

AALS SECTION ON CHILDREN AND THE LAW

JANUARY 4, 2011

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WHICH DO NOT
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REPRESENT THE
POSITION OF
THE ASSOCIA-
TION OF AMERI-
CAN LAW
SCHOOLS.**

TRIBUTE TO A CHILDREN'S LAW EXPERT & ADVOCATE – IRENE MERKER ROSENBERG BY ELLEN MARRUS

Irene Merker Rosenberg, Royce R. Till Professor Emerita of Law at the University of Houston Law Center, died on November 17, 2010 after a long battle with cancer. She was born in the Bronx, New York and was educated at The City College of New York, where she earned a B.A. in 1961. She also earned a LL.B., from New York University School of Law in 1964. At NYU she was a Florence Allen Scholar and an editor of Law Review. There she met Yale L. Rosenberg her colleague, collaborator, and first husband to whom she was happily married for 38 years until his death in 2002. Irene Merker Rosenberg was a compassionate, courageous, and accomplished woman, who contributed much to her community, to the world of scholarship, to the students she taught, and to the Law Center she graced.

Upon attaining her law degree, Professor Rosenberg spent two years with the Department of Health, Education & Welfare, Office of the General Counsel, Washington D.C. as a staff attorney. In 1967 she joined the Juvenile Rights Division of the Legal Aid Society of New York. As with most things that she did, Professor Rosenberg did not take an easy route. Rather, she worked in one of the toughest boroughs – the Bronx – and represented children charged with criminal acts. For many of the children Professor Rosenberg was the only adult person who was on their side, who showed some faith in them. Society, the courts, and oftentimes their families, had given up on them. She believed that the legal system and good lawyers working diligently on behalf of their young clients could provide a means for the youth to have a stake in the system, giving them another chance. We shared many stories of clients that we represented, including cases where our representation was difficult. There was one instance where she represented a youth that had painted a swastika on a community synagogue. When her colleagues asked how she could represent him, being a practicing Jew, she did not hesitate in her belief that this young man was also entitled to representation, the best that she could give. She held true to the Jewish tenet “Justice, justice, you shall pursue” and ensured that her clients did receive not just adequate representation, but the best that she could offer. She also recognized that for many of these children, their behavior was not the true crime, but rather how the children had been treated by their parents and other adults.



(continued on page 3)

OUR CHILDREN, THE WORLD'S CHILDREN – THE EFFECT OF GLOBALIZATION ON CHILDREN



The annual meeting program for our section will be held on Friday, January 7, 2011 from 4:00–5:45 pm in the Parc 55 Wyndham San Francisco Union Square Hotel. It will be held in the Sutro Room on the second floor level. Four presenters were chosen from a call for papers. They are Ann Laquer Estin, David J. Gartner, Shani King and Marcia A. Zug. The moderator will be our incoming section chair, William W. Patton. We look forward to seeing many of you in San Francisco.

LETTER FROM THE CHAIR

The legal system touches on children’s lives in a myriad of ways. We have tried to plan our programs to reflect our section’s broad coverage. This year’s program is an example. Co-sponsored with the Sections on Family and Juvenile Law, Immigration Law, International Law and International Human Rights Law, it is entitled “Our Children – The World’s Children: The Effect of Globalization on Children.” Our call for papers resulted in a large number of very interesting proposals on a wide range of topics. The chosen papers, some by established scholars, others by rising stars, should make for a fascinating program.

The chosen papers are Global Childhood: *The Work of Family Law* by Ann Laquer Estin of the University of Iowa College of Law, *The Right to Education and the Transformation of the Education for All – Fast Track Initiative* by David J. Gartner of the Arizona State University Sandra Day O’Conner College of Law, *Haiti in the Aftermath of the 2010 Earthquake: A Case Study of Inter-country Adoption Practices* by Shani King of the University of Florida Frederic G. Levin College of Law, and *Separation, Deportation, Termination* by Marcia A. Yablon-Zug of the University of South Carolina School of Law. Our incoming Section Chair, William W. Patton of Whittier Law School can be counted on to be an informed moderator.

The program will be held in the Sutro Room on the second floor level of the Parc 55 Wyndham San Francisco Union Square Hotel from 4:00 to 5:45 on Friday, January 7th. Please come to hear and participate in the program and in the business meeting which will follow.

At the business meeting, we will select officers and executive committee members for next year. Please let me know if you are interested in a leadership position in our section.

I have enjoyed serving as our Section’s chair this year, and I know that the section will thrive under Bill Patton’s leadership. We accomplished a great deal this year. Most notably, we were granted permanent status. We also continued to build relationships with other sections. But there is much more that we would like to do in the future. In particular, an active mentoring program and an on-line presence are goals we hope to pursue.

Happy New Year to everyone and I hope to see you all in San Francisco.

