

Scholarly Commons @ UNLV Boyd Law

Scholarly Works

Faculty Scholarship

2006

Standing in Babylon, Looking Toward Zion

Katherine R. Kruse

University of Nevada, Las Vegas -- William S. Boyd School of Law

Follow this and additional works at: <https://scholars.law.unlv.edu/facpub>



Part of the [Family Law Commons](#), [Legal Ethics and Professional Responsibility Commons](#), and the [Other Law Commons](#)

Recommended Citation

Kruse, Katherine R., "Standing in Babylon, Looking Toward Zion" (2006). *Scholarly Works*. 406.
<https://scholars.law.unlv.edu/facpub/406>

This Article is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

STANDING IN BABYLON, LOOKING TOWARD ZION

Katherine R. Kruse

The *UNLV Conference on Representing Children in Families* convened an impressive group of academics, policymakers, practitioners, and participants in the child welfare and juvenile justice systems in what might seem an unlikely place—Las Vegas—to consider how to move beyond recommendations made ten years earlier about how lawyers for children should approach their work.¹ The 1996 *Fordham Conference on Ethical Issues in Legal Representation of Children* had forged an important consensus among a community of scholars and child advocates around the ideal that lawyers should represent the expressed wishes of their child clients rather than their clients' best interests; and it had confronted many of the complexities of that approach with specific recommendations about how to give practical effect to "expressed wishes" representation.² The bold anti-paternalism of the 1996 *Fordham Recommendations* asserted the value of treating children as individuals entitled in their own right to protection against state intervention, even when that intervention occurs in the name of their best interests.

Just as the roots of the 1996 *Fordham Recommendations* rest squarely in the political theoretical traditions of Liberalism, the 2006 *UNLV Conference* challenged participants to tackle some of the most demanding postmodern and communitarian critiques of the premises on which Liberalism is based. The questions at the *UNLV Conference* asked participants to confront the atomizing effects of individualism inherent in "expressed wishes" representation. It asked them to view children not just as individuals, but as deeply constituted by their relationships to others; as members of families and communities; and as having identities that may distance or connect them to their families and communities by virtue of their race, sex, class, ethnicity, or sexual orientation.

The questions posed at the *UNLV Conference* were theoretically exciting, intellectually ambitious, and vitally important to refining and clarifying the norms inherent in the *Fordham Conference* "expressed wishes" representation. However, the most perplexing challenge at the *UNLV Conference* came not from the questions themselves—heavy as they were—but from how to go about answering them as lawyers in juvenile and child welfare systems that still fall grievously—unconscionably—short of their own ideals. As opening arti-

¹ *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301, 1301 (1996) reprinted in 6 NEV. L.J. 1408 (2006) (distinguishing between the role of the child's lawyer and the child's guardian *ad litem*).

² *Id.* at 1308-11 (making recommendations regarding the obligations of lawyers for preverbal and impaired children who lack capacity to direct representation); *id.* at 1312-13 (making recommendations on determining whether a verbal child is capable of directing representation).

cles cautioned, ten years after *Fordham*, children still largely lack representation by lawyers dedicated to expressing their wishes in the proceedings that affect them;³ and the provision of counsel to children who are not effective advocates may serve little purpose other than to sustain and legitimate the state's social control over the lives of families in poverty.⁴

An uneasy tension between realism and idealism thus played itself out among participants at the *UNLV Conference*, particularly in questions about how to approach the formulation of specific recommendations. Should the recommendations coming out of the conference be practical or visionary? Should they be addressed to the realities of lawyers working within broken systems, or should they be based on an idealized vision of the role of lawyers in the system as it should operate? Should they focus on micro-changes addressed to helping lawyers cope with the imperfections of the systems within which they work, or macro-changes directed to transforming those systems into what they should be? And what role should the political realities of where we are and what we can accomplish by publishing of a set of recommendations play?

At the end of the day, when the recommendations were read and the votes were cast, it is fair to say that the visionaries came out ahead. The recommendations re-affirmed expressed wishes representation of children, but broadened and deepened it to include such ideals as holistic representation of children in collateral matters, multidisciplinary collaboration with other professionals, the pursuit of alternative dispute resolution procedures, and providing community outreach, education and systemic advocacy.⁵ Participants rejected a proposed recommendation that "expressed wishes" representation be based on a bright-line age-based standard for children over seven, despite pragmatic arguments that such a recommendation could be politically useful in convincing "best wishes" jurisdictions to mandate *some* form of expressed wishes representation.⁶ And a special working group formed to recommend a caseload limit for lawyers representing children under the holistic, multidisciplinary, multi-systemic, culturally sensitive, community-based and contextualized lawyering model that the recommendations—taken as a whole—envision for representing children in families.⁷

This response paper will defend the triumph of vision at the *UNLV Conference* by examining the interrelationship between idealism and realism in the definition of lawyers' roles and the importance of idealized visions to the process of reforming dysfunctional systems. I suggest that the vision of lawyering

³ Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 NEV. L.J. 966 (2006).

⁴ Martin Guggenheim, *How Children's Lawyers Serve State Interests*, 6 NEV. L.J. 805 (2006).

⁵ *Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years after Fordham*, 6 NEV. L.J. 592 (2006) [hereinafter *Recommendations of the UNLV Conference*].

⁶ See *Report of the Working Group on the Role of Age and Stage of Development*, 6 NEV. L.J. 623 (2006) (proposing a bright-line age-based standard); *Report of the Working Group on the Best Interests of the Child and the Role of the Attorney*, 6 NEV. L.J. 682 (2006) (rejecting a bright-line age-based standard).

⁷ *Report of the Working Group on Representing the Whole Child*, 6 NEV. L.J. 665 (2006).

for children sketched in the *UNLV Recommendations*—though based in idealism—is both deeply realistic and ultimately practical. I thus affirm the choice of the group of idealists who stood together for a few days in modern-day Babylon to keep their eyes trained on the vision of Zion as they crafted recommendations for making the legal systems in which they practice, study, and teach—and about which they deeply care—better for children and their families.

