



Copyright (c) 2006 Emory University School of Law
Emory International Law Review

Spring, 2006

20 Emory Int'l L. Rev. 69

LENGTH: 4819 words

SPECIAL SPRING 2006 SYMPOSIUM: CHILDREN'S RIGHTS AND AMERICAN LAW: A RESPONSE TO WHAT'S WRONG WITH CHILDREN'S RIGHTS

NAME: Howard Davidson*

BIO: * Howard Davidson, J.D., is Director of the American Bar Association Center on Children and the Law. The Center, established in 1978, provides technical assistance, training, and research addressing a broad spectrum of law-and court-related topics affecting children. It focuses on improving lawyering and legal reform in cases involving child maltreatment, child sexual exploitation, child and adolescent health, foster and kinship care, adoption/guardianship, teens at risk of entering the juvenile justice system, and children's exposure to domestic violence.

LEXISNEXIS SUMMARY:

... Introduction - The Importance of the CRC to the United States ... Increasing numbers of states have created "Child Advocate" offices or "Children's Ombudsman" programs to provide a mechanism for the enforcement of children's protection under the law. ... Americans need to learn that the CRC encourages this and that U.S. ratification would promote it. ... Its work is focused on but one important area of "rights": the protection and services due children who are victims of parental abuse or neglect and who enter the foster care system. ... Professor Guggenheim, I suspect, would disagree with the CRC provision that gives special weight to the "best interests of the child" as a factor in government decisions. ... " Contrary to this assertion, I believe the best interests of the child standard as well as the CRC itself (when accompanied by wise legislative and policy direction) are not incompatible with support for parental authority that respects children's dignity and safety. ... The CRC simultaneously promotes the best interests of the child and gives great deference to parental decision-making prerogatives. ... Would such access help prevent child abuse, neglect, and foster care placement? Definitely. ...

TEXT:

[*69]

Introduction - The Importance of the CRC to the United States

American critics of the Convention on the Rights of the Child (CRC) have galvanized opposition by mislabeling it as a potential threat to the American family and by making unsubstantiated claims that it would, if ratified by the United States, undermine national sovereignty and interfere with American parent-child relationships. Let us put those untruths aside and refocus the argument on why it is important for America to ratify the CRC. n1

One good reason for ratification is that the United States can become an unencumbered world leader in promoting national laws and government policies across the globe that can help protect children from violence and neglect. This is something in which America has a great deal of expertise.

While recently reconsidering the CRC's potential impact in the United States and the status of children's rights within our country, I was asked by an American Bar Association (ABA) international program to review and comment on a draft children's rights code for the nation of Kyrgyzstan. I was impressed with the breadth of that draft law and with its sweeping articulation of the rights of their children in accordance with the principles of the CRC. I could not help but think that in my thirty-plus years in the field of child protection law I had - despite the draft's many flaws - never seen any U.S. federal or state law remotely like it.

[*70] Few American laws have "children's rights" in their title. This is in part because many believe that if children are afforded "rights" that they will come at the expense of parental rights. The relationship between the rights of American parents and those independently possessed by American children is the subject of a recent book titled *What's Wrong with Children's Rights*, written by Martin Guggenheim, a distinguished American law professor at New York University. Notice that there is no question mark at the end of the title.

Despite concerns of many American parents about children possessing independent rights, if the CRC was ratified it would likely result in new legal protections for children that would - as with many U.S. child protection law reforms - have broad bipartisan support. Americans who may be fearful of children's "rights" are unlikely to have reservations about enhancing protections for children.

Over fifty years of judicial decisions address children's constitutional protections applied to a variety of factual situations. The cases range from those considering juvenile incarceration without access to legal counsel to those dealing with the ability of students to express political views in non-disruptive ways. Court decisions also address the protection of children in foster care and, more recently, curtailment of the juvenile death penalty. In the legislative arena, there are model federal and state special education laws and other laws to protect children from being deprived of educational opportunities such as universal free elementary and secondary education. n2 Increasing numbers of states have created "Child Advocate" offices n3 or "Children's Ombudsman" programs n4 to provide a mechanism for the enforcement of children's protection under the law.

[*71] The United States has a vast body of American children's "rights" law that the CRC encourages. We are doing many things correctly, and we need to build U.S. support on our notable achievements. One of the most important reforms in U.S. law as it relates to children has been a focus on the "protection rights" of children, both at home and in the foster care system. n5 One reason that the Bush administration was comfortable quickly ratifying the Optional Protocol to the CRC on the sexual exploitation of children was past U.S. legal achievements in child protection. n6 We must, as part of an American CRC support strategy, build upon Republican and Democratic Party support for aggressive legal protection of trafficked, exploited, abducted, and seriously abused children.

