

TABLE OF CONTENTS

ARTICLES

A Question of Capacity: Towards A Comprehensive and Consistent Vision of Children and Their Status Under the Law
Larry Cunningham.....275

How Are Reasonable Children Coerced? The Difficulty of Applying the Establishment Clause to Minors
Marianna Moss379

Discovering the Undiscoverable in Child Protective Proceedings: Safety Planning Conferences and the Abuse of the Right to Counsel
Theresa Hughes429

You Can't Force Her to be a Second Mom: *KM v. EG*
Micah Nilsson479

CHILDREN'S SECTION:

AGING OUT OF FOSTER CARE

Phoenix Rising: I Made it but I Needed All The Help I Could Get
Christine McKenna520

My Life on the Streets
William Dominguez528

Overview of Financial Aid Related Programs Available to Former Foster Youth
Michael McPartlin.....534

Comment: Turning Back the Clock: The Loss of Tribal Jurisdiction over Involuntary Juvenile Dependency Proceedings
Sarah Martinez541

BOOK REVIEWS552

CHILDREN’S RIGHTS, STATE INTERVENTION, CUSTODY
AND DIVORCE: CONTRADICTIONS IN ETHICS AND
FAMILY LAW *By Laurence D. Houlgate*
Reviewed by Paul J. Levesque, PhD

CHANGING LIVES: DELINQUENCY PREVENTION AS
CRIME CONTROL POLICY *By Peter W. Greenwood*
Reviewed by Neha Marathe

**RECENT COURT DECISIONS
IMPACTING JUVENILES 562**

SUBSCRIPTION INFORMATION

The *UC Davis Journal of Juvenile Law & Policy* is published twice each year. The subscription price is \$40 per year for institutions and individuals and \$20 per year for current students. Please send your request to the address listed below.

Domestic claims for non-receipt of issues should be made within 90 days of the date of publication. Foreign claims for non-receipt should be made within 180 days of the date of publication. Claims for non-receipt are filled without charge if made within these periods. Delayed claims may result in usual and customary charges.

CALL FOR PAPERS

The *UC Davis Journal of Juvenile Law & Policy* is published twice a year. The Journal continually seeks submissions of articles for publication from professors, practitioners, clinicians, students and community leaders. We accept a broad range of topics including, but not limited to, family law, education law and juvenile criminal law. While most articles focus on law and policy in the United States, we eagerly review articles that address a relevant international issue. In addition to articles, the Journal will review scholarly book reviews, feature pieces, student comments and research notes for publication.

The editors prefer to receive submissions electronically. Manuscripts should be double-spaced, in footnote format and compatible with Microsoft *Word*. Citations should be in Bluebook format. *See* BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005). Please direct submissions to:

Address: Editor-in-Chief
Journal of Juvenile Law & Policy
UC Davis School of Law
400 Mrak Hall Drive
Davis, CA 95616

E-mail: jjlp@ucdavis.edu

UC DAVIS JOURNAL OF JUVENILE LAW & POLICY

Volume 10

Winter 2006

Number 2

Editor-in-Chief

STEPHEN M. SIPTROTH

Managing Articles Editor

LAURA WARNER

Managing Sections Editor

NEHA MARATHE

Senior Article Editors

ANDREA FAZEL
TERI ANN KEZIRIAN

DIANA GENG
ALLAN SHULDINER

Research Editors

ERIC DYE MARIAM KAVIANI SARAH ROPELATO LATIKA SHARMA

Business Editor

FRANCES BURNS

Circulation Editor

CATHERINE WISE

Production Editors

ANGELA CHEW & LESLIE DAVIS

Copy Editors

MAREN AHNBERG	JINA KIM	SHANNON PONEK
ALISON BROWN	ALEXANDER KRAMER	TERI MAE RUTLEDGE
REBECCA CANALES	SARAH MARTINEZ	PATRICK SNYDER
JOAN CHAN	JOHN MCCLURE	JOHN THOMAS
AMANDA CHAVEZ	JEREMY MCLAUGHLIN	LAUREN WIGGINS
ELAINE CHU	HEATHER MELTON	JULIA WILEY
JASON CINQ-MARS	JULIA MENDOZA	AMELIA WINCHESTER
GUY DANILOWITZ	NATALIE MOORE	GRACE YOO
RACHEL DIPPEL	CHRISTINE OLSON	SUSAN YOON
SARAH FISCHER	LAURA O'NEILL	IRENE ZURKO
ERIN GALLAGHER	JENNIFER PHAN	

Faculty Advisor

PROFESSOR MARTHA S. WEST

The Journal would like to offer special thanks to the Dean's Office, the Law Library, the Law Students Association, Madeleine Fischer, and Professor Martha S. West for their continued support.

