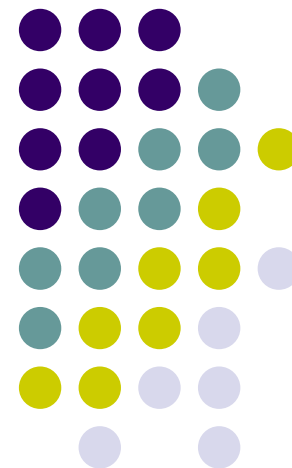


2012 NEW JUVENILE DEFENDER TRAINING

Fairness Freaks:
An Introduction
to Procedural Justice

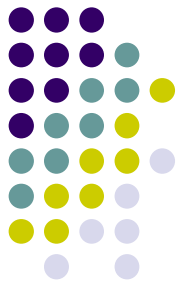


Why do people obey the law?



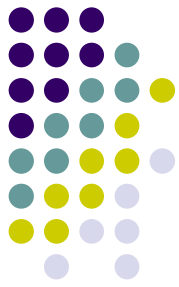
- Q: What legal system is the most effective in reducing crime?
- A: One that is based on procedural justice theory:
 - People are more likely to comply with the law when they believe the procedures were fair, unbiased, and efficient.

What do we know about children's attitudes toward the law?



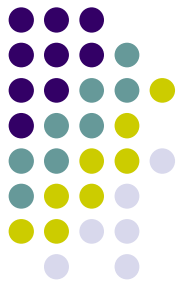
- Children experience a process of “legal socialization”
- Their attitudes toward the law develop early
- This shapes their behavior toward authority from adolescence through adulthood.

How does PJ theory affect a child's legal socialization?



- Fair treatment enhances a child's view of the law
- Unfair treatment triggers:
 - Negative reactions
 - Anger
 - Defiance

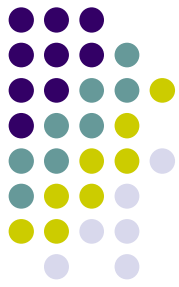
What does “fairness” mean to a child in the context of court?



- An opportunity to speak
- A decision-making process based on facts
- Being treated with respect
- Authorities who act out of caring motives

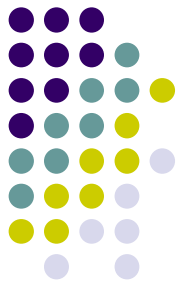
- Remember: it is NOT outcome-determinative

When children feel they have been treated fairly in court, they are less likely to recidivate.



- Based on empirical research
- The greater the child's capacity and competence, the greater her ability to take responsibility for her actions and cooperate with treatment.

In re Gault (1967)



- The U.S. Supreme Court recognized these connections when they cited a 1966 report by sociologists Wheeler and Cottrell:
 - “Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.”

The origins of the role of the juvenile defender



- In re Gault
 - Established the right to counsel for juveniles in delinquency court.
 - Any child “facing the awesome prospect of incarceration” needs “the guiding hand of counsel at every step in the proceedings against him.”



The impact of Gault

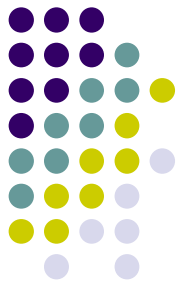
- With lawyers, juveniles became participants instead of spectators
- With lawyers, juveniles could:
 - challenge the facts,
 - insist upon procedural regularity,
 - determine whether there was a defense,
 - prepare and present a defense.
- ABA and IJA juvenile justice standards adopted in 1982

ABA Model Rule of Professional Conduct 1.2(a):

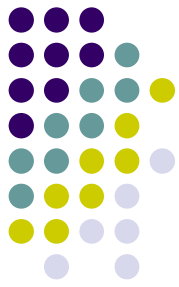


- [A] lawyer **shall abide by** a client's decisions concerning the objectives of representation and...
- **shall consult with** the client as to the means by which they are to be pursued...
- In a criminal case, the lawyer **shall abide by** the client's decision, after consultation with the lawyer:
 - as to a plea to be entered,
 - whether to waive jury trial and
 - whether the client will testify.

