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Book Review

David B. McClure

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apprise themselves of the contents, if not specifically then in essence. As the attorney expects his physician to be learned above the level of rudimentary hygiene, so also does the physician rely on the attorney's expert knowledge. Having read a short paragraph in a medical magazine about the "Darling" case,¹ I would expect my attorney to be fully aware of the case, since the decision affecting medical practice has implications beyond and above the level and range of my knowledge.

The medical student, at the third or fourth year level, should be indoctrinated as to both the ethics of his profession and those legal matters which directly affect his practice. *Law and the Physician* would prove an excellent text since it includes subjects ably covered in a number of the chapters devoted to physician/patient relationship, malpractice, medical expert witness, and the like. Those chapters on hospital liability, business organization, tax accounting and fiscal management could be reserved for more sophisticated personnel.

To this reviewer, whose superficial interest in medico-legal subjects is greater than might generally be expected of physicians, the book was most interesting, informative, and is well-recommended.

¹ *Darling v. Charleston Community Memorial Hospital*, 33 Ill. 2d 326, 211 N. E. 2d 253 (1965), cert. den. 383 U. S. 946 (1965).

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*Reviewed by David B. McClure**

CHILDREN IN THE COURTS—THE QUESTION OF REPRESENTATION, George G. Newman, Ed. Institute of Continuing Legal Education, University of Michigan, Ann Arbor, Michigan, 1967, 560 pp. \$15.00.

Children in the Courts is a timely compilation of current legal thought on the important issue of legal representation for the child in divorce, custody, neglect, and delinquency proceedings. The fourteen chapters of this work cover a broad spectrum of issues from the need for separate counsel for the child as a "disadvantaged party" in divorce actions to the need for advocates skilled in law and behavioral science to serve as effective counsel for all children in conflict with the law.

Children in court have long been neglected by the legal advocate and left to the often inadequate measures available to our nation's juvenile and domestic relations tribunals. Immediate action by the legal profession is needed to provide effective representation of the child's interests. The steadily-increasing rate of family-based court actions and

* B.S.S.S., John Carroll University; Fourth-year student, Cleveland-Marshall Law School of Baldwin-Wallace College; Director, Erie County Juvenile Court, Sandusky, Ohio.

delinquency cases is compelling reason for reflection and action by all lawyers and law students.

Divorces now average over 400,000 a year and another 100,000 homes are broken by separation without divorce. From 10 to 12 million children are currently classed as "half-orphans"—the disadvantaged parties of divorce and family breakdown. Juvenile court delinquency cases are approaching one million a year and the total volume of family-law problems is estimated at over 50% of all civil litigation. The rate is even higher if family-based criminal actions are included with the civil actions.¹

Children in the Courts examines the many faceted issues for the lawyer in representing children. The traditional *parens patriae* philosophy that the state acts as the ultimate parent for the best interest of the child is examined in relation to each kind of proceeding—divorce, neglect and delinquency—in which the child is involved. The role and function of legal counsel in divorce custody and neglect proceedings is examined from numerous positions. The use of "law guardians" in divorce and custody proceedings is discussed and a proposal for mediation and arbitration procedures is presented with critical comment. Although the articles on neglect proceedings are rather limited in treatment, the material presented does provide source material and the basis for further research.

The major thrust is directed at the controversy regarding the traditional *parens patriae* concept as applied to Juvenile Court delinquency proceedings. The delinquent child has been consistently denied basic constitutional rights now afforded adults charged with crime. The child is denied these rights—the key one being the right to counsel—on the grounds that a delinquency proceeding is not criminal in nature and that the court will act in the child's best interest. A delinquent child accused of criminal activity may even find himself committed to an adult reformatory on the ground that it is in his best interest. This procedure is not uncommon, and Juvenile Court judges may take such action without hearing a single voice raised on behalf of the child.²

Delinquency proceedings are examined and analyzed with great care, from both the traditional and revisionist positions. Six chapters with numerous articles, cases, notes and reference material combine to provide a thorough study of the subject. The extent of attorney representation in delinquency proceedings is surveyed with critical comment, and proposals are given for improving procedures from both law and social-work viewpoints. The recent California and New York statutory

¹ *Children in the Courts*, p. 58 n. 6, comment by Professor Foster; *The Challenge of Crime in a Free Society*, a report by the President's Commission on Law Enforcement and Administration of Justice, U. S. Government Printing Office, February, 1967, p. 5 and p. 63.

² *Cope v. Campbell*, 175 Ohio St. 475, 196 N. E. 2d 457 (1964).

revisions which now provide right to counsel are carefully analyzed, as are standard procedures in juvenile court proceedings.

The function and role of counsel in delinquency proceedings is discussed in a lengthy article. The right to counsel for adults accused of crime as established in *Miranda v. Arizona*³ is related to the procedure now applicable to delinquency cases. The entire juvenile process—arrest, intake and detention, adjudication hearing, disposition hearing—is treated, and legal counsel's role is thoroughly reviewed. *Miranda* is felt to apply with full effect to arrest of children charged with felonies. However, when counsel is in the disposition hearing he is both lawyer and social worker.

The book is timely, with its inclusion of the full briefs of counsel and the pending Supreme Court appeal of *In Re Gault*.⁴ This appeal comes from the Arizona Supreme Court affirmance of a juvenile court commitment of 16-year-old Gerald Francis Gault to the Arizona State Training School.⁵ The boy was found delinquent for making an obscene phone call and was committed without benefit of counsel. This appeal deals with the entire range of juvenile court procedures, and the forthcoming decision will have an extensive effect on all juvenile courts in the nation. The entire opinion of *Kent v. United States*⁶ is also included. In *Kent*, the Supreme Court reversed a District of Columbia Juvenile Court waiver decision which had allowed 16-year-old Kent to be tried as an adult. The Supreme Court held that failure to grant counsel an opportunity to be heard on the issue of waiver was an effective denial of right to counsel. The *Kent* decision and pending *Gault* appeal are essential reading for all persons concerned with the future development of the rights of children.

The final two chapters provide thoughtful material on the challenge to legal education in preparing advocates to represent the child in our juvenile and domestic relations courts. The Juvenile Court is seen as a day-to-day working laboratory for development of legal and social work manpower and the merger of law and behavioral science learning. The need for more collaboration between the two disciplines is amply demonstrated.

³ *Miranda v. Arizona*, 384 U. S. 436, 86 S. Ct. 1602 (1966).

⁴ No. 116, October term, United States Supreme Court, filed May 2, 1966, Jurisdiction noted June 20, 1966, argued Dec. 5, 1966, awaiting decision at the writing hereof.

⁵ 99 Ariz. 181, 407 P. 2d 760 (1965).

⁶ 383 U. S. 541, 86 Sup. Ct. 1045 (1966).