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CHILDREN ARE NOT LITTLE ADULTS: DEVELOPMENTAL DIFFERENCES AND THE JUVENILE JUSTICE SYSTEM

by LINDA M. B. UTTAL, J.D. & DAVID H. UTTAL

Children's thinking differs fundamentally from that of adults.¹ The difference between children and adults is not simply that children know less; they know and learn in qualitatively different ways than adults do.² The differences between an adult and an infant are so obvious that no one would suggest that they should be treated similarly by the legal system. But when it comes to older children and adults, we sometimes forget that they are still developing. It is now well documented that developmental differences persist through the teen years and perhaps even into early adulthood.³

The legal system has finally begun to appreciate the need for a return to a developmental perspective on juvenile law. Perhaps the best evidence for this growing appreciation is the *Roper v. Simmons* case in which the U.S. Supreme Court eliminated the juvenile death penalty.⁴ The majority opinion authored by Justice Anthony Kennedy states “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”⁵ Psychological and physical evidence of the cognitive and emotional differences between children and adults played a prominent role in the Court’s decision.⁶ The Court’s words point us back to why the Juvenile court was established: for rehabilitation, not to punish children as if they were adults.⁷

As important as the U.S. Supreme Court’s decision is, it is really just the beginning. A systematic reform is needed that recognizes the cognitive and emotional differences between children and adults. In this article, I will argue that juvenile justice reform cannot focus only on the courts but must include all institutions within or affiliated with the juvenile justice system, including police and probation officers, prison and jail guards, school personnel, social workers and in some cases the general public. I will convey briefly some guidelines and suggestions for needed reforms for the appropriate treatment of children before and during their interaction with the juvenile justice system. This article focuses on early interaction. The real goal is to have NO entry into the juvenile justice system. The reforms needed beyond the entry are numerous and perhaps the subject for another article.

My perspective on these issues is informed by both research and practice. Serving as the Chief of the Cook County Juvenile Justice Division, I experience on an almost daily basis the consequences of the failure to fully appreciate the cognitive and emotional differences between youth and adults. It has become clear to me that mistakes made early in the process can have a profound effect on the ultimate success or failure of a juvenile’s court case. My aim here is to help reduce some of these mistakes, by pointing out that seemingly simple (and well intended) actions can often turn out to be harmful. In most cases, these errors result from a lack of appreciation of unique characteristics of the adolescent mind.⁸

EARLY CONTACT: ARREST AND BEFORE

Imagine this scenario: A high school student is acting up in school, perhaps yelling or shouting obscenities. Security guards are called to assist the teacher. The guards try to diffuse the situation, and one puts his or her hand on the student's shoulder. The child reacts violently, thrashing and eventually hitting the guard. The guard calls for police support; the child is arrested and charged with a felony, aggravated battery. What started out as an issue of school discipline has now ended in a felony charge.

The guard did not intend for things to end up this way. But it turned out that the child had a relatively minor case of Asperger's Syndrome. She seemed normal but could not stand to be touched.

Or, imagine another situation. Two suburban middle-school girls are walking home together. A boy chases them and threatens to sexually attack them. The girls are able to outrun the boy and get home safely. Then, to try to identify the perpetrator, the principal calls in the suspect - and conducts a one on one show-up to determine if the boy is the "one." This practice hurts everyone involved. The girls are now terrified (again), because they were forced to confront their possible attacker—who may not have known who they were before. The boy is hurt because the police system is now biased against him; they assume he is guilty, even though the evidence thus far would hardly stand up in court. Even a prosecutor would find this situation intolerable, as the only witnesses to the crime have been biased, and their bias could easily be demonstrated when the defense attorney cross-examines them.

These situations are not hypothetical; I have observed them both. I would like to say that these sorts of occurrences are rare or atypical, but I am afraid they are not. They happen because the adults involved, despite having good intentions, may not appreciate the unique characteristics of children's thinking.

Prior to children being charged reform is needed in the approach on the street, in the classrooms and in the police station.

