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## For the Benefit of the Infant: An Introduction to the Symposium to End Child Abuse

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**FOR THE BENEFIT OF THE INFANT:  
AN INTRODUCTION TO THE SYMPOSIUM TO END CHILD ABUSE**

*Jon M. Garon<sup>1</sup>*

*Every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated. This is not the case.*

*- President John F. Kennedy*

On March 31 and April 1, 2006, the Hamline University School of Law *Journal of Public Law & Policy* (*Hamline Public Law Journal*) held a symposium entitled “*Reassessing the Past, Present and Future Role of Children and Their Participation and Protection in American Law*,” dedicated to the proposition that by bringing together the academic and professional leadership in child protection, the *Hamline Public Law Journal* could help Hamline Law School (Hamline) further the goal of improving the legal protection afforded to children at risk from the very caregivers who are charged with protecting and nurturing them. The idea was not new. The *Hamline Public Law Journal* has long been dedicated to marshalling academic resources to address significant societal issues.

But the child protection symposium had an urgency that I do not often see on law school campuses or among academic leaders. The reason for the urgency is simple. Without urgency, the problem of children left in abusive or neglectful situations will continue unabated, resulting in the torture of these victims and the continuation of a cycle of despair.

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The urgency came from all the participants, students and attendees at the symposium, but it was highlighted by the keynote speaker. Victor Vieth, Director of the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse and the National Child Protection Training Center, has been working on a national call to action to beat back the social scourge of child abuse.<sup>2</sup> Victor Vieth's work represents the activist scholar – setting both an academic framework for understanding the regulatory framework involving child abuse and demanding a social mandate to use our nation's resources to protect our most vulnerable citizens.

Director Vieth's vision may be grander than many, but he is certainly not alone. Academics and practicing attorneys came together at the *Hamline Public Law Journal* symposium for the purpose of sharing ideas and integrating proposals. By addressing concerns regarding the juvenile code,<sup>3</sup> foster care,<sup>4</sup> and racial bias,<sup>5</sup> both the two-day symposium and this symposium journal issue bring the best practices and most thoughtful analysis to a problem that has been long lamented but poorly addressed.

Since the birth of our nation, the government has laid claim to a significant role in the protection of children. The common law of the United States adopted the *parens patriae* doctrine directly from its British roots, but it slowly evolved to move child protection out from the shadow of poor laws and into the realm of children's health and welfare.<sup>6</sup> In 1824 Justice Story explained that

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<sup>2</sup> See Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years (revised and expanded)*, 28 *HAMLIN J. PUB. L. & POL'Y* 1 (2006).

<sup>3</sup> Mark Ells, *A Brief Analysis Of Some Elements Of a Proposed Model Juvenile Code*, 28 *HAMLIN J. PUB. L. & POL'Y* 199 (2006).

<sup>4</sup> Theo Liebmann, *What's Missing From Foster Care Reform? The Need for Comprehensive, Realistic, and Compassionate Removal Standards*, 28 *HAMLIN J. PUB. L. & POL'Y* 141 (2006).

<sup>5</sup> Tomiko D. Mackey, *Child Abuse: Victim's Race and Prosecution, is there a Correlation?*, 28 *HAMLIN J. PUB. L. & POL'Y* 131 (2006).

<sup>6</sup> See Liebmann, *supra* note 4 at 152.

the state had a role to intervene in the rights of a parent. Justice Story wrote:

As to the question of the right of the father to have the custody of his infant child, in a general sense it is true. But this is not on account of any absolute right of the father, but for the benefit of the infant, the law presuming it to be for his interest to be under the nurture and care of his natural protector, both for maintenance and education.<sup>7</sup>

Still, as Director Vieth details below, the Society to Prevent Cruelty to Children was founded in 1874, nine years after the Society to Prevent Cruelty to Animals<sup>8</sup> and a half a century after Justice Story was admonishing parents that the presumption of the laws were for the benefit of the infant rather than the power of the parent. Arguably, it took another century for states to really engage in systematic child protection systems. Most lamentably, it remains an open question whether these systems are close to adequate or whether they are so understaffed, poorly funded, and marginalized that our most vulnerable citizens remain at the mercy of those who fail their duty to nurture and develop our young.

Despite the slow movement of history, however, the law and social science have made great strides in the last three decades. The tools for progress are now available. The time has come to take the next step forward.

The next step can only come by marshalling the political will and social capital with a regulatory coherence that brings all the state's resources together around a common approach. This requires that parents who are at risk of harming their children are helped, the normative expectations for reporting child abuse are

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<sup>7</sup> U.S. v. Green, 26 F. Cas. 30, 31 (C.C.D.R.I. 1824) (No. 15,256) (quoting Raymond C. O'Brien, *Symposium: Solomon's Dilemma: Exploring Parental Rights: An Analysis of Realistic Due Process Rights of Children Versus Parents*, 26 CONN. L. REV. 1209, 1215 (1994)).

