Tips for New Juvenile Defenders

By Robin Walker Sterling

Since the U.S. Supreme Court ruled in *In re Gault* [1] that Fourteenth Amendment due process requires that youths facing delinquency proceedings have the right to counsel, the role of the juvenile defender has evolved to require a complex and challenging skill set. Juvenile defense attorneys must have all the legal knowledge and courtroom skills of a criminal defense attorney representing adult defendants.

In addition, juvenile defenders must be aware of the strengths and needs of their juvenile clients and of their clients’ families, communities, and other social structures.

Juvenile defenders must understand child and adolescent development to be able to communicate effectively with their clients, and to evaluate the client’s level of maturity and competency and its relevancy to the delinquency case; have knowledge of and contacts at community-based programs to compose an individualized disposition plan; be able to enlist the client’s parent or guardian as an ally without compromising the attorney-client relationship; know the intricacies of mental health and special education law, as well as the network of schools that may or may not be appropriate placements for the client; and communicate the long- and short-term collateral consequences of a juvenile adjudication, including the possible impact on public housing, school and job applications, eligibility for financial aid, and participation in the armed forces.

Know the Law

A very accomplished trial lawyer at one of the country’s leading public defender offices used to tell all his supervisees, “there are two kinds of lawyers: those who know the code, and those who don’t.” Be the lawyer who knows the code. Study your jurisdiction’s juvenile code and juvenile court rules. Get some good guidance on juvenile court practice. The second edition of the American Law Institute/American Bar Association’s *Trial Manual for Defense Attorneys in Juvenile Court*, by Randy Hertz, Martin Guggenheim, and Anthony Amsterdam, is one of the best places to look; chock full of clearly written, comprehensive advice, it even includes a searchable DVD.

Juvenile defense is a specialized area of practice. So, even if you have practice experience in other areas—including misdemeanors, felonies, and civil cases—be sure
to take the time to learn the ins and outs of juvenile defense practice in your jurisdiction.

Competent representation in juvenile delinquency court requires legal training in a wide range of traditionally legal areas, including the rules of evidence, constitutional law, juvenile law and procedure, criminal law and procedure, trial skills, and appellate procedure. It also requires familiarity with child and adolescent development, the collateral consequences of adjudication and conviction, expungement, special education, abuse and neglect, mental health, cultural competency, child welfare and entitlements, and immigration. So, seek out juvenile-specific training opportunities. Also, try observing juvenile court proceedings for several weeks before you start practicing, and even after you start, log a couple of hours of observation each week.

**Know Your Client**
The juvenile defense attorney plays a critical role in juvenile court. All the other courtroom players—the judge, the prosecutor, and the probation officer—have an ethical obligation to do what they think will serve the child’s best interest. The juvenile defense attorney, on the other hand, is the only person in the courtroom ethically charged with representing the child’s stated interest. Just as in the relationship between an adult and his or her criminal attorney, in the relationship between a juvenile and his or her delinquency attorney, the client calls the shots.

The juvenile court’s power is based in parens patriae, a common-law doctrine under which the juvenile court assumes parental-like authority to intervene in a child’s life. [2] Combine parens patriae with the reality that children who, in other circumstances, would not be able to drive, drink, vote, marry, or enter into a legal contract, are empowered to direct the course of their court matters, and the result can be confusion for many juvenile defense attorneys about how they should pursue their cases.

For example, should you obtain sorely needed services for the child, or should you advocate for what the child wants, even if what the child wants goes against your own legal judgment? On this point, ABA ethical rules are clear: With respect to the duty of loyalty owed to the client, the juvenile delinquency attorney-client relationship mirrors the adult criminal attorney-client relationship. That coextensive duty of loyalty requires defenders to represent the stated interests of their juvenile clients, and not the best interests as determined by the attorney, the judge, the prosecutor, or the probation officer. [3]

In the juvenile defender’s day-to-day client interactions, this mandate means, above all, listening to the client. In client-centered practice, the attorney’s role is to provide the youth, objectively and using age-appropriate language, with complete information concerning all aspects of the case, including candid predictions concerning the short-
term goals of the case (e.g., whether the client will be detained pending trial or whether the client will win the probable cause hearing) and the long-term goals of the case (e.g., whether the child will be acquitted or whether, if found involved, the child will be committed and/or face additional collateral consequences). In other words, the juvenile defense attorney’s role is to empower the client to make informed decisions, and then vigorously pursue the case goals the client has chosen.

Besides asking your client, there are a lot of ways to gain insight into your client’s goals. Spend time talking with your client about things besides the case, like school, sports, video games, movies, and other things that will help you build a rapport. Try to get to know the client outside of court. With the client’s permission, visit his or her home. Spend time getting to know his or her parents so that you can enlist them as allies when appropriate.

In working with parents, it is crucial to remember that juvenile defense counsel has an affirmative obligation to protect a client’s information or secrets from everyone, including parents or guardians; that interviews with the client should not include their parents or guardians; and that parents or guardians do not have any right to inspect juvenile defense counsel’s file, notes, discovery, or any other case-related documents without the client’s expressed consent, even if the parent or guardian is paying counsel’s fee.

