

nile court, and who entered the court's service knowing they would likely rotate out before long. Judges adept at managing business and commercial litigation were not necessarily well suited to thoughtful exercise of discretion in the juvenile court, where empathy for children and their distressed families displaced due process and other legal constraints.³⁵

The risks of diminished judicial specialization and interest differed from place to place. In these early years, for example, St. Louis City juvenile court judges would normally rotate out of the assignment after only a year or less, leaving a new judge to assume the caseload and become knowledgeable in the court's specialized work. The city's first juvenile court judge, Robert M. Foster, won nationwide attention but began the short-term tradition when he declined reappointment and rotated out of the juvenile division in 1904, reportedly because he strongly supported its work and wanted to win the support of colleagues who shared the experience. He was succeeded by Judge Orrick Bishop, who served eighteen months on the juvenile court bench. In 1910, the St. Louis circuit court created a juvenile court committee consisting of three circuit judges serving eighteen-month terms, during which each would sit as the juvenile court judge for six months.³⁶

Tradition was quite different in Jackson County, where a judge would sit in the juvenile court until he left the bench. When Judge Edward E. Porterfield died in 1933, he had been a juvenile court judge for twenty-five years and held a national reputation. Judge Ray G. Cowan assumed the position in 1933 and sat until he retired in 1951. Longterm service continued in Jackson County until the 1970s, when circuit judges generally began rotating through the juvenile court every two years.³⁷

Not all early observers found diminished judicial specialization to be entirely a negative. For example, Roger N. Baldwin, St. Louis city's chief juvenile probation officer from 1907 to 1910 (and later the founder of the American Civil Liberties Union), said that inexperience led the city's juvenile court judges to rely more heavily on the probation department. "Especially in cases involving sex offenses and those of physical violence, such as shooting and knife affrays," Baldwin wrote later, "the judge often wanted to commit the child to an institution, being chiefly concerned with the seriousness of the offense. In most instances, however, the probation office was able to change his viewpoint and modify his court order."³⁸

Quick rotation threatened to compromise the juvenile court's ability to provide individualized treatment. In their classic 1914 text, *Juvenile Courts and Probation*, the evidently ambivalent Baldwin and his coauthor Bernard Flexner argued that rotated judges were less likely than veterans to develop personal relationships with the children appearing before them. "The proba-

tion office needs the background of intelligent cooperation on the part of the judge not only in the cases in the mass but in individual cases," they wrote, "and this can only be gotten where the judge sits for a sufficient time to enable him to know the children brought before him."³⁹

As in other states, Missouri's early record was mixed. In 1910, a leading juvenile justice professional painted a rosy national picture. When juvenile courts were created, he said, "eminent judges objected to being called upon to turn aside from the important concerns of corporations and other vast money interests in order to hear petty cases relating to little children; but a brief experience on the bench of a juvenile court almost invariably resulted in a change of heart and a recognition of the juvenile court as second to none in the importance of the interests involved." Missouri's 1939 Children's Code Commission reported more evenhandedly that while many juvenile court judges took "an active interest in the children's problems, . . . others, by reason of temperament or something else, found little interest in the work."⁴⁰

Judge Thomas J. Frawley explains that the tradition of rotation may stem from the sheer emotional and physical strain of juvenile court judging. Day in and day out, juvenile court judges with increasing caseloads grapple with sensitive family crises ranging from serious delinquency to sexual or physical abuse. Parties in business or commercial disputes generally stand to lose only money, but parties in juvenile court stand to lose something more dear, their intact family. The juvenile court judge is the sole decisionmaker, without support from a jury, or even from other judges because appeals are so infrequent. Chief Justice Stephen N. Limbaugh, Jr., a former juvenile court judge, explains: "Our sense of empathy for the parties . . . —the anguish that we feel for both the parents and the children—can, after a time, be difficult to bear."⁴¹

No state has found an easy cure to the rotation problem, which some still wrestle with today. Many judges covet assignment to the juvenile court for the immediate positive impact the court can have on the lives of children and their families, but a former Philadelphia trial judge observed in 1984 that other judges consider assignment to juvenile court "an exile in purgatory."⁴²

The Juvenile Court's Rehabilitative Model

In delinquency and dependency cases alike, juvenile court proponents envisioned a tribunal that would rehabilitate, not punish, the child or family for the conditions that had landed them before the law. The rehabilitative model stressed five primary characteristics—individualized treatment, civil

jurisdiction, informality, confidentiality, and incapacitation of delinquents separate from adults. These five characteristics sharply distinguished the nation's juvenile courts from the trial courts that had previously decided cases concerning dependent and delinquent children.

