JUVENILE JUSTICE NOW

Reinvention and Promise

By
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About the Author

H. Ted Rubin was elected a judge of the Denver Juvenile Court in November 1964 and entered into this office two months later. Prior to the judgeship he served two terms in the Colorado House of Representatives following his elections to this office in 1960 and 1962. There he established the state's first forestry camp for delinquent juveniles and first residential treatment facility for emotionally disturbed children.

As the sixth judge of this historic court that was inaugurated in 1903, Judge Rubin received recognition for his initiating and directing the court's research-based intervention project with glue sniffing boys, for sponsoring the nations' first Vista Volunteers (now Americorps) project in a juvenile court, and for obtaining the funding as well as overseeing a halfway houses project that further reduced the court's commitments of juveniles to state institutional facilities. He also served as primary adviser to the Colorado State Legislature with its drafting and enactment of the state's first juvenile code in 1967.

Nonetheless, Judge Rubin's bid for a second term was rejected by the voters of Denver, stimulated by spokespersons who urged the selection of a different judge who would be less opposed to commitments of youth to juvenile institutions or their transfers into criminal court jurisdiction.

Judge Rubin was able to transfer his experience to become the director for juvenile justice management and training for the Institute for Court Management, Denver, which he served from 1971 until August 1992. There he directed 89 national juvenile justice training workshops for ICM and participated in more than 150 court and justice agency studies. Also, he was a principal in the national Restitution, Education, Specialized Training, and Technical Assistance Project (RESSTA). Following ICM's becoming a division of the National Center for State Courts, Judge Rubin was Co-director for the Integration of Child and Family Legal Proceedings Project, and directed the Civil Jurisdiction of Tribal Courts and State Courts: The Prevention and Resolution of Jurisdictional Disputes Project. He served, also, as a reporter for the volume on Court Organization and Administration, IJA-ABA Joint Commission on Juvenile Justice Standards.

He became a private consultant to juvenile and family courts in August 1992. He was employed in this role by governmental and non-profit associations to evaluate justice systems and recommend ways to reduce delays in case processing at all stages of case handling, expand Restorative Justice accomplishment, increase use of community-based alternatives to detention and institutionalization, and reduce disproportionate minority contacts. In all, he provided professional services in 49 states, as well as Canada, Egypt, El Salvador, and Israel.

Judge Rubin, prior to his judicial election, was a lawyer in private practice in Denver and held social service positions there and in Chicago. He obtained his law degree from DePaul University, a master's degree in social work from Case Western Reserve University, and an A.B degree (Phi Beta Kappa) from Pennsylvania State University. He has served as Visiting Professor, School of Criminal Justice, State University of New York at Albany, was primary American instructor for the American University Institute on Juvenile Justice in Great Britain and the United States, London, and taught extensively in the School of Law and Department of Sociology, University of Colorado.

Judge Rubin has written more than 380 research reports and articles concerned with juvenile or family justice and corrections, along with five other books: *The Courts: Fulcrum of the Justice System* (Second Edition, Random House, 1984), *Juvenile Justice: Policy, Practice, and Law* (Second Edition, Random House, 1985), *Behind the Black Robes* (Sage, 1985), *Juvenile Justice: Policies, Practices, and Programs, Volume 1* (Civic Research Institute, 2003), and *Juvenile Justice: Policies, Practices, and Programs, Volume 2* (Civic Research Institute, 2012). Also, he was the editor of *Juveniles in Justice: A Book of Readings* (Goodyear, 1980).

He is an editorial board member and regular columnist for *Juvenile Justice Update*. In recent years he was honored with the Beto Award for Service to the Probation Profession by the National Association of Probation Executives and as one of 100 distinguished alumni by the Graduate School of Applied Social Sciences, Case Western Reserve University. A Colorado resident since 1956, Judge Rubin resides in the Boulder hills, this residence following his many years in Denver.

