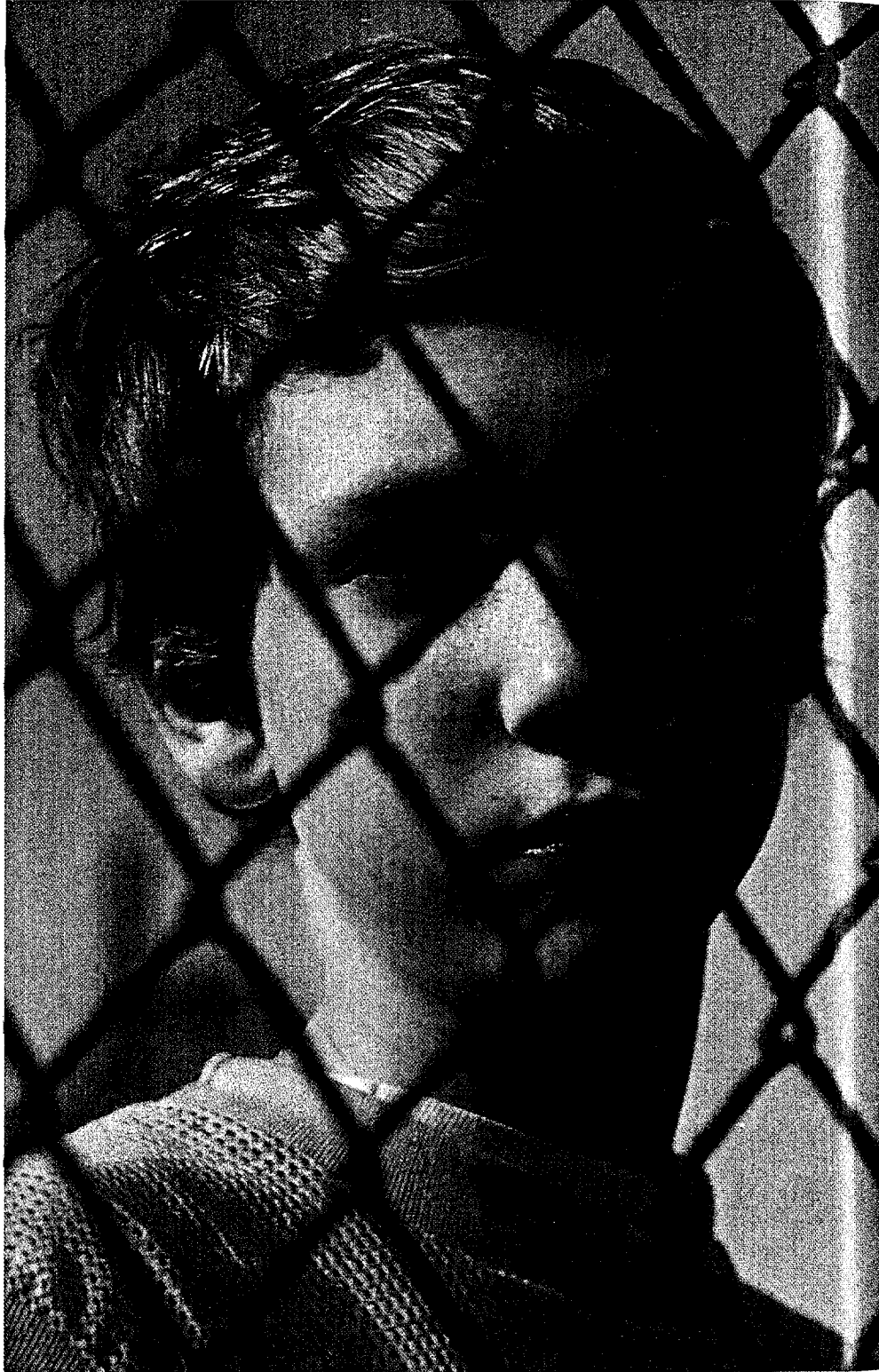
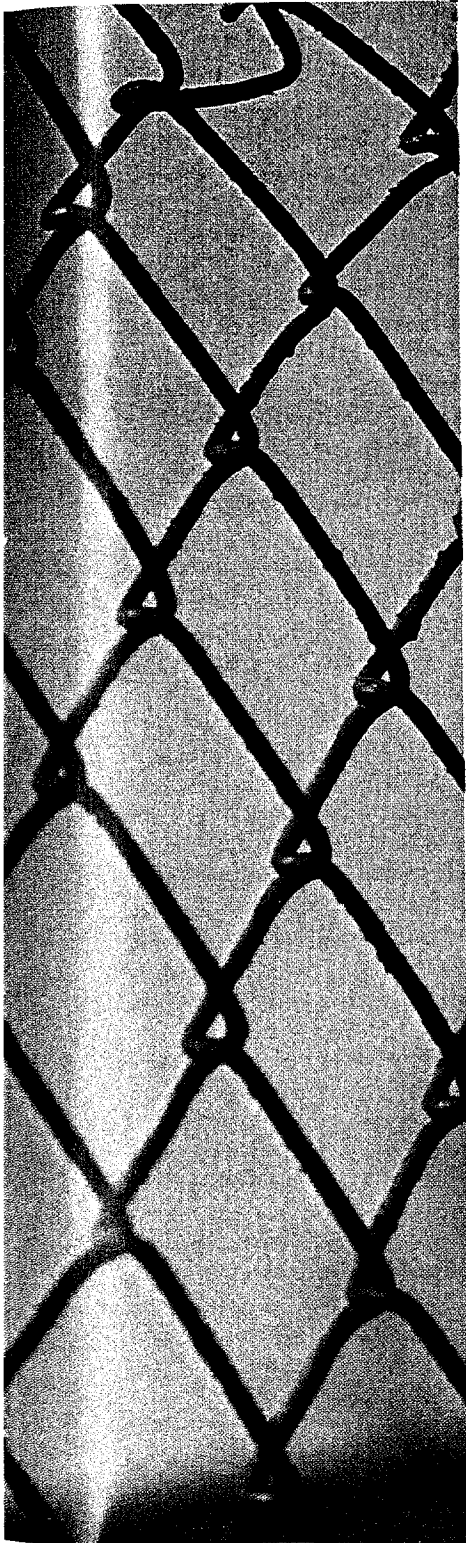