I. Accomplishments in Children's Rights

American child advocates have much to be proud of. Attorneys seeking protection for foster children's rights have won victory after victory, exemplified by the 2003 Washington Supreme Court's decision in *Braam v. State*. n7 *Braam* cited over twenty years of federal court precedents affirming that foster children possess substantive due process rights under the U.S. Constitution that states are required to respect. n8 Those rights include the right to be free from unreasonable risks of harm and a right to reasonable safety, including adequate services to meet a foster child's basic needs.

Despite these judicial victories for children, the United States only has narrowly tailored "rights based" state laws for children. These children's rights laws are almost entirely found in limited, albeit important areas recognized by the CRC. For example, they include the rights of children in foster care placement (such as in New Jersey and Rhode Island). n9 They also include legislative protection of the rights of child crime victims (as in

[*72] Illinois). n10 The latter topic has been addressed in international guidelines recently approved by the United Nations. n11

By ratifying the CRC's Optional Protocol addressing child prostitution and pornography, the United States has already obligated itself to "adopt appropriate measures to protect the rights and interests of child victims" related to practices that the Protocol prohibits, at all stages of the criminal justice process. n12 The CRC contains similar obligations that should not be difficult for the United States to accept. n13

An exception to the more subject-limited statutes is a broad law in the Commonwealth of Puerto Rico. Puerto Rico's Bill of Rights of the Child, enacted over seven years ago, covers persons from birth through age twenty-one. n14 It explicitly guarantees to children and youth the enforcement of their rights in a vast array of areas protected under Puerto Rico's Constitution, laws, and policies. n15 Its twenty-seven provisions, not surprisingly, track many CRC topic areas. No other state law is like it, but maybe if we ratified the CRC we would see more laws throughout the United States resembling it.

How important is it to articulate rights of children in statute? Here is one example: New Jersey's Child Placement Bill of Rights Act became the basis of an important federal court decision in 2005. n16 Judge Brotman of the U.S. District Court for the District of New Jersey (K.J. ex rel. Lowry v. Division of Youth & Family Services) held that children maltreated in an adoptive home not only had a federal constitutional claim for deprivation of their substantive [*73] and procedural due process rights, but also a private right of action for damages under that specific New Jersey law. n17 The court deemed it important that this statute gave children rights independent of their parents when placed outside the home by the state. n18

The United States needs more laws like those in Puerto Rico, Illinois, Rhode Island, and New Jersey. States, as well as the federal government, should be increasingly guided by laws that can be used to evaluate policies and practices of government agencies as well as court involvement with families. Laws should also be used to measure whether government is fulfilling its obligation to promote the healthy development of children - free of violence in their homes and neighborhoods. Americans need to learn that the CRC encourages this and that U.S. ratification would promote it.

II. Impact of the CRC to Date

Prior to Justice Kennedy taking note of the CRC in *Roper v. Simmons*, n19 very few federal or state judges had ever cited the CRC or applied it within a child-related decision. I have only found nineteen reported federal cases since 1989 in which the CRC was originally cited. n20 The only citation I could find in which a trial judge relied upon the CRC in a reported state case was in Ohio, in support of a "best interests of the child"-oriented decision. n21 In what I am sure the judge saw as giving a child a "breath of fresh air," the judge included the CRC among voluminous citations to the best interest standard. He then used [*74] that standard and the CRC to support his decision to bar both parents in a child custody suit from smoking in the presence of the child. n22

Among the CRC cases mentioned above, most have been cases involving immigration related asylum claims within the United States. Only two of those opinions suggest that the CRC should be a guiding or controlling factor in the dispute. n23 However, in each decision the CRC was cited in the dissenting opinion for an unsuccessful asylum seeker. This indicates that we need to be educating American judges and lawyers on what the CRC is all about.

Except for a key citation in the *Roper* decision, n24 the CRC has had no American judicial impact. Likewise, individual "children's rights laws" at the state or federal level have had very limited impact on government actions. This should not be surprising, in that I contend there is no children's rights movement in our country that has affected the executive, legislative, or judicial branches of government, even among those lawyers who focus their work on child law issues.

