

FALL 2009 NEWSLETTER

SECTION ON CHILDREN AND THE LAW*

◇ Prepared by William Wesley Patton, Whittier Law School

Officers and Executive Committee for 2009/2010:

Chair: Sacha M. Coupet, Loyola University,
Chicago School of Law
(312) 915-7120
scoupet@luc.edu



Chair Elect: Shaun Shaughnesy, Washington and
Lee University School of Law
(540) 458-8512
shaughnessyj@wlu.edu



**Secretary/
Treasurer:** William Wesley Patton, Whittier Law School
(714) 444-4141 X220
bpatton@law.whittier.edu



Executive Committee:

Elizabeth Scott (Columbia) escott@law.columbia.edu
Marty Guggenheim (NYU) guggenh@juris.law.nyu.edu
Ellen Marrus (Houston) emarrus@central.uh.edu
Odeana Neal (Baltimore) oneal@ubalt.edu
Randi Mandelbaum (Rutgers) rmandelbaum@kinoy.rutgers.edu
Nancy Dowd (Univ. of Florida) ndowd@ufl.edu
Warren Binford (Willamette) wbinford@willamette.edu
Mary Jo Hunter (Hamline) MHunter@hamline.edu

* This newsletter provides a forum for announcements and opinions which are not necessarily those of the Section and which do not necessarily represent the position of the Association of American Law Schools.

MESSAGE FROM THE CHAIR:

I am delighted to be serving as Chair of the Section on Children and the Law as we enter our third year of programming. Over the past two years we have grown from a small group of colleagues with shared interests to an organized section within AALS receiving tremendous praise and support throughout the organization. Our previous two annual meeting programs drew high attendance and extremely positive feedback from both child and family law colleagues and those whose primary interests within law are not typically conceived as children's issues. We are thrilled to see our impact within the AALS and expect to increase our reach within the wider legal academic community through future section programs and events. It remains our aim to promote the exploration of a range of legal issues through the lens of children, providing a forum for rich discussion of children's legal, social, educational, physical, and intellectual needs, among others.

It is to this end that the section's topic at the 2010 Annual Meeting is "**Meeting the Needs of Children in Crisis: Hurricane Katrina and Beyond,**" which we believe aptly reflects the 2010 AALS meeting's theme of "Transformative Law." Answering President Rachel Moran's call to place the 2010 AALS meeting in the context of New Orleans, both literally and figuratively, the Section on Children and the Law will be hosting an ambitious extended program on **Thursday, January 7, 2010 from 9:00am to 5:00pm** addressing the needs of children during times of crises, both acute and ongoing. We will begin our program with a keynote speaker followed by three consecutive panels addressing the juvenile justice and foster care, educational and health needs of children, respectively.

The panel on juvenile justice and foster care will focus on ways in which children in contact with the law can be supported through programs emphasizing positive youth development—a strategic initiative that promotes challenging youth in ways that build their competence. In addition, legal scholars and clinicians will discuss how systemic change can be achieved and sustained through a new conceptualization of juvenile justice and foster care.

Our education panel will highlight the roles played by schools in serving children, families and communities during crises and the tremendous potential for growth presented by comprehensive, adequate and equitable educational services. In the interest of diversifying the presentation style within our program and expanding the use of mixed media at the AALS annual meeting, the education panel will commence with a documentary film, "Left Behind: The Story of the New Orleans Public Schools," a poignant exploration of a vulnerable public school system before and after Hurricane Katrina.

Finally, our panel on health care will focus on the challenge of delivering appropriate physical and mental health services to children in times of crises, a task rendered more difficult in poor communities where the dearth of resources prior to a disaster leaves populations at greater risk of long-term harm. Panelists will address efforts to build a

comprehensive and effective health infrastructure, one that can be better responsive to the ongoing needs of children.

Of course, as always, it is our hope that scholars and clinicians whose areas within law might not otherwise compel them to attend a program on children's issues will find the extended program useful and rewarding.