Wards Or Waifs



Of The Court

by Susan Leviton



The juvenile courts of the United States have traditionally had a rehabilitative and protective role in the lives of children. However, modern changes in the juvenile court system threaten its ability to fulfill that role effectively. One of these changes is a shift from the juvenile court having a rehabilitative purpose to a more punitive one. Another shift has been a decrease in the power of the juvenile court to ensure that children receive the services and treatment they need. To better understand why these shifts have occurred, one needs to look briefly at the history of the juvenile court, examine why it was established, and assess ways of ensuring that it will still play a major role in the rehabilitation and treatment of children.

In July 1999, America's juvenile courts celebrated their 100th anniversary. Founded because children's rights advocates, or progressives, were troubled by the discovery that hundreds of children, some as young as eight years of age, were jailed alongside adults, they pushed state lawmakers in the late 1800s to create a separate justice system for children. The juvenile court system was the first in a series of century-shaping reforms for children, including mandatory public education, child labor laws, and development of parks and recreation spaces.

The progressives defined childhood as a sacred period in human life, a period in which children and adolescents required the nurturing and guidance of adults to mold them into moral, responsible people. No longer were children treated as "mini-adults" — they were perceived as qualitatively and developmentally different. Because their personalities were still in the process of formation, children were thought to be less culpable for their actions and more amenable to rehabilitation. Pro-

gressives believed that a child's misbehavior was a direct result of some bad influence in their environment.

Hence, removing them from this environment and placing them in one in which they received appropriate attention and instruction would halt their development from juvenile to career crime. The reformers believed that the state had a moral obligation to act as a "kind and just parent" to each of its children. *Second Chances: 100 Years of the Children's Court, Giving Kids a Chance to Make a Better Choice* (Justice Policy Inst. & Children and Family Justice Ctr.) (1999), hereinafter *Second Chances*.

The juvenile court created by the progressives reflected their vision of childhood by functioning as a rehabilitative tool. Juvenile offenders were defined less by their offense than by their need for adult guidance and care. Rather than doling out crippling punishments as in the adult system, juvenile judges worked in tandem with probation officers and social workers to give each child individualized attention and to form a plan of treatment to meet their needs. Working with children required more flexibility than working with adults, and judges were given broad discretion to fashion appropriate remedies.

