Once in a while, a case comes along that can refocus your whole career in law. For Suellyn Scarnecchia, that case came in the small form of a child known as Jessica.

Scarnecchia and students in the Law School’s Child Advocacy Law Clinic represented Roberta and Jan DeBoer in their struggle to adopt the child they've lived with and loved for two years. The girl’s biological parents, Cara and Daniel Schmidt of Iowa, fought to block the adoption and reclaim custody.

Cara, then single, waived parental rights to her daughter at birth in February 1991, but she named the wrong man as father. Within weeks, she reconsidered; after the DeBoers brought the baby back to Michigan, she told Schmidt that he was the real father, and they launched a legal battle to reclaim the child. After three Iowa courts confirmed the Schmidts' parental rights and granted them custody, the DeBoers sought the clinic's help.

In Michigan courts and the glare of intense publicity, Scarnecchia and the DeBoers argued that the Iowa rulings weren’t valid because they failed to consider the child’s best interests. In July, the Michigan Supreme Court ruled that the child must go back to the Schmidts in Iowa. Scarnecchia, Professor Kent Syverud and attorneys at the Washington, D.C., firm of Wilmer, Cutler and Pickering asked the U.S. Supreme Court to block the transfer order and hear the case. The Court refused, and in a tear-drenched parting Aug. 2, Scarnecchia handed the child over to the Schmidts.

At first, Scarnecchia thought there was little hope that Michigan courts would take the case, but the students she asked to research the jurisdiction issue found one case that offered a precedent to switch states. “My clients and I knew we had little chance of success, but we felt that the injustice inherent in the Iowa decision was something we should try to fight,” she says. “A child’s right to have her best interests considered, even in the face of a conflict with her father’s rights, is an important legal issue. The case offered a good teaching tool.”

Not least among the lessons was a crash course in advanced media relations. “As soon as we realized how much media coverage there was going to be, we saw that this was not a case where we could put students in court like we usually do. We didn’t want them to be in a situation where they were reciting their very first words in court while hooked to 20/20’s cameras,” Scarnecchia says with a laugh.

Instead, she argued the case up to the Michigan Supreme Court.
She found herself constantly televised, photographed and interviewed. Court TV broadcast the entire eight-day hearing on the child's interests in Washtenaw County Circuit Court. "I found out people were sitting in bars in Cedar Rapids watching every minute of this," she marvels. Of all the surreal media moments, "Court TV was the weirdest part," she says. "They are just like sports commentators, doing play-by-play during the trial. They ask you during breaks if you want to comment on the trial. One day I decided I did want to comment on some issue. The reporter was listening to the guy in the New York studio through an earpiece and all of a sudden she turned to me and started asking me questions. I felt like I was Bo Schembechler being interviewed on the sidelines. It was really strange."

Like sportscasts, Court TV relies on experts around the country to give instant analysis of a trial in progress. Ironically, one such expert asked to comment on Scarnecchia's performance in court had to decline because about that time, he was evaluating her teaching skills in her tenure review at the Law School.

She was granted tenure in May, but because her review was mentioned in the newspapers, even that came under public criticism. Schmidt proponents complained that she shouldn't be rewarded with tenure for spending the Law School's resources and taxpayers money to support the DeBoers when they have little legal standing. Scarnecchia calmly ignores the personal attacks, but she defends the clinic's role in taking the case.

"The clinic is here to take a public policy position on children's rights and teach students about important issues like this. We will always have people who disagree with a position and they will object to tax dollars spent on it, but in fact, those dollars are spent on educating law students. We can't teach students to be lawyers without taking positions on cases."

Scarnecchia stresses that the DeBoers paid all out-of-pocket expenses related to the case, including phone bills, copying fees, travel costs, expert witness fees and filing fees. "All we've provided is free attorney time, which is considerable," she says, declining to even estimate the hours involved. "However, there is no question that there are other attorneys who would have been willing to do this for free, although it might have taken a combination of offices to handle the workload, whereas we had the students to help."

She's grateful for the efforts of her students and attorneys, including alumni, who volunteered to help with parts of the case. For example, Veronique Lerner, '86, and local attorney Joan Lowenstein coauthored a Michigan Supreme Court brief on behalf of guardians ad litem. Sally Rutzky, '73, and Peter Darrow, '48, served as Jessica's court-appointed guardians ad litem. Scott Bassett, '81, represented Darrow in a second case filed in the child's name.

The six students staffing the case clearly learned a lot and loved it. "They're excited about jurisdiction and civil procedure in a way I've never seen students excited about these subjects," she says. She has shared every problem and issue with them — even the somewhat superficial but very real problem of what to wear when all the cameras are aimed at you.

After long debate, Scarnecchia broke the long-standing taboo for female attorneys and wore pants to court. Yes, even the Michigan Supreme Court. "My women students were appalled. They were so convinced that you have to wear a skirt to court. It's another example of the questions new women lawyers face that men just don't have to deal with," she says. She had serious qualms herself, but finally decided, "The Supreme Court was not going to decide the case on whether or not I wore pants. It came down to the fact that I would feel much more comfortable trying a case in pants." She did and encourages women attorneys to try it and "call me if someone complains!"

Heaven knows she's heard plenty of complaints already. Emotions ran high on both sides of the case, and she received anonymous calls at home from people supporting the Schmids. Pro-DeBoer people stopped her on the street to tell her she was doing a good job. "That's nice, but it also scares me a little bit to have strangers coming up to me because there are such strong feelings on the other side," she notes.

