

***From First Court Model to Model Court:  
The history of the Cook County Juvenile Court***

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### **1. Preface**

For most of its history the public has largely ignored the court. For better or for worse, little attention was paid to the Cook County Juvenile Court. During the early years of the court various leaders tried to uphold the lofty ambitions of the juvenile court founders. Intrinsicly tied with the history and idea of the court to help children rather than punishing them is “Suitcase Mary” Barthelme. Barthelme, the first Cook County Public Guardian and later a juvenile court judge, earned her nickname because of her practice of giving suitcases neatly packed with dresses toiletries and other necessities to the girls who appeared in court. Throughout the time beliefs changed, what to do with troubled and neglected children and influences of politics and media conflicted with solid knowledge, how to treat these children successfully and allow them to have a future and to become a productive citizen until today.

Historically media attention has driven the public’s interest and awareness of the court. Whether it was conditions at the Juvenile Detention Center or child’s death and the crack cocaine epidemic in the 1990’s, public attention and media attention have a tendency to coincide. Sometimes this has brought needed resources. Other times it has brought wrong-headed solutions that took years to correct. I will talk about the media a little later. During the 15 year tenure as presiding judge, we have tried to be very open to the media so that they may receive a balanced view of the work that we do.

### **2. Historic Periods of the Juvenile Court**

The History of Cook County Juvenile Court consists of three specific periods which represent major shifts for the court:

**First period:** Founding of the court

**Second period:** 1960’s when juvenile justice and child protection cases diverged

**Third period:** The last twenty years when the court underwent major reform

#### **2.1 First Period**

The Cook County Juvenile Court was the first court of its kind in the United States. The state of Illinois created the court in 1899. To have a full understanding of the court, however, it helps to know a little bit about the Chicago of the late eighteen hundreds.

In 1871, Chicago suffered the Great Chicago Fire. The fire destroyed more than 18,000 buildings and left one third of the city’s population homeless. Over the next 30 years, Chi-

ago would rebuild. In 1893, to showcase its progress, Chicago hosted the World's Fair or as it is known in Chicago the Columbian Exposition. The people of Chicago hoped that the fair's 27.5 million visitors would see a new, growing, prosperous Chicago. Indeed, Chicago was all of these. It was new. The world's first steel framed skyscraper, the Home Insurance Building, was built in 1884. The city was growing. Between 1870 and 1900 Chicago's population increased more 500% to nearly 1.7 million people. The population growth reflected not only a migration to Chicago from other parts of the country but an influx of a great many newly settled immigrants from Europe. And the city was prosperous.

This population growth and booming economy were a boon but also presented challenges. For example, there was labor unrest such as the Haymarket Bombing and Riot on May 4, 1883 in which 7 policemen and 4 workers died with as many as 60 police and 70 civilians wounded. There were the Union Stockyards which gave Chicago the title of "Hog Butcher to the World," the conditions of which were memorialized in Upton Sinclair's 1906 novel, "The Jungle." At the same time, the Progressive Movement was taking hold in the United States with some of its leading proponents located in Chicago. It was in this environment that the Chicago Juvenile Court began.

The issue of children becoming criminals had been discussed for some time. Children were arrested for many minor offenses such as truancy, petty theft, and stealing rides on street cars. Once arrested the children were held in police jail and tried in police courts. The offenses frequently resulted in fines but if the families could not pay the fines, the children were sent to the same city jails as adults. In 1884, future Illinois governor John Altgeld speaking of this system referred to it as:

**[A] "great mill which, in one way or another, supplies its own grist, a maelstrom which draws from the outside, and then keeps its victims moving in a circle until swallowed in the vortex."**

At the time of the founding of the Juvenile Court, placards read, **"Who is the Criminal – the State or the Child?"**

Not surprisingly, because of Chicago's rapid growth many residents lived in tenements. The founders of the juvenile court thought that it was these poor social conditions that brought children into the criminal justice system. They believed that the state first neglected those children and then punished them. The thought was that the court could reduce crime by providing services to children to ameliorate their conditions. Thus from its inception the court linked delinquency and abuse and neglect.

