

1991

BOOK REVIEW – Stepping Stones: Successful Advocacy for Children. By Sheryl Dicker

Janet Weinstein

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/cwlr>

Recommended Citation

Weinstein, Janet (1991) "BOOK REVIEW – Stepping Stones: Successful Advocacy for Children. By Sheryl Dicker," *California Western Law Review*. Vol. 28 : No. 1 , Article 13.

Available at: <https://scholarlycommons.law.cwsl.edu/cwlr/vol28/iss1/13>

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in California Western Law Review by an authorized editor of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

Stepping Stones: Successful Advocacy for Children. By Sheryl Dicker, et al. New York: The Foundation for Child Development. 1990. Pp. ix, 233. No price given.

*Reviewed by Janet Weinstein**

Stepping Stones, a collection of five case studies, is an inspiring report of social, legal, and political activism on behalf of children and families. The book serves as an important reminder, particularly to those working in the legal arena, that significant change involves far more than successful litigation or artful legislative drafting. The activities documented in this book speak to the importance of collaboration, determination, and persistence—skills not often addressed in the law school curriculum.

The subjects of change in *Stepping Stones* are social and legal policies which apply to the less powerful members of our society—children, the indigent, and the handicapped. The glamour of high-tech law, spectacular salaries, and fancy offices so often perceived to be the motivating forces driving lawyers today, are not found in this book. Instead, there is concern, commitment, and fortitude.

For those among us who yearn for a return to the social activism of the '60's, *Stepping Stones* is a sober reminder of the unyielding hard work which is required to make things happen. And, as this book so clearly illustrates, the hard work seems only to be effective when mixed with a certain amount of luck. The right people in the right places at the right times proved to be essential ingredients in the recipe for change that is set forth in the five case studies in the book. The five studies, taken together, provide a historical examination of the process of change in social policy and its implementation during the past two decades. Even more valuable, however, are the lessons the studies provide on what is necessary to make these changes occur.

Mothers and Children First: Advocates, the Massachusetts ET Program, and its Child Care Component. *By Sheryl Dicker.*

Obtaining consistent and quality child care for welfare mothers participating in the state mandated employment training program in Massachusetts was a hard won victory that is still being defended. More than anything else, strong coalition building was responsible for that success.

In this first chapter of the book, Ms. Dicker describes the situation in

* Professor and Director of Clinical Program, California Western School of Law.

Massachusetts in the early 1980's. Governor Ed King was proposing mandatory participation in job training and placement by welfare mothers to make them "work off" their welfare checks. This "Workfare" program and its successor, the Work Training Program, required welfare mothers to work without the provision of adequate child care. Though such programs clearly seem doomed to fail, the chapter describes the fight which ensued, and the bureaucratic rigidity and closed-mindedness that so often confronts those who would fight for change. Even when commitment to reform came from top management, movement below was difficult and slow.

The political nature of change is clearly evident throughout the book, but especially so in this chapter. The lobbying, persuasion, use of media, and drawing together of concerned groups is depicted in detail. So political is the process, in fact, that it is impossible to know if the same change could have occurred without the dramatic shift in political climate marked by the election of Michael Dukakis. It seems that the final victory was won only with the assistance of that administration. Many similar battles may have been lost for the lack of a strong political ally.

Another theme presented in this chapter and apparent throughout *Stepping Stones* is the need for lawyers to be flexible in their approaches. Narrowly trained as they are, lawyers must become better problem-solvers, able and willing to shift from the adversarial mode to whatever is needed at the moment, including the ability to build consensus. In this case, the lawyers tended to focus on legal issues, such as sanctions, rather than on their clients' real needs for child care. Rather than work for change through the judicial system, the Massachusetts coalition worked through government and the private sector ("inside/outside" work), only using the judicial system when necessary to confront stubborn bureaucrats. It is a reminder that not all, perhaps not most, advocates are lawyers.

Finally, Ms. Dicker and the other contributors make plain the importance of understanding the factual basis for the desired change. In the case of child care for welfare recipients, understanding the factual basis required a knowledge of child development, especially the children's needs for stability and a concerned caretaker.

