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JUVENILE JUSTICE OR INJUSTICE?

THE DEBATE OVER REFORM

HONORABLE MICHAEL A. CORRIERO*

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Judge Corriero was appointed to the Court of Claims in June 1990. Since 1992, he has presided over Manhattan's Youth Part, a court set aside within the adult court system to deal exclusively with the cases of 13, 14 and 15 year-olds who are charged with the most serious and violent crimes. Most recently, Judge Corriero presided over the high profile case involving the Central Park slaying committed by teenagers Christopher Vasquez and Daphne Abdela.

He was previously appointed to New York State Supreme Court (1989-90) and also served as a Judge of the Criminal Court of the City of New York (1980-89).

He lectured on criminal justice as an Adjunct Professor at Pace University (1976-94) and was an Assistant District Attorney for New York County (1969-73). He subsequently specialized as a private practitioner in all phases of criminal law (1973-80). Judge Corriero was also Assistant General Counsel to the Society of European Songwriters, Authors, and Composers, a Legislative Assistant, and an Associate at Schiffmacher, Rochford, and Cullen.

His legal writings include: *South African Paper – Proposals for a "Youth Justice Act,"* NYSBA Crim. Just. J. (forthcoming Spring 1999); *Sentencing Children Tried and Convicted as Adults*, NYSBA Crim. Just. J. (forthcoming Spring 1999); *The Youth Part and Juvenile Justice*, N.Y.L.J., Feb. 4, 1997, at 1; *Youth Parts: Constructive Response to the Challenge of Youth Crime*, N.Y.L.J., Oct. 26, 1990, at 1; *A Fresh Look at the Fashionable Fifth*, 3 King's County Crim. Bar Assoc. J., June 1997.

Judge Corriero is Chairperson of the Committee on Juvenile Justice, Association of the Bar of the City of New York; a Member of the NYSBA Juvenile Justice Committee; a Member of the ABA Criminal Justice Section; a Trustee of Big Brothers, Big Sisters of New York; a Member of the Advisory Committee of the Citizen's Committee for Children; a Member of the Professional Committee of ELEM (Youth at Risk in Israel); and a Board Member of Transfiguration Grammar School Education Association.

Judge Corriero is the recipient of numerous honors and awards, including: The Livingston Hall Juvenile Justice Award (ABA 1997); Outstanding Service on Behalf of Youth Award (ELEM 1996); The Conrad B. Mattox, Jr. Commonwealth Debate Winner (University of Richmond 1996); The Charles A. Rapallo Award (Colombian Lawyers Association 1994); and the Brooke Russel Astor Award (Nominee 1993 & 1994).

He has also delivered professional presentations on juvenile justice issues at institutions such as the Tel Aviv University (ELEM 1998), and the MacArthur Foundation in Washington, D.C. (1997). In November 1997, the United Nations invited Judge Corriero to join a team of international juvenile justice experts to advise South African Law Officials on the creation of a juvenile justice system. In addition, Judge Corriero has testified at state and city legislative hearings on juvenile justice issues, delivered numerous addresses and participated in many state and national panel discussions.

James Hillman, author of *The Soul's Code*,¹ a book about the development of human personality, once told of an ancient African tradition where the elders of a village would look at a child as it was being born and would ask the question, "What is this child's destiny?" The challenge for them was to discover that destiny and then to nurture it, to see to it that that child achieved his or her potential.

It seems to me that that is the challenge facing us as a society. What is each child's relationship to this community? How can we best nurture and see to it that that child realizes his or her destiny? A juvenile justice system can definitely play an important role, although not the only role, in helping a child find their place in society. Sitting in Manhattan's Youth Part, I have had the opportunity since 1992 to see over 1,000 juvenile offenders; these being 13, 14, and 15-year-old children who are accused of the most serious and violent offenses. These youths are actually being prosecuted in the adult court, because of the 1978 Juvenile Offender Law.² Specifically, this law takes out of the jurisdiction of the Family Court the cases of 13, 14, and 15 year olds who are accused of the most serious and violent crimes. Thus, they are automatically placed in the adult court for prosecution as adults.

