

Children and Juvenile Justice

Children and Juvenile Justice

THIRD EDITION

Ellen Marrus

ROYCE TILL PROFESSOR OF LAW
DIRECTOR OF THE CENTER FOR CHILDREN, LAW, AND POLICY
UNIVERSITY OF HOUSTON LAW CENTER



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2021
Ellen Marrus
All Rights Reserved

ISBN 978-1-61163-897-4
eISBN 978-1-5310-0033-2
LCCN 2020943323

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
E-mail: cap@cap-press.com
www.cap-press.com

Printed in the United States of America

*This edition is in memory of Irene Merker Rosenberg, my colleague, friend
and co-author. Without her support the original edition of this book
would never had been written.*

E.M.

Summary of Contents

Table of Cases	xvii
Preface	xxi
Acknowledgments	xxiii
Chapter 1 · The Juvenile Court System in the United States	3
A. Historical Perspectives	3
B. Children in the Courts	27
C. An Overview of the Juvenile Justice System	32
Chapter 2 · The Supreme Court’s Constitutional Domestication of the Juvenile Court	41
A. Introduction	41
B. The Supreme Court Cases	42
C. Abolition of the Juvenile Court System	313
Chapter 3 · Right to Counsel in the Juvenile Court: Theory and Practice	325
A. The Various Stages of a Delinquency Proceeding at Which the Right to Counsel Could Theoretically Apply	325
B. The Reality of the Right to Counsel in Juvenile Court	328
C. Models of Representation	343
D. Why Effective Assistance of Counsel Standards Applicable to Adult Defendants Are Insufficient to Protect Delinquents in Juvenile Court	352
Chapter 4 · Juvenile Delinquency Proceedings: State Statutes and Cases	359
A. Infancy Defense—Introduction	359
B. Age Limitations	370
C. Special Problems Relating to Juvenile Court Age Limits	373
D. Taking a Juvenile into Custody	381
E. The Intake Process	398
F. Pre-Trial Detention Hearings	432
G. Adjudicatory Hearings	485
H. Dispositional Hearings	506
I. International and Comparative Law	551

Chapter 5 · Constitutional Restraints on Practices in Juvenile Correctional Facilities	563
A. Cases from the 1970s	563
B. Do the More Things Change the More They Remain the Same?	582
Chapter 6 · Waiver and Blended, Determinate, and Extended Jurisdiction Sentencing	605
A. The Three Types of Waiver Statutes: Judicial, Prosecutorial, and Legislative	605
B. The Constitution and the Waiver Decision	609
C. A Typical Waiver Statute—Florida	641
D. Evidentiary Problems in Judicial Waiver Cases	645
E. What Happens after Waiver?	657
F. Blended, Determinate and Extended Jurisdiction Sentencing	680
Index	723

Contents

Table of Cases	xvii
Preface	xxi
Acknowledgments	xxiii
Chapter 1 · The Juvenile Court System in the United States	3
A. Historical Perspectives	3
1. President’s Commission on Law Enforcement, Task Force Report: Juvenile Delinquency and Youth Crime	3
2. Robert E. Shepherd, Jr., <i>The Juvenile Court at 100: Birthday Cake or Funeral Pyre?</i>	6
3. Sanford J. Fox, <i>Juvenile Justice Reform: An Historical Perspective</i>	9
4. Anthony Platt, <i>The Child Savers: The Invention of Delinquency</i>	21
5. Barry C. Feld, <i>Bad Kids: Race and the Transformation of the Juvenile Court</i>	23
Notes	26
B. Children in the Courts	27
1. Early Cases	27
<i>Ex parte CROUSE</i> , 4 Whart. 9 (1839)	27
<i>People ex rel O’Connell v. Turner</i> , 55 Ill. 280 (1870)	29
C. An Overview of the Juvenile Justice System	32
1. The Changing Nature of the Juvenile Court as Reflected in the “Purposes” Sections of Juvenile Justice Codes	32
Notes	36
2. Tracking a Typical Delinquency Case through the Juvenile Court	37
a. Flow Chart	39
Chapter 2 · The Supreme Court’s Constitutional Domestication of the Juvenile Court	41
A. Introduction	41
Irene Merker Rosenberg, <i>The Constitutional Rights of Children Charged with Crime: Proposal for a Return to the Not So Distant Past</i>	41
B. The Supreme Court Cases	42
<i>Kent v. United States</i> , 383 U.S. 541 (1966)	42
Notes	52
<i>In re Gault</i> , 387 U.S. 1 (1967)	54