Introduction

Juvenile justice now provides more justice for juveniles.

Justice for a juvenile now may mean not going before a judge.

Justice for a juvenile now means handling problematic school misbehaviors within the school, using age- and gender-appropriate procedures, or employing a non-court restorative justice course of action that focuses on a juvenile's responsibility and an obligation to the one he or she offended.

Juvenile delinquent offenses and offenders have been in a very lengthy numerical decline which has assisted the furthering of progressive juvenile justice reforms.

Numerous states have acted to "raise the age" and enable sixteen and seventeen-year-old juveniles to be subject to juvenile court jurisdiction instead of the prior practice of their routine flow into an adult criminal court.

Jurisdiction after jurisdiction has acted legislatively and procedurally to remove myriad juveniles, previously ticketed for criminal court handling and subject to very long incarceration terms, to instead be handled in a juvenile court.

Far fewer juveniles are now locked into secure pretrial detention centers; some centers have closed and others have closed one or more living units.

Far fewer juveniles are now committed to deep-end state juvenile correctional facilities.

Far more juveniles, including repetitive juvenile offenders, are now handled in their own homes and communities, assisted by program services found to be effective with many of them.

We want these and related improvements in our work with young people and their families to remain on course and to further the above-listed directions.

Maintaining these progressive directions will require ongoing citizen and professional advocacy and engagement.

A prominent objective should be taking steps to enable conversion of savings due to court, detention, and institutional population reduction costs to be reinvested in community-based services with our young people and their families.

JUVENILES WHO VIOLATE A LAW OR BEHAVORIAL NORM AND HOW THEIR COMMUNITIES RESPOND TO THESE YOUNG PEOPLE

When a young person breaks the law or acts in ways that violate norms of behavior, how the community responds varies tremendously from place to place. There is no "national" juvenile justice system—juvenile law is a patchwork of state and local statutes, and every jurisdiction has its own local practices, customs, and norms. Nevertheless, while local differences are important, there is also a growing national recognition about how to deal with young people who have committed an offense; advances

in fields ranging from neurobiology to cultural competence are helping to forge what amounts to a national consensus on best practices. This book brings together the encouraging progress I have witnessed in my visits to juvenile courts around the country, as reported in my regular columns for the quarterly *Juvenile Justice Update* over the last decade. This is the central focus of *Juvenile Justice Now: Reinvention and Promise*. It is told through its many chapters and author's notes. It tells the story of the then new invention, a juvenile court, which was first unveiled in this land in 1899 in Chicago, and was to spread out into all but two states by 1925. It recounts both progressive and what this author believes to be regressive developments and practices in subsequent decades. The juvenile courts are again moving forward, through the efforts of people and programs like the ones profiled in this book, reinventing the juvenile justice system and realizing the promise it embodies.

Delinquency is what brings a young person before the juvenile court. But what constitutes a juvenile delinquent act has varied among the states, though less so now than in the past. Juvenile court law is written by state legislatures and ruled on most often in state courts, though U.S. Supreme Court decisions, particularly after 1965, have had powerful impacts on what law and practice must be. It is difficult for many to realize there is no uniform juvenile court structure or jurisdiction, so we have to learn, for example, that a juvenile court in a state such as Utah is the same across that state while this court in Denver has a different structural provision than all other judicial districts across Colorado.

States have differences in the minimum age for which a juvenile may be brought to court for a law violation as well as with the maximum age. Jurisdiction to one day before one's eighteenth birthday is the dominant policy and outlier states have been moving to join that overwhelming majority.

That said, many states reject juvenile court authority over some older juveniles charged with more serious offenses, instead starting these cases in the adult criminal court. Again, states vary as to the age and nature of the offenses of the particular youth involved. Certain states allow the prosecutor to select whether the offense(s) shall be direct-filed in a criminal court, a policy popularized during the several decades preceding our current reform redirection. Other states place this decision with a juvenile court judge following a particularized hearing, the preferable practice for this author.

