

# Engaging Parents as a Legitimacy-Building Approach in Juvenile Delinquency Court

LIANA J. PENNINGTON\*

## Table of Contents

<b>I. Introduction .....</b>	<b>483</b>
<b>II. The Socio-legal Implications of Disengaging Parents .....</b>	<b>487</b>
A. <i>The Procedural Justice Effects of Parents’ Undefined Role in the Juvenile Court .....</i>	<i>488</i>
B. <i>Relying on Others for Voice – Filtered Participation through Defense Attorneys and Probation Officers.....</i>	<i>493</i>
C. <i>Fostering Negative Views of the Justice System within the Family.....</i>	<i>497</i>
D. <i>Ripple Effects of Parents’ Limited Role in Juvenile Courts.....</i>	<i>501</i>
<b>III. The Limited Role of Parents – The Implications of History.....</b>	<b>502</b>
A. <i>The Early Years of the Juvenile Court System ....</i>	<i>503</i>
B. <i>New Rights for Children - Procedural Justice in the Due Process Era.....</i>	<i>508</i>
<b>IV. The Role of Parents in the Modern Era – Continuing to Sideline Parents.....</b>	<b>513</b>
A. <i>Parental Accountability in Delinquency Court - Negative v. Positive Parental Participation .....</i>	<i>514</i>

---

\* Ph.D. Candidate in Law and Public Policy, Northeastern University. J.D. Georgetown University Law Center. I would like to thank Mary O’Connell, Kristin Henning, Anne-Marie Hakstian, Keramet Reiter and Amy Farrell for their insightful and helpful comments on earlier drafts of this paper. I also thank my fellow panelists at the 2011 Law and Society Annual Meeting in San Francisco, CA.

B. *Redefining the Parental Role – A Slow Move in the Right Direction*.....520

**V. A Strategy for Increased Legitimacy – Defining a New Role for Parents**.....**521**

A. *Creating More Responsive Courtroom Environments for Parents*.....523

B. *Engaging Parents as Co-Producers of Justice* ...527

C. *Building Parental Support as a Community Resource*.....531

**VI. Conclusion** .....**532**

## I. Introduction

*A prosecutor argues in a juvenile delinquency courtroom that a fifteen-year-old should be held. The probation officer reports to the judge that the youth is not behaving at home or listening to his parents. Sitting in the gallery, the child's father mutters, "That's not true." He stands up to say something and the bailiff gestures for him to sit down. The judge decides to detain the youth without the father's input.*

- Observation in New England Juvenile Court

*"We don't get to say anything when we come in. We just get another court date. Even if I want to talk and raise my hand, the lawyers say no, no, no and to sit down."*

- Interview with African American Mother<sup>1</sup>

Juvenile delinquency courts regularly fail to integrate parents into the juvenile justice process. These courts routinely order parents to appear in court, but then leave them sitting in silence at the sidelines. At best, this failure is a missed opportunity to engage parents in the task of encouraging positive changes in their child's behavior. At worst, sidelining parents reinforces any negative perceptions they may have of the judicial process. In this event, parents may share their distrust of the justice process with their court-involved child and with members of their community. Most states do not give parents a statutorily prescribed role in the delinquency process.<sup>2</sup> Often parents must rely on defense

---

<sup>1</sup> The observation and interview noted here were parts of an empirical research project on parents' experiences in juvenile delinquency court in one state in the urban Northeast. Subsequent observations and quotes used throughout this article are from the same research project. This research was funded by the National Science Foundation (grant # SES 1060009), the Gardiner Howland Shaw Foundation, and the Law and Public Policy Program at Northeastern University, Boston, MA.

<sup>2</sup> See *infra* Part III.A.

attorneys and probation officers to present their views on what is appropriate for their children, even when the parents are present in the courtroom. When parents feel disrespected, ignored, or blamed by legal authorities, their views of the fairness and legitimacy of the justice system are affected.<sup>3</sup> This Article is based on eighteen months of empirical research documenting parents' experiences in the juvenile delinquency court process in two Northeastern urban communities.<sup>4</sup>

Trust in the court process is at historic lows, particularly in urban communities where a disproportionate number of juvenile prosecutions take place.<sup>5</sup> Positive parental

---

<sup>3</sup> Socio-legal research in the area of procedural justice consistently demonstrates that perceived treatment during a legal process affects individuals' assessment of the legitimacy of the criminal justice system. *See generally* TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006); TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (2002); JOHN W. THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975). *See discussion infra* Part I.

<sup>4</sup> This field research followed thirty families through the juvenile delinquency process in two urban juvenile courts in one state in the northeast United States. The focus of the research was to examine parents' experiences in the juvenile delinquency court and how parents and court-involved youth discuss issues of law and justice within the family. This empirical project included approximately seventy-five interviews with court-involved youth and their parents as well as over one hundred observations of court hearings and attorney meetings with the family. Family members and youth participating in interviews had been declared indigent by the court and were assigned a court-appointed attorney employed by a juvenile defender organization. Subsequent analysis of this data will examine any differences between the two courts. Empirical research on juvenile courts is complicated because procedures can vary from courtroom to courtroom, as well as from state to state. *See* Barry C. Feld, *Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration*, 82 J. CRIM. L. & CRIMINOLOGY 156, 161-62 (1991) (discussing the complexity of empirical research because of the variation in juvenile justice practices).

<sup>5</sup> *See* DAVID B. ROTTMAN & RANDALL M. HANSEN, NAT'L CTR. STATE CTS., *HOW RECENT COURT USERS VIEW THE STATE COURTS: PERCEPTIONS OF WHITES, AFRICAN AMERICANS, AND LATINOS 1-5* (2001), <http://contentdm.ncsconline.org/cgi->

involvement in juvenile delinquency court can help to counteract declining trust and confidence in legal authorities and institutions. When parents assess their juvenile court experiences as fair and believe that their presence makes a difference in the process, the juvenile justice system benefits as a whole. Thus, paying attention to court policies and practices that bolster legitimacy and finding innovative ways in which courts can enhance public trust and confidence in the justice system is essential.<sup>6</sup> This Article examines the unintended harms that legislative mandates and court practices in some states may produce by requiring the presence of parents without providing them a meaningful voice in the hearings that involve their child. New legislation that encourages parental involvement in the juvenile delinquency court can support positive views of the legal system within the family and community. Although parents may have avenues for direct participation in juvenile delinquency courts in some jurisdictions, this Article focuses on areas where parents cannot participate in the courtroom directly and must rely instead on information filtered through the probation officer or the defense attorney to the judge.

Part I of this Article explains how the juvenile delinquency courtroom becomes a socialization experience for both parents and youth. Using courtroom observations and interviews with parents and juveniles, the Article examines parents' view of their limited role in the juvenile justice system and how parents' negative perceptions of the legal process can have a ripple effect in their families and communities. Observations and statements by parents of

---

bin/showfile.exe?CISOROOT=/ctcomm&CISOPTR=18/ (citing declining rates of perceived legitimacy of public institutions, particularly among members of racial minority groups); Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 262 (2008); BARRY C. FELD, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* 264, 267 (1999) (arrested and detained juveniles are disproportionately youth of color).

<sup>6</sup> See Tom R. Tyler, *Public Mistrust of the Law: A Political Perspective*, 66 U. CIN. L. REV. 847, 868-69 (1998).

court-involved youth are used in both Part I and Part IV to illustrate common themes that emerge during this research.

Part II examines the historical development of parents' limited role in the juvenile court. Early juvenile courts assumed that parents were responsible for their child's misconduct. Reformers during this era cared little about parents' experiences of the court process, since they assumed the parents were a negative influence on their children.<sup>7</sup> As due process protections were imposed on juvenile courts during the Warren Court era, the focus was on children, not parents. During this time attention was paid to the lasting negative effects that court experiences can have on children's views of the legal system, without considering the similar impact on parents.<sup>8</sup>

Part III examines the current state of parental participation in juvenile delinquency courts. Today's delinquency courts emphasize the social threat of juvenile criminality over the child's rehabilitation. This section examines state statutory guidelines that discourage positive parental participation in the juvenile delinquency courts. Current laws focus on parental accountability rather than fostering parental input.<sup>9</sup> Yet, for parents to trust the court system and view it as legitimate, they must see themselves as meaningful participants, not passive observers of a process in which legal authorities make all the decisions regarding their child.

Part IV proposes a way to increase parental voice and participation without diluting the juvenile's constitutionally guaranteed due process rights. Providing parents with an

---

<sup>7</sup> See Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 581 (2000). See discussion *infra* Part II.A.

<sup>8</sup> See *In re Gault*, 387 U.S. 1, 26-27 (1967) (children who receive harsh penalties with few procedural protections can leave the juvenile court viewing themselves as victims of an unjust process); see also discussion *infra* Part II.B.

<sup>9</sup> For example, parents can be ordered to pay for their child's counseling, restitution and attorney's fees. Parents may even be ordered to undergo treatment themselves. See statutes cited *infra* note 87.

opportunity to present a parental narrative, a time when parents can speak to the court about their child's home life and their opinion concerning the child's needs, would be relatively easy and cost very little. Encouraging parental participation through brief narratives can create more inclusive courtroom environments for parents, engage parents as co-producers of justice in the case involving their child, and build parental support as a community resource.

## II. The Socio-legal Implications of Disengaging Parents

*"The system is not fair and it will never be fair. You can't get any justice in this court."*

- African American Father

Distrust and lack of confidence in the courts and the justice system are widespread in the United States, particularly in disadvantaged urban neighborhoods and minority communities.<sup>10</sup> Members of racial minority groups are more likely to perceive the criminal justice system as unfair, with more than one-half of Latinos and two-thirds of African Americans perceiving their local courts as out of touch with the community.<sup>11</sup> Socio-legal research demonstrates that individual levels of trust and confidence in the courts can have important social implications. Individuals with negative perceptions of the courts and the justice system are less likely to accept legal decisions and are more likely to engage in criminal behavior.<sup>12</sup> This Article examines the

---

<sup>10</sup> See ROTTMAN & HANSEN, *supra* note 5, at 1-5; Tyler & Fagan, *supra* note 5, at 231; LAWRENCE W. SHERMAN, ET AL., PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING: A REPORT TO THE UNITED STATES CONGRESS, Washington, DC: National Institute of Justice (1997). African Americans may have even higher levels of distrust of the courts and the criminal justice system than of the police. See Tyler & Fagan, *supra*, note 5, at 238.

<sup>11</sup> See ROTTMAN & HANSEN, *supra* note 5, at 1-2.

<sup>12</sup> Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26, 26 (2007); Katherine M. Kitzmann & Robert E. Emery, *Procedural Justice and Parents' Satisfaction in a Field Study of Child Custody Dispute Resolution*, 17 LAW & HUM. BEHAV. 553, 564 (1993); E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE

policies and practices in some juvenile delinquency courts that can foster distrust of both courts and legal authorities in part by not encouraging parental participation. Failing to provide parents with meaningful opportunities to engage positively with the juvenile court can have three negative effects: 1) creating or reinforcing parents' negative perceptions of the legal process; 2) creating or reinforcing juveniles' negative perceptions of the legal process when they discuss their court experiences with their parents and look to them for guidance; and 3) decreasing the levels of community trust in the court process and legal authorities when parents discuss their negative courtroom experiences with family, friends, and neighbors.

A. *The Procedural Justice Effects of Parents' Undefined Role in the Juvenile Court*

*An African American mother sits silently on the front bench in the courtroom gallery during a contested hearing on a juvenile probation violation. The judge orders her son into custody and the court officer handcuffs him and leads him away. The defense attorney follows his client. The judge calls the prosecutor and another defense lawyer up to the bench. The three probation officers talk with one another, one picking up the phone to make a call. Everyone in the courtroom is in motion, except the mother who is still sitting in the same place. After a few minutes she looks around the room, stands up and leaves.*

Court practices that deny parents a meaningful role in their child's legal case can affect parents' views of the fairness of the delinquency court and the legitimacy of the legal system. Whether individuals believe they were treated fairly in a legal process is a key factor in determining whether

---

(1988); THIBAUT & WALKER, *supra* note 3.



they assess a legal institution positively or negatively.<sup>13</sup> Social science research in the area of procedural justice consistently finds that fair treatment by police and court officials is more important than the outcome of the case when individuals evaluate their legal experiences.<sup>14</sup> Having a voice in the legal process and being treated with dignity emerge as particularly important factors in determining whether individuals experience a court procedure as fair.<sup>15</sup>

While some jurisdictions allow parents to participate at multiple stages of the juvenile justice process, this is not true of all delinquency courts. A national survey supports the conclusion that juvenile courts need to more actively encourage parents' direct involvement.<sup>16</sup> This survey, which relied on judges' and probation officers' self-reported

---

<sup>13</sup> Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from the Law and Legal Institutions?*, 19 BEH. SCI. & L. 215, 216 (2001).

<sup>14</sup> TYLER, *supra* note 3, at 126. Having opportunities for engagement and perceiving a process as fair are crucial determinants in deciding whether a legal institution is perceived as "appropriate, proper, and just." Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCH. 375, 376 (2006). See Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 284 (2003) [hereinafter *Procedural Justice*]; TYLER & HUO, *supra* note 3, at 158. This is true both when individuals react to their own personal encounters with legal authorities and legal institutions and when they are making general evaluations of the police and courts in their community. Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513, 531 (2003).