Notes	86
<i>In re Winship</i> , 397 U.S. 358 (1970)	88
Notes	98
<i>McKeiver v. Pennsylvania</i> , 403 U.S. 528 (1971)	100
Notes	114
<i>Breed v. Jones</i> , 421 U.S. 519 (1975)	116
Notes	126
<i>Swisher v. Brady</i> , 438 U.S. 204 (1978)	128
Notes	143
<i>Fare v. Michael C.</i> , 442 U.S. 707 (1979)	143
Notes	158
<i>Schall v. Martin</i> , 467 U.S. 253 (1984)	161
Notes	190
<i>New Jersey v. T.L.O.</i> , 469 U.S. 325 (1985)	191
Notes	223
<i>Safford Unified School District v. April Redding</i> , 129 S. Ct. 2633 (2009)	227
Notes	242
<i>Roper v. Simmons</i> , 543 U.S. 551 (2005)	242
Notes	262
<i>Terrance Jamar Graham v. Florida</i> , 130 S.Ct. 2011 (2010)	263
Notes	296
<i>J.D.B. v. North Carolina</i> , 131 S. Ct. 2394 (2011)	298
Notes	313
C. Abolition of the Juvenile Court System	313
1. Katherine Hunt Federle, <i>The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Rights</i>	313
2. Janet E. Ainsworth, <i>Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court</i>	314
3. Barry C. Feld, <i>The Transformation of the Juvenile Court</i>	316
4. Irene Merker Rosenberg, <i>Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists</i>	318
Notes	323
Chapter 3 · Right to Counsel in the Juvenile Court: Theory and Practice	325
A. The Various Stages of a Delinquency Proceeding at Which the Right to Counsel Could Theoretically Apply	325
1. Ellen Marrus, <i>Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime</i>	325
2. IJA-ABA Juvenile Justice Standards Annotated: Standards Relating to Counsel for Private Parties	327
B. The Reality of the Right to Counsel in Juvenile Court	328
1. Anthony M. Platt, <i>The Child Savers: The Invention of Delinquency</i>	328
2. Janet E. Ainsworth, <i>Re-Imagining Childhood and Reconstructing</i>	

<i>the Legal Order: The Case for Abolishing the Juvenile Court</i>	331
3. A Call For Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings	333
4. Indigency	334
a. Ellen Marrus, <i>Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime</i>	334
b. IJA-ABA Juvenile Justice Standards Annotated: Standards Relating to Pretrial Court Proceedings	335
5. Waiver of the Right to Counsel	336
a. Barry C. Feld, <i>The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make</i>	336
b. Thomas Grisso, <i>What We Know About Youths' Capacities as Trial Defendants</i>	336
c. Ellen Marrus, <i>Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime</i>	338
d. Mary Berkheiser, <i>The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts</i>	340
e. IJA-ABA Juvenile Justice Standards Annotated: Standards Relating to Pretrial Court Proceedings	341
6. The Role of Parents and the Right to Counsel	342
a. Ellen Marrus, <i>Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime</i>	342
b. IJA-ABA Juvenile Justice Standards Annotated: Standards Relating to Pretrial Court Proceedings	343
c. Consider This Hypothetical	343
C. Models of Representation	343
1. Emily Buss, <i>The Missed Opportunity in Gault</i>	343
2. Leslie Abramson, <i>The Defense Is Ready: Life in the Trenches of Criminal Law</i>	344
3. Thomas Welch, <i>Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum</i>	344
4. Ellen Marrus, <i>Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime</i>	345
5. Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems	347
D. Why Effective Assistance of Counsel Standards Applicable to Adult Defendants Are Insufficient to Protect Delinquents in Juvenile Court	352
1. Ellen Marrus, <i>Effective Assistance of Counsel in the Wonderland of</i>	