Scarnecchia battles her own worries about what will happen to Jessica. "From all I've been told, sending her back to Iowa will hurt her terribly. It's my experience that courts usually consider the child's interests paramount in custody cases. This case feels worse because the courts aren't considering her interests at all. It's very frustrating," she says quietly.

The intense media attention and the potential of arguing the DeBoers' case all the way to the Supreme Court made Scarnecchia call on qualities she didn't know she had — like courage. She told Law School graduates in a speech at Honors Convocation in May that she found herself contemplating courage as she struggled to make sense of her role. After 12 years as an attorney, she was surprised to realize how hard it was to relate courage to her profession. It was still harder to think of herself as courageous. "Then I remembered what had drawn me to becoming a lawyer. It was my desire to be like those courageous lawyers who fought in court for the underdog, like Atticus Finch, the white lawyer who faced his town to represent a black defendant wrongly accused of rape in To Kill a Mockingbird," she told students.

As this case drew to its bitter conclusion, Scarnecchia showed commitment and courage worthy of the heroes of literature and
the civil rights movement who inspired her career choice. On the day the court-ordered transfer took place, it fell to her to carry the screaming Jessica from the DeBoers’ home, escorted by guards hired after intense public opposition led to threats. She drove the child to a secure garage at Ann Arbor Police Department where the Schmidts waited, shielded from cameras, to claim the child. She had to entice Jessica to climb into the Schmidts’ van, and then she turned away. Just two hours later, she bravely recounted the wrenching experience before a room full of reporters.

“We really could not anticipate how hard this was going to be. It was terribly, terribly hard,” she told reporters. “We’ve taken a healthy, happy child and sent her away from her family. We’ve done a terrible thing to her today.

“I strongly believe that it was the law of the state of Iowa that created her family with the DeBoers and the law that ripped her family apart. I’m ashamed in many ways to be part of a legal system that allowed this to happen and I pray she’ll be O.K. A lot of people have debated who was at fault in this case. Regardless of what the adults did and where we went wrong, the fact is that the law should have intervened to protect her from this trauma.”

Although disappointed in the law now, Scarnecchia has known since age 14 that she wanted to battle injustice as a lawyer. Once in law school, she was drawn to the women’s movement and served as president of the Women Law Student Association. After graduation in 1981, though, she shelved her interest in family law and practiced employment discrimination law in private practice in Battle Creek instead.

“I kept away from family law because I was aware that there was a sexist stereotype that it was a woman’s field. I was worried that people wouldn’t take me seriously as a litigator in that kind of practice. It’s ironic that I’m getting all this publicity and attention for a child’s case after all,” she laughs.

Ultimately, her interest in children — her own son and others — brought her back to the Law School to join the clinic faculty in 1987. “One of the reasons I left private practice was to be able to spend more time with my son, now 7. During this case, I spent more weekend and evening time working than I ever did in practice,” she notes.

More soberly, she adds that she’s worried about the impact of the case on her son. “He’s heard me talk to reporters on the phone about how terrible I think it would be for Jessica if she went to Iowa now. I didn’t really realize how much of that he was hearing until Martin Luther King Day. Everyone in his class had to finish the sentence, ‘I have a dream. . . .’ His was, ‘I have a dream that Jessica will get to stay with the DeBoers.’”

Jessica’s case has given her new ways to think about child abuse and neglect. “I know I’ve learned just how difficult it is to ask adults to think in terms of a child’s point of view. I realize...
The Battle for Custody

February '91  Cara Clausen gives birth to a baby girl and releases her parental rights. The man she named as father waives his rights as well. The infant goes to live in Ann Arbor with Roberta and Jan DeBoer.

March '91  Clausen challenges her release of rights in Iowa courts, claiming she signed papers without waiting the 72 hours required by Iowa law. Dan Schmidt also challenges the adoption, claiming that he is the real father. The Iowa Juvenile Court dismisses both claims.

December '91  Iowa District Court finds that Schmidt is the father and orders the DeBoers to return the child to him.

January '92  Iowa Supreme Court stays the District Court order, finding that it is in Jessica’s best interest to leave her with the DeBoers pending appeal. In September, the court affirms district court findings.

December '92  The Iowa Supreme Court grants custody to Schmidt. The DeBoers file in Michigan Circuit Court under the Uniform Child Custody Jurisdiction Act.

January '93  Michigan Circuit Court holds an eight-day hearing on Jessica’s best interests.

February '93  Circuit Court judge finds it in the child’s interest to remain with the DeBoers. The Schmidts’ attorney appeals the court’s jurisdiction.

March '93  Michigan Court of Appeals rules that Michigan has no jurisdiction and the DeBoers have no standing to bring a custody case.

April '93  Jessica’s guardian ad litem, Peter Darrow, files a new custody case in Circuit Court on behalf of the child. The Michigan Supreme Court grants leave to appeal both the DeBoer case and the child’s suit.

June '93  The Michigan Supreme Court hears oral arguments in both cases.

July '93  The Michigan Supreme Court upholds the Court of Appeals decision and orders both parties to work out a transfer plan to return Jessica to the Schmidts within 31 days. The DeBoers petition the U.S. Supreme Court to stay the transfer order and hear the case. The Court refuses to grant a stay. On Aug. 2, the DeBoers bid tearful goodbyes to Jessica and Scarnecchia turn her over to the Schmidts, who fly her back to Iowa immediately.