III. What's Right About Children's Rights

In various ways in his book, *What's Wrong with Children's Rights*, Professor Guggenheim criticizes both children's rights "advocates" and what he calls the "children's rights movement." n25 Few legal professionals would say their work focuses on advancing children's rights as distinguished from children's protection from harm. The ranks of known American children's rights advocates are few. For example, a Connecticut judge has for years nobly led a personal campaign for a children's rights amendment to the U.S. Constitution, n26 but I am unaware of any significant legal support for it. A national campaign to promote U.S. ratification of the CRC is planning a [*75] national summit in May 2006 to garner support for ratification, but it has been operating with very little money. n27

I can only think of two American programs with "children's rights" in their names. One is Children's Rights, Inc., based in New York City. n28 Its work is focused on but one important area of "rights": the protection and services due children who are victims of parental abuse or neglect and who enter the foster care system. The other is the Children's Rights Council, based in Washington, D.C. n29 Its name is somewhat of a misnomer, in that it principally advocates for non-custodial parents to have greater access to and involvement with their children. It also promotes the legal concept, recognized by Article 9 of the CRC, that children have the "right" of active involvement of both parents who are separated or divorced. n30

In devoting no more than eight sentences of his three hundred page book on "children's rights" to the CRC, Professor Guggenheim is not alone among practicing lawyers, law professors, and children's advocacy organizations in unfortunately ignoring how the Convention might positively affect our country. n31 As of early 2006, one would not find detailed information about, or advocacy for, the CRC on the websites of the Children's Defense Fund (CDF), Voices for America's Children, or any of the country's leading national child advocacy organizations. n32 Yet, many of these organizations are advocating for the large systemic child and family reforms that Professor Guggenheim suggests children's rights advocates have failed to push for.

Despite the present lack of focus on the CRC within the work of domestic child advocacy groups, the American Bar Association, CDF, and others were early supporters of U.S. ratification of the CRC. The ABA, in partnership with Defense for Children-USA, produced the first U.S. book on the CRC, titled *Children's Rights in America*. n33

[*76] Professor Guggenheim, I suspect, would disagree with the CRC provision that gives special weight to the "best interests of the child" as a factor in government decisions. n34 He has called the "best interests" decision-making factor "a formula for unleashing state power, without any meaningful reassurance of advancing children's interests." n35 Contrary to this assertion, I believe the best interests of the child standard as well as the CRC itself (when accompanied by wise legislative and policy direction) are not incompatible with support for parental authority that respects children's dignity and safety.

The CRC simultaneously promotes the best interests of the child and gives great deference to parental decision-making prerogatives. n36 To the extent the CRC addresses, as it does in several articles, intra-familial child custody conflicts, n37 I note Professor Guggenheim's observation in his book that child custody cases are "not really about children" but are about the interests of adults. n38 Like it or not, whether treated in court proceedings as parties-in-interest or not, children are at the center of such disputes. The CRC can be a vehicle to help support policies that will help assure that their voices are heard (pursuant to Article 12) and their interests protected in bitter family wars.

One key aspect of the legal status of children is their access to legal counsel when involved with the courts and having their voices heard in judicial proceedings. I have been working for a year with the National Conference of Commissioners on Uniform State Laws (NCCUSL) on its drafting of a model state law on legal representation of children. n39 The Commissioners are calling for something that only slightly more than half our states require: that every child who is the subject of an abuse-and neglect-related civil judicial proceeding should have a lawyer and that the child's views in those cases must be made known to the court if the child so wishes.

In custody disputes between parents, the NCCUSL drafting group has suggested that judges carefully weigh a set of factors that place children at [*77] great vulnerability and trauma in high-conflict parental custody disputes. n40 It suggests that judges exercise their authority to appoint a lawyer for the child based on the application of those criteria. Lawyers appointed for children must have explicit guidance on their role, and this clarification of the functions of an attorney appointed by the court to represent a child is at the core of the model state law being drafted.

Probably my greatest disagreement with the way Professor Guggenheim has, in his latest book, characterized the work of children's advocates is in his use of an old parable. He claims children's rights advocates are grabbing drowning babies out of the river without going upstream to see who is throwing them in. That generalization is definitely not true of those frontline pediatric lawyers I have known across the country or of those who, since 1995 alone, have been responsible for initiating thirty-five federal and state child welfare class action lawsuits. Each of these lawsuits has focused in different ways on "going upstream" and correcting systemic problems that have led to too many children entering foster care unnecessarily, remaining in foster care inappropriately, or not receiving the protective services to which they are entitled.

Do child advocacy lawyers believe that poor families need access to better paying jobs, safer housing, good child care, and well-functioning schools? Of course. Would such access help prevent child abuse, neglect, and foster care placement? Definitely.

