

CONTINUING LEGAL EDUCATION

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THE REPRESENTATION OF ADOLESCENTS IN ADULT CRIMINAL COURTS - PART II

THE NATURE OF ADOLESCENCE – IMPACT ON CRIMINAL
RESPONSIBILITY AND LIABILITY: STRATEGIES FOR DEFENSE

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*The Representation of Adolescents
in Adult Criminal Courts*

Session 2

The Nature of Adolescence

How many of you have ever been 14?

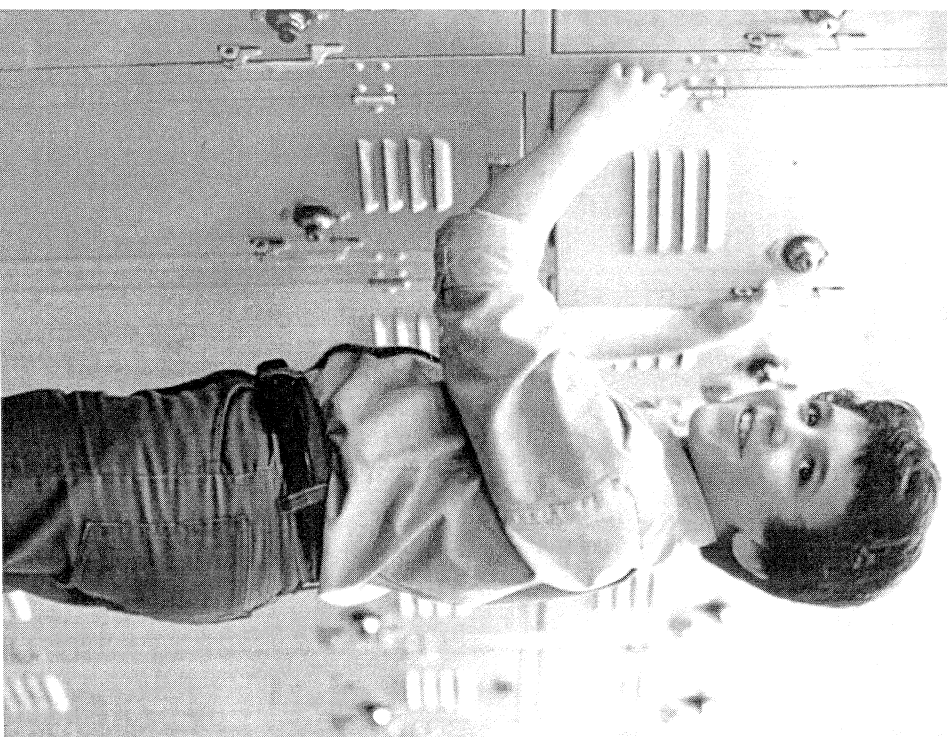
The Adolescent Experience

- That is how I often facetiously begin a discussion with mature audiences on the relationship of adolescence to juvenile crime.
- The serious point of the question is to emphasize that offending and non-offending teenagers, as well as adults, share at least one thing in common: the adolescent experience.

Remembering

- Evoking the memory of our own adolescence is crucial to understanding the issues involved in judging the culpability of juveniles who commit crimes and determining the appropriate societal response to their behavior.

The Nature of Adolescence



“But who are you at 14? Who are you at 14? You
are what your friends think you are.”

-- Kevin

Building a Developmentally Sensitive Process

- Building a process that reflects developmentally sensitive principles of justice requires, In the first instance an understanding of the nature of adolescence and the particular qualities of adolescence that have a bearing on youthful offenses.
- For Example: What are the qualities or attributes of adolescence that contribute to a juvenile's susceptibility to mischief and trouble with the law?

Adolescence

Adolescence was first recognized as a distinct developmental phase in modern psychology at the turn of the 20th Century. It was classified as a transitional stage between childhood and adulthood brought on by the onset of puberty.

-- G. Stanley Hall

Adolescence (1905)

A Legal Definition of Adolescence

“The psychosocial response to the profound biological changes of puberty within a social context.”

Professor Robert E. Shepherd Jr.,

University of Richmond's T.C. Williams School of Law

The Key

- This definition is our key to constructing an effective youth policy-the recognition that the experience of adolescence has a bearing on culpability, influencing behavioral choices, and that although the non-offending teenager and the delinquent share the experience of adolescence, they often do so in vastly different social contexts.

