Early Modern Juvenile Justice in St. Louis

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IN EARLY June 1961, while I was still a state trial judge but before my experience in the Juvenile Division (1964–1970), I was approached by Judge David A. McMillan, a judge sitting in the Juvenile Division of the City of St. Louis Circuit Court, about joining a committee consisting of Judges John C. Casey and Ivan Lee Holt. The committee's purpose was to be two-fold: 1) to conduct a study on the case loads and working conditions of the deputy juvenile officers and 2) to plan a new juvenile court and select a building site.

For many years the juvenile court for the City of St. Louis operated out of the Children's Building at 14th and Clark Streets. In 1916 when the Children's Building was opened, it was nationally acclaimed as one of the country's best facilities serving the needs of young people, their families and the community. Unfortunately, with the passage of time, the Children's Building deteriorated and became an eyesore. The elevator was constantly in disrepair; the plumbing and electrical systems became obsolete; space for juvenile officers and detention facilities for the children became cramped; the administrative offices were outdated and overcrowded; and, finally, the courtroom facility was outmoded and grossly inadequate. Almost daily there were mechanical and physical breakdowns or both that far exceeded the budgetary allotments. Woefully, the exercise space and the children's detention quarters more and more resembled a Dickens novel about Victorian England. This was the picture, and the challenge, presented to the juvenile court committee. Yet, with the support of all the judges of the 22nd Judicial Circuit, as well as that of Mayor Raymond Tucker and later Mayor Al Cervantes and their respective administrations, the challenge was successfully met.

In the late 1950s and early 1960s, during the time that the committee was looking for a site for the new juvenile court facility, almost all the neighborhoods in the City of St. Louis were undergoing vast changes. Unfortunately for the neighborhood, but fortunately for the juvenile justice system, Vandeventer Place was declared "blighted" and the site at Vandeventer and Franklin Avenues became available. Vandeventer Place was one of the many exclusive residential "suburbs" developed after the Civil War. It was platted and developed in 1870, contained only three houses in 1875, and reached its fashionable zenith in the 1890s. After the Vandeventer Place site was acquired, Judge McMillan was able to retain Sherwood Norman, a nationally known architect, to design the new juvenile detention facility.

The design of the facility was innovative in many ways: 1) the large courtroom had a half-moon-shaped bench and, more importantly, the judge, the deputy juvenile officer, and the children and their families were all on the same level; 2) individual offices for each supervisor and deputy juvenile officer; 3) a large conference room; 4) a large gym and outside exercise area; 5) a dining facility and cafeteria; 6) individual rooms for each detainee; 7) a secure facility designed so that the entire unit was under surveillance and officers could monitor the movement of detainees and court personnel from one unit to another; 8) classrooms for the detainees; and 9) adequate public parking and secure parking for the staff. The entire facility was air-conditioned.

Before the building was completed, the committee was able to obtain a $25,000 funding commitment from the city administration to commission the National Probation and Parole Agency to conduct an in-depth study and report its findings to our committee and to the circuit court en banc.

The National Probation and Parole Agency's report not only pointed out what the committee had suspected, but also what the committee knew, that is, our juvenile court was woefully understaffed and that staff was severely overworked. The report noted that the national optimum caseload was 35 cases per social worker. Yet our caseload was as much as 100 to 110 cases per social worker. The report also noted that most of our deputy juvenile officers were recent graduates whose salaries were lower than those of police officers and school teachers; our court had neither a training program nor a plan to subsidize additional education. Equally important, the report noted that we had too many detainees in custody, and that, instead of being detained for 10 to 12 days before being placed into a permanent program, detainees were held in detention for weeks, sometimes months, before their cases were heard. Finally, the report found that our detention facility's sleeping accommodations were arranged like a barracks and that detainees were not properly segregated by age or offense.

Armed with this report, the committee went to the city administration. First, we pointed out that, because of the extremely high caseload, detainees who needed school the most were being deprived of their education. In many instances, instead of being able to hear cases within 10 to 12 days, we were holding children for weeks, if not months. The city administration was impressed by the report and, with their support and the help of Dr. William Kottmayer, the city school superintendent, the committee convinced the St. Louis City School Board to give the juvenile court its first elementary school. The Grissom Elementary School consist-

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ed of 5 regular classrooms and the gymnasium. The School Board also assigned 6 certified teachers and a principal, Dr. John A. Wright, the present superintendent of the Ferguson-Florissant School District and Chair of the St. Louis Community College District. The juvenile court now had classrooms for 4th to 9th grades, and occasionally 10th grade. Because of the length of time children were held in detention, our classrooms kept detainees from falling farther behind their classmates.