<sup>15</sup> Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 ANN. REV. L. & SOC. SCI. 171, 172 (2005). But see TYLER & HUO, *supra* note 3, at 300 (suggesting that participation does not independently influence assessments of procedural justice, though participation has an important indirect influence as individuals are more likely to rate the quality of decision making and interpersonal treatment as high when given opportunities to participate). These procedural justice effects are particularly strong for court-related experiences. TYLER, *supra* note 3, at 105 (finding that procedural justice effects are stronger for courts than the police).

<sup>16</sup> HEATHER J. DAVIES & HOWARD A. DAVIDSON, AMERICAN BAR ASS'N, PARENTAL INVOLVEMENT PRACTICES OF JUVENILE COURT 10 (2001).

behavior, found that most judges do not directly question parents about their relationship with their child. Judges instead rely on information provided to them by the probation officer or defense attorney.<sup>17</sup> Recent statutory reforms have focused on parental accountability and not positive parental involvement, allowing judges to require parents to undergo services such as treatment and counseling to aid in the child's rehabilitation.<sup>18</sup> These statutes, sometimes referred to as parental involvement statutes, typically do not focus on the positive contributions that parents can bring to the juvenile courtroom.<sup>19</sup>

Although the juvenile delinquency court could be a

---

<sup>17</sup> *Id.* at 75, 94. In the Davies & Davidson survey, the judges surveyed reported they promote parental participation in 79% percentage of juvenile cases, yet this high percentage does not likely depict the actual level of active parental involvement occurring in most delinquency courtrooms. *Id.* at 43. Davis & Davidson used a purposive method in their survey design, aiming to reach juvenile courts that used new approaches to enhance parental participation. *Id.* at 18-19. This figure includes all cases in juvenile court, including status offenses such as truancy. Judges in the survey reported they were less likely to encourage parental participation in delinquency cases than in other juvenile cases. *Id.* at 95. In addition, in this survey parental participation included activities not likely to encourage parent's positive involvement, such as ordering parents to appear in court, having parents sign probation contracts and informing parents that they could be subject to sanctions. *Id.* at 42-47. In their report, Davies & Davidson note that the methods used by the judges to promote parental participation did not seem "unusually innovative or unique" and that parents need additional ways to positively and proactively engage with the court system. *Id.* at 7, 43.

<sup>18</sup> *Id.* at 109; James Herbie DiFonzo, *Parental Responsibility for Juvenile Crime*, 80 OR. L. REV. 1, 87 (2001); Mindy M. Willman, *Express and Implied Limits on Juvenile Court's Authority to Order Parental Drug Tests*, 43 ID. L. REV. 837, 848 (2007); Eve M. Brank, Stephanie C. Kucera, & Stephanie A. Hays, *Parental Responsibility Statutes: An Organization and Policy Implication*, 7 J. L. & FAM. STUD. 1, 11(2005).

<sup>19</sup> *See* DAVIES & DAVIDSON, *supra* note 16, at 109; Brank et al., *supra* note 18, at 11; DiFonzo, *supra* note 18, at 87. *See also* discussion *infra* Part II.A. Although many states have focused on negative participation by parents, a few states have allowed for more positive participation by parents, particularly in the dispositional stage of the juvenile court process. DAVIES & DAVIDSON, *supra* note 16, at 109; *see* discussion *infra* Part III.B.

key forum for parents to positively engage with the legal system and provide the court with useful information about their child, parents often leave the courtroom feeling disrespected and ignored. In my research, many parents expected that they would have an opportunity to talk with the judge directly and were often surprised, frustrated, and angry by their limited role. One Latina mother said,

*“They need to hear more from people, to listen to them. They don’t let the people talk. They only listen to what the prosecutor says or the lawyer says. They don’t let people say what they need to say.”*

One mother who has been in delinquency court with her son on multiple cases believed the judge should question parents about the child, saying “the judge should hear the stories, the situations from the parent.” A single working mother who has had two children in the juvenile justice system said, “I’m responsible to shelter her, feed her, clothe her, raise her, water her and watch her grow. Why don’t I have say when I’m in a courtroom? Why am I sitting in the back?”

Although judges can have valid reasons for not listening to parents,<sup>20</sup> parents and other family members may develop negative perceptions of the legal process if they do not understand why they cannot speak.

*In one case the judge and attorneys step into the hall for a private meeting while the juvenile’s family stays in the courtroom. The*

---

<sup>20</sup> Some parents may have interests that are adverse to their child’s interests. See Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1291-1298 (2004) (examining parents’ and guardians’ potential legal, personal, and financial conflicts of interests); Kristin N. Henning, *It Takes a Lawyer to Raise a Child?: Allocating Responsibilities among Parents, Children, and Lawyers in Delinquency Cases*, 6 NEV. L.J. 836, 856-865 (2006) (parents can have their own legal issues concerning their child’s case, including facing potential criminal charges and tort liability for their child’s behavior).

*juvenile's adult sister shouts, "Wait a minute" before they shut the door, remarking to the family member next to her, "So why did we come in here?" The sister angrily asks the clerk, "Does the family, guardian, nobody get to go back there?" The clerk responds, "They are talking about legal issues usually and what to do with the case. Then they come back out and put it on the record." Wiping away tears, the sister says, "But what about the guardian of the person or whoever's there to represent the family?"*

In my research, I observed a number of parents trying to speak in the courtroom who were stopped by the judge. During one hearing the juvenile's attorney told the judge that family therapy would benefit the client and his mother. The mother tried to interject two times, saying, "Can I say something?" After the second time, the judge said to the mother, "Ma'am, please be quiet." In another case a mother stood and said, "I didn't even get to speak and tell you something," as she was led out of the courtroom. Parents often told me they did not understand what was happening in court, describing themselves as outsiders in a process over which they had no control. Individuals who lack control over a decision-making process are more likely to perceive the procedure as unfair and not legitimate.<sup>21</sup> When asked about his experiences, one African American father said, "As a parent, you try to protect your kids from the world. It felt very helpless when you're just hearing people negotiating and having control over my son's life. I felt helpless as a parent." One mother described feeling immobilized by the process, saying, "I don't even know what could happen, anything could. It's all up to the judge."

A significant number of parents turn to the juvenile justice system to gain more control over their child.<sup>22</sup> These

---

<sup>21</sup> TYLER, *supra* note 3, at 7.

<sup>22</sup> See Laurie Schaffner, *Families on Probation: Court-Ordered Parenting Skills Classes for Parents of Juvenile Offenders*, 43 CRIME &

parents may become quickly disillusioned when they learn how limited their voice can be in the court process. Parents become frustrated and defensive in the delinquency process if they are losing control over their child at home, and that lack of authority is reinforced by the juvenile court. One African American mother who was seeking mental health treatment for her son said to me,

*“The child has his attorney, but the parent is sitting there left to fend for their self. And when it’s left like that, it breaks down a parent’s parenting tremendously. . . They don’t listen to when the parent comes forward, and it’s the parent that’s asking for this help. This is my child, I’m trying to actually save my child.”*

Many of the youth I spoke with noted their parents’ limited role and influence in the court process.<sup>23</sup> One juvenile told me her mother “has no say” in the courtroom, and another said his mother’s role in delinquency court is “to do nothing.” Another juvenile said that the juvenile court process would be the same without parents, noting that his mother “is just sitting there.”

*B. Relying on Others for Voice – Filtered Participation through Defense Attorneys and Probation Officers*

Parents can also become frustrated when their participation in the juvenile court process is indirect and filtered through others. Although defense attorneys and probation officers have no responsibility for voicing the

---

DELINQ. 412, 430-31 (1997) (parents and juvenile justice officials often shared an “adult solidarity perspective,” agreeing that the child was out of control and required intervention).

<sup>23</sup> Previous scholarship has noted that juveniles likely observe the limited role and decision-making power of their parents in the court process, but prior empirical research has not examined this issue. Tamar R. Birkhead, *Toward a Theory of Procedural Justice for Juveniles*, 57 BUFF. L. REV. 1447, n.219 (2009) (finding no empirical research on the question of how juvenile offenders view the role of their parents in delinquency proceedings after a thorough search of social science research).

concerns of parents,<sup>24</sup> these legal authorities are often the primary avenue for parents to express their views and provide information to the court. One mother became exasperated when the defense attorney and the probation officer went back and forth about the child's home life, angrily saying that the judge should "just ask us, we're sitting right here." A Latina mother expressed a similar sentiment, saying, "For us, it would make us feel better if could express ourselves. Not just tell another person and that person tells the judge. You want to speak for yourself too."

In my research a number of parents believed that the attorney could not accurately portray their family's situation to the court.<sup>25</sup> In the words of one African American mother

---

<sup>24</sup> Defense attorneys have no obligation to speak for the parent in court. Indeed they often cannot because their obligation is to the child, not the family. It is generally accepted that defense attorneys are required to represent their juvenile client's expressed interest. AM. BAR ASS'N, IJA-ABA JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH 147 (ROBERT E. SHEPHERD, JR. ed., 1996); *see* MODEL RULES OF PROF'L CONDUCT R. 1.14 (2010).

In most jurisdictions, probation officers interview parents and collect information about the child's home life before the dispositional hearing, acting as a filter of information conveyed to the court. Although probation officers may be required to speak with parents before court hearings, they do not need to side with parents or present the parents' views to the court. *See, e.g.* ALA. CODE § 12-15-214 (2010); CONN. GEN. STAT. § 46b-134 (2010); MASS. GEN. LAWS ch. 119, § 57 (2010); MISS. CODE ANN. § 43-21-603 (2010); S.D. CODIFIED LAWS § 26-7A-88 (2010).

<sup>25</sup> In my research, although a number of parents expressed frustration with the defense attorney, other parents reported having positive interactions. This research did not focus on defense attorneys' perceptions, but evaluations of state juvenile justice systems conducted in the past decade offer some insight into how defense attorneys in other jurisdictions can view parents as intruding on the attorney/client relationship. In these evaluations, defense attorneys expressed frustration with parents, voicing a common complaint that parents were often angry that the attorney represents the child and not the family. *See* JESSIE BECK, PATRICIA PURITZ, & ROBIN WALKER STERLING, NAT'L JUVENILE DEFENDER CTR., JUVENILE LEGAL DEFENSE: A REPORT ON ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION FOR CHILDREN IN NEBRASKA 35 (2009). In a study of North Carolina's representation of juvenile offenders, many defense attorneys seemed disdainful of parents and named them as a major

who had four sons in the delinquency system,

*“The defense attorneys take notes, but they don’t write down the whole thing. They twist it into their own words. They don’t know the child. They don’t know the parents. They explain the best they could, but it don’t come out right.”*

Another mother said that “all lawyers are liars” and she doubted her son would have a fair hearing. Parents who were satisfied with their child’s attorney still believed parents deserved a direct participatory role in the court process. Emphasizing the cultural differences between the attorney and her family, one mother said the “alphabet soup” at the end of the attorneys’ name (referring to their advanced degrees) “makes them so much more important.” This mother said that while she thinks her child’s attorney is nice, “once we get into the courtroom the attorney will say what he thinks is best” no matter what she tells him. Another mother who was very pleased with her son’s attorney nonetheless bristled at her limited role, saying it angered her that parents have so little say in the process.

Relying on probation officers to express parents’ views in the courtroom is also problematic. In my research, parents generally did not trust probation officers or believe they understood their family’s needs. One mother doubted that the probation officer could accurately portray her child’s home life, saying “it’s like they’re scared to go to people’s houses and scared to interact with the kids. They just stay

---

obstacle to effective representation. One attorney stated that parents are a “big problem” because “they always want to know what’s going on.” LYNN GRINDALL, AM. BAR ASS’N JUVENILE JUSTICE CTR., NORTH CAROLINA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 6, 39 (2003). Defense attorneys in Texas seemed dismissive of parents’ interest in their children’s cases, with one attorney saying, “If [the parents] don’t agree with me, I don’t care. I know what is in [the juveniles’] best interest better than their parents do.” TEXAS APPLESEED FAIR DEFENSE PROJECT, SELLING JUSTICE SHORT: JUVENILE INDIGENT DEFENSE IN TEXAS 24 (2000).

behind a desk.” Mothers called probation officers “very, very ignorant” and “mean to kids, mean to parents.”<sup>26</sup> When probation officers presented incorrect information about the family to the judge, parents did not always have the chance to correct it.

*One African American grandmother shakes her head vigorously when the probation officer reported missed appointments to the judge. She raises her hand and starts to say something, but the judge does not let her speak. After the hearing she tells me she did not appreciate “how only the negative came out from the probation officer,” explaining that the family had called and notified probation beforehand and that her granddaughter had been excused. The grandmother says, “He said one thing outside the courtroom and then did something else inside. My words didn’t mean nothing.”*

Having to rely on legal authorities to portray their home situation to the court reinforces parents’ negative perceptions of the justice system, particularly when parents either do not trust these legal authorities or do not believe they can fully understand their home situation because of cultural and social differences. Since being able to participate and voice concerns are key elements in assessing the fairness of a court process,<sup>27</sup> building trust in the delinquency system calls for opportunities for direct participation by parents. This is particularly true if parents do not believe these legal authorities can speak accurately on their behalf, and when neither defense attorneys nor probation officers are bound to represent parents’ interests.

---

<sup>26</sup> Although most of the parents in my study had negative feelings towards probation officers, this was not universal. For example, one mother felt very supported by the probation officer, saying “probation looks out for parents.”

<sup>27</sup> Tyler, *supra* note 13, at 231.