The best way to explain what I try to do in the Youth Part is to

¹ JAMES HILLMAN, SOULS CODE (Random House 1996) (providing alternative existential viewpoint that who we become as adults is pre-determined before our birth).

² See 1978 N.Y.LAWS, chs. 478, 481; N.Y. PENAL LAW § 30.00 (2) (McKinney 1998) [hereinafter Juvenile Offender Law] stating:

A person thirteen, fourteen or fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); section 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); subdivisions one and two of section 130.50 (sodomy in the first degree); section 130.70 (aggravated sexual abuse); section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); section 150.15 (arson in the second degree); section 160.15 (robbery in the first degree) or subdivision two of section 160.10 (robbery in the second degree) of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree; section 265.03 (criminal possession of a weapon in the second degree, but only when the weapon is possessed on school grounds); section 265.02 (criminal possession of a weapon in the third degree, but only when the weapon is possessed on school grounds).

Id.

refer to the movie called "A Bronx Tale."³

I do not know how many of you have actually seen the movie. Those of you who have not seen the movie, I will not ruin it for you. However, there is this pivotal scene I would like to share with you; and the movie, of course, is about a sixteen-year-old boy. His nickname is C. He is growing up in an Italian-American neighborhood in the South Bronx in the late Fifties and early Sixties. There is a scene in the movie where C is walking through the neighborhood one day when a car packed full of his friends pulls up to the curb.

"Hey, C, come on. Get in the car."

He jumps into the car, squeezes into the back seat, a friend on each side. He looks down at his feet and sees a box of Molotov cocktails. His friend in the front seat brandishes a gun. He realizes that they are on their way to an adjoining neighborhood to settle some perceived score. In the movie, we hear C saying to himself: "I don't want to be here. I don't want to do this. What's my father to think? I'm supposed to go to college." But he's in turmoil. He knows he can't tell his friends, "Stop, let me out of the car. I don't want any part of this." Why? He cannot say that because he knows from his point of view he will lose their respect and he will no longer be accepted in the neighborhood. So C is in turmoil. At that point, when all seems lost, the car is cut off by another car and the other protagonist in the movie, Sonny, a local wise guy, a gangster who took a paternal interest in C, reaches into the car and pulls C out of the car and, his friends unfortunately drive on to tragedy.

Now, I like to think that what we try to do in Manhattan's Youth Part is reach into that car and pull the kids like C out.⁴ Especially, the kids who do not want to engage in violence but are caught up in events initiated by others, but because of peer pressure cannot extricate themselves from the situation, and who do not yet have the self-confidence or maturity to say, "Stop. I don't want any part of this."

Now, the prosecutors think there are less of these kids in the car than I do, and the defense attorneys think there are more of

³ A Bronx Tale (Tribeca Prods. 1993).

⁴ See generally Michael A. Corriero, *Youth Parts: Constructive Response to the Challenge of Youth Crime*, 204 N.Y.L.J. 1 (1990) (discussing youth parts in New York).

them. Consequently, I have to strike a balance. The issue for me is whether these kids are "dead kids walking," if you will, or are they children who have the potential and the capacity to become contributing members of our society. How do I decide that? Our keynote speaker, Barbara Bennett Woodhouse, talked about heroes. How do I make this decision? Who am I? I grew up on Mulberry Street in Little Italy in Manhattan. I played stick-ball against the walls of the Criminal Court Building that I am now sitting in as a judge. How do I make this decision? How did this happen to me? I look at my life experience, I look at the great fortune that I have had in my life, the good fortune, and, as Mr. Roberto Benigni said in his Academy Award acceptance speech, "I thank my parents for the great gift of poverty." How do I make this decision?

