



Looking Ahead to the Next 30 Years of Child Advocacy

MARCH 28 - APRIL 1, 2007

A symposium and celebration of the 30th anniversary of Michigan Law's pioneering Child Advocacy Law Clinic (CALC)

SPONSOR

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U-M *Journal of Law Reform*, U-M Law School
March 28-April 1, 2007

Papers from the conference will be printed in a future issue of the Journal of Law Reform.

INTRODUCTION

The History of Child Protection in America by Professor John E.B. Myers
University of the Pacific, McGeorge School of Law

KEYNOTE ADDRESS

U.S. Senator Debbie Stabenow

SESSIONS

- Child Well-Being in America
- Child Welfare and Children's Rights Around the World
- 1 • How to Best Protect the Legal Interests of Children?
- 2 • What Role Should Impact Litigation Play in Achieving Justice for Children?
- The Role of Interdisciplinary Education in Child Advocacy
- The Child Welfare Courts of the Future
- The Practice of Child Welfare Law in 2036
- Challenges for the Future of Legal Advocacy for Children and Families

PHOTO LEGEND

- 1 McGeorge School of Law Professor John E.B. Myers details the history of U.S. child protection.
- 2 *Journal of Law Reform* Symposium Editor Emily Keller, Donald N. Duquette, '75, U.S. Senator Debbie Stabenow, and UN Committee on Children Chair Jaap E. Dock chat during a conference reception.
- 3 Listening intently.
- 4 Children's Rights Executive Director Marcia Robinson Lowry on "What role should impact litigation play in achieving justice for children?"
- 5 Washington State Supreme Court Justice Bobbe Bridge addresses participants.





Donald N. Duquette: 'Kiddie law' is growing up

In 1976 Donald N. Duquette, '75, right, launched the Law School's Child Advocacy Law Clinic, which today has become perhaps the most-imitated clinical education vehicle in the country. In addition to training law students, the clinic has provided significant, successful assistance for many children and their parents, and Duquette and others associated with CALC have become well known as pioneers and leaders in the field of child advocacy law. Here, Duquette recalls some events of CALC's founding and early years and ponders the future in the field of child advocacy.

Q: What were your expectations and goals when you launched the Child Advocacy Law Clinic (CALC) 30 years ago? Why did you feel such a clinic was needed?

A: One rarely does anything alone in this world. Then, as now, I was part of a team, a community of people dedicated to addressing a serious social problem—child abuse and neglect. The U.S. Congress, in 1974, passed the Child Abuse Prevention and Treatment Act that provided federal funds to address these problems—if states adopted certain procedures including mandatory reporting of suspected child abuse and neglect and representation of children in such cases. The Harry A. and Margaret D. Towsley Foundation gave a three-year grant to the Law School for an interdisciplinary program in child abuse and neglect that included law, social work, and, within medicine, pediatrics and psychiatry. Dr. Towsley was himself a pediatrician and quite sensitive to the concerns that had gained national attention. He and others recognized the need to develop knowledge and professionals able to meet this challenge of child abuse. The challenge to this nascent interdisciplinary program on child abuse and neglect was to develop a broad-based, interdisciplinary approach to the problem of professional education and advocacy for the abused and neglected child. Each school was to develop clinical, non-clinical, and continuing professional education programs in child abuse and neglect. Before law school I had been a social worker in the field of child protection and foster care. After I graduated from Michigan Law, my first job was as an assistant professor of pediatrics at Michigan State University, where I worked closely with Dr. Ray Helfer, a pioneer in the diagnosis and treatment of child abuse and neglect. When I saw the advertisement for the interdisciplinary project position, I thought my name was on it and applied at once. I was fortunate enough to be hired and began in August of 1976. Our first CALC class of six students met in fall 1976.

Despite the presence of some dedicated individuals, the state of the law and court practice was dismal. It was a rare caseworker, lawyer, or judge who possessed even rudimentary knowledge of the field. The state caseworkers found the court process unpredictable and mysterious. But more seriously, the court and agency procedures did not reflect current psychological knowledge of child development and children's needs for continuity, stability, and prompt decision-making. One of the slogans





coined during this time (by Anna Freud, Joseph Goldstein, and Albert J. Solnit) was “the child’s sense of time,” which translated for child advocacy workers into “Make good decisions, but make them efficiently and promptly.” On one hand, the legal community was hungry for the medical, psychological, and social work information that we had available for them. On the other hand, the non-law community was similarly starved and receptive for information and guidance as to the law and legal procedures. Both camps wanted interdisciplinary procedures that could lead to better outcomes for children and their families.