C. *Fostering Negative Views of the Justice System within the Family*

*When asked how her court-involved son feels about the legal process, one mother says, “He thinks the same way I do. That it’s not fair in everything.”*

- Latina Mother

Many parents discuss their court experience with their court-involved children out of the presence of judges and lawyers.<sup>28</sup> In my research, a number of parents told me they had on-going conversations with their child about the court proceedings. One mother said she frequently discussed the criminal justice system with her four sons, all of whom were involved in the delinquency court. She described talking about court as “one of our main conversations.” One juvenile told me that even though her mother does not attend court, they nonetheless have “girl talk” after every hearing and discuss what went on in the courtroom. One mother, who believed police had withheld important information about an accomplice, told me she often talks with her son about the case, telling him “I don’t agree with how things are going.”

Parents help their children interpret the court experience. Youth in the juvenile justice process often solicit their parents’ advice and look to family members to help them navigate the legal process.<sup>29</sup> When asked about his mother’s

---

<sup>28</sup> There are no legal barriers preventing parents from talking about the court process with their children. *See* Henning, *supra* note 20, at 875. In my research, not all parents reported in-depth conversations with their court-involved child about the legal process, but the parents who had such conversations told me that they discussed the criminal justice system frequently with their child.

<sup>29</sup> Anne Tobey, Thomas Grisso, & Robert Schwartz, *Trial Participation as Seen by Youths and Their Attorneys*, in *YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE* 225, 235-36 (Thomas Grisso & Robert G. Schwartz eds., 2000); *see* Henning, *supra* note 20, at 839 (youth often turn to their parents for guidance when faced with a crisis such as the possibility of detention. Henning calls this type of positive participation the “Parent as Ally.”). It is also important to

role in the court process, one juvenile said, “she’s here to guide me.” This same youth said this is necessary because “it’s like they’re speaking a different language” in court. Another young man said it “helps to have [his mother] here. She gives me support so I’m not alone.” The family’s role in processing social experiences is well established. Families are tightly interconnected units; the belief systems of one family member often influence the others.<sup>30</sup> Children acquire their law-related attitudes, values, and norms through close interaction with their immediate social groups, such as family members and peers.<sup>31</sup> Parents play a crucial role in the socialization of their child, including creating and maintaining perceptions of the law and the justice system.<sup>32</sup> When one

---

recognize that parents are not always their children’s allies in the court process. Henning identifies cases in which parental instability and conflict within the family make the parent less helpful to the juvenile’s attorney and more of a barrier to the child’s effective representation. *Id.* at 848-49.

<sup>30</sup> Wesley T. Church II, et al., *What Do You Mean My Child Is in Custody? A Qualitative Study of Parental Response to the Detention of Their Child*, 12 J. FAM. SOC. WORK 9, 9 (2009) (describing family systems theories as capturing “the interconnectedness of family members” and explaining “how the actions of one member of the system influence the system as a whole,” even during adolescence).

<sup>31</sup> See RONALD AKERS, *DEVIAANT BEHAVIOR: A SOCIAL LEARNING APPROACH* (3d ed. 1985); EDWIN H. SUTHERLAND & DONALD R. CRESSEY, *PRINCIPLES OF CRIMINOLOGY* (7th ed. 1966). Although a child’s interaction with peers may be very influential, it is parents’ perceptions of the legal system’s legitimacy that are directly at issue here because it is the parents who participate in the justice process directly with their children.

<sup>32</sup> See Gerald R. Patterson & Thomas J. Dishion, *Contributions of Families and Peers to Delinquency*, 23 *CRIMINOLOGY* 1, 63-79 (1985); MICHAEL GOTTFREDSON & TRAVIS HIRSCHI, *A GENERAL THEORY OF CRIME* 97-100 (1990) (individuals engage in criminal activity in the absence of self-control and effective parenting can help children develop appropriate self-control); Church, *supra* note 30, at 9. Parental perceptions of law and justice can strongly affect a child’s moral and political beliefs. See Alex R. Piquero, et al., *Developmental Trajectories of Legal Socialization Among Serious Adolescent Offenders*, 96 J. CRIM. L. & CRIMINOLOGY 267, 298 (2005) (stating more research on the concordance of parent-child perceptions of the legal system is necessary because parents are an important socializing agent in their child’s development). Prior work has emphasized the need for research on the origins of perceptions of legitimacy and how family relationships affect children’s

Latina mother was asked how she thinks her son feels about the juvenile delinquency court process, she said, “He thinks like me. He thinks the same way I do.”

How parents respond to their child’s delinquent behavior and how they discuss their time in the juvenile court can strongly influence whether a child continues to engage in criminal activity.<sup>33</sup> Experiences with the police and court authorities during adolescence are particularly formative.<sup>34</sup> Youth are in the process of developing their attitudes about the legitimacy of law and its capacity for justice.<sup>35</sup> Understanding how youth view the legal process is crucial to the delinquency court’s success; youth who perceive the criminal justice system as legitimate and fair are less likely to recidivate.<sup>36</sup> Increasing the level of trust youth have in legal

---

acquisition of values relating to the law and justice. *Id.*; see also Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 SOC. JUST. RES. 217, 222 (2005).

<sup>33</sup> See James Snyder & Mike Stoolmiller, *Reinforcement and Coercion Mechanisms in the Development of Antisocial Behavior: the Family*, in ANTISOCIAL BEHAVIOR IN CHILDREN AND ADOLESCENTS: A DEVELOPMENTAL ANALYSIS AND MODEL FOR INTERVENTION 98-100 (John B. Reid, Gerald R. Patterson, & James J. Snyder eds., Am. Psychological Ass’n 2002) (microsocial research examining day-to-day interactions demonstrates that parents’ reactions to a child’s antisocial behavior within the family environment influence whether the child continues to engage in antisocial behavior).

<sup>34</sup> John Hagan, Carla Shedd, & Monique Payne, *Race, Ethnicity, and Youth Perceptions of Criminal Justice* 70 AM. SOC. REV. 281, 383 (2005) (the teenage years are a critical period for the formation of politically related beliefs, such as perceptions of the criminal justice system).

<sup>35</sup> *Id.*; June Louin Tapp & Felice J. Levine, *Legal Socialization: Strategies for an Ethical Legality*, 27 STAN. L. REV. 1, 4-9, 17 (1974) (as children age, their understanding about the law generally evolves from viewing laws as simple rules devised by authority figures to conceptualizing law as a series of complicated social agreements).

<sup>36</sup> Jeffrey Fagan, Joseph G. Weis, & Yu-The Cheng, *Delinquency and Substance Use Among Inner-City Students*, 20 J. DRUG ISSUES 351 (1990) (attitudes toward the law significantly predicted both drug use and delinquency among inner-city youth). Each experience a child has relating to the law is part of a socialization process that teaches him or her about the nature of power, justice, and authority. See AUSTIN SARAT & WILLIAM L. F. FELSTINER, *DIVORCE LAWYERS AND THEIR CLIENTS: POWER AND*

authorities is viewed as one the most effective long-term strategies for preventing crime, particularly with youth considered high-risk.<sup>37</sup> Juvenile justice professionals should expect that parents will significantly influence their child's views of the legal process even if the parents have no formal, participatory role. In my research, parents who held negative views of the justice system appeared more likely to justify their child's delinquent behavior. One mother said that she makes a point of discussing her distrust of the police with her son, telling him, "It's not right what they're doing to you."<sup>38</sup>

---

MEANING IN THE LEGAL PROCESS 3 (1995) (describing experiences of clients in divorce court). Participating in the justice process can be particularly significant, positively or negatively. *See* Tyler, *supra* note 12, at 30 (stating it is important to remember that each individual involved with the criminal courts treats his or her experiences as a "civics lesson" about the legal system).

<sup>37</sup> SHERMAN ET AL., *supra* note 10 (making the style and substance of police practices more legitimate in the public's eye may be one of the most effective long-term strategies to prevent crime, especially among high-risk juveniles). Increasing the perceived legitimacy of legal authorities has become a major policy concern. In a panel discussion titled "A View From the Street: Police Leaders Share Their Perspectives on Urgent Policy and Research Issues Facing Law Enforcement in 2010 and Beyond" at the 2010 National Institute of Justice Conference, Bernard K. Melekian, Director of the Office of Community Oriented Policing Services at the U.S. Department of Justice, stated that the issue of credibility and public trust of police officers is one of the country's most pressing problems. National Institute of Justice Conference Panel, A View From the Street: Police Leaders Share Their Perspectives on Urgent Policy and Research Issues Facing Law Enforcement in 2010 and Beyond (June 14, 2010), <http://nij.ncjrs.org/multimedia/transcripts/trans-audio-nijconf2010-view-from-streets.htm#melekian>. State courts have also noted that increasing the public's trust and confidence in the courts is an important goal. Many states have developed action plans to address issues of legitimacy. *Court-Community Initiative Resource Guide*, NATIONAL CENTER FOR STATE COURTS, <http://www.ncsc.org/topics/court-community.aspx> (last visited Mar. 15, 2012) (describing a number of initiatives designed to increase trust and confidence in local courts).

<sup>38</sup> This mother and son share their distrust of the court system as well as of the police. When I asked the mother how she believes her son perceives the juvenile court she says, "he thinks the same way I do." In his interview, the son echoed his mother's negative views of both the police and the courts.

Referring to a surge of violence in the community during the summer months, one father said “with everything going on out there, I don’t blame [my son] for being here.” Parents help to create what the law is and what the court process represents for their children. Engaging parents in a meaningful way in the juvenile justice process not only helps build positive views of the law within the family, but also potentially diminishes delinquent behavior.

*D. Ripple Effects of Parents’ Limited Role in Juvenile Courts*

*When asked if she expected the court to be fair, one mother replies, “I didn’t think it would be fair. You kidding me? You just hear the worst and the worst. Most of it is generated through racism and not getting a fair trial. People have told me their different stories.”*

- African American mother

Parents not only discuss the juvenile court process with their children, they talk to others in the community as well. Many parents and youth knew people at the courthouse and knew the details of the charges they were facing. One mother said, “Everybody I know, they go to [that] court. . .I recognize everybody in that courthouse.” In my research, a number of parents and youth had formed an impression of the judge and the probation officers before entering the courtroom. For example, one mother was familiar with the judge in her son’s case because she “heard about him from around, from my neighbors.” A mother who did not attend most of her daughters’ court hearings nonetheless had a strong negative view of the judge in the case, saying “People talk about him, how he is.” In my research, parents not only acknowledged this discourse within their communities, but often attributed the genesis of their own views of the court system to discussions with family, friends, and neighbors. For example, when asked how she believed she formed her opinions about the courts and the police, one mother replied,

*“From other people’s opinions and minds. Just seeing how they feel about it. Hearing their*

*output. Because I know their experience and my experience is the same. People go to court all the time and we talk. So we just compare.”*

- African American mother

One family's distrust of legal institutions and the criminal justice system can have a ripple effect throughout a community, decreasing levels of cooperation with legal authorities and making it more difficult for the police and the courts to maintain social order and reduce crime.<sup>39</sup> Police and courts rely on the support of participants and the greater community to function effectively, particularly in neighborhoods with high levels of reported crime.<sup>40</sup> To rein in the high levels of cynicism toward the law that currently pervade historically disadvantaged areas, courts must engage with community members in more positive ways.<sup>41</sup> One low-cost strategy is to create a more defined role for parents in juvenile delinquency court and to value their input in the proceedings involving their children.

### III. The Limited Role of Parents – The Implications of History

After more than a century of existence,<sup>42</sup> the juvenile

---

<sup>39</sup> See Tyler & Fagan, *supra* note 5, at 263. “Recent discussions of crime and urban disorder suggest that the police have difficulty effectively managing crime without the support of the community...[w]hile society creates legal authorities and institutions to manage problems of social order, the success of those authorities is ultimately linked to the attitudes and behaviors of people living within the communities involved.” *Id.* at 262.

<sup>40</sup> *Id.*; *Procedural Justice*, *supra* note 14, at 286, 342-44 (using fair procedures is particularly important in interactions between legal authorities and members of minority groups). Tyler emphasizes that community members must play an active role for the police to effectively control crime in high-crime areas. *Id.* at 343. Low levels of trust and confidence in the law and the police work against this objective. *Id.*

<sup>41</sup> See Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 LAW & SOC’Y REV. 777, 801 (1998).

<sup>42</sup> The first law establishing a court system for children in the United States was passed in Illinois in 1899, titled “An Act for the Treatment and

courts continue to struggle to define the role of parents in delinquency cases. To better understand the limited voice of parents in many juvenile delinquency courts today, it is necessary to look at the role of parents in a historical context. The history of the juvenile court is often divided into three time periods, each with its own characteristics, objectives, and goals.<sup>43</sup> In the founding era, parents were often viewed as the cause of their child's delinquency and the source of moral deprivation.<sup>44</sup> The judge was viewed as a direct replacement to parental authority. In the second era, often called the due process revolution in juvenile justice,<sup>45</sup> the focus turned away from the deprivation of families and toward children's rights in the delinquency system and the impact of the legal process on a child's moral development. This important change came at the expense of viewing the child as part of a family unit whose other members are also deeply embedded in the juvenile justice process. Part III will examine the modern era and the renewed focus on the social threat of juvenile crime.

