

# **Children and Juvenile Justice**

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# Children and Juvenile Justice

SECOND EDITION

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In loving memory of Yoel ben Moshe Halevi ז"ל, Yale L. Rosenberg, A.A. White Professor of Law, University of Houston Law Center. Beloved husband, school mate, best friend, colleague, co-author, and so much more.

I.M.R.

...

In memory of my grandmother, Rebecca Rosenblatt, who always believed I could accomplish whatever I set out to do. To my granddaughter, Rifqa, for being a very special and thoughtful young lady who lives up to the meaning of her name. I want to thank my daughter, Malikah, for her encouragement and support while I was working on this book.

This edition is also in memory of Irene Merker Rosenberg, my friend and coauthor, who passed away prior to the publication of this edition. Without her support this book would never had been written.

E.M.



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# Preface

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When we sat down to begin work on the first edition of this book (which was a long time ago), we knew what we wanted to accomplish—to create a casebook that would combine theory, practice, and ethics. We hope we have succeeded.

At that time we both underestimated how difficult this project would be—the numerous decisions that would have to be made, the tedious detail work, the extensive research and culling of materials. We decided at that time that we might well do some things differently—we are told that this is the purpose of second editions. At that time I did not realize how much harder it would be to write the second edition. Between our two books, Irene became ill and passed away before the second edition was completed. It has been a difficult task to continue this work without the discussions, laughter, and arguments that we had with the first edition. I have kept much of the same philosophy with the second edition as we did with the first.

One of our decisions was to edit Supreme Court cases lightly. They provide the basic constitutional framework for analyzing juvenile justice issues in the United States. We believe that students should discover and experience the full import and flavor of the Court's opinions in order to be able to grapple with the Court's shifting approaches in resolving questions regarding the juvenile justice system. We want students to view the subject matter in all its constitutional complexity rather than as simplistic “sand box” law or “kiddie” court law. This continues in the second edition. When *Roper v. Simmons* was decided, we had many discussions about where to place the case in the book. I wanted to put it with the other constitutional law cases. Professor Rosenberg wanted to put it separate because “death is different.” She won out in the first edition. However, when we first started to discuss this edition, Professor Rosenberg said something she rarely would admit, someone else was right. In this edition *Roper* appears in the chapter that includes the Supreme Court decisions, along with the cases that have followed the reasoning of the Court in *Roper*. We did so because just as the Court has always stated “death is different” the Court has also continued to say “children are different.”

We have also used the Institute of Judicial Administration—American Bar Association's (IJA-ABA) Standards rather freely. Although they were written quite awhile ago, in general, they still provide the best source for what we consider the best practices.

In our efforts to make this a national case book, we used cases and statutes from many states. We think they are sufficiently representative of the juvenile justice systems in the United States. However, we recognize that most students want to know how the system works in their particular jurisdictions. To that end, we suggest that professors who use this book complement it with statutes from their home states.

We hope that our practice experience gives students greater access to the somewhat schizophrenic, secretive, and impenetrable juvenile justice world. We have tried to be

neutral in our choice of materials and notes, but because we were both defense attorneys in large urban areas and share common views about the juvenile courts, some of our biases may be reflected in the book. We do not apologize for this, but we do want to make explicit what may be implicit.

Many ethical problems arise in juvenile practice. Unfortunately they are rarely acknowledged, and when they are, they are disposed of under the rubric of the “best interests of the child.” We have tried to explore these issues openly. Some students may find this disconcerting, but we think discussion of such problems will force students to examine their own views about children and the adversarial process.

Both of us have used some version of these materials when teaching juvenile law. We want to thank our students at the University of Houston Law Center who helped compile the materials and were willing to be experimental subjects with the various versions. We, however, are responsible for any typos or editorial mistakes. We also want to thank the University of Houston Law Foundation for its financial support.

As before, I invite your criticism, comments, suggestions, and any observations as to what worked and what did not. Please contact Ellen Marrus, [emarrus@uh.edu](mailto:emarrus@uh.edu), with your ideas.

We hope that you and your students enjoy using the book.

June 2012

E.M. and I.M.R.

# Acknowledgments

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