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Lessons from Juvenile Justice History in the United States

Douglas E. Abrams¹

I am honored to follow Judge Thomas J. Frawley as we kick off this two-day juvenile justice symposium graced by so many talented speakers from around the world. Now that you have heard Judge Frawley's wisdom drawn from years of experience, I trust I do not need to explain why he is recognized as one of the Missouri's leading juvenile and family court judges. State Supreme Court judges, lawyers, families and pediatric professionals regularly turn to him for the right answers in the best interests of children. He does not disappoint.

In the hour allotted to me today, I think it is particularly appropriate to draw lessons from America's juvenile justice history. In his last book, written shortly before his death two years ago, historian Stephen E. Ambrose identified the core purpose of historical inquiry: "[T]hrough history . . .," he said, "we learn who we are and how we got that way."² As history teaches us how we got here, history's lessons help guide us to where we want to be. Constructing this roadmap to a brighter future is a core purpose of this symposium.

Juvenile justice in America has been a work in progress ever since the "child savers" began their sustained struggle for reform early in the nineteenth century.³ By stressing the development of juvenile justice in Missouri this morning, I will also be examining its development throughout America. Last year, when I wrote a book on the history of Missouri's juvenile justice system, I began only with a basic understanding of the ebb and flow of the nation's juvenile justice history.⁴ Writing is a learning experience for the writer, and I soon confirmed that Missouri has not developed a unique juvenile justice mosaic over the decades. Throughout the nineteenth and twentieth centuries, much of what was happening in Missouri at a particular time was also happening in other states. Well before the Supreme Court imposed nationwide constitutional constraints on delinquency adjudication in *In re Gault* in 1967, details diverged from state to state but national juvenile justice trends remained remarkably uniform.⁵

Properly understood, "juvenile justice" encompasses all four primary categories of juvenile court jurisdiction - - abuse and neglect, adoption, status offenses and delinquency.⁶ I will concentrate today on delinquency - - what states have done with

¹ Copyright 2004 author, published here by permission. Co-author of *Children and the Law – Doctrine, Policy and Practice* (2d ed. 2003) and *Children and the Law in a Nutshell* (2d ed. 2003). Author of *A Very Special Place In Life – The History of Juvenile Justice in Missouri* (2003). Recipient of the Meritorious Service to the Children of America Award, presented by the National Council of Juvenile and Family Court Judges (1994). Correspondence should be addressed to University of Missouri-Columbia School of Law, Hulston Hall, Missouri and Conley Avenues, Columbia, Missouri 65211 U.S.A.

² Stephen E. Ambrose, *To America* xvi (2002).

³ Concerning the child savers and the nineteenth century juvenile justice reform movement generally, see, e.g., Douglas E. Abrams, *A Very Special Place In Life – The History of Juvenile Justice in Missouri* ch. 1 (2003); Lawrence M. Friedman, *Crime and Punishment in American History* 414-15 (1993); Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (2d ed. 1977); Justine Wise Polier, *Prescriptions For Reform: Doing What We Set Out To Do?*, in *Juvenile Justice: The Progressive Legacy and Current Reforms* 216 (LaMar T. Empey, ed 1979); Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experiment* (1978).

⁴ See Douglas E. Abrams, *supra* note 3.

⁵ See *In re Gault*, 387 U.S. 1 (1967).

⁶ *Civil abuse and neglect* proceedings determine the state's claims that a parent or custodian (1) has committed physical, sexual or emotional violence on the child, or (2) has failed to provide the child a minimal level of support, education, nutrition, or medical or other care necessary for the child's well-

children found to have committed acts that would be crimes if committed by adults. After surveying the history of delinquency treatment and care I will draw two conclusions:

- Many states refuse to learn from history. These states stubbornly maintain ineffective, frequently barbaric, juvenile prison systems that disserve the public interest by perpetuating the worst failures of the past.
- Missouri today maintains the nation's finest statewide system of delinquency treatment and care, the acknowledged national model recently praised as "a guiding light for reform."⁷ National experts speak in unison about Missouri's preeminence, and states struggling to reform their own systems frequently send delegations to Missouri to study our Division of Youth Services.

I. A Brief History of Juvenile Delinquency Confinement⁸

A. The Early Years

In the nineteenth century, states imprisoned delinquent children under conditions that remain a national embarrassment today because grim incarceration utterly failed to rehabilitate children, or to protect public safety by turning them away from a life of crime. For most of the nineteenth century, children and adults were arrested under the same laws, tried in the same courts, and incarcerated in the same squalid prisons. Lots of children. And young children too because the common law permitted children as young as seven to be convicted of crimes and sent to prison.⁹ The "child savers" fought for reform, but relatively few people paid serious attention because law and the greater society perceived children as miniature adults, and not as distinct individuals with undeveloped physical, emotional and cognitive needs and sensibilities. America had not yet progressed to the compulsory education statutes, child labor laws and juvenile courts

being. (Criminal abuse or neglect charges are heard in criminal court rather than juvenile court.) This category of juvenile court jurisdiction generally confers jurisdiction to decide termination-of-parental-rights petitions filed by the state seeking to permanently sever the parent-child relationship because of gross abuse or gross neglect.

Adoption generally terminates the parent-child relationship between the child and the natural parents, and creates a new parent-child relationship between the child and the adoptive parents. (In an adoption by a stepparent, however, the spouse's parental rights are not terminated.) A child may be adopted only if parental rights have been terminated by consent or court order, and if the juvenile court approves the adoption as being in the best interests of the child. In some states, adoption jurisdiction is in the probate or surrogate's court.

A *status offense* is conduct sanctionable only where the person committing it is a minor. Prime examples are truancy, running away from away from home, and ungovernability (that the minor habitually resists reasonable discipline from his or her parents and is beyond their control).

A *delinquency* proceeding alleges that the juvenile has committed an act that would be a felony or misdemeanor if committed by an adult.

In some states, the juvenile court also has jurisdiction over various other matters, such as juvenile traffic offenses, guardianship proceedings, commitment proceedings for mentally ill or seriously disabled children, proceedings for consent to an abortion or underage marriage, and paternity and child support proceedings. State appellate codes define the circumstances in which appeals may be taken from juvenile court decisions. See Douglas E. Abrams and Sarah H. Ramsey, *Children and the Law – Doctrine, Policy and Practice* 13 (2d ed. 2003).

⁷ See American Youth Policy Forum, National Study Cities Missouri Juvenile Justice Agency as Guiding Light For Reform (June 6, 2001) (press release).

⁸ More extensive discussion of Missouri's juvenile justice history appears in Douglas E. Abrams, *supra* note 3, ch. 1.

⁹ See, e.g., *Gammons v. Berlat*, 696 P.2d 700 (Ariz. 1985) (discussing the common law infancy defense).

legislation that helped set children apart from adults in the public mind. Childhood and adolescence in America are twentieth century concepts drawn from emerging doctrines in psychology and the social sciences, doctrines that did not inform nineteenth century policymakers.

Missouri was not alone in imprisoning delinquent and dependent children in the nineteenth century. When Alexis de Tocqueville described America's orphans and abandoned children in 1833, he called them children who, "by their own fault or that of their parents, have fallen into a state so bordering on crime that they would become infallibly guilty were they to retain their liberty."¹⁰ In 1851, for example, New York still had 4,000 inmates under twenty-one in its prisons, including 800 children under fifteen and 175 under ten.¹¹

For adults and children alike, nineteenth century prisons meant "hard time." American prisons were barely fit for human habitation because the nation did not yet perceive rehabilitation as even a peripheral goal of criminal punishment, except insofar as prisoners might change their ways by the deterrent force of harsh confinement itself. Make prisons as horrible as possible, and inmates would not want to return. Even children.