Unfortunately, this very early linking of abuse and neglect to future criminal behavior still haunts the court. In saying this, I do not dispute that child maltreatment is a risk factor for delinquency. I do believe, however, that by tying the two together too closely that we reinforced prejudices towards abused and neglected children and their families. Today, our research has shown that these children are treated more harshly

in such areas as scholastic discipline. I submit that this a residual effect of regarding maltreated children as budding criminals.

Returning to the early years of the court, despite the enormous step forward that the juvenile court represented in many ways it was built on a criminal justice model. For example, children and their families were monitored by probation officers and children who did not remain with their parents lived in an institutional setting. Of course there were quite a number of early problems with the juvenile court that focused on societal issues rather than the best interests of children. For example, there were those who sought to shut down the court. There were accusations that the court was akin to child slavery, tearing children from poor families to ship them to other states and nations.

Problems were not confined to the court's opponents. There were conflicts between those who supported and wanted to help the court. Catholic and Protestant affiliated charities argued about how social services would be provided. The worry among both Catholics and Protestants being that the juvenile court would somehow proselytize the children who came before it. Remnants of this dispute remain today in our statutes. The Illinois Juvenile Court Act states that parents retain the right to determine their children's religious affiliations unless parental rights are terminated. Federal law expressly bars race as factor in choosing foster placements but child welfare agencies may take religion into account when choosing a foster home for a child.

The procedures employed by the court reflected a belief that the child was innately good. The child was denied the rights afforded to adult criminal defendants. As the United States Supreme Court (relying on a 1909 Harvard Law Review article) summarized:

**“[The child was] to feel that he is the object of the state’s care and solicitude, not that he was under arrest or on trial. The rules of criminal procedure were therefore altogether inapplicable. The apparent rigidities, technicalities, and harshness which they observed in both substantive and procedural criminal law were therefore to be discarded. The idea of crime and punishment was to be abandoned. The child was to be „treated“ and „rehabilitated,“ and the procedures, from apprehension through institutionalization, were to be „clinical,“ rather than punitive.”**

The reformers who founded juvenile court envisioned a court focused on improving the conditions of children. By the 1930s the pendulum had swung again towards punishing children. In the 1940s and 1950s society expressed its concern regarding the “escalating rate” of juvenile delinquency. These developments set the stage for the next major shift.

## **2.2 Second Period**

The 1960s were a time of turmoil in the United States. Examples of that turmoil were readily evident in Chicago. There were riots during the democratic convention. Hay-

market square returned to the news with the bombing of the police memorial erected in the square to commemorate the police officers killed in the 1886 bombing. The civil rights struggle that began in the 1950s continued. Primarily as a result of that struggle, federal courts were rapidly expanding guaranties of equal protection, due process, and individual rights. Meanwhile the juvenile court continued in an informal atmosphere. The court continued to sit, in theory, in a non-adversarial capacity. While some spoke of the benign paternalism of the court, others disagreed.

### **-In re Gault Ruling**

In 1967, the Supreme Court resolved this dispute in its landmark ruling, *In re Gault*. In Arizona, on a June morning in 1964, 15 year old Gerald Gault and a friend made an obscene phone call to one of Gerald's neighbors. Thus began Gerald's journey to the Supreme Court. Within a week, Gerald was found delinquent and committed to the Arizona State Industrial School for the period of his minority unless discharged sooner. An adult convicted of the same crime could have been sentenced to a fine of between 5 and 50 dollars or imprisonment for up to two months. Gerald faced a potential confinement of six years. The Supreme Court ruled that Arizona had violated Gerald's constitutional rights. Specifically, the Supreme Court found that juveniles accused in delinquency proceedings had the right to notice of the charges, the right to counsel, the right to confront and cross-examine witnesses, and the right against self-incrimination. The *Gault* case marked a turning point in how delinquency hearings would occur. It also marked a divergence between juvenile justice cases and child protection cases. Henceforth, juvenile justice cases took on more of an atmosphere of a criminal case. Child Protection cases retained their civil nature.

