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Foreword

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Symposium

Children, Families and the Law

Foreword

In the spring of 1991, the Executive Board of the *Nova Law Review* decided to produce a symposium dealing with the rights and relationships of children and families under the law. This topic was chosen, in part, because of a humanistic interest in the laws affecting the areas of personal life and privacy closest to where most of us live: within the family setting. The authors and students who have contributed to this issue of the *Review* offer an eclectic mix of issues ranging from child custody concerns to the psychological effects of divorce; from the tragic issue of child abuse to concerns about the children who kill; and also whether society is now ready to accept the same-gender marriage and family situation.

Professor John Batt of the University of Kentucky examines the contemporary rationale behind child custody determinations and provides a thorough and insightful commentary of the theories which drive these types of determinations by the courts.¹ Professor Batt explains and critiques the best interests of the child model—or paradigm—which was articulated by Joseph Goldstein, Anna Freud, and Albert Solnit and has found widespread favor among a great many jurists, attorneys, and other professionals involved in the arena of child custody and placement. Professor Batt also addresses a more recent model based on the work of Erik Erikson, the psychoanalytic humanist, whose ideas have gained favor among some commentators and others. Professor Batt's analysis melds the critical commentary regarding these influential paradigms with his own practical perspectives and suggests continuing critical review of the way we, as a society, approach the issues of child custody.

Josephine A. Bulkley, of the American Bar Association's Center

1. John Batt, *Child Custody Disputes and the Beyond the Best Interests Paradigm: A Contemporary Assessment of the Goldstein/Freud/Solnit Position and the Group's Painter v. Bannister Jurisprudence*, 16 NOVA L. REV. 621 (1992).

on Children and the Law, offers a current perspective on the sensitive issues involving child abuse prosecutions.² Bulkley, one of the better-known commentators in this area of the law, examines recent decisions by the United States Supreme Court which continue to reinforce alternatives to the in-court and confrontational testimony of a child who has been abused. Ms. Bulkley's article addresses the use of closed circuit television and other exceptions which allow a child's testimony to be used as evidence, without a face-to-face confrontation in the courtroom setting.

As the Director of The Children's Law Project at Nova University's Shepard Broad Law Center, Nancy Schleifer also provides commentary on child abuse cases and the Confrontation Clause.³ Her article addresses the child's perspective in the family court setting, as opposed to a criminal proceeding. It also provides guidance and recommendations for the development of a child protection case to practitioners who may represent the interests of abused children.

Gerald P. Koocher, an associate professor at Harvard Medical School and Chief Psychologist at Boston's Children's Hospital, offers a different perspective on children's rights and the role of the legal system in evaluating those rights.⁴ In essence, he exhorts the legal scholar, jurist, or practitioner to "step into the shoes," as it were, of the health care professional in order to see the effect of legal or governmental proceedings on children. His article focuses on matters which relate to decision-making for, and by, children.

Memphis State University's Janet Leach Richards provides a thoughtful commentary on the need to balance the scales in child custody determinations between a natural parent and an interested third party holding a significant relationship with the child.⁵ Her article examines the natural parent preference, its underpinnings, and continued viability; it suggests recognition of a third party who has acted in a parental role and seeks a balancing of the competing interests so that,

2. Josephine A. Bulkley, *Recent Supreme Court Decisions Ease Child Abuse Prosecutions: Use of Closed-Circuit Television and Children's Statements of Abuse Under the Confrontation Clause*, 16 NOVA L. REV. 687 (1992).

3. Nancy Schleifer, *Might Versus Fright: The Confrontation Clause and the Search for "Truth" in the Child Abuse Family Court Case*, 16 NOVA L. REV. 783 (1992).

4. Gerald P. Koocher, *Different Lenses: Psycho-Legal Perspectives on Children's Rights*, 16 NOVA L. REV. 711 (1992).

5. Janet Leach Richards, *The Natural Parent Preference Versus Third Parties: Expanding the Definition of Parent*, 16 NOVA L. REV. 733 (1992).

ultimately, the best interests of the child are served.