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. 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 generally did not have legal representation, and the children themselves were not generally represented. The laws governing children in foster care were rudimentary.

What were my expectations at the beginning? I think I had only an intuitive sense that child maltreatment is a problem that could not be addressed by any single discipline and that an interdisciplinary approach to academic inquiry, professional education, and practice would bear positive results for children.

Q: As you look back over CALC’s 30 years, what accomplishments do you see? And what remains to be achieved?

A: Thirty years later, the system is vastly different. States have developed sophisticated child welfare laws, including a significant body of appellate law. Over the years CALC has been involved

in nearly all of the state initiatives to reform child welfare. I can look at the Michigan Juvenile Code and identify sections where our involvement was instrumental. I can look to particular sections and remember which students helped with the drafting. That part has been gratifying.

In 1990 I wrote a book with an interdisciplinary group of graduate students. *Advocating for the Child in Protection Proceedings* was picked up by a group doing a national study of child representation mandated by Congress and that book became the framework for the study. Our view of the dimensions of child representation became part of the national conversation and influenced many of the model acts and state laws since developed. That part too has been gratifying, but there is so much more to be done.

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. An idea that started here was to certify lawyers as specialists in child welfare law. We partnered with the National Association of Counsel for Children, received a sizeable grant from the U.S. Children’s Bureau, and launched a project to implement lawyer certification in child welfare. The ABA approved the specialty and just last May we certified the first group of lawyers as Child Welfare Law Specialists from Michigan, New Mexico, and California. National groups of judges (National Council of Family and Juvenile Court Judges) and lawyers (National Association of Counsel for Children, the ABA Center on Children and the Law) have provided important leadership in this field. There has been a dramatic increase in the sophistication of national groups addressing the problems of child

disgrace. If parents had more resources to cope with the inevitable stresses of life, fewer children would end up in the court system. Sixty percent of reports of suspected child abuse and neglect are for neglect. A recent report to Congress found that child poverty costs our U.S. economy \$500 billion per year.

Lawyers who work for children do have different needs. They need an interdisciplinary training and a law practice that has access to other disciplines such as social work, psychology, and education. They need support, both emotionally and professionally. Lawyers need to be connected to legal and social science resources. We see many statewide or national listserves in which case issues and personal issues are discussed and solutions shared. We need more of that. Lawyers still need assurance that there are few areas of the law more important than what they are doing. They also need to be paid better.

Q: You, CALC, and other advocates for children have been instrumental in forming a network of lawyers (more than 50,000 today) involved in child welfare work and establishing ABA certification of Child Welfare Law as a legal specialty. Yet today there are more children in foster care than when you launched CALC in 1976. What is the lesson of this apparent contradiction?

A: Law cannot solve every social problem. Courts are overloaded with cases and problems that courts are not well-suited to addressing. This is an interdisciplinary problem when a specific case is identified. From a systemic perspective, child maltreatment is a broad social problem where societal neglect of families is as much at fault as are individual parents.

Q: So there still is a great deal to accomplish and change in the field of child advocacy and child welfare law. What does this continuing need bode for legal education and legal practice?

A: This area of the law remains very dynamic. There are unexplored issues everywhere. Constitutional issues are developing and will continue to. That makes it exciting. It also means that child advocacy clinics such as ours will have plenty of interesting issues with which to grapple, while at the same time providing good service to individual children and parents. Child advocacy is an excellent setting for seeing the human side of law and lawyering. Legal education should have experiences for law students generally in which they see the power and responsibility of the law and are challenged to develop the most sophisticated legal skills. For law students looking to pursue a career in child welfare, we always encourage them to be not only "soft-hearted" but also "hard-headed". That is, be the best lawyer you can be.

Q: What kinds of changes do you foresee for the next 30 years?