In the early 1960s, the juvenile court doubled the number of deputy juvenile officers, obtained salary increases, and reduced the caseload per officer almost by half. With the support of the city administration, we were permitted to subsidize additional education programs by paying for Masters in Social Work courses at St. Louis University and Washington University. For each year of tuition paid for by the juvenile court, the officer made a commitment to serve a year with the juvenile court, thus improving the professionalism of the juvenile court staff.

At the same time that the juvenile court was moving into the new Juvenile Detention Center and we were improving the quantity and quality and professionalism of our staff, the juvenile court committee was able to hire Louis McHardy as the newly-created Director of Court Services. (After many years, Mr. McHardy left to become the first director of the new National College of Juvenile Justice in Reno, Nevada.)

Later, Judge Noah Weinstein, of the Juvenile Division of the 21st Judicial Circuit, in St. Louis County, and I were able to obtain funding from the Missouri Bar Foundation, the Sears Roebuck Foundation and the Danforth Foundation to study and draft rules of practice and procedure for the juvenile courts in Missouri. The rules committee was composed of Judges Noah Weinstein, Andrew Higgins, Douglas Green, and Marshall Craig, and attorneys Alden Moss and Hess. The draft Rules for Practice and Procedure were reviewed and adopted by the Missouri Supreme Court.

On my first full assignment to the juvenile division in the early 1960s, I called a press conference where, out of sheer ignorance, I declared that I was not going to "mollycoddle" juvenile offenders. Nor was I going to continue slapping them on the wrist. In other words, I suffered from that "back to the woodshed" mentality; that is, I believed that "you can beat goodness in and beat badness out"! After less than six months, however, having seen and dealt with the myriad of problems presented by the juvenile justice system, I called another press conference and publicly admitted my sheer ignorance in making my earlier press statement. It was evident that, at my first press conference, I did not have a clue as to the problems facing our young people, their families and the shameful lack of support and resources to address their problems.

Quite early I found out that neither Booneville nor Missouri Hills was adequately staffed or funded or had even the basic programs to handle and deal with the kinds of problems that children from cities like St. Louis, Kansas City or Springfield were experiencing. The vocational programs were obsolete. For example, the automotive equipment dated from the 1940s and 1950s; the printing equipment had been donated by the *Globe-Democrat* newspaper and not only broke down frequently but was perilously close to the state of technology used by Gutenberg! Imagine city kids being taught farming and how to milk a cow. Girls were taught domestic skills such as hair-dressing and sewing.

Understandably, the executive and legislative branches, like the judiciary, do not fully appreciate the importance of the juvenile justice movement. Young people are our nation's most valuable natural resource, more important to our nation's future than the mineral wealth, forests, air, and water. And yet, the juvenile courts and juvenile facilities, like adult prison facilities, are relatively low on the list of budget priorities. Therefore, in competing for limited budget dollars, juvenile facilities must fight for legislative attention with education, highways, hospitals, and other public needs. Sometimes, when I take a good look at some of our juvenile facilities and other children's placement facilities, I note that, if we judged these facilities by the same standard used to remove children from their parents for neglect and dependency, we too could easily be charged with institutional neglect.

1999 is the centennial of the juvenile justice system in the United States. Prior to the opening of the juvenile court in Cook County, Illinois in July 1899, juvenile offenders were prosecuted under the same laws and in the same courts as adult offenders. The common law did not differentiate between adults and minors who had reached the age of criminal responsibility, which was age 7 at common law and in most states 10 to 12 years of age. In other words, the fundamental thought in our criminal jurisprudence at the turn of the 20th century was not, and in most jurisdictions is not, reformation or rehabilitation but punishment—punishment for the offense and punishment as a warning to others. (*See* Mack, *The Juvenile Court*, 23 Harv. L. Rev. 108 (1909).) To get away from the idea that children are to be treated as criminals—and to save even the most delinquent children from the brand of criminality, a stigma that often follows one for life, to take them in hand and reform and protect them—this was the objective of the new juvenile justice systems.

To carry out the new reform and rehabilitation objective, the role of the juvenile court judge became critically important. The juvenile court judge needed to be interested in children's issues, broad-minded, patient, tolerant, and, perhaps most importantly, possessed of great faith in humanity and the potential for goodness in each child. The Supreme Court of Utah stated this very succinctly:

> The judge of any court, and especially a judge of a juvenile court, should be willing at all times, not only to respect, but (also) to maintain and preserve, the legal and natural rights of persons and children alike…. The fact that the American system of government is controlled and directed by laws, not men [or women], cannot be too often or too strongly impressed upon those who administer any branch of or a part of the government,… where a proper spirit and good judgment are followed as a guide, oppression can and will be avoided…
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> The juvenile court is of such vast importance to the state and society that it seems to us it should be administered by those who are learned in the law and versed in the rules of procedure, to the end that the beneficent purposes of the law may be made effective and individual rights respected. Care must be exercised both in the selection of the judge and in the administration of the law. Mills v. Brown, 88 P. 609 (1907).