I. LAWYERS' ROLES AND THE INTERRELATIONSHIP BETWEEN IDEALISM AND REALISM

“A lawyer,” begins the Preamble to the *Model Rules of Professional Conduct*, performs multiple roles: “a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”⁸ The Preamble goes on to present an idealized vision of a well-functioning adversary system in which these roles are “usually harmonious.”⁹ Zealous partisan representation of a client, the Preamble reassures us, will most often result in just outcomes, and keeping a client’s confidences will usually accord with the public interest.¹⁰ However, for this to be so, certain idealized conditions must hold. Each side must have the resources to fully investigate, unobstructed access to relevant information, and representation by skilled and knowledgeable counsel. The legal decision-makers must well informed about the law, discerning about human nature, and unaffected by bias. It also helps if everyone is honest, everyone is well motivated, and the law is basically fair.

Unfortunately, the conditions necessary to bring this idealized adversary system into existence are rarely present,¹¹ leaving lawyers with the question of what they are to do when the realities of practice fail to measure up to the idealized conditions on which their professional role obligations are based.¹² The Preamble again provides an answer: lawyers are to exercise “sensitive professional and moral judgment guided by the basic principles underlying the Rules.”¹³ At its best, the idealized vision of adversary justice aids the exercise of this professional judgment by offering a normative model against which the conditions of actual practice can be assessed and legal representation calibrated. At its worst, the idealization provides an “adversary system excuse” for lawyers to work injustice or pursue self-interested gain in the name of professionalism.¹⁴

⁸ MODEL RULES OF PROF'L CONDUCT Preamble ¶ 1 (2002).

⁹ *Id.* at ¶ 8.

¹⁰ *Id.*

¹¹ For a sobering analysis of the way dispute resolution resources actually get distributed, see Robert Robinson, *A Theory of Access to Justice*, 29 J. LEGAL PROF. 89 (2005).

¹² As William Simon has written, traditional legal ethics requires lawyers to trade “the vividly perceived injustice of the here and now [for] the greater justice expected elsewhere and later.” WILLIAM H. SIMON, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS* 2 (1998).

¹³ MODEL RULES OF PROF'L CONDUCT PREAMBLE ¶ [9].

¹⁴ See David Luban, *The Adversary System Excuse*, in *THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* 83 (David Luban ed., 1984).

Although the adversary system ideal may seem to be based on a hopelessly utopian view of the world, closer examination reveals it to be grounded in a deep realism. The strongest defenders of adversarial ethics point not to how well the adversary system works in practice, but to how much better it works than alternative models in meeting the goals of determining truth, protecting human dignity, and providing participants with a sense of fair treatment.¹⁵ Even one of its most persistent critics concludes that the adversary system is ultimately defensible—if only weakly—on the pragmatic ground that “despite its imperfections, irrationalities, loopholes, and perversities, [it] seems to do as good a job as any at finding truth and protecting legal rights.”¹⁶ Although hardly a ringing endorsement, the realist defense of the adversary system points to an ultimately protective role for lawyers in the face of the fallibility of courts, agencies and other institutions of justice. Even if not the best way to arrive at the goals of truth and justice in an ideal world, the realist defense suggests, the adversary system is the model least susceptible to abuse in the event that not everyone is honest, not everyone is well motivated, and the law is not basically fair.

Like professional ethical standards, the role of lawyers for children has been defined according to both idealism about the systems in which law intervenes into the lives of children and realism about the limitation of those interventions. The early Juvenile Court was established on a rehabilitative ideal in which informal proceedings were thought to enhance rehabilitation by breaking down the boundaries between the court and the child.¹⁷ A survey of juvenile court judges conducted in 1964—just prior to the Supreme Court’s 1967 decision in *In re Gault* that children be represented in juvenile delinquency cases¹⁸—demonstrates an attitude of skepticism toward children’s counsel operating under traditional lawyering roles.¹⁹ The lawyers for children who occasionally appeared before them (in about five percent of all cases) were most criticized by these juvenile court judges for “a perceived lack of knowledge of the philosophy and purposes of the juvenile court”; and were most valued for “securing cooperation in the court’s disposition.”²⁰

As we know, the right to adversary counsel in delinquency cases was established in a surge of realism about the widespread failure of juvenile courts to live up to their rehabilitative ideals.²¹ The right to counsel, along with other

¹⁵ See MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS’ ETHICS 28-43 (3d ed. 2004). Defenders of adversarial zeal decry the most prevalent alternative—an inquisitorial model—for its tendency to close in too quickly on a particular version of the truth without allowing the situation to be considered from all perspectives, *id.* at 30-34; the ease with which it permits the state to sacrifice the rights of individuals to the common good, *id.* at 39-40; and a design that leaves participants feeling unheard and less satisfied with outcomes. *Id.* at 40-42.

¹⁶ DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY 92 (1988).

¹⁷ See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1910).

¹⁸ 387 U.S. 1.

¹⁹ Daniel L. Skoler & Charles W. Tenney, Jr., *Attorney Representation in Juvenile Court: A Survey of Juvenile Court Judges Serving the Nation’s Largest Metropolitan Areas*, 4 J. FAM. LAW. 77 (1964).

²⁰ *Id.* at 97.

²¹ As the Supreme Court recognized “[t]he absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment.” *Gault*,

due process requirements, was introduced to hold the system accountable to its ideals, to ensure that it kept its rehabilitative promise amidst the realities of “loose procedures, high handed methods and crowded court calendars.”²² Counsel was thought necessary in even a less formal rehabilitative court “to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the child] has a defense and to prepare and submit it.”²³ Early pioneers of organized efforts to provide representation for children in delinquency and dependency cases urged an even broader role for counsel, consistent with the role ultimately endorsed in the *Fordham* “expressed wishes” recommendations: that the child’s lawyer should be something more than just one more expert in the room talking about what was in the child’s best interests.²⁴

Yet even the formulation of “expressed wishes” representation—in which the lawyer’s primary role is to amplify the voice of the child²⁵—is based on an idealized vision. The idealization is a vision of representation in which lawyers for children have the luxury of other experts in the room. It is a system in which court-appointed social workers or probation officers are using the best methods of their profession to assess the strengths of families, to individualize recommendations, to think creatively about options and alternatives, and to treat participants with dignity and cultural sensitivity.²⁶ Assured that her child client’s best interests are being well-considered by others, a lawyer can comfortably provide the role of voicing her client’s heart-felt but sometimes short-sighted wishes as part of a larger process devoted to a sensitive, well-informed and complete analysis of what is best for the child.