“Kiddie Court” — <i>Why the Queen of Hearts Trumps Strickland</i>	352
Note	357
Chapter 4 · Juvenile Delinquency Proceedings: State Statutes and Cases	359
A. Infancy Defense—Introduction	359
1. Cases	360
<i>In re Tyvonne</i> , 558 A.2d 661 (Conn. 1989)	360
Notes	365
<i>State v. Q.D. and M.S.</i> , 685 P.2d 557 (Wash. 1984)	366
2. Irene Merker Rosenberg, <i>Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists</i>	369
Notes	370
B. Age Limitations	370
State Juvenile Court Delinquency Jurisdiction	371
Notes	372
C. Special Problems Relating to Juvenile Court Age Limits	373
<i>Commonwealth v. A Juvenile</i> , 534 N.E.2d 809 (Mass. App. Ct. 1989)	373
<i>Choco v. United States</i> , 383 A.2d 333 (D.C. 1978)	374
<i>Commonwealth of Pennsylvania v. Iafrate</i> , 561 A.2d 1244 (Pa. Super. Ct. 1989)	376
<i>In the Matter of M.E.</i> , 982 S.W.2d 528 (Tex. App. 1998)	377
Note	378
<i>Commonwealth of Pennsylvania v. Anderson</i> , 630 A.2d 47 (Pa. Super. Ct. 1993)	378
Note	380
D. Taking a Juvenile into Custody	381
1. Summons	381
<i>State v. S.C.W.</i> , 718 So. 2d 320 (Fla. Dist. Ct. App. 1998)	381
2. Probable Cause	382
<i>Lanes v. Texas</i> , 767 S.W.2d 789 (Tex. Crim. App. 1989)	382
Notes	388
3. Resisting Arrest	389
<i>In the Matter of Hartsfield</i> , 531 S.W.2d 149 (Tex. Civ. App. 1975)	389
4. Confessions	389
<i>In the Matter of J.B.J.</i> , 86 S.W.3d 810 (Tex. App. 2002)	389
Note	392
<i>In the Interest of R.L.J.</i> , 336 So. 2d 132 (Fla. Dist. Ct. App. 1976)	392
5. IJA-ABA Juvenile Justice Standards: Standards Relating to Police Handling of Juvenile Problems	396
Notes	397
E. The Intake Process	398
1. Statutes	398
a. Cal. Welf. & Inst. Code § 653.5	398
b. Cal. Rules of Court, Rule 5.516	399

c. Cal. Rules of Court, Rule 5.514	401
d. Tex. Family Code § 53.01	404
e. Tex. Family Code § 53.012	406
f. West's F.S.A. § 985.14	406
g. West's F.S.A. § 985.145	407
2. Informal Adjustment Contract	412
3. Cases	414
<i>In the Matter of Elizabeth J.</i> , 413 N.Y.S. 2d 867 (N.Y. Fam. Ct. 1979)	414
<i>In re M.D.</i> , 527 N.E.2d 286 (Ohio 1988)	415
<i>In re Armondo A.</i> , 3 Cal. App. 4th 1185 (Cal. Ct. App. 1992)	419
<i>In the Matter of Frank H.</i> , 337 N.Y.S.2d 118 (N.Y. Fam. Ct. 1972)	422
Notes	426
4. IJA-ABA Juvenile Justice Standards	427
a. Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services	427
Notes	432
F. Pre-Trial Detention Hearings	432
1. Statutes	432
a. N.Y. Family Court Act § 320.5	432
b. Tex. Family Code § 53.02	433
c. Tex. Family Code § 54.01	434
2. Detention Forms and Assessments	439
3. Cases	449
<i>Moss v. Weaver</i> , 525 F.2d 1258 (5th Cir. 1976)	449
<i>Doe v. State</i> , 487 P.2d 47 (Alaska 1971)	451
Notes	455
<i>Alfredo A.</i> , 865 P.2d 56 (Cal. 1994) Opinion on Rehearing	455
Note	461
4. Detention Facilities	461
<i>Martarella v. Kelley</i> , 349 F. Supp. 575 (S.D.N.Y. 1972)	461
<i>Martarella v. Kelley</i> , 359 F. Supp. 478 (S.D.N.Y. 1973)	466
Note	469
<i>A.J. v. Kierst</i> , 56 F.3d 849 (8th Cir. 1995)	469
Notes	476
5. IJA-ABA Juvenile Justice Standards Relating to Interim Status: The Release, Control and Detention of Accused Juvenile Offenders between Arrest and Disposition	481
G. Adjudicatory Hearings	485
1. The Criminal—Civil Dichotomy	485
a. Tex. Family Code § 51.17	485
b. N.Y. Family Court Act § 165	485
c. N.Y. Fam. Court Act § 303.2	486