Adolescent Traits

Three traits of teenagers that create fertile ground for juvenile offending:

- Impulsivity
- Shortsightedness
- Peer pressure

Collective Adolescent Behavior

- Collective adolescent behavior is the hallmark of juvenile crime. The quest for friendship, to belong, to be part of a group, to be accepted, is a powerful, if not dominant, adolescent trait. It heightens a child's vulnerability to peer pressure.

Common Understanding

- We have always known that adolescents behave differently than adults. Young people are more impulsive, more shortsighted, more willing to take risks, and more susceptible to the influence of their peers.
- Anyone who has raised a teenager, taught a teenager, counseled a teenager, or been a teenage knows this.

Science

- Scientific discoveries about brain development have helped us understand why this is true, but they haven't changed the basic storyline.

Robert

Andrew

Positive Principles of Youth Development

- Malleability
- Resiliency

Malleability

The recognition that because of their youth, adolescents are not wedded to their past. They are less committed to their misconduct and more adaptable to positive influence than most adults who commit crimes.

Resiliency

The ability of youth to positively adjust, respond, and be optimistic even in the face of significant trauma, both physical and emotional.

Alice

Overarching Principle

Youth are developmentally different from adults, and these developmental differences need to be taken into account at all stages and in all aspects of the adult criminal justice system.

-- “Youth in the Criminal Justice System, ABA Guidelines”

A concept of justice based on a recognition of the developmental differences of adolescents

A concept of justice based on fairness and
“giving each person his due” cannot
encompass a system that denies adolescents
full participation in civil society based on their
immaturity and yet, at the same time,
punishes them criminally despite their
immaturity.

Justice for *Adolescents*

- Consequently, a view of adolescence which holds that childhood mistakes are to be expected and, if their nature permits, we should view these mistakes as an opportunity to teach and help teenagers grow – move forward, rather than backward – in the process of adolescent development is more consistent with a system of proportionate justice.

The Youth Part

A Judge for 28 Years

- As many of you know I was a judge for 28 years-serving in the adult criminal courts. The last 16 years of my tenure I presided over a special court- the youth part- which had the responsibility of resolving the cases of all of the 13, 14, and 15 year olds charged as adults pursuant to the juvenile offender law; and there co-defendants regardless of age.
- As a result I resolved the cases of thousands of teenagers.

The Issue

- I've grappled with the question of "How should a just and democratic society treat children who violate the law?"

The Process

Dr. Stewart Ablon

- According to Dr. Stewart Ablon a prominent child psychologist, resilient kids succeed despite tough situations.
- They usually can point to one adult who created a “helping” relationship with them; a parent, guardian, or teacher.
- That one adult can also be a judge.

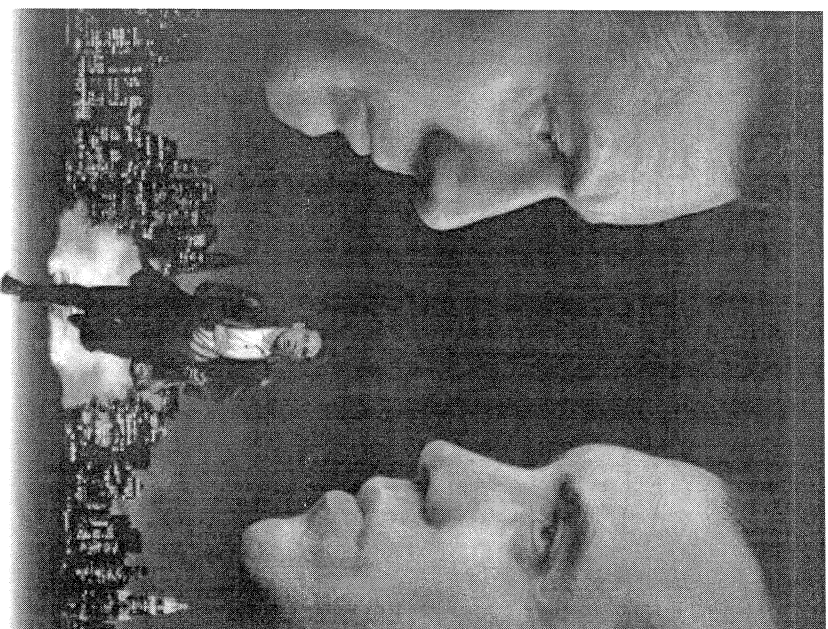
Youth Part Procedure

- In the Manhattan criminal court, prior to 1992, the cases of all youth under 19 years of age, including those 13, 14, and 15 year olds classified as Juvenile Offenders were randomly assigned to judges in the same manner as adult cases were processed. A youth's case, therefore, could be referred to any one of the approximately 50 judges presiding in the adult criminal term.