Confronted by the realities of overloaded dockets, routinized disposition and permanency plans, and punitive attitudes toward children and their parents, expressed wishes representation becomes more difficult. Such realities put pressure on lawyers for children to take up the slack by developing an independent, individualized and multidisciplinary determination of their child clients’

387 U.S. at 18. The Court “confront[ed] the reality” presented in Gerald Gault’s case that a boy guilty of nothing more than prank phone calls was ultimately “committed to an institution where he may be restrained of liberty for years The fact of the matter is that, however euphemistic the title, a ‘receiving home’ or an ‘industrial school’ for juveniles is an institution of confinement in which the child is incarcerated” *Id.* at 27.

²² *Id.* at 19, quoting Paul S. Lehman, *A Juvenile’s Right to Counsel in a Delinquency Hearing*, 17 JUV. CT. JUDGE’S J. 53, 54 (1966).

²³ *In re Gault*, 387 U.S. at 36.

²⁴ This view was attributed to Charles Schinitzky, the head of the Legal Aid office in New York that provided the first “law guardians” to children in delinquency and dependency proceedings. See PETER S. PRESCOTT, *THE CHILD SAVERS: JUVENILE JUSTICE OBSERVED* 65 (1981). *In re Gault* limited representation to the adjudicatory stage of a juvenile delinquency hearing. 387 U. S. at 36. Schinitzky advocated a broader role for counsel than the Court ultimately adopted. Schinitzky envisioned lawyers for children who would not only protect children’s legal rights and provide independent investigation of the facts, but would also “work with probation officers in the disposition of cases” and go “beyond the courtroom to [work with] religious organizations, the school authorities, settlement houses, temporary shelters and institutions.” Charles Schinitzky, *The Role of the Lawyer in Children’s Court*, 17 RECORD N.Y.C. B. ASS’N 10, 25 (1962).

²⁵ Annette Appell, *Children’s Voice and Justice: Lawyering for Children in the Twenty-First Century*, 6 NEV. L.J. 692 (2006).

²⁶ Susan Brooks, *Representing Children in Families*, 6 NEV. L.J. 724 (2006).

best interests that may or may not coincide with the child's expressed wishes.²⁷ The more time and resources that the child's representative invests in those tasks—and the less responsive the other actors in the system are to their responsibilities—the more fiercely the concern for a child client's best interests competes with the role of giving voice to the child's own wishes.

This complex interplay of idealism and realism forms the backdrop against which participants at the *UNLV Conference* confronted the questions of how to incorporate concerns for a child's family and community into the role of the lawyer representing children. The recommendations that emerged are based on the highest ideals but also informed by the darkest realities of the legal systems intervening in the lives of children. Relentlessly, conference participants indicted the present systems for hubristic, over-reaching, non-participatory, unimaginative, dehumanizing and punitive attitudes and approaches toward the children and families within their jurisdiction.²⁸ The recommendations call on the systems to respond collaboratively to children and families, to provide appropriate, culturally competent and individualized services, to develop child-centered and child-friendly court processes and organizational structures, and to develop quality assurance mechanisms to document the effectiveness of the services they provide.²⁹ And the recommendations call on lawyers for children to adopt principles of holistic problem-solving, cultural sensitivity, multidisciplinary partnership, and accountability to client communities within their own representation.³⁰

Although articulating these idealized visions of legal systems and legal representation may seem a meaningless rant that will inevitably fall on deaf ears, I suggest that it is an ultimately practical endeavor that can inform a lawyer's day-to-day ethical choices—the exercise of sensitive professional judgment informed by the principles underlying ethical rules—in concrete ways. As the continual shift between idealism and realism in professional role definition suggests, idealized models of procedural justice serve two important functions in guiding a lawyer's exercise of professional judgment: one ameliorative and the other protective.

First, idealized visions of well-functioning systems help lawyers balance their duties to clients and to legal systems by shedding light on how they might ameliorate gaps between the ideal operation of a system and its imperfect implementation in the world.³¹ Knowing that an opponent is inadequately represented, for example, a lawyer can enhance the just operation of an adversarial system by tempering his zeal rather than seizing a competitive advantage. Likewise, understanding the ideal working of a system devoted to problem-

²⁷ See Jean Koh Peters, *The Roles and Content of Best Interests in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 *FORDHAM L. REV.* 1505 (1996) (describing the importance of lawyers' developing their own conception of a child client's best interests even when operating under a client-directed model of lawyering).

²⁸ *Report of the Working Group on the Role of the Family*, 6 *NEV. L.J.* 616 (2006).

²⁹ *Recommendations of the UNLV Conference*, *supra* note 5.

³⁰ *Id.*

³¹ See SIMON, *supra* note 12, at 139-44 (arguing that a lawyer's role as an advocate should be tempered by an assessment of whether procedures are working as they should and if they are not, that the lawyer's first duty should be to temper advocacy to mitigate procedural unfairness).

solving or rehabilitative goals—individualized treatment, cultural sensitivity, and strengths-based problem-solving—can help a lawyer for a child client calibrate her representation to make up for the absence of those conditions in a particular case. This kind of cooperative, public-spirited approach to representation can assist a system in operating according to its ideals despite the ordinary failings that occur in any endeavor that depends on fallible human beings to implement its goals.

However, the deep realism at the bottom of professional role definition suggests a secondary protective role for lawyers based on assessing a particular legal system's capacity to function according to its ideals. It suggests that lawyers' ultimate duty is to protect their child clients against intervention by systems that call themselves problem solving or rehabilitative but so utterly fail to deliver on their promises that amelioration is counterproductive. Rather than working to fill in gaps in systems that have devolved into unresponsive, dysfunctional bureaucracies, lawyers may need to resist cooperation and exploit every possible legal technicality to set their child clients free from these systems' grips. The idealized vision of a responsive and well-functioning system may serve an especially important function as a polestar to guide a lawyer's practical decision-making in a dysfunctional system when the swirl of the "way we do things around here" threatens a loss of direction.

But lawyers may want more from idealized visions of lawyering for children than assistance in the exercise of professional judgment and the complex choices about cooperation and resistance that individual client representation entails. Lawyers need not simply live with systems that fail, but may also seek to change them. As the stories in the next section illustrate, visions of how systems should operate also guide the process of systemic reform, especially when they interact symbiotically with incremental micro-changes in day-to-day practice.