Individualized treatment

In dependency cases, juvenile courts enforced remedies against parents or other caregivers in the name of child protection. Assisted by the probation department, the court determined the facts, investigated the family's condition, and fashioned a disposition calibrated to fit the family's particular circumstances.

Individualized treatment also prevailed in delinquency cases. Without necessarily overlooking rehabilitation and treatment of prisoners who will someday be released, the criminal law imposes sanctions defined primarily by the nature of the act committed. Each crime carries a sanction or sanction range (usually imprisonment, fine or both) prescribed by statute or sentencing guidelines. The court may hold discretion to impose a sentence fitting the defendant's own condition, but the sentence must lie within the range prescribed by the defendant's act.⁴³

Delinquency sanctions were different. The juvenile court based them on the juvenile's individual needs rather than the nature of the act committed. "[I]nstead of asking merely whether a boy or girl has committed a specific offense," former Illinois juvenile court Judge Julian W. Mack wrote in 1909, the court tried "to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen."⁴⁴

Delinquency jurisdiction was steeped in guardianship. In 1906, Ben B. Lindsey, a prominent, and quite outspoken, Colorado juvenile court judge explained that the new jurisdiction aimed "to make the child a co-worker with the state for his own salvation." The juvenile court was a "school-court" and its methods were "purely educational and not penal."⁴⁵

Missouri granted juvenile courts broad discretion to "take testimony and inquire into the habits, surroundings, condition and tendencies" of the child, including not only such factors as the juvenile's attitude, school performance, standing in the community, and mental health but also the family's stability and supportiveness. Dispositions would "rest in the discretion of the judge of the juvenile court, and execution of any sentence may be suspend-

ed or remitted in his discretion." To help assure successful treatment, dispositions were normally indeterminate, that is, they would remain in force until the juvenile turned twenty-one, unless authorities determined earlier that he or she had been rehabilitated.⁴⁶

The rehabilitative model quickly produced a vocabulary laden with euphemisms designed to cleanse delinquency of any pedigree in crime and punishment. Young offenders were "delinquents" who allegedly committed an "act of delinquency," not criminals accused of committing a crime. Juveniles were "taken into custody," not arrested. Juvenile court proceedings began with a "petition of delinquency," not a complaint, indictment or charge, and with a "summons," not a warrant. Juveniles proceeded to an "initial hearing," not to arraignment. Juveniles might be "held in detention," but were not jailed. If matters proceeded further, the court conducted a "hearing," not a trial. An "adjudication," a "finding of involvement" or a "finding of delinquency" might follow, not a conviction. The court entered a "disposition," not an order of conviction or acquittal. The juvenile might be placed in a "training school," "reformatory," or "group home," not sent to prison. "Aftercare," not parole, might follow.⁴⁷

Some veteran criminologists had a hard time grasping that an individualized disposition grounded in rehabilitation could be considerably more or less severe than the sentence a court could impose on an adult convicted of the same act. A fourteen-year-old who sent indecent letters to a neighbor, for example, might be found delinquent and sent to a reformatory until he reached majority seven years later, unless released earlier by official discretion. It would not matter that the criminal court could sentence an adult committing the same offense to no more than a few days' imprisonment or a small fine. If the fourteen-year-old committed attempted murder, the juvenile court could confine him for no more than the same seven years, though the criminal court might imprison an adult for decades.

Civil jurisdiction

Missouri's juvenile courts, like those in other states, exercised only civil jurisdiction. Civil jurisdiction raised no eyebrows in abuse and neglect cases because the child, whose condition is the focus of these proceedings, is a victim rather than a wrongdoer and deserves no punishment. Civil abuse or neglect proceedings also did not preclude criminal court prosecution of adults responsible for the condition.⁴⁸

Thornier conceptual questions lurked within civil delinquency jurisdiction, which by definition displaced previously criminal jurisdiction and could deprive children of liberty. Civil jurisdiction appeared entirely defen-

sible, however, because the *parens patriae* doctrine likened juvenile courts to the English chancery court, which had protected children in civil matters by tempering law with mercy for centuries.