Since that time, research has shown that the vast majority of children who break the law do not go on to become career criminals. In fact, most of these children learn their lesson and do not commit further crime. The same holds true for children in juvenile court. Most children who appear before the court do so only once. The court's power to turn kids around and help them become productive, law-abiding members of society is well-documented. *Second Chances*.

Maryland courts today acknowledge that the foremost consideration in the disposition of juveniles was a course of treatment and rehabilitation best suited to promote the full growth and development of the child. *In re: Keith W.*, 110 Md. 99, 1987. The state's position as a "kind and just par-

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ent," commonly known as the doctrine of *parens patriae*, is also reflected in the purpose clause of the Juvenile Causes Act: "If necessary to remove a child from his home to secure for him custody, care, and discipline as nearly as possible equivalent to that which will be given by his parents" (Md. Code Ann., Cts. and Jud. Proc. Art. §3-802(6)) and "To provide for the care, protection, and wholesome mental and physical development of children... and to provide for a program of treatment, training, and rehabilitation consistent with the child's best interests and the protection of the public interest." Md. Code Ann., Cts. & Jud. Proc. Art. §3-802(4).

However, the state is becoming an increasingly impoverished parent. As the number of children requiring care and treatment from the juvenile system continues to grow, funding for child-serving agencies fails to keep pace. For example, Maryland's detention facilities are intended to provide temporary placement for children pending adjudication and disposition of their cases by the juvenile court. *Id.* §3-801(1). However, more than 25 percent of the children in overcrowded detention facilities have already been adjudicated by the juvenile court and committed to an agency for placement in a specialized treatment program. Many never receive the proscribed treatment.

These kids, many of whom have a diagnosed need for mental health or drug counseling, sit in detention where they receive no services at all. The Department of Juvenile Justice contends that children in detention do not need these services because their stay there is only short-term. Nevertheless, the department acknowledges that many children spend more than 30 days in detention, and often their stay stretches for a period of several months.

Sexual offenders and children requiring specialized mental health care tend to wait the longest, due to the limited money available for treatment programs. Detention facilities do not have an adequate number of psychiatrists or psychologists on staff and cannot meet the basic medical needs of the delinquent and mentally ill children who spend the most time in detention. In one particularly outrageous case last summer, a child was forced to detoxify from his heroin addiction without medical supervision or at-

tention as he waited in detention. This potentially life-threatening situation ended in the boy's emergency hospitalization.

The 25 percent of youth in detention facilities who have diagnosed mental health problems and the 40 percent with substance abuse problems receive no treatment whatever. *Shelton, D., Estimates of Emotional Disorder in Detained and Committed Youth in the Maryland Juvenile Justice System. Maryland Juvenile Justice Advisory Council. May 1996, p. 16 and Department of Juvenile Justice Three Year Plan 2000-2002. State of Maryland. February 1, 1999.* When the underlying causes of a child's delinquency are not treated, then there is no reduction of the incidence and severity of future delinquent behavior.

Because children wait so long for placement, there are tremendous overcrowding problems in detention facilities. For example, in Cheltenham, the state's largest detention center, dormitories were built to safely house 27 children and later retrofitted for an increased capacity of 40. In June 1999, one dormitory was home to 89 boys and the other to 92. Forty-eight others slept on cots in large recreation rooms functioning as makeshift sleeping quarters. *Facility Census Log, June 3, 1999. Department of Juvenile Justice.* Staff must stay in the recreation rooms to supervise and cannot, for example, leave to unlock dormitory cells to allow other children to go to the bathroom during the night. Consequently, some children urinate in their rooms, compounding the squalid living conditions.

In these overcrowded facilities, staff rely more on punitive, physical control, thus contributing to an environment where physical dominance rather than problem solving through communication is the norm. Children fight each other for turf and status, making their time in state custody simply an extension of their lives on the street. This is a far cry from the progressive vision of rehabilitating the child by removing him from a dangerous environment and taking him under the nurturing wing of the state.

Advocates for children suggest that repairing the system will require a much more active involvement of the juvenile court. The authority of the juvenile court to order an appropriate program of services and specify the type of placement where the services will be provided has

engendered much administrative, legislative, and judicial debate. An examination of Maryland's law illustrates clearly that the legislature intended the court to play a major role in ensuring that juveniles receive appropriate treatment.