<sup>8</sup> Vieth, *supra* note 2 at 6.

substantially improved, the foster care system is enhanced to protect the children in its care, the criminal justice system more vigorously punishes those who harm children, and society invests in children as an imperative rather than an afterthought.

To invest in the parents requires that we invest in education, reduce teen pregnancy, and attack any social policies that economically discourage marriage or keep individuals in poverty. By removing poverty and drug abuse while enhancing education and marriage, many of the environmental predicates for abuse will be removed. While it is unquestionably true that abuse exists in every economic strata and social environment,<sup>9</sup> adult drug use and illegal activities put children in harm's way. As explained by the U.S. Department of Health and Human Services, Administration for Children and Families, "[o]ften abusers are ordinary people caught in stressful situations: young mothers and fathers unprepared for the responsibilities of raising a child; overwhelmed single parents with no support system; families placed under great stress by poverty, divorce, or sickness; parents with alcohol or drug problems."<sup>10</sup> To the extent we can improve the environment in which we raise our children, we can reduce the potential for harm and stop the stressors that lead to violence, abuse and neglect.

To change the normative expectations of mandatory reporting, the laws for mandatory reporting must be respected and those who work with children need support and training to better identify abuse, to feel safe when they report, and to know that the reports matter. Teachers, doctors, nurses, clergy and others who work with children, need to trust that the reporting is worth the social risk, that they will be supported by their employers when

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<sup>9</sup> See U.S. Dep't of Health and Human Servs., Admin. for Children and Families, *Factsheet: Recognizing Child Abuse and Neglect*, available at <http://www.childwelfare.gov/preventing/overview/recognize.cfm> (arguing, "[c]hild abuse affects children of every age, race, and income level. It often takes place in the home and comes from a person the child knows and trusts—a parent, relative, babysitter, or friend of the family.").

<sup>10</sup> *Id.*

they make reports, and that the reports will be acted upon. The normative model should not treat someone who reports abuse as a hero. That suggests reporting is an extraordinary act. Instead, one who reports should be recognized for doing his or her job and doing it well.

At the next stage, when children are placed in foster care, the state must provide a system in which the homes are refuges; never more threatening than the living conditions from which the children have been protected. Taxpayers must assure that their states provide sufficient resources to investigate both the placements and the homes to which the children are returned. Society must invest in all our children, particularly those at risk.

Finally, the criminal justice system must be monitored and improved to maximize the opportunities for these youngest of criminal victims to see justice done. The rights of these victims must be fully respected by the prosecutors and judges. Without abrogating the rights of criminal defendants, much can be done to improve the procedures and invest in the forensic evidence that will enhance the state's ability to bring criminals to justice and validate bona fide allegations of abuse. These steps are highlighted throughout the articles in this volume.

When each step in the system is analyzed, the pattern becomes clear. The pipeline of child protection begins with the parents and continues with the other adults who regularly support and nurture those children in their lives. When the household becomes a source of abuse rather than support, other adults must fulfill their responsibility to report the evidence they see of neglect or abuse. Those reports must be aggressively pursued and the system of investigation, placement and assessment must be provided resources sufficient to meet its goals and held accountable for its failure if those goals are not met. The children must be heard; the evidence collected and preserved in a manner admissible in court. The states must adopt the methods suggested in the *Hamline Public Law Journal* to improve access to this testimony while still protecting defendants' rights to fair trials.

When an at-risk child's picture appears on a milk carton, a website, or a television disaster special, the entire world cries in sympathy and opens its collective heart to rescue that child. But when the image is of thousands or tens of thousands, we are overwhelmed. But children are neglected and abused one person at a time. Each child protected from abuse or neglect brings us a step closer to eradicating the epidemic. Each lawyer we train, each law enforcement officer we sensitize, and each parent we educate, slows the disease and vaccinates the participants.

The articles in this symposium issue highlight the various steps necessary to achieve these goals. The scholars and experts have invested their professional lives to attacking this disease and understanding the best practices available to improve the likelihood that fewer children will be harmed. I am grateful to them and humbled by what they strive to accomplish.

We in legal education are called upon to reflect upon all of law and thus every aspect of society. I can think of few areas in which there is more agreement about the need to solve the crises and less resolve to complete the task before us.

The *Hamline Public Law Journal* has set a Hamline record for both the size of the issue and the size of its initial publication. I hope that this volume of the *Journal* maintains the urgency felt by the participants at the symposium and the thousands of caring professionals who work every day to make the lives of these at-risk children a little better.

On behalf of Hamline University School of Law, I wish to thank the authors who participated in the symposium, the journal issue, and the tremendously difficult work that goes on every day to protect the children who so desperately need the aid. It is my fervent wish that together through this publication we can strike the spark that will take these children out of their darkness and into a place of brilliance and safety.