We are continuing to add to our e-mail distribution list which has served as a useful forum for the distribution of news regarding recent scholarship, conferences, emerging legal issues. If you are not already a member of the list, and wish to join, you can do so by completing the subscription form at:

<http://lists.ubalt.edu/mailman/listinfo/aalschildlaw>.

We look forward to seeing you in New Orleans!

Sacha M. Coupet

***This year at the New Orleans meeting, we will be hosting a scholarship and mentorship gathering for junior scholars with interests in juvenile justice on Wed. Jan.6th. More details to follow in next newsletter!**

2010 JUVENILE LAW CONFERENCES:

**Call for Papers: *Juvenile Justice: Passages, Prevention, and Intervention*
February 19 and 20, 2010**

Deadline for proposals: September 15, 2009

**Juvenile Justice Project
Center for Children and Families
University of Florida Levin College of Law**

In collaboration with the Center for Race and Race Relations, University of Florida Levin College of Law

Co-sponsors: Child Advocacy Project, Harvard Law School and Juvenile Justice Clinic,
Georgetown University School of Law

Plenary Speakers:

Geoffrey Canada, founder of the Harlem Children's Zone

Shay Bilchek, director, Center for Juvenile Justice Reform, Georgetown University

Confirmed participants:

Jeffrey Fagan, Mark Fondacaro, Lon Lanza Kaduce, Kenneth Nunn, Alex Piquero, Bob Schwartz, Elizabeth Scott, Christopher Slobogin

Juvenile Justice: Passages, Prevention, and Intervention

Children and youth become involved with the juvenile justice system at a significant rate. While some children move just as quickly out of the system and go on to live productive lives as adults, other children become enmeshed in the system, moving to deeper problems and even to the adult criminal justice system.

This conference is focused on (1) avoiding this connection, whether brief or deep, and (2) intervening in ways that most effectively prevent further involvement with the system, address children's issues, and foster children's success.

Prevention. For many children, involvement in the juvenile justice system is a link to other problems, difficulties and issues. Those might include: the structure of work and family responsibilities and supports; the educational system, and the "school to jail" pipeline; family difficulties and the "dependency to jail" pipeline. Papers might also examine policies regarding school discipline, bullying, sexual harassment, sex education, drug and alcohol education and abuse, truancy, and ungovernability. Various systems and statutory structures impact on the ecology of children's development: we encourage both broad and very specific analysis of existing structures or proposals/strategies for change. We seek to critique and disrupt existing pathways to delinquency, in order to create the supports and strategies for children to succeed, as well as identify model programs and best practices.

Intervention. Those children who can be identified as likely to become involved in the system, or those initially involved in the juvenile justice system, may be "turned around" or rehabilitated by effective programs that are developmentally sound and seek the goal of restorative justice. As with the topic of prevention, the possible issues here may be either very broad and overarching principles that must be recognized and integrated into the system, or very specific models and programs that require better statutory supports or funding or both. In addition, systems of evaluation and ongoing monitoring are critical to effective intervention. We encourage papers that address any part of the subject of early intervention, either among juveniles who have not yet come into the juvenile justice system, or those who are in the "shallow" end of the system. We seek to identify programs and strategies that have been effective, or critique those that have failed, in order to explore and identify better ways for diversion and intervention to operate to keep children from further involvement with the system while effectively addressing the problems and issues that they present.

Race, Gender, Class and Disability. We aim to explore these issues with respect to all children, and strongly encourage issues of race, gender, class and/or disability to be addressed in the papers. In addition, we welcome papers that focus on one or more of these critical identifiers with respect to juvenile justice and prevention or intervention.

Rehabilitation, not Punishment. We hope to focus on strengthening the rationale and operation of rehabilitative justice as the core principle in juvenile justice.

While this conference will be focused on issues of keeping children out of the juvenile justice system and effectively dealing with children in the early stages of involvement in the system, talking about the current juvenile justice system may well be necessary as part of the focus on prevention and avoidance. The Juvenile Justice Project will be holding a second conference focused on critique and reforms of the existing juvenile justice system.