For instance, disposition is defined as a hearing to determine 1) whether a child needs the court's assistance, guidance, treatment, or rehabilitation; and if so, 2) the nature of that assistance, guidance, treatment, or rehabilitation. Md. Code Ann., Cts. & Jud. Proc. §3-801(n). Various agencies assist the court in making its disposition by preparing reports outlining treatment alternatives and recommendations. *Id.* at §3-818. After reviewing the agencies' recommendations, the juvenile court must decide what type of treatment or rehabilitation is required. To ensure that these treatment needs are met, the legislature has also provided for judicial authority to 1) enter a commitment order which is effective for three years and renewable until the child reaches the age of 21, *Id.* at §3-825(b); 2) require the agency to file periodic progress reports with treatment recommendations, *Id.* at §3-826; and to 3) enter an order controlling the conduct of persons before the court where such an order will assist in rehabilitation or is necessary for the welfare of the child. *Id.* at §3-827(l).

Additionally, juvenile judges are charged with the responsibility of determining whether the juvenile court should waive its jurisdiction, allowing the youth to be prosecuted in the adult criminal system. *Id.* at §3-817. One factor the court is required to weigh is the youth's amenability to treatment in the juvenile system. Absent broad authority to 1) identify treatment needs and 2) ensure that those needs will actually be met in an appropriate program, the juvenile court lacks a sound basis for making this crucial determination.

As a consequence of this heavy reliance on the juvenile court's expertise, the legislature has provided that juvenile court judges and masters be specifically assigned to the division of juvenile causes. This assignment is to be based on temperament and special expertise or training in juvenile causes and the problems of children. *Id.* at §3-803.

Although the legislature has conferred broad discretion on the juvenile court, the judges' authority at disposition is not unfettered. Historically, appellate courts

have found that juvenile judges lack the power to commit a child to a public agency with the requirement that he or she be housed apart from adult patients, *In re Appeal No. 653*, September Term 1975, 277 Md. 212 (1976); or with the requirement that the child be placed in an expensive, private psychiatric hospital. *Maryland Department of Health and Mental Hygiene v. Prince Georges County Department of Social Services*, 47 Md. App. 436 (1980).

In response to these decisions, the legislature amended the disposition section of the Courts and Judicial Proceedings Article to give the court the authority to commit children to the custody of an agency on terms that the court considers appropriate, including designating the type of facility where the child is to be accommodated. Md. Ann. Code, Cts. & Jud. Proc. Art. §3-820. *In re Demetrius J.*, 321 Md. 468, 583 A.2d 258 (1990). This compromise, which gives the court authority to designate the type of facility, but not to dictate the specific placement, has often been used by the agencies as an excuse to allow children to languish in detention waiting for services. As United States Court of Appeals Judge Patricia Wald stated more than 23 years ago:

The curse of juvenile courts has always been their lack of appropriate disposition resources for the variety of problem children they handle. The availability of detention facilities for holding juveniles indefinitely in lieu of a final placement thus has proven a convenient device for avoiding reform... After detention of (at most a few weeks), release or transfer to a permanent placement should be mandatory. If a juvenile justice system in fact has no resources to treat or rehabilitate, the dilemma ought to be faced in open court...

ABA Institute of Judicial Administration, ABA Juvenile Justice Standards, Interim Status, New York, 1979, p. 13.

Thus, the courts and attorneys working with these children must be much more actively involved to ensure that, once a child is committed to the state, he gets the services and type of placement needed. The basis for that responsibility is the doctrine of *parens patriae*, i.e. The state assumes the role of parent when it determines that the actual parents are unable to supervise the child. If the child is taken from his fam-

ily and deprived of his liberty, then the state has an affirmative obligation to provide him with adequate care. If the state fails to do so, then it has subverted the very basis for its action.

Maryland rarely fulfills this responsibility because it has not made the budgetary commitment to ensure that these children will receive appropriate services once the state becomes their "parent." Nor is Maryland unaware of this problem. As far back as 1975, the General Assembly passed Maryland House Joint Res. 49, 1975 Md. Laws 3866, creating a Commission on Juvenile Justice to determine how the juvenile justice system could be made more responsive to the needs of children. The Commission's final report, issued in 1977, states:

The Commission is convinced that intervening in the life of a child and his family should only occur when benefits to them are likely to be realized. Necessary resources to implement the provisions must be supplied by the appropriation of adequate funds. The Governor and General Assembly are urged to meet the challenge.