II. SYSTEMIC REFORM AND THE INTERACTION BETWEEN VISIONS OF MACRO-CHANGE AND IMPLEMENTATION OF MICRO-CHANGE

This section will briefly recount two stories of the interrelationship in bringing about widespread systemic reform between small-scale, practical, on-the-ground changes and more sweeping and idealistic visions of how a system should operate. The first is the story of widespread and successful changes to the Alabama child welfare system brought about by the Bazelon Center's class action litigation in *R.C. v. Hornsby*.³² The second is the story of newer and still ongoing reform efforts in the Clark County Juvenile Court in Las Vegas, in which my own practice and clinical teaching is embedded.

³² The story recounted here is based on the Bazelon Center's monograph *Making Child Welfare Work: How the R.C. Litigation Forged New Partnerships to Protect Children and Sustain Families*, Washington, D.C. 1998. [hereinafter *Making Child Welfare Work*]. The report is available from the Publications Desk at the Bazelon Center at (202) 467-5730, ext. 41; or by emailing pubs@bazelon.org.

A. *Alabama Child Welfare Reform*

In *Making Child Welfare Work*, the Bazelon Center for Mental Health recounts its successful “bottom-up” child welfare reform in Alabama, which began with a class-action lawsuit challenging a child welfare system that was backlogged, over-reliant on institutionalization and poorly functioning.³³ With a governor and other key state officials committed to reform,³⁴ and after two years of discovery revealed a grievously failing system,³⁵ the suit moved toward settlement. However, when the defendants offered to settle the case with a five million dollar budget supplement to expand caseworkers and services, lead plaintiffs’ counsel Ira Burnim realized it would not be enough. It wasn’t that he wanted more money; it was that he wanted something completely different: “a system that works.”³⁶

Instead of more of the same, what Burnim eventually offered and the defendants ultimately accepted was a set of goals and principles that spelled out an idealized vision—no less ambitious than that of the *UNLV Conference* recommendations—of how a child welfare system ought to function. An ideal child welfare system, according to the vision spelled out in the *R.C.* consent decree, ought to be truly individualized by providing services based on children’s and families’ unique strengths and needs rather than on available services; it ought to be collaborative by including families in planning services; it ought to seek genuine agreement to the service plans by allowing any child or family member to refuse services to the extent permitted by law; it ought to be culturally sensitive; and it ought to embrace a philosophy of home and community-based services that places children in the “least restrictive, most normalized” living situation, preferably their own home.³⁷

Rather than trying to build an elaborate implementation plan to bring this idealized vision into existence from the top down, the state began a process of incremental county-by-county reform that they dubbed “fixing a bicycle while riding it.”³⁸ Reform began at the lowest levels by reconceptualizing the relationship between caseworkers and families. Drawing on the expertise of consultant Marty Beyer, caseworkers were trained to approach their cases as partnerships with the families of children in abuse and neglect cases, in which they helped each family recognize its existing strengths and identify each child’s unique and specific needs.³⁹ As an example of an individualized need, the consent decree used music lessons: if “music lessons might be a cost-efficient and normalized service that could help meet a particular child’s need for self-esteem and help to reduce negative behaviors,” then music lessons should be identified as a “need” and funded as part of an individualized service plan.⁴⁰ Crucially, caseworkers were oriented away from defining needs in terms of existing services (“this parent needs drug counseling”) and imposing these ser-

³³ *Id.* at 5.

³⁴ *Id.* at 10.

³⁵ *Id.* at 18.

³⁶ *Id.* at 20.

³⁷ *Id.* at app. 1 (Goals and Principles from the *R.C.* consent decree).

³⁸ *Id.* at 5-6.

³⁹ *Id.* at 51-52.

⁴⁰ *Id.* at 21.

vices on families; and instead were trained to negotiate an individualized service plan in cooperation with the family.⁴¹

After training the caseworkers in this approach, the first group of counties began the process of figuring out—from the bottom up and “planning while doing”—what infrastructural changes would be needed to bring the vision into reality. The breadth of systemic reform that resulted was staggering. The counties developed new computerized information management systems, which helped them track their progress and share information with each other.⁴² They created a new staff position—“resource developer”—to develop community-based services in response to individualized planning.⁴³ Resource developers created new categories of services like “familiar care,” in which neighbors or other persons familiar with a child could provide in-home support or respite care; and they negotiated with state-level officials to amend administrative standards to account for these new care providers.⁴⁴ A system of “flex-funds” was established to allow counties to pay for services that would not traditionally be offered; and a voucher system of paying for services as needed began to supplant the system of contracting for predetermined services or institutional beds.⁴⁵ As the use of flex-funds increased, it put pressure on service providers to diversify the services they offered, and resulted in an increase in home-based services and a decrease in the use of institutional placement.⁴⁶

By far the most important ingredient of the Alabama reforms was the genuine buy-in by individual caseworkers and other stakeholders to the collaborative, strengths-needs based permanency-planning philosophy, based on direct experience that told them it worked. Caseworkers liked the less adversarial problem-solving relationships that the new approach helped them develop with the families of children in abuse and neglect cases, and they consistently came to the defense of the new system when it faced bureaucratic resistance at higher levels.⁴⁷ Plaintiffs’ counsel helped create a parent network that brought together natural, adoptive and foster parents to share information, help each other advocate for their needs in individual cases, and develop a common political voice.⁴⁸ Particularly telling, when the consent decree came under attack by a new governor hostile to the reforms and a Department of Human Resources commissioner appointed with a mandate to dismantle them, a broad alliance of providers, family organizations, county child welfare directors, and business leaders repudiated the governor’s attempts to stymie reform and forced the commissioner’s resignation.⁴⁹

I don’t practice law in Alabama, but my guess is that even with these impressive reforms, the state has not yet achieved Nirvana. The authors of the Bazelon Center monograph who recount this story of reform indicate that the

⁴¹ *Id.* at 22.

⁴² *Id.* at 32.

⁴³ *Id.* at 63.

⁴⁴ *Id.*

⁴⁵ *Id.* at 64. *See also id.* at 45-46.

⁴⁶ *Id.* at 64.

⁴⁷ *Id.* at 38-39.

⁴⁸ *Id.* at 74-76.