d. In the Matter of S.L.L., 906 S.W.2d 190 (Tex. App. 1995) (per curiam)	486
e. In the Matter of J.R., 907 S.W.2d 107 (Tex. App. 1995) (per curiam)	486
2. The Differences and Similarities between Rights and Rules Applicable in Criminal Trials and Those in Delinquency Adjudicatory Hearings	487
a. N.Y. Family Court Act § 342.1	487
b. N.Y. Family Court Act § 342.2	487
c. Tex. Family Code § 54.03	487
3. Cases	489
<i>In re Corcoran</i> , 587 N.E.2d 957 (Ohio Ct. App. 1990)	489
<i>In re Good</i> , 692 N.E.2d 1072 (Ohio Ct. App. 1997)	492
<i>In re J.S.</i> , 438 A.2d 1125 (Vt. 1981)	494
Notes	500
4. Ellen Marrus, “ <i>That Isn’t Fair, Judge</i> ”: <i>The Costs of Using Prior Juvenile Delinquency Adjudications in Criminal Court Sentencing</i>	501
5. Barry C. Feld, <i>The Constitutional Tension between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts</i>	502
6. IJA-ABA Juvenile Justice Standards Relating to Adjudication	504
H. Dispositional Hearings	506
1. Statutes	506
a. Tex. Fam. Code Sec. 54.04	506
b. Cal. Welf. & Inst. Code § 727	509
c. Cal. Welf. & Inst. Code § 730	513
d. Cal. Welf. & Inst. Code § 731	513
2. Cases	514
<i>State ex rel. D.D.H.</i> , 269 S.E.2d 401 (W. Va. 1980)	514
<i>Elios Tyler, Jr., A Delinquent Child v. Texas</i> , 512 S.W.2d 46 (Tex. Civ. App. 1974)	522
<i>In the Matter of L.G.</i> , 728 S.W.2d 939 (Tex. 1987)	523
<i>In the Interest of S.J., A Child</i> , 304 N.W.2d 685 (N.D. 1981)	526
Note	527
<i>In the Matter of J.M.</i> , 546 N.W.2d 383 (S.D. 1996)	527
Note	529
<i>In the Interest of B.B., A Minor Child</i> , 516 N.W.2d 874 (Iowa 1994)	529
<i>In the Matter of the Interests of A.L.J., A Minor</i> , 836 P.2d 307 (Wyo. 1992)	534
Notes	539
3. IJA-ABA Juvenile Justice Standards: Standards Relating to Dispositional Procedures	539
Notes	550
I. International and Comparative Law	551

1. Convention on the Rights of the Child	551
Notes	552
2. Comparative Systems	553
a. Masami Izumida Tyson, <i>Revising Shonhenho: A Call to a Reform That Makes the Already Effective Japanese Juvenile System Even More Effective</i>	553
b. Willie McCarney, Ph.D., Lay Magistrate, Belfast, Northern Ireland, <i>Responding to Juvenile Delinquency Restorative Justice An International Perspective</i>	555
c. Allan Borowski & Mimi Ajzenstadt, <i>A Solution without a Problem: Judges' Perspectives on the Impact of the Introduction of Public Defenders on Israel's Juvenile Courts</i>	557
Notes	561
Chapter 5 · Constitutional Restraints on Practices in Juvenile Correctional Facilities	563
A. Cases from the 1970s	563
<i>Inmates of the Boys' Training School v. Affleck</i> , 346 F. Supp. 1354 (D.R.I. 1972)	563
<i>Morales v. Turman</i> , 364 F. Supp. 166 (E.D. Tex. 1973)	575
Note	578
<i>Morales v. Turman</i> , 562 F.2d 993 (5th Cir. 1977)	578
Note	582
B. Do the More Things Change the More They Remain the Same?	582
1. <i>Texan Calls for Takeover of State's Juvenile Schools</i>	582
2. <i>Abuse Claims Poured in Amid Debate</i>	584
3. <i>Inquiry Finds Abuse of Inmates in a Youth House</i>	587
4. <i>Hard Time: A Special Report; Profits at a Juvenile Prison Come with a Chilling Cost</i>	588
5. <i>United States and Georgia in Deal to Improve Juvenile Prisons</i>	595
6. <i>Youth Prisons in California Stay Abusive, Suit Contends</i>	597
7. <i>Dismal California Prisons Hold Juvenile Offenders</i>	599
8. <i>In New York, A Report Details Abuse and Neglect at 2 State-Run Centers for Girls</i>	601
Notes	603
Chapter 6 · Waiver and Blended, Determinate, and Extended Jurisdiction Sentencing	605
A. The Three Types of Waiver Statutes: Judicial, Prosecutorial, and Legislative	605
Notes	607
B. The Constitution and the Waiver Decision	609
<i>Kent v. United States</i>	609
<i>Harris v. Procnier</i> , 498 F.2d 576 (9th Cir.) (en banc), cert. denied, 419 U.S. 970 (1974)	609