We aim to gather data, critique and models for juvenile justice, using multi disciplinary approaches, connecting academics, practitioners and policymakers. We mean to include the voices of children as well. To that end, we encourage you to respond to the call for papers either with (1) an abstract describing research that you wish to present, or (2) a description of yourself as a practitioner or policymaker with specific expertise to present or who would like to participate as a commentator. Our goal is to include academics and practitioners/policymakers in every part of the conference. Finally, (3) if you have experience in the juvenile justice or work with children directly in a way that you could bring your or their voice to the conference, please describe the "voice" you can bring to the conference to work on the issues of avoidance, prevention and intervention.

We hope to identify good systems, models and/or legislation. We hope also to be a sounding board for ideas, as well as a connecting place for those who might enrich each other's perspectives or assist in outcomes if they work collaboratively.

Papers may include already published work or works in progress.

Submissions to respond to the call for papers:

Please include the following:

Name, position, and contact information

Abstract of no more than 500 words, as follows:

Researchers: please describe the research and your planned presentation

Practitioners: please describe your practice expertise and how you would like to participate (presentation, commentator, or some other role)

Policy makers (organization, legislator, legislative staff, government agency): please briefly describe your role, and how you would like to participate (presentation, commentator, or some other role)

Keywords: please select up to three key words to identify your proposed participation (e.g., diversion, prevention, race, gender, school, community, family, etc)

Please send this information to jjp@law.ufl.edu, with the subject line "Abstract for Conference" by September 15, 2009. Submissions will be reviewed and you will be notified by October 15, 2009, of your acceptance for participation in the conference.

Included in the conference will be a welcoming reception and a dinner for all speakers. The conference registration fee will be waived for all speakers.

Final papers must be submitted by January 15, 2010 to jjp@law.ufl.edu . Papers will be made available to attendees and abstracts will be available online. New York University Press is interested in publishing a volume of selected papers from the conference.

Conference registration will be available on or before October 15, 2009.

For more detailed information paste the websites below into your browser

Juvenile Justice Project website: <http://www.law.ufl.edu/centers/childlaw/>

Conference website: <http://www.law.ufl.edu/centers/childlaw/juvenile/justice/conferences/>

Kids, Sex and the Law Symposium
Friday, October 23, 2009
8:30am - 1:00pm
University of Houston Law Center

American political and legal culture is uncomfortable with children's sexuality. While aware that sexual expression is a necessary part of human development, law often sees children as either sexless, as sexual victims, or as sexual predators. The Symposium examines emerging issues of children as victims and perpetrators of crimes of a sexual nature, the disjunction between the criminal and juvenile justice systems' treatment of adolescent sexual offenders and the legal issues facing lesbian, gay, bisexual and transgender children who are in state custody, among others.

Featuring Presentations by:

- * **FRANKLIN E. ZIMRING**, William G. Simon Professor of Law and Wolfen Distinguished Scholar, Boalt Hall, University of California Berkeley School of Law
- * **SETH KREIMER**, Kenneth W. Gemmill Professor of Law, University of Pennsylvania Law School
- * **JENNIFER A. DROBAC**, Professor of Law, Indiana University School of Law - Indianapolis
- * **SACHA M. COUPET**, Assistant Professor of Law & Director of Research, Civitas ChildLaw Center, Loyola University Chicago School of Law

With commentary by **ELLEN MARRUS**, George Butler Research Professor of Law & Co-Director, Center for Children, Law & Policy, University of Houston Law Center

NEW AND FORTHCOMING PUBLICATIONS:

Jay D. Aronson, *Neuroscience and Juvenile Law*, 42 Akron L. Rev. 917 (2009);

Barbara Ann Atwood, *Achieving Permanency for American Indian and Alaska Native Children: Lessons from Tribal Traditions*, 37 Cap. U. L. Rev. 239 (2008);

Rachel Ben-Ari and Itzhak Hirshberg, *Attachment Styles, Conflict Perception, and Adolescents' Strategies of Coping with Interpersonal Conflict*, 25 Negotiation J. 59 (2009);