⁴⁹ *Id.* at 73-76.

infrastructural changes to service provision were not uniform across the state, and were considerably more difficult to implement in the larger urban area of Birmingham than in smaller counties.⁵⁰ And pressuring the state to provide adequate funding for the reforms has been an ongoing struggle.⁵¹

But the story of the Alabama child welfare reform shows the importance of articulating idealized visions; and how, once articulated, they can be coaxed into reality through incremental bottom-up change. Lawyers played an important role in instigating and continuing to press for macro-change through the class-action lawsuit and enforcement of the consent decree. But they also helped in achieving micro-change at the level of individual cases, holding agency personnel accountable to the norms of the new system by targeted representation of children and parents.⁵² And when the reforms came under attack, it was the organized efforts of these bottom-level participants, whose hearts and minds had been won over to the idealized vision, which ultimately saved the reforms from being dismantled.

B. Clark County, Nevada Juvenile Justice Reform

The story of the Alabama child welfare reform started with a vision of the way things should be and proceeded with incremental but ultimately profound infrastructural changes. The still-ongoing story of Clark County juvenile justice reform begins with infrastructural change in the provision of counsel in juvenile cases, born not from a vision of the way things should be, but in reaction to widespread dissatisfaction with the way things were. A recent legislative change and an overhaul of the operations of the Clark County Public Defender's office have combined to transform a juvenile court system historically characterized by widespread waiver of counsel and an inadequately staffed juvenile office into a system where representation for children is now readily available. The impact of the suddenly widespread presence of counsel on a system rife with informality, proliferated in the absence of meaningful systemic advocacy for children, is just beginning to be felt. The question in Clark County is whether system participants can expand their vision of the juvenile justice system beyond its current horizons to picture how it might ideally operate with the new opportunities for improvement that counsel for children create.

Five years ago, the Clark County Public Defender's Office was on the ropes. Home to the Las Vegas metropolitan area, Clark County was by far the fastest-growing metropolitan area in the county.⁵³ However, the public defender's office, relying on informal and familiar practices that had worked in

⁵⁰ *Id.* at 64-65.

⁵¹ *Id.* at 73-74.

⁵² *Id.* at 77-78 (describing the "strategic" representation of about 100 children and families by ACLU special projects lawyer James Tucker, who selected from among cases forwarded to him by parents' networks, to teach a lesson by "highlighting specific implementation issues" or to help him gain a better understanding of "particular barriers or problems").

⁵³ Census 2000 PHC-T-3. Ranking Tables for Metropolitan Areas: 1990 and 2000, tbl. 5: Metropolitan Areas Ranked by Percent Population Change: 1990 to 2000, <http://www.census.gov/population/www/cen2000/phc-t3.html> (showing Las Vegas as the first-ranked metropolitan area in terms of population growth, with an 83.3% increase in population from 1990 to 2000).

the small-town atmosphere of the past, had not kept pace.⁵⁴ The widespread community perception—shared by some members of the Clark County office itself—was that Clark County public defenders were too cozy with prosecutors and systematically unresponsive to the poor people they were charged with representing.⁵⁵ Claims that the office had a policy and practice of denying clients effective assistance of counsel—based on allegations that its allocation of investigatory resources depended on whether its clients passed or failed polygraph examinations, and that it routinely assigned its least experienced attorneys to capital cases—were the subject of a federal lawsuit brought by a former client who had spent fourteen years on death row for a crime he did not commit.⁵⁶ In response to grassroots community concerns about racial and economic bias in the justice system, a Nevada Supreme Court task force commissioned the Spangenberg Group to study indigent defense services in the state.⁵⁷ The Spangenberg Report, released in December 2000, found generally that a lack of standards regarding attorney eligibility, training and workload raised quality concerns; and that low trial rates—especially in Clark County—were contributing to an “erosion of confidence in the system.”⁵⁸

The Spangenberg Report pointed to a strange anomaly with respect to public defender representation of children in juvenile court. Although the overall trial rate of 0.6% in the Clark County Public Defender’s Office was well below the national average of 4-7% for major urban areas,⁵⁹ the juvenile trial rate stood out as the highest of any single category.⁶⁰ One ready explanation for this anomaly was another trend noted in the report as a separate concern: that “juveniles are allowed to waive their right to counsel too easily,” resulting in a situation in which “[t]he majority of children end up not having counsel” in

⁵⁴ The Spangenberg Group, *Indigent Defense Services in the State of Nevada: Findings and Recommendations* 56-57 (Dec. 13, 2000) [hereinafter *The Spangenberg Report*] (attributing the findings of low trial rates to the possible explanations of a “dynamic in which a large, urban defender system has been created in what was a relatively small town in the not too distant past”).

⁵⁵ Frank Geary, *Veteran Public Defender to Retire after 29 Years*, LAS VEGAS REV.-J., Aug. 15, 2001, at 3B. See also *The Spangenberg Report*, *supra* note 54, at 57 (noting that some judges, community activists and public defenders voiced the opinion that public defenders “give in too easily to the prosecutors and, thus, actually hurt their clients interests”).

⁵⁶ *Miranda v. Clark County*, 319 F.3d 465 (9th Cir. 2003).

⁵⁷ *The Spangenberg Report*, *supra* note 54. This report was commissioned by the Implementation Committee of the Nevada Supreme Court Task Force on Racial and Economic Bias in the Justice System. The Task Force was established in 1992 in response to a citizens’ grassroots movement following the acquittals of police officers in the Rodney King beating case. *Id.* at 1. The Task Force issued its final report in 1997, highlighting several problems with indigent defense in the state of Nevada. Task Force members advocated for the creation of an Implementation Committee, which commissioned the Spangenberg Group to study the provision of indigent defense in the state. *Id.* at 1-3.

⁵⁸ *Id.* at 70.

⁵⁹ *Id.* at 43. The overall trial rate in Clark County was 0.6%, compared to a national average of 4-7% for major urban areas.

