

**Summary of *Children's Rights and Juvenile Justice:*
Victories, Challenges, and Opportunities
Georgetown University Law Center, November 19, 2014, 2-4 p.m.**

The moderator, Adjunct Prof. Ian Kysel, introduced the topic, then gave the floor to Martin Scherr, representing the Campaign for US Ratification of the Child Rights Convention (CRC). Scherr described the CRC and the Campaign's efforts to get it ratified by the US. He noted that the CRC is the most universally adopted treaty in the history of humankind, that it takes a systematic approach to juvenile justice, and that on November 20 its 25th anniversary will be celebrated. He welcomed those who wished to indicate that they would like to receive news and alerts from the Campaign.

Professor Wally Mlyniec then observed that here we confront two perplexing issues: international law and children. The CRC can be used in the courts, in legislatures, and in lobbying. International law has been integral to U.S. law since colonial times, complicated by our status as a federation, with States and localities making laws within their jurisdiction but with international implications. Most law concerning children is at these State and local levels. Opposition to the application of international law to children emerged soon after the UN General Assembly approved the CRC among those who saw it as a threat to parental autonomy in raising their children. They suggested that with the US in the CRC, UN nannies in blue berets would take children away from their parents. So the US remains as one of the very few holdouts to the CRC.

Most of the CRC's standards already are in US law, such as Articles 37 and 40 dealing with criminal law. The US does not meet the CRC's standard that children under 18 should not be sentenced to life imprisonment without parole, but the CRC incorporates basic US children's law principles such as the best interest of the child, nondiscrimination, the right to legal representation, and the right to be heard in one's own interest. He noted that recent scientific research shows abundantly that children deserve and need special treatment because of the slow growth in their psychological, social and emotional development, including impulse control. The U.S. Supreme Court's decision in Roper v. Simmons established that the US would meet the CRC's standard on exempting children under 18 from the death penalty, although the decision was based more on science than on the CRC. Justice Scalia pushed back against a dictum citing the CRC as evidence of a global consensus to exempt children. The question of life sentences without parole may be coming up for another round before the Supreme Court. We still don't know if the CRC can override State law, although several jurisdictions have used the CRC in changing their laws to meet its standards. Most of the juvenile justice problems with CRC standards if they applied in the US would relate to inadequate implementation of U.S. laws, rather than to the laws themselves.

Ira Burnim, Legal Director of the Bazelon Center for Mental Health Law, spoke next about international law as it applies to children with mental health

disabilities. He noted the difficulties facing those who are attempting to get the U.S. Senate to ratify the UN Convention to Protect Persons with Disabilities (CPRD). Burnham noted that a disproportionately high number of those in the juvenile justice system have mental health disabilities. Delinquency, involving culpability, needs to be distinguished from mental illness as a proximate cause. But no scientific research has distinguished “mad” from “bad”. Children mostly do not fit into traditional categories of schizophrenia or bipolar disorder, which usually emerges later. Most juveniles in the system suffer from depression, but usually are over-medicated for this to induce compliance with adult norms. The typical problems of anxiety, fear, anger, aggression, self-destruction, etc., need interventions that are beyond those usually offered, mostly because of lack of funding. Most juvenile justice facilities in the US punish, rather than rehabilitate. Crowding exacerbates these problems. Children sentenced as adults often are placed with adult prisoners, with no consideration of their age-related vulnerabilities. Agencies helping children do a poor job, especially if the children exhibit challenging behaviors. Schools are a problem. The school-to-prison pipeline is well known, starting with suspension and segregation conditions. The Bazelon Center files lawsuits to disrupt that pipeline, but the problem is endemic. Children put in foster care after age 8 are usually likely to end up in juvenile justice.

In order to change this miserable situation we have to believe that children can change their behaviors, empower them and their families to become agents of that change, and provide them with intensive and positive intervention in the child’s own environment.

Marisol Blanchard, Coordinator of the Office of the Rapporteur on children’s rights for the Inter-American Commission on Human Rights (IAHCR) spoke next. She was concerned about the disregard of international law in US culture. She noted that the IAHCR has jurisdiction in the US. The Commission has done extensive work on the U.S. death penalty, as well as violence in private settings, public schools, jails and prisons, etc. She agreed with Burnham that there is far too much incidence of untreated or poorly treated mental health problems among those in juvenile justice and child protective services. We should regard children not as objects of protection but as subjects of rights. There is a community responsibility to promote those rights, and prevent children from falling between the cracks.

The Commission holds hearings on different topics twice a year, among them two hearings about children treated as adults in the US criminal system. The Rapporteur has visited prisons in New York and Colorado, and plans to visit prisons in Michigan, Florida, and DC. Most U.S. police are untrained in dealing with children as prisoners, often over-medicating them without medical orders. Children in adult prisons are not offered appropriate activities or mental health treatment. Juvenile detention is better than adult prisons, but often due process is waived, with serious consequences.

Phil Mosby, a former prisoner, spoke next. He was sentenced as an adult at age 16, and served the next 10 years in a number of prisons, all inaccessible

to his family and friends. Free Minds (encouraging poetry among prisoners), New Beginnings, and the Campaign for Youth Justice, helped him keep his sanity and stay out of trouble, and they prepared him for release 2 months ago. He is getting help in finding work and completing a G.E.D. from the Pre-Release Center in Rockville.

In the public discussion period that followed, Mlyniec noted that funding for juvenile justice programs in the US is very poor, and that very few public defender offices have separate divisions for juvenile justice. DC and New Orleans have started these, and in Maryland a child can stay in the juvenile justice system until release. Much work remains to be done in the Midwest. Once a prisoner is locked up, his or her lawyers can't really help.

In response to requests for information about work in juvenile justice for recent law school graduates, Blanchard noted that the IACHR has 3-6 month internships in DC, and a fellowship year that will open for applications in February. Burnham noted that Bazelon has one or 2-year fellowships, made possible through Soros or EJW, working on lawsuits to expand the number of lawyers helping juveniles with disabilities. Bazelon usually hires lawyers with at least 5 years of experience. Most of the hiring organizations are on the coasts, with the Midwest not very promising. There are networks of legal advocacy organizations, such as in disabilities law, through which one can hear of opportunities. In response to a request to advise on what lawyers can do for prisoners, Mosby suggested that prisoners need all the help they can get. Trust is vitally important, as too many lawyers sugarcoat the process. He noted that it takes \$26,000 a year to keep a juvenile in prison. We all need to get past the idea that young people in the system are "other", not us.

Blanchard noted that prison and detention problems are widespread internationally, and that they apply to international migrants as well as juveniles. The truth about these conditions needs to be publicized. Prisoners need contact with their families, and the families need support in parenting. Judges need to hear positive stories about those who survived and thrived after juvenile justice experiences. Mlyniec stressed that we need to keep looking for solutions to make it better for the victims of crime as well as the client in front of you, wherever you are in the legal profession. People need to be made aware of the basics.

The session ended with Mosby's poem of promises to himself and his future. He took the poem to prison, and it helped to keep him positive during his confinement. A reception followed.