Copyright © 2006 by the Regents of the University of California. Except as otherwise provided, the author of each article in this issue has granted permission for copies of the article to be made for classroom use, provided that (1) copies are distributed at or below cost, (2) the author and the journal are identified, (3) proper notice of copyright is affixed to each copy, and (4) the U.C. Davis Journal of Juvenile Law & Policy is notified of the use.

Please cite to this issue of the journal as follows:
10 U.C. DAVIS J. JUV. L. & POL'Y ____ (2006).

ADMINISTRATIVE OFFICERS

ROBERT C. DYNES, B.S., M.S., PH.D., *President of the University*
LARRY N. VANDERHOEF, B.S., PH.D., *Chancellor*
VIRGINIA S. HINSHAW, B.A., M.S., PH.D., *Provost and Executive Vice Chancellor*
REX R. PERSCHBACHER, A.B., J.D., *Dean*
KEVIN R. JOHNSON, A.B., J.D., *Associate Dean for Academic Affairs*
HOLLIS KULWIN, B.A., J.D., *Assistant Dean for Student Affairs*
ADAM TALLEY, *Assistant Dean for Administration*

School of Law Faculty

Professor of Law

DIANE MARIE AMANN, B.S., M.A., J.D.
ALAN E. BROWNSTEIN, B.A., J.D.
ANUPAM CHANDER, A.B., J.D.
JOEL C. DOBRIS, B.A., LL.B.
HOLLY D. DOREMUS, B.S., J.D., PH.D.
FLOYD F. FEENEY, B.S., LL.B., *Homer G. and Ann Berryhill Angelo Professor of Law*
ARTURO GÁNDARA, B.S., M.S., M.B.A., J.D.
GEORGE S. GROSSMAN, B.A., LL.B., M.S.L.S., *Law Librarian*
ROBERT W. HILLMAN, B.A., J.D., *Fair Business Practices and Investor Advocacy*
BILL ONG HING, A.B., J.D., *Director of Clinical Education*
EDWARD J. IMWINKELRIED, B.A., J.D., *Edward L. Barrett Professor of Law and Director of Trial Advocacy Program*
KEVIN R. JOHNSON, A.B., J.D., *Associate Dean for Academic Affairs and Mabie/Apallas Professor of Public Interest Law and Chicana Studies*
THOMAS W. JOO, A.B., J.D.
LESLIE A. KURTZ, B.A., M.A., J.D.
EVELYN A. LEWIS, B.A., J.D.
ROBERT P. MERGES, B.S., J.D., LL.M., J.S.D.
JOHN B. OAKLEY, B.A., J.D.
REX R. PERSCHBACHER, A.B., J.D., *Dean*
LISA R. PRUITT, B.A., J.D., PH.D.
CRUZ REYNOSO, A.B., LL.B., *Boochever and Bird Chair for the Study and Teaching of Freedom and Equality*
DANIEL L. SIMMONS, B.A., J.D.
MADHAVI SUNDER, A.B., J.D.
MARTHA S. WEST, B.A., J.D.
BRUCE A. WOLK, B.S., M.S., J.D.

Professor of Law Emeritus

JOHN D. AYER, A.B., J.D., LL.M.
EDWARD L. BARRETT, JR., B.S., J.D.
FLORIAN BARTOSIC, B.A., B.C.L., LL.M.
CAROL S. BRUCH, A.B., J.D.
HARRISON C. DUNNING, A.B., LL.B.
GARY S. GOODPASTER, B.A., J.D.
JAMES E. HOGAN, A.B., LL.B.
RAYMOND I. PARNAS, A.B., J.D., LL.M., S.J.D.
JOHN W. POULOS, A.B., J.D.

EDWARD H. RABIN, A.B., J.D.
MORTIMER D. SCHWARTZ, J.D., LL.M., M.S.
RICHARD C. WYDICK, B.A., LL.B.

Acting Professor of Law

ANDREA K. BJORKLUND, B.A., M.A., J.D.
JENNIFER CHACÓN, A.B., J.D.
CHRISTOPHER S. ELMENDORF, B.A., J.D.
ELIZABETH E. JOH, B.A., J.D., PH.D.
CARLTON LARSON, A.B., J.D.
ALBERT C. LIN, B.S., M.P.P., J.D.
ROBERT A. MIKOS, A.B., J.D.
ANGELA I. ONWUACHI-WILLIG, B.A., J.D.
DONNA SHESTOWSKY, B.A., M.S., J.D., PH.D.
TOBIAS BARRINGTON WOLFF, B.A., J.D.