The movement for police departments to include training for officers dealing with youth is not new.⁹ What is new is the number of police officers working as school security officers.¹⁰ There needs to continue to be an effort to fund

such training and to include training on Crisis Intervention, such as how to approach a child who may have a mental illness that may cause an unexpected and undesired reaction. Police training on the development of youth includes dialogue with the youth in their community.¹¹ One model of training police officers in dealing with youth was developed in Boston by the Juvenile Justice Center of Suffolk University Law School.¹² Police officers need to be trained on how to recognize a child in crisis and get training on where to take the youth for mental health crisis intervention rather than to the local detention center.¹³

As in our example above, rather than laying hands on the minor who may suffer from Asperger's Syndrome, another approach is required. Some schools are attempting to stop the principal or security officer from calling the police and beginning the trip to juvenile court by reforming school codes of conduct to include more Balanced and Restorative Justice approaches to incidents which may arise.¹⁴ The Chicago Public Schools mandate that all parties who have a stake in an incident collectively identify and address the harm done and determine what is needed to correct the situation fully.¹⁵ Some of the methods include Peacemaking Circles, Peer Juries, Victim Impact Panels and Victim Offender Conferencing.¹⁶ With the support of community organizations, schools have started employing these balanced and restorative practices for minor infractions, but there is no reason they could not be used for more serious incidents of misconduct. For instance, in the City of Chicago, community organizations use peacemaking circles to address gang problems in the community.¹⁷ By implementing more programs to keep children in school and address the problems of school conduct violations without resorting to juvenile court, we will keep more youth from starting down the path that result in court action.

ARREST: INTERROGATION AND MIRANDA

According to *Application of Gault* a minor is entitled to protection from self-incrimination.¹⁸ Much has been written on youth and the understanding of their Miranda warnings.¹⁹

In Illinois, the Miranda warnings given to children are same as those given to adults.²⁰ But this does not mean that children understand them in the same way that adults do. For example, if you are a 14-year-old and are told you have

a right to a lawyer - where do you think you would get one? You certainly have no money, no names, you are in custody, and all you want to do is go home. The idea of obtaining a lawyer is probably as foreign as obtaining a banker or real estate agent—it is something that youth almost certainly never think about and would have no one to turn to in an emergency. One reform to protect the child's rights would be having a law so that there cannot be any interrogation of children without an attorney present.

Currently, Illinois has a concerned adult statute in which a Youth Officer or parent could be present during the interrogation.²¹ I have yet to see a youth officer advise a minor to remain silent, so not to incriminate himself. Often if a parent or guardian is present they may tell the minor “to tell the truth” so that they can go home, not realizing that an incriminating statement may follow.²² Obviously this is not good legal advice, but without an attorney or informed adult present, it is the kind of advice children are likely to get. Illinois made a step in the right direction by requiring an attorney to be present during the entire custodial interrogation, for homicide and other enumerated offenses if they were committed by a minor under the age of 13.²³ Localities may find the cost of this sort of measure prohibitive, but I propose to not require an attorney is more costly to our youth and the justice system.

Many lawyers, researchers and advocates have examined how the court can determine if a minor's statement, or that of a minor with severe mental impairment, was given voluntarily and without coercion.²⁴ After examining a multitude of cases it is suggested the only way to safeguard the constitutional rights of those in police custody, and to preserve the information regarding how the statement was gathered is to require videotaping of not just statements, but of all of the interrogation.²⁵

Protection needs to be given so that minors who participate in court ordered treatment cannot have statements used against them. For instance, statements made during an assessment, screening or treatment for mental illness, addiction, therapy and treatment of sexual offenses could not be held against the child.²⁶

JUVENILE COURT: AGE OF JURISDICTION

Cook County is the birthplace of the Juvenile Court.²⁷ The founders set out to have a court system in which the unique developmental differences of children should be recognized.²⁸ One of the basic reasons for the Court was the concern over the children being kept in jail.²⁹ Over the years some of the protections of the Juvenile Court have eroded as more laws have been passed to transfer younger children to adult court.³⁰ Increasing the age of Juvenile Jurisdiction to take into consideration the mental development of the minors is fundamental. Illinois is one of 19 states that still hold the age of minors charged with felonies to 17.³¹ In January 2010, the age of Juvenile Court Jurisdiction was raised to 18 for misdemeanors.³² Now with the developmental research showing the vital stages of adolescent brain development into the early 20s, the legislature should revisit where they have drawn the line in the sand and adjust the ages to comply with that which science has established.³³