When I reread the *Gault* case, I was struck not so much by the failings that the Supreme Court pointed out but by certain admonitions that that court quoted in its opinion:

There was a quote from one judge warning that a juvenile court must not "degenerate into a star chamber proceeding with the judge imposing his own particular brand of culture and morals on indigent people. . . ." Another from a law review article warned that „The judge as amateur psychologist, experimenting upon the unfortunate children who must appear before him, is neither an attractive nor a convincing figure.“ What struck me about those quotes was the call that they made to judges to be humble and not to overreach in our use of our authority. I find that admonition particularly compelling when juxtaposed to the injustices committed and referenced in the *Gault* case.

### **2.3 Third Period**

I am going to spend the majority of my remaining remarks on child protection matters. Before I do that, however, I would like to discuss one more development in juvenile justice, BARJ or balanced and restorative justice.

### **2.3.1 BARJ Principles**

Balanced and restorative justice has three purposes:

- the community
- hold the offender accountable
- equip the offender with competencies to enable the offender to live a productive and responsible life.

The State of Illinois codified these three BARJ principles in 1998 during a complete rewrite of the delinquency article of the Juvenile Court Act.

#### **Protecting the community:**

All of us have the right to live in a safe community. The first prong of balanced and restorative justice recognizes the rights of victims. This prong goes beyond commitment of those minors who present a danger to the community. It recognizes the need to promote, develop, and implement community based programs aimed at preventing delinquency.

#### **Accountability:**

Accountability means that minors understand that their actions have consequences. Accountability is broader than punishment. Accountability means that the offender understands the effects of his actions on the victim and the community.

#### **Competency development:**

This means teaching skills with which the offender can build a productive life. Competency development takes a holistic approach through programs such as multi systemic therapy, MST. MST is an intensive intervention geared towards working with the entire family as a unit.

### **2.3.2 Cook County Intervention programs based on BARJ Principles**

In Cook County there are a variety of programs intended to implement these principles. There are diversionary programs such as peer juries. There is offender victim mediation and victim offender conferencing to assist the victim in securing meaningful restitution. There are programs such as victim impact panels and community panels for youth. These programs help offenders understand how their actions have affected their victims and the community at large.

Probation plans often require minors to provide community service. This way minors can work to benefit and rebuild their communities while the minors learn positive skills. Our probation department also offers interventions aimed at specific types of crime. Probation has a program called Retail Theft School. I have to admit that I am not fond

of this program's name. It sounds like a program that teaches retail theft. In actuality it is a partnership between probation, the state's attorney office, and private loss prevention officers to teach those arrested for retail theft the effects of their behavior, including the effects upon themselves.

As you can see from this brief list of programs, BARJ is an attempt to balance societal interests, victims' rights, and offenders' rights. The BARJ principles are inter-related. They build upon each other. Accountability includes not only punishment but an understanding of the harm caused. Protecting communities isn't just about law enforcement; it's about people becoming invested in their communities. Building competency includes gaining new skills and therapeutic interventions. With that I am now going to move away from delinquency to child protection.

### **2.3.3 Child Protection Courts**

In the United States child protection courts deal adjudicate cases of child abuse and neglect. This is the area in which I have spent the majority of my judicial career. For the last 15 years, I have been the Presiding Judge of the Cook County Child Protection Division. I work with 14 other judges to whom are entrusted the care of 6,100 children. We work closely with the Illinois Department of Family Services and various attorney offices to improve the lives of these children and their families. Our goal is the best interest of the child. First, we try to determine if a child may remain safely with his or her family. If the child must be removed, we attempt to work with the family towards a safe and speedy reunification. If reunification cannot be achieved or is impracticable, we explore other permanent options for the child such as adoption or guardianship with a private individual. This is essentially the framework within every child protection court in the United States operates. Allow me to share with you our road to this destination.

Child protection systems have always had to confront the problems of children growing up in foster care. It is now widely recognized that removal of a child from the child's parents, even when necessary to save the child's life can be traumatic for the child. Even more widely accepted is the fact that childhood traumas may have lasting consequences.