#### A. *The Early Years of the Juvenile Court System*

In 1899 when the first juvenile court opened its door, parents were viewed as the primary source of a child's misdeeds. Progressive reformers believed that parents of court-involved youth were incapable of socializing their children properly and they accused them of failing to meet their child's physical and moral needs.<sup>46</sup> Parental neglect was

---

Control of Dependent, Neglected, and Delinquent Children." Illinois Juvenile Court Act, 1899 Ill. Laws 132 *et seq.* See generally David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Conception*, in A CENTURY OF JUVENILE JUSTICE 42 (Margaret K. Rosenheim et al. eds., 2002).

<sup>43</sup> See Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 141 (1998); Scott, *supra* note 7, at 579. Scott provides an insightful look at how "reform rhetoric" reflects strikingly different pictures of childhood and adolescence at different periods. *Id.*

<sup>44</sup> Scott, *supra* note 7, at 581.

<sup>45</sup> FELD, *supra* note 5, at 80.

<sup>46</sup> Scott, *supra* note 7, at 581. See also Scott & Grisso, *supra* note 43, at

viewed as the primary cause of delinquency and a child's criminality was considered directly attributable to the failures of the child's mother or father.<sup>47</sup> Reformers demonstrated sympathy for poor children but displayed little regard for the suffering of parents, making a sharp distinction between adult poverty and the needs of children.<sup>48</sup> Adult poverty was viewed as a symptom of weakness and idleness, while poor children were innocent victims of their parents' flaws.<sup>49</sup> The ethnic background, immigration status, and socio-economic circumstances of parents often influenced the judge's actions in a juvenile case. The historian Steven Schlossman writes, "[i]n practice the juvenile court functioned as a public arena where the dependent status of children was verified and reinforced and where the incapacities of lower-class immigrant parents were, in a sense, certified."<sup>50</sup>

Reformers believed the state needed to take over parental duties in order to save the child. Under the doctrine of *parens patriae*, the juvenile court had the right and responsibility to substitute its control over children in place of

---

144, n.30 ("In the reformers' minds, parents were often the culprits, mostly in failing to provide positive influence, thus leaving vulnerable children susceptible to the influences of peers.").

<sup>47</sup> Scott, *supra* note 7, at 581. Reflecting this belief, the first juvenile courts did not separate children who were victims of abuse or neglect from children charged with criminal acts. The original act establishing the first juvenile court was titled "An Act for the Treatment and Control of Dependent, Neglected, and Delinquent Children," making no distinction between neglect and delinquency. Tanenhaus, *supra* note 42, at 42. See also Scott & Grisso, *supra* note 43, at 145.

<sup>48</sup> STEVEN L. SCHLOSSMAN, *LOVE AND THE AMERICAN DELINQUENT: THE THEORY AND PRACTICE OF "PROGRESSIVE" JUVENILE JUSTICE, 1825-1920*, at 91-92 (1977).

<sup>49</sup> MICHAEL GROSSBERG, *Changing Conceptions of Child Welfare in the United States, 1820-1935*, in *A CENTURY OF JUVENILE JUSTICE*, *supra* note 42, at 3, 19.

<sup>50</sup> SCHLOSSMAN, *supra* note 48, at 57-58. Schlossman notes that empirical research on this era is quite limited. *Id.* at 124. Schlossman and others have found that Irish and other immigrant parents were generally viewed with suspicion and the children of these families were more likely than other children to be detained. *Id.* See BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 18 (1993).



the natural parents when the parents were deemed unable to adequately care for their children.<sup>51</sup> A core assumption of the early juvenile courts was that parents of court-involved children, mainly poor and immigrant parents, needed government assistance to provide appropriate guidance to their child.<sup>52</sup> The founders of the juvenile court used the language of parenthood to describe the judicial role, calling the judge a “wise and merciful father”<sup>53</sup> acting “in the spirit of a wise parent toward an erring child.”<sup>54</sup>

The socialization of children and the educative character of the juvenile court were central to the court’s origins.<sup>55</sup> Moral corruption cultivated within the family

---

<sup>51</sup> The term *parens patriae* established the state’s responsibility for dependent children and affirmed its ability to take children away from their natural parents if the circumstances demanded it. See GROSSBERG, *supra* note 49, at 7. The constitutionality of the *parens patriae* doctrine was affirmed in the case *Ex parte Crouse*. *Ex parte Crouse*, 4 Wharton 9 (Pa., 1838).

<sup>52</sup> See generally ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1977) (arguing that turn of the century middle class reformers shaped the juvenile court as a class-based disciplining institution); see also FELD, *supra* note 5, at 62-65 (same). But see FRANKLIN E. ZIMRING, *The Common Thread: Diversion in the Jurisprudence of Juvenile Courts*, in *A CENTURY OF JUVENILE JUSTICE*, *supra* note 42, at 142, 147 (stating that most late 20th century work underestimates the capacities and misrepresents the motives of founding figures of the juvenile court movement).

<sup>53</sup> Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 109 (1909). Judge Julian Mack is considered a leader in the juvenile court movement. In this influential law review article he wrote, “Why is it not just and proper to treat these juvenile offenders, as we deal with the neglected children, as a wise and merciful father handles his own child?” *Id.*

<sup>54</sup> MIRIAM VAN WATERS, *YOUTH IN CONFLICT* 11 (1926). Miriam Van Waters was a prominent juvenile justice advocate in the Progressive area who rallied against the harsh methods of punishment towards young girls. MARY E. ODEM *DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885-1920*, at 130 (1995).

<sup>55</sup> As Judge Julian Mack stated, “We must reach into the soul-life of the child.” Julian W. Mack, *The Chancery Procedure in the Juvenile Court*, in *THE CHILD, THE CLINIC AND THE COURT* 315 (Jane Addams ed., 1925). Many states still have “moral education” objectives in their juvenile codes.

environment was identified as the primary cause of children's delinquent behavior.<sup>56</sup> Judges would often lecture and chastise both parents and youth, dictating to them how to live their lives properly.<sup>57</sup> As one historian stated, "the sponsors of the juvenile court infantilized the adult poor while attempting to civilize them."<sup>58</sup> Since the reformers viewed parental flaws as the cause of juvenile delinquency, it is not surprising that parents had no defined role in the juvenile court process and little voice in the proceedings. Judges typically disregarded parents' versions of facts in the case and rarely solicited parents' opinions regarding their child's needs. Often judges would ignore parents entirely during the course of the court

---

*See, e.g.*, MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 (LexisNexis 2010) (balancing objectives of public safety, making victim whole, and "competency and character development to assist children in becoming responsible and productive members of society"); MONT. CODE ANN. § 41-5-102 (2010) (to provide for the care, protection, and wholesome mental and physical development of a youth); N.H. REV. STAT. ANN. § 169-B:1 (2010) (to encourage the wholesome moral, mental, emotional, and physical development of each minor); N.J. STAT. ANN. § 2A:4A-21 (West 2010) (to provide for the care, protection, and wholesome mental and physical development of juveniles); TENN. CODE ANN. § 37-1-101 (2010) (to provide for the care, protection, and wholesome moral, mental and physical development of children); TEX. FAM. CODE ANN § 51.01 (Vernon 2010) (same).

<sup>56</sup> KRISBERG & AUSTIN, *supra* note 50, at 13; Mark F. Testa & Frank F. Furstenberg, *The Social Ecology of Child Endangerment*, in A CENTURY OF JUVENILE JUSTICE, *supra* note 42, at 237-38. Progressive reformers believed that children were dependent on others for moral guidance, particularly their parents. The founders of the juvenile court movement believed that children lacked the ability to reason and make moral judgments, making them unable to be held criminally responsible for their actions. *See* Elizabeth S. Scott, *The Legal Construction of Childhood*, in A CENTURY OF JUVENILE JUSTICE, *supra* note 42, at 113, 117 (juvenile court founders believed that children lacked "the capacity for reasoning, moral understanding, and judgment on which attributions of blameworthiness must rest.").

<sup>57</sup> Bernardine Dohrn, *The School, the Child, and the Court*, in A CENTURY OF JUVENILE JUSTICE, *supra* note 42, at 267, 304. There is an ongoing debate on whether these lectures were "well intentioned or supremacist." *Id.*

<sup>58</sup> SCHLOSSMAN, *supra* note 48, at 192.

proceeding, even if the parents had relevant information.<sup>59</sup> When parents tried to assert a more active role in the court process, there could be negative consequences for the child, especially if the parents had a low social status.<sup>60</sup> In contrast to the compassionate communication between children and judges that the proponents of juvenile courts had envisioned, interactions between judges and families during this era have been characterized as “generally hostile and always superficial.”<sup>61</sup>

As is true today, some parents in the Progressive era turned to the courts for assistance in controlling their child and to access otherwise unavailable services.<sup>62</sup> In the Progressive era, many immigrant parents sought the court’s help to control their Americanized children, particularly their daughters.<sup>63</sup> These parents expected judges to reinforce their authority within the home. However, they often left the court disillusioned with the legal system because of their exclusion from the process and inability to directly participate. In her research on court-involved girls in the early days of the juvenile court, Mary Odem found that although parents’ original intentions were to utilize the juvenile court for their own purposes to discipline their daughters, in the end

---

<sup>59</sup> *Id.* at 175. Schlossman describes a case from the Milwaukee juvenile courts during the early years of the 20th century. A child was charged with exposing himself to a neighbor, but the trial testimony focused on the parents’ worthiness. The main issue was whether the parents were capable of raising the child properly. This dispute was played out through the testimony of others and parents themselves were not allowed to testify regarding their ability as parents. *Id.*

<sup>60</sup> *Id.* at 163.

<sup>61</sup> *Id.* at 167. Schlossman finds that in contrast to the theory that he calls “affectional discipline” where judges and youth would engage in a close relationship, instead judges would rely on threats and fear tactics. *Id.*

<sup>62</sup> PLATT, *supra* note 52, at 212 (post-script). *See* SCHLOSSMAN, *supra* note 48, at 148 (finding that nearly a third of the cases were initiated by parents in his study of Milwaukee cases from 1825-1920).

<sup>63</sup> *See generally* ODEM, *supra* note 54. Odem’s work considers how working class parents actively used the courts to discipline their rebellious daughters during the Progressive era.

“parental needs took a backseat to state interests.”<sup>64</sup>

Under the *parens patriae* doctrine, juvenile court judges act as the “common guardian of the community.”<sup>65</sup> However, then as now, there was no single set of values for maintaining social order and no common agreement on what was best for children. These issues became areas of passionate debate in the Due Process era<sup>66</sup> and continue to be important in discussing the balance of power between the state and parents of court-involved children.

*B. New Rights for Children - Procedural Justice in the Due Process Era*

The founding of the juvenile court was one step in a long process of reordering the relationships between families and the state in delinquency cases. During the 1960s and 1970s, the United States Supreme Court drastically changed the daily operation of the delinquency court, reallocating power among the child, parents and the judge. In a series of key decisions, the United States Supreme Court held that youth accused of a crime have many of the same due process protections as adult defendants.<sup>67</sup> Underlying these changes

---

<sup>64</sup> Miroslava Chavez-Garcia, *In Retrospect: Anthony M. Platt's The Child Savers: The Invention of Delinquency*, in *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY*, *supra* note 52, at xxvi (characterizing Odem's conclusion to her work); *see generally* ODEM, *supra* note 54.

<sup>65</sup> *Ex parte Crouse*, 4 Wharton 9 (Pa., 1838). In *Ex parte Crouse*, the parent of a child committed to a House of Refuge sought her release. The Pennsylvania Supreme Court held that the rights of the parents must give way to the state when the court finds that reformation and treatment is in the child's and the community's interest.

<sup>66</sup> Barry Feld, an expert on juvenile law, states that the “Progressives' consensus about state benevolence, the legitimacy of imposing certain values on others, and what rehabilitation entailed or how and when it occurred had all become matters of intense debate.” FELD, *supra* note 5, at 80.

<sup>67</sup> In 1966, the U.S. Supreme Court stated that the existing system of informal procedures and paternalistic practices juveniles had become the “worst of both worlds.” *Kent v. United States*, 383 U.S. 541, 556 (1966). In a five-year period, the Court affirmed a number of key due process rights to juvenile defendants. *See id.* at 557 (right to a full and fair hearing

was a focus on the child's participation needs and the educative role of the court system.

Beginning in 1966, the United States Supreme Court provided clear guidelines concerning the procedural protections extended to youth accused of committing a crime. However, the Court at this time did not fully consider the possible collateral effects of leaving parents without a defined role in the process or an opportunity to participate in the proceedings. In *Kent v. United States*,<sup>68</sup> the Court's focus on ensuring a fair process for juveniles had the unintended consequence of relegating the issue of parental participation to the background. Kent was a sixteen-year-old boy charged with robbery and sexual assault while on probation for previous offenses. Kent's delinquency case was transferred to adult court without a hearing, although the local statute stated that a "full investigation" was required before transfer.<sup>69</sup> Kent contested the waiver, arguing that the trial court below did not make a full investigation of the facts because his parents were not able to participate meaningfully in the court process and provide the court with information regarding his mental health.<sup>70</sup> The Supreme Court decided in favor of Kent, but did

---

and a statement of reasons for decision before transfer to adult court); *In re Gault*, 387 U.S. 1, 31-58 (1967) (right to written notice to child and to parents of the charges to allow for advance preparation, right to court-appointed counsel, right to confront and cross-examine witnesses, and right against self-incrimination); *In re Winship*, 397 U.S. 358, 368 (1970) (right not to be adjudicated of a delinquent charge unless all essential elements are proven beyond a reasonable doubt). *But see* *McKeiver v. Pennsylvania*, 403 U.S. 528, 550-51 (1971) (juvenile defendants do not have a right to trial by jury).