⁶⁰ *Id.* at 46. The juvenile trial rate was measured at 4.59% in 1996; 2.87% in 1997; 2.80% in 1998; and 2.33% in 1999. *Id.* Every other category (adult felony, adult gross misdemeanor, and adult misdemeanor) was well below 1%. *Id.*

juvenile cases.⁶¹ In other words, with juvenile court hearing masters routinely eliciting waivers of counsel from children who admitted their charges at their first appearances, the relatively high trial rate of juvenile public defenders could be explained by the fact that only those children with the temerity to contest their charges were getting public defenders in the first place.⁶²

Just about five years ago, representation for children in Clark County Juvenile Court began to change as the result of changes in both the law-governing waiver of counsel and an overhaul of the office itself. In the fall of 2000, the University of Nevada Las Vegas's new law school—the only law school in the state—opened the doors of its Juvenile Justice Clinic.⁶³ While the handful of law students enrolled in the clinic each semester could not make a dent in the actual number of juveniles represented by counsel, the presence of the clinic brought an outsider perspective to the workings of the juvenile court. In laying the groundwork for the clinic in the spring of 2000, Juvenile Justice Clinic Director Mary Berkheiser had noted the same disturbing trend reported in the Spangenberg Report: that the routine waiver of counsel in juvenile cases was rendering the right to counsel a fiction rather than a reality.⁶⁴ Children were routinely admitting to charges in juvenile court without being advised of the possibly serious consequences of juvenile adjudications;⁶⁵ and without the “skilled inquiry into the facts” or assessment of whether the child had a legal defense that *Gault* had envisioned.⁶⁶ Professor Berkheiser's response was to work for what seemed at the time like a small change.⁶⁷ In the 2001 legislative session, she helped advocate for a legislative amendment that formalized the

⁶¹ *Id.* at 73. The Spangenberg Report listed “Juvenile Justice Practices Adds to the Perception of Bias in the System” as a separate finding in its study, based on lack of judicial oversight of decisions to waive juveniles into adult court as well as the widespread waiver of counsel. *Id.* at 72-73.

⁶² In one particularly egregious example in a transcript reviewed by this author, the hearing master repeatedly badgered the client for an answer to the question of whether or not he “did it,” despite the insistence of the minor and his father that what they wanted to do was to plead not guilty and request legal counsel.

⁶³ The William S. Boyd School of Law matriculated its first class in the fall of 1998. Planning for a clinic began at the founding of the law school with the hiring of two faculty members, Professors Annette Appell and Mary Berkheiser. The clinic plan that they developed envisioned a multidisciplinary clinic devoted to the legal issues of children and families. The first two clinics—a Child Welfare Clinic and a Juvenile Justice Clinic—began operation in the fall of 2000.

⁶⁴ Berkheiser's interest in juvenile waiver standards eventually led her to embark on academic study of the issue. See Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577 (2002).

⁶⁵ *Id.* at 648-49 (cataloging some long-term consequences that can result from delinquency adjudications).

⁶⁶ *Id.* at 633-34 (recounting one of the first cases handled by her clinic in which minimal investigation revealed that the charges were unfounded, and that only the client's request for counsel resulted in the juvenile petition being dismissed, in contrast to two accomplices who had made uncounseled admissions and were adjudicated delinquent).

⁶⁷ The waiver procedures enacted by the legislature were not as radical a reform as the automatic and unwaivable right to counsel that Berkheiser advocated in her academic writing. *Id.* at 631-49.

procedure for waiving counsel in juvenile cases, requiring waivers to be made knowingly and voluntarily on the record.⁶⁸

The revised waiver of counsel legislation enacted in June 2001 interjected procedural regularity into a system accustomed to proceeding informally. Instead of routinely eliciting waivers of counsel, the hearing masters began routinely referring cases to the juvenile public defender's office. This procedural change sent a wave of new child clients to an already understaffed office ill-equipped to handle the increased demand. But things were about to change in the Clark County Public Defender Office as well.

In August 2001, longtime Clark County Public Defender Morgan Harris announced his retirement after nearly three decades at his post.⁶⁹ The retirement was greeted with relief on the part of community activists, long frustrated with policies and practices that they perceived as ill-serving the needs of indigent criminal defendants.⁷⁰ When veteran public defender Marcus Cooper took over the top job in October 2001, he promised an "era of accountability" to clients and to the public.⁷¹ He ordered an audit of the office by a team of well-respected outsiders from the National Legal Aid and Defender Association ("NLADA"), and permitted unrestricted access to all aspects of the office,

⁶⁸ 2001 Nevada Assembly Bill No. 308 (approved June 5, 2001). Prior to the legislative change, the applicable statute read: "If a child is alleged to be delinquent or in need of supervision, the child and his parents, guardian or custodian must be advised by the court or its representative that the child is entitled to be represented by an attorney, unless waived." NEV. REV. STAT. § 62.085(1) (2005). The amendment struck the words "unless waived" from the statute, and added a new subsection, which stated in relevant part: "... the child may waive the right to be represented by an attorney if the record of the court shows that the waiver of the right to be represented by an attorney is made knowingly, intelligently, voluntarily and in accordance with any applicable standards established by the court." NEV. REV. STAT. § 62.085(5) (2005).

⁶⁹ Frank Geary, *Veteran Public Defender to Retire after 29 Years*, LAS VEGAS REV. J., Aug. 15, 2001, at 3B.

⁷⁰ Relief is perhaps an understatement of the strength of this feeling. Elgin Simpson, who had served as executive director of the Nevada Supreme Court Task Force for the Study of Racial and Economic Bias in the Justice System, was quoted as saying:

I think it is fantastic because he has done a lousy job as public defender There are a lot of poor people in jail that shouldn't be or that are serving more time than they should because their cases were not properly investigated, they were not properly represented and they (deputy public defenders) laid down for the district attorney.

Id.

⁷¹ Frank Geary, *Public Defender Nominee Promises "Era of Accountability"*, LAS VEGAS REV.-J., Oct. 16, 2001, at B1. Cooper's own appointment was criticized as a choice of "convenience over credentials" in which a twenty-three-year insider in the troubled office was chosen over an external candidate with management, teaching and trial experience opposed by entrenched forces who feared she would "overhaul the office, take more cases to trial, upset the office staff and jack up the county's cost of defending the indigent." *Id.* However, a 2002 NLADA audit of the office noted Cooper's significant efforts toward improvement, assessing him as possessing "the right combination of vision and compassion to rejuvenate" the office; a "genuine understanding of the enormity of the tasks that lie ahead"; and a pragmatic management style "defined by trying to walk the fine line between implementing needed change and having the office fracture beyond repair." National Legal Aid & Defender Association, *Evaluation of the Public Defender Office: Clark County, Nevada* 38 (Mar. 4, 2003) (unpublished report on file with the author) [hereinafter *The NLADA Report*].

encouraging auditors to “shine a light” on any aspect of the organization that impeded the ability to provide quality representation to indigent clients in the community.⁷²