In child protection, that initial trauma may be compounded by multiple placements in foster care, further abuse or neglect, unresolved needs, and countless other factors. In the 1970s, policy makers began to recognize the problem of foster care drift. A situation in which a child entered the child welfare system only to move from foster home to foster home and then "age out" without the skills or support system to be a productive adult. Often times foster care drift was the result of repeated, failed efforts to reunite parents and children no matter how extraordinary those efforts were. Intertwined with repeated failed attempts at reunification was the difficulty in terminating parental rights and freeing the child for adoption.

### **2.3.3.1 The Role of the Adoption Assistance and Child Welfare Act of 1980**

These problems eventually resulted in our Congress enacting the Adoption Assistance and Child Welfare Act of 1980. The Act set up a framework under which our courts still operate. I alluded to that framework earlier in describing our court. Focusing on Illinois, after the Adoption Assistance Act was enacted Illinois drafted a state plan corresponding to the Act's provisions. In practice, however, the plan was not followed. This resulted in a number of lawsuits demanding that our Department of Children and Family Services, DCFS, improve its practices in serving its wards.

#### **- "Super-Predators"-Concern**

At the same time there was again a growing concern about juvenile crime and new drug, crack cocaine, becoming prevalent in the inner city. Intrauterine exposure to crack was predicted to have enormous consequences. It was suggested that these babies would lack the ability to form attachments and not develop empathy. Combined with the fear of juvenile crime, this would eventually give rise to a new boogeyman, "super-predators"-juveniles, utterly lacking consciences, committing heinous crimes. Of course the truth fell far short of the Hollywood movie plot that was presented.

#### **-The Role of the Media**

Enter a third element, the media. There were a number of sensational media reports of maltreated children. This spawned outrage that DCFS had not acted in time to prevent the maltreatment. Thus, the Illinois DCFS was squeezed between outrage that it was not removing children and outrage that it was not caring properly for the children that it did remove.

### **2.3.3.2 The Wallace Case and its impact on the Family Court**

All of this set the stage for what happened in April 1993. A mentally ill mother, Amanda Wallace, killed her three year old son, Joey. The details of the murder were shocking. For the public, however, one detail was too much to bear. Two months before his murder, a juvenile court judge had reunified Joey with Amanda. The editorial pages erupted. The court was a disgrace and DCFS was inept. More media attention, in November of that year case of children starvation emerged during the weekend of the United States's national day of Thanksgiving. Then in the winter of 1994, 19 children were found living in squalor in an apartment on Keystone Avenue in Chicago.

The bubbling cauldron of child welfare finally boiled over. Worried over the criticism of inaction combined with routine screenings for drug exposure in maternity wards resulted in more new cases than ever entering court. In 1994, over 10,000 children were brought to the court's attention. If you will recall, earlier I mentioned that our total current caseload is roughly 6,100 children. Illinois would go on to have the highest removal rate of children in the country.

At the same time, as a result of the Wallace case, few children returned home for fear of what would happen “if something went wrong.” The court’s caseload ballooned to over 50,000 children. At one point 17.2 of every 1000 children in Illinois were in foster care. The situation led to a widespread call for reform.

### **3. From Reform to Reform: Current Reform Strategies**

In retrospect, I wonder how similar this scenario must have been to the original reforms that led to the creation of the court in the 1890s. Blue ribbon commissions convened, private foundations and universities offered their resources and services, and governmental bodies lavished attention. A new courthouse was built. New leaders were brought in to the child protection system. More judges were assigned and quasi-judicial personnel were hired.

The child protection system adopted a strategy to attack at both the front end of the system and the backend of the system. On the front end, new tools for assessing risk were developed. New legislation, redefining what constitutes neglect, was passed. DCFS provided more and better services to parents to enable them to care safely for their children.

The mid-nineties and the decision of Illinois to simultaneously address problems at both the front and back ends of the child welfare continuum. At the same time as we were undergoing these reforms, Congress was addressing the failure of the Adoption Assistance Act to achieve its goals nationally. The federal government created an incentive system to increase the number of adoptions. Illinois found itself in the vanguard of this new adoption movement. In 1997 and 1998, Illinois accounted for 14% and 18% respectively of all adoptions reported to the federal government from all 50 states.

