

Tennessee Judicial Academy 2022

Juvenile Court Judges

Delinquency and Unruly

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First Things First

- Get a TCCY Compilation Book
- Contains most Tennessee statutes and rules applicable to juveniles
- Keep old copies for reference
- Do not pass Go, get the book

Thought to keep in mind:

- Role of the Judge – what is it?
- Event ----- Judicial
Result

The dotted line: all procedures must be fair and in accordance with the rule of law

Juvenile Justice System Philosophy

- TCA 37-1-101
- Our “Preamble”
- Tennessee’s first juvenile court statute - 1911

37-1-101(a)(1):

- “Provide for the care, protection, and wholesome moral, mental and physical development of children coming within its provisions.”
- Emphasis in juvenile court is *rehabilitative* and *protective* – not punishment oriented
- Focus is on what the child **IS**, rather than what the child **HAS DONE**
 - **Our job: at disposition, change the status quo**

37-1-101(a)(2):

- “Consistent with the protection of the public interest, **remove** from children committing delinquent acts the **taint of criminality** and the consequences of criminal behavior and to substitute therefor a program of treatment, training, and rehabilitation.”
- “I guess some mistakes you keep on paying for.” Robert Redford as Roy Hobbs in *The Natural*
- Emphasis is that children should not be considered criminals – children should be *treated, trained, and rehabilitated*
- Exception: “consistent with the protection of the public interest”

37-1-101(a)(3):

- “Achieve the foregoing in a **family environment** whenever possible, separating the child from such child’s parents only when necessary for such child’s welfare or in the interest of public safety.”
- Emphasis is on the **family** and the importance of keeping the child at home whenever possible.
- Children usually do better in a **family environment**; children almost always want to be with their family; society advances when families are strengthened.
- Separation of a child from the **family** is a massive intrusion by the state into a family’s affairs – tread surely, but lightly.

37-1-101(a)(4):

- “Provide a simple judicial procedure through which this part is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.”
- “Simple judicial procedure” – proceedings in juvenile court are often more informal than in other courts – BUT
- Special emphasis of this provision is on a “fair hearing” and the parties’ “constitutional and other legal rights”
- Do you see any *tension* between these two objectives?
- Ask yourself as judge: At the end of the day, was this proceeding fair to all parties? **Were constitutional and other rights respected?**

Clear Trend

- Over time, the juvenile has been accorded most substantive and procedural safeguards and rights as are enjoyed by adults
- Trendline overwhelmingly arcs toward justice for the juvenile
- Recall Dr. King: “The arc of history is long, but it bends toward justice.”

Trend Began Long Ago:

- “Great powers are lodged in the juvenile court and its particular field, and proceedings there should be conducted according to the mandates of the statute. Unless there is substantial compliance with the statutory requirements in these cases, the orders of the juvenile court will be reversed.” *Juvenile Court of Shelby County v. State*, 201 S.W. 771, 773 (Tenn. 1918).
- We’ll talk about Gault in a few slides

Recent CASA Conference

- Question: As Judge, how do you balance a parent's constitutional and other rights against protection of a child?
- My answer: **Procedure, procedure, procedure**
- Many societal hot-topic issues involve a failure (or perceived failure) of procedure: police actions; investigatory stops; search and seizure; confessions; validity of elections; taxation; treatment of a child in school
- Must avoid “kangaroo court” perception

Rules of the Road – You Gotta Know a Lot of Stuff

- Juvenile Court statutes – Title 37, Part 1 (primarily)
- Criminal statutes – (including traffic, TWRA)
- Other statutes - i.e., custody, TPR, education, mental health
- Rules of Juvenile Court Practice and Procedure – delinquency/unruly – 201 et seq.
- VCO Federal Regs
- Rules of Evidence
- Rules of Civil Procedure (TPRs, Paternity, Custody)
- Rules of Judicial Conduct (in TRSC)
- Child Support Guidelines
- Rules of Tennessee Supreme Court – approximately 3-4
- Appellate Court Decisions – vast majority TPRs

You Gotta Know....

- Subscribe to something that keeps you up-to-date on Appellate decisions
- I use the TBA daily email
- I used to subscribe to Tennessee Attorneys Memo

37-1-101(b):

- “It is the intention of the general assembly in the passage of this part to promulgate laws relative to children that are to be **uniform** in application throughout the state.” (emphasis added)
- Clear intent is for Tennessee children to be treated the same regardless of which county handles the case – need to avoid **justice by geography**
- Although the Rules of Juvenile Practice and Procedure allow for local rules and encourage development of local processes, the substantive effect should be as consistent as possible

New Rules of Juvenile Practice and Procedure

- Complete rewrite of Juvenile Rules completed 2016
- A years-long effort spearheaded by the Supreme Court's Court Improvement Program, Law Committee Work Group
- Among other things, reorganized the then-existing rules and related statutes, removing substantive matters from the rules and procedural matters from the statutes
- Separate sections for general rules, delinquency/unruly, d/n, foster care
- Delinquency/Unruly – Sections 201-213

Juvenile Rules

- To assist in rule interpretation, check out the Commission Comments
- Illumines the rules (I have cited the comments many times in court orders)

Nomenclature in Juvenile Court: Words are “softer”

- Crime – delinquent offense or delinquent act
- Charging instrument, warrant – petition
- Arrest – attachment or taking into custody
- Incarceration – detention
- Defendant – child or juvenile
- Arraigned – undergoes intake
- Pleads guilty or not guilty – admits or denies (new rules added no contest and best interests pleas)
- Trial – adjudication
- Sentencing hearing – dispositional hearing

Nomenclature

- In juvenile court, we refer to family members in relation to the child
- For example: “mother” “father” “maternal grandmother” “sister”

Definition of Delinquency

- Delinquent Act: TCA 37-1-102(b)(10) – an act designated a crime, but not a status offense or a traffic offense (with exceptions – DUI, felony traffic offenses)
- Delinquent child: TCA 37-1-102(b)(11) – a child who has committed a delinquent act **AND** “is in need of treatment and rehabilitation”
- Two step process: guilty of delinquent act and in need of treatment and rehabilitation – 37-1-129(b)(3)
- Sham Wow! guy
- 37-1-129(b)(3) – acts that constitute felony or that reflect recidivistic delinquency are sufficient to sustain finding of treatment and rehabilitation

Definition of Child

37-1-102(b)(5)

- A person under the age of 18
- A person under the age of 19 for limited purposes
 - To enforce a **non-custodial** order of disposition entered prior to the child's 18th birthday
 - To complete commitment to DCS (for a delinquency offense)
 - To consider delinquency matters involving acts occurring prior to age 18 (act occurred when less than 18, adjudication after 18)