Our Center, in collaboration with the Child Welfare League of America, has recently analyzed the consent decrees, settlement agreements, and court orders in thirty-five class action court cases over the past ten years. This child advocacy litigation has led to significant reforms in the expanded provision of family preservation services and medical, mental health, and social services to maltreated children and their families. These cases have helped bring major improvements to foster parent recruitment and training, protective services investigations, caseload controls and enhanced training and supervision for child protective social workers. n41 They have also led to structural reforms that [*78] enhance data collection, analysis, and new quality assurance activities by child welfare agencies.

Children's advocates, including many of my Center colleagues, actively work to help child welfare agencies avoid unnecessary and unnecessarily prolonged foster placements by offering parents services needed to keep children safe in their own home. For these children's advocates, enhancing family support is a core "children's rights" issue.

Just as it is too simplistic to label attorney advocates for children as anti-parent, so too is it wrong to blame child and family attorney specialists with the increased number of children enmeshed in legal proceedings. We have become a more contentious and litigious society. Our domestic relations and child welfare laws have become increasingly focused on protecting the interests of adults as well as children.

Conclusion - We Have Nothing to Fear from Children's Rights or the CRC

Professor Guggenheim has written that in the "topsy-turvy world of children's rights," children's rights have the opposite effect of delineating the power of state officials. n42 Instead, he says, they expand government power. n43 The children's legal advocates I know are not seeking either diminution of parental rights or the expansion of government power over families, but rather, for example, reduction of trauma to children involved in court proceedings and wider access by children and families to the services they need. Child advocates are promoting mediated resolutions of cases to help avoid bitterly protracted litigation. Legal work is also speeding resolution of children's cases, limiting unnecessary involvement of the state in children's lives, and helping assure that children's voices are heard in the judicial proceedings affecting their lives.

I strongly believe it is immoral for the government to intervene in the lives of families where it fails to provide the services needed to help them care for their young children. And, it is equally immoral for government to simply lock up any but the most violent juvenile offenders without giving troubled pre-delinquent youth and their families the help they need to prevent a youth's later [*79] antisocial behavior. I believe that most Americans would agree with these

principles, and it is those principles that are at the heart of the CRC.

Neither the CRC, nor appropriate judicial application of "best interests of the child" criteria, nor the current actions of American pediatric lawyers, are likely to legally disadvantage parents if fathers and mothers are provided with resources to help keep their children safe. Nor should we fear that a more child-focused set of laws and agency services - that the CRC encourages - will deprive young people or parents of due process of law.

The CRC provides a set of international norms to guide efforts of all who work with children - not just the nations that ratify it. When I was a member of the U.S. Advisory Board on Child Abuse and Neglect, we wrote that the CRC provisions should immediately be used as guiding principles for the work of state and local child protection agencies. n44 Today, many of our state and federal laws conform to both the spirit and letter of the CRC. That needs to become better known. Americans also need to know that we have a long way to go. Whether we ratify it soon or not, the CRC must be used now in the United States as a tool to help provide an even stronger basis for addressing the safety, health, and overall well-being of American children.

Legal Topics:

For related research and practice materials, see the following legal topics:

Civil Procedure
Class Actions
Compromises
Criminal Law & Procedure
Criminal Offenses
Crimes Against Persons
Domestic Offenses
Children
Elements
Family Law
Family Protection & Welfare
Children
Abuse, Endangerment & Neglect

FOOTNOTES:

n1. In 1990, the Center on Children and the Law published the first American book on the CRC, *Children's Rights in America: U.N. Convention on the Rights of the Child Compared with United States Law* (Cynthia Price Cohen & Howard Davidson eds., 1990). A year later, an American Bar Association policy resolution supported U.S. ratification of the CRC.

n2. See, e.g., Ga. Const. art. 8, 1, P I (creating free education); Ill. Const. art. 10, 1 (setting educational development as a fundamental goal and mandating public education through the secondary level to be free); Individuals with Disabilities Education Act, 20 U.S.C. 1400 (2000); *Colo. Rev. Stat. Ann. 22-33-103* (West 1998) (establishing free public school education for residents between the ages of six and twenty-one); *N.J. Stat. Ann. 18A:38-1* (West 1999) (allowing free public education for those between the ages of five and twenty); *N.M. Stat. 22-12-4* (1978) (establishing a free public education); *N.C. Gen. Stat. 115C-111* (2005) (granting free appropriate education for children with special needs); *S.D. Codified Laws 13-37-1.3* (2002) (providing free special education to residential children); *Tenn. Code Ann. 49-10-101* (2002) (stating that state policy is to provide special education services to maximize the capabilities of disabled children).