What did imprisoned nineteenth century children do to deserve such harsh treatment? Relatively few were truly violent criminals, or otherwise beyond rehabilitation if states and localities had valued juvenile rehabilitation as a penological goal. Some child prisoners had committed petty theft or other antisocial conduct, often driven by the influences of the streets. But many children imprisoned in the nineteenth century had committed no crime at all by today's standards. Some were incarcerated simply for disobeying their parents, which today would make them status offenders normally ineligible for prison.¹² Many others were poor or homeless, but were jailed with hardened adult criminals because authorities often had no other place to put them when their parents died or could no longer shoulder the burdens of care and upbringing. Today, children in these unhappy circumstances would be found abused or neglected, and would be treated sympathetically as victims and not as criminals to be put behind bars.

Prison was often the first option in the nineteenth century, however, because statewide agencies and programs for abused and neglected children did not dot the landscape until the New Deal. Begging and vagrancy - - being poor and neglected - - were nineteenth century crimes whether a person was fifty years old or ten, so prisons

¹⁰ Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System In the United States and Its Application To France* 138 (1833).

¹¹ See Stephen O'Connor, *The Story of Charles Loring Brace and the Children He Saved and Failed* 38 (2001).

¹² The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. ~ 5601 et seq., enables state and local governments to secure federal formula grant funds for projects and programs related to juvenile justice and delinquency. To secure these funds, a state must satisfy four mandates. The "deinstitutionalization" mandate requires states to prohibit detention of status offenders (and also of such no offenders as dependent or neglected children) in secure detention or secure correctional facilities, such as jails, police lockups, juvenile detention centers, training schools. (A secure facility is one the juvenile may not leave without permission.)

Under a 1980 amendment to the 1974 Act, a state may authorize its courts to order secure detention of status offenders who violate valid court orders. See is. ~5633(a) (12) (A). Where a status offender violates a court order requiring treatment, this authorization permits the court to hold the status offender in criminal contempt and confine him in secure detention for a limited period. By alleging an act that would be a crime if committed by an adult, the contempt charge alleges delinquency, which is outside the deinstitutionalization mandate. Congress enacted the 1980 amendment after finding that the deinstitutionalization mandate had compromised the courts' ability to protect some at-risk juveniles, particularly chronic runaways or chronic truants. See Douglas E. Abrams and Sarah H. Ramsey, *supra* note 6, at 1035.

and almshouses sometimes warehoused children whose only “crime” was that they had parents who could not care for them.

From the time Missouri achieved statehood in 1821 until the state penitentiary opened in Jefferson City in 1836, prisoners on the frontier and in cities alike might be sentenced to whipping with the lash or standing in the pillory. By the late 1830s, imprisonment in Missouri usually meant confinement in the penitentiary or a county jail, or in military prisons in rural counties that maintained no jails of their own. Disease and death were rampant in all these places. Missouri’s early county jails were “fortresses . . . erected simply and solely to house bad men,” without thought to light and sanitation.¹³ Children and hardened adult criminals were incarcerated together, enabling the adults to prey on the children and teach them the ways of the criminal world.

By the early 1850s, the Missouri state penitentiary had become a “loathsome stone purgatory,” with cells that were “little more than kennels” barely fit for dogs.¹⁴ Throughout the nineteenth century, the penitentiary housed some children and remained a cold institution driven by an unrelenting policy of incarcerating convicts at the lowest possible cost. The state paid little attention to persistent mistreatment by poorly trained, underpaid guards, who included, according to one researcher, “all manners of men from sadists and drunkards.”¹⁵ The state penitentiary, the St. Louis Workhouse that opened in 1843, and most county prisons were barely fit for adults but were no places for children.

American prisons were such dungeons that by the second half of the nineteenth century, Missouri and other states began informally removing many children from them. Judges and juries were sometimes so repulsed that they set children free rather than incarcerate them. (In the eastern states, and perhaps also in Missouri, such informal nullification of the criminal law may have begun even earlier. In 1833, de Tocqueville observed that judges “hesitate to pursue young delinquents, and the jury to condemn them” because of the prospect of imprisonment with hardened adult criminals.)¹⁶ Courts sometimes also gave convicted children lighter sentences than adults, and executive authorities pardoned children more often than adults. Probation statutes were still decades away, but America’s criminal courts also began informally releasing wayward children to the custody of private citizens or charitable organizations, who would supervise them in probation-like circumstances.¹⁷

As industrialism and immigration combined to produce a desperate class of urban poor by mid-century, public children’s institutions began to appear in St. Louis and other American cities as alternatives to prison. By 1850, St. Louis had grown from a frontier community to the nation’s eighth largest city in just a decade. The explosive growth had produced a population of 78,000, including hordes of rootless children roaming the streets.¹⁸ The public St. Louis House of Refuge opened in 1853 to take in children, but the institution quickly spiraled downward and became just another prison.

The House of Refuge and most other children’s asylums in America made no effort to separate, or otherwise protect, vulnerable dependent children from the more dangerous juvenile criminals. In 1866, the House’s directors sharply criticized institutionalization of children and recommended adoption of the so-called “cottage” plan. The plan called for construction of small buildings, each housing about a dozen

¹³ See William T. Cross and Charlotte B. Forrester, *County Almshouses and Jails of Missouri 3-4* (Mo. State Nurses’ Ass’n 1913).

¹⁴ See I Bob Priddy, *Across Our Wide Missouri* 42 (1982).

¹⁵ William Nesheim, *A History of the Missouri State Penitentiary 1833-1875*, at 35 (unpublished M.A. thesis 1970, on file in the University of Missouri-Kansas City library).

¹⁶ Gustave de Beaumont and Alexis de Tocqueville, *supra* note 10, at 138.

¹⁷ See Douglas E. Abrams, *supra* note 3, at 12.

¹⁸ *Id.* At 13.

children in a family-style atmosphere under responsible adult supervision. The St. Louis municipal assembly approved the bond issue, but cottages would have to await another day because the mayor vetoed the bond measure as too expensive.¹⁹

The mayor of St. Louis reported in 1872 that the House of Refuge had become “principally a prison-house for the juvenile offenders.”²⁰ Windows and doors had iron bars to prevent escapes, children wore uniforms, rules prevented talking at mealtime and the children’s heads were shaved. The children had no directed play, and few opportunities for indoor or outdoor recreation.²¹

Concern about cruelty at the House of Refuge grew, but conditions there changed little. In 1893, the House’s superintendent pleaded with the city’s lawmakers: “We have 100 boys sleeping in one room 40 by 80 feet, low ceiling and the beds are ‘two story’; there are no bathroom privileges of any kind in the building Can we not prevail upon this assembly to give us relief? In the name of humanity!”²² By 1902, “the Ref” still confined some juveniles at hard labor, which sometimes meant work on public roads or breaking rock, even for children who had committed only petty crimes, or no crimes at all except for being destitute.

In 1899, reformers visited the St. Louis city jail and found between thirty and forty imprisoned boys under sixteen, including ones waiting for the grand jury which might not meet for weeks or even months. The young prisoners included two ten-year-olds, already jailed for months awaiting trial for grand larceny because they had driven off with a farmer’s wagon and were found asleep in it.²³

Harsh as they were, local reform schools like the House of Refuge did not keep all delinquent and dependent children out of adult prison. In the year or so before Illinois passed the nation’s first juvenile court act in 1899, for example, the Cook County jail confined 575 children and the city jail confined nearly 2000 more.²⁴ In 1900, about 500 children between six and sixteen were confined in Philadelphia’s county prison.²⁵ In 1901, 700 to 800 boys were still confined each year in the St. Louis city jail, without separation from older prisoners.²⁶

What was happening in the latter half of the nineteenth century in Missouri’s rural outstate areas (that is, most of the state at the time)? Most rural areas did not have institutions like the House of Refuge because maintaining such large congregate facilities for a relatively small number of wayward children made no economic sense. Most rural areas also lacked networks of charities and other private providers to keep children out of prison. Outside St. Louis, dependent and delinquent children as young as seven were often imprisoned by courts that had no other place to put them. Between 1897 and 1910, the State Board of Charities and Corrections found Missouri’s prisons filthy, with all ages, both sexes and the insane often mixed together.²⁷

In 1916, the Missouri Children’s Code Commission found more than five hundred children in county jails, which (according to the State Board of Charities and

¹⁹ See Douglas E. Abrams, *supra* note 3, at 12-14.