Real World: the extra year until the child's 19th birthday is used quite often (at least in Stewart County), especially with drug issues and restitution

Commencement of Case

- 37-1-108
 - Transfer from adult court (37-1-109)
 - Traffic offenses (37-1-146)
 - Transfer from another state (37-1-142, 144)
 - Filing of a petition or issuance of citation

District Attorney

- The state should be represented by a member of the DA's office – Rule 104(c)
- Rule prohibits the YSO from acting as a prosecutor (see Comments)

Arrest (or taking into custody)

- 37-1-113
- A child may be taken into custody:
 - Pursuant to court order (attachment – rule 109)
 - Pursuant to laws of arrest (40-7-101 et. Seq.)
 - LE, DCS worker, court officer – if PC child abuse
 - LE or court officer - runaway

Intake

- Rule 201 Called “preliminary inquiry”
- Intake officer – “designated court officer” – usually done by Youth Services Officer (see 37-1-106)
- Receipt of “complaint” and preliminary inquiry
 - “complaint” – Rule 202 Advisory Commission comments – “includes, but is not limited to, a petition or citation”
 - “The term ‘complaint’ ... is not equivalent to a complaint referenced in the Rules of Civil Procedure.” Broader.

Preliminary Inquiry

- Rule 201 – designated court officer to determine whether the facts alleged establish that the matter is within the jurisdiction of the court, whether the evidence is sufficient, and whether the matter is serious enough to warrant official action (**Picture a gardener weeding the garden**)
- Advisory Commission Comments to Rule 201 encourage development of local rules to afford the district attorney an opportunity to object to informal adjustment
- Probable Cause? Rule 201(a)(B) refers to “insufficient evidence” as being grounds to close a complaint (see also Rule 201(c)(3))
 - Best Practice: involve the DA on the front end in questionable cases

Preliminary Inquiry: Duties

- Rule 201(c) - Intake officer to
 - Interview child, parents, guardians
 - Advise of rights
 - Request court to appoint attorney, if child requests
- Intake officer to divert cases from formal court action if appropriate (**Weeding the garden**)
- Pursue informal adjustment, if appropriate (37-1-110, and Rule 201(d)) (**Weeding the garden**)
- File petition if I/A is deemed inappropriate

Informal Adjustment

- Rule 201(d) and 37-1-110
- Rule places authority in “designated court officer”
 - Rule has factors to consider
- Limited to “counsel and advice” – must be voluntary
 - No admission by child
- Wide discretion given to court officer
- Limited to 3 months, unless court extends (up to 6 months)
- May be terminated by court officer or child, and case recommences against child
- Note: Traffic offenses are diversion eligible under 37-1-146
- If successful, petition is dismissed
- Note: procedure for expunction (37-1-153(f)(3))

Informal Adjustment

- The idea of an “Informal Adjustment” developed as a more structured method to handle cases that, previously, may have been “held open” for a period
- The 3/6 month timeframe avoids a case from lingering

IA Best Practice

- Figure out what types of cases should be subject to IA in your court
- Stewart County: First offense traffic (except involving alcohol or drugs, excessive speed, or crash); first offense vape (unless THC) or tobacco; first offense curfew; disobedient children
- Truancy – think it through (tier plan under 49-6-3009) – time frame is important
- Simple Possession, UDP, or Alcohol – think it through (I do not allow IA for these)

Petition

- Statutes: 37-1-119; 37-1-120 (note: heading is incorrect on section 120 in the compilation)
- Includes all charging instruments used to initiate delinquency proceedings
- Note: non-traffic offense citations – are definitely used and fall under definition

Petition: Who May File?

- TCA 37-1-119 – by any person “with knowledge of the facts” or “is informed and believes that they are true.”
- Usually law enforcement
- Special rules for certain petitions filed by school personnel:
 - 37-1-120(e) – special education students, manifestation requirements under 49-10-1304(h)(2)
 - 37-1-120(f) – acts committed on school grounds – must first attempt resolution “through available educational approaches”
 - School personnel must involve parents

Petition: Contents

- TCA 37-1-120(b) – requirements for delinquency petitions
- Due Process Concerns
 - “shall set forth plainly...”
 - “facts that bring the child ... within the jurisdiction”
 - “including the approximate date, manner, and place of the acts”
 - “offense charged, the relevant statutes”
 - Detention status of child
- *State v. Rogers*, 235 S.W.3d 92, 95 (Tenn. 2007): “The child is afforded a number of constitutional and statutory rights and procedures in delinquency proceedings. These include the right to due process....”

Heads up:

- Some law enforcement agencies use a computer generated citation form
- Nothing wrong with that, but...
- Check for a **narrative**
- If no narrative, does that comply with the statute (look at 37-1-120)? With due process?

- Hint: Check Trooper citations

Key Juvenile Court Personnel

- Youth Services Officer (the “YSO”) – 37-1-106
- Probation Officer – 37-1-105
- Probation Officers can be “county” officers or employees of DCS
- Clerk – an elected official, often combined with Clerk of General Sessions and/or Circuit Court (especially in small counties)
- Court Liaison – DCS employee assigned to the court to facilitate contact between DCS and the court (a good one is “priceless”)
- SBC court coordinator (select counties)
- Court Officers – good ones often have an impact on kids

Other personnel in court – delinquency matters

- District Attorney
- Public Defender or private counsel
- Service providers
- DCS attorney (jic – state's custody)
- Court reporter
- Court interpreter
- GAL – rare but allowed

Nature of the Delinquency Proceeding

- 37-1-133
- A finding of delinquency is not a “conviction of crime”
- The delinquency proceeding is “civil” in nature
- *State v. Womack*, 591 S.W.2d 437, 442 (Tenn. Ct. App. 1979) – “Until a juvenile has been ‘transferred’ to the criminal court, the proceeding against him is civil in nature....”
- Outer limit to “civil” treatment: Due Process – **“civil” doesn’t mean due process goes away**

Nature of the Proceeding, cont.

- *Arwood v. State*, 49 S.W.2d 943, 946 (Tenn. Ct. App. 1970):
- “... our answer is simply that where due process comes into conflict with procedures in the juvenile courts – however laudable the purpose behind the adoption of the procedures – due process must prevail.”
- Remember the trend

Rights of Child

- In the beginning, there was *In re: Gault*, 387 U.S. 1 (1967)
- Unremarkable facts:
 - Gerald, age 15, accused of making lewd telephone calls
 - Gerald was on probation for theft (he accompanied another juvenile when a lady's purse was stolen)
- Remarkable procedure:
 - No written accusation from complaining witness
 - Taken into custody and detained – w/o warrant
 - Parents not notified of detention – they learned from co-D family
 - Several days later, parents learned from probation officer that hearing would be next day
 - Probation officer filed petition on hearing day, no service on Gerald or his parents

Rights, cont.

