

Symposium on Environmental Alternative Dispute Resolution

What Elian Gonzalez Knows

Robert F. Blomquist

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Robert F. Blomquist, *What Elian Gonzalez Knows*, 34 Val. U. L. Rev. 239 (2000).
Available at: <https://scholar.valpo.edu/vulr/vol34/iss2/1>

This Symposium is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



VALPARAISO UNIVERSITY LAW REVIEW

VOLUME 34

SPRING 2000

NUMBER 2

Foreword

WHAT ELIAN GONZALEZ KNOWS

Robert F. Blomquist*

Formalized litigation, which often mushrooms into a game of no-holds-barred-kill-or-be-killed-hardball, can spark enormous costs in money, time, psychological distress and destroyed human relationships. As I write this, two major newspaper articles in the *Wall Street Journal* illustrate this enormous cost. The first article talks about the Elian Gonzalez case, referring to the long, acrimonious litigation between the United States Immigration and Naturalization Service, Elian Gonzalez's father and the "Miami relatives" of the six-year old boy:

Most signs point to long and bitter proceedings. Fidel Castro, basking in a public relations coup, seems in no hurry to have Elian and his father back [from the Andrews Air Force Base Compound, near Washington, D.C., where Elian was whisked on Easter Eve]. Cuban-exile groups, whose influence has been waning as its core members grow older, have regained prominence and a fund-raising cause. And the Miami relatives' lawyers, angry at Attorney General Janet Reno for taking the boy in the pre-dawn raid, seem prepared to fight in as many [legal] venues as they can.

Some at the Justice Department fear they could be reliving [the Easter 2000] weekend for [several years]. Within hours of the seizure, Elian's Miami relatives were

* Professor of Law, Valparaiso University School of Law. B.S. Economics, University of Pennsylvania (Wharton School), 1973. J.D., Cornell Law School, 1977.

already showing off damage to their home—laying the groundwork for a suit against the government. Other high-profile raids during Ms. Reno’s tenure, such as the one in Waco, Texas, have produced long-running legal actions, conspiracy theories and reenactments. That prospect caused a senior Justice official to predict that the nation could see the Elian Gonzalez case played out over and over again.¹

The second article, concerning the ravages of litigation run amok, is in the civil law sphere, albeit in our neighboring country of Canada. According to this account:

Canada’s longest-running shareholder dispute has been to the country’s highest court and back four times. And it may go back there again.

It is a dispute that has wrecked marriages. It has generated mind-boggling legal bills. And one shareholder even has planned ahead to keep the fight going after he’s dead.

What could be so important? Money, of course, and what shareholders say is a matter of principle. For 25 years now, Toronto food giant Loblaw Cos has been locked in the battle with John Housepian, a 74-year old retired tool maker in Brantford, Ontario, and a band of about two dozen other dissident investors over the company’s offers to buy out their holdings in a Loblaw subsidiary.

* * *

One shareholder, says the fight has devastated his personal life. . . . Now 69, he blames the continuing battle for a nervous breakdown he suffered in 1989. He says this led to the breakup of his 33-year marriage,

¹ Joe Matthews & Martha Brannigan, *Elian Probably Will Return to Cuba, But Not Very Soon*, WALL ST. J., Apr. 24, 2000, at A40. See also Peggy Noonan, *Why Did They Do It*, WALL ST. J., Apr. 24, 2000, at A38 (Opinion Editorial) (condemning Elian Gonzalez raid); Sally Satel, *Isn’t a Commando Raid “Psychologically Abusive?”*, WALL ST. J., Apr. 24, 2000, at A38 (Opinion Editorial) (arguing against the government’s commando raid based on the true “best interests of the child” standard).

alcoholism and the loss of US\$12 million in business investments.

"I've gone through hell," says [the shareholder] . . .²

These two recent cautionary legal tales should remind us of Charles Dickens' famous Nineteenth Century rendition of the breakdown of the legal system within the context of formalized legal structures and procedures of traditional adjudication.³ These accounts of what might be called "legal meltdown" should also remind us of the analogous military notion of what happens in the face of Total War.⁴

² Joel Baglole, *No End in Sight for Loblaw Shareholder Dispute*, WALL ST. J., Apr. 24, 2000, at C1.

³ See CHARLES DICKENS, *BLEAK HOUSE* (1853) (Centennial ed.) A synopsis of the story—and the interminable legal dispute of *Jarndyce v. Jarndyce* states:

Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds this day, in the sight of heaven and earth.

Esther Summerson tells her own story. She has been brought up by Miss Barbary, her godmother, really her aunt, who will not acknowledge her relationship because Esther is illegitimate. After six years' teaching at Miss Donny's school, Esther goes to live with her guardian, John Jarndyce, the master of Bleak House. There is a Jarndyce suit in the Court of Chancery which has dragged out interminably. One of the principals, Tom Jarndyce, has committed suicide, and John Jarndyce refuses to be associated with the case. But he has taken into his home two of the parties of the suit – the young, pretty Ada Clare, and the irresponsible youth, Richard Carstone. Ada and Richard are in love, but Jarndyce will not allow them to marry until they are of age, and Richard capable of earning his living. Richard, however, pins his hopes on the success of the lawsuit, and will not concentrate on any of the professions which in turn he takes up.

MICHAEL HARDWICK & MOLLIE HARDWICK, *THE CHARLES DICKENS COMPANION* 142 (1968).

⁴ See generally GERHARD L. WEINBERG, *A WORLD AT ARMS: A GLOBAL HISTORY OF WORLD WAR II* (1994). Professor Weinberg observes:

[In World War II] the extent of destruction was very much greater, and spread over vastly larger areas, than in any prior war, while the loss of life was at least twice that of the war of 1914-18. Contemporaries of that earlier struggle were so impressed by . . . the vast lands and populations it engulfed, that they had quite early come to call it "The Great War," a name by which its survivors recalled it when they did not instead refer to it as "The World War." Both by comparison with that terrible event, and when set against all other wars of which we have any knowledge, the second world-wide conflagration of this century surely deserves to be called "The Greatest War." Only an all-out nuclear war could ever be yet greater, and there would

Of course, not every lawsuit results in legal paralysis or overwhelming losses for the litigants. Sometimes, litigation is the only answer to intractable disputes. Whether we speak of divorce proceedings or contract disputes, employment discrimination claims or educational policy disagreements, tort law issues or environmental and natural resources disagreements, we need to ask ourselves whether there is a better way (a more cost-effective, amicable, civilized, rapid and efficient manner) to resolve these disputes than by means of the 600-year old Anglo-American common law-based system of accreted legal procedures we call "litigation."

Alternative Dispute Resolution ("ADR") may provide a better way to resolve these disputes. Valparaiso University School of Law's Center on Dispute Resolution's First Annual Conference, *Is Environmental Alternative Dispute Resolution Working in America?*, explored ADR as an alternative to litigation in the area of environmental law. The Conference was held on October 22, 1999, in Indianapolis, Indiana. I was privileged to be the organizer and conference co-chair of that event. Conference goers were rewarded by listening to eight nationally recognized experts in various facets of environmental alternative dispute resolution, in both the private and public spheres, who provided golden insights into the overarching thematic question of the conference. This Symposium Edition of the *Valparaiso University Law Review* provides a selective sampling of articles by some of the conference speakers who chose to extend and elaborate on their remarks in Indianapolis. We, at Valparaiso University School of Law, hope that you enjoy and profit from reading these articles.

presumably be no historian left alive to record it—to say nothing of any records for a reconstruction of its course.

Id. at 3.