From its early days, juvenile courts delegated an important function to its probation staff, a determination whether a law enforcement or family complaint shall proceed to a judicial hearing. Judges differed, some supporting the screening out of less serious reported violations, other judges indifferent to or reluctant to screen away a complaint. This practice took on a name, diversion, and it enabled many youths to avert a record of a formal hearing and adjudication while allowing system officials to better determine and control their workloads and priorities.

Earlier, also, law enforcement officials frequently took lesser offenders home to their parent(s) with a message that parental discipline should be invoked. The next time, there would be an arrest, everyone would go to court and the youth would receive an onerous disposition.

But during the getting tough on crime period that became prominent in the late 1970s or so, law enforcement reduced its diversion practice and policy makers either redirected the police report to a prosecutor or awarded a prosecutor a veto power over a probation department diversion decision. Diversion practices reduced, as well.

OTHER JUVENILE COURT JURISDICTIONAL AUTHORITY: STATUS OFFENDERS

Juveniles' status offenses, i.e., conduct illegal only for children, are now more often filtered away from any formal judicial handling and, more often, even short-stopped prior to any referral to any court official or prosecutor. These matters, such as truancy, running away from home, incorrigibility . . . or curfew violation, now are increasingly viewed as matters for community service entities to handle and provide assistance to a youth and family. School-related behavioral problems, those less serious in nature, are now more regularly handled within a school's disciplinary scheme, via a school-based or community restorative justice program, or with referral to a community agency service . . . but not to a juvenile court. Liquor law violation is another offense that children under 18 years of age experience, often a monetary fine matter, though this offense is more often experienced by those 18-21 years.

A term, the school-to-prison pipeline, was phrased and influenced policy and practice as numerous communities urged schools to handle these matters without court referral. There was recognition that juveniles missed a number of days of schooling due to a court referral . . . for an interview with a screening probation officer, for a date in court with a judge, for a date for a staff investigation in preparation for a predisposition report, for another hearing before a judge, for an appointment with a supervising probation officer . . . as well as studies showing such court-referred juveniles more often dropped out of school without graduating. There was recognition, as well, that parents had to take off work for these hearings, or if caretaking other youngsters, somehow had to get to court and bring siblings with them to a hearing or appointment; experiences that often were costly and burdensome.

Also, there have been reports that some relabeling has taken place when law enforcement has been called to assist with a family-related fracas. It used to be that an offending youth would be brought to court as a status offender and placed under court control. But due to the system's diminished interest in adjudicating such a status offender, some law enforcement agencies rebranded the matter as an assault, i.e., a delinquent domestic violence offense, and facilitated more significant court concern and a formal proceeding.

Now, status offenders represent a reduced percentage of the juvenile court workload.

OTHER JUVENILE COURT JURISDICTIONAL AUTHORITY: DEPENDENT, NEGLECTED, AND ABUSED CHILDREN

The public child welfare or protective services agency is the court's primary accomplice in these matters (as the probation department is with delinquent offenders). These children, and the child welfare agencies that serve them, are often in the public's eye. Different labels are given these children in different states, but dependent, neglected, or abused terms are used here as the references. One learns from the media of a child whose parents have perished in a fire or been imprisoned and for whom there is no on-going caretaker (dependent), who lacks care due to parental alcoholism or is a frequent witness to adult-to-adult brutalities (neglected), or who has been sexually or physically mistreated (abused). Child neglect is the most frequent form or these reports to authorities.

Agency efforts to protect or assist these children by improving their family stability or removing them for placement in a relative's home or some form of foster care has helped many. But other children have been further injured by agency failures to provide beneficial foster care settings or necessary medical or rehabilitative interventions.

