# Juvenile Justice in the Making

*DAVID S. TANENHAUS*

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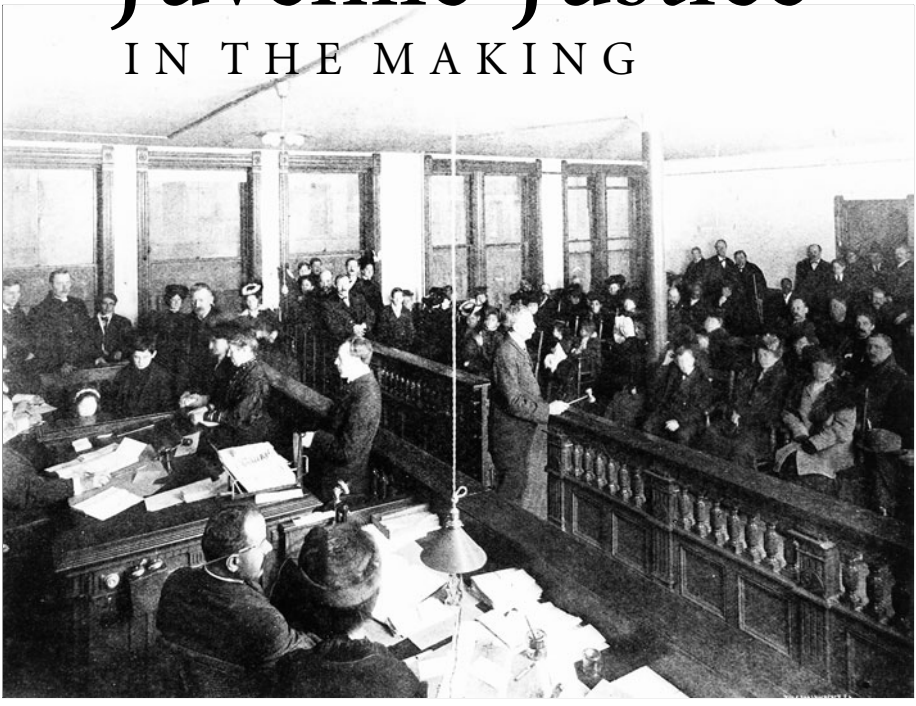

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For Jenifer L. Stenfors

(1970–1999)

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# [ FOREWORD ]

How does society deal with its young miscreants in ways that are fair, humane, and recognizable just? At the turn of the millennium and just after the first centennial of the invention of the world's first juvenile court, a brilliant young historian here illuminates the manifold ways in which the past can provide a beacon to the future for children in conflict with the law. Writing with a sharpness and dynamism that reveals the ethical paradoxes, social conflicts, and intellectual enterprise embedded in the transformative process of juvenile justice, David S. Tanenhaus engages the anguishing dilemmas of crime and punishment, youthfulness and accountability, consequences and second chances. Tanenhaus, who uncovered a treasure trove of dusty juvenile court records—case files from the first 30 years of Chicago's juvenile court—sifts through the dry, judgmental, often self-justifying prose of the harried probation officers, to reconstitute the vibrant life of the early twentieth century delinquent and the pulsing, dynamic, adaptive institution that first enmeshed the then largely immigrant children and now today's children of color hauled before the court.

Justice for children, the recognition of children as persons, with both rights and special needs, is intrinsically bound to the abolition of slavery in the U.S. Twice in the past century, the

reframing of justice for the child closely shadowed the lurching forward of social struggle and legal emancipation of the Negro. It was, as Tanenhaus notes, in the Reconstruction era immediately following the Emancipation, and then again in the civil rights crucible of the 60s, that U.S. courts first addressed and then revisited the issue of children's rights. For if an African American is a person under the Fourteenth Amendment to the Constitution, then what about immigrants, what about women, and what about the child? Property relationships between human beings were eroding, although children had been the exclusive legal property of adult males for centuries—subject to their physical terror, torture, exploitation, and sale. Agitation about the rights of incarcerated children developed momentum in the Reconstruction years, when legal arguments and court opinions in Illinois closely linked slavery concepts with a lively debate on the nature of childhood. And if children are indeed legal persons, what kind of persons are they? These fundamental constructs of humanness involve issues of Constitutional rights, civil rights, criminal justice, and human rights for the majority of the world's people: its children.