Karwacki Comm'n. Report at 27 (1977).

Only by insisting that courts conduct periodic reviews, and that officials be held in contempt if services are not provided, can we ensure that children receive the services they need. This was the original purpose of the juvenile court. In 1902, the state's first juvenile court in Baltimore City was a police court for minors, where judges had limited authority. Once a judge committed a child to a training school, he lost power to ensure that the child received appropriate care.

Dissatisfaction with this system prompted a change in 1943 by transferring juvenile court to circuit court, where the judge's equity powers enabled him to retain jurisdiction over children and monitor the care and treatment they received. Many of the children who traditionally were placed in training schools were now successfully supervised by probation. The first year of the new court, a 14½ percent decline in delinquency cases was noted. Dorothy Zietz, *The Development of the Juvenile Court Movement in Maryland, 1900-1948*. (1951) Unpublished Ph.D. dissertation, University of Maryland College Park (on file at the University of Maryland College Park library)

(hereinafter, *Zietz*). Thus, only by reasserting the power of the court can we ensure that the important role of the juvenile court in upholding the rights and interests of children is preserved.

In addition to those people who have become disenchanted with the juvenile court, because they feel it does not have the power to ensure that children receive the services they need, some critics perceive all juvenile offenders as "violent super-predators" and see the juvenile court as too permissive. This groups seeks, not to reform, but to abolish the juvenile court. They have sought to accomplish this goal by broadening transfer statutes so that more juvenile offenders are transferred to adult courts. This dilutes the court's original purpose as a separate and distinct system which rehabilitates and treats children. As attitudes toward juvenile offenders change and less money is allocated to juvenile programming, we stray further from the progressive vision of a separate juvenile court system.

Ironically, although juvenile homicides have dropped by 45 percent since 1993, two-thirds of Americans believe that crime by juveniles is on the rise. In fact, less than one half of one percent of all American children were arrested for violent crime last year. *Second Chances* at p. 4. Similarly, 45 percent of Marylanders surveyed believe that youth crime increased last year, when it actually decreased. *Residents' Perceptions and Opinions Regarding Crime Among Maryland Youth*, Prepared for the Maryland Juvenile Justice Coalition by WB&A Market Research, October 22, 1999.

The media fuels these misperceptions: the majority of times kids are portrayed on the evening news, it is in connection with violence. As Judge David Young, one of the Baltimore City Juvenile Court Judges stated: When I first came to the court, everybody was talking about the "juvenile superpredators," so I kept waiting on the superpredators. They never came. I never saw any superpredators in my court. What I saw were 14- and 15-year-olds, scared to death. *No Minor Matter, Children in Maryland's Jail, Human Rights Watch*, p. 12.

From its inception, the proponents of juvenile court realized that the institution was uniquely dependent on public perception. In 1909, the Chairman of the Bal-

timore Conference of Charities and Corrections noted: A very important phase of Juvenile Court... is the attitude of the public towards the Court. In this respect it is unique. No other court depends for the successful working of its machinery upon public opinion as does this court... Public opinion approves the principles upon which the court is founded... Zietz, at 43.

In 1999, this still held true. As public perception of juvenile offenders changes, politicians call for crime toughening measures, budgets for treatment programs are slashed, more children are transferred to adult court, and some lobby for the outright abolition of the juvenile court.

Consequently, we now face a situation where the hundred-year-old experiment called the juvenile court is badly misunderstood by the very nation that founded it. The result is suspicion and sometimes outright hostility toward a separate system of justice for children. Between 1992 and 1995 alone, 41 states changed their juvenile justice systems to make it easier to try juveniles as adults, and just as many have eroded confidentiality protections. In 1998, nearly 18,000 children spent time in adult prisons - 3,500 of those in the general adult prison population. There are another 7,000 to 8,000 children jailed with adults on a daily basis.