Three lawyer-activists connected with Hofstra University—Andrew Schepard, Joan Atwood, and Stephen W. Schlissel—contribute an article which draws attention to the problems created for children when parents divorce, and urges measures to ease the potential trauma.⁶ Using an educational program they developed as an example, the authors encourage the adoption of programs which would counsel divorcing parents on the problems encountered by their children, reduce the use of the children as a weapon or pawn in the break-up, and help to provide positive assurance to children of their place in the family setting. The recommendations of the authors further extend to professionals practicing in the field of matrimonial law and seek new standards of ethics to govern conduct in the field.

Ruth-Arlene W. Howe, of Boston College's School of Law, writes regarding the societal problems of children who kill others.⁷ Her essay reviews Charles Patrick Ewing's *When Children Kill: The Dynamics of Juvenile Homicide*. It explores the response of the judicial system in treating children as adults or as minors and goes on to suggest several courses of action in dealing with this serious and emerging problem.

On a much different slant, authors Michael L. Closen and Carol R. Heise suggest that it may be time for American society, through its legislative and judicial units, to recognize same-sex marriages.⁸ These unions have found acceptance in other parts of the world, explain the authors, and a public policy of reducing the spread of AIDS combined with a more rational and accepting attitude towards same gender relationships is sought. Employing an analysis which draws heavily on historical perspective and the evolution of American marriage laws, the authors argue that, much in the same way as society and the law have evolved in matters concerning women's rights and slaves' emancipation, the law will come to recognize same-sex marriages.

The symposium also contains four student works. Kelly Bennison examines the problems occurring when adopting parents discover the

6. Andrew Schepard et al., *Preventing Trauma for the Children of Divorce Through Education and Professional Responsibility*, 16 NOVA L. REV. 767 (1992).

7. Ruth-Arlene W. Howe, *A Wake-Up Call for American Society or Have "The Chickens Just Come Home to Roost?" – Essay Review of Charles Patrick Ewing's When Children Kill: The Dynamics of Juvenile Homicide*, 16 NOVA L. REV. 847 (1992).

8. Michael L. Closen & Carol R. Heise, *HIV-AIDS and the Non-Traditional Family: The Argument for State and Federal Judicial Recognition of Danish Same-Sex Marriages*, 16 NOVA L. REV. 809 (1992).

adopted child is not as represented and seek redress.⁹ David L. Ferguson evaluates a recent decision of the Florida Supreme Court in which one divorced mother's First Amendment rights were burdened in order to reinforce the relationship between her children and the father.¹⁰ Susan Yoffe Slaton addresses a children-related immigration issue, the availability of asylum protection for aliens, like the Chinese, who oppose population control policies.¹¹ Finally, Camille L. Worsnop writes of the unconstitutionality of the Florida statute which prohibits adoption by homosexuals.¹² Her comment is written in light of a recent decision of the circuit court in Monroe County, Florida in which the court struck down the statute on privacy and equal protection grounds.

Each of the student works is reflective of emerging modern problems in the law as affecting family life. As we continue to find new and innovative ways to consider, and deal with, these types of problems, no one should lose track of the common strain of humanity and care that sounds in issues involving children or the family.

The *Review* staff is most grateful to the authors and contributors to this edition for their enthusiasm and support throughout the writing and production process.

9. Kelly Bennison, Comment, *No Deposit No Return: The Adoption Dilemma*, 16 NOVA L. REV. 909 (1992).

10. David L. Ferguson, Comment, *Schutz v. Schutz: More Than a Mere "Incidental" Burden on First Amendment Rights*, 16 NOVA L. REV. 937 (1992).

11. Susan Yoffe Slaton, Note, *Hard Decisions: Asylum Protection as Applied to Aliens Opposing Population Control Policies*, 16 NOVA L. REV. 955 (1992).

12. Camille L. Worsnop, Comment, *Florida Statute Prohibiting Adoption by Homosexuals in View of Seebol v. Farie: Expressly Unconstitutional*, 16 NOVA L. REV. 983 (1992).