The invention of a distinctive court for children, a legal polity described by Professor Francis Allen as "the greatest legal institution invented in the United States," spread like a prairie fire across the U.S. and throughout the world. The birthing of the juvenile court involved a radical insistence that children not be crushed for their transgressions nor brutalized for lack of access and opportunity—that society not give up on its children. The juvenile court's birth was part and parcel of the ferment of urban, industrializing, immigrant America at the turn of the last century. The midwives were the militant, determined women of Hull House: Julia Lathrop, Lucy Flower, Florence Kelley, Mary Bartelme, and the unifying Jane Addams. The terrain of these social reformers included four decades of campaigns for compulsory education and an end to child labor, the removal of children from adult jails and poorhouses, and efforts to advance sanitation, literacy, labor rights, neighborhood democracy, women's rights, the expansion of the public space, and opposition to war.

The juvenile court, laced with tension and paradox, emerged as part of this philosophical mosaic.

Locating the institutional history of the juvenile court in the social turmoil and challenges of each decade is Tanenhaus's singular, creative contribution, for he reveals the children's court as a dynamic work in progress, not a frozen idea or institution limited forever by the constraints and biases of its founders. Much like the family, the school, or the workplace, the children's court becomes, under Tanenhaus's inventive scrutiny, a structure capable of growth and modification, adapting to fresh challenges, emerging norms, and cyclical constraints. Yet he never loses the consistent and core role of the juvenile court as an instrument of the crime control industry—controlling those who might produce unrest or disturb the social order (immigrants, the poor, children of color, wayward girls). Simultaneously, this book places the institutional legal history of juvenile court in a vivid contextual framework, and identifies the changing, flexible, adaptive growth of a remarkably elastic legal entity. This is history as fresh, interpretive storytelling, a reconceptualizing of tired formulas that brings new questions to the forefront today.

Today, hundreds of thousands of children appear in juvenile courts each day in the U.S. on critical matters affecting their liberty, their family, custody, identity, safety from abuse, rape, terror or harassment, health care, education, asylum, speech, privacy, immigration status, and protection from search and seizure. Children are subject to the death penalty and to life without possibility of parole, to indeterminate sentences in locked facilities far away from their families and counsel, and to widening circles of prosecutorial discretion in escalated charging and sentencing enhancements. Further, the accelerating rate of arrest of girls, the revival of status offenses (acts committed by youth that would not be crimes were they perpetrated by an adult, offenses with quaint names such as incorrigible, unruly, or ungovernable, truants, runaways, loitering, curfew laws, and liquor or cigarette law offenses), and the escalating rate of school arrests have vastly widened the net of delinquency involvement for youth, especially youth of color and young women.

It is this contemporary expansion of the punishment power of the juvenile court that provides such vibrant resonance to the history unraveled and marvelously interpreted by Tanenhaus. Those who proclaim that there is, today, a "new breed" of young people, qualitatively different from previous generations, will find themselves silenced by the history lesson rendered here. The contemporary inflammatory language of "superpredator," remorseless, violent, and raging "pre-feral beings" or wolfpacks attempts to make the moral case for a harsh criminal response; subsumed by this media tidal wave of "gang crime" or juvenile violence was the language of "children" or youthfulness and its structures for adolescent delinquents. In the name of public safety, a racially coded discourse about dangerousness means that it is the children of color who bear the brunt of this backlash of vilification and fear. Juxtaposed to this throughout the century is the radical insistence—still believed by a majority of Americans—that children not be crushed for their transgressions—that society not give up on children, even that tiny minority of children who commit violent crimes.

