

University of Michigan Journal of Law Reform

Volume 41

2007

Looking Ahead: The Future of Child Welfare Law

Donald N. Duquette

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mjlr>



Part of the [Juvenile Law Commons](#), [Legal Education Commons](#), and the [Legal History Commons](#)

Recommended Citation

Donald N. Duquette, *Looking Ahead: The Future of Child Welfare Law*, 41 U. MICH. J. L. REFORM 1 (2007).

Available at: <https://repository.law.umich.edu/mjlr/vol41/iss1/2>

This Symposium Introduction is brought to you for free and open access by the University of Michigan Journal of Law Reform at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in University of Michigan Journal of Law Reform by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

Donald N. Duquette*

INTRODUCTION

In March 2007, the University of Michigan Law School sponsored a three-day symposium to mark the Thirtieth Anniversary of the Child Advocacy Law Clinic. This thirtieth anniversary symposium offered reflections on thirty years of child welfare law and contemplated the future of justice for children. Many of this country's leaders in child welfare law participated in the discussion. The organizing questions were: *What should the law and legal institutions governing children's rights and child and family welfare look like in thirty more years? What steps are necessary to achieve those goals?*

When the University of Michigan launched the Child Advocacy Law Clinic in 1976, the first child advocacy clinic in the nation specializing in child abuse and neglect, there were about 340,000 children in foster care.¹ These children stayed in the system too long and lived in far too many different placements. Courts and lawyers played a very limited role in these cases. Parents had no right to counsel, child welfare agencies usually did not have legal representation, and the children themselves were not generally represented. The laws governing children in foster care were rudimentary.

Thirty years later, the system is vastly different. States have developed sophisticated child welfare laws, as well as significant bodies

* Clinical Professor of Law and Director, Child Advocacy Law Clinic, University of Michigan Law School.

1. This is an estimate. There are not hard data on the number of children in foster care in 1976. States were not required to report uniform data to a federal agency and data collection was very poor. Michael Wald estimates the foster care population at "over 300,000." Michael S. Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 STAN. L. REV. 623, 626 n.4 (1976). ("There are over 300,000 non-delinquent children presently in foster care under state supervision.") In December 1, 1975 hearings before the Subcommittee on Children and Youth, Senate Committee on Labor and Public Welfare Chairman Senator Walter Mondale, based on Department of Health, Education and Welfare estimates, put the number of children in foster care at roughly 360,000 for 1971. *Foster Care: Problems and Issues: Joint Hearing Before the S. Comm. on Children & Youth and S. Comm. on Select Education, Part 1*, 94th Cong. 1 (1975) (statement of Sen. Mondale). In the same of hearing, David Evans, President of the National Foster Parent Association, estimated the foster children at 350,000 or more. *Id.* at 4 (statement of David Evans, President, National Foster Parent Association).

of appellate law. Courts are now heavily involved in these cases, and lawyers now represent the child, parents, and child welfare agencies. There are as many as 50,000 lawyers involved in child welfare law in the United States,² and lawyers can become certified by the National Association of Counsel for Children (“NACC”) in an American Bar Association (“ABA”) approved specialty of Child Welfare Law.³

The status and sophistication of children’s law has certainly increased over the last thirty years. But have these changes benefited children? The condition of children in America is not better than it was thirty years ago, and by some measures it is worse. In 2003, there were about 523,000 children in the U.S. foster care system.⁴ About 800,000 children experience foster care each and every year.⁵ These children continue to stay in the system too long and have too many placements.

This symposium issue of the *Michigan Journal of Law Reform* includes fifteen articles and essays reflecting on the future of child welfare and child welfare law, addressing the organizing questions of the symposium. *What should the law and legal institutions governing children’s rights and child and family welfare look like in thirty more years? What steps are necessary to achieve those goals? What needs to be done to improve the way courts respond to cases of alleged child maltreatment?* The oral presentations and discussion from the symposium, a full list of which is shown in Table 1, provide additional insight.⁶ Audio and

2. Donald N. Duquette & Marvin Ventrell, *Certification of Child Welfare Attorneys: The Next Step in Building a Profession Dedicated to Justice for Children*, 23 CHILD. LEGAL RTS. J. 53, 54 (2003).

3. NAT’L ASS’N OF COUNSEL FOR CHILDREN, CHILD WELFARE LAW ATTORNEY SPECIALTY CERTIFICATION: PROGRAM SUMMARY (2007), http://www.naccchildlaw.org/training/documents/ProgramBrochure10-06_000.pdf. For additional information about certification, visit <http://www.naccchildlaw.org/training/certification.html>.