- Initial hearing conducted in chambers
- Complaining witness not present
- No sworn testimony, no record of proceedings
- Gerald not represented by counsel
- Judge questioned Gerald directly
- Unclear what Gerald admitted to
- Judge took matter under advisement and sent Gerald back to detention
- Gerald released from detention two or three days later
- Parents received a note on plain paper informing of further proceedings
- At second hearing, complaining witness not present
- Gerald denied making call, confirmed by probation officer

Rights, cont.

- Gerald not represented by counsel
- Judge never spoke to the complaining witness
- Probation officer filed a “referral report” which was never disclosed to Gerald or his parents
- Judge considered the “referral report” – no opportunity to rebut
- Mom not at hearing
- Mom did not receive petition until Habeas proceeding 2 months later
- Judge found Gerald to be a juvenile delinquent
- Sentenced to “State Industrial School” until age 21 (effective 6 year sentence)
- No appeal allowed
- Initial event: June 8 Final hearing: June 24
- An adult found guilty of this offense would face a fine of \$5-\$50 and two months incarceration

Rights, cont.

- Supreme Court **blasted** the lower courts
- Court held that juveniles are entitled to due process, including:
 - Right to proper notice of proceeding
 - Right to counsel, including if indigent
 - Privilege against self-incrimination
 - Right of confrontation, including right to sworn testimony and cross examination
- “Being a boy does not justify a kangaroo court”

Rights, cont.

- You might say “In re: Gault was needed at the time, but now its old news”
- Yes, but...
- In the spring of this year (2022), in a Tennessee juvenile court with a judge with 25 years experience, this happened (in a d/n proceeding, but instructive none the less):
 - No GAL
 - No counsel for parents
 - No real hearing, judge just declared child d/n
 - And that was that
- Don’t be that judge

Rights, cont.

- So, what will you do to avoid such a hot mess?
- The judge sets the tone. The judge sets the tone.
- Remember the line between the event and the final judicial result?

Rights, cont.

- Basic Rights at hearing: 37-1-127
- Represent virtual codification of *Gault* decision
 - Right to introduce evidence
 - Right to testify
 - Right of confrontation
 - Privilege against self-incrimination
 - Right to constitutional scrutiny of confession
 - Right to benefit of exclusionary rule
 - Right to benefit of corroboration of confessions
 - Right to be informed of sex offender registration requirements

Rights, cont.

- Interpreters
 - Rule 42, TSC
 - If limited English proficiency, court must appoint
 - State will pay “reasonable costs”
 - Order of preference:
 - State certified
 - State registered
 - Non-credentialed
- Don't forget to swear-in the interpreter

Rights, cont.

- Rule 209 – Guilty Plea, No contest
 - Contains a listing of child's rights
 - Nature of charge, dispositional consequences
 - Right to counsel, including if indigent
 - Right to plead not guilty
 - Right to trial; beyond reasonable doubt
 - Right to subpoena witnesses
 - Right to present proof; confrontation
 - Right to testify; priv. against self-incrimination
 - Affirms need for treatment/rehabilitation
 - Waiver of right to appeal
 - Immigrant status and consequences of plea

Rights, cont.

- Confessions -
 - *Miranda* analysis under 37-1-127 (knowing and voluntary)
 - Reasonable time requirement during intake under 37-1-115
- Tennessee courts recognize *Miranda* in juvenile court:
 - *R.D.S. v. State*, 245 S.W.3d 356, 363 (Tenn. 2008)
- Exclusionary rule – 37-1-127(d); Rule 210(d)
- Search Warrants? Proper procedure? Tennessee Rule Criminal Procedure 1(a) – not applicable in Juvenile Court

Rights, cont.

- Right to counsel
- Juvenile has right “at all stages of any delinquency proceeding” – 37-1-126(a)
- Includes indigent juveniles – 37-1-126(a)(3); Tenn. Sup. Ct. R. 13, Sec. 1 (d)(2)(A)
- Court must determine if unrepresented juveniles are aware of right – 37-1-126(a)(3)
- Indigency is to be determined by reference to 37-1-126(b) and may include consideration of parents’ finances
- Juvenile **must** be represented by counsel at transfer hearing – Rule 208(b)(1)(B)
- Unruly – if danger of removal from home – 37-1-126(a)(4)
- Counsel is to continue representation through appeals or until relieved by court – Tenn. Sup. Ct. R. 13, Sec. 1 (e)(5)

Rights, cont.

- Court must appoint if no parent present or parent's interests conflict – 37-1-126(a)(4)
- Child cannot choose appointed counsel, court must use public defender unless there is a reason not to – Tenn. Sup. Ct. R. 13, Sec. 1 (e)(4) and (f)(1)
- Don't forget the administrative fee – 37-1-126(c)(1)
- Court may assess parents an administrative fee up to \$200 – 37-1-126(c)(2)
- Court may also assess parents “any sum” for the child's counsel – 37-1-150(g)(1)
- Counsel takeaway: **When in doubt (or not), get the child a lawyer (a court never got into too much trouble by appointing lawyers to represent kids)**

Rights, cont.

- Standard of Proof: Beyond a Reasonable Doubt – Rule 210(e); 209(a)(4)
- Presumption of Innocence – Rules 205(b)(1)(B); 209(a)(3)
- Evidence Admissible: in Adjudicatory Hearing, Rules of Evidence apply – Rule 210(d)
- Evidence Admissible: in Dispositional Hearing, Evidence formally admitted (under the Rules of Evidence), the juvenile court record, and reliable hearsay – Rule 211(e)

Rights, cont.

- No right to jury trial – 37-1-124(a)
- Right to Attorney Judge – *State ex. Rel. Anglin v. Mitchell*, 596 S.W.2d 779, 791 (Tenn. 1980); 37-1-181 (mental health cases); 37-1-107 (magistrate); 37-1-203 (only Sessions judge-attorneys may order commitment to DCS); 37-1-159(d) (criminal court must conduct acceptance hearing if juvenile judge who ordered transfer is non-lawyer)
- Double Jeopardy – applicable to juvenile proceedings – *Breed v. Jones*, 421 U.S. 519, 531 (1975)

Rights, cont.