More than anything else, what impresses the reader about the work in Massachusetts is the dedication and constant effort which was required to progress from one step to the next. The advocates had to keep on top of the situation at all times, not relying upon each small victory to carry through to the desired end. The coming, working, and staying together of these energetic and committed individuals were certainly the key ingredients for change.

Services for Violent and Severely Disturbed Children:
The *Willie M.* Litigation. By Mark Soler and Loren Warboys

The children who were the subjects of the needed services in this case composed a much smaller group than the welfare children and mothers in

Massachusetts. These violent and severely disturbed children were the “throw-aways”—children difficult to place and to handle within the child welfare system. The forum for this battle was North Carolina, although many other jurisdictions would have been suitable candidates. Frequently, these children were placed in locked institutional settings—psychiatric or juvenile justice facilities—and, for all practical purposes, the keys were thrown away. The children were provided with little or no rehabilitative services or treatments.

Here, litigation in the form of a class action lawsuit proved effective to spur change. In describing the approach to the lawsuit, the authors provide an invaluable lesson in the considerations required for such an action. They describe, in detail, how they dealt with questions of how to define the class, whom to name as defendants, how to select the venue and court, and which remedies to request. They also provide us with an insider’s perspective of the creative negotiations which led to the settlement in the case.

Once again, the individual personalities of the players proved to be crucial in achieving change. The somewhat unusual initiation of this case is a perfect example of this. Frustrated by his own experience in dealing with these cases, Chief Judge George Bason, of the Wake County District Court, called a press conference to make public the lack of services for this group of children. At the conference he asked the attorneys representing the children to bring a class action lawsuit. Judge Bason continued to involve the press and to play an active role in moving things forward. Similarly crucial roles were played by many others, including the attorneys, whose persistence in spite of great resistance was commendable. And, again, it is easy to see the difference that is made when those in authority choose to participate in the change.

Other common patterns emerge from this scenario. The vital role played by non-lawyer professionals, particularly mental health experts, reflects the collaborative nature of change. Settlement of issues, rather than protracted litigation became another factor in moving things forward. The judge in charge of the case regularly imposed early time limits on the parties so that inertia could not set in. Finally, willingness and energy to see the case through, even more than ten years after its initiation, made the difference between wasted effort and success. In North Carolina, an aggressive Review Panel has been a significant factor in this follow-through activity. One lesson to learn from this case is how to establish such a panel and the need to have one in any situation requiring implementation of an ongoing nature.

**The Richmond Case Study: Ending Segregated Education
for Disabled Children. *By Julia Landau***

The Richmond case study illustrates a phenomenon that exists throughout this country. Instead of a situation where children’s suffering can be ended by new legislation or increased funding, this case involved a situation in which suitable laws were in existence but were not being enforced. At the

time the issue was raised in Richmond, federal law required integration of disabled students into regular classrooms and school activities. Such laws were not implemented, however, for a variety of reasons, including good intentions.

The "old school" of thought regarding handicapped children was that special institutions and instruction were best for them. Such segregated education kept children from feeling inadequate and shielded them from cruelties they might face in dealing with non-handicapped children. These assumptions were found to be inaccurate.¹ Handicapped children grew into adulthood after spending their entire childhood in isolation. They grew into adults who were not prepared to integrate into non-handicapped society. In spite of this new awareness, educational programs for the handicapped changed little in Richmond or in most other places. Parents, teachers, and administrators had a difficult time letting go of the old approach. The special schools for the handicapped seemed to provide a safe haven for these needy children. Furthermore, teachers and administrators in mainstream schools were hesitant to invite the handicapped into their classrooms for fear of the disruption and change that would accompany them.

Change began in this case with a few concerned parents who were not actually seeking "mainstreaming" for their children, but rather were concerned about a cutback in services in the special schools. The parents sought legal advice from the Disability Rights Education and Defense Fund (DREDF). This choice shifted the focus of these families and many others from improving special schools to mainstreaming. It was not only DREDF's familiarity with disability law which led to the success in this case, but also the fact that this law and policy center is operated by individuals with handicaps who could serve as models of success for these children.