Everyone agrees that the juvenile court has not lived up to its most ambitious missions. But the fact remains that juvenile court continues to sanction the vast majority of juvenile offenders without "criminalizing" the youth. And most youngsters who are petitioned to the court never return. The juvenile court reworks itself over decades and discourses to acknowledge the different nature of adolescent competence, capacity, and culpability from that of adults.

That famous extremist, William Shakespeare, wrote in *The Winter's Tale*:

> I would that there were no age between ten and three-and-twenty, or that youth would sleep out the rest; for there is nothing in the between but getting wenches with child, wronging the ancestry, stealing, fighting.

Ironically, if all male children aged 10 to 18 were put to sleep or were incarcerated until their twenty-third birthday, there would still be 90 percent of the violent crime in America: the adult

offenders. The intense concentration on youth crime is a social and political choice—and always has been—rather than a strategic response to the facts about crime and public safety.

Tanenhaus does not neglect the other major social institutions whose vitality directly impacts young people, families, and the juvenile court. Schools, child welfare systems, probation, youth agencies, parks, and health care services constrict or expand, are well-supported or neglected by society. Where do the young go for help, attention, development, socialization, survival, care, and attention—other than each other? Indeed the intimate relationships between the common school and the institutions of juvenile justice long assumed that if children were no longer engaged in labor nor incarcerated in adult prisons, they would be attending school. This core principle of literacy and education as the proper preparation for citizenship and productive work tied the early juvenile court to the public school through truancy, probation, and juvenile sanctions. Recently, however, children are increasingly policed in schools, barricaded in schools, arrested in and excluded from schools (through expulsions, suspensions, high-stakes testing, and drop-outs), and petitioned to juvenile court for behaviors previously sanctioned within schools themselves—and in ways that are grossly racially disproportionate.

As fiscal priorities shift from education, scholarships, access to jobs, and cultural expression to prison construction, law enforcement growth, and expanded mechanisms for the social control and exile of sectors of youth, so the landscape of the young is transformed. When their minor offenses are no longer dealt with in stride by retail stores, teachers, sports coaches, neighbors, parents, mental health professionals, or youth workers, but rather police are called, arrests are made, and petitions are filed, we are all at peril. The institution of the juvenile court thus functions as a gateway for the failures of the other youth institutions; overcrowded juvenile correctional institutions, deficient youth facilities, and disproportionate racial and economic confinement are among the consequences.

The youth themselves, being the intelligent and observant people they are, are vividly alert to issues of fairness that lie at

the heart of justice. They are sensitive to adult hypocrisies—particularly to society harshly holding the young alone accountable for protracted adult social failures. We would do well to support and welcome their voices, their opinions, and their best interests, as required by developing international human rights law. History schools us in the powerful role of children themselves, who have changed the world by their collective actions in Little Rock, Birmingham, Soweto, and Tien An Mien. We know, too, of the possibilities of adult, mobilized civic will to invest in our common future: all our children.

The idea and the institution of the juvenile court spread across the world a century ago; today, it is global human rights law that has created a unique body of children's law. Now, sadly and ironically, international law has codified and is developing children's rights with the tumultuous and elastic participation of virtually every nation in the world *except* the United States. The Convention on the Rights of the Child and its associated protocols and case law embody the innovations of the juvenile court founders, and the rights revolution of the sixties, with the new notion of the right to participation by children.

At the dawn of the new millennium, the issues clarified one hundred years ago are in full contention. This early history allows us to revisit first principles and emerge more enlightened to face the dilemmas of today.