The NLADA audit revealed decades of management decisions and workload pressures that “seriously limited the organization’s current ability to provide effective and cost-efficient representation.”⁷³ Under Harris’s leadership the office had developed an institutional culture of “organizational isolationism,” which limited the accountability of attorneys working in the office, inhibited their interactions with one another, and cut them off from the national indigent defense community.⁷⁴ New lawyers were “‘thrown into practice’ with no training or support” and into an organizational structure that impeded rather than assisted mentoring.⁷⁵ Auditors noted that public defenders had routinely received “glowing reviews (whether warranted or not) and pay raises for over two decades.”⁷⁶ Staff lawyers concerned about the distressingly low quality of client representation they saw around them were “cast as ‘trouble-makers’” or became “‘burned out’ trying to push for change,” fostering “an office atmosphere where bad performance [was] acceptable.”⁷⁷ Even for the best-intentioned public defenders, the ability to provide quality professional representation was overwhelmed by high caseloads,⁷⁸ and frustrated by inadequately trained investigators, and a complete lack of paralegal and social work support.⁷⁹

Nowhere was the situation more troubling than in the juvenile office.⁸⁰ The NLADA site visit, conducted in July 2002,⁸¹ came about one year after the standards for waiver of counsel in juvenile cases had been legislatively amended, deluging the office with clients. As a result, the already high caseloads of the two public defenders assigned to the office had spiked to over 1,400 cases per year—seven times the national standard.⁸² Auditors noted that

⁷² The NLADA Report, *supra* note 71, at 7.

⁷³ *Id.* at 13.

⁷⁴ *Id.*

⁷⁵ *Id.* at 14-15. Though divided into “teams,” the audit found that this “nomenclature simply refers to the district courtroom in which an attorney is assigned.” *Id.* at 10. Offices of team members were not located in physical proximity to one another, and team chiefs were given no caseload reduction to allow for supervision or mentoring. *Id.* Moreover, because the bulk of the misdemeanor representation was handled by private attorneys under contract, there was no system for allowing new attorneys to build their skills on less serious matters before taking on representation in cases with more severe consequences for the clients. *Id.* at 16.

⁷⁶ *Id.* at 38.

⁷⁷ *Id.* at 18.

⁷⁸ *Id.* at 24-37.

⁷⁹ *Id.* at 41-44.

⁸⁰ *Id.* at 33.

⁸¹ *Id.* at i.

⁸² *Id.* at 31. The caseload figures analyzed by the NLADA show total new cases assigned to the juvenile office rising from a little over 2,000 (in the year 2000) to 2,867 (in 2001). The national benchmark for juvenile public defenders was identified as 200 new cases per attorney per year. However, it must be noted that the 2001-caseload figures analyzed by the NLADA included only six months under the new waiver of counsel procedures, which were approved June 5, 2001. The NLADA report noted that Cooper had assigned an additional public defender to the juvenile office in 2002, but that even with this addition, caseloads

charges in juvenile court were “seldom investigated,” motions were “rarely filed or litigated,” and there was “no time to develop professional client relations.”⁸³ By NLADA estimates, the average amount of time that a juvenile public defender working forty hours per week could possibly devote to each case was less than two hours.⁸⁴

Though the lawyers and other staff persons in the juvenile office were praised for their dedication and desire to provide competent and professional representation,⁸⁵ the audit concluded that given the crush of cases and the minimal amount of time devoted to each child client, representation in the juvenile public defender office “is not about representing children; it is about processing cases.”⁸⁶ The higher ideals of ambitious juvenile public defender offices—promoting placement of children in appropriate community-based programs and collaborating with others in the system to support them—were far beyond the Clark County office’s reach.⁸⁷ Suffering from inadequate equipment as well as staff, the office was hard-pressed to handle even the most basic functions of modern law practice.⁸⁸ “Incredibly,” the auditors noted, “at the time of the site visit, the unit had no photocopier,” requiring office staff to either use the copy function on the fax machine, or “travel some distance to the District Attorney’s office to request permission to use their machine—a request that is, reportedly, denied with increasing frequency.”⁸⁹

Perhaps unsurprisingly, one of the main findings of the NLADA audit was that the representation of juveniles in Clark County was “beyond the crisis point and require[d] immediate attention to avert constitutional challenges.”⁹⁰ To its credit, the Clark County Public Defender’s Office has responded to the crisis in juvenile representation by pouring resources into the office. The NLADA report recommended that to meet national standards, the juvenile office would require fourteen public defenders, five investigators, and five social workers.⁹¹ In the space of just three years, the county has provided nearly all of those resources,⁹² along with increased office space to accommodate them and the technological equipment to support them. Top management

were still at 950 per attorney per year. *Id.* at 32. In reality, because the 2001 figures only partially captured the changes wrought by the new waiver of counsel procedures, the caseloads—even with the third attorney—were higher.

⁸³ *Id.* at 34.

⁸⁴ *Id.* at 32.

⁸⁵ *Id.* at 35.

⁸⁶ *Id.* at 33.

⁸⁷ *Id.* The report noted that “neither increased social work staff nor attorney time spent on locating appropriate services nor developing disposition alternatives accompanies” the juvenile court’s emphasis of dispositions, in contrast to other juvenile public defender offices where “there is generally a corresponding emphasis on constructive alternative dispositions, through rehabilitation, social work staff and educational and social services.” *Id.* at 34.

⁸⁸ Instead of computerized case tracking systems, for example, the office relied on “inefficient, outdated manual procedures” like filling out forms by hand or with a typewriter. *Id.* at 34.

⁸⁹ *Id.*

⁹⁰ *Id.* at ii, 25.

⁹¹ *Id.* at 40-44.

⁹² The office currently has thirteen public defenders, five social workers, and two investigators.

changed again in March 2004 when Marcus Cooper was replaced by a new public defender, Phil Kohn.⁹³ Kohn has recruited new attorneys into the juvenile office with the stated objective of filling the posts with persons committed to an ethic of zealous representation,⁹⁴ and has deployed experienced trial attorneys to the juvenile office to mentor them.⁹⁵

The challenges now facing the juvenile public defenders in Clark County raise concerns not about resources, but about vision. Defining a vision of representation that can overcome expectations lowered by decades of case-processing and plea-dealing is not an easy task. There is no question that the Clark County Public Defender's office is imbued with a spirit of dedication to changing the practices of the past.⁹⁶ But being able to see what practices actually need changing and picturing what those changes would look like requires more than dedication. For example, in their site visit, the NLADA auditors observed a "troubling lack of pretrial motion practice" throughout the public defender's office.⁹⁷ Yet many of the public defenders they surveyed either found the motion practice adequate or lacked a sense of concern about the problem.⁹⁸ Likewise, the auditors found it troubling to observe repeated instances in which clients were seen advocating in court on their own behalf for time served or for release on bail, while their public defenders sat silently by.⁹⁹ When auditors raised this phenomenon as an issue of concern with individual public defenders, the auditors were told simply, "that that is the way the system works in Clark County."¹⁰⁰