- Corroboration of Accomplice Testimony
- Adjudication of guilt cannot rest upon accomplice testimony alone – must be corroborated
- In re: JAF, 2005 Tenn. App. LEXIS, 554 (Ct. App. 2005); Mathis v. State, 590 S.W.2d 449, 452 (Tenn. 1979); State v. Pfeifer, 993 S.W.2d 47, 52 (Ct. App. 1998).

Rights, cont.

- Mental State – Rule 207
- No current Tennessee case law on insanity defense in juvenile court (but remember the trend?)
- At time of hearing – Rule 207(a)
 - Court may stay proceedings for evaluation
 - If incompetent, adjudication must be continued
- At time of offense – Rule 207(b)
 - Notice of intent to use defense must be given
 - Court may allow defense or have child examined

Rights, cont.

- *Ake v. Oklahoma*, 470 U.S. 68 (1985) – due process requires the state to provide an indigent defendant with access to a mental health professional to assist in the preparation, evaluation, and presentation of his or her defense when the defendant's mental condition at the time of the offense is likely to be a significant factor in the case
- Applicable to Tennessee in *State v. Barnett*, 909 S.W.2d 423, 428 (Tenn. 1995)
- TSC Rule 13, sec. 5 – juvenile transfer hearings
- No Tennessee case (found) applies *Ake* to juvenile court delinquency cases (but, remember the trend?)

Rights, cont.

- School Setting
- Vehicles, containers, packages, lockers or other enclosures may be searched “when individual circumstances in a school dictate” – TCA 49-6-4204(a)
- Students or visitors
- “Individual circumstances” – examples given in TCA 49-6-4204(b) (i.e., incidents involving guns, drugs, assaults)
- **Persons** may be searched due to results of locker search or “information received from a teacher, staff member, student or other person” – TCA 49-6-4205(a)
- Person search must be “reasonable” – statute describes reasonableness – TCA 49-6-4205 (b)

Rights, cont.

- Schools may use dogs for search, **but not of persons** – TCA 49-6-4208
- Drug tests of students ok if “reasonable indications” are present – TCA 49-6-4213(a)(1) - **Not Random**
- Drug test must be “reasonable” – statute lists 5 factors which must be present – TCA 49-6-4213(a)(1)
- Students participating in **voluntary extracurricular school** activities are subject to *random* testing – TCA 49-6-4213(a)(2)

Rights, cont.

- Restraints
- Rule 204
- Restraints only if:
 - Risk of harm to self or others
 - Risk of flight
 - No less restrictive alternatives
- Applies only in courtroom

Rights, cont.

- Discovery
- Rule 206
- “access to any discovery materials consistent with [TRCrP] Rule 16”

- Speedy trial – Rule 210 (comments)
- In re: Addison M., 2015 Tenn. App. LEXIS 896 (Tenn. Ct. App. 2015)

Waiver of Rights

- Must be in compliance with Rule 205 (and 209)
- Knowing and voluntary – Rule 205(c)
- Consultation with “knowledgeable adult who has no interest adverse to the child” is required for waivers in absence of attorney – Rule 205(b)(3)
- Who is this “knowledgeable adult?” Comments to Rule 205 state that “parents generally satisfy this requirement.” But, court must ensure an appropriate level of trust between child and parent
- If parent has brought charges, cannot fulfill this role (unruly cases are problematic)
- DCS cannot fulfill this role
- Stress appointment of attorney

Guardian ad Litem

- Court may appoint under TCA 37-1-149
- Be aware that AOC does not reimburse GALs in delinquency matters – Tenn. Sup. St. R. 13, 40

Detention – Pre-Hearing

- Pre-hearing detention – TCA 37-1-114
- Statute lists eligible offenses – TCA 37-1-114(c)
- Probable cause
- Finding of no “less drastic alternative” – TCA 37-1-114(a)(2); TCA 37-1-114(c)(7)
- Special circumstances cases under TCA 37-1-114(c)(3)
 - Require judicial action within 24 hours
- Judicial action (ex parte) required within 48 hours – Rule 203(b)(1) (PC findings required under TCA 37-1-114)
- Detention hearing within 3 days – TCA 37-1-117(b)(1); Rule 203
 - Nonjudicial days excluded – defined at TCA 37-1-102(b)(20) – Saturdays, Sundays and legal holidays (Title 15 for legal holidays)

Detention, Pre-Hearing, cont.

- Petition required to be filed “promptly” – TCA 37-1-117(a)(2)
 - What is “promptly?” D/N petitions required to be filed within two days of child removal – TCA 37-1-117(b)(2)
 - *Gerstein v. Pugh*, 420 U.S. 103, 124 (1974) (judicial determination of probable cause in warrantless arrest must be made “either before or promptly after arrest”)
 - *County of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991) (“A jurisdiction that chooses to offer combined [probable cause and arraignment] proceedings must do so as soon as is reasonably feasible, but in no event later than 48 hours after arrest.”)
 - *Cox v. Turley*, 506 F.2d 1347, 1353 (6th Cir. 1974) (“... prompt determination of probable cause – a constitutional mandate that protects juveniles as well as adults.”)
 - 37-1-115(a)(2) – Petition to be filed within 2 judicial days

Detention, Pre-Hearing, cont.

- After arrest, if child is “brought before the court or delivered to a detention facility”
- Intake or other authorized officer
- Shall immediately “make an investigation and release the child unless ... detention is warranted or required under 37-1-114.”
- 37-1-117(a)(1)

Detention, Pre-Hearing, cont.

- Detention Hearing – Rule 203
 - Court required to inform of purpose of hearing and of rights – Rule 203(d)(1)
 - Findings required for continued detention:
 - Probable cause to believe child committed offense
 - Best interest of child and public that child be detained
 - Child's detention qualifies under TCA 37-1-114
 - Detention is least restrictive alternative
- Evidence considered may include reliable hearsay – Rule 203(d)(2)
- If child is released, case is not over
 - Child may waive timing of hearing – 203(d)(6)

Detention, Pre-Hearing, cont.

- When child first taken into custody by law enforcement, must be released to parent or “within reasonable time” taken to juvenile court or to a detention facility – 37-1-115(a)
- When child first brought to detention facility, court and parents must be notified – 37-1-115(a)(2); Rule 203(c)
- Intake officer must conduct preliminary investigation – 37-1-117(a)(1)

Detention, Pre-Hearing, cont.