<sup>68</sup> *Kent v. United States*, 383 U.S. 541 (1966).

<sup>69</sup> D.C. CODE § 11-914 (1961).

<sup>70</sup> *Kent v. United States*, 343 F.2d 247, 251, 255 (D.C. Cir. 1964). Specifically, Kent's attorney submitted affidavits stating the father was never approached by court officials and the mother had been interviewed only "superficially." *Id.* Kent's mental capacity was central to the issue of transfer since law in Washington, D.C. at that time weighed the likelihood of reasonable rehabilitation by the use of services available to the juvenile court. *Id.* at n.5. The D.C. Circuit had held for the prosecution, stating they could not say that the juvenile court's "waiver in this case was wholly at odds with the *parens patriae* philosophy of the statutory scheme under

not rest their decision on the participation opportunities available to parents. Instead, the Court held that the original hearing was defective because the defense attorney had not been allowed to access and challenge the court's social record concerning the juvenile.<sup>71</sup> The attorney's lack of access to important documents had eclipsed the concern over the role of the parents and their ability to participate in the proceedings. Whereas juvenile courts in the Progressive era focused on the family, viewing parents as the source of the child's delinquent behavior, the due process rights afforded by the *Kent* Court focused solely on the child and failed to clarify the role of the parents.

In the most important case of the Due Process era, *In re Gault*,<sup>72</sup> the Supreme Court appeared to be of two minds concerning parents' role in juvenile cases, perhaps even intending that due process rights were held to some extent by both the juvenile and the parent.<sup>73</sup> *Gault* was a fifteen-year-old boy accused of making a lewd telephone call to a neighbor. After informal and perfunctory proceedings in the juvenile court, he was sentenced to an industrial school for the period of his minority. In holding that the procedures afforded to *Gault* lacked the fundamentals of due process, the Court introduced new procedural protections for juveniles but did not clearly delineate a role for parents. In listing the due process rights of juveniles, the *Gault* Court discussed rights accorded to both parents and children. The Court stated that both the child and his parents or guardian must be notified in writing of the specific charges filed and that notice be given sufficiently early to permit appropriate preparation.<sup>74</sup> When questioned in oral argument as to why notice was required for

---

which that Court functions." *Id.* at 252.

<sup>71</sup> *Kent*, 383 U.S. at 447.

<sup>72</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>73</sup> See Kristin N. Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of the Child's Counsel in Delinquency Cases*, 81 NOTRE DAME L. REV. 245, 253-54 (2005) (reviewing early commentary after the *Gault* decision concerning the ability of parents to direct the attorney's representation of their child).

<sup>74</sup> *Gault*, 387 U.S. at 33.

both parent and child, *Gault*'s attorney responded that there is a familial relationship that goes beyond a property right and that parents are in a position to help their child.<sup>75</sup> However, even as the *Gault* Court demonstrated some concern for the parents' role in delinquency cases, the Court's focus on due process for children was at the forefront.<sup>76</sup>

Underlying the move to increased procedural protections and greater formality for the juvenile court was the notion that the court process itself can be an education about the fairness and the legitimacy of the justice system. The *Gault* Court was concerned with the socialization effects of the court experience on youth, particularly when juveniles could receive harsh penalties for slight offenses with few procedural protections.<sup>77</sup> When youth leave the court

---

<sup>75</sup> Transcript of Oral Argument Dec. 16, 1966, *In re Gault*, 387 U.S. 1 (1967), available at [http://www.oyez.org/cases/1960-1969/1966/1966\\_116](http://www.oyez.org/cases/1960-1969/1966/1966_116).

<sup>76</sup> The Supreme Court has a long history of supporting parental rights, including parental participation in matters involving their children. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (recognizing a "fundamental liberty interest of natural parents in the care, custody and management of their child"); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (holding that parents have a right to direct the upbringing of their children); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968) (stating that "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society"); *Pierce v. Society of Sisters*, 268 U.S. 510, 518 (1925) (holding that compulsory public school attendance unreasonably interferes with the parents' right to direct the education of children); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (recognizing the right of parents to control their child's education); *Parham v. J.R.*, 442 U.S. 584 (1979) (holding that parental authority includes the ability to admit their child to a state psychiatric hospital because parents normally act in the best interests of their children); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (holding that parents have the right to make decisions about their children's care, custody, and control, describing this right as "perhaps the oldest of the fundamental liberty interests." See generally MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 2-49 (2005).

<sup>77</sup> *Gault*, 387 U.S. at 26-27; see Birkhead, *supra* note 23, at 1482-83 (noting the procedural justice underpinnings of the *Gault* decision). It was believed that increased reliance on formal procedures would help dispel

perceiving themselves as victims of an unjust process, there could be long-lasting social implications.<sup>78</sup> The *Gault* Court cites an influential report stating “informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.”<sup>79</sup> Here the Court recognizes that an inadequate opportunity to participate in the justice process can lead to feelings of dissatisfaction regarding the law and to lower

---

the growing mistrust of the juvenile justice system, particularly in urban communities. *See* *McKeiver v. Pennsylvania*, 438 Pa. 339, n.15 (1970) (“[I]nformal methods relying on kindness, expertise, and discretion are most acceptable in contexts of trust. If nearly everyone in a community shares a common faith in institutions, and in the generally prevailing goals, safeguards designed to protect against abuse will not seem so important. . . . [But] this is not the situation in the crisis-ridden cities of today. . . . Divisions in the urban community are deep. Formal procedure, to some extent may be able to dispel mistrust.”). *See also* Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775, 786 (1966) (discussing the potential procedural justice consequences of informal hearings). This Harvard note was cited numerous times throughout the *Gault* opinion (cited at notes 11, 30, 33, 34 and 102).

<sup>78</sup> The *Gault* Court states that “when the procedural laxness of the ‘*parens patriae*’ attitude is followed by stern disciplining, the contrast may have an adverse effect upon the child, who feels that he has been deceived or enticed.” *Gault*, 387 U.S. at 26. Citing an influential study by sociologists Stanton Wheeler and Leonard S. Cottrell, Jr., the Court demonstrates concern with the potentially long-lasting implications of juveniles perceiving themselves as victims of an unjust process. *Id.* at 26, n.37.

<sup>79</sup> *Id.* at n.37 (citing to a 1966 report by Russell Sage Foundation report titled “Juvenile Delinquency - Its Prevention and Control”). Briefs in the *Gault* case addressed the issue of the long-term effects of perceived unjust treatment more directly, seeing consequences not only for the youth themselves, but also for society. In their amicus brief for *Gault*, the American Parents Committee argued that denying children the due process rights of adults was not only unconstitutional, but “tends also to adversely affect their development towards responsible adult citizenship.” Brief for American Parents Committee as Amicus Curiae Supporting Petitioner, at 8, *In re Gault*, 387 U.S. 1 (1967).



levels of trust in the legal system. While the Court validates this phenomenon with respect to juveniles, it fails to address the potential consequences of parents' limited role and how parents help to develop and reaffirm their child's views of legal actors and institutions.<sup>80</sup>

#### IV. The Role of Parents in the Modern Era – Continuing to Sideline Parents

The current era in the juvenile delinquency court is characterized as increasingly punitive. The main objective of today's juvenile justice system is reducing the social threat of adolescent crime, not rehabilitating the child.<sup>81</sup> A perceived increase in juvenile crime in the 1990s sparked national concern and nearly every state enacted new juvenile justice

---

<sup>80</sup> Although not in the *Gault* opinion, the literature relied upon by the *Gault* Court discussed the effects of informal procedures on both the juvenile and parents as a family unit. One article that is cited extensively throughout the *Gault* opinion speaks about the impact of the informal process in juvenile court, stating “[i]nstead of producing attitudes of rapport and trust (considered necessary for rehabilitation), the high degree of informality leads to confusion and lack of perception or understanding of roles and standards. In the eyes of the adolescent and the parent the officials seem all-powerful. Their decisions are completely personal and can turn on whim, anger or friendliness.” Joel F. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7, 19 (1965) (cited in note 23 in the *Gault* opinion). While the *Gault* decision does not discuss the role of parents, the justices were likely aware of and had thought about the broader issues of procedural justice and families even as the opinion itself fails to clarify the parent's role.

<sup>81</sup> Scott & Grisso, *supra* note 43, at 176 (“In the current climate, any modest developmental claim for leniency seems to be far outweighed by the importance of reducing the social threat of adolescent crime”). Children accused of criminal activity have sometimes been described as “superpredators,” in stark contrast to prior images of innocent dependents in need of treatment. WILLIAM J. BENNET, JOHN J. DI IULIO, & JOHN P. WALTERS, *BODY COUNT: MORAL POVERTY AND HOW TO WIN AMERICA'S WAR AGAINST CRIME AND DRUGS* 59 (1996). Increasingly large numbers of youth are being processed through the adult justice system and are sentenced to harsher penalties. AARON KUPCHIK, *JUDGING JUVENILES: PROSECUTING JUVENILES IN ADULT AND JUVENILE COURTS* 1-3 (2006).

legislation with a punitive objective.<sup>82</sup> This focus on social protection is an opportunity for a fresh look at the role of parents in the juvenile delinquency courtroom. To reduce the social threat of juvenile crime it can be more effective to work with parents rather than to alienate them. Today's juvenile justice system still aims to change youth behavior and to better socialize children to accept dominant norms.<sup>83</sup> The meaningful involvement of parents can help the justice system to realize these goals and lead to overall better outcomes for children.

*A. Parental Accountability in Delinquency Court -  
Negative v. Positive Parental Participation*

Instead of utilizing parents as a resource in their child's legal and moral socialization, current juvenile justice policies often take a negative view of parental participation, focusing on holding parents accountable for their child's misbehavior. In the vast majority of states, parents are summonsed to appear in court with their child.<sup>84</sup> In many

---

<sup>82</sup> DiFonzo, *supra* note 18, at 16-17 (47 states and D.C. modified their juvenile codes during this time period to be more punitive). *See also* Barry C. Feld, *The Transformation of the Juvenile Court- Part II: Race and the "Crack Down" on Youth Crime*, 84 MINN. L. REV. 327 (1999); SCOTT, *supra* note 56, at 132.

<sup>83</sup> *See* statutes cited *supra* note 55.

<sup>84</sup> ALA. CODE § 12-15-122 (2010); ARIZ. REV. STAT. ANN. § 8-323 (2010) (judge shall not dispose of petition or citation unless parent is present); COLO. REV. STAT. § 19-2-109 (2010) (parent, guardian, or legal custodian required to attend all proceedings); D.C. CODE § 16-2325.01 (2010) (court shall enter an order requiring mandatory attendance at all hearings unless the court determines that such an order not in the child's best interests); FLA. STAT. § 985.0301 (2010) (court has jurisdiction over both juvenile and parent or guardian); GA. CODE ANN. § 15-11-39 (2010) (court may direct parent to appear to answer summons); IND. CODE ANN. § 31-37-10-7 (LexisNexis 2010) (child's parents or guardians are parties to proceeding); KY. REV. STAT. ANN. § 610.040 (2010) (person who has care or custody of the child is summonsed to court to appear personally with the child); MASS. GEN. LAWS ch. 119, § 55 (2010) (summons shall be issued to parent who shall be required to appear); MICH. COMP. LAWS § 712A.6a (2010) (parent shall attend each hearing unless excused for good cause); MINN. STAT. ANN. § 260B.163 (West 2009) (parent or guardian

states, a parent can be held in contempt for not appearing in court in his or her child's case.<sup>85</sup> In some states, the juvenile court can have jurisdiction over parents as well as children

---

must accompany child at hearing); MISS. CODE ANN. § 43-21-501 (2010) (petition should be served on parent or guardian to appear with child); MONT. CODE ANN. § 41-5-333 (2010) (parent, guardian, or custodian of youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless cannot be located or for good cause); NEB. REV. STAT. § 43-247 (2010) (juvenile court has jurisdiction over parent, custodian, or guardian); N.C. GEN. STAT. § 7B-1600 (2010) (court has jurisdiction of parent, guardian, or custodian once served with summons); 42 PA. CONS. STAT. § 6335 (2010) (court may issue summons directing the parents, guardian, or other custodian to appear at hearing); R.I. GEN. LAWS § 14-1-16 (2010) (court may issue summons requiring child and parents, guardian, or other lawful custodian to appear); S.D. CODIFIED LAWS § 26-7A-44 (2010) (parents required to appear at the time and place on the summons); TENN. CODE ANN. § 37-1-121 (2010) (court may order parents, guardian or other custodian to appear personally at hearing); TEX. FAM. CODE ANN. § 53.06 (Vernon 2010) (summons issued to child and the child's parent, guardian, or custodian); VT. STAT. ANN. tit. 33, § 5221 (2010) (notice to parent shall direct the responsible adult to appear at hearing with child); VA. CODE ANN. § 16.1-250 (2010) (at least one parent, guardian, legal custodian or other person standing in loco parentis shall be required to appear personally; where custodian is summonsed and is not a parent of juvenile, a parent shall also be summonsed); WASH. REV. CODE § 13.40.130 (2010) (court shall notify parent, guardian, or custodian of hearing and require attendance); W. VA. CODE § 49-5-7 (2010) (parents, guardians or custodians shall be named in petition and be required to appear); WYO. STAT. ANN. § 14-6-213 (2010) (court shall issue an order to appear directed to the child's parents, guardian, custodian and spouse). *See also* People v. R.S., 104 Ill. 2d 1 (1984) (holding that parents are necessary respondents who must be named and served with notice in order for court to conduct an adjudicatory proceeding); Smith v. Commonwealth, 38 Va. App. 840 (2002) (not required that both parents be served with a summons). *But see* ALASKA STAT. § 47.12.025 (2010) (notice to parent of hearing and presence of parent not required in all cases); LA. CHILD CODE ANN. art. 879 (2010) (parent may be present at the delinquency hearing). Parents can be summonsed to appear even if the child is not in their custody, indicating that having a parent present is important beyond simply ensuring that the child appears in court. VA. CODE ANN. § 16.1-250 (2010).

