Law, Psychology, and Children

Overarching Issues*

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Society's treatment of children and families is guided by the premises that children lack the ability and/or the capacity to be autonomous directors of their own lives and that the private autonomous family is best suited to provide for the best interests of children. These premises are based on two assumptions: (a) that parents will act in their children's best interests, and (b) that parents possess the maturity, experience, and judgment required to make life's difficult decisions, which children lack. We explore these premises and assumptions along with the concept of the best interests of children and the relationship between children's capacities and children's rights. We conclude that collaboration between legal scholars and social scientists will enhance the likelihood of more informed decision making about these issues.

Almost a decade ago, the first author and his colleagues (Reppucci, Weithorn, Mulvey, & Monahan, 1984) edited a book on children, mental health, and the law as a modest first step in providing an integrated compendium of the state of psychological knowledge in this field. At the time, although two legal casebooks (Mnookin, 1979; Wadlington, Whitebread, & Davis, 1983) and the enormously influential volumes by Goldstein, Freud, and Solnit (1973, 1979) were available, no texts existed to teach psychology students about these issues. A few groundbreaking empirical investigations (Grisso, 1981; Weithorn & Campbell, 1982) and a conference on children's competence to consent (Melton, Koocher, & Saks, 1983) had recently provided exciting demonstrations of the potential of psychological research to contribute to the legal arena regarding children. Moreover, in

* Appreciation is expressed to Sarah L. Cook, without whose assistance this special issue would never have been completed. Requests for reprints should be sent to N. Dickon Reppucci, Department of Psychology, Gilmer Hall, University of Virginia, Charlottesville, VA 22903.
the same year that our book was published, Melton (1984) issued a provocative call for developmental research on legally relevant topics, and in the world at large the explosive McMartin Day Care child sexual abuse scandal made headlines nationwide.

The McMartin trial, which lasted for more than 5 years and eventually proved to be the most expensive civil proceeding in American history, cast a negative light on mental health professionals' understanding of legal contexts. The salience of the child sexual abuse situation in this country has been a stimulus to many cognitive and developmental researchers to pursue investigations of children's suggestibility, memory, eye witness testimony, lying, and other topics (e.g., Doris, 1991; Ceci, DeSimone, & Pednick, 1992). In addition, the increasing crime statistics for juveniles (Mulvey, Arthur, & Reppucci, in press), the increased number of divorces with the concomitant child custody battles (Weithorn, 1987), and the overwhelming statistics regarding child abuse and neglect in general (Cicchetti & Carlson, 1989) have increased the involvement of both researchers and clinicians in these areas. Entities such as the Consortium on Children, Families and the Law, under the leadership of Gary Melton at the University of Nebraska–Lincoln and composed of research groups at the Universities of Buffalo, Hawaii, Iowa, Michigan, Pittsburgh, and Virginia, have become active forces in stimulating research and policy projects since the mid-1980s. Thus the time seemed ripe to develop a special issue on law and children for *Law and Human Behavior*.

Rather than focus a special issue on a specific topic regarding law and children (although we hope future special issues will do this), we decided to cast a general net for papers in order to encourage submissions of uniqueness and relevance. Whereas special issues usually elicit about 10 to 15 manuscripts, we received 39 completed manuscripts and numerous other inquiries. As readers may judge for themselves, we believe the nine papers that survived the rigorous review process justify this approach. Some represent recent work in fields that have attracted a fair amount of research, whereas others are unique in their subject matter. In all cases, they represent exciting research directions that have the potential to stimulate more researchers to become involved in this arena.

Before presenting these papers, however, we provide a brief overview of the domain of children, psychology, and the law as a framework for interpreting and integrating the studies that follow as well as a context for the field.

**Basic Premises**

The functioning of institutions within a society reflects basic propositions about that society's beliefs. In our society, the family may be the most critical institution. Our treatment of the family appears to be guided by two related premises: (1) children, by virtue of their age and experience, lack the ability and/or the capacity to be completely autonomous directors of their own lives; and (2) the private and autonomous family is the institution most suited to provide for the best interests of society's children. This second premise provides the rationale for society's protection of familial sanctity and assumes that, in general, state intervention into families is a negative occurrence.