Well, for me, I look at the Bible, I look at history, and I look at my own life experience. Talking about heroes, I know that Moses had the power to part a sea in order to avoid bloodshed, and that another young man who lived a long time ago, who did not punch anyone or stab anyone or shoot anyone, yet he had the power to split time in two. I know that Mahatma Gandhi had the power to create a nation and Martin Luther King had the power to move a nation, all without violence. Through imagination and faith they were able to change the world. I know that the young people who come before me have the power to change and to surmount the obstacles that are confronting them, if only they could behave. Accordingly, what I try to do is interact with them in such a way that I can instill belief in them. To instill belief in this democracy, which gave me the opportunity to achieve all that I have achieved.

It is not so facile, however, because the problems that these young people face are enormous. Let me just give you one brief example of a young African-American woman, 14 years of age, who was accused of a serious and violent crime, in terms of the impact that it had on us. I will call her Cecilia, that's not her true name. She was on the train with her girlfriend, who happened to be a little older, sitting across the way from her was another group of young girls. One of the young girls had pierced ears and earrings dangling from her ears.

The girlfriend said to Cecilia, "You know, I like those earrings on that girl. I want them."

They proceeded to get up, walked across the subway car. At this point Cecilia was standing next to the bully, who was hovering over the girl with the earrings.

The bully then says, "Give me those earrings."

The girl responds, "No, I'm not going to give you my earrings."

The bully repeats, "Give me those earrings."

The girl then tried to get up to walk away, and Cecilia, by standing there, blocked her from leaving. Simultaneously, as the girl sat down, the bully reached over and ripped the earrings out of her ears, and both she and Cecilia ran out of the subway door into the arms of police officers who happened to be there.

Now, Cecilia walked into my courtroom. I found out that she was a very talented dancer, going to a school here in New York for the performing arts. I asked one of the program representatives to interview her. Tell me what you can about Cecilia. See if she is suitable for an alternative to incarceration program.

A few days later the social worker came back to me and said, "You know, I spoke to Cecilia. I asked her a question that social workers would ask someone to get a picture of who they were." The social worker further stated, "I asked Cecilia, 'Cecilia, if you could change three things in your life, what would you change?'"

I subsequently asked, "Well, what did Cecilia say?"

The social worker responded, "You know what Cecilia said to me? She said that she would change her country, she would change her family, and she would change her sex. Her country because she believed America was a racist society, her family because her mother was a crack addict and she never knew who her father was, and her sex because she believed that young women were vulnerable to sexual and physical abuse."

How do you reach Cecilia? How do you tell Cecilia that you can achieve your goals in our society by concentrating on your talent? In particular, that along with your talent, if you will, you can develop discipline. You can survive these circumstances. That is the challenge that we face.

Certainly, our juvenile justice system is inadequate to face the aforementioned challenge, as it is presently constituted. In 1978, the legislature delivered the bodies of these children to the adult

court, and nothing else,⁵ specifically, without providing any special services, or special probation resources. Actually, nothing was provided for by the legislature other than the physical bodies of these children. Moreover, the reality is that the vast majority of children that I see in the adult court can be better served through the "rehabilitative model" of the Family Court. Therefore, out of this experience there are really four principles that I would like to share with you today.

First, if we want to deal effectively and constructively with the children of our society, the first thing we need to do is to develop a statutory strategy that identifies with precision violent, dangerous and chronic juvenile offenders. Our present system is the most imprecise. Youths are prosecuted as adults simply by virtue of having reached the threshold age and being accused of a crime. There is no specificity there. We should have a "transfer up" system like the vast majority of states; a legitimately constituted "transfer up" system where a Family Court judge, after a due process hearing, determines which children should be transferred to the adult court,⁶ children that they have seen before, children that they have tried to deal with or children whose crimes are so serious that to prosecute them in the Family Court would undermine confidence in the juvenile justice system. Thus, we need a statutorily precise way of identifying the violent juvenile offender.