<sup>85</sup> *See, eg.* ARIZ. REV. STAT. ANN. § 8-323 (2010); COLO. REV. STAT. § 19-2-109 (2010); GA. CODE ANN. § 15-11-39 (2010); MONT. CODE ANN. § 41-5-333 (2010); WASH. REV. CODE § 13.40.130 (2010).

once a delinquency petition is filed.<sup>86</sup> Parents are often required to pay the costs of their child's treatment, restitution, fine, or attorney fees.<sup>87</sup> Sometimes the only time parents have

---

<sup>86</sup> FLA. STAT. § 985.0301 (2010); MINN. STAT. ANN. § 260B.163 (West 2009); NEB. REV. STAT. § 43-247 (2010); N.C. GEN. STAT. § 7B-1600 (2010); WYO. STAT. ANN. §14-6-213 (2010).

<sup>87</sup> ALA. CODE § 12-15-109 (2010) (attorney fees, court costs, and treatment costs; civil and/or criminal contempt penalties for willful failure to pay); ALASKA STAT. § 47.12.120 (2010) (restitution); ARIZ. REV. STAT. ANN. § 8-234 (2010) (treatment, counseling, education, and restitution); ARK. CODE ANN. § 9-27-330 (2010) (court costs, fine, restitution, costs of commitment); CAL. WELF. & INST. CODE § 729.5 (2009) (restitution, fines, and penalty assessments); CONN. GEN. STAT. § 46b-134 (2010) (physical or mental examinations, restitution if had knowledge or and condoned child's conduct); DEL. CODE ANN. tit. 10, § 1009 (2010) (restitution); FLA. STAT. § 985.513 (2010) (restitution); IND. CODE ANN. § 31-37-12-6 (LexisNexis 2010) (treatment of services to child or parent); IOWA CODE § 232.52 (2010) (reimburse county for costs); KY. REV. STAT. ANN. § 610.360 (LexisNexis 2010) (court costs unless parent a complainant or victim in case); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19 (LexisNexis 2010) (court costs and restitution); MINN. STAT. ANN. § 260B.331 (West 2009) (costs of care, treatment, attorneys' fees, rehabilitation); MISS. CODE ANN. § 43-21-615 (2010) (costs of commitment); NEB. REV. STAT. § 43-290 (2010), NEB. REV. STAT. § 62E.570 (2010) (reasonable attorney fees, restitution); N.H. REV. STAT. ANN. § 169-B:2-a (2010), N.H. REV. STAT. ANN. § 169-B:40 (2010) (restitution if in the interest of justice and rehabilitation, cost of detention); N.C. GEN. STAT. § 7B-1805 (2010) (treatment, support for child, attorney's fees); N.D. CENT. CODE § 27-20-31.2 (2010) (restitution in amount not exceeding five thousand dollars); OKLA. STAT. tit. 10A § 2-2-404 (2010) (restitution); OR. REV. STAT. § 419C.570 (2010) (all or a portion of probation supervision fee); R.I. GEN. LAWS § 14-1-32 (2010) (restitution); S.D. CODIFIED LAWS § 26-7A-4 (2010) (costs and fees); TENN. CODE ANN. § 37-1-150 (2010), TENN. CODE ANN. § 37-1-151 (2010) (costs of detention, court costs, attorney costs, support); TEX. FAM. CODE ANN. § 54.041 (Vernon 2010) (costs and restitution); VA. CODE ANN. § 16.1-286 (2010) (cost of placement); WASH. REV. CODE § 13.16.085 (2010) (cost of detention); W. VA. CODE § 49-5-13b (2010) (restitution); WIS. STAT. § 938.275 (2010), WIS. STAT. § 938.45 (2010) (cost of custody, post-adjudication services including placement, costs of sanction, attorney fees but not if parent is the complaining or petitioning party or the interests of parent and child are substantially and directly adverse, restitution); WYO. STAT. ANN. § 14-6-247 (2010) (restitution, fine). *See also In re D. M.*, 191 S.W.3d 381 (Tex. Crim. App. 2006) (in arson case, trial court did not err by ordering parents to pay \$25,000 in

a specific and active role in the delinquency court process is to protest an order for payment.<sup>88</sup> In addition, in many states parents can be ordered to undergo counseling, treatment, or parent education classes even though they have not been accused of criminal activity.<sup>89</sup> These punitive measures have

---

restitution where damages were over \$100,000 given circumstances that parents should have reasonably known of delinquent activity).

<sup>88</sup> Not all states require that parents be given an opportunity for a hearing ordering payment. For examples of states that do require a hearing, *see, e.g.*, ALASKA STAT. § 47.12.230 (2010); IND. CODE ANN. § 31-37-12-6 (LexisNexis 2010); MD. CODE ANN., CRIM. PROC. § 11-604 (2010); VA. CODE ANN. § 16.1-286 (2010); WASH. REV. CODE § 13.16.085 (2010). *See also In re Kory L.*, 194 Ariz. 215, 219 (1999) (parent is entitled to due process of law before being deprived of property in form of paying restitution). In some jurisdictions the court must take into account specific information such as whether payment would be in the best interest of the child. *See, e.g.*, N.D. CENT. CODE § 27-21-12 (2010) (court must take into account whether ordering parental restitution could detract from a child's treatment, rehabilitation, or welfare); TEX. FAM. CODE ANN. § 54.041 (Vernon 2010) (payment must not unduly burden parents and court can waive having parents pay for restitution upon showing that parents made a reasonable good faith effort to prevent child from engaging in delinquent conduct).

<sup>89</sup> ARK. CODE ANN. § 9-27-330 (2010) (community service, parental responsibility training); CAL. WELF. & INST. CODE § 362 (West 2010) (parent education or training); COLO. REV. STAT. § 19-2-304 (2010) (parent responsibility training); DEL. CODE ANN. tit. 10, § 1009 (2010) (counseling, treatment); FLA. STAT. § 985.512 (2010), FLA. STAT. § 985.513 (2010) (community service, parenting class, counseling, or other assistance); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-19 (LexisNexis 2010) (rehabilitative services in the best interest of the child); N.H. REV. STAT. ANN. § 169-B:2a (2010) (substance abuse treatment, parenting classes, mediation, and community service); N.C. GEN. STAT. § 7B-2701 (2010), N.C. GEN. STAT. § 7B-2703 (2010) (parental responsibility classes, medical, psychological, or other evaluation of parent); N.D. CENT. CODE, § 27-20-17 (2010) (participate in treatment); OR. REV. STAT. § 419C.570 (2010) (educational or counseling programs directed at parenting); R.I. GEN. LAWS § 14-1-32 (2010); S.D. CODIFIED LAWS § 26-7A-88 (2010) (psychological, psychiatric or medical examination and evaluation); TENN. CODE ANN. § 37-1-103 (2010), TENN. CODE ANN. § 37-1-174 (2010) (counseling, treatment, community service); UTAH CODE ANN. § 78A-6-117 (2010) (reasonable conditions); VA. CODE ANN. § 16.1-278.8 (2010) (participate in programs and treatment, be subject to conditions and limitations as court may order designed for rehabilitation of

been criticized as creating resentment within the family and not furthering the child's rehabilitation.<sup>90</sup> States may alienate parents further by treating the parent as an arm of the government. Parents can be obligated to assist the juvenile probation officer and the court in ensuring that the child complies with the court's disposition.<sup>91</sup> This is true regardless of whether parents agree with the sentencing conditions or believe that the court's course of action is in the best interest of their child.<sup>92</sup>

---

juvenile and parent); WIS. STAT. § 938.295 (2010) (alcohol or drug abuse assessment, court shall hear objections before ordering); WYO. STAT. ANN. § 14-6-219 (2010) (substance abuse assessment). *But see* State v. Moreno, 203 P.3d 1000, 1012 (Utah 2009) (ordering father to undergo drug testing in the absence of probable cause to believe father was using drugs violated father's constitutional rights).

<sup>90</sup> Brank et al., *supra* note 18, at 17; Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 303, 323 (1991). *See also* SAMANTHA HARVELL, BELEN RODAS, & LEAH HENDEY, GEORGETOWN PUB. POLICY INST., PARENTAL INVOLVEMENT IN JUVENILE JUSTICE: PROSPECTS AND POSSIBILITIES 8 (describing legislative testimony of Georgetown Law Professor Kristin N. Henning against proposed D.C. law. Henning argued that parents who are treated punitively may become resentful of their child, negatively impacting the child's rehabilitation).

<sup>91</sup> ALA. CODE § 12-15-218 (2010); MONT. CODE ANN. § 41-5-1412 (2010) (parents obligated to assist the court in implementing orders); N.C. GEN. STAT. 7B-2703 (2010) (court may order parent to cooperate with and assist the juvenile in complying with probation or other orders of the court); OR. REV. STAT. § 419C.570 (2010) (court may order parent to assist the court in any reasonable manner in providing treatment or counseling for child); VT. STAT. ANN. tit. 33, § 5263 (2010) (parent's signature on probation certification constitutes verification that parent agrees to facilitate and support child's compliance). Parents can also face penalties for not helping to enforce the court order, such as being ordered to pay a fine up to one thousand dollars. OR. REV. STAT. § 419C.570 (2010); VA. CODE ANN. § 16.1-292 (2010) (parents can violate order of probation and be subject to penalties).

<sup>92</sup> Even specialty juvenile courts focusing on rehabilitation can be punitive with respect to parents. In the past few decades, thousands of juveniles have been involved in specialty court programs such as juvenile drug courts, gun courts, and mental health courts. *E.g.*, BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, JUVENILE DRUG COURTS: STRATEGIES IN PRACTICE (2003). These courts aim to provide more individualized attention to youth and their families and, as in the early

Policies that blame parents for their child's delinquency or place onerous burdens on parents without giving them meaningful opportunities to participate in the process do not encourage parents to have positive interactions with the juvenile court. In effect, these laws subtly undermine the parent-child relationship by holding parents responsible for their child's misdeeds while overtly stating the importance of preserving family ties.<sup>93</sup> Putting new policies in place can help to resolve these seeming contradictions. Both of these objectives can be met if parents actively participate in the court process voluntarily and assist the court in making reasonable decisions concerning the child.

---

days of the juvenile court, the specialty court judge is described as acting *in loco parentis* (in place of the parent). *Id.* at 20. Described as "family-focused," these courts demand more of parents' time and can be much more intrusive into their private lives than traditional juvenile courts. Daniel M. Filler & Austin E. Smith, *The New Rehabilitation*, 91 IOWA L. REV. 951, 979 (2006). Parents must attend frequent court sessions and are often required to participate in separate parent support and counseling groups under threat of incarceration or other sanctions. CAROLINE S. COOPER, U.S. DEP'T OF JUSTICE, JUVENILE DRUG COURT PROGRAMS 9-10 (2001). Parents whose child is involved in drug courts or other specialty juvenile courts may be more apt to develop negative views of the justice process because of these courts' intense and often intrusive nature. As with standard juvenile delinquency courts, parents' presence in specialty courts is mandated while their ability to participate is not legislated and is subject to judicial discretion.

<sup>93</sup> See, e.g. CAL. WELF. & INST. CODE § 202 (West 2010) (purpose includes preserving and strengthening minor's family ties whenever possible as well as reaffirming the duty of the parent to pay when child is made a ward of the court); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-02 (LexisNexis 2010) (purpose of juvenile code is conserving and strengthening family ties as well as "to hold parents of children found to be delinquent responsible for the child's behavior and accountable to the victim and to the community"); N.H. REV. STAT. ANN. § 169-B:1 (2010) (purpose statute includes preserving the unit of the family as well as making "parents aware of the extent if any to which they may have contributed to the delinquency and make them accountable for their role in its resolution").

*B. Redefining the Parental Role – A Slow Move in the Right Direction*

A number of states accord positive participation rights to parents at different points in the juvenile court process, although these opportunities are limited. In Colorado and Utah, a parent has the right to decide who should be present in the courtroom during his or her child's case.<sup>94</sup> In Minnesota, a parent has the right to participate in all proceedings, including being entitled to be heard, to present evidence, and to cross-examine witnesses.<sup>95</sup> In New Mexico and West Virginia, a parent can demand a jury trial.<sup>96</sup> Other states demonstrate a willingness to engage parents in the juvenile justice process in their intent statutes. Kentucky aims "to provide judicial procedures in which rights and interests of all parties including the parents . . . are recognized."<sup>97</sup> North Carolina states that the court has the objective "to provide uniform procedures that assure fairness and equity," including protecting the constitutional rights of parents.<sup>98</sup> West Virginia recognizes "the fundamental rights of children and parents" and aims to involve the family in the planning and delivery of programs and services.<sup>99</sup> A number of states dictate that a parent can be made a party to the proceeding,

---

<sup>94</sup> COLO. REV. STAT. §19-1-106 (2010) (court shall admit only such persons as those who have an interest in the case, including those who parents, custodian, or other guardian wish to be present); UTAH CODE ANN. § 78A-6-114 (2010) (court may admit persons requested by the parent or legal guardian to be present).