n3. See, e.g., *Conn. Gen. Stat. Ann. 46a-13k to -13q* (2004) (establishing the Office of the Child Advocate).

n4. See, e.g., Children's Ombudsman Act, *Mich. Comp. Laws Ann.* 722.921-.935 (West 2005).

n5. See Convention on the Rights of the Child arts. 19, 34, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

n6. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/253, Annex II, U.N. Doc. A/RES/54/263 (Mar. 16, 2001) [hereinafter Optional Protocol].

n7. *Braam v. State*, 81 P.3d 851 (Wash. 2003).

n8. *Id.* at 856-57.

n9. *N.J. Stat. 9:6B-4* (2002) (listing the rights of children placed outside the home); *R.I. Gen. Laws 42-72-15* (1998) (creating a children's bill of rights for children under the supervision of the state).

n10. 725 Ill. Comp. Stat. 115/1-4 (2005) (creating a bill of rights for children "to ensure the fair and compassionate treatment of children involved in the criminal justice system").

n11. U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Crime Prevention & Criminal Justice, Report on the Fourteenth Session, 20, U.N. Doc. E/CN/15/2005/20 (July 22, 2005) (recommending ECOSOC's adoption of draft resolution on Guidelines on Justice Matters Involving Child Victims and Witnesses of Crime).

n12. Optional Protocol, *supra* note 6, art. 8, P 1. The United States deposited its instruments of ratification with the United Nations on December 23, 2002. See Media Note, U.S. Dept. of State, Ratification of Optional Protocols to the Convention on the Rights of the Child (Dec. 23, 2002), <http://www.state.gov/r/pa/prs/ps/2002/16198.htm>.

n13. For example, Articles 34 and 35 of the CRC take a broad stance against the sexual exploitation, abuse, and trafficking of children. This is roughly comparable to Article 3 of the Optional Protocol, which the United States has already ratified. See CRC, *supra* note 5, arts. 34, 35; Optional Protocol, *supra* note 6, art. 3. Articles 19 and 39 of the CRC and Articles 8 and 10 of the Optional Protocol all focus on the physical and psychological recovery of child victims. See CRC, *supra* note 5, arts. 19, 39; Optional Protocol, *supra* note 6, arts. 8, 10.

n14. P.R. Laws Ann. tit. 1, 412 (2004).

n15. *Id.* 412(1).

n16. Child Placement Bill of Rights Act, *N.J. Stat. Ann.* 9:6B-1 to -6 (2002); *K.J. ex rel. Lowry v. Div. of Youth & Family Servs.*, 363 F. Supp. 2d 728, 741-45 (D.N.J. 2005).

n17. *K.J.*, 363 F. Supp. 2d at 747.

n18. Child Placement Bill of Rights Act 9:6B-2(a); *K.J.*, 363 F. Supp. 2d at 742.

n19. *Roper v. Simmons*, 543 U.S. 551, 576 (2005).

n20. *Id.*; *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006, 1007-13 (9th Cir. 2005); *Oliva v. U.S. Dep't of Justice*, 433 F.3d 229, 230-36 (2d Cir. 2005); *Guaylupo-Moya v. Gonzales*, 423 F.3d 121, 133-35 (2d Cir. 2005); *Mansour v. Ashcroft*, 390 F.3d 667, 687 (9th Cir. 2004); *Abebe v. Ashcroft*, 379 F.3d 755, 764 (9th Cir. 2004); *Flores v. S. Peru Copper Corp.*, 343 F.3d 140, 165 (2d Cir. 2003); *Beharry v. Ashcroft*, 329 F.3d 51, 55 (2d Cir. 2003); *Ayala-Caballero v. Coleman*, 58 Fed. Appx. 669, 672 (9th Cir. 2002); *Sadeghi v. I.N.S.*, 40 F.3d 1139, 1145-47 (10th Cir. 1994); *Ficken v. Rice*, No. 04-1132, 2006 U.S. Dist. LEXIS 2689, at 16 (D.D.C. Jan. 17, 2006); *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 453 (D.D.C. 2005); *Fernandez v. I.N.S.*, No. 03-cv-2623, 2004 WL 951491, at 2 (E.D.N.Y. Apr. 29, 2004); *Naoum v. Att'y Gen. of U.S.*, 300 F. Supp. 2d 521, 526 (N.D. Ohio 2004); *Doe v. Reddy*, No. 02-05570, 2003 U.S. Dist. LEXIS 26120, at 32 n.3 (N.D. Cal. Aug. 4, 2003); *Adebeyo v. Ashcroft*, No. 02-cv-02684, 2003 U.S. Dist. LEXIS 27048, at 13 (E.D.N.Y. Mar. 6, 2003); *Alvarez-Garcia v. I.N.S.*, 234 F. Supp. 2d 283, 289 (S.D.N.Y. 2002); *Nicholson v. Williams*, 203 F. Supp. 2d 153, 234 (E.D.N.Y. 2002); *United States v. Martinelli*, 62 M.J. 52, 72 n.37 (C.A.A.F. 2005).