²⁰ See Report of the [St. Louis] Municipal Commission on Delinquent, Dependent and Defective Children 13 (1911).

²¹ See Gaylord E. Landau, *A History of the St. Louis Board of Children’s Guardians In Relation To the Care of Dependent and Neglected Children From 1912-1938*, at 20 (unpublished M.S.W. thesis 1939, on file in the Washington U. library).

²² *Id.* at 24.

²³ See Douglas E. Abrams, *supra* note 3, at 18-19.

²⁴ See Timothy D. Hurley, *Origins of the Illinois Juvenile Court Law*, in *The Child, the Clinic and the Court* 320-21 (1925).

²⁵ See Ernest K. Coulter, *The Children In the Shadow* 35 (1913).

²⁶ See Missouri Conference of Charities and Corrections, *Proceedings*, 1901, at 23 (1901).

²⁷ See Douglas E. Abrams, *supra* note 3, at 94-95.

Corrections) were often “dark and unsanitary, vermin-laden and disinfectant soaked.”²⁸ The Commission also reported that the state penitentiary still confined some children, a practice Governor William J. Stone had called “almost inhuman, and a disgrace to our civilization” more than two decades earlier.²⁹ The rural Nevada, Missouri jail housed four children between nine to thirteen, who were awaiting trial for entering an abandoned dwelling and taking jewelry worth one dollar.³⁰ Four pint-sized prisoners in Nevada was quite a large number, considering the small population in the local area.

Routine incarceration of children with adults remained a nationwide problem well into the twentieth century. In 1931, the federal Wickersham Commission found that 54% of the nation’s prisoners were committed when they were children.³¹ In 1938, a federal agency reported that prisoners in the Missouri state penitentiary included children as young as fifteen.³² In 1943, a Federal Bureau of Prisons inspector estimated that “tens of thousands” of children were confined in the nation’s jails and lockups.³³

B. The State Training Schools

For delinquent and dependent children and their distressed families, 1899 was a watershed year because Illinois created the nation’s first juvenile court in Chicago. The child savers’ ideal of a special court to hear cases central to the lives of children then spread so rapidly throughout the nation that a group of leading juvenile justice advocates called the juvenile court “the most widely and immediately popular legal reform in American history.”³⁴ The new specialized courts were grounded in the core premise that children were different from adults, with distinct physical, emotional and cognitive needs and capacities. The child savers’ battles were not yet won, however, because states began building large congregate statewide reform schools to house delinquent and dependent children. Like the earlier local houses of refuge, the state reform schools (sometimes euphemistically called “training schools”) typically housed hundreds of children and soon perpetuated the worst shortcomings of the institutions they purported to replace. Training schools proved to be national failures with, as one writer remarked in 2002, “a zero reputation for innovation or behavior impact.”³⁵

The reform school movement ignored the advice of the nation’s most prominent child care experts at the first White House Conference on Children, which President Theodore Roosevelt convened six weeks before he left office in 1909. The Conference recommended that where state confinement of children was necessary, placement should be as family-like as possible, on the cottage plan with small units housing no more than twenty-five children in each.³⁶ The new congregate reform schools did not fit the mold.

²⁸ See Douglas E. Abrams, *supra* note 3, at 94-95.

²⁹ 8 Messages and Proclamations of the Governors of the State of Missouri 44-45 (1926) (first biennial message, Jan. 1, 1895).

³⁰ See Deborah Shirley Protmy, *The History of the State Board of Charities and Corrections In Missouri* 76 (M.A. thesis 1934, on file with the Washington U. library).

³¹ See Douglas E. Abrams, *supra* note 3, at 95.

³² See Prison Indus. Reorg. Adm., *The Prison Problem in Missouri* 2 (1938).

³³ See Albert R. Roberts, *Juvenile Justice: Policies, Programs and Services* 29-30 (1989).

³⁴ Margaret K. Rosenheim et. al. (eds.), *A Century of Juvenile Justice* xiii (2002).

³⁵ Franklin E. Zimring, *The Common Thread: Diversion In the Jurisprudence of Juvenile Courts*, in *A Century of Juvenile Justice* 147 (Margaret K. Rosenheim et. al. eds., 2002).

³⁶ See Douglas E. Abrams, *supra* note 3, at 70. The Roosevelt conference concentrated on dependent children, but the 1919 White House Conference on Child Welfare, summoned by President Woodrow Wilson, extended the conference’s conclusions to delinquent children. *Id.* At 70-71.

Missouri built three statewide reform schools beginning in 1889, the Missouri Reform School For Boys at Boonville, the State Industrial Home For Girls at Chillicothe, and the State Industrial School For Negro Girls at Tipton. By the time the legislature created the state's first juvenile court in 1903, these places had already begun degenerating into juvenile warehouses. Generations of Missouri parents admonished their sons that "you had better behave, or you'll go to Boonville." Even young boys know what that meant.

In 1911, a St. Louis city commission called conditions at Boonville "almost intolerable," and concluded that the institution had already become little more than a pediatric penitentiary.³⁷ The boys slept barracks-style with a hundred or more in a large room, without any semblance of home-like atmosphere. Boonville mixed dependent boys as young as eight and hardened juvenile criminals in decaying buildings without separation by walls or cells, and with ineffective supervision that encouraged the strong to prey on the weak.³⁸ The risk of physical assault disturbed even the governor, but the commission's call for homelike-cottages rather than large congregate institutions fell on deaf ears.³⁹

In 1931, a Missouri legislative commission reported that living conditions in Boonville were "far from what they should be for young men and children," and urged the state to close the reformatory before it hurt more children.⁴⁰ In 1934, Boonville's new superintendent told the legislature that the institution was "in a deplorable condition," with decrepit buildings that were fire hazards.⁴¹ The dining room, kitchen and hospital were filthy. Boys sometimes refused to eat because the food was infested with bugs, flies and roaches (dead ones if authorities used bug-spray just before the meal). Mattresses were infested with bedbugs.⁴² A visiting Minnesota prison warden said that he did not "coddle criminals, but . . . Missouri has sadly neglected its delinquent youngsters and left them with no hope for their improvement."⁴³

In 1937, the Osborne Association published a four-volume report on conditions in the nation's juvenile reformatories. The Association found Boonville and Chillicothe "among the worst" institutions it inspected, little more than "old-time prisons" filled to overflowing.⁴⁴ A few larger Missouri counties tried to avoid sending children to these state institutions by opening their own facilities, but most rural counties (still most of the state) often had few alternatives to the state reform schools, even for children whose only "crime" was to be hapless victims of abuse or neglect they could neither prevent nor control.

C. The Later Years

Conditions at Boonville remained harsh throughout the 1940s, which culminated with the "Midnight Ride of Governor Donnelly." On the night of March 17, 1948, a

³⁷ See Report of the [St. Louis] Municipal Commission, *supra* note 20, at 69.

³⁸ See *Ex Parte Loving*, 77 S.W. 508 (Mo. 1903) (eight-year-old adjudicated a delinquent for petit larceny and, when neither he nor his indigent parents could pay the costs of detention, sentenced to two years at Boonville).

³⁹ See Report of the [St. Louis] Municipal Commission, *supra* note 20, at 10, 25, 38, 69.

⁴⁰ See Jack Reichenstein, *A History of the Missouri Training School For Boys, Boonville, 1917-1944*, at 28-29, 49-50 (unpublished M.S.W. thesis 1950, on file in the Washington U. library).