In addition to the observations made by the Supreme Court of Utah, I venture to add that judges of the juvenile courts must be trained in psychology, social welfare, and the behavioral sciences. Moreover, when judges assume the responsibility for the operation of the juvenile courts, they should make unannounced visits not only to their own detention facilities but also to every detention facility to which children from their court are assigned or transferred.

By the enactment of a typical juvenile justice court act, a state undertakes to remove the detriment and stigma of a criminal proceeding against children and promises to provide them with the essentials of parental training, care, and custody which were not provided by their own parents. Because of these assurances on the part of the state, the juvenile offender has been stripped of the constitutional protections traditionally afforded to adults charged with criminal offenses. (*See* Oram W. Ketcham, "The Unfulfilled Promises of the Juvenile Court,[7] *Crime & Delinquency* 97 [1961].) Judge Ketcham lists the five unkept promises of the juvenile justice system as 1) the promise that the consequences of a finding of delinquency will, in fact, be noncriminal and that the stigma of a criminal "record" will not obtain; 2) the promise that the hearing itself will be promptly held, easily understood, fair, and compatible with, if not part of, the treatment process; 3) the promise that family ties will be strengthened and the child removed from the home only when the child's welfare or the interest of the community demands such action; 4) the promise that the child's treatment subsequent to a finding of delinquency will approximate as closely as possible that which the child should have received from the child's parents; and 5) finally, that in cases where removal from the home and close supervision are required, the promise that the deleterious effects of imprisonment upon habits, attitudes, and aspirations will be minimized by therapeutically, rather than punitively, oriented restrictions.

Judge Ketcham noted that the cornerstone of *parens patriae* is the concept that the interest of the state and the welfare of the child are in harmony, not in conflict, that is, that the state, acting as a substitute parent, will act considerately and in the best interests of the child and will competently control and raise the child. When the state has failed to make good on its promises, all children in need of protection, care, and training will have given up their precious rights of individual freedom under law for the tyranny of state intervention whenever the state considers its interests threatened.

Looking back, I feel very privileged to have been part of the revolution in juvenile justice in St. Louis. During my years as a juvenile court judge, juvenile justice was fundamentally changed by the landmark decision, *In re Gault*, 387 U.S. 1 (1967), which held that the constitutional due process guarantees of notice, the right to counsel, the privilege against self-incrimination, and the right to confrontation applied to the adjudicatory phase of juvenile delinquency proceedings. These rights have since been extended beyond juvenile delinquency proceedings. (The following summary and discussion is based in large part on B. James George, Jr., *Gault and the Juvenile Court Revolution* 29–39 (1968).)

A few background facts about the *Gault* case will put it in perspective. Today the case seems almost trivial. The case began when a neighbor complained to the police that Gerald Gault and another boy had made an obscene phone call. The police picked him up. His parents were at work at the time and apparently no attempt was made to contact them after Gerald was taken into custody. They apparently learned about his arrest that night from the parents of the other boy. They went to the detention home and were informed that a hearing would be held the next day.

The police officer in charge filed a petition for the hearing to be held that day. No copy of the petition was served on the parents. The petition contained only legal allegations and no facts. The hearing was held in chambers; the complaining neighbor did not appear and no sworn testimony was taken. There was no record of the proceedings. The only information about the hearing was found in the record of a *habeas* proceeding brought after the juvenile court proceedings. Gerald was released from custody two days later. The police notified Mrs. Gault that another hearing would be held three days later.

At the second hearing the judge apparently relied on admissions about the phone call that the police reported that Gerald had made. Mrs. Gault asked that the complaining neighbor attend the hearing, but the judge ruled that the neighbor's attendance was not necessary and her version was reported in court on the basis of her telephone conversation with the investigating officer. The judge also had a probation "referral report," but it was not shown to either Gerald or his parents. The judge committed Gerald to the state industrial training school "for the period of his minority, unless sooner discharged by due process of law." Because Gerald was 15, he would have been in custody until he turned 21.

No direct appeal was authorized. However, about two months later, a *habeas* proceeding was filed in the Arizona Supreme Court, which ordered a hearing in the superior court. The superior court denied *habeas* relief on the ground that there was no denial of either constitutional or statutory rights. The Arizona Supreme Court affirmed, *Application of Gault*, 99 Ariz. 181, 407 P.2d 760 (1965), and the Supreme Court reversed.