Social work agencies, often understaffed, often deal with severe and terribly complicated human conditions and interrelationships. Their work, often, is with impoverished and under-educated families who are overwhelmed by adjustment problems. Individual social workers must follow ever-changing guidebook procedures, and function in often bureaucratic organizations. They may get mixed messages from their agency supervisors and/or from law enforcement officers who accompany them when a child must be removed from a family that does not want to give up, temporarily or long-term, the care of the child. There is a high staff turnover rate in these agencies, which are normally staffed with persons having a baccalaureate degree, and only sometimes working under a supervisor who holds a graduate degree. Situations frequently require after-hours or weekend work. Further, social workers wait in court for hearings, often for hours, until the hearing commences and they are called to testify. They may be in court concerning an emergency removal, or to testify at a contested trial, or to defend their report at a dispositional or permanency planning hearing, as well as take their turn to go on the witness stand when their agency seeks to terminate parental rights at a much contested hearing where they are grilled by a parent's attorney. I have long commented that these agency social workers have the most difficult job of all social work fields.

Whether or not to remove certain of these children in the first place can be a decision that can be erroneously made in lieu of inserting more concentrated services such as drug abuse treatment of a parent, homemaker assistance, food or rental supplements, and/or intensive parent or family counseling. But reality has demonstrated that some children have not been removed who should have been and some have died of physical abuse in their own homes—an event that in some jurisdictions will prompt an agency directive that encourages child removals when in doubt, a practice that in some cases proves out to have been unwise. Still, when parents are not sufficiently assisted or reject assistance, the consequence can be their permanent separation from their child via a termination of parental rights proceeding. Their child might then be adopted, or might proceed to grown up in one or more foster homes or group facilities.

There are myriad foster homes that have done yeoman work with removed children, both short term and long term, quite a few providing the only stable and loving family such a child has known. But some foster children have been re-abused in foster care, or have made life too difficult for foster parents, which prompts removal to another foster home or residential facility.

The dependent, neglected, and abused child arena, like the delinquent child arena, serves a disproportionate number of minority children and families. There is awareness in both systems that system officials may exacerbate this overrepresentation by how they view and how they handle events related to minority persons, especially low-income minorities. This awareness is of long standing. More enlightened case finding and case management have been of some help, yet overrepresentation continues as a prominent concern.

OTHER JUVENILE COURT JURISDICTIONAL MATTERS

A number of these courts handle the adoption of children, as highlighted in a subsequent report on Judge Casey of Kalamazoo. Some may handle paternity determinations together with child support of children whose paternity has been determined. Such a court may handle the matter of an adult who may contribute to the delinquency of a minor. Such a court may rule on the guardianship of a minor. During the author's judgeship, he determined whether or not a marriage license should be issued to an underage youth who may or may not have had the approval of a parent.

HOPE DIES LAST

Juvenile courts are wise societal investments, but they often deal with very difficult situations and persons whose issues and concerns are often not met effectively enough either by the court or by the community. They are a centerpiece for community-wide efforts to harness together the schools, law enforcement, community service agencies, mental health agencies, the child welfare system, community housing programs, and local and state government interests. All of these entities sometimes do, but always should plan together and collaborate to further effective procedures and practices that foster youth, family, and community well-being. And the court and its collaborators should, as well, learn from their clients what their viewpoints and experiences tell as to what does and does not work. Data collection and use aided by regular cooperative planning meetings, yes . . . more but necessary meetings . . . can make us better.

The late Studs Terkel, one of America's greatest listeners and story tellers, verbalized about an interview with a former stoop-labor farm worker, Jessie de la Cruz, who worked tirelessly in the fields as well as outside the fields organizing to obtain better working conditions for this often ignored but critical labor force. She said, " . . . '*La esperanza muere ultima*. Hope dies last. You can't lose hope. If you lose hope, you lose everything."

Let us maintain our hopefulness for the juvenile court movement that is critically important to this nation, and help it move to a heightened effectiveness with those it serves on our behalf.

—H. Ted Rubin
February 2018