Bernardine Dohrn

# [ PREFACE ]

Although I misspent a great deal of my own youth, I did not end up in juvenile court until graduate school. In my case, an abiding interest in youth and legal history, not truancy, incorrigibility, or larceny landed me in the Cook County (Chicago) Juvenile Court. I soon learned that it had been the world's first such court and due to celebrate its centennial in 1999. As I researched the court's origins and reconstructed its early operations, I learned that the Illinois Secretary of State Archives held the case files for a perplexing Illinois Supreme Court decision, *The People v. Turner*, 55 Illinois 280 (1870). Justice Anthony Thornton, who had just joined the high court and served as a Republican representative for Illinois in the famous 39th Congress that had passed the Fourteenth Amendment, authored its unanimous opinion in *Turner*. It declared that under Illinois's brand-new constitution, children were entitled to the due process of law, and freed Daniel O'Connell, a fourteen-year-old Irish-Catholic boy, from incarceration in the Chicago Reform School. *Turner* has long puzzled scholars of juvenile justice, for a decision that treated a child like an adult with personal rights and privileges seemed to belong to the rights revolution of the 1960s. This apparent historical anachronism intrigued me.

I traveled to Springfield, the burial place of Abraham Lincoln, to learn more about Daniel O'Connell, who shared the name of the famous leader of the Irish liberation movement of the 1820s and 1830s. As I entered the state archive, one of its staffers was positioning miniature soldiers on a large map spread across a table. When I asked what he was doing, he explained that he was recreating the Battle of Gettsyburg to figure out a way for Pickett's Charge to have succeeded, so that "our side" could have won the war. That week I realized how Southern central Illinois really was, and, in the case files for *Turner*, I learned the significance of the Union's victory for Daniel's fate.

Although since the 1980s scholars have revealed that the Civil War, by abolishing chattel slavery, had launched a revolutionary era in which Americans debated what liberty, dependency, and governance would mean in the new nation, they have not explored how these debates raised new questions about "dependent children."[1] These were children who had been abused, neglected, or considered to be at risk of becoming juvenile delinquents, but who had not been charged with or convicted of committing a criminal offense. Whether the state, without a criminal trial, could incarcerate these children, such as Daniel, in reformatories in order to prevent them from turning into juvenile delinquents raised fundamental questions about whether children, like the freed people, now had civil rights that had to be protected. If not, would children become the new slaves in a society that supposedly had abolished slavery?

The imprisonment of Daniel raised fundamental questions about the legal status of children at a critical moment in American constitutional history when Americans began constructing a modern liberal state that privileged the constitutional rights of autonomous individuals.[2] His case also occurred at a transitional stage in the history of American childhood. Increasing numbers of Americans supported the idea that children should be in school, not at work in the factories, mills, and mines of the industrializing nation. But before 1870 few states had passed compulsory school attendance laws or restricted child labor, and the laws that did exist generally applied to children under twelve or fourteen years

of age.[3] In urban America, almost one out of every three children between the ages of ten and fifteen worked to help support their families.[4] It is thus not surprising that the Chicago Reform School recorded the "occupations" of the children it received, or that "attending school" was listed as the occupation for only 178 out of the 1,121 boys committed to the institution between 1856 and 1869.[5] In fact Daniel had worked in a tobacco factory for eighteen months prior to his arrest.[6]

Daniel O'Connell's case thus posed profound questions about how American law should treat children in a formative era for not only law but also for childhood. The jurisprudence of youth that developed in response to this question of whether children were autonomous beings or the property of either their parents or the state set the stage for the subject of this book: the emergence and development of the American juvenile court. Through a detailed historical-institutional analysis of the trial-and-error development of America's first juvenile court, this book addresses one of the fundamental and recurring problems in the history of law—how to treat the young. Through its analysis of a revolutionary institution, it explores the early history of juvenile justice in order to help the reader think more clearly about what its future should be.

Since beginning this project, I have had the opportunity to work with judges, children's advocates, scholars, juvenile justice practitioners, archivists, and graduates of the juvenile court to engage its storied and controversial past. It is a pleasure to have the opportunity to thank all those who have made this book possible. I am indebted to Barry Karl for sending me to juvenile court, and to Bernardine Dohrn, Bill Novak, Peggy Rosenheim, and Frank Zimring for helping me to appreciate its political, legal, and social significance. Their passion for history and social policy have all shaped this book in countless ways. I also owe special debts to Jenifer Stenfors, Frank Zimring, Bill Novak, Michael Willrich, Andy Fry, Steve Schlossman, Mary Wammack, Tom Green, Chris Tomlins, Art McEvoy, Dirk Hartog, Steve Drizin, Elizabeth Dale, Andrew Cohen, Jeff Fagan, an anonymous reader for Oxford University Press, and my wonderful editor at

Oxford, Dedi Felman. At important stages, they all provided invaluable readings of the manuscript.