- Place of detention – TCA 37-1-116
- General idea is that juveniles may be detained only in licensed detention facilities
- Detention in an adult jail is a general big no-no – requirements are onerous – TCA 37-1-116(e), (h)
- In the event of a transfer, jails are ok – TCA 37-1-116(c)
- Small counties: will need a contract with one or more facilities
- Expensive!

Law Enforcement Diversion

- 37-1-115(d)
- “authorized to create and administer its own juvenile diversion program to address citable juvenile offenses without court involvement”
- Must consult with DA, juvenile court, local school districts, “other community stakeholders”
- Operates as informal adjustment
- My take: good idea, but rarely used

Pretrial Diversion

- 37-1-110(b)
- Requires court approval
- May include “terms and conditions” – would include sanctions (more than just “counsel and advice” under informal adjustment)
- May last 6 months; can be extended by court an additional 6 months
- Charges may be reinstated – failure to complete, filing of new charges
- Child entitled to notice and hearing
- Note: notice must be filed before end of term
- Certain serious offenses not eligible

Pretrial Diversion, cont.

- Upon completion of the agreement, charges are dismissed
- Main difference between informal adjustment and pretrial diversion: “counsel and advice” vs. “terms and conditions”
- Another difference: 3 months vs. 6 months
- If it falls apart, child still has all rights, presumed innocent

Post Trial Diversion

- Rule 209(f); 37-1-129(a)
- With post trial, child pleads guilty or no contest; with pre trial, no plea
- Court does not enter plea as judgement of guilt or finding of delinquency
- If child violates, court then enters plea and finding
- 6 month limit, one 6 month extension (with findings)
- Probation “subject to reasonable conditions”
- Certain serious offenses not eligible

Diversions

- No limit to number of diversions
- Contrast with adult diversion

Teen Court

- 37-1-701, et. Seq.
- Listed eligible offenses
- “Deferred judgment” – I/A, diversion, or disposition by court
- Voluntary
- Teen court members determine disposition
- Disposition is confirmed or modified by judge
- Charges dismissed if successful

Adjudicatory Hearing

- TCA 37-1-129; Rule 210
- This is the trial – conduct it like one – full panoply of rights
- Court requirements at commencement
 - Lawyers?
 - All parties present? Age of child? Notices given?
 - Explain purpose of hearing, consequences, rights
- Rules of Evidence apply fully
- Note: juvenile files attract stuff like dogs to a gut wagon – DO NOT consider anything not properly admitted
- Proof beyond a reasonable doubt – Rule 210(e)
- If guilty, then find (or not) “in need of treatment and rehabilitation” – already completed rehab? SHAM WOW guy.

Adjudicatory Hearing, cont.

- Time Limits: 30 days if in detention; 30-90 days otherwise – Rule 210(b)
- If guilty and in need of treatment and rehabilitation, move on to disposition – now or later
- Other statutes:
 - TCA 37-1-124 (conduct of hearing) – informal but orderly, no jury, DA represents the state, minutes to be kept
 - TCA 37-1-126 (right to counsel)
 - TCA 37-1-127 (basic rights – due process)
- Other Rule: Rule 114 – mostly whether open to public: “general public may be excluded” – may be closed further

Adjudicatory Hearing, cont.

- If postpone either “treatment and rehabilitation” phase or disposition, court may make interim orders – TCA 37-1-129(f); Rule 211(d)
- If found not guilty, or not in need of treatment and rehabilitation, case is dismissed, court loses jurisdiction – you’re done
- Real world – child is given chance to reach agreement with DA prior to trial
- Stewart County: 95% plus

Adjudicatory Hearing, cont.

- Time limits: Rule 210
- If child is detained, adjudication within 30 days
- If child is not detained, adjudication within 30 – 90 days
- Continuances granted “for good cause shown”
- If continued, must be to a date certain

Guilty Pleas

- Rule 209
- Court's Role:
 - Inform child of nature of charge
 - Possible dispositional consequences (and agreement if applicable)
 - Inform of Rights – Rule 209, 205
 - Determine voluntariness of plea
 - Determine factual basis of plea
 - Inform that court may ask questions; perjury; immigration status
- No contest pleas allowed (with court consent)

Guilty Pleas, cont.

- Heads up:
- Some really smart defense attorneys may try to plead their client early on (usually at first appearance) before involvement of the DA – when the offense is serious
- The judge can opt to not accept the plea until later
- The judge must control the process

Dispositional Hearing

- TCA 37-1-129; Rule 211
- Devise plan to meet the needs of the child and to achieve objectives of state (comments)
- May be held immediately after adjudication or later
 - Why later? Receipt of reports, medical/psychological assessments, additional witnesses, time for parties to discuss alternatives, complete rehab or obtain proof of completion
- Predisposition report – court may order
- Time Limits: 15 days from adjudication if in detention; 90 days otherwise
- Standard of proof: preponderance of evidence
- Evidence considered: formally admitted; court record; reliable hearsay (with opportunity to rebut)

Dispositional Alternatives

- TCA 37-1-131 – choices reduced by JJRA 2018
- Placing child with “any relative or other individual”
- Placing child on probation – county or DCS – “under conditions and limitations the court prescribes...consistent with **validated risk and needs assessment**”
- Facility operated under direction of court or by local authority
- Commit to DCS custody – restrictions apply
- Commit to county dcs (unsure if any exist)
- Community service work
- Mentor
- Family counseling services

Dispositional Alternatives, cont. – Risk and Needs

- Validated risk and needs assessment – required of all children on probation – delinquency only
- 37-1-164
- “Validated risk and needs assessment”: a determination of a child’s risk to reoffend and the needs that reduce the child’s risk to reoffend – 37-1-102(b)(34)
- Such RNA must include use of “actuarial assessment tool that assesses the dynamic and static factors that predict delinquent behavior”

Dispositional Alternatives, cont. – Case Plans

- Each child on probation – delinquent or unruly
- “Supervising authority” must develop an “individualized case plan”
- Plan must be “informed” by the risk and needs assessment
- Must be periodically updated
- Must be prepared within 7 days of conviction (delinquent children)
- 37-1-173

Dispositional Alternatives, cont. – Behavior Response

- Each “supervising authority” must adopt a behavior response system
- Responses to the child’s behavior should be “swift, certain, and proportionate”
- 37-1-173(d) and (e)

Dispositional Alternatives, cont.

- Community Service Work
 - Statutory immunity for groups using juveniles
 - ER visit (alcohol offenses)
 - Labor laws – must comply
- Restitution – under (b) – may convert to civil judgment
- Opportunity for courts to BE CREATIVE:
 - Henry County Boxing program
 - Montgomery County CPR classes
 - Reality-type programs
 - Cop ride-a-longs
 - Find out what other judges/courts are doing

Dispositional Alternatives, cont.