⁴¹ *Id.* at 51.

⁴² See Jack Reichenstein, *supra* note 40, at 51.

⁴³ See Harry Roberds Studer, *Two State Institutions For the Treatment of Delinquent Boys* 49 (unpublished M.A. thesis 1937, on file in the University of Missouri-Columbia library).

⁴⁴ I Osborne Ass'n, *Handbook of American Institutions for Delinquent Juveniles* 236 (1938).

convoy of Highway Patrol cars carrying Governor Phil M. Donnelly and armed officers drove there after violent inmates had recently killed two boys at the school and committed a series of assaults. The officers seized the seventy-one of the most violent boys and transferred them in chains to cells in the state penitentiary.⁴⁵

Boonville had always taught the young inmates farming, and the State Board of Training Schools stated frankly that the cattle at Boonville were treated better than the boys.⁴⁶ In 1950, social worker Albert Deutsch called Boonville a “hellhole” with a “long-standing tradition of sadistic maltreatment.”⁴⁷ Boonville’s boys were “mixed indiscriminately – the younger with the older, dangerous mental cases with the normals, the first offender with the hardened repeater, the frightened child with the sadistic hoodlum.”⁴⁸ Deutsch reported frequent beatings by the underpaid poorly trained guards. “[T]error-stricken and desperate boys had been escaping from the institution in great numbers,” about four hundred escapes in 1948 alone.⁴⁹

In the 1950s and the 1960s, some Missouri juvenile court judges refused to send children to Boonville or Chillicothe because of beatings by staff, youth-on-youth violence and other dangers lurking there. Judges still did not have quite so much leeway in the state’s smaller counties; some judges avoided Boonville by sending children outside Missouri for treatment.⁵⁰

Boonville was in an uproar by the late 1960s. A 1969 federal report roundly condemned its “quasi-penal-military” atmosphere, lack of adequate rehabilitation programs, substandard educational opportunities, understaffing, outdated physical plant and deteriorating buildings. Particularly notorious was “the Hole,” a dank solitary confinement room located atop the administration building for decades. By 1971, about a quarter of Boonville’s staff positions were vacant because the institution’s reputation was so bad that juvenile justice professionals did not want their resumes to include employment there.⁵¹

Calls mounted to close Boonville entirely. In 1976, investigative reporter Kenneth Wooden wrote a book about his visits to juvenile correctional facilities in thirty states. During his visit to Boonville, inmates told him about staff members “having sexual relations with the children, beating them, throwing them into solitary confinement for no substantial reason, pushing drugs, etc.”⁵²

When Missouri finally closed Boonville in 1982, the institution left a haunting legacy. Atop a hill on school grounds was a cemetery with fifty white markers, only three with names.⁵³ People could not quite remember whether these were boys beaten by guards, boys beaten by other inmates, or (as a former Boonville staff member recently speculated to me) boys who died during an influenza epidemic. Regardless of how the markers got there, none stood above the coffin of a boy with no family or friends who bothered to claim his body.

⁴⁵ See Ted Gest, *Training Schools Head Likely To Resign Soon*, St. Louis Post-Dispatch, Aug. 27, 1971.

⁴⁶ See Albert Deutsch, *Our Rejected Children* 130-31 (1950).

⁴⁷ *Id.* at 126-27.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See Douglas E. Abrams, *supra* note 3, at 198.

⁵¹ See Douglas E. Abrams, *supra* note 3, at 70.

⁵² Kenneth Wooden, *Weeping In the Playtime of Others: America’s Incarcerated Children* 117 (1976 & 2ed. 2000).

⁵³ *Id.* at 117.

II. Surveying Juvenile Delinquency Confinement Today

A. The 1970s and Beyond

By the 1970s, it had become evident that training schools warehoused children in often bestial conditions and compromised public safety by releasing children in worse condition than when they were admitted. America still has much to learn from this sordid history, however, because many states still warehouse delinquent children in dilapidated, filthy institutions marked by beatings, sexual abuse, youth-on-youth violence, substandard or nonexistent education, and denial of needed medical and mental health care. “Conditions in many American juvenile detention centers are awful,” one commentator wrote in 1998, “and they have been for years.”⁵⁴ The president of the National Juvenile Detention Association (which represents the heads of the nation’s juvenile jails) concurred: “The issue of violence against offenders, lack of adequate education and mental health, of crowding and of poorly paid and poorly trained staff are the norm rather than the exception.”⁵⁵

Shortly after the U.S. Supreme Court conferred due process rights on accused delinquents in 1967, children’s advocates began filing federal lawsuits challenging the constitutionality of conditions in many of the nation’s secure juvenile correctional institutions.⁵⁶ Courts found conditions every bit as bad as conditions that prevailed in prisons and juvenile institutions a century earlier. Some of these conditions were so bad that they violated the Eight Amendment ban on cruel and unusual punishment.

In 1974, for example, a Texas federal district court described juvenile institution rife with “widespread physical and psychological brutality . . . so severe as to degrade human dignity” and “be unacceptable to contemporary society.”⁵⁷ The court pinpointed “the widespread practice of beating, slapping, kicking, and otherwise physically abusing juveniles in the absence of any exigent circumstances; the use of tear gas and other chemical crowd-control devices in situations not posing an imminent threat to human life or and imminent and substantial threat to property; the placing of juveniles in solitary confinement . . . ; . . . the performance of repetitive, nonfunctional, degrading and unnecessary tasks . . . [and] [c]onfinement under circumstances giving rise to a high probability of physical injury to inmates.”⁵⁸

An Indiana federal court described an institution where juvenile inmates suffered supervised beatings with a thick board for violating institutional rules: where the nurse administered tranquilizing drugs by injection to control inmates’ excited behavior, without medical staff on hand despite the potential for serious medical side effects; and where children were placed in solitary confinement in 9’ x 12’ locked cells on any staff member’s request for prolonged periods that sometimes lasted for almost half a year, without education or recreation and with only sporadic contact with treatment staff.⁵⁹ A Rhode Island federal court described boys training school that maintained a dark, cold solitary confinement room where boys were kept for as long as a week, wearing only

⁵⁴ Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers*, 32 U.S.F.L. Rev. 675, 675 (1998).

⁵⁵ See Fox Butterfield, *Profits at a Juvenile Prison Come With a Chilling Cost*, N.Y. Times, July 15, 1998, at A1.

⁵⁶ See *In re Gault*, 387 U.S. 1 (1967).

⁵⁷ *Morales v. Turman*, 383 F. Supp. 53, 77 (E.D. Tex. 1974), rev’d on other grounds, 535 F. 2d 864 (5th Cir. 1976), rev’d on other grounds, 430 U.S. 322 (1977).

⁵⁸ *Id.*

⁵⁹ See *Nelson v. Heyne*, 355 F. Supp. 451, 454-58 (N.D. Ind. 1974).

their underwear, without being provided toilet paper, sheets, blankets or changes of clothes.⁶⁰

Private lawsuits challenging the conditions of juvenile detention have continued through the 1990s and into the twenty-first century.⁶¹ In 1995, for example, a federal district court found that conditions in South Carolina juvenile detention facilities violated the detainees' due process rights to reasonably safe conditions of confinement.⁶²

These private lawsuits tell only part of the story. In 1980, Congress enacted the Civil Rights of Incarcerated Persons Act (CIRPA), which authorizes the U.S. Justice Department to sue state and local governments to remedy "egregious or flagrant" conditions that deny constitutional rights to persons residing or confined in public institutions, including juvenile detention facilities.⁶³ The court may order remedies that "insure the minimum corrective measures necessary to insure the full enjoyment" of these rights.⁶⁴ The Justice Department may also sue under a provision of the Violent Crime Control and Law Enforcement Act of 1994 prohibiting a "pattern or practice" of civil rights abuses by law enforcement officers.⁶⁵

By the late 1990s, the Justice Department had investigated nearly 100 juvenile detention facilities nationwide, leading to agreements or consent decrees covering more than thirty where conditions had plummeted well below constitutional standards. In just the past six years, the Department has moved against a number of states, including Georgia, Louisiana, Mississippi, Arkansas, Michigan, Arizona and South Dakota. The Justice Department's detailed reports concerning these states, which are available conveniently on the Internet, paint a picture of systems that still fail to rehabilitate incarcerated children, and that still compromise public safety by tolerating recidivism rates that frequently top 70%.⁶⁶ At the dawn of the twenty-first century, these and other states still lacked the political will to learn from the legacy of nineteenth century failures.