Shaun Shaughnessy



**CHAIR SHAUN
SHAUGHNESSY,
WASHINGTON AND
LEE UNIVERSITY
SCHOOL OF LAW**

**A CHILD
IS THE
ROOT OF
THE
HEART.**

**CAROLINA
MARIA DE
JESUS**

AAALS SECTION ON CHILDREN AND THE LAW— EXECUTIVE COMMITTEE

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Elizabeth S. Scott, Columbia University

Chair-Elect: William W. Patton, Whittier Law School

Secretary/Treasurer: Jessica Dixon Weaver, SMU Dedman School of Law



San Francisco Bridge

UPCOMING CONFERENCES

- ◆ The Harvard Law School Child Advocacy Program is sponsoring a conference at Harvard Law School on January 29-29, 2011 entitled: "Race & Child Welfare: Disproportionality, Disparity, Discrimination: Re-Assessing the Facts, Re-Thinking the Policy Options." The Chapin Hall Center for Children is Affiliate Sponsor.
- ◆ The American University Journal of Gender, Social Policy & the Law and the Washington College of Law Disability Rights Law Clinic are hosting a symposium entitled, "Keeping the Needs of Students with Disabilities on the Agenda: Current Issues in Special Education Advocacy" on Friday, February 25, 2011 at the Washington College of Law at American University in Washington, D.C.

TRIBUTE—IRENE MERKER ROSENBERG (CONTINUED)

She was also the trial lawyer in *In re Winship*, 397 U.S. 358 (1970), setting the standard of proof for delinquency cases at beyond a reasonable doubt, the same standard applied to adult criminal cases. It was her skill as a trial lawyer that ensured the transcript held the necessary language for the appeal, and it was her dedication and perseverance that convinced the legal aid office to file the appeal. I teach *Winship* in my juvenile law course not only to look at equivalence for juveniles, but also to demonstrate how important it is for a trial attorney to see the whole picture and how a good trial transcript makes for a good appeal, and the far reaching effects it can have. Teaching *Winship* will never be quite the same as I will not be able to have Irene talk to my students about the case.

Irene Rosenberg, however, was not just a trial attorney, she was the attorney in charge of the Bronx office and responsible for the training and supervision of 60 attorneys. In this capacity she developed the first training manual for juvenile attorneys, which with very few modifications is still being used today. In this role she was also a mentor and an inspiration to many young attorneys, insuring that the children that appeared in court in the Bronx had excellent representation, as she would expect nothing less from the attorneys who worked with her.

She joined the University of Houston Law Center faculty in 1974, teaching generations of students Constitutional Law, Criminal Procedure, Criminal Law, Juvenile Law, Legal Analysis, and a Juvenile Justice Clinic. Her first "class" at UHLC was a juvenile justice clinic. She taught those students to represent the youth appearing in the Harris County juvenile courts with the same vigor and determination that she expected from attorneys in the Bronx. Irene and the students fought so hard for their clients that the judges called the Dean of the law school and asked him to fire her. He would not do that, but the clinic did disappear for awhile. Through the clinic and her juvenile law course, she encouraged many young lawyers to go into this area of practice and to always remember to represent the children to the best of their ability. In all her classes, students talked about her compassion for the law and people, and how "she always made you think more than in any other class." Another student commented, "Irene was not just my favorite professor during law school, she was also a warm and kind friend who made me feel smarter than I actually was, and better than I could ever be."

A distinguished scholar, Irene Rosenberg was an expert in juvenile justice, children's law, criminal law, and constitutional law. She wrote many important juvenile law articles, articles that considered the importance for children to receive at least the same rights as adults, if not more constitutional protections. In addition, with Yale as a co-author, she also composed many pieces on criminal law, Jewish law and the comparison of the secular and religious approaches.

For most of the time that Professor Rosenberg taught juvenile law there was no casebook that looked primarily at delinquency and status offenders (the two areas Professor Rosenberg covered in the course). Professor Rosenberg developed her own materials for the course, putting together a four volume set of cases, law review articles, and newspaper articles. She would update the materials on a yearly basis, providing students with important cases and materials in the subject area. In addition, her scholarship in this area provided students, practitioners, and legal academics with well written, analytical, and thought provoking pieces. Her scholarship continues to promote the work of others in this field.