Blackburn, Kerry Blackburn, *The expansion of allowable impeachment: admission of juvenile priors, misdemeanor convictions, and good faith cross-examination by prosecutors*, 1 Chapman J. Crim. Just. 213(2009);

Jane E. Cross, Nan Palmer and Charlene L. Smith, *Families Redefined: Kinship Groups that Deserve Benefits*, 78 Miss. L. J. Int'l & Comp. L. 305 (2009);

James G. Dwyer, *A Constitutional Birthright: the State, Parentage, and the Rights of Newborn Persons*, 56 UCLA L. Rev. 755 (2009);

Linda Elrod and Dr. Milfred Dale, *Paradigm Shifts and Pendulum Swings in Child Custody*, 42Fam. L. Q. 381 (2008);

Barbara Glesner-Fines, *Pressures Toward Mediocrity in the Representation of Children*, 37 Capital Univ. L. Rev. 411 (2008);

Dorcas R. Gilmore, *Expanding Opportunities for Low-Income Youth: Making Space for Youth Entrepreneurship Legal Services*, 18 J. Affordable Housing & Commun. Dev. L. 321 (2009);

Rashmi Goel, *Delinquent or Distracted? Attention Deficit Disorder and the Construction of the Juvenile Offender*, 27 Law & Ineq. 1 (2009);

Martin Guggenheim, *Rediscovering Third Party Visitation Under the Common Law in New York: Some Uncommon Answers*, 33 N.Y.U. Rev. L. & Soc. Change 153 (2009);

Randy Hertz, Martin Guggenheim, and Anthony G. Amsterdam, TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE COURT (PHILADELPHIA, PA: ALI-ABA, 2008);

Rebecca Johnson, *Mothers, Babies and Jail*, 8 U. Md. L. J. Race, Religion, Gender & Class 47 (2008);

Phillip M. Kannan, *But Who Will Protect Poor Joshua DeShaney, a Four Year Old Child with no Positive Due Process Rights?*, 39 U. Mem. L. Rev. 543 (2009);

Rachel L. Lawless, *When Love is Not Enough: Termination of Parental Rights When the Parents Have a Mental Disability*, 37 Cap.U. L. Rev. 491 (2008);

Allyson B. Levine, *Failing to Speak for Itself: the res ipsa loquitor Presumption of Parental Culpability and its Greater Consequences*, 57 Buff. L. Rev. 587 (2009);

Anthony C. Musto, *Potato, Potahto: Whether Ineffective Assistance or Due Process, an Effective Rule is Overdue in Termination of Parental Rights Cases in Florida*, 21 St. Thomas L. Rev. 231 (2009);

William Wesley Patton, *To Err Is Human, To Forgive, Often Unjust: Harmless Error Analysis In Child Abuse Dependency Proceedings*, 13 U.C. Davis J. of Juv. L. & Pol. 99 (2009);

William Wesley Patton, *Chapter 5: The Rights of Siblings in Foster Care and Adoption: A Legal Perspective*, in *SIBLINGS IN ADOPTION AND FOSTER CARE: TRAUMATIC SEPARATIONS AND HONORED CONNECTIONS* (Praeger, 2009);

Sarah Ramsey and Robert F. Kelly, *Child Custody Evaluations: The Need for Systems-Level Outcome Assessments*, 47 Fam. Ct. Rev. 286 (2009);

Cart Rixey, *the Ultimate Disillusionment: the Need for Jury Trials in Juvenile Adjudications*, 58 Cath. U. L. Rev. 885 (2009);

Elizabeth Scott & Laurence Steinberg, *Rethinking Juvenile Justice* (Harvard U. Press 2008);

Elizabeth Scott & Laurence Steinberg, *Adolescent Development and the Regulation of Juvenile Crime*, in *Juvenile Justice*, 18 (2) *The Future of Children* 15 (Fall 2008);

Joseph Sanborn, Jr., *Juveniles' Competency to Stand Trial: Wading Through the Rhetoric and the Evidence*, 99 J. Crim. L. & Criminology 135 (2009);