Notes	617
<i>United States v. Bland</i> , 472 F.2d 1329 (1972)	617
Notes	634
<i>Morgan Victor Manduley, et al. v. The Superior Court of San Diego County</i> , 27 Cal.4th 537 (Cal. 2002)	634
C. A Typical Waiver Statute—Florida	641
Fla. Stat. 985.556	641
Fla. Stat. 985.557	643
D. Evidentiary Problems in Judicial Waiver Cases	645
<i>In re Randolph T.</i> , 437 A.2d 230 (Md. 1981)	645
Note	650
<i>Collins v. State of Arkansas</i> , 908 S.W.2d 80 (Ark. 1995)	650
<i>McKaine v. Texas</i> , 170 S.W.3d 285 (Tex. Crim. App. 2005)	653
Notes	656
E. What Happens after Waiver?	657
<i>Ex Parte Powell</i> , 558 S.W.2d 480 (Tex. Crim. App. 1977)	657
Notes	658
<i>Griffin v. State</i> , 765 S.W.2d 422 (Tex. Crim. App. 1989) (en banc)	658
<i>Vasquez v. Texas</i> , 739 S.W.2d 37 (Tex. Crim App. 1987) (en banc)	660
Notes	665
<i>Ex Parte Green</i> , 688 S.W.2d 555 (Tex. Crim. App. 1985) (en banc)	666
Note	668
<i>Robinson v. State</i> , 707 S.W.2d 47 (Tex. Crim. App. 1986) (en banc)	668
Note	669
<i>Cameron Moon v. The STATE of Texas</i> , 410 S.W.3d 366 (TX Court of Appeals, Houston, 1st Dist 2013)	670
Note	679
F. Blended, Determinate and Extended Jurisdiction Sentencing	680
Patrick Griffin, <i>Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws</i>	680
Note	687
<i>In the Matter of the Welfare of L.J.S. and J.T.K.</i> , 539 N.W.2d 408 (Minn. Ct. App. 1996)	687
<i>New Mexico v. Gonzales</i> , 24 P.3d 776 (N.M. Ct. App. 2001)	691
Notes	706
<i>In the Matter of the Welfare of D.M.D., Jr.</i> , 607 N.W.2d 432 (Minn. 2000)	707
<i>In the Matter of D.S., A Minor</i> , 921 S.W.2d 383 (Tex. Crim. App. 1996)	709
<i>State v. IRA</i> , 43 P.3d 359 (N.M. Ct. App. 2002)	712
Note	721
Index	723

Table of Cases

- A.J. v. Kierst, 56 F.3d 849 (8th Cir. 1995), **469**, 603
- Addington v. Texas, 441 U.S. 418 (1979), 100, 160, 186, 645, 646, 647, 648, 650, 697, 704
- Alfredo A., 865 P.2d 56 (Cal. 1994) Opinion on Rehearing, **455**
- Bellotti v. Baird, 443 U.S. 622 (1979) (plurality opinion), 160, 538
- Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 536 U.S. 822 (2002), 225, 226, 242
- Breed v. Jones, 421 U.S. 519 (1975), **116**, 126, 127, 128, 133, 134, 135, 136, 143, 161, 225, 227, 319, 496, 538, 696, 705
- Cameron Moon v. The State of Texas, 410 S.W.3d 366 (Tex. Court of Appeals, Houston, 1st Dist. 2013), **670**, 679
- Choco v. United States, 383 A.2d 333 (D.C. 1978), **374**
- Collins v. State of Arkansas, 908 S.W.2d 80 (Ark. 1995), **650**
- Commonwealth v. A Juvenile, 534 N.E.2d 809 (Mass. App. Ct. 1989), **373**
- Commonwealth of Pennsylvania v. Anderson, 630 A.2d 47 (Pa. Super. Ct. 1993), **378**, 380
- Commonwealth of Pennsylvania v. Iafrate, 561 A.2d 1244 (Pa. Super. Ct. 1989), **376**
- Doe v. State, 487 P.2d 47 (Alaska 1971), **451**
- Elious Tyler, Jr., A Delinquent Child v. Texas, 512 S.W.2d 46 (Tex. Civ. App. 1974), **522**
- Ex Parte Crouse, 4 Whart. 9 (1839), 7, 26, **27**
- Ex Parte Green, 688 S.W.2d 555 (Tex. Crim. App. 1985) (en banc), **666**, 668, 669
- Ex Parte Powell, 558 S.W.2d 480 (Tex. Crim. App. 1977), **657**
- Fare v. Michael C., 442 U.S. 707 (1979), **143**, 158, 159, 160, 397
- Gallegos v. Colorado, 370 U.S. 49 (1962), 52, 59, 101, 155, 158
- Griffin v. State, 765 S.W.2d 422 (Tex. Crim. App. 1989) (en banc), **658**, 665
- Haley v. Ohio, 332 U.S. 596 (1948), 52, 59, 101, 155, 158
- Harris v. Procunier, 498 F.2d 576 (9th Cir.) (en banc), cert. denied, 419 U.S. 970 (1974), 605, **609**, 650
- In re Armondo A., 3 Cal. App. 4th 1185 (Cal. Ct. App. 1992), **419**
- In re Corcoran, 587 N.E.2d 957 (Ohio Ct. App. 1990), **489**
- In re Gault, 387 U.S. 1 (1967), 53, **54**, 121, 155, 157, 190, 227, 347, 352, 383,