<sup>95</sup> MINN. STAT. ANN. § 260B.163 (West 2009).

<sup>96</sup> N.M. STAT. ANN. § 32A-2-16 (West 2010); W. VA. CODE § 49-5-6 (2010). It is unclear whether parents have an independent right to demand a jury trial if the child is represented by counsel. Courts in some states have interpreted similar statutes narrowly, holding that parents have no separate right when the child is represented by counsel. *See, e.g.* State v. Kirk N., 214 W. Va. 730 (2003) (requirement that a juvenile's parents be named as respondents does not create an entitlement to participate as full and separate parties in a juvenile proceeding).

<sup>97</sup> KY. REV. STAT. ANN. § 600.010 (LexisNexis 2010).

<sup>98</sup> N.C. GEN. STAT. § 7B-1500 (2010).

<sup>99</sup> W. VA. CODE § 49-1-1 (2010).



but do not specify the rights or opportunities associated with being named a party in this context.<sup>100</sup>

These laws have great symbolic importance as they demonstrate that parental input and participation is valued in the court process. Yet many of these laws do not sufficiently describe how parents can become directly engaged in the delinquency courtroom. More legislation is needed at the state level that gives clear guidance on how parents can actively participate in the juvenile delinquency court, recognizing how views of the justice process can be impacted by parents' courtroom experiences.

#### **V. A Strategy for Increased Legitimacy – Defining a New Role for Parents**

One way to transform juvenile delinquency courts into a more effective force to combat crime in disadvantaged

---

<sup>100</sup> ALA. CODE § 12-15-113 (2010) (“a juvenile court shall have the authority to make a parent, legal guardian, or legal custodian a party to a juvenile court proceeding”); COLO. REV. STAT. 19-2-113 (2010) (any treatment plan developed pursuant to this article may include requirements to be imposed on the juvenile's parent, so long as the parent is a party to the delinquency proceedings); IND. CODE ANN. § 31-37-10-7 (LexisNexis 2010) (child's parents or guardians are parties to proceeding); *see also* K.S. v. State, 849 N.E.2d 538, 542-43 (Ind. 2006) (no error by trial court who allowed mother to stay in courtroom because a parent is a party to the hearing). Even if a party to the juvenile proceeding, a number of state courts have held that parents are not able to contest the delinquency petition if the child is represented by counsel. *See In re Phillip G. K. v. State*, No. 97-0505, 1997 WL 442027, at \*1 (Wis. Ct. App. Aug. 7, 1997) (unpublished table opinion) (holding that even though state statute designates parents as parties in juvenile delinquency proceedings, parents are not able to contest the petition). *See also* Matter of Pima County Delinq. Action No. 90101-1, 154 Ariz. 493, 494 (1987) (parents lacked standing to review a predisposition report and to examine a probation officer in their child's probation revocation hearing because parents are not aggrieved parties within the meaning of the statute and parents had no fundamental right to participate in the ultimate determination of the disposition); *State v. Kirk N.*, 214 W. Va. 730, 738-39 (2003) (requirement that juvenile's parents be named as respondents does not create an entitlement for parents to participate as full and separate parties in delinquency proceedings).

urban communities is to create a new role for parents, giving them a recognized voice in the proceedings involving their child. A relatively easy and low-cost way to engage parents is to provide parents with a time in the court process when they know they will be heard. Judges can encourage parents to provide a brief statement to the court called a *parental narrative*. During these parental narratives, parents can present information regarding the child's home life and their opinion regarding possible resolutions in the case. My research revealed that many parents believe they have a valuable perspective regarding bail considerations, sentencing alternatives, and treatment options. Parental narratives will give parents an opportunity to voice how they believe the court can best respond to their child's needs, potentially leading parents to more positive views of the legal system.

Direct participation by parents in the delinquent court can benefit the juvenile justice process without diminishing the child's due process rights. Judges do not have the same ethical boundaries as defense attorneys and can consider parental insight directly without the concern for potentially conflicting interests. It is generally accepted that the defense attorney represents the child and not the family.<sup>101</sup> This dynamic can lead to tension between parents and defense attorneys in the juvenile court process.<sup>102</sup> An increased parental role could improve this often strained relationship. If parents can be assured they will have a voice at some point in the juvenile court process, they may become more comfortable allowing the child to direct the attorney/client relationship.<sup>103</sup>

---

<sup>101</sup> AMERICAN BAR ASS'N, IJA-ABA JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH 138-39 (ROBERT E. SHEPHERD, JR. ed., 1996) (defense attorneys have an ethical duty to represent the juvenile client's expressed interests); see MODEL RULES OF PROF'L CONDUCT R. 1.14.

<sup>102</sup> Henning, *supra* note 20, at 853-855. Parents may not fully understand the role of attorney/client confidentiality and the child's constitutional rights. See *id.* at 851; Farber, *supra* note 20, at 1291.

<sup>103</sup> Parents may be particularly reluctant to cede authority to their child and need additional assurance when there is already conflict within the

Not all parents will choose to actively participate in the delinquency court. Many parents will need additional support to become effective participants in the justice system, but involving these parents is worth the effort and resources. Nearly all parents of juveniles in the delinquency system will continue to have an important socializing role in the life of their child, regardless of their educational background, social class, or family history. It is particularly important to engage poor or undereducated parents who might be seen as undeserving.<sup>104</sup> To increase the legitimacy of the juvenile delinquency court, the legal system needs to reach out to community members that may be the most hostile to the legal process. Including parental narratives in juvenile delinquency court can have the following positive effects on the justice process: 1) helping to create more responsive courtroom environments for parents, 2) increasing parents' positive views of the legal process through their direct participation in court, and 3) building parental support as a crime-fighting resource within the community.

*A. Creating More Responsive Courtroom Environments for Parents*

Giving parents the opportunity to present a parental narrative would indicate to parents that the legal system respects their position in the home and values their unique perspective regarding the child. Similar narratives, such as victim impact statements, have been mandated in criminal

---

family. Henning, *supra* note 20, at 854-55 (parents may become angered when children take the lawyer's advice not to speak with the parent about the case as permission to disobey the parent's directives in other situations).

<sup>104</sup> Parents' rights advocates have distinguished between "deserving" and "undeserving" parents, arguing that "deserving" parents are qualified to make decisions for their children in delinquency proceedings. See Jonathan O. Hafen, *Children's Rights and Legal Representation: The Proper Roles of Children, Parents, and Attorneys*, 7 NOTRE DAME J.L. ETHICS & PUB. POL'Y 423, 427-28 (1993). This Article does not argue that parents should make decisions in delinquency court and instead focuses on parents' opportunities to participate and raise concerns during the juvenile justice process.

cases in many states to provide contextualized information to the judge without disrupting the flow of the justice process.<sup>105</sup> Victim impact statements also provide a voice in the courtroom, potentially increasing satisfaction with the legal system and the likelihood of cooperating with legal authorities in the future.<sup>106</sup> Parental narratives can serve a similar dual purpose, placing the juvenile and his or her delinquent behavior in context of the child's family and cultural history while also increasing parents' positive views of the justice system.<sup>107</sup> In my research, many poor and minority parents

---

<sup>105</sup> Victim impact statements are brief statements made in the courtroom by the victim or by someone speaking on the victim's behalf. These statements describe the impact of the criminal act on the victim's life. *See, e.g.* CAL. PENAL CODE § 1191.1 (West 2011) (victim has the right to appear at the sentencing proceeding and reasonably express his or her views concerning the crime, the person responsible, and the need for restitution and the court shall consider the victim's statement while determining the sentence); CONN. GEN. STAT. § 54-91c (2011) (the court shall permit a victim to make a statement at the sentencing proceeding or to submit a written statement regarding the facts of the case, the extent of any injuries, and the appropriateness of any penalty); FLA. STAT. § 921.143 (2011) (the sentencing court shall permit a victim to make an oral or written statement); N.H. REV. STAT. ANN. 651:4-a (2011) (victims of certain crimes shall have the opportunity to address the judge before sentencing); R.I. GEN. LAWS § 12-28-4 (2011) (victim of a crime shall have the opportunity to address the court about the impact of the defendant's conduct before sentencing); TENN. CODE ANN. § 40-35-209 (2011) (the court may afford the victim the opportunity to speak before sentencing); W. VA. CODE § 61-11A-2 (2011) (the court shall allow the victim to give an oral statement before sentencing).

<sup>106</sup> Sarah N. Welling, *Victim Participation in Plea Bargains*, 65 WASH. U. L. Q. 301, 308-309 (1987); John Hagan, *Victims before the Law: A Study of Victims' Involvement in the Criminal Justice Process*, 73 J. OF CRIM. L. & CRIMINOLOGY 317, 328-29 (1982); Edna Erez and Pamela Tontodonato, *Victim Participation in Sentencing and Satisfaction with Justice*, 9 JUST. Q. 393, 394-95 (1992). Erez and Tontodonato conclude that victims who participate and believe that the judge took their opinion into consideration had higher levels of satisfaction with the justice system, while victims who participate and believe that their views were ignored by the court had lower levels of satisfaction. *Id.* at 410.

<sup>107</sup> Henning, *supra* note 20, at 846 (parents can help children navigate the juvenile justice system by contextualizing legal issues in their cultural and familial values). Many parents will need guidance and education in how to

believed that judges and legal professionals did not fully appreciate the difficulties of their family life and the circumstances underlying the child's delinquent behavior. For example, one African American mother said, "Judges need to get people more involved in the court, let them have more say so, because parents have a better understanding of what's going on with their kids." Another mother from the same neighborhood said, "[The court's] recommendation is not always what's right. A parent needs to step in to say what's right in the long run." Through a short prepared statement, parents can provide information to the judge to help situate the child within the family and the resources of the community.

By bringing different voices into the courtroom, parental narratives can increase the legal system's perceived legitimacy among minority defendants and their families by making the legal process more responsive to their actual needs. First-person narratives can help combat misunderstandings and correct prejudices and assumptions that legal authorities may have concerning disadvantaged groups.<sup>108</sup> Judges and other legal professionals in the United States are overwhelmingly white, a reality that has contributed to the high level of distrust of courts among

---

best prepare and present these narratives. *See* discussion *infra* Part IV.C.

<sup>108</sup> Marc A. Fajer, *Authority, Credibility, and Pre-Understanding: A Defense of Outsider Narratives in Legal Scholarship*, 82 GEO. L.J. 1845, 1847, 1857 (1994) (narratives are particularly effective to combat "pre-understanding" and to develop empathy for members of excluded groups). Feminist scholarship has also proposed that hearing stories from individuals who have directly experienced a phenomenon can be very helpful to decision makers. Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 982 (1991); *see also* Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2079-2083 (1989) (stories from outsiders are often ignored in the legal process). Victim impact statements have been criticized as unnecessary or even unfair because the victims' viewpoint is already found in the dominant narrative heard in the court. Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361, 409-10 (1996). In contrast, the narratives of parents in juvenile court are not part of the dominant courtroom narrative since the voices of poor and minority defendants and their families are often missing from the legal process.

African Americans and Latinos.<sup>109</sup> Cultural misunderstandings between juveniles and court authorities can lead to more severe penalties for youth of color in the juvenile justice system.<sup>110</sup> Parents can serve an important role by voicing the values of their community and working to uncover the cultural biases that can infiltrate the juvenile courtroom.<sup>111</sup> With these narratives, parents can provide information that places their court-involved child and his or her delinquent behavior within the context of family and community values. In some cases, these narratives could lead to judges issuing less restrictive juvenile sentences, helping to reduce the over-criminalization and disproportionate

---

<sup>109</sup> AMERICAN BAR ASS'N, JUSTICE IN JEOPARDY: REPORT OF THE AMERICAN BAR ASSOCIATION COMMISSION ON THE 21<sup>ST</sup> CENTURY JUDICIARY 42-47 (2003). The lack of diversity on the bench is viewed as compounding the problem of decreasing trust in the justice system in non-white communities. *Id.* at 1 (“[w]ithin communities of color...suspicion of the courts is compounded by a lack of diversity throughout the justice system.”). See ROTTMAN & HANSEN, *supra* note 5, at 1-5 (finding that members of minority groups report higher levels of distrust of courts than white respondents). In my courtroom observations, a number of the judges were African American. I found that parents wanted to participate in the courtroom and discuss the particular circumstances of their family even when they shared the same race as the judge.

<sup>110</sup> See FRANCISCO A. VILLARRUEL, ET AL., INST. FOR CHILDREN, YOUTH, & FAMILIES, DONDE ESTA LA JUSTICIA? A CALL TO ACTION ON BEHALF OF LATINO AND LATINA YOUTH IN THE U.S. JUSTICE SYSTEM 53 (n.d.) (suggesting that cultural differences between Latino children and judges and other juvenile justice personnel can result in misunderstandings and harsher sentences for Latino youth); KRISBERG & AUSTIN, *supra* note 50, at 129-131 (discussing racial stereotyping conducted by juvenile justice officials. One judge in their research admitted viewing black males as less controllable and having limited family support if returned to their community).

<sup>111</sup> See Henning, *supra* note 20, at 846 (finding that parents are often in the best position to understand cultural and community norms as they relate to their child). Numerous ethnographies and autobiographical works have illustrated the hardships and difficulties facing youth and families living in impoverished conditions as well as the strong cultural and community identity often present in disadvantaged communities. See generally, e.g. VICTOR RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS (2011); ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE AND THE MORAL LIFE OF THE INNER CITY (1999).

incarceration of members of racial minority groups.<sup>112</sup> With more opportunities to participate in a positive way, parents could share information with the court and subtly educate justice professionals about what they value and consider most important for their children.