Given Professor Rosenberg's record of practice, teaching, and scholarship, it should be no surprise that I might have been a little intimidated by her when we first met. My talk to the



San Francisco, California

**If we are to teach
real peace in this
world, and if we
are to carry on a
real war against
war, we shall
have to begin
with the children.**

**Mohandas
Gandhi**



Chair-elect, William W. Patton,
Whittier Law School
bpattton@law.whittier.edu

NEW PUBLICATIONS

- ◆ Elizabeth Bartholet, *The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions*, 51 *Arizona Law Review* 871 (2009).
- ◆ Melissa Berger, *Making Waves of Keeping the Calm?: Analyzing the Institutional Culture of Family Courts Through the Lens of Social Psychology of Groupthink Theory*, 20 *Law & Psychology Review* 55 (2010).
- ◆ Melissa Berger, *Against the Dilution of the Child's Voice in Court*, 20 *Indiana International & Comparative Law Review* 1 (2010) (lead article).
- ◆ Leslie Harris, *Failure to Protect from Exposure to Domestic Violence in Private Custody Contests*, 44 *Family Law Quarterly* 169 (2010).
- ◆ Randi Mandelbaum, *Delicate Balances: Assessing the Needs and Rights of Siblings in Foster Care to Maintain Their Relationships Post-Adoption*, 41 *New Mexico Law Review* 1 (forthcoming Winter 2001).
- ◆ Elizabeth Scott & Laurence Steinberg, *Social Welfare and Fairness in Juvenile Crime Regulation* 71 *LSU Law Review* 35 (2010).
- ◆ Victor Streib, *Intentional Wrongful Conviction of Children*, 85 *Chicago-Kent Law Review* 163 (2010).
- ◆ Victor Streib, *Protecting Preteens: A Child's Portion of the Fourth Amendment*, __ *Mississippi Law Journal* __ (forthcoming 2011).
- ◆ Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 *North Carolina Law Review* __ (forthcoming 2011).
- ◆ Jonathan Todres, *Children's Health in the United States: Assessing the Potential Impact of the Convention on the Rights of the Child*, 89 No. 5 *CHILD WELFARE* 37 (2010).
- ◆ Jonathan Todres, "A Human Rights Approach to Preventing Sex Trafficking of Children" in *CHILD SLAVERY NOW: A CONTEMPORARY READER* (Gary Craig ed., Policy Press 2010).
- ◆ Jessica Dixon Weaver, *The Principle of Subsidiarity Applied: Reforming the Legal Framework to Capture the Psychological Abuse of Children*, 18 *Virginia Journal of Social Policy and the Law*, __ (forthcoming 2011).

PRESENTATIONS

- ◆ Erik S. Pitchal, "Representing Children in Abuse and Neglect Proceedings: Holding Attorneys Accountable," Harvard Law School, Sept. 16, 2010.
- ◆ Erik S. Pitchal, "How New Legislation in Massachusetts Will Help Our Youth," Massachusetts Bar Association, Dec. 8, 2010.
- ◆ Jonathan Todres, Maturity as a Legal and Cultural Concept, William & Mary School of Law, July 2010; International Society of Family Law's North American Conference, June 2010; Emerging Family Law Scholars conference, June 2010.
- ◆ Jonathan Todres, Child Trafficking and Children's Rights Issues, Loyola University Chicago School of Law, Sept. 2010; Northeastern University School of Law, Oct. 2010.
- ◆ Jessica Dixon Weaver, *The Principle of Subsidiarity Applied: Reforming the Legal Framework to Capture the Psychological Abuse of Children*, Poster presentation, AALS Annual Meeting, January 7, 2011.



A person's a
person, no
matter how
small.

Dr. Seuss

CALL FOR PAPERS & PRESENTATIONS

Keeping the Needs of Students with Disabilities on the Agenda: Current Issues in Special Education Advocacy – This symposium conference at Washington College of Law (WCL) at American University on Friday, February 25, 2011, will focus on current issues in special education advocacy.

While the school house doors have technically been opened to students with disabilities, children, parents, advocates, teachers, and education officials face new challenges in this era of school reform and of difficult financial constraints that states and local school districts are experiencing. As schools and the systems that govern them, in the wake of a financial crisis and in an era of school reform, aim to improve the quality of public education in school districts across the nation, it is more important than ever that the needs of special education students remain on the agenda. Individual advocacy strategies and systemic reform efforts are adapting to take on these new challenges. This symposium provides a forum for academics and practitioners to discuss these and other issues related to special education advocacy in today's times.

The American University Journal of Gender, Social Policy & the Law will publish articles presented or related to this symposium, with preference given to those who both submit papers and attend the conference. Articles may address one of the topics noted above or another topic related to a current issue in special education advocacy. The Journal will consider traditional law review-style articles, as well as recent development pieces and shorter essays. The ideal length for submissions is 25 pages (double-spaced, including footnotes), although both shorter and longer submissions are welcome. Footnotes should be formatted according to the latest edition of The Bluebook. Accepted articles will appear in Volume 19, Issue 3, with expected publication shortly after the symposium takes place. Submissions will be accepted for publication based on both the quality of the article and the Journal's publication restraints. The Journal ultimately reserves the right to make offers of publication to papers submitted. **Please note that in order to meet publication deadlines, no articles submitted after January 17, 2011, will be considered for publication.** All essays, articles, and questions regarding publication can be emailed to SpecialEdAd@gmail.com.