Laura Many Shapiro, *Inferring a Right to Permanent Family Care from the United Nations Convention on the Rights of the Child, the Hague Convention on Intercountry Adoption, and Selected Scientific Literature*, 15 Wash. & Lee J. C. R. & Soc. Just. 191 (2008);

Jay A Sekulow and Benjamin P. Sisney, *Constitutionally Protected Parental Rights in Child-Custody Arrangements and the Impact of Religion on Children*, 1 *Regent J.L. & Pub. Pol'y.* 169(2009);

Katherine Barrett Wiik, *Justice for America's Homeless Children: Cultivating a Child's Right to Shelter in the United States*, 35 *Wm. Mitchell L. Rev.* 875-935 (2009);

Neal F. Wilson, *No Child Left Behind: the Adam Walsh Act and Pennsylvania Juvenile Sex Offenders*, 70 *U. Pitt. L. Rev.* 327 (2008);

Jennifer Woolard & Elizabeth Scott, *The Legal Regulation of Adolescence*, in *Handbook of Adolescent Psychology*, (3rd ed.) Richard Lerner & Laurence Steinberg (eds.) 2008.

RECENT EVENTS:

On July 16 and 17, 2009, a workshop was held at Washington & Lee School of Law for junior scholars writing in the area of children and the law. The workshop was sponsored by W&L's Frances Lewis Law Center. The junior faculty presenters included:

Tamar R. Birckhead, Assistant Professor of Law, UNC School of Law, *Toward a Theory of Procedural Justice for Juveniles*;

Josie Brown, Assistant Professor, University of South Carolina School of Law, *Developmental Due Process: Making the Constitutional Case for Aligning School Disciplinary Practices with the Science of Child Development*;

Andrea B. Carroll, C. E. Laborde, Jr. Associate Professor of Law, Paul M. Hebert Law Center, Louisiana State University, *Re-Regulating the Baby Market: A Call for a Ban on Payment of Birthfamily Living Expenses*;

Hillary B. Farber, Assistant Professor, College of Criminal Justice & Visiting Assistant Professor, School of Law, Northeastern University, *Do You Swear to Tell the Truth, the Whole Truth, and Nothing but the Truth Against Your Child?*;

Courtney G. Joslin, Acting Professor of Law, UC Davis School of Law, *Assisted Reproductive Technology and the Marriage Requirement: How Exclusionary Parentage Rules Harm the Financial Well-Being of Children*;

Renee Newman Knake, Lecturer in Law, Michigan State University College of Law, *Regulating Mass Media Harm to Children While Responding to the First Amendment: Exploring the Reality of a Paradigm Shift*;

Mary Beth Musumeci, Reuschlein Clinical Teaching Fellow, Villanova University School of Law, (Abstract #2-Article relating to Medicaid for Children with Disabilities);

Meredith L. Schalick, Visiting Clinical Assistant Professor of Law, Child and Family Advocacy Clinic, Rutgers School of Law-Camden, *Remedies for Children Living in Placement: The Silver Lining of the Jackson Case*;

Wendy M. Seiden, Esq., Family Mediation Clinic Coordinator, University of Baltimore, *Three is Not a Crowd: Making Room for Child Victim's Attorneys in Criminal Court*;

Jessica Dixon Weaver, Director, W. W. Caruth, Jr. Child Advocacy Clinic, Southern Methodist University, *FLDS Reconsidered: Establishing Substantial Emotional Abuse as Part of the Legal Standard for Emergency Child Removal*.

The senior faculty panelists included: Sacha Coupet, Loyola University, Chicago School of Law; Vivian Hamilton, William and Mary School of Law; Ellen Marrus, University of Houston Law Center; Joan (Shaun) M. Shaughnesy, Washington and Lee University School of Law; Robin Wilson, Washington and Lee University School of Law.