*B. Engaging Parents as Co-Producers of Justice*

By soliciting parents' views in the courtroom, courts can directly engage parents in the courtroom as "co-producers of justice" in the outcome of their child's case.<sup>113</sup> When presenting a parental narrative to the court, parents can see themselves as active contributors in the process of creating the right outcome for the child. Rather than ignoring or penalizing parents, juvenile courts can create ways to engage parents' active participation with the goal of opening up new

---

<sup>112</sup> To reduce the overrepresentation of Aboriginal defendants in custody, Canada uses a form of narrative when sentencing all individuals of Aboriginal descent who are convicted of a crime. The purpose of these narrative reports is to culturally situate Aboriginal defendants within the broader social context in which their criminal acts occur, focusing on the offender's family experiences and their ties with the community. *See R. v. Gladue*, [1999] 1 S.C.R. 688 (Can.) (holding that all Aboriginal defendants in criminal cases were entitled to a report addressing potential sentencing factors relevant to systemic racial bias); Kelly Hannah-Moffat & Paula Maurutto, *Re-contextualizing Pre-sentence Reports: Risk and Race*, 12 PUNISHMENT & SOC'Y 262, 266 (2010). According to Hannah-Moffat and Maurutto, *Gladue* reports also "incorporate racial knowledge to position criminal behavior holistically within a wider collective history of race relations and colonialism." *Id.* Juvenile defendants in the United States could similarly benefit from the use of narratives to contextualize their family experience since the juvenile justice system disproportionately involves poor and minority youth. *See FELD, supra* note 5, at 267.

<sup>113</sup> The term "co-producers of justice" is used by Mark Moore with respect to members of the public who can become involved in sustaining and legitimizing criminal justice policy. Moore writes that legal authorities "must pay attention to the quality of the interactions [they] have with citizens in three distinct roles: as clients, as overseers, and as co-producers of justice." Mark Moore, *Legitimizing Criminal Justice Policies and Practices*, 14 FBI L. ENFORCEMENT BULL. 1, 4 (1997). Moore writes that engaging citizens as co-producers of justice is an important objective that can enhance the legitimacy of the court system. *Id.* at 6.

areas of positive reciprocal influence.<sup>114</sup> Juvenile delinquency courts can include parents at a time and place when parents are already present and may be seeking more involvement in their child's life. In my research, even parents who distrusted the legal system wanted their child to learn a positive lesson from the court experience. For example, an African American mother who viewed the legal system as racist described her role in the court process as "helping my son understand what his responsibilities are and to help him see how serious the charge is." One Latina mother with very negative views of the police and the courts told me "if he did what they say he did, he should be punished so he can learn." The juvenile court process provides an opportunity to engage parents with negative views of the legal system who nonetheless want to see changes in their child's delinquent behavior.

Presenting a parental narrative can bring parents into the inner circle of the court process, changing their status from passive observer to active participant. Many of the parents I interviewed resented their position as outsiders in

---

<sup>114</sup> Parental participation has been sought after in the school context. Federal school legislation emphasizes a positive role for parents in schools, stating that "affording parents substantial and meaningful opportunities to participate in the education of their children" is important and necessary for high-quality education. Improving the Academic Achievement of the Disadvantaged, 20 U.S.C. § 6301 (2010). Federal legislation encourages schools to view parents as collaborators with valid and important contributions to make regarding their child, defining parental involvement as the "the participation of parents in regular, two-way and meaningful communication involving student academic learning and other school activities." No Child Left Behind Act of 2001, 20 U.S.C. § 6319 (2010). Some school districts try to increase parental involvement in various ways, including scheduling meetings at more convenient times, providing transportation and child care, and arranging for translation services. BARRY RUTHERFORD, BECKIE ANDERSON & SHELLEY BILLIG, *STUDIES OF EDUCATION REFORM: PARENT AND COMMUNITY INVOLVEMENT IN EDUCATION* 122 (1995). Yet even with these measures in place, schools often find it challenging to involve parents, particularly in communities with high concentrations of poor and minority students. ANGELA SHARTRAND ET AL., *HARVARD FAMILY RESEARCH PROJECT, NEW SKILLS FOR NEW SCHOOLS: PREPARING TEACHERS IN FAMILY INVOLVEMENT* 25 (1997).



the delinquency court. For example, one African American father said, “parents can be kept out of the loop. . .that’s something that parents can’t get used to.” When family members have direct contact with judges, they value this interaction immensely. In my interviews, parents responded to their treatment by judges more strongly than their treatment by probation officers or defense lawyers. One African American grandmother described the moment when the judge looked at her and thanked her for coming, saying, “It felt so good when he said that. It was very considerate. I never knew a judge to say that. . . It meant a lot to me.”<sup>115</sup> Courtrooms have enormous symbolic power.<sup>116</sup> Probation officers and defense attorneys should be encouraged to work with parents outside the courtroom,<sup>117</sup> but it is particularly important that

---

<sup>115</sup> Care must be taken that the participatory role for parents in the juvenile court is actual, not just illusory. Court procedures can be modified to allow for more participation so that the procedures appear more just, while the underlying structural inequality in the system has not changed. This notion that apparently fair procedures will distract individuals from normative concerns and disparities in legal outcomes is called “false consciousness” in the procedural justice literature. See MacCoun, *supra* note 15, at 188-89; Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities*, 25 LAW & SOC. INQUIRY 983, 998 (2000). The grandmother discussed here felt very positive after her interaction with the judge, but she did not have the opportunity to say anything substantive in the proceeding even though earlier she had told me she wanted to speak to the judge directly. It is important that parents feel appreciated by the court, but it is also important that parents can influence judicial decisions when appropriate.

<sup>116</sup> See Harold Garfinkel, *Conditions of a Degradation Ceremony*, 61 AM. J. SOC. 420-424 (1956); MALCOLM FEELEY, *THE PROCESS IS THE PUNISHMENT: HANDLING CASES IN A LOWER CRIMINAL COURT* (1979).

<sup>117</sup> In some states, probation officers have a responsibility to work with parents to build a plan they together can present to the judge. OR. REV. STAT. § 419C.570 (2010) (“[T]he juvenile department and parent shall develop a plan for supervision of the youth offender” on probation); W. VA. CODE § 49-5D-3 (2010) (same); ARIZ. REV. STAT. ANN. § 8-352 (2010) (“[P]robation officer shall include the recommendation of . . . parents in the disposition report”); IND. CODE ANN. § 31-37-19-1.5 (LexisNexis 2010) (probation department shall complete child’s case plan after negotiating with parents).

Building meaningful relationships between parents and defense attorneys

parents have the ability to speak directly to the judge.

To turn around declining levels of trust and confidence of legal authorities in poor and minority communities, courts need to provide more opportunities for positive engagement.<sup>118</sup> Participation in the legal process can bring about a sense of ownership of the outcome and a responsibility to the legal system.<sup>119</sup> Parents who view themselves as collaborators in the justice system are more likely to buy in to the legal process and to support the court's recommendations regarding their child.<sup>120</sup> These parents may be more motivated to talk about the juvenile court positively with their child and to engender respect for the legal system within their family. Juvenile delinquency courts should utilize the opportunity to engage with parents in urban communities who have the highest distrust of the justice system and attempt to build collaborative relationships.

---

is also important. Henning, *supra* note 73, at 315-320 (advocating for a more nuanced collaborative model of advocacy where attorneys work closely with parents).

<sup>118</sup> See *Procedural Justice*, *supra* note 14, at 344 (suggesting that to increase the legitimacy of the criminal justice system, legal authorities need to motivate proactive behavior). Tyler states that to have a "law-abiding society," having people defer to laws is insufficient. Legal authorities also need to learn how to encourage individuals "to engage in society behaviorally and psychologically," especially members of "particularly vulnerable minority groups." *Id.*

<sup>119</sup> Dennis Maloney, *The Challenge of Restorative Community Justice*, Address at the Annual Meeting of the Juvenile Justice Coalition (Feb. 1988), quoted in GORDON BAZEMORE, *AMERICAN PROSECUTORS RESEARCH INST., MEASURING WHAT REALLY MATTERS IN JUVENILE JUSTICE* 22 (2006). The full quote that Bazemore attributes to Maloney is the following: "Participation denied breeds apathy. Apathy breeds suspicion. Suspicion breeds cynicism. Cynicism prevails. Conversely, participation builds a sense of ownership and a sense of ownership builds personal responsibility. A sense of personal responsibility for the well-being of the community prevails." *Id.*

<sup>120</sup> Tyler, *supra* note 14, at 284 (individuals with higher trust in the courts are more likely to cooperate with the court's recommendations). See also Sunshine & Tyler, *supra* note 14, at 526 (finding that trust in the police affect individuals' willingness to cooperate with the police).

### C. Building Parental Support as a Community Resource

Encouraging families to develop positive perceptions of the law and the court process is important to the long-term health of the justice system. To truly integrate and value parents' voices through courtroom narratives, many parents will need support and assistance to effectively participate. Parents can have difficulty understanding the complexities of the legal process, particularly in disadvantaged urban areas where parents often have limited education.<sup>121</sup> Parents will need assistance crafting their courtroom narratives so they convey relevant and persuasive information. One way to provide this support is by instituting a parent advocate or community liaison program where parents can turn for guidance.<sup>122</sup> Suitable and thought-provoking parental narratives can help to transform the delinquency court into a more educative environment for both parents and juveniles. Through the act of crafting their narratives, parents would be participating in a process of skill-building, advocacy, and community engagement. By giving parents both the opportunity and tools for meaningful participation, parents can become part of what has been described as a strategy to

---

<sup>121</sup> Empirical research has demonstrated that parents often do not have a solid understanding of the legal process or of their child's constitutional rights. See Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1154 (1980) (finding that less than half of parents in study adequately understood the content of *Miranda* warnings); TOBEY, GRISSO, & SCHWARTZ, *supra* note 29, at 230-31 (finding many parents wanted to help their court-involved child understand the system but often had a limited understanding of the process themselves).

<sup>122</sup> One African American mother who I spoke with felt very strongly there should be a parent advocate in the courthouse who could help her and her son. She said, "The lawyers just say what they've got to say, they leave and they go home. It's like they're not involved with the defendant." When I ask about what the court could do differently, the mother answers, "Maybe have someone in the courts. They can create a whole other job to have someone that goes in, like a liaison, who can work between the lawyer and parents and the juvenile so that everybody is on the same page." This mother volunteered to staff the program as a parent advocate volunteer if she were given the appropriate training.

increase “community competency” to address deep-rooted social problems.<sup>123</sup> Reducing juvenile delinquency cannot rest on youth alone; the focus must also be on the adults responsible for teaching, disciplining, and socializing children.<sup>124</sup>

Developing new and innovative ways to improve the legitimacy of today’s court system through community involvement is vital to the court’s ability to maintain order in ways that contribute to the growth and success of community members. Socio-legal research demonstrates that legal institutions are more successful when they operate in a manner consistent with a community’s internal values.<sup>125</sup> Police and courts may continue to have difficulty managing criminal activity in urban areas because the success of legal authorities is ultimately linked to the attitudes of individuals living in the community.<sup>126</sup> By valuing and integrating parents’ perspective, juvenile defendants and their families can help to shape the procedures of the juvenile court, the range of meaning and opportunity courts can afford to those in the legal process, and how the justice system is perceived in their wider community.

## VI. Conclusion

Parents need a more direct avenue for participation in many delinquency courtrooms. Directly engaging parents in juvenile delinquency cases can be an effective long-term strategy to build more trust and confidence in legal authorities, particularly in disadvantaged communities.

---

<sup>123</sup> Bazemore, *supra* note 119, at 21.

<sup>124</sup> *Id.* (stating it is necessary to “increase the capacity of adults and community groups to socialize, support, discipline, and reintegrate young offenders”).

<sup>125</sup> *Procedural Justice*, *supra* note 14, at 323 (finding that when citizens internalize values where they respect the law they are more likely to voluntarily defer to legal authorities).

<sup>126</sup> *Id.* Tyler & Fagan, *supra* note 5, at 262; Tracey Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 LAW & SOC’Y REV. 805, 809 (1998) (“[L]aw and norms can interact in ways that either enhance the deterrent aims of the law or inhibit them”).

Throughout the juvenile court's history, parents have had little opportunity to participate meaningfully in the justice process, even as their presence at each court hearing is mandatory in most states. It is time to take a closer look at the effects of parents' limited role in the courtroom on the legal socialization of their children, particularly given the link between low levels of trust in legal authorities and criminal activity. One relatively easy and low-cost way to directly engage parents is to encourage them to present a parental narrative to the court, a time when parents can discuss their child's home life and perceived needs.

Juvenile justice policy should adopt a legitimacy-building approach that increases parents' positive participation in the court process. Current policies that limit parents' involvement in both the attorney/client relationship and in the courtroom frustrate parents and lead to distrust of the justice system that parents can share with their court-involved child. Not only can meaningful participation capitalize on parents' unique influence and insight, a defined parental role can be a powerful tool for increasing the perceived legitimacy of legal authorities and institutions. Through the adoption of innovative policies that encourage parents' positive participation in juvenile delinquency court, we can help court-involved children as we also build on-going support for legal institutions in ways responsive to the needs of urban communities.