Model Rules 1.1 Competence, 1.3 Diligence



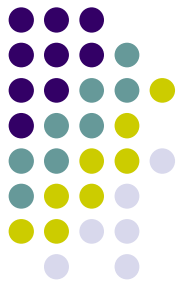
- A juvenile defense attorney provides competent, prompt, and diligent representation based in legal knowledge, skill, thorough presentation, ongoing training.
- Day-to-day activities are expansive, encompassing the obligations to investigate, to zealously protect the child's due process rights from arrest to the close of the case, to engage in dispo advocacy, and access ancillary services.



ILJ/ABA Juvenile Justice Standards re Counsel to Private Parties

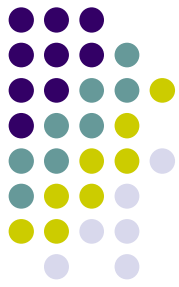
- Read
- Familiarize yourself
- Know the ethical rules

3.1 The nature of the relationship.



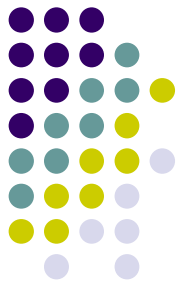
- (a) **Client's interests paramount.**
- However engaged, the lawyer's **principal duty** is the representation of the client's legitimate interests.
- Considerations of personal and professional advantage or convenience **should not influence** counsel's advice or performance.

(b) Determination of client's interests.



- In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately **the responsibility of the client** after full consultation with the attorney.
- Counsel for the respondent in a delinquency... proceeding should ordinarily **be bound by the client's definition of his or her interests** with respect to admission or denial of the facts or conditions alleged.
- It is appropriate and desirable for counsel **to advise the client concerning the probable success and consequences** of adopting any posture with respect to those proceedings

3.3 Confidentiality



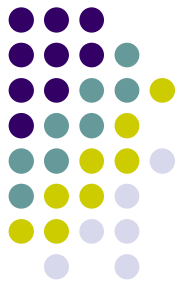
- Counsel should seek from the outset to establish a **relationship of trust and confidence** with the client.
- The lawyer should explain that full disclosure to counsel of all facts known to the client is necessary for **effective representation**
- and at the same time explain that the lawyer's obligation of confidentiality **makes privileged the client's disclosures** relating to the case.

3.3 (d) Disclosure of Confidential Communications



- A lawyer may reveal confidences or secrets with the **informed and competent consent** of the client, but only after full disclosure of all relevant circumstances to them.
- If the client is a juvenile incapable of considered judgment...a lawyer may reveal such communications **only if it will not disadvantage the juvenile and will further rendition of counseling, advice or other service to the client.**

3.5 Duty to keep client informed.



- The lawyer has a duty to keep the client **informed of the development** in the case, and of the lawyer's efforts and progress with respect to all phases of representation.
- This duty may extend...to a parent whose **interests are not adverse** to the juvenile's, subject to the requirements of confidentiality.

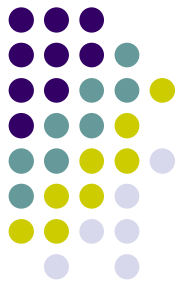
9.3 Counseling prior to disposition.



- The lawyer **should explain to the client** the nature of the disposition hearing, the issues involved, and the alternatives open to the court.
- The lawyer should also **explain fully and candidly the nature, obligations, and consequences** of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution...and the probable duration.
- Ordinarily, the lawyer **should not make or agree to** a specific dispositional recommendation **without the client's consent.**

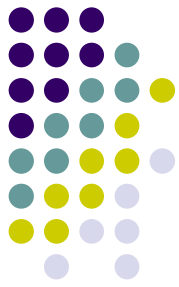
Part VIII. Standards for the Defense Attorney

8.2 Duties regarding detention



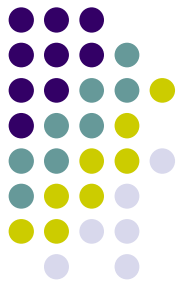
- It should be the duty of counsel for an accused juvenile to **explore promptly the least restrictive form of release,**
- the **alternatives** to detention,
- and the **opportunities** for detention review, at every stage of the proceedings where such an inquiry would be relevant.

Hypotheticals



- Jonathan
- Randy
- Marcus

Questions? Comments?



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