One example of a law that has since been successfully reversed is the Illinois drug transfer law adopted in 1985 and 1990.³⁴ The law created the automatic transfer of minors ages 15 and 16 to adult court if they were charged with delivery of a controlled substance within one thousand feet of a school, or public housing.³⁵ In August 2005, these automatic transfers were no longer allowed and there was a decrease in transfers to adult court by nearly two-thirds.³⁶ Children who are transferred to adult court are significantly more likely to re-offend.³⁷ The most striking fact is that after the law was changed to keep these cases in Juvenile Court there was not a huge influx of cases overloading the Juvenile system, rather there was almost no change in the number of Juvenile Court caseloads after the rollback of the drug transfer law thus public safety was not compromised by this change in the statute.³⁸

CONTINUED ADAPTATION OF LAWS WITH DEVELOPMENTAL RESEARCH FINDINGS

Other areas of potential reform are numerous. Currently, as fiscal budgets are cut for community organizations, we have to reinvigorate the support of them, as they are the future of the children in our community. We need to focus on strategies of no entry.

Illinois continues to apply the same competency statute it uses for adults in Juvenile Court. Stakeholders need to convene a task group to draft a new competency statute which would take the minor's mental development into consideration. Additionally, more research and consideration as to the role trauma has on juveniles needs to be considered. As discussed above, there needs to be reform within the schools, police training and laws to reflect what developmental research has shown regarding the adolescent brain. To look at how we initially encounter children and take the opportunity to address them and their needs in a manner which acknowledges their developmental level will help us achieve the goal of no entry.

The number of other issues to be examined once a child is involved in the Juvenile Justice system and should be changed is countless and really beyond the mission here. As we look at the youth and how they are treated we have to ask ourselves is it Illness or Delinquency and then look at how we are responding.

NOTES

1 See H. P. GINSBURG & S. OPPER, *PIAGET'S THEORY OF INTELLECTUAL DEVELOPMENT* (Prentice Hall 3d ed. 1987).

2 See *Id.*

3 Sarah J. Blakemore & Suparna Choudhury, *Development of the Adolescent Brain: Implications for Executive Function and Social Cognition*, 47 *J. OF CHILD PSYCHOL. & PSYCHIATRY* 296, 300 (2006); T. Paus, *Mapping Brain Maturation and Cognitive Development During Adolescence*, 9 *TRENDS IN COGNITIVE SCI.* 60 (2005); See generally Abigail A. Baird & Jonathan A. Fugelsang, *The Emergence of Consequential Thought: Evidence from Neuroscience*, 359 *PHIL. TRANSACTIONS ROYAL SOC'Y LONDON B: BIOLOGICAL SCI.* 1797 (2004).

4 *Roper v. Simmons*, 543 U.S. 551 (2005).

5 *Id.* at 569.

6 See *Id.*

7 DAVID S. TANENHAUS, *JUVENILE JUSTICE IN THE MAKING* 26 (Oxford University Press 2004); See *Roper*, 543 U.S. 551.

8 The following opinions are my own and do not reflect the opinion of my employer.

9 Queensland Police Brief History 1950-1978, <http://www.police.qld.gov.au/aboutUs/history/5078.htm> (discussing establishment of Juvenile Aid Bureau in 1963).

10 See Jack Cavanaugh, *Evolving Role for Police Officers in Schools*, *N.Y. TIMES*, Jan. 5, 1997.

11 News Release, Chi. Police Dep't, Chicago Police Crisis Intervention Team, Easter Seals, and the Autism Program of Illinois Sponsor Autism Safety Awareness Event (Apr. 17, 2009), available at <http://www.chicagopolice.org/MailingList/PressAttachment/releaseautism.pdf> (discussing Chicago Police Department Crisis Intervention Team training to help officers understand people with mental health issues when responding to a scene, for example the Chicago

Police CIT officers training includes how to de-escalate emergency situation involving persons with autism); See also Karen Meyer, *Police Trained How to Handle People with Mental Illness*, ABC7NEWS WLS-TV (Jan. 14, 2010), http://abclocal.go.com/wls/story?section=news/disability_issues&id=7218589.