In addition to adoptions, Illinois developed other tools to help children find permanency. For example, Illinois obtained a federal waiver to subsidize guardianship. This enabled families to receive a subsidy if they agreed to become the private guardians of foster children. This program proved to be an effective tool to enable extended family to care permanently for children without disrupting existing family structures,

On the backend, a push to locate safe and permanent placements for children was launched. Permanency became a mantra. The Cook County Juvenile Court became a participant in the National Council of Juvenile and Family Court Judges’ model court project.

## **4. NCJFCJ Nationwide Strategies for Reform**

### **4.1 NCJFCJ Model Court Program**

Let’s talk a little about the NCJFCJ model court program. When we hear model court, we tend to envision an ideal court. I wish we were ideal courts but that is not what the NCJFCJ meant to imply when creating the model court program. The program is one through which various jurisdictions agree to become “laboratories” or models of change. The courts agree to collaborate with their various stakeholders and attempt to

improve outcomes for children and families. In return, the NCJFCJ provides technical support and training opportunities.

When Cook County joined the model court program, we made two commitments to the NCJ FCJ. The first was to work collaboratively with our stakeholders. In my opinion, one of the chief benefits of becoming a model court was that it caused us to create and institutionalize a mechanism for cooperation between the court, DCFS, our attorney offices, and other stakeholders. This group, the Table of Five, although we exceeded five members long ago, still meets monthly to discuss and resolve problems. The group has proven invaluable. We have been able to solve numerous systemic problems through these meetings. We have been able to discuss and rectify problems with diversionary programs. We have been able to help our partners manage changes in law that would otherwise overwhelm them. Most importantly, we have developed a culture of trust and respect.

We better understand the challenges that each of us face. Moreover, when things have gone wrong, we have moved beyond assigning blame. Our collaboration is solution driven. We recognize our obligations to the children and families we serve and recognize that we need solutions to fulfill those obligations.

#### **4.2 NCJFCJ Change Model Program**

Our second commitment to the NCJFCJ was to become a change model. We agreed that we would work creatively to improve outcomes for children and families. To do this we continually assessed our deficiencies and our needs. Once we identified those needs, we experimented with a variety of programs to address them. The model court program, in turn, provided us with a nationwide network of other laboratories to which we could look for ideas and programs. Over the years, we have hosted and attended site visits during which one model court observes a program of another model court. These visits create a forum through which a model court can learn from another court's experiences. This way we can avoid pitfalls and snares that the other court has had to navigate.

In addition, the model court program has given Cook County access to some of the top experts in child welfare. The National Council has repeatedly brought valuable trainings to Cook County. As our model court matured, we were able to bring our experiences to new model courts. Though these exchanges, Cook County has introduced programs that are imitated nationwide. These exchanges, have also allowed us to copy programs from elsewhere.

#### **5. Conclusion**

I had been a judge in juvenile court for a brief time in 1996 and 1997 when our reform was still in its infancy. I returned to the court as presiding judge in 2000. At the time of my return, the juvenile court's caseload had declined to under 30,000 children.

My goals in becoming presiding judge were too build on the successes of my predecessors, empower those who came before the court, and to improve the lives of children in foster care. On this last goal, I am a firm believer that if we are going to remove children from their families only if our alternative is an improvement.

I am still working on these goals. In terms of building on previous successes, the court has done well. Over the last six years the court has averaged 1150 new cases. I would like to note that we now have one of the lowest removal rates in the country along with no adverse effects on re-abuse or child deaths. As I have mentioned twice our total caseload is approximately 6,100 children well below our peak of 50,000 children and the number when I began, 30,000 children.

With respect to my other goals, I introduced a program to give children who are likely to leave the court as adults a greater role in participating in plan for their future. Likewise, I have introduced programs to empower families to help craft solutions to their problems. Our mediation program employs trained mediators to facilitate discussions between parents, caseworkers, foster parents, and others involved in a child's life. Mediation, we hope empowers participants and provides a ready alternative to actions imposed on them by the court.

I regret that I have had time to share with you only a small portion of the court's history and but a sample of the truly impressive effort of the last 115 years. Nevertheless, I hope that you have enjoyed this journey from court model to model court. If all of us work together, on the local, regional, national or even international level we will be most influential to better children's lives. They are and will ever be our future.

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