For more information on the symposium and call for papers, and to register for this free conference, please visit <http://www.wcl.american.edu/secl/founders/2011/20110225.cfm>.

RECENT EVENTS & ANNOUNCEMENTS

- RETHINKING JUVENILE JUSTICE, a book on juvenile justice written by Elizabeth Scott and Laurence Steinberg, received the 2010 Social Policy Best Authored Book Award from the Society for Research on Adolescence. The book, first published in 2008, outlines a new developmental model of juvenile justice that recognizes adolescents' immaturity but also holds them accountable. Scott and Steinberg argue that juvenile justice should be grounded in the best available psychological science, which shows that adolescence is a distinctive state of cognitive and emotional development between childhood and adulthood.
- Victor Streib is currently working on a book project, LITTLE KIDS WHO KILL: HOMICIDAL PRETEEN IN THE JUSTICE SYSTEM, and would love to hear from other scholars working on this topic. He hopes to finish the book in 2011.
- Victor Streib officially retired from Ohio Northern in December 2010, but will continue to write and teach part-time at other schools in North Carolina. His contact information is 1721 Hobbs Road, Greensboro, NC 27140, (336) 617-5946, victor.streib@gmail.com.
- The Oregon Child Advocacy Project, directed by Leslie Harris, Dorothy Kliks Fones Professor at University of Oregon, presented two programs for law students and attorneys during the fall 2010 semester. Each program was attended by more than 80 people. "Kids in the Crossfire of Immigration Reform" explored the impact of immigration laws and enforcement practices on children. The second program, "Banning Grand Theft Auto: Child Protection v. Free Speech," examined the issues raised by Schwarzenegger v. Entertainment Merchants' Assn., which was argued in the Supreme Court in early November 2010.



We have a powerful potential in our youth, and we must have the courage to change old ideas and practices so that we may direct their power towards good ends.

Mary McLeod
Bethune

AALS Section on Children and the Law

DISCUSSION LISTSERVE

Our discussion list serve, launched by Professor Odeana Neal, is another service to our members. If you haven't yet joined, please complete the subscription form at

<http://lists.ubalt.edu/mailman/listinfo/aalschildlaw>.



**ODEANA NEAL,
UNIVERSITY OF
BALTIMORE SCHOOL
OF LAW**

TRIBUTE—IRENE MERKER ROSENBERG (CONTINUED FROM PAGE 3)

faculty during my hiring process was about my view of clinical education as I was being considered for the director position of our clinical programs. I talked about the hands on experiences that clinical education allows for law students, handling cases from beginning to end under the supervision of a clinical professor. I also discussed what involvement 1Ls could have in this process – doing intake interviews, serving subpoenas, and filing papers at the court house (a process that many new attorneys do not know how to do). Professor Rosenberg was clear that in her opinion 1Ls should only be concentrating on the fundamental law school courses—learning the law and legal analysis, not practice. In spite of the fact that we disagreed about this, she has always been supportive of my efforts and provided excellent mentorship over the years. She helped me select topics to write on, ones that I knew about and were interested in, and warned me away from areas that my own personal experiences might color my judgment. She has pushed me to make my scholarship more rigorous and meaningful. Early in my career I was asked to present a paper on representing juveniles and what I came to coin as “holistic lawyering.” When I discussed with several people working this presentation into an article, it was only Irene who helped me see how to do it in such a way that it has become an article that has been used by practitioners and scholars alike, and has influenced the practice of juvenile defense attorneys.

I have had the privilege of writing articles with Professor Rosenberg. This has been a pleasure, not because we always agree (in fact we have argued over several major points), but because I always learn from her and am able to see things from other angles and perspectives. I get great satisfaction, however, when I win a point in our “discussions,” and can make Professor Rosenberg see something from my point of view, but I also enjoy listening to her position and being swayed to her side. It is the give and take that has always been the most stimulating.

Even while she was ill Irene continued to be a mentor to individuals in the legal academy. About a year and a half ago I had the opportunity to attend a workshop for junior scholars in the area of children and the law. I was invited to comment on their work as a “senior” scholar. One of the participants discussed some of Professor Rosenberg’s scholarship and I offered to show her work to Professor Rosenberg. She was so pleased, particularly after Professor Rosenberg took the time to read it and contact her with her comments.

Irene’s passing leaves a gap that will not be easily filled in the legal community, with advocates for children, with junior faculty, for law students, and anyone else who had the good fortune to know her or might have become one of the many people that she always helped in so many ways.



If you have an event, publication, presentation, or other ideas that you would like included in the next newsletter distributed by our Section, please contact me at jdweaver@smu.edu. I would be happy to hear any ideas that you have about how to make our newsletter more informative and interesting.

Secretary/Treasurer — Jessica Dixon Weaver, SMU Dedman School of Law