12 News Release, Suffolk Univ. Law Sch., <http://www.law.suffolk.edu/about/news/pressarticle.cfm?ID=101> (discussing Suffolk University Law School's Juvenile Justice Center's training initiative aimed at promoting more peaceable, positive interactions between MBTA Police officers and youth in Boston communities. The program is made possible through supportive grants from the Mabel Louise Riley Foundation (\$72,000) and the Boston Foundation (\$45,000)).

13 Amy C. Watson et al. *Improving Police Response to Persons with Mental Illness: A Multi-level Conceptualization of CIT*, 31 INT'L J.L. & PSYCHIATRY 359, 359-68 (2008).

14 E.g., BD. OF EDUC. OF THE CITY OF CHI., STUDENT CODE OF CONDUCT (2009).

15 *Id.* at 8.

16 *Id.* at 48-54.

17 Chicago Area Project, Community Justice for Youth Institute, and many others assist in the training and facilitating many of the Balanced and Restorative Justice Programs implemented in Chicago.

18 *Application of Gault*, 387 U.S. 1 (1967).

19 *Miranda v. Arizona*, 384 U.S. 436, 444-45, 473-74 (1966); See generally Kenneth J. King, *Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights*, 2 WIS. L. REV. 431 (2006).

20 *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

21 705 ILL. COMP. STAT. 405/5-405 (1999).

22 Andy Clark, Comment, *Interested Adults with Conflicts of Interest at Juvenile Interrogations: Applying the Close Relationship Standard of Emotional Distress*, 68 U. CHI. L. REV. 903, 903-04 (2001).

23 705 ILL. COMP. STAT. 405/5-170 (2005).

24 Barry C. Feld, *Juvenile's Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26 (2006).

25 See Richard A. Leo et al., *Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century*, 2006 WIS. L. REV. 479 (2006) (discussing that young children and adolescents tend to be immature, naïvely trusting of authority, acquiescent, and eager to please adult figures and that these traits predispose them to be submissive when questioned by police).

26 See LOURDES M. ROSADO & RIYA S. SHAH, PROTECTING YOUTH FROM SELF-INCRIMINATION WHEN UNDERGOING SCREENING, ASSESSMENT AND TREATMENT WITHIN THE JUVENILE JUSTICE SYSTEM 55 (Juvenile Law Center, 2007), available at www.jlc.org/files/publications/protectingyouth.pdf (discussing model Legislation that has been drawn up by the Juvenile Law Center).

27 TANENHAUS, *supra* note 7, at 25.

28 *Id.* at 6.

29 *Id.* at 6.

30 *Id.* at 24.

31 JUVENILE JUSTICE INITIATIVE, CHANGING COURSE: A REVIEW OF THE FIRST TWO YEARS OF DRUG TRANSFER REFORM IN ILLINOIS 16 (2008), available at http://justiceforyouth.com/documents/IL_ChangingCourse.pdf.

32 S.B. 2275, 96th Gen. Assem., Reg. Sess. (Ill. 2009).

33 See T. Paus, *Mapping Brain Maturation and Cognitive Development during Adolescence*, 9 TRENDS IN COGNITIVE SCI. 60 (2005).

34 705 ILL. COMP. STAT. 405/5-130 (2) (2006).

35 705 ILL. COMP. STAT. 405/5-130 (2) (2006).

36 JUVENILE JUSTICE INITIATIVE, *supra* note 31, at 16-17.

37 See D.L. Myers, *The Recidivism of Violent Youth in Juvenile and Adult Court: A Consideration of Selection Bias*, 1 YOUTH VIOLENCE & JUV. JUST. 79, 94 (2003).

38 JUVENILE JUSTICE INITIATIVE, *supra* note 31, at 16-17.