- Do not be afraid to fail: “The maxim ‘Nothing avails but perfection’ may be spelt shorter: paralysis.” *Winston Churchill*
- Graduated scheme – first, perhaps no probation, or “parental probation”; second, county probation; third, DCS probation; fourth, custody (if eligible)
- Common sanctions used by Stewart County Juvenile Court:
 - Probation (graduated scheme)
 - Community service
 - Apology
 - Essays
 - Restitution
 - A & D assessment, Drug education, random drug screens

Dispositional Alternatives, cont.

- Funeral home visits
- Police ride-a-long
- Reality-type programs
- Restriction of driving privileges (remember the Drug Free Youth Act – TCA 55-10-701 – certain convictions must be reported)
- Driving education – consequences of stupid driving
- CPR classes
- Counseling with court staff
- Call ins
- Regular meetings
- Interaction with former addicts, inmates, parents of victims

Dispositional Alternatives, cont.

- Curfew
- Ankle monitor
- House arrest
- Speaking to younger groups
- Tour of jail
- Participation in “Shop with a Cop”
- Restraining orders (sometimes called “no contact” orders)
- Nursing home visit

Dispositional Alternatives, cont. – Probation Extension

- Extension of probation (initial 6 mo. Max)
- Court may extend for additional 6 month **periods** if: court finds, in a written order
 - Best interest of child to continue on probation
 - Specifies the conditions and why such are in child's best interests
- 37-1-131(a)(2)(A)

Dispositional Alternatives, cont. - Parents

- Participation of parents
 - TCA 37-1-103(f) – court may require parent to participate in counseling or treatment program
 - TCA 37-1-174(a) – court may require parent to participate in treatment and rehabilitation, seek resources to treat the child, community service with child, and provide supervision of child – court required to find “did not take responsible steps” to control child

Dispositional Alternatives, cont.

- Court may not spank – Op. Tn. Atty. Gen. 95-040
- Court may not banish child – Op. Tn. Atty. Gen. 99-007
- Function of juvenile court at disposition:
 - Dispassionate jurist vs. Inquisitive jurist

Dispositional Alternatives, cont.

- A word about commitment to DCS
- JJRA 2018 – 37-1-131(a)(4)
- Felony
- Third strike (separate incidents)
- Imminent risk
- 6 month limit with one 6 month extension (with findings)

Dispositional Alternatives, cont.

- Another word re: commitment to DCS:
- Generally, indeterminate sentence – 37-1-137(a)(1)(A)
- May be a determinate sentence: certain serious crimes, 3 felonies, or within 6 mo. of age 18 - 37-1-137(a)(1)(B) - up to 19th birthday
- But – child serving determinate sentence is eligible for credits (good behavior, completion of programs) – 37-1-137(h) – up to 2 for 1

Dispositional Alternatives, cont.

- More words re: commitment to DCS
- One year DCS commitments are **required**, subject to court's discretion
- Certain serious crimes (homicide)– 37-1-131(d)
- One year DCS commitments are **allowed**, subject to court's discretion
- Listed sex crimes – 37-1-131(e)

Dispositional Alternatives, cont.

- More words re: commitment to DCS
- DCS has sole placement authority – 37-1-129(c)(1) – Court is **gatekeeper**
- Court may review placement – 37-1-129(c)(2)
- Requires a hearing, 30 days notice

Dispositional Alternatives, cont. – School Notification

- Notification of school required if child adjudicated delinquent of certain serious crimes
- 37-1-131(a)(2)(B)
- Court may also “change the educational assignment of the juvenile” – “in conjunction with ... the LEA” -- 37-1-131(c) – protection of the victim

Traffic

- A different animal – traffic offenders are a separate class – not delinquents - TCA 37-137-1-146
- Definition of “delinquent act” excludes most traffic offenses – TCA 37-1-102(b)(10)
- Informal adjustment, pre- and post- trial diversion
- Dispositional alternatives:
 - Suspend or hold d/l
 - Limit driving privileges
 - Traffic school
 - Up to \$50 fine against parents
 - CSW
 - Probation
- Jurisdiction may be waived to adult traffic court
- Remember the Drug Free Youth Act – TCA 55-10-701

Transfer (To Adult Court)

- TCA 37-1-134; Rule 208
- Children eligible:
 - Less than 14: 1st or 2nd murder, or attempt
 - 14 to less than 17: specified offenses
 - 16 or above: robbery or attempt
 - 17 or above: any offense
- No death penalty
- Process begins with petition filed by DA – 90 days
- Four conditions must be satisfied prior to transfer:
 - Age and qualifying offense
 - Transfer hearing held
 - At least 14 day's notice given

Transfer, cont.

- Probable cause to believe:
 - Child committed delinquent act
 - Child not committable to institution
 - Interests of community require child be transferred
- Child **must** be represented by attorney
- State represented by DA
- Rules of evidence apply as in TRCrP in preliminary hearing
- Note: 3rd finding: **Interests of community** not best interests of child (may be the only instance when community interests override best interests of child)

Transfer, cont.

- Child presumed to be not committable – Rule 24(b)(4)
- Best practice: Have the child examined
- Interests of the community (the crux of the matter)
 - Statutory factors – nonexclusive
- Statements made at transfer hearing not admissible later

Transfer, cont.

- Effect of transfer: juvenile court jurisdiction terminates, unless dismissal or acquitted in circuit/criminal court
- If transfer is denied, case is put back on the “adjudication track”
- Judge may have to recuse in subsequent adjudicatory hearing if objection raised
- No appeal of transfer decision (unless non-lawyer judge presided over transfer hearing)

Transfer, cont.

- Lesson learned the hard way:

Do not agree to a waiver of the transfer hearing unless the state and defense have an agreement to be implemented in Circuit/Criminal court ---- The agreement must be in writing.

Transfer, cont.

- Another tidbit or two:
- In the situation of multiple charges, the transfer statute must be met with regard to each charge
- In other words, some charges may be transferred and others remain in juvenile
- Be mindful of DAs using the threat of transfer to force a plea

Appeals

- TCA 37-1-159; Rule 118
- Final order or judgment – rule states “entry of the final order”
- 10 day period – excluding nonjudicial days
- Criminal court or “court having criminal jurisdiction”
- De Novo hearing – “anew” – another bite
- Court duties:
 - Inform right to appeal during dispositional hearing; time limits; right to lawyer (put standard language into your orders)
- Rehearings in matters tried before magistrate – 10 judicial days to request hearing before judge – TCA 37-1-107(d)

Appeals, cont.