A: We must support families better. To protect children, support families, that would be my slogan. We must empower families to take better care of their own. The state is a lousy parent, despite its best efforts. The Detroit Center for Family Advocacy is a model that will take off, giving parents and extended families some legal and social work assistance so they can better provide for their children without involvement of this cumbersome child welfare system. I think courts will get away from merely "processing" cases. This is unfortunate where it happens, but it happens now way too much.

There is a huge debate in the field about whether a lawyer should represent a child's best interests or the stated wishes of the child. The so-called "client directed" approach will not work for the youngest children and will eventually be abandoned, but the client directed approach will be expanded at the older ages so the stated wishes of children as young as 10 or even 7 will be aggressively advocated by lawyers. Children at those ages can have important views about what is best for them that should be fully heard by the court.

We will see more decision-making in 30 years that is not adversarial and that takes place outside the traditional courtroom. Non-adversarial case resolution will become more and more common, including family group conferencing and mediation.

Q: Many former CALC students have pursued careers in child welfare, others do pro bono work in the field, and, no matter what their current work, graduates consistently refer to CALC as a high point of their legal education. Do you find it rewarding that CALC has played such a significant role in so many graduates' lives?

A: Yes, it is rewarding to hear from students who have become leaders in the child welfare law field or who

Child Advocacy Law Clinic alumni and current and former CALC faculty in a group photo at the 30th anniversary celebration and conference.





continue to work day after day on behalf of children and their families. Some very influential national leaders in child law have come through our CALC: Chris Wu, '84, of the California Administrative Office of the Courts and now chair of the National Association of Counsel for Children's Board of Directors; Scott Hollander, '90, the executive director of KidsVoice in Pittsburgh, with a terrific model of interdisciplinary legal representation of children; James Marsh, '90, founder of the Children's Law Center of Washington, D.C., another national model of child representation. (Coincidentally, that office is now directed by Judith Sandalow, whose father, U-M Law Professor Emeritus Terry Sandalow, was dean during the critical formative years of CALC.) Our students are present in law schools, too: David Herring, '85, a former student and then faculty member at CALC who left Michigan Law to start a child advocacy clinic at University of Pittsburgh School of Law, ended up as dean of Pitt Law for nearly 10 years, and continues to be an important scholar in the area; Melissa Breger, '94, is a clinical professor at Albany Law School in a domestic violence clinic; one of the most prominent family law scholars, with a popular casebook on children and the law, is Sarah Ramsey of Syracuse University, who received an LL.M at Michigan in 1982 and worked very closely with CALC in some groundbreaking research. I could go on: Kristin Kimmel, '96, at Lawyers for Children in New York; Beth Locker, '03, at the Georgia Supreme Court's administrative office, doing children's work. We also have many family and juvenile court judges among our graduates, including Court of Appeals judge Maurice Portley, '78, in Arizona, and Patricia Gardner, '83, [Kent County] and Carol Garagiola, '80, [Livingston County] from

Michigan. And this outpouring is just the tip of the iceberg of former CALC students involved in the field.

However, I would estimate that only perhaps 10 percent of our 800 or so alums are doing child and family law careers. The vast majority of the CALC alums are doing traditional practices or not practicing law at all. But they remember their CALC experience very positively. Remember our place in the law school curriculum. We do not set out to train child advocate lawyers. We set out to train the best lawyers in America—smart, well-prepared, and ready to do sophisticated, productive work. Every semester I tell the incoming students that our goal is no less than to give them the best clinical law experience available anywhere in America. We mean that and try to hit that high goal.

The CALC experience exposes these amazing people to an interesting and compelling area of the law and they often stay committed, even if they do not practice in the area. That is one of the reasons our alums tend also to be involved in children's issues either doing pro bono legal work, committee work, or as financial supporters.

Consistent with the role of UMLS to public service, we actively consider it part of our mission to identify and encourage altruism and the public interest ethic. We are hard-headed pragmatists about this work. We are hopeful and confident without being Pollyannas. Whether the motive is compassion or enlightened self-interest, child welfare and child advocacy make sense. ■

To view a video about the Child Advocacy Law Clinic, go to the Web site: www.law.umich.edu/centersandprograms/clinical/calc/index.htm

