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 Moss........................................................379

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

Theresa Hughes .....................................................429

You Can’t Force Her to be a Second Mom: KM v. EG

Micah Nilsson..........................................................479

CHILDREN’S SECTION:
AGING OUT OF FOSTER CARE
Phoenix Rising: I Made it but I Needed All The Help I Could Get

Christine McKenna..................................................520

My Life on the Streets

William Dominguez ..................................................528

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 Martinez ........................................................541
BOOK REVIEWS.................................................................552

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
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:
ADMINISTRATIVE OFFICERS

ROBERT C. DYNES, B.S., M.S., PH.D., President of the University
LARRY N. VANDERHOEFE, 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

DIANE MARIE AMANN, B.S., M.A., J.D.
ALAN E. BROWNSTEIN, B.A., J.D.
ANUPAM CHANDER, B.A., J.D.
JOEL C. DOBRES, B.A., LL.B.

DIANE MARIE AMANN, B.S., M.A., J.D.
ALAN E. BROWNSTEIN, B.A., J.D.
ANUPAM CHANDER, B.A., J.D.
JOEL C. DOBRES, B.A., LL.B.

HOLLY D. DOREMUS, B.S., J.D., PH.D.

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

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.

ARTURO GÁNDARA, B.S., M.S., M.B.A., J.D.

GEORGE S. GROSSMAN, B.A., LL.B., M.S.L.S., Law Librarian

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

ROBERT W. HILLMAN, B.A., J.D., Fair Business Practices and Investor Advocacy

BILL ONG HING, A.B., J.D., Director of Clinical Education

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

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

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.

THOMAS W. JOO, A.B., J.D.

LESLIE A. KURTZ, B.A., M.A., J.D.

LESLIE A. KURTZ, B.A., M.A., J.D.

EVELYN A. LEWIS, B.A., J.D., J.S.D.

EVELYN A. LEWIS, B.A., J.D., J.S.D.

ROBERT P. MERRIS, B.S., J.D., LL.M., J.S.D.

ROBERT P. MERRIS, B.S., J.D., LL.M., J.S.D.

JOHN B. OAKLEY, B.A., J.D.

JOHN B. OAKLEY, B.A., J.D.

REX R. PERSCHBACHER, A.B., J.D., Dean

REX R. PERSCHBACHER, A.B., J.D., Dean

LISA R. PRUITT, B.A., J.D., PH.D.

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

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.

DANIEL L. SIMMONS, B.A., J.D.

MADHAVI SUNDER, B.A., J.D.

MADHAVI SUNDER, B.A., J.D.

MARTHA S. WEST, B.A., J.D.

MARTHA S. WEST, B.A., J.D.

BRUCE A. WOLK, B.S., M.S., J.D.

BRUCE A. WOLK, B.S., M.S., J.D.

Professor of Law Emeritus

Professor of Law Emeritus

JOHN D. AYER, A.B., J.D., LL.M.

JOHN D. AYER, A.B., J.D., LL.M.

EDWARD L. BARRETT, JR., B.S., J.D.

EDWARD L. BARRETT, JR., B.S., J.D.

VINCENT BARTECTORIC, B.A., B.C.L., LL.M.

VINCENT BARTECTORIC, B.A., B.C.L., LL.M.

CAROL S. BRUCH, A.B., J.D.

CAROL S. BRUCH, A.B., J.D.

HARRISON C. DUNNING, A.B., LL.B.

HARRISON C. DUNNING, A.B., LL.B.

GARY S. GOOPDASTER, B.A., J.D.

GARY S. GOOPDASTER, B.A., J.D.

JAMES E. HOGAN, A.B., LL.B.

JAMES E. HOGAN, A.B., LL.B.

RAYMOND I. PARNAS, A.B., J.D., LL.M., S.J.D.

RAYMOND I. PARNAS, A.B., J.D., LL.M., S.J.D.

JOHN W. POULOS, A.B., J.D.

JOHN W. POULOS, A.B., J.D.

EDWARD H. RABIN, A.B., J.D.

EDWARD H. RABIN, A.B., J.D.

MORTIMER D. SCHWARTZ, J.D., LL.M., M.S.

MORTIMER D. SCHWARTZ, J.D., LL.M., M.S.