4. CHILD WELFARE INFO. GATEWAY, U.S. DEP’T. OF HEALTH & HUM. SERVS., FOSTER CARE 3 (2005), <http://www.childwelfare.gov/pubs/factsheets/foster.pdf>.

5. CHILD. BUREAU, U.S. DEP’T. OF HEALTH & HUM. SERVS., TRENDS IN FOSTER CARE AND ADOPTION—FY 2000—FY 2005 1 (2007), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends2000-2005.pdf; Sharon Vandivere et al., *Children in Foster Homes: How Are They Faring?*, in RESEARCH BRIEF, at 1 (Child Trends, Research Brief No. 2003–23, 2003), <http://www.childtrends.org/files/FosterHomesRB.pdf>.

6. An undertaking like this conference requires commitment and leadership from many quarters. I want to express my deep personal thanks to Emily Keller of the University of Michigan Journal of Law Reform (“JLR”) and Alicia Lixey, the administrator of the Child Advocacy Law Clinic, for their skillful management of the program. Thanks to 2006 JLR Editor in Chief Kate Zell, for sharing the vision and getting the collaboration with JLR started, and Chad Lindner, the current Editor in Chief, for bringing this symposium issue to completion. Our donor, Lance Johnson, University of Michigan Law School Class of 1965, was an essential partner in bringing this idea to fruition. Finally, whatever success the Child

video recordings of the presentations are currently available on the *Journal of Law Reform* website and can be accessed at: <http://students.law.umich.edu/mjlr/prospectus/calc.html>. The articles and the symposium talks alike are thoughtful and provocative from many different perspectives. They come from a U.S. Senator, professors of law and social work, clinical professors, the international community, leaders of the bar, directors of national child law organizations, directors of child law offices, and judges from all levels—trial, appellate, and state supreme courts. All the participants are recognized leaders in the field and all add immeasurably to this exercise of envisioning the future. A list of the symposium participants can be found in Table 2. It is our hope that the symposium presentations and this *University of Michigan Journal of Law Reform* publication will spark many new ideas and insights, and that the conversations initiated here will help chart our national direction going forward.

Our ambition is to encourage a vision of the child welfare legal system of the future. We should develop a consensus on goals for improving how the justice system functions for children and their families. Unless we develop vision, we will not be able to set targets for improvement or critically evaluate developments or cope with the inevitable surprises sure to be sprung upon us.

At the end of this issue, I share my personal reflections on the future of child welfare law.⁷ I hope you find this symposium issue helpful in your work.

Advocacy Law Clinic or this Thirtieth Anniversary has realized is a tribute to the deep support of Michigan Law School and our Dean, Evan Caminker.

7. Donald N. Duquette, *Looking Ahead: A Personal Vision of the Future of Child Welfare Law*, 41 U. MICH. J.L. REFORM 317 (2007).

TABLE 1. THE UNIVERSITY OF MICHIGAN CHILD ADVOCACY LAW
CLINIC 30TH ANNIVERSARY SYMPOSIUM: LOOKING AHEAD
TO THE NEXT 30 YEARS OF CHILD ADVOCACY

Welcome and the History of Child Protection in America

DON DUQUETTE, Director, Child Advocacy Law
Clinic, Clinical Professor of Law

JOHN E.B. MYERS, Professor of Law, University of
the Pacific, McGeorge School of Law

Keynote Address by United States Senator Debbie
Stabenow, Democrat, Michigan

Child Well-being in America

ANN REYES ROBBINS (CALC 1996), University of
California, Ph.D. Student in Social Work

MICHAEL BARR, Professor of Law, University of
Michigan Law School

SARAH RAMSEY, Professor of Law, Syracuse Univer-
sity College of Law

KATHLEEN C. FALLER, Professor, University of
Michigan School of Social Work

Child Welfare and Children's Rights Around the World

ELIZABETH LOCKER (CALC 2002), Georgia Commit-
tee on Justice for Children

JAAP E. DOEK, Chair, UN Committee on Children;
Professor of Law, Vrije Universiteit, Amsterdam

HOWARD DAVIDSON, Director, ABA Center on Chil-
dren and the Law, Washington, D.C.

How to Best Protect the Legal Interests of Children?

DAVID CHAMBERS, Professor Emeritus of Law, Uni-
versity of Michigan Law School

SACHA COUPET (CALC 1994), Assistant Professor,
Loyola Civitas ChildLaw Program

DAVID HERRING (CALC 1984), Professor of Law,
University of Pittsburgh School of Law

MARTY GUGGENHEIM, Professor of Clinical Law,
New York University School of Law

What Role Should Impact Litigation Play in Achieving Justice for Children?