- Waiver of right to appeal if:
 - Pleads guilty or no contest
 - If plea deal included disposition, waive right to appeal disposition
-
- File notice of appeal with Juvenile Court Clerk (see comments to Rule 118)

Probation Revocation

- Rule 212
- Petition to be filed
- Proceeding conducted same as delinquency adjudication
- Child entitled to full rights
- Standard of proof – preponderance of evidence
- Upon finding of violation, court may extend or any other disposition available in the original proceeding
- Under 37-1-131(a)(2)(A)(v), no DCS commitment unless:
 - Separate d/n adjudication
 - Convicted of eligible delinquent offense
 - Imminent risk if not committed

Modification and Vacation of Orders

- TCA 37-1-139; Rule 213
- Modification: clerical mistakes – upon motion of party or court's own initiative
- Modification: changed Circumstances – best interests analysis
- Modification: newly discovered evidence
- Vacation: fraud or mistake
- Vacation: no jurisdiction
- Vacation: newly discovered evidence
- Motion required
- Filed by: any party, probation officer, any other person with supervision or custody of child

Unruly

- Same general procedure as delinquency matters
- Definition of Unruly child: TCA 37-1-102(b)(33)
 - Truant
 - Disobedient of reasonable and lawful commands of parent or guardian
 - Commits an offense applicable only to minor
 - Runaway
 - Sexting – 37-1-148
- Right to court-appointed attorney: **only** if in danger of being removed from home – TCA 37-1-126(a)

Unruly, cont.

- Basic rights – 37-1-127 – language suggests some rights apply only to delinquency matters
 - Fully applicable to unruly matters:
 - (a) – right to introduce evidence, cross exam, be heard
 - (c) – confessions- must be constitutionally admissible
 - (d) – illegally obtained evidence – exclusionary rule
 - Contains language limiting to delinquency matters:
 - (b) – self incrimination
 - (e) – confessions must be corroborated
 - (f) – juvenile sex offender warning

Unruly, cont.

- Standard of Proof: Clear and Convincing
- Evidence Admissible: Adjudication – only evidence properly admitted; Disposition – evidence admitted, court record, reliable hearsay
- GAL – court can appoint, but AOC will **not** pay
- Detention – TCA 37-1-114(b) – 24 hours is limit unless probable cause of violation of Valid Court Order
- VCO – Appendix to rules

A word about VCO

- Established by federal regulations
- Attached as Appendix to juvenile rules
- Allows for detention of juveniles violating VCO
- **BE WARY:** requirements are very strict
- Court order must meet certain requirements
- Must have assessment within 48 hours
- “Appropriate state agency” – unsure
- Cannot be court staff or law enforcement
- 24 hours PC
- Full hearing 72 hours – right to counsel
- **Must consider the assessment report**
- 7 day max detention (recent change)

Unruly, cont.

- Dispositional Alternatives: TCA 37-1-132
 - No detention – 37-1-123
- Appeals – same as delinquency matter – TCA 37-1-159
- Probation Revocation – same as delinquency matter
- Modification and Vacation of Orders – same as delinquency matter

- DCS probation – only if also delinquent or violation VCO

- DCS commitment – only if third strike (delinquent or unruly acts) or imminent risk

A word about Truancy

- Truancy is a bane for juvenile court judges
- Can be approached in three general ways:
 - As d/n (definition of d/n includes child “unlawfully kept out of school – 37-1-102(b)(13)(C))
 - Action against parent – 49-6-3009(a)
 - Action against child – unruly (definition includes child “habitually and without justification truant from school” – 37-1-102(b)(33)(A))
- Jurisdiction limited to county

Truancy, cont.

- New statute establishes tier system – 49-6-3009
 - Many judges approve
- Local BOE required to develop progressive truancy plan
- Three tiers:
 - Tier one: prevention oriented supports
 - Tier two: 5 unexcused; conf. with parents, contract signed
 - Tier three: community services; teen court; make-up days
- Tiers can be skipped if parent unwilling to cooperate
- Petitions MUST include certification that tier system was used and was unsuccessful
- Court is required to dismiss petition if no certification

Truancy, in my experience

- If the child is of “tender” years, often the problem is with the parents/caregivers
- Make a DCS referral, or an order of reference requiring an investigation (37-1-128)
- If the child is older, often the problem is with the child (playing hookey)
- Placing child on probation (and actively monitoring) often cures the problem
- Sternly warning parent of criminal implications
- Use SROs for filing criminal charges – drastic step, but necessary sometimes

Truancy, in my experience

- Once a petition is filed:
- TSC Rule 40, sec. 8 allows GAL to investigate
- The child's educational needs and authorizes the GAL to obtain and review the child's school records

Fines and Fees

- Statutory change due to JJRA 2018
- 37-1-163
- Court cannot assess “financial obligations” against a child in delinquency and unruly cases
- Court can assess against parents (37-1-150(g); 37-1-151; 37-1-163)
- Court can order restitution
- “Financial obligations” – fines, fees, costs, surcharges, child support, or other monetary liabilities ordered by court – 37-1-102(b)(16)

Injunctive Relief

- Court may order injunctive relief – 37-1-152
- Rule 108
- Motion, petition, court's motion
- Ex parte: restrain act only
- After hearing: restrain or compel act

- Common orders: no-contact; treatment; dis-association with peers

Expunction

- Extensive provisions – 37-1-153(f)
- (f)(1) – tried and adjudicated – findings req. by court
- (f)(2) – LE records not affected
- (f)(3) – informal adjustment – by motion
- (f)(4) – pretrial diversion – by motion
- (f)(5) – judicial diversion – by motion
- (f)(6) – other dismissals – automatic, no motion
- (f)(8) – unruly and misdemeanor convictions – by motion

Adult Criminal Prosecutions

- Some adult prosecutions can be heard in juvenile court
- See Rule 101(b)(4) for list
- Child abuse (39-15-401)
- Failure to report child abuse (37-1-412)
- Criminal nonsupport (39-15-101)
- Contributing to: delinquency (37-1-156); d/n (37-1-157)
- Compulsory school attendance (49-6-3001, et seq.)
- Criminal contempt

- **Child abuse – look closely at statute – 39-15-401(d) and (e)**
 - Develop a system to address children testing positive
 - See next slide

Child abuse statute

- 39-15-401(d)(2):
- “For purposes of this subsection (d), a person engages in conduct that places a child in imminent danger of death, bodily injury, or physical or mental impairment if the person’s conduct related to [any illegal drug except marijuana] exposes the child to the controlled substance **and an analysis of a specimen of the child’s blood, hair, fingernail, urine, or other bodily substance indicates that presence of [any illegal drug except marijuana] in the child’s body.**”

Child Abuse Statute, cont.