A significant factor in this study is the role of education. While the case is about educational services for handicapped children, the education which proved essential here was that which occurred when DREDF educated the parents and schools. The old assumptions about handicapped children, described above, had to be replaced with current understanding about the benefits of mainstreaming. Parents and teachers had to be taught enough to allow them to let go of the security of the known and to move into an integrated system.

Once a small core of parents was educated, it served as the primary force behind the integration movement. The more the parents grew to understand the rights of their children under the federal law, the more they were able to push against local government resistance. The failure of the school district and local government to consider the needs of these children as a matter of primary importance, even when that was their specific mandate, became intolerable.

1. S. DICKER, ET AL., *STEPPING STONES: SUCCESSFUL ADVOCACY FOR CHILDREN* 115-21, 123 (1990) [hereinafter *STEPPING STONES*].

The laws which establish these interests on behalf of the children also provide a remedy which is common to many federal laws dealing with children.² This case shows the power of the purse string in attempting to achieve local compliance with federal law. In the case of handicapped children, many of the rights and services provided by federal law condition grants of money to the states on the existence of state procedures for implementation. These procedures often provide good means for enforcing compliance with the federal mandate. Although the possibility of a lawsuit to accomplish this end serves as a motivating force, the fight for these rights occurs primarily in the administrative arena.

The key for winning this hard-fought battle was the involvement and commitment of parents confronting agencies refusing to do what they were legally required to do. Perhaps the most powerful weapon in this battle was education. Had the parents and DREDF been unable to persuade the majority of parents that mainstreaming was in the best interest of their handicapped children, this might have been a pyrrhic victory. Certainly in the implementation of these important changes, parent understanding and support was essential. Likewise, an ongoing education campaign for teachers and administrators was essential to deal with a very resistant bureaucracy.

The multi-faceted approach used in this case runs through all the cases presented in *Stepping Stones*. The advocates used the political and legal systems and worked on the local, state and federal levels. They involved parents, teachers, administrators, lawyers, legislators, and the general public. Key personnel changes within the responsible agencies reflected the element of "luck." Other common themes are the effective use of committees for implementing and easing the transition and the necessity of monitoring compliance at every step in bringing about change.

Lobbying for Poor Mothers and Children in Texas: The 1985
Indigent Health Care Reforms. *By Bonnie Milstein and Linda Lowe*

Similar to the case in Massachusetts, this case study from Texas focuses on the plight of the economically disadvantaged. As in Massachusetts, advocates focused on reforms which would affect children, partly because of the political attractiveness of this issue. In fact, the reforms sought in Texas were far broader than the mere provision of health services to poor mothers and children.

The situation in Texas in 1983 was similar to that which continues to face every state in the nation today. It arises from a short-sightedness which seems to be inherent in American society, namely, the tendency to avoid short-term sacrifices even at the cost of long-term gains. Lawmakers in

2. See, e.g., Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500-535 (codified as amended in scattered sections of 42 U.S.C. (1991)) which ties federal assistance for children's services and foster care to compliance with the Act.

particular, seem averse to enacting and funding legislation which will have the long-term effect of saving money, if the legislation will require substantial present budget commitments. Poverty and the issues surrounding it present a clear example of the need to provide funding now in order to avert the need to provide even more at a later time. When the poverty issues are health care issues, the term "preventive medicine" is perfect in more ways than one. In a society in which humanitarian reasons are insufficient to justify changes, economic reasons sometimes can prevail. Yet, the study in Texas shows that our society has so distanced itself from the problems of the poor, that even the economic rationale for change cannot easily overcome a history of prejudice, fear, and greed.

For the poor of Texas in 1983, health care services were the exception rather than the rule. Having no voice in the system, the poor received what can be described as "barbaric" services. Pregnant mothers received little prenatal care, often resulting in high costs of services after delivery. In fact, many births occurred in the emergency rooms of hospitals, because indigent mothers had no physicians and no hospitals which would accept them as regular patients. These emergency room deliveries, and the complications arising from the lack of prenatal care, cost the counties and state of Texas far more than the uniform delivery of prenatal services would have cost.³

At the same time provision of health care services to all indigent people in Texas was so paltry, the federal government was increasing its Medicaid expenditures. Texas, however, was unable to take advantage of this increased funding because its own regulations and provision of indigent health care was so restrictive, and because there was no real coordination of policy within the state.