DAVID CHAMBERS, Professor Emeritus of Law, Uni-
versity of Michigan Law School

SUELLYN SCARNECCHIA, Dean and Professor of Law,
New Mexico School of Law

MARCIA ROBINSON LOWRY, Executive Director,
Children's Rights Inc., New York, NY

JUSTICE BOBBE BRIDGE, Washington State Supreme
Court

FRANK VANDERVORT, Clinical Assistant Professor of
Law, Child Advocacy Law Clinic, University of
Michigan Law School

The Role of Interdisciplinary Education in Child Advocacy

FRANK VANDERVORT, Clinical Assistant Professor of
Law, Child Advocacy Law Clinic, University of
Michigan Law School

PAUL HOLLAND, Director of Clinical Programs, Seat-
tle University School of Law

SCOTT HOLLANDER (CALC 1988), Executive Direc-
tor, KidsVoice, Pittsburgh, PA

KATHLEEN C. FALLER, Professor, University of
Michigan School of Social Work

The Child Welfare Courts of the Future

CHRIS WU (CALC 1982), California Administrative
Office of the Courts; Board Chair, NACC

HON. MAURICE PORTLEY (CALC 1978), Arizona
Court of Appeals

HON. RICHARD FITZGERALD, retired Jefferson Fam-
ily Court Chief Judge, Kentucky

HON. EUGENE A. MOORE, Oakland County Probate
Court

JUSTICE BOBBE BRIDGE, Washington State Supreme
Court

The Practice of Child Welfare Law in 2036

DONNA FURTH, Attorney at Law, San Francisco, CA

MARVIN VENTRELL, President and CEO, NACC

JUDITH SANDALOW, Executive Director, Children's
Law Center, Washington, D.C.

JAMES MARSH (CALC 1988), Marsh, Menken &
Weingarden, PLLC, White Plains, NY

Challenges for the Future of Legal Advocacy for Children and Families

MELISSA BREGER (CALC 1994), Clinical Professor of Law, Director, Family Violence Litigation, Albany Law School

HOWARD DAVIDSON, Director, ABA Center on Children and the Law, Washington, D.C.

MARTY GUGGENHEIM, Professor of Clinical Law, New York University School of Law

VIVEK SANKARAN (CALC 2002), Clinical Assistant Professor of Law, Child Advocacy Law Clinic, University of Michigan Law School

TABLE 2. UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM
CALC SYMPOSIUM ISSUE, FALL 2007

1. RAMSEY, SARAH H., Child Well-Being: A Beneficial Advocacy Framework for Improving the Child Welfare System?
2. DOHRN, BERNARDINE, "I'll Try Anything Once": Using the Conceptual Framework of Children's Human Rights Norms in the United States
3. DOEK, JAAP E., The Eighteenth Birthday of the Convention of Rights of the Child: Achievements and Challenges
4. COUPET, SACHA M., Neither Dyad Nor Triad: Children's Relationship Interests Within Kinship Caregiving Families
5. HERRING, DAVID J., The Multiethnic Placement Act: Threat to Foster Child Safety and Well-being?
6. FALLER, KATHLEEN COULBORN and VANDERVORT, FRANK E., Interdisciplinary Clinical Teaching of Child Welfare Practice to Law and Social Work Students: When World Views Collide
7. BREGER, MELISSA and HUGHES, THERESA, Advancing the Future of Family Violence Law Pedagogy: The Founding of a Law School Clinic
8. HOLLANDER, SCOTT and Budd, JONATHAN, Kids-Voice: A Multidisciplinary Approach to Child Advocacy
9. LOWRY, MARCIA ROBINSON and BARTOSZ, SARA, Why Children Still Need a Lawyer
10. MOORE, HON. EUGENE ARTHUR, Juvenile Justice: The Nathaniel Abraham Murder Case
11. REYES ROBBINS, ANN, Troubled Children and Children in Trouble: Redefining the Role of the Juvenile Court in the Lives of Children
12. BRIDGE, HON. BOBBE J., Reflections on the Future of Child Advocacy
13. LOCKER, ELIZABETH and BARCLAY, ANDREW, Measuring the Next 30 Years

14. SANKARAN, VIVEK S., Innovation Held Hostage: Has Federal Intervention Stifled Efforts to Reform the Child Welfare System?
15. DUQUETTE, DONALD N., Looking Ahead: A Personal Vision of the Future of Child Welfare Law