- 39-15-401(e)(1):
- “Any court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court, either by summons or warrant.”
- 39-15-401(e)(2)(A):
- “As provided in this subdivision (e)(2), juvenile courts... shall have concurrent jurisdiction to hear violations of this section.”
- (B): “If the person pleads not guilty... shall have the power to bind the person over to the grand jury....”
- (C): “On a plea of not guilty... shall have the power to proceed to hear the case on its merits....”
- (D): “If a person enters a plea of guilty... shall sentence the person under this section.”
- **Remember Rule 101(c)(4)(A)** – rules of crim. Proc. Apply in adult child abuse prosecutions – preliminary hearing?

Record Confidentiality

- General principle: Juvenile court records must be kept confidential
- 37-1-153(a) – specifies who has access
- 37-3-153(b) – certain serious crimes, open to public inspection
- 37-1-153(c) – **BUT: petitions and orders only**
- Subsection (c) confirmed: Berry v. State, 366 S.W.3d 160 (Ct. Crim. App. 2011)(Subsection c controls over a Brady request); Reguli v. Guffee, No. M2015-00188-COA-R3-CV (Ct. App. 2016)(confirms Berry – only petitions and orders)

Record Confidentiality, cont.

- State ex rel Wilson v. Gentry, No. M2019-02201-COA-R3-CV (Ct. App. 2020)
- Court held that an audio recording of a court proceeding is not a Public Record under Tennessee's Public Records Act (TCA 10-7-503)
- Court relied on Supreme Court Rule 34 to deny access

Contempt

- Juvenile court judges have same contempt power as Circuit, Chancery, or Appellate judges
- Keep in mind:
 - Direct and indirect
 - Criminal and Civil
- My experience: rarely used

Juvenile Sex Offender Registry

- 40-39-202 et. Seq.
- Intricate statute
- Requires registration within 48 hours
- Generally, qualifying crimes involve violence or coercion – specifically listed offenses
- Restrictions on activities apply
- Eligible offenders released from requirements at age 25 (exceptions apply)

My Experience with Delinquencies

- Although delinquent/unruly cases may make up half or more of Stewart County's docket, I spend 90% plus of time on d/n
- Approximately 95% of Stewart County delinquent/unruly children plead guilty
- Approximately 95% of the pleas involve an agreement with the state that includes disposition
- Any modification to disposition suggested by me has always been accepted by the child

Andy's Ramblings:

- Know where you are procedurally
- Before making a decision, know the law or take time to figure it out
- Keep up to date- **COME TO CONFERENCES!!!**
- It's okay to ask other judges their opinion – this can be a lonely job
- If a case is taken under advisement, don't put it off (I give myself a public "deadline") – RJC 2.5 (60 day max for trial; 30 day max for motions – citing TRSC 11) (TRJPP 307(e)(2) – 30 day max d/n) (TPR – 36-1-113(k) – 30 day max)
- Wisdom of proverb: "The morning is wiser than the evening."

Andy's Ramblings, cont.

- Make the best decision you can, then MOVE ON
- Court appearances are not usual for most folks
- Contempt – use it sparingly – take a time out to cool off (you'd be surprised how the judge's exit affects people and changes their attitude)
- Don't lose your temper – use your temper
- On slow days, visit other courts, service-provider facilities
- Maintain good relations with surrounding judges – for interchange, ideas

Andy's ramblings, cont.

- Do you have a job, or are you a judge?
- Does a minister have a job, or is he/she a minister?
- **YOU ARE A JUDGE** – all day, every day
- Even after you step down, people are apt to call you “judge”

Andy's ramblings, cont.

- Take care of your Admin matters – set up a regular system to sign orders, review motions, staff matters, ACAP, etc.
- Remember the Code of Judicial Conduct requires **YOU** to ensure your staff complies with the Code
- You will receive letters, etc. ex parte about a case. Don't read it all, send to all parties, allow the parties to motion the matter into court to discuss.
- If the substance of the letter/communication is child abuse allegations, **MAKE A REFERRAL**

Andy's ramblings, cont.

- The Inquisitive Jurist v. The Dispassionate Jurist
- A juvenile court judge must find that line, and respect it
- We are to be neutral, impartial, and fair magistrates, calling balls and strikes
- But a natural tension exists due to our role in protecting children

Andy's Ramblings, cont.

- You are encouraged to speak to groups about the law and juvenile court in particular (no case specifics, of course)
- Lots of folks don't know what we do and the opportunity we have in juvenile court to impact a child's life
- Juvenile court may be the most important of all our courts

Andy's Ramblings, cont.

- “It’s good to be king.”
– *Mel Brooks*
- “Nearly all men can stand adversity, but if you want to test a man’s character, give him power.” –
Abraham Lincoln
- *Beware “Black Robe Fever” – source of many BJC complaints*

IN OTHER WORDS:



Andy's Ramblings, cont.

- “But what is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, no external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; *and in the next place oblige it to **control itself.***” Madison, *Federalist 51*

Andy's Ramblings, cont.

- “The history of American freedom is, in no small measure, the history of procedure.” – *Mr. Justice Frankfurter (as quoted in In re: Gault)*
- “Blessed are they who maintain justice, who constantly do what is right.” – *Psalms 106:3*

Andy's Ramblings, cont.

See the potential in every child, even when others can't:

“Destiny guides our fortunes more favorably than we could have expected. Look there, Sancho Panza, my friend, and see those 30 or so wild giants, with whom I intend to do battle and kill each and all of them, so with their stolen booty we can begin to enrich ourselves. This is noble, righteous warfare, for it is wonderfully useful to God to have such an evil race wiped from the face of the earth.”

“What giants?” asked Sancho Panza.

“The ones you can see over there,” answered his master, “with the huge arms, some of which are very nearly two leagues long.”

“Now look, your grace,” said Sancho, “what you see over there aren't giants, but windmills, and what seems to be arms are just their sails, that go around in the wind and turn the millstone.”

“Obviously,” replied Don Quijote, “you don't know much about adventures.”

Don Quijote de la Mancha, by Miguel de Cervantes

And now something irrelevant, completely:

- **“You can’t be a real country unless you have a beer and an airline – it helps if you have some kind of football team, or some nuclear weapons, but in the very least you need a beer.”**
- **Frank Zappa**