Incongruities underlying civil delinquency jurisdiction also remained submerged because juvenile court supporters likened delinquency to neglect. The chief cause of crime, said one, was “neglected childhood . . . at an age when character is still plastic.” The founder of the Big Brother Movement said that often “the real culprit that should be arraigned is not the child, but the conditions that have brought him to court.” “The delinquent parent,” he said, “is a much more serious problem than the delinquent child.” One juvenile court judge called the court “nothing more than a very enlarged parent,” with the judge as “nothing more than an official head . . . of a rather large family” that included the child.⁴⁹

Missouri’s juvenile court acts permitted “any reputable person” to file a delinquency petition, fundamentally different from the criminal process which permits only the prosecutor or grand jury to initiate proceedings. The juvenile court would secure the attendance of the alleged delinquent and the parent by a summons rather than the warrant available in criminal courts. The General Assembly also instructed the courts to construe the juvenile court acts liberally to insure, first, that “the care, custody and discipline of the child shall approximate as nearly as may that which should be given by its parents,” and, second, that “as far as practicable any delinquent child shall be treated, not as a criminal, but as misdirected and misguided, and needing aid, encouragement, help and assistance.” Liberal construction is a civil canon inconsistent with the rule of lenity, which mandates that courts construe criminal statutes strictly in the defendant’s favor.⁵⁰

What about the constitutional rights guaranteed to criminal defendants? The reformers’ short answer was that these rights held no place in delinquency proceedings, which rehabilitated without imposing punishment. Jane Addams, a major force behind the 1899 Illinois juvenile court act, explained that “[t]he child was brought before the judge with no one to prosecute him and no one to defend him—the judge and all concerned were merely trying to find out what could be done on his behalf. The element of conflict was absolutely eliminated and with it, all notion of punishment.” The rights that mattered, said another social worker, were not children’s constitutional criminal rights, but their “primary right to shelter, protection, and proper guardianship.”⁵¹

Under this new rights model, juvenile courts acted as the child’s protector and ultimate guardian, and not as decisionmakers in an adversary process. Due process, statutory standards and the rules of evidence governed crimi-

nal proceedings, but juvenile courts saw these constraints as undesirable barriers to rehabilitation because they enabled parties to withhold material facts. Few dissenting voices were heard in 1920, when the U.S. Children's Bureau praised civil jurisdiction for enabling the juvenile court to gather "all the information . . . about the child and his family, decide whether or not the child is in a condition of delinquency or neglect, and apply the remedies best suited to the correction of the condition."⁵²

"Rehabilitation, not punishment" was also the firm answer of the Missouri Supreme Court, which unanimously rejected a frontal constitutional challenge to delinquency jurisdiction in 1923. In *State ex rel. Matacia v. Buckner*, the juvenile was charged with delinquency in the Jackson County juvenile court for acts that would have constituted rape if committed by an adult. He contended that the 1911 juvenile court act imposed criminal punishment without various federal and state constitutional criminal protections, including indictment, information, counsel, arraignment, bail, public trial and compulsory process for witnesses.⁵³

Matacia rejected the contention on the ground that delinquency proceedings were not criminal, but rather "exertion[s] of the State's power, *parens patriae*" to "supply proper custody and care in lieu of that of which neglected and delinquent children are deprived." The juvenile court's "principal, if not sole, purpose," Judge James T. Blair wrote for the court, "is not trial and punishment for crime, but the protection and support of neglected children and the reformation of delinquent children."⁵⁴ Two years later, the court reiterated that delinquency proceedings "might result in imprisonment, as for the commission of a crime," but only "for reformatory purposes and not as a punishment."⁵⁵

The criminal law made one inroad into the early juvenile court in 1921, but only for conduct ordinarily committed by adults, including a child's own parents. After a child came under the juvenile court's care and control, or after the court made an order concerning the child, the legislature authorized the court to punish by contempt any person who contributed to the child's delinquency or neglect, or who disobeyed, violated or interfered with any lawful court order concerning the child. "Any person" meant "any person." The defendant might be a parent who neglected the child or took him to a saloon or house of prostitution, or the defendant might be a non-relative such as a saloon-keeper who sold children liquor.