Legal Services attorneys were involved in this system in a reactive role. Clients came to them when they had received services for which they could not pay. As a result of their unpaid bills they were denied further services—not the best position from which to make an equitable argument for the provision of these services. The Legal Services offices lacked coordination from county to county, primarily because of understaffing caused by the Reagan administration's funding cuts.⁴ In addition, regulations promulgated by the administration for Legal Services ". . . discourag[ed] lawyers from challenging systemic problems affecting their low-income clients."⁵

When an action was finally brought by Legal Services attorneys, the federal court abstained, agreeing with the *amici* briefs of the counties, and holding that time should be given for the state law to be clarified by the legislature. It appeared that the status quo was unchangeable. As with the other cases, however, luck, timing, and politics converged to bring some impetus to the force for change.

3. STEPPING STONES, *supra* note 1, at 159-63.

4. *Id.*

5. *Id.* at 163.

The recently elected governor had received voter support from the Hispanic community, partly due to his promises on health care issues. When the Hispanic community was dissatisfied with the governor's follow-through, its leaders organized for action. Other advocacy groups and strong leadership from the state's Department of Human Services Board increased the pressure. They argued that the state was spending money inappropriately because of the higher cost of post-natal care for babies who had not received pre-natal care and because the state was not making full use of federal funding.

The governor named a Task Force on Indigent Health Care and appointed an experienced and successful chair. He also instructed his lieutenant governor to provide leadership in this area, another fortuitous event. The lieutenant governor was a senior, seasoned politician who presided over the state senate. The Task Force included representatives from all affected groups, the legislature, and county commissioners. After a year and a half, it published a draft report recommending reforms.

The Children's Defense Fund (CDF) opened an office in Texas during this period, recognizing the enormity of the problem and the impact its successful treatment would have. The CDF attorney helped to build a coalition which worked on drafting and lobbying for the needed legislation. Two important lessons to be drawn from the work of the coalition are the need for consensus building and support, and the usefulness of a policy which avoids debate on issues that can't be resolved. These principles kept the coalition together and moving forward.

The constituency for this advocacy campaign grew in widening circles. The coalition recruited the churches which have a strong influence in Texas; they in turn, recruited their membership. When the coalition was interested in demonstrating support for the proposed legislation, it was able to mobilize its constituents and "swarm" the capitol.

Another important group in this study was an informal committee of members of the executive and legislative branches who met regularly to share information, give direction to the campaign, and plan for further action. In all of these advocacy groups, strong leadership and committed membership support were available. These characteristics link this case to the others in the book and distinguish it from the many efforts which never came to fruition.

Obtaining financing for the required health services and determining where decision making power should lie were the biggest barriers to the reform. The decision making, or control, issue enraged physicians, private hospitals and local governments as each group sought to maintain its authority over provision of health care services. This dispute worked in the reformers' favor when the Texas Hospital Association engaged in tactics which aggravated the state legislators and aroused media attention.

When the legislation was passed, another task force was appointed to implement it. Implementation was even more challenging because all involved needed to be retrained. An ad hoc committee appointed to monitor implementation continues to function. Problems of resistance to and

underfunding of the law have not allowed the change to be as dramatic as hoped for; in fact, "dumping" of indigent patients by hospitals continues to this day.

The Texas case study again demonstrates the elements of perseverance and coalition building which seem to be essential to making significant change. It also proves again the role of luck, particularly as it relates to the appointment of strong, committed leaders and timing.

Reforming the Arkansas Juvenile Justice System.

By Don Crary and Sheryl Dicker

The juvenile justice system in Arkansas in the 1970's was virtually non-existent. In fact, "juvenile justice" in Arkansas was an oxymoron. Throughout the state, the county courts, which were usually not really courts but local governmental agencies, determined the fate of minors who were deemed to be delinquent or dependent. These agencies engaged in significant abuse, including disregarding due process and denying hearings.