- 424, 451, 493, 496, 535, 571, 612, 613, 622, 646, 703
 In re Good, 692 N.E.2d 1072 (Ohio Ct. App. 1997), **492**
 In re J.S., 438 A.2d 1125 (Vt. 1981), **494**
 In re M.D., 527 N.E.2d 286 (Ohio 1988), **415**
 In re Randolph T., 437 A.2d 230 (Md. 1981) **645**
 In re Tyvonne, 558 A.2d 661 (Conn. 1989), **360**, 365
 In re Winship, 397 U.S. 358 (1970), **88**, 98, 100, 101, 104, 105, 114, 126, 127, 141, 160, 227, 319, 364, 369, 370, 496, 538, 615, 646, 647, 648 696, 698
 In the Interest of B.B., A Minor Child, 516 N.W.2d 874 (Iowa 1994), **529**
 In the Interest of R.L.J., 336 So. 2d 132 (Fla. Dist. Ct. App. 1976), **392**
 In the Interest of S.J., A Child, 304 N.W.2d 685 (N.D. 1981), **526**
 In the Matter of D.S., A Minor, 921 S.W.2d 383 (Tex. Crim. App. 1996), **709**
 In the Matter of Elizabeth J., 413 N.Y.S. 2d 867 (N.Y. Fam. Ct. 1979), **414**
 In the Matter of Frank H., 337 N.Y.S.2d 118 (N.Y. Fam. Ct. 1972), **422**, 426, 432
 In the Matter of Hartsfield, 531 S.W.2d 149 (Tex. Civ. App. 1975), **389**
 In the Matter of J.B.J., 86 S.W.3d 810 (Tex. App. 2002), **389**, 392
 In the Matter of J.M., 546 N.W.2d 383 (S.D. 1996), **527**
 In the Matter of J.R., 907 S.W.2d 107 (Ct. App. Tex. 1995) (per curiam), 486
 In the Matter of L.G., 728 S.W.2d 939 (Tex. 1987), **523**
 In the Matter of M.E., 982 S.W.2d 528 (Tex. App. 1998), **377**
 In the Matter of S.L.L., 906 S.W.2d 190 (Tex. App. Ct. 1995) (per curiam), 486
 In the Matter of the Interests of A.L.J., A Minor, 836 P.2d 307 (Wyo. 1992), **534**
 In the Matter of the Welfare of D.M.D., Jr., 607 N.W.2d 432 (Minn. 2000), **707**
 In the Matter of the Welfare of L.J.S. and J.T.K., 539 N.W.2d 408 (Minn. Ct. App. 1996), **687**
 Inmates of the Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972), **563**
 Ivan V. v. New York, 407 U.S. 203 (1972), 614, 615
 J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011), **298**, 313, 323, 387
 Kent v. United States, 383 U.S. 541 (1966), **42**, 53, 58, 123, 124, 172, 451, 538, 605, 606, 609, 621, 622, 629, 640, 646, 673
 Lanes v. Texas, 767 S.W.2d 789 (Tex. Crim. App. 1989), **382**
 Martarella v. Kelley, 349 F. Supp. 575 (S.D.N.Y. 1972), **461**
 Martarella v. Kelley, 359 F. Supp. 478 (S.D.N.Y. 1973), **466**
 McKaine v. Texas, 170 S.W.3d 285 (Tex. Crim. App. 2005), **653**
 McKeiver v. Pennsylvania, 403 U.S. 528 (1971), **100**, 114, 115, 120, 122, 126, 127, 160, 165, 227, 316, 320, 323, 385, 450, 451, 500, 502, 538, 632
 Miller v. Alabama, 132 S. Ct. 2455 (2012), 296, 298