The juvenile court was a natural venue to adjudicate the new contempt proceeding, which would usually relate to children's conduct that would come before the court sooner or later. Rather than move only against the child as a delinquent, the court now had a potent weapon against the adult

who had influenced the child, for example by taking him to a saloon or house of prostitution. Defendants faced six months' imprisonment, a hefty \$500 fine (nearly a year's income for most Americans at the time), or both.⁵⁶

Informality

In 1910, a contemporary observer reported that juvenile courts in Missouri and a number of other states were already marked by "an intimate, friendly relationship . . . between the judge and the child." A leading juvenile court proponent asserted that the new court would fulfill its non-adversarial, rehabilitative role best by "discard[ing] technicalities of procedure which are not absolutely necessary and which tend to confuse a child's mind."⁵⁷

Appellate decisions quickly upholding juvenile court informality muted any debate about its pros and cons. In an influential 1905 decision, for example, the Pennsylvania Supreme Court held that "[t]o save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the Legislature surely may provide for the salvation of such a child . . . by bringing it into one of the courts of the state without any process at all."⁵⁸

Procedural informality left some observers uneasy, notably Roscoe Pound, who commented in 1913 that compared to the juvenile court, "the powers of the court of Star Chamber were a bagatelle." The following year, another writer predicted that broad discretion in the juvenile court would prove "just as unsafe as experience proved it to be in the criminal court."⁵⁹ Criticism fell on deaf ears because informality comported so well with prevailing perceptions of the juvenile court's rehabilitative mission. The U.S. Children's Bureau thought it was doing children a favor when it recommended that juvenile court hearings be held "with as little formality as possible," that criminal procedural rules "be avoided," and that the court go no further than to "bear in mind" the rules of evidence. In 1904, a juvenile court judge explained that hearsay, objectionable questions and circumstantial evidence were routinely admitted because "the juvenile court was a court of inquiry and not of prosecution."⁶⁰

Missouri's 1911 and 1917 juvenile court acts each specified that the court would hear cases "in a summary manner." The 1917 act even recognized the particular informality that marked many rural and small town courts by permitting hearings to be conducted "in the judge's chambers or in such other room or apartment as may be provided" for juvenile cases. To the state Supreme Court, "summary" meant that juvenile court proceedings would be "entirely informal." To the juvenile courts, "summary" soon also meant expeditious. By

the 1930s, Jackson County's juvenile court disposed of nearly seven cases an hour, an average of less than ten minutes for each.⁶¹

Medical analogies began dominating national discussions of juvenile court informality. Delinquency was likened not to criminality but, as one juvenile court judge put it, to "a disease shadowing and destroying the lives of more children than any other disease known to man." Another juvenile court judge compared the juvenile court to a medical clinic, where the judge viewed the child as "morally sick," reached a diagnosis and prescribed a remedy. Still another judge described the court as "a social agency . . . for the adjustment of such social ills . . . as are disclosed by an act or by repeated acts of minors whose conduct gives us the objective symptoms of unwholesome social conditions."⁶²

Once juvenile court judges were likened to physicians, little room was left for due process, the privilege against compulsory self-incrimination and other formal brakes on factfinding. "The physician searches for every detail that bears on the condition of the patient," one juvenile court referee said. "The physician demands all the facts, because he believes it is only *good* that can follow to his patient. The patient is privileged to expect *good*, but only on condition that he reveal all the facts and submit himself utterly. He is freed from fear because the aim of the examination is his own welfare."⁶³

Medical analogies became ingrained in juvenile court practice. As late as 1967, President Johnson's blue ribbon Commission on Law Enforcement and Administration of Justice (the "Katzenbach Commission") reported that in the juvenile court, "delinquency was thought of almost as a disease, to be diagnosed by specialists and the patient kindly but firmly dosed."⁶⁴

Two procedural protections survived juvenile court informality in Missouri. In delinquency proceedings, the 1911 and 1917 juvenile court acts guaranteed a jury trial on request by the child, parent or guardian. The acts also guaranteed the right to appeal any final order or judgment, though the right would probably have existed anyway under statutes already providing for appeals from circuit court determinations generally.⁶⁵ Provisions guaranteeing juries and appeals were absent from early juvenile court acts in many other states. Jury trials would serve only a limited purpose in juvenile court, where the focus was less on what the child did than on what to do with the child. Even so, the legislature may have preserved the jury trial right for fear that courts might hold denial unconstitutional in cases charging criminal behavior. The caution soon proved misplaced because by the mid-1920s, courts in several states had upheld juvenile court acts that had no jury trial provisions. Preservation may also have been less for the child than for the parents, who held a statutory right to the child's earnings in Missouri and

thus might be adversely affected by juvenile court decisions concerning the child.⁶⁶