⁶⁰ *Training School v. Affleck*, 346 F. Supp. 1354, 1358-62 (D.R.I. 1972).

⁶¹ See, e.g., *K.L.W. v. James*, No. 2:04-CV-149BN (S.D.Miss. Filed 4/13/04), and the Complaint and Plaintiffs' Memorandum of Law In Support of Motion For Immediate Preliminary Injunction, both of which are available at <http://www.splcenter.org/legal/docet/files.jsp?cdrID=46> (July 8, 2004) (suit filed on behalf of a developmentally disabled 14-year-old incarcerated at Columbia in Mississippi, allegedly after a youth court hearing that lasted approximately five minutes, for stealing a cell phone belonging to his school; suit alleges that the state unconstitutionally denies access to counsel to youths seeking redress for beatings, violence and other constitutional violations).

⁶² See *Alexander S. v. Boyd*, 876 F. Supp. 773 (D.S.C. 1995).

⁶³ 42 U.S.C. ~ 1997-1997j; *id.* ~ 1997(1) (B) (iv).

⁶⁴ *Id.* ~ 1997a(a).

⁶⁵ 42 U.S.C. ~ 14141.

⁶⁶ See, e.g., U.S. Dep't of Justice, Findings of Investigation of [Georgia] State Juvenile Justice Facilities 3 (Feb. 13, 1998), available at <http://www.usdoj.gov/crt/split/documents/gajuvfind.htm> (Mar. 2, 2004); U.S. Justice Dep't, First Interim Emergency Letter re Investigation of Secure Correctional Facilities for Children in Louisiana (July 15, 1996), available at <http://www.usdoj.gov/crt/split/documents/lajuvfind3.htm> (Mar. 2, 2004); U.S. Justice Dep't, Second Interim Emergency Letter re Investigation of Secure Correctional Facilities for Children in Louisiana (Oct. 3, 1996), available at <http://www.usdoj.gov/crt/split/documents/lajuvfind2.htm> (Mar. 20, 2004); U.S. Justice Dep't, Letter re Findings of Investigation of Secure Correctional Facilities for Juveniles in Louisiana (1998), available at <http://www.usdoj.gov/crt/split/documents/lajuvfind1.htm> (Mar. 2, 2004); U.S. Justice Dep't, Letter re CIRPA Investigation of Alexander Youth Services Center, Alexander, Arkansas (2002), available at <http://www.usdoj.gov/crt/split/documents/alexanderfindings.htm> (Mar. 2, 2004); U.S. Justice Dep't, Baltimore City Detention Center 2-5 (2002), available at http://www.usdoj.gov/crt/split/documents/Baltimore_findings_let.htm (Mar. 2, 2004); U.S. Justice Dep't, CIRPA Investigation of Custer Youth Correctional Center, Custer, South Dakota (Feb. 2003), available at http://www.usdoj.gov/crt/split/documents/custer_southdakota.htm (Mar. 2, 2004); U.S. Justice Dep't, CIRPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Phoenix, Arizona (Jan. 23, 2004), available at <http://www.usdoj.gov> (Mar. 2, 2004). See also, e.g., See Human Rights Watch, *No Minor Matter: Children in Maryland's Jails*

I will briefly tell the story of Mississippi, which the Justice Department sued three months ago when negotiations failed to produce a consent decree for necessary reforms at its two aging training schools, the Oakley Training School in Raymond and the Columbia Training School in Columbia. Then I will discuss Missouri's Division of Youth Services, which sets the positive example for the nation.

B. The U.S. Justice Department's Suit Against Mississippi

1. Introduction

By the time the Justice Department inspected Oakley and Columbia in 2002, Oakley had been subject to a federal district court order for twenty-five years for violating the constitutional and statutory rights of the juveniles confined there.⁶⁷ In 1977, the district court found that Oakley (1) confined non-violent, and sometimes suicidal, children around the clock in isolation units in dark, cold cells bare except for a hole in the floor for a toilet;⁶⁸ (2) maintained understaffed medical and mental health facilities that denied children needed treatment;⁶⁹ (3) maintained overcrowded living units that denied children basic privacy;⁷⁰ and (4) provided little or no general or vocational education, and virtually no special education programs for the "extremely high percentage" of juveniles who were mentally retarded or otherwise required these services.⁷¹

2. The 2003 Justice Department Report

For a quarter-century, the federal district court order mandating corrective action at Oakley fell largely on deaf ears in the governor's office, the legislature and the state Division of Youth Services.⁷² If anything, safety and other conditions at Oakley were still spiraling downward by the time the Justice Department arrived on the scene in 2002. So too were conditions at Columbia.⁷³

(1999), available at <http://www.hrw.org/reports/1999/Maryland> (Mar. 1, 2004); Human Rights Watch: Children in Confinement in Louisiana 10 (1995), available at <http://www.hrw.org/reports/1995/Us3.htm>; Human Rights Watch Modern Capital of Human Rights: Abuses in the State of Georgia 60 (1996), available at <http://www.hrw.org/reports/1996/Us.htm> (Mar. 1, 2004); Human Rights Watch, South Dakota: Stop Abuses of Detained Kids: Governor Must End Inhumane Practices (Mar. 6, 2000) (press release and letter to Gov. Janklow), available at <http://hrw.org/press/2000/03/sdakota.htm> (Mar. 20, 2004).

The Justice Department has continued reporting since I spoke at the symposium on March 29, 2004. See U.S. Justice Dep't, CIRPA Investigation of W.J. Maxey Training School Whitmore Lake MI (Apr. 9, 2004), available at <http://www.usdoj.gov> (June 29, 2004); U.S. Justice Dep't, Los Angeles Juvenile Halls (Apr. 9, 2003), available at <http://www.usdoj.gov> (June 1, 2004); U.S. Justice Department, Investigation of the Cheltenham Youth Facility in Cheltenham, Maryland, and the Charles H. Hickey, Jr. School in Baltimore, Maryland (Apr. 9, 2004), available at <http://www.usdoj.gov> (June 29, 2004).

⁶⁷ See *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977).

⁶⁸ See *id.* at 1130, 1138-40.

⁶⁹ See *id.* at 1130, 1140-46.

⁷⁰ See *id.* at 1130, 1140-46.

⁷¹ See *id.* at 1130, 1152-53.

⁷² See *id.* at 1130, 1159 (S.D. Miss. 1977). See also, e.g., David Halbfinger, Care of Juvenile Offenders in Mississippi Is Faulted, *N.Y. Times*, Sept. 1, 2003, at 13 ("Perhaps most alarming about the Justice Department's conclusions . . . is how loudly their echo those of a federal judge in a landmark 1977 court ruling on conditions at Oakley.")