With an influx of training, resources and changed institutional structures, the public defender's office is working to overcome the "that is just the way the system works" mentality. The juvenile office has reached outside of Clark County to find visions of practice that stretch its staff lawyers' imaginations. Its first annual training, held in conjunction with the law school in February 2004, invited in some of the leading experts in the field of child representation, including Simmie Baer, the founder of the innovative TeamChild program in Seattle;¹⁰¹ and Marty Beyer, the architect and prime mover of the Alabama

⁹³ Adrienne Packer, *New Public Defender Announced*, LAS VEGAS REV.-J., Mar. 17, 2004, at B1.

⁹⁴ The author knows this from her own conversations with Mr. Kohn in providing job references to her former students.

⁹⁵ One of the current juvenile public defenders is Ralph Baker, a highly respected and experienced trial attorney whose appointment as First Assistant Public Defender under Kohn's predecessor, Marcus Cooper, was lauded by the NLADA site team as sending "a strong message to the office and the community that the quality of representation under his leadership was going to be different." The NLADA Report, *supra* note 71, at 38.

⁹⁶ Glenn Puit, *Public Defender Intends to Instill New Work Ethic*, LAS VEGAS REV.-J., May 10, 2004, at B1 (quoting Phil Kohn as saying he has "many, many bright, aggressive people who want to be exactly what I want them to be" and stating that he has been "pleasantly surprised by the work ethic he has witnessed" among public defender attorneys "hungry to dispel the past perceptions.").

⁹⁷ The NLADA Report, *supra* note 71, at 14.

⁹⁸ *Id.* at 14-15.

⁹⁹ *Id.* at 21.

¹⁰⁰ *Id.*

¹⁰¹ TeamChild was founded as a legal advocacy clearinghouse to supplement public defender services by addressing related legal issues in a child's life, such as educational, housing, and health care, which are often at the root of the child's problems and, if

child welfare reform's collaborative strengths-needs based approach to permanency planning.¹⁰² Opportunities to hear from innovators like these, who have put their visions into practice, expose the limits of business as usual to the light of cutting-edge multidisciplinary, problem-solving and community-responsive defense representation toward which the national indigent defense community strives.¹⁰³

However, to the extent that the Clark County juvenile public defender's office is successful in forging into the new territory of expanded horizons, it encounters the further challenge of resistance by other system participants. Teaching in a high-resource low-volume multidisciplinary clinic representing children in Clark County juvenile delinquency cases provides me with ready examples of this kind of challenge.¹⁰⁴ The ridiculous luxury of our clinic time and resources permits extensive investigation, legal research, disposition planning, and client relationship-building in each case we take. Despite the fits and starts caused by constant turnover of student novices in every discipline, we think of ourselves as striving to practice law and represent children the way it should be done. But transplanting representation as we think it should be done into a system that only three years ago was in the business of "processing cases not representing children" can be jarring to business as usual. In the space of one discouraging week this semester a probation officer hung up on a student who called to discuss the disposition recommendation that the agent was planning to present to the court the following week, and an assistant district attorney sent an exasperated email message chastising another student (and our program as a whole) for what she perceived as the unreasonable practice of filing motions and then attempting to negotiate our cases. But not all days are as bad as these; and the commitment of leaders in the Clark County Juvenile Court to wider-ranging reform promises better days ahead.¹⁰⁵

addressed, can divert the child from the delinquency system. For more information about TeamChild, visit <http://teamchild.org/> (last visited May 18, 2006).

¹⁰² *Making Child Welfare Work*, *supra* note 32, at iii.

¹⁰³ See The NLADA Report, *supra* note 71, at 21-23 (discussing the national trends of problem-solving and community-responsive representation in public defender services from which the Clark County Public Defender, due to its decades of operation in isolation, has been cut off).

¹⁰⁴ The Juvenile Justice Clinic enrolls six law students each semester, who team with three social work students, a psychology doctoral candidate, and an educational psychology student, each getting credit in his or her respective department. For a description of this clinic and some of my reflections after my first semester of teaching in it, see Katherine R. Kruse, *Lawyers Should Be Lawyers, But What Does That Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U. J. OF L. & POL'Y 49, 90-98 (2004).

¹⁰⁵ The Clark County Juvenile Court and related juvenile justice services are undergoing many concurrent reforms, which promise much hope for continued change in the future. The most ambitious effort is a grant from the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative ("JDAI"), under which Clark County is receiving technical assistance to examine and reform its juvenile detention policies. The Juvenile Detention Alternatives Initiative helps participating sites gather and evaluate information about their detention policies and practices and provides technical assistance in devising alternatives to detention in consultation with other jurisdictions that have successfully reduced their juvenile detention populations. See generally Rochelle Stanfield, *Overview: The JDAI Story: Building a Better Juvenile Detention System* (1999), <http://aecf.org/initiatives/jdai/pdf/overview.pdf>.

Like the strange landing of a multidisciplinary law school clinic in the middle of Clark County, Nevada, the idealized vision and recommendations for representing children in families that this volume publishes may seem exotic or extravagant when juxtaposed with the realities of practice in most juvenile and child welfare systems. Like the extravagance of clinical law practice, the formulation of these idealized recommendations is an endeavor based in both faith and hope. As a clinical professor, my faith is that the idealized practice in rarefied conditions into which we temporarily invite law students can ultimately be of practical benefit. My hope is that our students will build on their clinic experiences to develop visions of practice toward which to strive and against which to measure the world in the myriad choices and professional judgments they will make as lawyers. As an academic, my faith is that theory can inform practice; and my hope is that the visions of justice that we promulgate in the academy can—and sometimes in some spaces will—take root and grow. And as a lawyer, my hope is that the innovative practices that ambitious advocates for children develop in the small spaces around them will bear seed and spread. Faith and hope are uncertain and ephemeral; they may give only weak support to the efforts of visionaries. But one thing I know with certainty is that without a vision of how legal systems ought ideally to operate, none of the reforms we hope to see in the imperfect systems around us has even a remote chance of succeeding.