Like many of the children described in this book, I spent time at a number of institutions. The History Department at the University of Nevada, Las Vegas (UNLV), has been my academic home since 1997, and I could not have asked for more supportive colleagues, especially the members of our Faculty Enrichment Seminar who read parts of the manuscript. They include Andrew Bell, Greg Brown, Raquel Casas, Andy Fry, Jo Goodwin, Colin Loader, Chris Rasmussen, Willard Rollings, Hal Rothman, Michelle Tusan, Barbara Wallace, Mary Wammack, Paul Werth, Elizabeth White, and David Wrobel. I am also appreciative of my newer colleagues in the William S. Boyd School of Law for making a historian feel so welcome as part of a law faculty. Special thanks to Annette Appell, Mary Berkheiser, Chris Bryant, Lynne Henderson, Bob Lawless, Tom McAffee, Carl Tobias, and our remarkable dean, Dick Morgan, and his splendid executive assistant Dianne Fouret. I was also extremely fortunate to have spent 2000–2001 as a Mellon Postdoctoral Research Fellow at the Newberry Library in Chicago. It is a pleasure to thank Jim Grossman, the Newberry staff (especially Sara Austin), my fellow fellows, my friends at Coffee Expressions, and Dean Jim Frey of the College of Liberal Arts at UNLV for providing salary support that allowed me to spend such a stimulating year among humanists.

I would also like to express gratitude to the Rockefeller Archive Center, the Andrew W. Mellon Foundation, the Harry Barnard Family, the University of Chicago, and the James E. Rogers Research Grant Foundation at the William S. Boyd School of Law for providing the necessary financial assistance for completing this book. I also appreciate the help that I received from Archie Motley at the Chicago Historical Society, and from the archivists and staff of the Joseph Regenstein Library, the Newberry Library, the Illinois Secretary of State Archives, the Arthur and Elizabeth Schlesinger Library on the History of Women in America, the Department of Special Collections at the University of Illinois Library, and the Lied Library (and Law Library) at

UNLV. I am especially indebted to Phil Costello, the Archivist at the Circuit Court of Cook County, and his staff for locating the lost case files of the Cook County Juvenile Court and to the Honorable Sophia Hall, who granted me permission to work with them.

Earlier versions of parts of this book appeared as "Justice for the Child: The Beginning of the Juvenile Court in Chicago," *Chicago History* 27 (winter 1998–1999): 4–19; "The Evolution of Transfer out of the Juvenile Court," in *The Changing Borders of Juvenile Justice: The Transfer of Adolescents to the Criminal Court,* edited by Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000), 13–43; "Growing Up Dependent: Family Preservation in Early Twentieth-Century Chicago," *Law and History Review* 19 (fall 2001): 547–582; "The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction," in *A Century of Juvenile Justice,* edited by Margaret K. Rosenheim, Franklin E. Zimring, David S. Tanenhaus and Bernardine Dohrn (Chicago: University of Chicago Press, 2002), 42–73; and as "'Owing to the Extreme Youth of the Accused': The Changing Legal Response to Juvenile Homicide," *Journal of Criminal Law and Criminology* 92 (Spring & Summer 2002): 641–706. I am grateful for permission to incorporate this material into this book.

As this is a book about beginnings, it is also fitting to thank my parents, Gussie and Joe Tanenhaus, for their love and nurturing. I also thank my siblings, Beth, Sam, and Michael, and their spouses (Bill, Kathy, and Becca), and my nieces Annie, Stefanie, and Lydia, and my nephew Max, for their love and support. Growing up in a family that cared about ideas (thanks to Gussie, we had a portrait of Henry James over the mantel) ensured that they all would play active roles in this project. I especially want to thank Beth and Gussie for sending me newspaper clippings about children's cases, and Sam for discussing narrative strategies with me.