- Montgomery v. Louisiana, 136 S. Ct. 718 (2016), 298
- Morales v. Turman, 364 F. Supp. 166 (E.D. Tex. 1973), **575**
- Morales v. Turman, 562 F.2d 993 (5th Cir. 1977), **578**
- Morgan Victor Manduley, et al. v. The Superior Court of San Diego County, 27 Cal.4th 537 (Cal. 2002), **634**
- Moss v. Weaver, 525 F.2d 1258 (5th Cir. 1976), **449**, 455
- New Jersey v. T.L.O., 469 U.S. 325 (1985), **191**, 223, 224, 225, 226, 228, 231, 232, 233, 234, 235, 236, 237, 238, 242, 319, 320
- New Mexico v. Gonzales, 24 P.3d 776 (N.M. Ct. App. 2001), **691**
- People ex rel. O’Connell v. Turner, 55 Ill. 280 (1870), 8, **29**
- Robinson v. State, 707 S.W.2d 47 (Tex. Crim. App. 1986) (en banc), **668**
- Roper v. Simmons, 543 U.S. 551 (2005), **242**, 262, 263, 268, 271, 273, 276, 277, 278, 279, 280, 281, 282, 292, 294, 296, 297, 298, 313, 323, 347, 373, 397, 607
- Safford Unified School District v. April Redding, 129 S. Ct. 2633 (2009), **227**
- Schall v. Martin, 467 U.S. 253 (1984), **161**, 190, 223, 320, 387, 389, 455, 460, 667
- State ex rel. D.D.H., 269 S.E.2d 401 (W. Va. 1980), **514**
- State v. IRA, 43 P.3d 359 (N.M. Ct. App. 2002), **712**
- State v. Q.D. and M.S., 685 P.2d 557 (Wash. 1984), **366**
- State v. S.C.W., 718 So. 2d 320 (Fla. Dist. Ct. App. 1998), **381**
- Swisher v. Brady, 438 U.S. 204 (1978), **128**, 143
- Terrance Jamar Graham v. Florida, 130 S.Ct. 2011 (2010), **263**, 296, 297, 313, 323
- United States v. Bland, 472 F.2d 1329 (1972), 606, **617**, 634, 689
- Vasquez v. Texas, 739 S.W.2d 37 (Tex. Crim App. 1987) (en banc), 387, 388, **660**, 665, 668
- Vernonia School District v. Acton, 515 U.S. 646 (1995), 225, 242
- Yarborough v. Alvarado, 541 U.S. 652 (2004), 159

Preface

When Irene and I 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 future editions. At that time I did not realize how much harder it would be to write the future editions. After the first edition 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 this 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 wanted students to view the subject matter in all its constitutional complexity rather than as simplistic "sand box" law or "kiddie" court law. This continues and I find it beneficial when teaching juvenile law to my students.

In our efforts to make this a national case book, we used cases and statutes from many states. We thought they were 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.

Our combined practice experience gives students greater access to the somewhat schizophrenic, secretive, and impenetrable juvenile justice world. We 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 never apologized 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 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. Many of the role plays that are in the teacher’s manual also reflect on the ethical issues that arise in representation of youth.

I 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. I, however, am responsible for any typos or editorial mistakes. I 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 me at emarrus@uh.edu, with your ideas.

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

October 2020

E.M.

Acknowledgments

The excerpts from the articles and books cited below are reprinted with the kind permission of the copyright holders.

A CALL FOR JUSTICE: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (1995) (reprinted with the permission of the American Bar Association).

Janet E. Ainsworth, *Re-Imagining Childhood and Reconstructing The Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C.L. REV. 1083 (1991) (reprinted with the permission of the North Carolina Law Review).

Neal I. Aizenstein, *Note, Fourth Amendment— Searches By Public School Officials Valid On “Reasonable Grounds,”* 76 J. CRIM. L. & CRIMINOLOGY 898 (1985) (reprinted with the permission of the Journal of Criminal Law & Criminology).

Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577 (2002) (reprinted with the permission of the Florida Law Review).

Allan Borowski and Mimi Ajzenstadt, *A Solution Without a Problem: Judges’ Perspectives on the Impact of the Introduction of Public Defenders on Israel’s Juvenile Courts*, 45 BRIT. J. CRIMINOLOGY 183 (2005) (reprinted with the permission of the British Journal of Criminology).

Emily Buss, *The Missed Opportunity in Gault*, 70 U. CHI. L. REV. 39 (2003) (reprinted with the permission of the University of Chicago Law Review).