⁷³ In May, 2002, the Joint Legislative Committee on Evaluation and Expenditure Review ("PEER"), the state legislature's watchdog committee, reported to the lawmakers that Oakley and Columbia still failed to

In its 2003 report, the Justice Department found that Oakley and Columbia still denied confined juveniles adequate mental health and medical care. Oakley still tolerated unsanitary conditions,⁷⁴ and both institutions still denied required general and special educational services.⁷⁴ The Justice Department also focused on another violation not touched by the 1977 federal court order – the routine, unchecked beatings and other physical assault that staff perpetrated on children “with impunity” at both institutions.⁷⁵

Oakley and Columbia operated on a paramilitary model, Oakley for 336 boys and Columbia for 92 girls and 104 boys. Some of the confined youths were as young as ten, and most were nonviolent offenders.⁷⁶ Mississippi law required courts to commit mentally ill youths to rehabilitation facilities operated by the state Department of Mental Health and not to a prison-like training school, but a July 2001 study funded by two state agencies found that between 66 and 85 percent of juvenile offenders incarcerated in Mississippi “met . . . diagnostic criteria for a mental disorder.” “[M]ultiple, co-occurring mental health and substance abuse diagnoses were evident,” and 9% of the incarcerated juveniles had “suicidal thoughts and plans.”⁷⁷

The Justice Department found that children at Oakley and Columbia were hog-tied, pole-shackled, locked in mechanical restraints and isolation units, and routinely assaulted by staff. Staff also sprayed children with oleoresin capsicum (OC) spray, a form of pepper spray, as punishment for minor infractions. At Columbia, suicidal youths were sprayed for their suicidal behavior and gestures, and youths locked in isolation rooms were sprayed for banging on their cell doors. One suicidal girl was sprayed because she failed to remove her clothes before being placed naked in solitary confinement. Also sprayed were youths who failed to perform military exercises, including youths who had physical difficulty keeping up with others.⁷⁸

Two leading researchers from the University of North Carolina and Duke University warn that “[s]erious adverse health effects, even death, have followed the use of OC sprays. These sprays should be regarded as poisons and weapons and kept away from children and teenagers.”⁷⁹ The UNC/Duke researchers conclude that “[w]hen OC spray is used, officers must decontaminate those sprayed as soon as possible, continuously monitor them for evidence of serious adverse effects, and seek medical

protect children from abuse, and still provided deficient medical care, dental care, and treatment and programming for special needs children. See PEER, *Health and Safety Issues at the Oakley and Columbia Training Schools* (2003); Patrice Sawyer, *Abuse Cited At Youth Training Centers*, *Clarion-Ledger* (Jackson, Miss.), July 15, 2003, at A1.

⁷⁴ See U.S. Justice Dep’t, *CRIPA Investigation of Oakley and Columbia Training Schools in Raymond and Columbia, Mississippi 1-2* (June 19, 2003), available at <http://usdoj.gov> (July 6, 2004).

⁷⁵ *Id.* at 10. By the time the Department arrived on the scene, budgetary constraints had left Oakley and Columbia with staff vacancy rates of 39% and about 30% respectively, and some senior managers frankly admitted that a hiring freeze kept them from firing abusive staff. Besides, most staff told the Department that they feared retaliation for reporting co-workers’ abuse in the first place. See *id.* at 14. The Department also found that Oakley and Columbia the juveniles’ First Amendment rights by “coercing [them] to engage in specific religious activities.” *Id.* at 32.

⁷⁶ *Id.* at 2-4. Most boys at Oakley were committed for property offenses, lower level drug possession charges, or auto theft charges. Seventy-five percent of the girls at Columbia were committed for status offenses, probation violations or contempt of court. *Id.*

⁷⁷ *Id.* at 15. The study speculated that the statutory mandate is ignored because the state does not screen juveniles for mental illness at sentencing, but only when they arrive at the secure detention facility. See Eric Stringfellow, *Flags May Find Legacy in Juvenile Justice*, *Clarion-Ledger* (Jackson, Miss.), Mar. 7, 2004, at 1.

⁷⁸ See U.S. Justice Dep’t, *CRIPA Investigation of Oakley and Columbia Training Schools*, *supra* note 74, at 11-12.

⁷⁹ C. Gregory Smith and Woodhall Stopford, *Health Hazards of Pepper Spray*, available at <http://www.geocities.com/CapitolHill/6416/smith-ok.html> (July 8, 2004).

attention immediately if potentially life-threatening symptoms develop.”⁸⁰ Incarcerated children remain at particular risk because of their impaired mental or medical condition, and because monitoring rarely occurs in juvenile detention facilities such as Oakley and Columbia, where children are sometimes fortunate when they can see a physician or other health professional from one month to the next.

A hog-tied child is forced to face-down on the floor, and guards tie the child’s arms and legs together behind the back with rope, chains or shackles. A Columbia staff member confirmed incidents of hog-tying, which youths reported occurred while they were on suicide watch or when they failed to follow orders. Pole-shackled children had their hands and legs handcuffed around a utility pole as other juveniles and staff watched.⁸¹

Girls who were suicidal or acted out were sometimes stripped naked and hog-tied in Columbia’s “dark room” for periods lasting from three days to a week. The room was a locked windowless isolation cell stripped of everything but a drain in the floor through which the girls urinated and defecated but which they could not flush.⁸²

Of the fourteen girls confined in Columbia’s isolation unit when the Justice Department arrived, nine had been locked up in bare, extremely hot, inadequately ventilated cells for more than a week and one had been locked up for 114 days. The girls were often denied water, personal hygiene items, bathrooms facilities and sufficient mental health services, even though a significant number of girls in Mississippi juvenile facilities suffered from mental disorders, particularly separation anxiety disorder.⁸³

Girls reported being forced to eat their own vomit if they threw up while exercising in the hot sun.⁸⁴ Youths recommitted to Oakley were taken to an isolation room and punched and slapped by staff as punishment for being recommitted. Staff confirmed that one counselor choked a boy, and another boy reported that a staff member had shoved his head into a toilet. Girls as young as ten in Columbia’s isolation unit also reported being hit, choked and slapped.⁸⁵ Several girls alleged that a staff member forced girls to run and perform military exercises wearing tires.⁸⁶

The Justice Department found that youths with mental health concerns received only “haphazard and cursory” treatment. Many youths previously on psychiatric medications were not allowed to continue receiving their medication. Rather than receive counseling, rehabilitative treatment and education, suicidal youths were kept in bare isolation cells, sometimes naked, with no mattresses during the day on the concrete floor.⁸⁷ When the Justice Department arrived at Oakley, inspectors observed a 13-year-old boy locked in a restraint chair near the control room, reportedly to prevent self-mutilation:

No staff approached him, and he was not allowed to attend school or receive programming, counseling, or medication. This boy had been severely sexually and physically abused by family members and had been in several psychiatric hospitals . . . Just before our arrival, he had been locked naked in his empty cell.

⁸⁰ *Id.*

⁸¹ See U.S. Justice Dep’t, CRIPA Investigation of Oakley and Columbia Training Schools, *supra* note 74, at 5-7.

⁸² *Id.* at 7.

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 10.

⁸⁶ *Id.* at 13.

⁸⁷ *Id.* at 16-17.