Baltimore City's Juvenile Court was created in 1902 because of concern that between 600 and 700 children were committed to Baltimore City's adult jails that year. Zietz, at 24. But in 1997, more than 900 children were again jailed in the Baltimore City Detention Center. "Maryland's Youth do not Belong in Adult Courts, Jails or Prisons," *Md.'s Juvenile Justice Coalition Issue Brief*, Aug. 1999 (hereinafter Issue Brief). This is because Maryland, since 1994, has followed the national trend of sending more children under 18 to adult court when charged with serious crimes.

In Maryland, hundreds of children are being held in appalling conditions in Baltimore City Detention Centers and other adult jails. Juveniles are confined to dimly lit, squalid cells, crawling with cockroaches and rodents, and subject to extreme temperatures. Violence between inmates is rampant and may include "shanks," weapons fashioned or pieces of metal from air vents or old light fixtures.

Mental health services in Baltimore's jail are minimal to non-existent, with no services designated specifically for juveniles. Although children in adult jails are eight times more likely to commit suicide than their peers in juvenile detention centers, children in the Baltimore jail have no therapeutic group or individual counseling. Inmates in crisis are placed in a mental health unit, where they are often kept naked, with nothing more than paper blankets to cover their bodies.

Children in adult facilities are often exposed to adult inmates or placed in the same unit as adults. Contrary to international guidelines, children may have daily contact with adults, or even share cells. One youth in the Baltimore City Detention Center told Human Rights Watch that adult detainees in his section continually harassed him by throwing excrement and urine into his cell. After complaints yielded no results, he resorted to telling guards that he was suicidal, and was moved to the psychiatric wing for several days. *No Minor Matter, Children in Maryland's Jails*, Human Rights Watch, November, 1999.

While the juvenile court is far from a perfect institution, the majority of children who are referred to juvenile court do not return. However, children transferred to the adult system are more likely to reoffend, and commit serious crimes at a greater rate than those sent to juvenile facilities. "The Transfer of Juveniles to Criminal Court: Does It Make a Difference," *Crime and Delinquency*, Vol. 42 No. (2), April 1996. Juvenile offenders are also more likely to pick up criminal habits and associates in the adult criminal system than to be deterred from re-offending. And children jailed with adults are five times more likely to be sexually assaulted. "Baltimore's Children in Jail: A Report on Minors at the Baltimore City Detention Center," *Maryland's Juvenile Justice Coalition*, June 1999.

Nor does trying children in adult courts produce even a short-term benefit to public safety. A University of Maryland study of Pennsylvania offenders indicated that excluding children from juvenile court may have the unintended effect of returning them to the community faster. Adult judges may see youthful offenders as children, be reluctant to issue tough sentences, and thus set them

free sooner. Juvenile court judges are more familiar with adolescents and may be more likely to impose graduated sanctions, order rehabilitative services, and keep them off the streets.

Studies in New York and Florida, the two states which imprison the most children in adult facilities, found that those tried in adult court were more likely to engage in criminal behavior following release than a comparable sample of children in juvenile facilities. *Maryland Juvenile Justice Coalition Issue Brief*, August 1999. In fact, New York and Florida still have the highest rates of juvenile crime in the nation. *Coalition for Juvenile Justice (1998): "A Celebration or a Wake: The Juvenile Court After 100 Years."*

Those who support abolition of the juvenile court claim that today's children are different from those in the past. This is obviously true: they are more likely to witness violence, to live in families destroyed by substance abuse, and to have easy access to deadly narcotics and firearms. Many children live in neighborhoods that don't allow much room for adolescent mistakes. They see friends shot and fear walking to crumbling schools.

But despite the wreckage around them, they are still children. They still ride bikes, play video games, and go on dates. They are often impulsive and silly. They often make wrong-headed decisions and are too easily swayed by their peers. To the extent that parents and communities fail, society must assume the *parens patriae* role and help children achieve. Sending them to an adult criminal system that is already overburdened and has never been effective at dealing with adult offenders is an abdication of this duty.

We must mourn the fact that much of the founders' vision of the juvenile court, a vision based on children as our hope, rather than our despair, has been discarded. This is not because young people have changed, but because adults are not willing to devote the time, energy, and resources to guide them through adolescence. But the core tenants of the juvenile court - rehabilitation, judicial flexibility and authority to ensure children receive necessary services, and the opportunity for children to have a second chance - are as important now as ever. ♪