The writing of this book has spanned two lifetimes. Jenifer Stenfors, my first wife, after a heroic struggle against breast cancer,

passed away on September 9, 1999. Jen's spirit inspires everyone who knew her, and this book is lovingly dedicated to her. My wife Virginia Tanenhaus has made life joyous once again, and I am delighted to thank Ginger and our delinquent dogs, Nigella and Oz, for their enduring love and support.

# [ CONTENTS ]

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*If we don't want to throw out the baby with the bath water, treat all youngsters more harshly, and perhaps even abolish the juvenile court and return to the days of the Industrial Revolution where we had one criminal court for both children and adults, we must do better with the thousands of juveniles we see every day in our juvenile courts.*
*—Judge Eugene A. Moore, January 13, 2000*

# Introduction

In 1999, in Oakland County, Michigan, the trial of Nathaniel Abraham, a thirteen-year-old, for first-degree murder focused international attention on the state of American juvenile justice during its centennial year.[1] When Nathaniel was only eleven, he had stolen a .22-caliber rifle and on October 29, 1997, shot Ronnie Greene Jr., whom he did not know, in the head. Nathaniel had fired the fatal shot from a hilltop more than two hundred feet from Greene. Two days later, after receiving a tip from a neighbor that Nathaniel had been seen firing a rifle, the police took the boy, who was in his Halloween costume, from his grammar school and questioned him in the presence of his mother at the station. At the time of his arrest, Nathaniel was no stranger to the Pontiac police; the sixth-grader was a suspect in more than twenty crimes, including burglaries, home invasions, and assaults.[2] Although Nathaniel confessed to firing the rifle, he denied aiming it at anyone.

Oakland County prosecutors rejected Nathaniel's contention that the shooting was accidental. The neighbor who had told the police about Nathaniel also alleged that the boy had fired the rifle at him. The prosecutors found other witnesses who said that Nathaniel had vowed to shoot someone and had bragged about killing a person shortly after Greene's death. Under a collection of

new laws that went into effect in Michigan in 1997, they prosecuted the eleven-year-old as an adult.[3] They charged him with first-degree murder, two firearm violations, and two counts of assault with intent to murder. If convicted of first-degree murder, Nathaniel would receive a sentence of life imprisonment without the possibility of parole.

Nathaniel's attorney, Geoffrey Fieger, argued that Greene's death was an accident, the result of "child's play" with a gun. "This is a little boy. We're not disputing the fact that he's guilty of something. It's the way he's treated that's at issue. We're not saying he should walk the streets. He should be treated like a sick 11-year-old, not a murdering 25-year-old."[4] He used a version of the infancy defense, which had been an important part of Anglo-American law from at least the fourteenth century until the spread of the juvenile court movement in the early twentieth century. Under the common law, children below the age of seven were immune from prosecution in capital cases (a category that the British Parliament expanded in the eighteenth century to cover increasing numbers of property offenses) because they were considered incapable by nature of having "felonious discretion."[5] This meant that they were not able to form the "necessary intent" to commit a crime. Children from seven to fourteen were presumed to be incapable of having the necessary intent, but the state could rebut this presumption and, if successful, prosecute the child. Children fourteen and older were tried as adults. Fieger argued that Nathaniel, as a mildly retarded child who functioned intellectually at the level of a six- to an eight-year-old, could not form the necessary intent to kill. Thus, he could not be guilty of murder.[6]

The prosecutors depicted the boy as a premeditated killer who knew what he was doing. They argued that he discussed killing someone and then followed through with his plans. After four days of deliberation, the jury reached its verdict. Nathaniel was acquitted of first-degree murder but convicted of second-degree murder. This meant that the jurors found that he either intended to kill or injure Greene or knew that his actions created a high risk of death or injury but could not find that he plotted to

kill Greene.[7] As the foreman of the jury Daniel J. Stotlz explained, "we felt that he knew the firearm was dangerous."[8]