**Don’t Be Afraid of Confrontation**

Sometimes pursuing the client’s goals will mean advocating for the opposite of what everyone else in the courtroom thinks is the right result. But the introduction of advocates to the juvenile court system was meant to infuse juvenile court with more of the constitutional protections of adult criminal court and their attendant adversarial tenor. Noting that the “absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment,” [4] the *Gault* Court held that a child’s interests in delinquency proceedings are not adequately protected without adherence to due process principles. In other words, unless defense compliance is in the youth’s stated interest, a juvenile court proceeding in which the defense attorney is not advocating to protect the child’s stated interest is exactly the kind of pre-*Gault* proceeding that the Court found unconstitutional four decades ago.

So go ahead and get angry. The trick is to know the code, juvenile practice, and courtroom practice well enough to be able to translate the things that make you angry into colorable claims. If you think the police were not properly able to search your client’s home, research and file a suppression motion; if you did not get discovery until the three days before trial and now it’s too late to hunt down an exculpatory witness, file a motion for sanctions; if you think the police officer will use your
client’s alias at trial to prejudice the court, file a motion in limine to keep him or her from saying it; if the government testifies that the basis for his or her traffic stop was that your client ran a stop sign, when the police report did not contain any mention of a stop sign, impeach the police officer. File motions. Make arguments. Call witnesses. Kick up dust. In a healthy adversarial system—the system that *Gault* intends—the parties understand that they are in different roles, will often be at odds, and will enjoy mutual respect that survives disagreement.

**Don’t Forget Disposition**

Although there will be plenty of times when you will disagree with the juvenile system actors, there will also be times when your client’s wishes might be in line with what the other stakeholders want. Often, you will reach a point like this at disposition. At disposition, juvenile defense counsel’s role is to present the court with a creative, comprehensive, strengths-based, individualized disposition alternative, consistent with the client’s expressed interests, that is responsive to the court’s concerns.

As important as trial skills are, in most jurisdictions, a small number of juvenile cases go to trial, but the vast majority goes to disposition. For this reason, it is very important to remember that, particularly in rural jurisdictions, maintaining good working relationships with the other courtroom actors is good advocacy. Generally, so long as you are respectful and reasonable, and a consistently zealous advocate for the client’s stated interests, people will work well with you.

It is as important to maintain good working relationships with colleagues inside the courtroom—the judge, prosecutor, and probation officer—as it is to maintain good working relationships with colleagues outside the courtroom, like detention center staff or youth counselors for community-based programs. You may even introduce yourself to the youth police officers in the areas where most of your clients live (if you can tell). The system is configured so that things can happen in your client’s case and you have no idea. Your client might be rearrested, interrogated, and give up a confession before you are even aware that your client has a new case. The probation officer might decide to revoke your client’s probation because your client has missed too many appointments; you would not find out before your client does, until you receive notice in the mail. Your goal is to make it easier for people to include you. So, when your client is rearrested, the police officer will call you to the precinct. Or, when your client misses his third appointment with probation in a row, the probation officer calls you and you have one more chance to convince the probation officer to give your client one more chance before he or she moves to revoke your client’s probation.
The best dispositional investigation and advocacy begin at the beginning of the case; or, as one juvenile defense attorney put it, “I sentence my clients the second they walk through the door.” This statement does not mean that the attorney assumes the client is guilty and gives up the fight. Far from it. It means that, in light of the reality that a good disposition plan takes a long time to put into place—often longer than the time the court allots between the plea or the verdict and the date for the disposition hearing—disposition planning and investigation should start at the earliest opportunity to maximize the chance that the appropriate investigation, evaluations, and interviews are completed, and the necessary documents are located and submitted. The goal is that, should the client be found guilty, the client receives the most appropriate, least restrictive disposition with as little delay as possible.

Finally, remember to be creative. Enlist professional allies, like mitigation specialists, social workers, and mental health, special education, and other experts to develop a plan consistent with the client’s expressed interests. Also consider volunteer allies, like your client’s neighbors who might be willing to watch your client after school until his or her parents get home from work for the next few months, church members, after-school programs, teachers, family members—as many responsible adults as you can find who will be willing to stand up for your client. The more thoughtful and comprehensive the plan, the more likely it is that the court will see things your way.

**Be a Good Colleague**

When you’re new to practice, experienced mentors can be your greatest resource. Take every opportunity you can to watch experienced juvenile defense attorneys in court, and to seek out their advice. Learning from this kind of modeling is the best way to evolve the sensibility to make the difficult judgment calls that juvenile defense attorneys have to make regularly.

It is just as important to find a group of similarly experienced peers who appear in juvenile court. You are going to have a lot of moments when you’ll need to talk with someone about a tactical call that you’ve made that you’re questioning. There also will be times when you’ll have a victory that you will want to share. Other times, you might feel overwhelmed about the realities of practice—frustration, for example, that a judge will not see an issue your way despite your best efforts; that a particular drug or mental health program will not admit your client; or even that your client will not come to court or answer your calls.

You can lean on your colleagues for sample motions and arguments; advice about the practices of individual judges, probation officers, and prosecutors; and mock cross-examinations of your witnesses as you prepare for evidentiary hearings, as well as for emotional support. The importance of building a juvenile defender community, and of knowing that you are part of a juvenile defender community, simply cannot be
understated.

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**Endnotes**

1. 387 U.S. 1 (1967).
2. *Id.* at 16 (1967) (explaining that the doctrine of parens patriae “was taken from chancery practice, where, however, it was used to describe the power of the state to act in loco parentis for the purpose of protecting the property interests and the person of the child”).