Second, once we have done that, we need to re-examine the purposes of punishment. Yes, punishment should be for retribution, but when we talk about punishment of children we should ask ourselves, how do we discipline our children and why do we discipline our children? Certainly in order to educate and socialize them. Consequently, should it be any different with the

⁵ See Juvenile Offender Law, *supra* note 2. See generally Susan K. Knipps, *Urban Criminal Justice: Is It Fair? Does It Appear Fair?*, 20 FORDHAM URB. L.J. 455, 458 (1993) (noting that New York Juvenile Offender Law represented, at that time, harshest and most punitive system for treatment of young offenders in United States).

⁶ See generally Robert E. Shepherd Jr., *The Rush To Waive Children To Adult Court*, 10 SUM. CRIM. JUST. 39, 40 (1995) (discussing how most states had given juvenile court exclusive jurisdiction over children charged with delinquent acts, with typical upper age of eighteen, but then authorized court to waive its jurisdiction and transfer case to adult court for trial when appropriate). *But see id.* (concluding that historical pattern has eroded in recent years and that three states—Nebraska, New Mexico, and New York—have no system for waiver or transfer, and sixteen states allow criminal court jurisdiction, or waiver or transfer by judicial or prosecutorial decision, at any age for at least certain offenses).

children who come into court? No. Accordingly, in addition to retribution, or accountability, our punishment must be shaped and designed to educate these children, develop skills in them, and to help them in the areas that they drastically need help in. The questions we should be responding to in developing a comprehensive juvenile justice system revolve around a fourteen-year-old coming into court, and according to the Juvenile Offender Law, that fourteen-year-old is capable of committing a felony and forever being stigmatized with a felony conviction. As a result, he is subject to mandatory imprisonment.

So what about fourteen-year-old youths who we have no alternatives for; whose crimes are dreadfully serious and whose personal involvement in violence make them dangerous to themselves and to others? These fourteen-year-olds that we have to send off to detention facilities, what happens when they return to us? Certainly, we must recognize that virtually all juvenile offenders, regardless of the crime they commit will be back in society by the time they are 21 years of age, with the exception, of course, of murder. Consequently, who will be waiting to hire this fourteen-year-old with a felony conviction, having served two to six years in a detention facility? What skills will he have learned? Above all, how safe are we now from this child? These are the questions that have to infuse into an analysis of what we should be doing in terms of our juvenile justice system. Therefore, we want a system of punishment that educates, as well as rehabilitates.

Third, we need a system of prosecution and punishment that is flexible enough to recognize those children who can be safely channeled out of the system, who can benefit from the services of an alternative; for example, an alternative to incarceration program. So there has to be this element of flexibility. We call it discretion. What do we hear today, however, from our leaders? Lock more kids up, lock them up for longer periods of time, and take away discretion from the judges. When in fact we need just the opposite when we are dealing with children. We need more flexibility.

Finally, what about that fourteen-year-old to whom I cannot grant youthful offender treatment, to whom I cannot give probation, but who I must send off to prison for a serious robbery that he or she committed at 14 years of age? What about five

years after he is released from prison? He is married now and has a child of his own. He wants to drive a taxicab; he wants to work for the Transit Authority; he wants to work for the Sanitation Department; but he cannot because he has a felony conviction, a conviction for something that he did at the ripe old age of 14. We need a process of decriminalization. We need to be able to bring these children back into our society. The children who can demonstrate, if you will, their willingness to conform their behavior or to recognize that what happened at 14 is not who they are, but was just a sad episode in their lives. Then, we can have the grandest design on paper that can ever be devised. But we need something more, something only you can provide. As an illustration, that something is captured in the words of the late Supreme Court Justice William Brennan. He said that if due process values are to survive in the bureaucratic state of the late 20th century, it might be essential that officials possess passion.⁷ The passion that puts them in touch with the dreams and disappointments of those with whom they deal, the passion that understands the pulse of life beneath the official version of events. Thank you.

⁷ William J. Brennan, Jr., *Reason, Passion, and "The Progress of the Law"*, *The Forty-Second Annual Benjamin N. Cardozo Lecture*, 42 *THE RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK* 948 (1987), reprinted in 10 *CARDOZO L. REV.* 3, 22 (1988) (introducing passion as a new element into the decisional process).