Katherine Hunt Federle, *The Abolition of the Juvenile Court: A Proposal for the Preservation of Children’s Rights*, 16 J. CONTEMP. L. 23 (1990) (reprinted with the permission of the Journal of Contemporary Law).

Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative “Backlash,”* 87 MINN. L. REV. 1447 (2003) (reprinted with the permission of the Minnesota Law Review).

Barry C. Feld, *The Constitutional Tension Between Apprendi and McKeiver: Sentence Enhancements Based on Delinquency Convictions and the Quality of Justice in Juvenile Courts*, 38 WAKE FOREST L. REV. 1111 (2003) (reprinted with the permission of the Wake Forest Law Review).

Barry C. Feld, *BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT* (1999) (reprinted with the permission of Oxford University Press).

Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691 (1991) (reprinted with the permission of the Minnesota Law Review).

Barry C. Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 J. CRIM. L. & CRIMINOLOGY 1185 (1989) (reprinted with the permission of the Journal of Criminal Law & Criminology).

Patrick Griffin, *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*, (2003) (reprinted with the permission of the National Center for Juvenile Justice).

Thomas Grisso, *What We Know About Youths' Capacities as Trial Defendants in T. Grisso & R. Schwartz (eds.), YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE* (2003) (reprinted with the permission of the author).

Charles W. Hardin, Jr., Comment, *Searching Public Schools: T.L.O. and the Exclusionary Rule*, 47 OHIO STATE L.J. 1099 (1986) (reprinted with the permission of the Ohio State Law Journal).

IJA-ABA JUVENILE JUSTICE STANDARDS ANNOTATED, Robert E. Shepherd, Jr., ed. (1996) (reprinted with the permission of the American Bar Association).

Ellen Marrus, "That Isn't Fair, Judge": *The Costs of Using Prior Juvenile Delinquency Adjudications in Criminal Court Sentencing*, 40 HOUS. L. REV. 1323 (2004) (reprinted with the permission of the author).

Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation For Children Accused of Crime*, 62 MD. L. REV. 288 (2003) (reprinted with the permission of the author).

Ellen Marrus, *Effective Assistance of Counsel in the Wonderland of "Kiddie Court"—Why The Queen of Hearts Trumps Strickland*, 39 CRIM. L. BULL. 393 (2003) (reprinted with the permission of the Criminal Law Bulletin and the author).

Ellen Marrus and Irene Merker Rosenberg, *After Roper v. Simmons: Keeping Kids Out of Adult Criminal Court*, 42 SAN DIEGO L. REV. 1151 (2005) (reprinted with the permission of the San Diego Law Review and the authors).

Willie McCarney, *Responding to Juvenile Delinquency Restorative Justice: An International Perspective*, 3 J. CENTER FOR FAMILIES, CHILD. & CTS. 3 (2001) (reprinted with the permission of the Journal of the Center for Families, Children and Courts).

Anthony Platt, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1977) (reprinted with the permission of University of Chicago Press).

Irene Merker Rosenberg, *Leaving Bad Enough Alone: A Response To The Juvenile Court Abolitionists*, 1993 WIS. L. REV. 163 (1993) (reprinted with the permission of the Wisconsin Law Review).

Irene Merker Rosenberg, *Winship Redux: 1970–1990*, 69 TEX. L. REV. 109 (1990) (reprinted with the permission of the Texas Law Review).

Irene Merker Rosenberg, *The Constitutional Rights of Children Charged With Crime: Proposal for a Return to the Not So Distant Past*, 27 U.C.L.A. L. REV. 656 (1980) (reprinted with the permission of the University of California Los Angeles Law Review).

Irene Merker Rosenberg and Yale L. Rosenberg, *The Legacy of the Stubborn and Rebellious Son*, 74 MICH. L. REV. 1097 (1976) (reprinted with the permission of the Michigan Law Review).

Robert E. Shepherd, Jr., *The Juvenile Court at 100: Birthday Cake or Funeral Pyre?*, 13 CRIMINAL JUSTICE 47 (1999) (reprinted with the permission of Criminal Justice).

Masami Izumida Tyson, *Revising Shonenho: a Call to a Reform That Makes the Already Effective Japanese Juvenile System Even More Effective*, 33 VAND. J. TRANSNAT'L. L. 739 (2000) (reprinted with the permission of the Vanderbilt Journal of Transnational Law).

Lois A. Weithorn, *Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates*, 40 STAN. L. REV. 773 (1988) (reprinted with the permission of the Stanford Law Review).

Thomas Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 MINN. L. REV. 653 (1966) (reprinted with the permission of the Minnesota Law Review).