In actual day-to-day juvenile court practice, jury trials and appeals made little difference because both remained rare events. By 1925, the St. Louis City juvenile court had held no more than about one jury trial a year, and only in particularly serious cases. The prospect of appeal may have vindicated the system's integrity by authorizing review of trial court decisionmaking, but the effects of appellate review were limited because only four or five of the St. Louis court's decisions had been appealed since 1920. No appeal had produced close review of essentially discretionary decisions.⁶⁷

Juvenile court informality never entirely submerged due process, at least in cases directly implicating the rights of adults. *In re Zartman's Adoption* demonstrated the point in 1933. The Jackson County juvenile court entered a decree approving adoption of a child whose parents had died. Without notice to the adoptive parents two months later, the court set aside the adoption after it learned from an unnamed source that the adoptive mother drank to excess and was away from the child for prolonged periods. The state Supreme Court held that the juvenile court could not annul the adoption without offering the adoptive parent notice and opportunity to be heard.⁶⁸

Informality directly affected the configuration of Missouri's early juvenile courtrooms. "The ordinary trappings of the court-room are out of place" in juvenile court hearings, Judge Mack explained in his widely cited 1909 *Harvard Law Review* article. "The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude." Judge Mack himself went quite far in the name of informality: "The judge on a bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work."⁶⁹

Missouri's historical record yields no mention of judges with arms around children's shoulders, but the contemporary thinking was that juvenile courts would rehabilitate best with courtrooms that resembled offices. The room should be small because hearings would not have a public audience, but large enough to impress children and their parents with the dignity of the court and the gravity of the proceedings.

Before settling on an appropriate format, the St. Louis City juvenile court moved several times in its early years. From its initial home in the old Four Courts Building, the court moved to the third floor of the new City Hall until April 1904, and then to the City Hall basement later that year. The court

shared the basement with a circuit court criminal division until February of 1908, when renovations of the Four Courts Building allowed the criminal division to move there, leaving the City Hall basement to the juvenile court and its probation office. In 1918, the juvenile court and probation office moved into the Children's Building at Fourteenth and Clark Streets. The rare jury trial was held in the St. Louis city courthouse because the small juvenile courtroom had no jury box.⁷⁰

In 1925, the U.S. Children's Bureau reported approvingly that the St. Louis City court's new facilities were designed specially for the purpose they served, and that the courtroom, "though small, had in modified form some of the features of the ordinary court room." A contemporary observer found the St. Louis juvenile courtroom quite informal, though more formal than most others in the state. The courtroom (pictured on the front cover of this book) had a low bench, creating an atmosphere essentially different from that of the criminal court. "The court convenes with a call for order by the Deputy Sheriff. Then the Clerk calls the case for hearing and the names of the witnesses. Each child, with all other parties concerned, stands before the judge's desk, and the examination is carried on in a conversational tone. The children are brought in from the detention home upstairs and the witnesses wait their turn outside in the waiting room, thus permitting a private hearing in each case."⁷¹

Jackson County's juvenile courtroom was also a small office, with only four chairs in front of the judge's desk because the judge did not like having anyone attend other than the juvenile, the parents, a stenographer and perhaps a probation officer. The judge was not on a raised platform, but on the same level near the juvenile. In 1936, the county completed a new five-story house of detention, including a courtroom equipped with a jury box.⁷²

Juvenile court informality left little role for lawyers, who were seen to thwart rehabilitation rather than serve the best interests of children. Illinois' juvenile court was not yet two years old before a sociologist breathed a sigh of relief that "much of the practice of the shyster police court lawyer" was absent from the court proceedings he had just observed.⁷³

On the rare occasion when an attorney appeared in juvenile court, it was usually to represent the interests of the parent or complainant, and not the child. When an attorney did appear for the child, one Missouri observer reported that the attorney made "little difference" because the judge usually did most of the questioning with the witnesses seldom under oath. A juvenile court judge candidly advised that counsel did not matter one way or the other because the juvenile court could easily "make the lawyer . . . an ally . . . and interest him in securing the real welfare of" the child, even if the alliance led the lawyer to forego the zealous advocacy adult clients would receive.⁷⁴

The U.S. Children's Bureau, created by Congress in 1912 and a strong chil-