His cell smelled of urine, and we observed torn pieces of toilet paper on the concrete floor that he had been using as a pillow.⁸⁸

The Justice Department found both institutions' paramilitary programs particularly unsuitable for four groups of children forced to participate in it – younger boys, girls, youths with developmental disabilities, and physically or emotionally fragile youths. “Many staff perceived that [younger boys were] non-compliant and anti-authority, when in reality, many of the boys are merely active third, fourth, and fifth graders with short attention spans.” Or boys with Attention Deficit Hyperactivity Disorder (ADHD) but denied their medication by the doctor.⁸⁹ “Harsh disciplinary practices . . . characterized as training” were meted out to girls, including one who was required to sleep one hour and walk one hour for two successive nights before she was forced to eat every meal standing for the next week. A staff member told the Justice Department that youths with learning or developmental disabilities “can’t make it” in the military program, but that these youths nonetheless served longer commitments because of their failures. Columbia staff made fun of a girl with physical and cognitive impairments who was just learning to read.⁹⁰ Military staff also singled out physically or emotionally fragile youths and “made [them] feel worse because of their fragility.”⁹¹

Medical and dental care at Oakley and Columbia were marked by professional staff shortages; incomplete health assessments; routine failure to continue medication and other medical regimens children followed before they were admitted; reliance on old rusty, dirty equipment; and inadequate dental examinations and treatment only for extractions. Columbia’s acting head nurse ignored youths’ illnesses and injuries, kept children from seeing the visiting physician.⁹² Youths at both institutions still did not attend school for several weeks after admission, and then generally did not receive state-mandated class time, appropriate placements or special education that met federal requirements.⁹³ Staff regularly removed children from class for work detail.⁹⁴

Twenty-five years after the federal district court ordered improvements at Oakley, the institution’s buildings were still unsafe and unsanitary. One medical clinic was in a decrepit building damaged by water leaks. The clinic had no sterilization equipment to clean medical equipment, and supplies were not properly stored to maintain any kind of sterilization. “The dental clinic had not been cleaned in many months” because the Justice Department inspection team “observed dirt, spider webs, mouse droppings, and dead roaches everywhere. It was apparent that the clinic has a major insect and rodent infestation.”⁹⁵

Oakley’s kitchen still had rodent and insect infestation, including mouse droppings in the food storage areas and live and dead cockroaches in the kitchen. Staff said they had to cover food while cooking because cockroaches would otherwise fall in from the hood above the stove. Youths also complained about finding roaches in their food. Dishes were not always clean.⁹⁶

⁸⁸ Id. at 19.

⁸⁹ Id. at 20.

⁹⁰ Id. at 20-21.

⁹¹ Id. at 21.

⁹² Id. at 25.

⁹³ Id. at 22-23. These requirements are established by the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. ~ 1400 et seq.), and section 504 of the Rehabilitation Act, 29 U.S.C. ~ 794.

⁹⁴ Id. at 28.

⁹⁵ Id. at 34-35.

⁹⁶ Id. at 35.

Some of Oakley's housing units still suffered from age and deterioration, broken urinals and showers, and poor lighting that invited accidents. Youths shared one bar of soap during showers. The fire marshal determined that most of the living units were fire hazards because the units had no operable fire alarm system, emergency generators required hand cranking, and staff generally had considerable difficulty finding the right key for fire extinguishers and fire exits.⁹⁷

Finally, procedures at Oakley and Columbia still discouraged children from maintaining contact with their families during their confinement, which lasted an average of two to three months, through some youths were confined for six months or more.⁹⁸ Youths could not make or receive telephone calls, and families could visit the children only on Sunday, and only for two hours that day. Many youths reported that as a practical matter, their families could not visit at all during the two-hour weekly window because the institution was so far from their homes.⁹⁹

When all the dust had settled, it was difficult to quarrel with this assessment of Oakley and Columbia from Mississippi children's advocate: "These abuses are the kind of things you would hear about in some torture chamber in a Third World country. This is not how we treat our children in the United States."¹⁰⁰

C. Missouri: A "Guiding Light For Reform"

Missouri put history's lessons to work. By the end of the 1970s, Boonville and Chillicothe, the state's last two training schools, were collapsing after eight decades of violence and decay. Missouri was ready to move in a new direction. We need to

⁹⁷ Id. at 35-37.

⁹⁸ Id. at 2.

⁹⁹ Id. at 39.

¹⁰⁰ Southern Poverty Law Center, Center Works to Improve Mississippi Juvenile Justice (2003), available at <http://www.splcenter.org/center/splcreport/article.jsp?aid=65> (July 6, 2004) (quoting Rhonda Brownstein, SPLC legal director). The Justice Department suit has sparked debate about the future direction of Mississippi's juvenile justice system. According to the chair of the legislature's Juvenile Justice Committee, the question is not whether abuse prevailed at Oakley and Columbia, but how to correct it. See Right Approach On Training Schools, Clarion-Ledger (Jackson, Miss.), Feb. 5, 2004, at 6 (editorial). The outgoing state attorney general said that rather than continuing to operate mini-prison camps that warehouse children until they graduate to adult prison, the state should take a regional, community based approach to try to save them. See Right Approach On Training Schools, Clarion-Ledger (Jackson, Miss.), Feb. 5, 2004, at 6 (editorial); Assoc. Press, Juveniles Still Sent to Probed Facilities, Sun Herald (Biloxi, Miss.), Dec. 21, 2003, at 7; Sheila Hardwell Byrd, AG: Suit Against Schools "Senseless," Dec. 19, 2003, at A*. Youth court judges told the legislature's Juvenile Justice Committee that they too want more community-based alternatives to Oakley and Columbia. See Eric Stringfellow, Flaggs May Find Legacy in Juvenile Justice, Clarion-Ledger (Jackson, Miss.), Mar. 7, 2004, at 1.

Lingering state budget problems, however, have reportedly surfaced as impediments to change. Many of Mississippi's poorest counties, for example, have no group homes or treatment centers, so the counties have used the training schools "as a catch basin for all the child and youth problems in the state." David Halbfinger, *supra* note 72, at 13 (quoting Jeffrey A. Butts, director of the Urban Institute's Program on Youth Justice). More than a quarter-century after Oakley was placed under federal court order, Congressman Bennie Thompson (who first urged the Justice Department to conduct its investigation) remained skeptical: "Mississippi had plenty of time to get its act together and didn't," he said. "You're asking people to trust an entity that has not demonstrated any care or concern about children. . . . You just can't strip children naked for several days and deprive them of adequate medical care." See Pamela Berry, State Seeks Help In U.S. Suit, Clarion-Ledger (Jackson, Miss.), Mar. 12, 2004, at B1. If the past is any predictor of the future, much work remains before DYS achieves its stated goal of "creating legitimate, alternative pathways to adulthood through equal access to services that are least intrusive, culturally sensitive, and consistent with the highest professional standards." See DYS mission statement, available at <http://www.mdhs.state.ms.us/dys.html> (July 8, 2004).

appreciate the times to understand just how profound and courageous the move was. The 1970s were “law and order” times, when many national leaders called on states and localities to meet violent crime with get-tough measures. America’s patience with violent crime, including juvenile crime, had worn particularly thin. This was not a national atmosphere that encouraged truly positive, innovative change in juvenile justice. But positive, innovative change is precisely what happened in Missouri.

The state closed Chillicothe in 1981 and Boonville in 1983. (The Tipton Negro Girls School had been closed in 1960.) The transformation of the Division of Youth Services (DYS) was guided by a 15-member, bipartisan Division of Youth Services Advisory Board comprised of respected judges, former legislators, officials and concerned citizens from all walks of life and all areas of the state. The board provided expertise concerning productive juvenile corrections policy and helped develop stable support for the Division’s innovations. Because DYS treatment programs proved successful, the agency has enjoyed bipartisan support from governors and the legislature ever since, and a budget that has quadrupled from about \$15 million to \$60 million in fifteen years.¹⁰¹

Throughout the 1980s, DYS replaced the failed reform schools with smaller regional, community-based facilities that enabled local staff to treat delinquent children near their homes in cooperation with local juvenile courts. While other states continued operating “overcrowded, understaffed, Dickensian warehouses¹⁰² of human souls,” the “cottage plan” finally become reality in Missouri.

DYS has divided the state into five regions with thirty-one residential facilities that provide intensive treatment to more than 1300 delinquent children committed by the juvenile courts each year. The agency treats offenders in the least restrictive program that meets the child’s needs and provides necessary control. Most of the children are treated within thirty to fifty miles of their homes so their families and other sources of community support can remain involved in their lives.¹⁰³

Each of the five regions has a diverse range of residential facilities. DYS maintains group homes for ten to twelve youths under responsible adult supervision, proctor homes where youths live with college student mentor/role models, moderate care facilities that permit youths to interact with the community, and secure care facilities that provide the most serious offenders education, counseling and vocational guidance in groups of ten to twelve. Day treatment facilities provide youths a minimum of six hours of education, counseling and community service activities before they return home in the evening. The agency’s comprehensive aftercare program even helps youths find employment and proper direction when they are discharged.