n21. *In re Julie Anne*, 780 N.E.2d 635 (Ohio C.P. Ct. 2002).

n22. *Id.*

n23. *Abebe*, 379 F.3d at 764 (Ferguson, J., dissenting); *Sadeghi*, 40 F.3d at 1147 (Kane, J., dissenting).

n24. *Roper*, 543 U.S. at 576.

n25. Martin Guggenheim, *What's Wrong with Children's Rights* 12 (2005). "Between the liberationists and the advocates who lost their way in figuring out what rights are, the children's rights movement has been a confused and often ridiculed one." *Id.* "The modern children's advocate is likely to advance claims for children that are based on a fatally flawed premise. As rights have entered center stage, many children's claims are advanced on the basis of the child's individual personhood." *Id.* at 13. "Regrettably, a leading characteristic of the children's rights movement is its propensity to separate children's interests from their parents." *Id.*

n26. In 1988, Connecticut judge Charles Gill co-founded the National Task Force for Children's Constitutional Rights. Its goal was to have a constitutional amendment by the year 2000, giving children the right to live in a safe and healthy home and to be heard in court proceedings.

n27. The Summit for the Convention on the Rights of the Child will be held May 18-20, 2006, at American University in Washington, D.C. See Campaign for U.S. Ratification of the Convention on the Rights of the Child, <http://www.childrightscampaign.org/crcsummit.htm> (last visited Mar. 26, 2006).

n28. See Children's Rights, Inc., <http://www.childrensrights.org> (last visited Mar. 26, 2006).

n29. See Children's Rights Council, <http://www.gocrc.com> (last visited Mar. 26, 2006).

n30. The organization "works to assure children meaningful and continuing contact with both their parents

and extended family regardless of the parents' marital status." *Id.*; see also CRC, *supra* note 5, art. 9.

n31. See Guggenheim, *supra* note 25, at 14-15.

n32. See Children's Defense Fund, <http://www.childrensdefense.org> (last visited Mar. 26, 2006); Voices for America's Children, <http://www.voicesforamericaschildren.org> (last visited Mar. 26, 2006).

n33. Children's Rights in America, *supra* note 1.

n34. See CRC, *supra* note 5, art. 3 (requiring "all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, [to primarily consider] the best interests of the child").

n35. Guggenheim, *supra* note 25, at 41.

n36. See CRC, *supra* note 5, arts. 3, 5, 7, 8, 9, 10, 18, 20.

n37. See *id.* arts. 9, 10, 11, 18, 20.

n38. Guggenheim, *supra* note 25, at 143.

n39. Nat'l Conference of Comm'rs on Uniform State Laws, Draft Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act (2006), available at <http://www.law.upenn.edu/bll/ulc/RARCCDA/2006FebChildRepDraft.pdf>. This draft Act is scheduled for final approval by NCCUSL in July 2006.

n40. *Id.* 6(b)(1)-(11). The February 2006 draft of the Act, in Section 6, lists eleven factors that courts must consider in determining whether to appoint an attorney or other person to represent the child.

n41. See Child Welfare League of Am. & ABA Ctr. on Children and the Law, *Child Welfare Consent Decrees: Analysis of Thirty-Five Court Actions from 1995 to 2005* (2005), available at <http://www.cwla.org/advocacy/consentdecrees.pdf>. Consent decrees have addressed the methods and timeliness of child maltreatment investigations, recruitment and retention of qualified foster parents, and the supervision of staff. *Id.* at 12, 18, 29.

n42. Guggenheim, *supra* note 25, at 246-47.

n43. *Id.*

n44. U.S. Dep't of Health & Human Servs., U.S. Advisory Board on Child Abuse & Neglect, *The Continuing Child Protection Emergency: A Challenge to the Nation* 14-15 (1993).