The Supreme Court first reviewed the history of the juvenile justice system and its aim of protecting the juvenile against the harshness of the adult criminal system. The juvenile justice statutes had been consistently upheld as constitutional as an exercise of the state's *parens patriae* power, that is, as inherently civil or equitable proceedings to which the procedural guarantees of a criminal trial were inapplicable. The Court noted, however, that "failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy." 387 U.S. at 19–20. In other words, juvenile proceedings violated due process.

The Court recited some interesting statistics in support of its extension of due process guarantees to juvenile proceedings. For example, the Court noted that the rehabilitative goals of juvenile proceedings were not being met, citing recidivism rates as high as 56 percent and 61 percent in recent studies, which suggested that the absence of constitutional procedural guarantees did not mean that efficiency promoted rehabilitation. In addition, "delinquency" was not supposedly to be equated with "criminality," but in actual practice the term "delinquent" had come to carry the same stigma and produce as many instances of continued discrimination as the term "criminal." Moreover, unfairness was not reduced through limiting access to juvenile court records. Although juvenile court records were confidential, in actual practice the records were widely accessible to public and private agencies and the police.

The Court ultimately concluded that juvenile court proceedings would not be undermined by the application of due process guarantees. The Court explained that

> [w]e confront the reality of that portion of the juvenile court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. . . .
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> In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court.…The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure as well as the long commitment were possible because Gerald was 15 years of age instead of over 18. (387 U.S. at 27–29.)

The Court specifically held that notice of the charges had to be provided to the juvenile and his or her parents. The notice must be in writing, must contain the specific charge or allegations of fact upon which the juvenile proceeding is to be based, and must be given as early as possible and "in any event sufficiently in advance of the hearing to permit preparation." 387 U.S. at 33. The Court also held that the juvenile has a right to representation by counsel or, if he or she cannot afford counsel, a right to representation by appointed counsel. 387 U.S. at 41. The right to counsel acknowledged the fact that juvenile proceedings are inherently adversarial; the juvenile officer represented the state and not the juvenile and the juvenile court judge could not serve as both arbiter and defender of the juvenile. Lay adults often cannot understand legal proceedings, particularly criminal proceedings (*Gideon v. Wainwright*, 372 U.S. 335 (1963)) and are unable to protect their own interests; this is even more so in the case of juveniles. The Court also held that the right to confrontation was as important in juvenile delinquency proceedings as in criminal trials.

Finally, the Court held that the privilege against self-incrimination applied to juveniles. The Court noted that "[i]t would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children." 387 U.S. at 47. Adopting what would later be known as textual analysis, the Court held that "[t]he language of the Fifth Amendment, applicable to the States by the operation of the Fourteenth Amendment, is unequivocal and without exception. And the scope of the privilege is comprehensive…." 387 U.S. at 47. In effect, the Court extended the Fifth Amendment to juvenile proceedings. As a result, the state could no longer prove delinquent acts merely by questioning the juvenile in court. More importantly, the Court extended *Miranda* (384 U.S. 436 (1966)) to the custodial interrogation of juveniles.

> We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. The participation of counsel will, of course, assist the police, juvenile courts and appellate tribunals in administering the privilege. If counsel is not present for some permissible reason when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it has not been coerced or suggested, but also that it is not the product of ignorance of rights or of adolescent fantasy, fright or despair. (387 U.S. at 44.)

In particular, the Court expressed its skepticism about the credibility of juvenile confessions. The Court noted that

> Evidence is accumulating that confessions by juveniles do not aid in "individualized treatment," as the court below put it, and that compelling the child to answer questions, without warning or advice as to his [or her] right to remain silent, does not serve this or any other good purpose…. [I]t seems probable that where children are induced to confess by "paternal" urgings on the part of officials and the confession is then followed by disciplinary action, the child's reaction is likely to be hostile and adverse—the child may well feel that he has been led or tricked into confession and that despite his [or her] confession, he [or she] is being manipulated. (387 U.S. at 51–52.)

Of course, there were many other changes in juvenile justice during those early years, changes that did not involve *Gault*. For example, I was involved in two cases that at the time set new and controversial precedents in St. Louis—I approved the first single-parent adoption and the first adoption by a blind couple. Today neither situation seems that unusual.

Unfortunately, one hundred years later, the current trend in most American jurisdictions is the opposite of the principal objective of juvenile justice reform to treat children differently from adults. Forty-five states now permit the prosecution of children as adults for certain offenses; in 17 states there is no minimum age for prosecution as an adult. (Statistics reported on the ABC Evening News, Sunday, Oct. 24, 1999.)