

## **Pacific Juvenile Defender's Conference Roundtable**

by

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The Pacific Juvenile Defender's Conference Roundtable took place on November 20, 2009, at Loyola Law School in Los Angeles. An organization called the Pacific Juvenile Defender Center (PJDC) organized the conference. PJDC was created by the State Bar in 1999 to help respond to the need to improve the access and quality of representation for juveniles in the justice system.

The day began with presentations summarizing updates of new juvenile case law, legislation, policy, and reforms to the Division of Juvenile Justice (DJJ), also known as the Division of Juvenile Facilities (DJF) and previously called California Youth Authority (CYA). There was a presentation on motion and writ practice, where trial attorneys were encouraged to file motions with not only the trial court, but also appellate courts in mind in terms of both: 1) preparing an adequate record; and 2) raising arguments even where there may be virtually no chance for success in the trial court but potential for success on appeal.

Breakout sessions regarded topics of mental health, discovery, detention hearings, and fitness hearings. Probably most relevant to issues confronted on appeal was the mental health discussion, led by Dr. Mari Radzic, Ph.D., from the Children's Hospital Los Angeles Division of Adolescent Medicine and Maureen Patti from the Los Angeles County Public Defender. The presentation provided helpful context for mental health and youth development considerations in juvenile cases and emphasized importance of reminding courts that individuals' brains are not fully formed until about age 24; juveniles in fact interpret emotions and trauma differently and think differently. The United States Supreme Court case of *Simmons v. Roper* (2005) 543 U.S. 551 is helpful for making this point. During the seminar, Dr. Radzic noted a Dr. Jay Giedd has been conducting studies regarding brain development; some links to relevant articles appear to be available here: <http://intramural.nimh.nih.gov/chp/articles/index.html>. Also worth noting is a helpful suggestion from Maureen Patti for increasing the persuasive power of arguments where a minor has been the victim of trauma and/or where the minor has a mental illness: Focus on directly tying problematic behaviors to the trauma or mental illness to help explain them. Helpful resources related to child trauma can be found at <http://www.nctsn.org>, including an information sheet for judges at [http://nctsn.org/nctsn\\_assets/pdfs/JudgesFactSheet.pdf](http://nctsn.org/nctsn_assets/pdfs/JudgesFactSheet.pdf).

While we appellate practitioners tend to be quite good at keeping up with case law or at least are able to easily find case law, we tend to be less good at keeping abreast of policy issues. Therefore, it seems worth sharing a few pieces of interesting information

disseminated at the conference regarding DJJ updates (presented by Sara Norman, Managing Attorney for the Prison Law Office) and legislative and policy updates (presented by David Steinhart, Director of Juvenile Justice for the Commonwealth Juvenile Justice Program).

First, as everyone probably knows, major problems exist at DJJ. A lawsuit initiated by the Prison Law Office led to a consent decree in 2004, whereby DJJ (then CYA) agreed to remedy many ongoing problems. Since then, remedial plans in various areas have been prepared, and updates on the progress for said plans are ongoing.

Sara Norman spoke frankly about the progress of the reforms. Normal warned that while there have been advertisements that a high percentage of reforms are complete, such percentages have little practical meaning because every required reform – major or minor – is weighed equally, and some pivotal reforms are nowhere near completion. Some significant improvements have been made, such as in education and medical care. However, a recent study found the rates of violence in DJJ the same as in 2005. There remain suicide problems and problems with staff taunting and isolating youth. Pepper spray is used frequently, including on disabled youth. The mental health and custody staff are in separate worlds such that custody staff do not realize when they may be harming youth with mental health issues. The facilities are horrendous and it has been concluded they are not suitable for reform and rehabilitation, yet there are no plans to replace the facilities. There is no confidentiality policy in the sexual behavior treatment program. Also, time is being added to custody lengths for various reasons without transparency and some for questionable reasons, for example for time spent in orientation status.

The above notes include just a sampling of what was discussed and what has been taking place. An excellent way to get additional information and to keep updated about the status of the reforms is the Prison Law Office website, which includes the most updated reports filed in accordance with the consent decree:

<http://www.prisonlaw.com/cases.php>.

One of the most interesting pieces of information I acquired at the conference was that, according to a San Bernardino deputy public defender, San Bernardino County has not sent a single young person to DJJ in about a year and a half, because the probation department came to understand the problematic quality of DJJ and helped convince judges of the same. Before this turn of events, San Bernardino County had one of the highest rates of DJJ commitments.

Generally, commitments to DJJ have been drastically decreasing. While almost 10,000 youth were in DJJ on December 31, 1995, only around 1600 to 1700 youths are currently in DJJ. Since September 2007, the population has decreased about one-third

because of Senate Bill (SB) 81, which diverted non-violent juvenile offenders from DJJ to local juvenile offender options by restricting DJJ dispositions only to those minors who committed serious or violent Welfare and Institutions Code section 707, subdivision (b) offenses and some sex offenses (Welf. & Inst. Code, §§ 731, 733). Largely due to these new laws, there are only about 300 new DJJ commitments per year. While diverting young people from DJJ was certainly deemed positive progress at the seminar, questions were posed about the quality of the county programs for diverted youth, as SB 81 unfortunately provided no accountability requirements for counties. As of July of this year, though, amendments in SBX4 13 have created requirements for accountability and performance measures.

In terms of other legislation, Assembly Bill (AB) 1053, which recently passed, provides new rules for release dates for DJJ wards. AB 999 is pending Legislation to provide new rules for custody credits and time-adds to DJJ custody time. SB 399, which aimed to provide a means for recalling juvenile life without parole sentences, also has not yet been successful, but it likely will be back on the table soon. These bills and other California bills can be reviewed and tracked at the Official California Legislative Information website: <http://www.leginfo.ca.gov>.

In the coming year, policy issues likely will include improving services for mentally ill juvenile offenders and providing additional regulations for adding custody time for juveniles. Also, serious questions about whether maintaining DJJ can be justified may be discussed, given the cost per DJJ ward per year of \$252,000 in 2008. The average length of incarceration time currently is about 37 months. A significant concern with shutting down DJJ noted was that it likely would lead to trying more juveniles in adult court.

An important resource to know about for juvenile justice cases is PJDC's recently launched new website: [www.pjdc.org](http://www.pjdc.org) It has various public materials, as well as a PJDC Resource center with extensive resources available only to juvenile defenders and members of the juvenile justice community. You can sign up for free to be a member and access the resources.