RICHARD C. WYDICK, B.A., LL.B.

RICHARD C. WYDICK, B.A., LL.B.

Acting Professor of Law

Acting Professor of Law

ANDREA K. BORKLUND, B.A., M.A., J.D.

ANDREA K. BORKLUND, B.A., M.A., J.D.

JENNIFER CACIÔN, A.B., J.D.

JENNIFER CACIÔN, A.B., J.D.

CHRISTOPHER S. ELMENDORF, B.A., J.D.

CHRISTOPHER S. ELMENDORF, B.A., J.D.

ELIZABETH E. JOH, B.A., J.D., PH.D.

ELIZABETH E. JOH, B.A., J.D., PH.D.

CARLTON LARSON, A.B., J.D.

CARLTON LARSON, A.B., J.D.

ALBERT C. LIN, B.S., M.P.P., J.D.

ALBERT C. LIN, B.S., M.P.P., J.D.

ROBERT A. MIKOS, A.B., J.D.

ROBERT A. MIKOS, A.B., J.D.

ANGELA I. ONWUACHI-WILLOGHBO, B.A., J.D.

ANGELA I. ONWUACHI-WILLOGHBO, B.A., J.D.

DONNA SHESTOWSKY, B.A., M.S., J.D., PH.D.

DONNA SHESTOWSKY, B.A., M.S., J.D., PH.D.

TOBIAS BARRINGTON WOLFF, B.A., J.D.

TOBIAS BARRINGTON WOLFF, B.A., J.D.

Senior Lecturer in Law

Senior Lecturer in Law

MARGARET Z. JOHNS, B.A., J.D., Director of Legal Writing and Civil Rights Clinic

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

JAMES F. SMITH, B.S., J.D., Director of Immigration Law Clinic

Lecturer in Law

Lecturer in Law

MILLARD MURPHY, B.A., J.D.

MILLARD MURPHY, B.A., J.D.

SARAH ORR, B.A., J.D., Staff Attorney, Family Protection Clinic

SARAH ORR, B.A., J.D., Staff Attorney, Family Protection Clinic

AMAGDA PEREZ, B.A., J.D., Staff Attorney, Immigration Clinic

AMAGDA PEREZ, B.A., J.D., Staff Attorney, Immigration Clinic

TIMOTHY SCHOLEY, B.A., J.D., Director of Moot Court Programs

TIMOTHY SCHOLEY, B.A., J.D., Director of Moot Court Programs

CARTER WHITE, A.B., J.D., Director of Civil Rights Clinic

CARTER WHITE, A.B., J.D., Director of Civil Rights Clinic

Visiting Professor of Law

Visiting Professor of Law

CHRISTOPHER H. CALFEE, B.A., J.D.

CHRISTOPHER H. CALFEE, B.A., J.D.

CHAD W. CARLOCK, B.A., J.D.

CHAD W. CARLOCK, B.A., J.D.

TIMOTHY J. FOLEY, B.S., J.D.

TIMOTHY J. FOLEY, B.S., J.D.

RUSSELL FONG, B.A., J.D.

RUSSELL FONG, B.A., J.D.

STEPHEN GOLDBERG, B.A., J.D.

STEPHEN GOLDBERG, B.A., J.D.

LISA IKEMOTO, B.A., J.D., LL.M.

LISA IKEMOTO, B.A., J.D., LL.M.

CHRISTINE MANOLOKAS, B.A., J.D., LL.M.

CHRISTINE MANOLOKAS, B.A., J.D., LL.M.

COURTENAY K. MCKEON, B.A., J.D.

COURTENAY K. MCKEON, B.A., J.D.

LISA A. FONCA, B.A., J.D.

LISA A. FONCA, B.A., J.D.

ALBERTO S. ROJDAN, B.A., J.D.

ALBERTO S. ROJDAN, B.A., J.D.

GARY F. SMITH, B.A., J.D.

GARY F. SMITH, B.A., J.D.

LYNN A. STARR, B.A., J.D.

LYNN A. STARR, B.A., J.D.

TIMOTHY M. TAYLOR, B.A., M.A., J.D.

TIMOTHY M. TAYLOR, B.A., M.A., J.D.

DANIEL TORRES, B.A., J.D.

DANIEL TORRES, B.A., J.D.
EDITORS 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.”