Senior Lecturer in Law

MARGARET Z. JOHNS, B.A., J.D., *Director of Legal Writing and Civil Rights Clinic*
JAMES F. SMITH, B.S., J.D., *Director of Immigration Law Clinic*

Lecturer in Law

MILLARD MURPHY, B.A., J.D.
SARAH ORR, B.A., J.D., *Staff Attorney, Family Protection Clinic*
AMAGDA PÉREZ, B.A., J.D., *Staff Attorney, Immigration Clinic*
TIMOTHY SCHOOLEY, B.A., J.D., *Director of Moot Court Programs*
CARTER WHITE, A.B., J.D., *Director of Civil Rights Clinic*

Visiting Professor of Law

CHRISTOPHER H. CALFEE, B.A., J.D.
CHAD W. CARLOCK, B.A., J.D.
TIMOTHY J. FOLEY, B.S., J.D.
RUSSELL FONG, B.A., J.D.
STEPHEN GOLDBERG, B.A., J.D.
LISA IKEMOTO, B.A., J.D., LL.M.
CHRISTINE MANOLAKAS, B.A., J.D., LL.M.
COURTENAY K. MCKEON, B.A., J.D.
LISA A. PONCIA, B.A., J.D.
ALBERTO S. ROLDAN, B.A., J.D.
GARY F. SMITH, B.A., J.D.
LYNN A. STARR, B.A., J.D.
TIMOTHY M. TAYLOR, B.A., M.A., J.D.
DANIEL TORRES, B.A., J.D.

EDITOR'S NOTE

The *Journal of Juvenile Law & Policy* is a corporate creation of the talents of our authors and the time and energy of the Journal's editorial staff. During my tenure as editor-in-chief I have learned much from my peers, especially that I have much more to learn! I would like to extend a special thanks to the entire editorial staff and to Neha Marathe and Laura Warner for managing the mechanical aspects of the Journal. I also would like to warmly welcome my colleague and friend, Leslie Davis, as the new editor-in-chief.

What I have learned is that we are pilgrims who have not yet arrived. I fear the day that we do arrive for it will mean the journey of human progression is over. Our pilgrimage leads us closer to a more perfect set of laws, a more humane set of social values, and a more holistic understanding and appreciation of each human person.

We must continue to embrace the struggles of trying to understand our humanity and of trying to comprehend the complexities of the human condition. In our time we must also address those obstacles which impede our ability to extend to all people the virtues of equality, justice and dignity. We engage a vast array of questions in this pursuit.

This issue's lead article by Professor Larry Cunningham engages the issue of legal capacity of juveniles. Professor Cunningham methodically explains the development of inconsistent understandings of capacity that have emerged in a variety of legal contexts. Professor Cunningham argues that a model code of capacity should be created based on our current understanding of developmental psychology. This code, then, would assist legislatures as they develop laws and consider how those laws apply to juveniles.

Marianna Moss' article considers the various tests courts have applied in cases involving religious expression and sponsorship in public schools. Borrowing concepts from tort law, Ms. Moss endeavors to develop a child-sensitive coercion test to be applied to similar future cases.

Professor Theresa Hughes examines the erosion of parents' right to counsel in child protective proceedings. After addressing the balance of parental rights and child protection that exists in these proceedings, Professor Hughes suggests improvements that can ensure the protection of both parental rights and child welfare.

In our last issue, we presented an article that addressed same-sex parentage in California and focused on the case of *K.M. v. E.G.* In this issue, Micah Nilsson's article exposes an alternative view of the effects the *K.M. v. E.G.* ruling had on family law in California.

Finally, our Children's Section focuses on the struggle of aging-out of foster care and highlights resources available to former foster children who wish to pursue higher education. We are pleased to feature a student comment that addresses the erosion of tribal jurisdiction in juvenile dependency proceedings involving Native Americans. For the first time we feature two book reviews of scholarly works, and again highlight recent court decisions that affect minors.

The articles presented in this issue expose complex debates of law and public policy that are unlikely to be resolved in the near future. The law is not created in a vacuum and must be able to change as new developments unfold in the hard and soft sciences. Our pilgrimage leads us to new understandings of what it means to be human. The law must continue to be responsive to this evolutionary process. By engaging the legal questions presented in this issue our authors indirectly engage the question of how best to edify justice, equality and human dignity. We must each, in our own time and in our own lives, engage this latter question if justice is to be anything other than a sword.¹

Stephen M. Siptroth
Editor-in-Chief

¹ On September 10, 1978, Archbishop Oscar Romero of San Salvador, El Salvador stated "...Love gives plentitude to all human duties, and without love justice is merely a sword. With love, justice becomes a brother's embrace."