On April 3, 2009, Widener University School of Law held a symposium, *The Child Witness*, hosted by Professors Jules Epstein and John Nivala and the Widener Law Review. The Widener Law Review will be publishing a symposium issue on child witness issues in 2010. The panels and panelists included:

PANEL 1: THE CHILD AS WITNESS:

Professor Jason J. Dickinson, Montclair State University
Marissa Boyers Bluestine
Dr. William Russell
Professor Jules Epstein, Widener University School of Law

PANEL 2: THE CHILD INTERVIEW PROCESS:

Professor Frank Vandervort, Univ. of Michigan Law School

Professor Douglas Godrey, Chicago-Kent College of Law
Amy Russell
Patricia Dailey Lewis

PANEL 3: THE CHILD WITNESS AND HEARSAY:
Professor Clifford Fishman, Catholic University Law School
Professor Lynn McLain

PANEL 4: CHILDREN IN THE COURTROOM: COMPETENCE:
Professor Myrna Raeder, Southwestern Law School
Marissa Boyers Bluestine
Dr. William Russell

PANEL 5: CHILDREN IN THE COURTROOM: SPECIAL ACCOMODATIONS:
Professor Myrna Raeder, Southwestern Law School
Judge Randy Holland
Mimi Rose
Professor William Wesley Patton, Whittier Law School

PANEL 6: CHILDREN IN THE COURTROOM: ETHICAL ISSUES:
Professor John Nivala, Widener University School of Law
Judge Chandlee Johnson Kuhn
Mimi Rose
Professor William Wesley Patton, Whittier Law School

UPCOMING EVENTS:

UC Davis National Child Abuse and Neglect Conference, Sept. 21-23, 2009, Sacramento, CA;

California AOC Center for Families, Children & the Courts (CFCC) [Beyond the Bench XX: Collaboration Works! Improving Outcomes and Achieving Safety and Stability in Challenging Times](#), December 17–18, 2009 San Diego Marriott Hotel and Marina;

Office of Juvenile Justice and Delinquency Prevention (OJJDP) [13th National Workshop on Adult and Juvenile Female Offenders](#), Jackson Marriott, Jackson, MS, October 10-14, 2009;

National Association for the Education of Homeless Children and Youth (NAEHCY), 21st Annual Conference, Nov. 14-17, 2009, Denver, CO;

San Diego International Conference on Child and Family Maltreatment, Jan. 24-29, 2010, San Diego, CA;

Child Welfare League of American, *Children 2010 – Leading a New Era*, Jan. 25-27, 2010, Washington D.C.;

OJJDP, [National Conference on Juvenile and Family Law](#), March 14-17, 2010, Planet Hollywood Resort and Casino, Las Vegas, NV;

ICAN-NCFR, *Sixth Annual Conference on Childhood Grief and Traumatic Loss: Restoring Joy to Children and Their Families*, March 17, 2010, Pasadena, CA;

National Council for Adoption, *The Age to Engage in Adoption*, Washington, D.C., July 6-9, 2010;

Society for Research in Child Development, April 1, 2011, Montreal, Canada.

UPCOMING STUDENT CHILDREN AND THE LAW COMPETITIONS:

Whittier Law School: The 15th Annual National Juvenile Moot Court Competition, sponsored by the Whittier Law School Center for Children's Rights, will be held on February 5-6, 2010. The problem concerns the alleged sexual harassment of Susanne Quiller, a student at Delacosta Magnet School. She filed a lawsuit based on sexual harassment by two male classmates (also defendants in the original lawsuit) who allegedly committed various harassing acts, including a sexually suggestive false profile of Susanne on MySpace. The district court denied the motion for summary adjudication on the claims against the school district and officials, and they now appeal the district court judgment;

Capital University School of Law: The Child Welfare & Adoption Law Moot Court Competition will be held on March 12-13, 2010. The topic is Biology and Parentage: Artificial Reproduction & Same Sex Relationships.

MESSAGE FROM THE SECRETARY/TREASURER:

This is the first newsletter that I have written for our section, and I need your assistance in making it more relevant and valuable to you. I would like to publicize our members' accomplishment, including publications, *amicus curiae* briefs, legislative analyses, presentations, expert consultations, awards, and anything else that you think would be of interest to those working in the many fields related to the legal representation of children and families. Please send your ideas to bpatton@law.whittier.edu. I look forward to crafting your suggestions into a revitalized newsletter in the spring.