Advantages of a Specialized Part

- A more uniform treatment of teenage defendants.
- The concentration and integration of court and private agencies dealing with youth.
- A greater diversion of teenage offenders to private agencies for supervision and counseling, thereby supplementing an overworked and overburdened probation department.

Model and Method



A BRONX TALE

Challenge

- How did we or could we “Identify” that kid?
- We created a process to help us make that determination.

Design

- The Youth Part was designed to facilitate the identification of a malleable youth
- An apparatus that could help identify those young offenders who could demonstrate that they were capable of overcoming their problems without compromising public safety

The Process

- Gather as much information as is available about the youth.
- Assess the youth's background and involvement in the offense to determine level of culpability.
- Develop a plan/ a structured plea.

Essential Tools in the Process

- The postponement of sentence after plea
- The conditional nature of the sentence
- Validation/monitoring
- In-chambers conference

Three Questions

Three questions should be considered before determining an appropriate sentence:

1. Does the juvenile represent a danger to society?
2. Can he be rehabilitated – can he learn from his mistakes, does he have the capacity to develop his character?
3. Will he be amenable to a sentencing process structured to give him the opportunity to prove that he can behave appropriately in educational and other social settings?

Validation

Validation of a youth's progress consisted of two aspects:

- A. Rigorous monitoring of a youth's progress and performance in a program
- B. Exploiting teachable moments to provide mentoring

Youth Part Goal

- Our goal was to construct a legal off ramp that would give us the capacity to hold young offenders accountable for their misdeeds in ways that get them back on track, instead of punishing them in ways that derail their transition to a productive adulthood.

Alternative to Incarceration Programs

- In this process ATI programs played an important role. They were considered extensions of the court and were required to be responsible and responsive.

Fundamental Ideas

A Central Dilemma

- Each day in my courtroom I confronted one of the central dilemmas of our time.
- A dilemma that we all face in our families, in our schools, in our neighborhoods.
- How do we persuade children that they can achieve their goals without violence, when they are living in a violent world.

Who are your heroes?

Education is Key

- In a democracy knowledge is power.
- Reason not might makes right.

The Power of Disappointment

- In a recent New York Times editorial the author stated the most effective response to bad behavior is to express disappointment.
- The beauty of expressing disappointment is that it communicates disapproval of the bad behavior, coupled with high expectations and the potential for improvement.

- In expressing disapproval:
 - Explain why the behavior was wrong.
 - How it affected others.
 - How they can rectify the situation.
- “You’re a good person, even if you did a bad thing, I know you can do better”.

A process to assess a young person's
“attitude,” “potential,” and his “prospects” for
rehabilitation.

Earning YO

- The Youth Part process was designed to reduce reliance upon “automatic” granting of YO treatment by allowing the “YO” decision to be made after a youth’s experience with the court

YO Factors

- The factors that the court must consider in determining whether to grant or deny YO treatment ultimately center upon the prospects or potential of a youth for rehabilitation. A conditional sentence allows a determination that is not limited to assessing a youth's past behavior as the basis for granting or denying YO treatment. By deferring or postponing a sentence and a decision to grant such relief, a judge can base his or her ultimate decision on a child's performance after intervention.
- Education is at the heart of this rehabilitative process and is assisted by rigorous judicial monitoring.

Incentives: The Carrot and the Stick

The Youth Part approach provided incentives for a youth to respond to services directed by the court and protected society if the youth did not adequately respond to court intervention.

Community based early intervention response

- In essence, what we developed in the youth part was a community based early intervention response to juvenile offending within the framework of the adult legal system.
- It became a model for the mobilization and coordination of the treatment and social services for children prosecuted in adult court.

Risk Management

- Shared decision-making
- The principled compromise
- Regular communication
- Advancing cases when a program is not working
- Curfew monitoring
- Timely reports from all agencies coming into contact with a youth

Shared Decision - Making

- Two concepts emerged from this process that helped to establish a collaborative approach to a resolution of cases between the prosecution, defense and the court. One we will call the concept of “shared” decision making. That is involving the prosecution and defense in the process in such a way that they assume “ownership”, “responsibility”, for a young offenders progress.

Curfew

- For Example: If a defendant violated the terms of his conditional sentence by not calling in consistently for curfew, we would involve the prosecution in the decision as to whether to continue participation and if the prosecutor agreed after an appropriate cautionary warning by the court, to permit the youth to continue in a program, this involvement gave the prosecutors a further stake in the success of the process.

The Principled Compromise.

The other concept which emerged early on in an effort to get a consensus as to an appropriate response to youthful criminal behavior, was the principled compromise.