Missouri’s about-face since closing Boonville and Chillicothe has catapulted the state squarely into the forefront of effective delinquency services nationally. In 1994, the National Council on Crime and Delinquency recognized Missouri’s national leadership by presenting Governor Mel Carnahan with its Award For Excellence in Adolescent Care. The Annie E. Casey¹⁰⁴ Foundation, which seeks to address the needs of vulnerable children and families, has named Missouri a model juvenile corrections system and has provided a grant to enable the state to showcase its program to other states. Bart Lubow,

¹⁰¹ Interview with Mark D. Steward, DYS director (Sept. 2, 2002); interview with Rep. Kaye H. Steinmetz (Sept. 10, 2002).

¹⁰² Vicent Schiraldi, *Detention Homes Aren’t the Answer*, *Fulton County Daily Report*, Dec. 13, 2001.

¹⁰³ See Missouri Division of Youth Services: *Programs and Services 1* (1999); 1987 Missouri Blue Ribbon Commission On Services To Youth 8 (1987).

¹⁰⁴ Interview with Mark D. Steward (Sept. 2, 2002) (model system); Interview with Bart Lubow (Nov. 5, 2002).

the foundation's Director of Programs for High-Risk Youth, describes Missouri's programs as "brilliant, thoughtful, creative" – and successful.

In 2001, Missouri's emphasis on small residential community-based programs won lavish praise from the American Youth Policy Forum. The AYPF found that while spending one-third less than surrounding states on juvenile corrections, Missouri enjoys a recidivism rate one-half to two-thirds below that of most other states. Indeed, Missouri has the lowest juvenile recidivism rate in the nation, only about 11%. In other states, recidivism by youths released from training schools remains high, usually between 50% and 70% and sometimes greater than 90%.¹⁰⁵

The AYPF called Missouri a "guiding light for reform," and found that the state's "unconventional approach - - emphasizing treatment and least-restrictive care - - is far more successful than the incarceration-oriented systems used in most other states." The report concluded that Missouri's approach "should be a model for the nation" because "[i]ts success offers definitive proof that states can protect the public, rehabilitate youth, and safeguard taxpayers far better if they abandon incarceration as the core of their juvenile corrections systems."¹⁰⁶

Missouri's success has also caught the attention of juvenile court judges in other states. One is Judge Ramona F. John, who served on the juvenile bench in Harris County, Texas from 1989 to 1993 after eighteen years representing children in court. Judge John calls Missouri "a prime example" of a state "nationally recognized for . . . excellence" in rehabilitating delinquents. She calls Missouri's low recidivism rate "astounding," and lauds the state for emphasizing education and job training, strong counseling and mentoring, family involvement and aftercare.¹⁰⁷

Other states and localities now look to Missouri for guidance about effective juvenile corrections. In 2001, for example, a Washington, D.C. mayor's commission toured DYS facilities to learn ways to improve that city's programs. A year later, on the heels of their settlements with the Justice Department, Georgia and Louisiana both sent delegations of legislators, judges and juvenile corrections officials to inspect and study the DYS system and consider reforms. Georgia even hired a DYS staff member to help replicate Missouri's system.

Unlike their counterparts in many other states, DYS facilities have had little violence or gang activity and no suicides. "At the Division of Youth Services, we focus first on the goals of community safety and youth accountability, but we do so in a way that engages young people and brings out the best in them," says Mark D. Steward, DYS director since 1988 and a prime architect of the agency's programs. "Our low recidivism rates demonstrate the troubled youth can be reached before incarceration in adult prisons becomes inevitable."¹⁰⁸

¹⁰⁵ See *Something to Brag About*, St. Louis Post-Dispatch, June 11, 2001, at B6 (editorial).

¹⁰⁶ See American Youth Policy Forum, National Study, *supra* note 7; American Youth Policy Forum, *Less Cost, More Safety: Guiding Lights For Reform In Juvenile Justice* 13-14 (2001). See also Center on Juvenile & Criminal Justice, *Reforming the Juvenile Justice System*, available at <http://www.cjcj.org/jjic/reforming.php> (July 14, 2004) (calling Missouri a "model state" for juvenile justice reform); Matthew Franck, *Juvenile Justice In Missouri Serves As Model For Nation*, St. Louis Post-Dispatch, Oct. 5, 2003, at A1; *Something to Brag About*, *supra* note 105 (calling DYS "the most successful statewide juvenile justice program in the nation").

¹⁰⁷ Interview with Judge Ramona F. John (Oct. 8, 2002). See also Ramona F. John, *Children and the Law in Texas: What Parents Should Know* (1999).

¹⁰⁸ Barry Krisberg and James F. Austin, *Reinventing Juvenile Justice* 166-67 (1993); American Youth Policy Forum, National Study Cites Missouri, *supra* note 7. See also Center for the Study of Youth Policy, *Incarcerating Youth: The Minnesota and Missouri Experiences* (1996); Center for the Study of Youth Policy, *Missouri and Hawaii: Leaders in Youth Correction Policy* (1992); St. Louis Post-Dispatch, *Something to Brag About*, *supra* note 105.

IV. Conclusion: Lessons From Juvenile Justice History

History can be revealing, interesting, entertaining, even discomforting. Studying the past, however, is most worthwhile for lessons that help shape the future. Many threads running through the nation's juvenile justice history remain discomforting to contemporary sensibilities. We cannot be proud today about the nineteenth century prisons that confined children under inhumane conditions with little thought for their future, and often for whether they had done anything wrong. Nor can we be proud of the twentieth century training schools that sacrificed rehabilitation while encouraging resentment and recidivism that compromised public safety.

Missouri's unhappy experiences with training schools, however, demonstrate the true value of historical inquiry. Learning from years of frustration, Missouri closed the Boonville and Chillicothe training schools in the early 1980s while other states held stubbornly to the past. The result is a success story that remains the envy of states still searching for a juvenile justice compass. These states have not yet learned their lesson, and now they look to Missouri for the right answers. Willingness to learn from history goes a long way.

As we apply history's lessons, we must recognize that managing delinquents is no easy chore. Delinquents are not angels. Crime has placed them in state custody. Statewide juvenile justice agency typically treats the hardest cases, delinquents who cannot readily be treated by local authorities. Some of these children are truly incorrigible and need secure detention, but Missouri has shown that the nineteenth century child savers were right – that most delinquent children can be rehabilitated steered toward a productive life and away from future crime that menaces the public safety.

The public interest suffers when states waste taxpayer dollars by incarcerating status offenders and non-violent youths who could be treated more effectively in less expensive community-based alternatives. And when states tolerate juvenile prisons that compromise public safety with recidivism rates exceeding 70% year after year. And when states maintain juvenile prisons where mentally ill children are beaten, denied needed treatment, and then released into the general population more debilitated than when they were admitted. We should have learned these lessons by now.

History suggests that juvenile justice systems serve rehabilitation and public safety best when reform reaches from top to bottom. "Missouri is a model we would all love to replicate," the director of the Maryland Juvenile Justice Coalition said only three weeks ago, "but it isn't a model you can replicate with legislation. What is unique about Missouri is the attitude and approach of the staff and the management."¹⁰⁹

The nation needs to take a long, hard look at juvenile justice history. To learn from that history, and not to continue repeating its worst mistakes. Nearly two centuries of experience help point the way toward what works and what does not. Juvenile justice will serve its mission best when other states join Missouri in forging a better future for delinquent children and the interests of public safety.

¹⁰⁹ See Dan Fesperman, *Bill Would Downsize Juvenile Facilities*, Baltimore Sun, Mar. 4, 2004, at 5B (quoting Heather Ford, director of the MJJC).