Although the county courts presided with little semblance or recognition of any controlling law, they were free to send minors to state training schools or foster care. A 1919 case challenging the system had declared the system of county courts to be constitutional, resting on the fact that juvenile matters were "local functions." This precedent inhibited challenge to the system for over 60 years.

In 1979, four important groups came together to begin the process of change. These groups were: (1) the Legislative Subcommittee on Children and Youth, which held hearings and drafted a constitutional amendment to divest the county courts of jurisdiction over juvenile defendants and create a family court system; (2) Arkansas Advocates for Children and Families (AACF), a research and advocacy group which received a federal grant to implement a new juvenile justice system; (3) the University of Arkansas at Little Rock Law School Clinic, which represented children day-to-day in court, and; (4) the Arkansas Bar Association Juvenile Justice Committee which was made up of judges and attorneys involved in the system.

These groups recognized that, in light of the substantial legal challenge before them, they needed to gather and present hard data to the legislature. This was an ominous task since no regular records had been kept by the county courts. AACF received funding and used citizen volunteers to gather data. At the same time, the Arkansas Bar received a grant and appointed a committee to draft remedial legislation. The Bar involved representatives of the legislative staff, garnering the support of the legislature for their reforms which were adopted in 1981.

The legislative reforms were intended as intermediate remedies until a constitutional amendment could be passed divesting the county courts of jurisdiction in juvenile matters. This process, however, proved to be difficult. AACF took the lead role in this movement. It developed strong ties with the media which continued even after the first attempt at amendment

failed. A 1983 study by AACF showed little change resulting from the 1981 legislation; some legal action was necessary.

While all agreed that a court order was needed to effectuate more dramatic change, there was little consensus as to what legal theory should be used to achieve it. A major challenge was to find an action that would require major and consistent reform throughout the state rather than piecemeal or patchwork reform, because all the counties operated different systems.

Luck played a role in this debate when a Legal Services attorney, new to the field, suggested a fresh yet daring approach. He brought an action challenging the jurisdiction of the county courts, based on the allegation that the facts had changed since 1919 and that juvenile matters were no longer a local function. Lawyers worked with AACF to provide a strong factual record to support this allegation.

Luck, again in the form of key personnel, moved change closer to realization by providing the plaintiffs with two critical witnesses from the Department of Human Services. The case was also strengthened by the testimony of two state senators and a judge who testified about the state interest in the subject and the confusion in the system.

In January of 1987, after an anticipated defeat in the lower court, the Arkansas Supreme Court overturned the 1919 decision. AACF had remained in close contact with the governor's office and the legislature to prepare them to write new legislation after the decision. Emergency legislation was written and a Juvenile Justice Commission was appointed by the governor to draft permanent legislation. The constitutional amendment passed on its second attempt.

The Arkansas case study, like the North Carolina study, focuses on litigation as a major force in bringing about change. As in all the case studies, the roles of collaboration and coalition building are fundamental. Without the concerted effort of all advocates to gather the factual information to prove the case, success would have been impossible. This case demonstrated another aspect of the need for flexibility by attorney advocates. Here the question was not whether to negotiate or litigate, but rather, what legal theory to use in the litigation.

CONCLUSION

Each of the case studies presented in *Stepping Stones* provides a model for others attempting to bring about change for the voiceless and powerless. The book's "Afterword" updates the information about the cases, sharing the progress and setbacks they have experienced. On an ongoing basis it is clear that these changes require continued vigilance, dedication, flexibility, a multifaceted approach, and a thorough command of the facts. In each of the cases, "insiders" played critical roles. Strong leadership and commitment by key personnel were also crucial. The formula for change which was proven in these varied situations is not an easy one to follow. Unlike a scientific formula which can be repeated upon command, this one requires a measure

of luck or coincidence which cannot always be guaranteed. For each of the success stories represented in this book, there are probably many more stories of defeated attempts at change. The message for those of us who would continue to tilt at windmills is to learn what we can from these experiences and to persevere. There are yet many fights to be won.