- “The principled compromise implies that no interest is compromised without “moral” justification.

A Split Sentence

- Consequently, in cases that were difficult to achieve prosecutorial and defense consensus, we agreed to a preliminary determination of a duration of temporary confinement before giving a youth an opportunity to earn youthful offender treatment, the equivalent of a split sentence.
- We did so on the understanding that the nature of the offense does not tell us all we need to know about the nature of the offender.

Our goal in the Youth Part was to motivate a child so that he or she would seek positive help when needed, resist negative peer pressure, and consider consequences before acting.

“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exist that a minor’s character deficiencies will be reformed.”

Ropers v. Simmons 543 U.S.
551 U.S. 551(2005)

Key Principles in The Representation of Adolescents

- Cultivate the ability to engage with young people.
- Recognize and integrate the malleability and resiliency of adolescents in dispositional recommendations.
- Cultivate a reintegrative / restorative approach to dispositions.
- Cultivate a recognition of the redemptive quality of children.
- Cultivate the right attitude.

The Science

Science / Commonsense

- The scientific evidence relating to adolescent development supports the common sense we apply in the resolution of cases involving teenagers.
- It is important to note that the scientific arguments do not say that adolescents cannot distinguish right from wrong, nor that they should be exempt from punishment.

Adolescence as Mitigation

- Rather, they point to the need to consider the developmental stage of adolescence as a mitigating factor when juveniles are facing criminal prosecution.
- The same factors that make youth ineligible to vote or to serve on a jury require us to treat them differently from adults.

Less Guilty by reason of Adolescence

- Consequently, teenagers are not –not guilty- by reason of adolescence but they are “less guilty by reason of adolescence”.

Supreme Court Juvenile Justice Jurisprudence

- Three times in the past 10 years , the Supreme Court has held that imposing harsh criminal sentences on juveniles violates the Eighth Amendment's prohibition on cruel and unusual punishment.

Roper v. Simmons 543 U.S. 551 (2005) rejected the imposition of the death penalty for a crime committed by a youth under 18 years of age.

Graham v. Florida 130 S.Ct. 2011 (2010) held that no minor could be sentenced to life without parole (LWOP) for a non-homicide offense.

Miller v. Alabama 132 S.Ct. 2455 (2012) prohibited the mandatory imposition of LWOP on a juvenile convicted of homicide.

Children Are Different

These cases announced a broad principle grounded in developmental knowledge that “children are different” from adult offenders and that these differences are important to the law’s response to youthful criminal conduct.

Viewed together, these cases reveal a judicial policy which recognizes that juveniles under 18 years of age are entitled to special care and protection because they are still developing physically, mentally, and emotionally; a policy that recognizes the “diminished” capacity and responsibility of children for their criminal behavior.

- The court has recognized a special status for young offenders and emphasized the importance of considering youth and immaturity in sentencing decisions involving adolescents; a concept reinforced by New York's Court of Appeals in People v. Rudolph.

- These decisions embody a set of constitutional values mandating fair treatment of young offenders.
- They reinforced a developmental approach, analysis, and evaluation of culpability and elevate the status of adolescence to one grounded in constitutional principles.

In Roper v. Simmons, the Supreme Court recognized three general differences between juveniles under 18 and adults demonstrating that juvenile offenders cannot with reliability be classified among the worst offenders.

Children are Different

- First, a lack of maturity and an underdeveloped sense of responsibility.
- Second, vulnerability or susceptibility to negative influences and outside pressures, including peer pressure
- Third, the character of a juvenile is not as well formed as that of an adult.

Two Consistent messages

The Eighth Amendment opinions offered two consistent messages – that juveniles who commit offenses are less culpable than their adult counterparts and that they are more likely to reform.

Judicial Responsibility

- In these three cases a majority of the justices of the Supreme Court articulate a judicial policy concerning the resolution of cases involving adolescents that imposes on a judge a special obligation to recognize these differences .
- This policy implies that the immaturity of adolescents cannot constitutionally be ignored or neglected in judicial decision-making.

**What does this mean for
judges?
What is the message?**

Judicial Responsibility/The Role of the Judge

Resolving Cases Involving Adolescents

“These developments in the body of knowledge concerning juvenile development underscore the need for judicial procedures that are solicitous of the interests of vulnerable youth, especially under New York's current youthful offender process in which guilt is determined in the context of a criminal justice system designed for adults. Young people who find themselves in the criminal courts are not comparable to adults in many respects and our jurisprudence should reflect that fact”.

Judge Victoria Graffeo, Concurring Opinion People v. Rudolph

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