The trial, which Court TV broadcast in its entirety, made Nathaniel Abraham into a poster child for the troubled state of American juvenile justice. Amnesty International reprinted an AP photo of the African-American child in the Oakland County courtroom on the cover of its report entitled "Betraying the Young: Human Rights Violations against Children in the US Justice System." The report criticized the United States for violating treaties that it had ratified, including the International Covenant on Civil and Political Rights and the Convention against Torture, as well as ones, such as the 1989 United Nations Convention on the Rights of the Child, that it had not adopted. At the time of the Abraham trial, 192 nations, including all the members of the United Nations, except for the United States and Somalia, had ratified this landmark human rights treaty. As Amnesty International pointed out, American juvenile justice systems, which had processed over 1.7 million delinquency cases in 1995 alone, were overcrowded, relied on excessive incarceration, inflicted cruel and unusual punishments, failed to provide adequate mental health services, and processed a disproportionate number of cases of racial and ethnic minorities. All of these practices, according to the watchdog agency, violated international human rights law.[9]

Even more disturbing than the state of American juvenile justice was the trend toward transferring adolescents from juvenile court to the adult criminal justice system. In the 1990s, for instance, in response to mounting concerns about youth violence, more than forty states passed laws that made it easier to try children as adults.[10] This practice led to more children being imprisoned with adult inmates, where they are more likely to be sexually abused and less likely to have adequate educational opportunities. Moreover, children in the criminal justice system also faced severe sentences, including life imprisonment without the possibility of parole and the death penalty.[11] During the 1990s the United States was one of only six nations, including Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen, known to have executed persons for crimes that they committed as juveniles. As the law professor

Victor Streib observed, "the death penalty for juvenile offenders has become essentially a uniquely American practice, in that it has been abandoned legally by nations everywhere else, due to the express provisions of the United Nations Convention on the Rights of the Child and of several other international treaties and agreements."[12] The United States, once the leader in the international crusade to secure justice for children, had become a rogue nation.

Faith in childhood, and its corollary that separate courts are required for children because they are developmentally different from adults, appeared to be vanishing. The United States, as the sociologist David Garland has shown, developed a "crime complex" in the late twentieth century. Americans accepted high crime rates as normal, politicized and presented crime in emotional ways, focused on victims' rights and public safety, distrusted the effectiveness of justice systems, discounted the authority of criminologists, and increasingly turned to the private sector for personal security. As Garland contends, "once established, this view of the world does not change rapidly." Instead, "our attitudes to crime—our fears and resentments, but also our common sense narratives and understandings—become settled cultural facts that are sustained and reproduced by cultural scripts and not by criminological research or official data."[13] People living in such a society tend to ignore falling crime and victimization rates, while questioning the effectiveness of justice systems and the relevance of the experts who study them. Thus, even as juvenile offending rates in the United States declined dramatically after 1994, states continued to pass more punitive laws, and three states executed men for crimes that they had committed as juveniles.[14]

Almost forgotten in this highly crime-conscious climate, during which a *New York Times* headline boldly announced "Fear of Crime Trumps the Fear of Lost Youth," was the fact that the juvenile court has been one of America's most influential legal inventions. The first juvenile court, which was established in Cook County, Illinois, in 1899, became a model within a generation for policy-makers in European, South American, and Asian nations. These child savers looked to this American creation to learn how

to divert children from the criminal justice system and to handle their cases in a less punitive fashion. By the end of the twentieth century, as the criminologist Franklin Zimring noted, "no legal institution in Anglo-American legal history [had] achieved such universal acceptance among the diverse legal systems of the industrial democracies."[15] Yet the future of the juvenile court in the United States remained in doubt. Even some children's advocates, including the highly respected law professor Barry Feld, called for its abolition.[16]

With the world watching, including protesters at the courthouse led by the Reverend Al Sharpton, who charged that the prosecution of Nathaniel Abraham was racially motivated, Judge Eugene Moore had to sentence the thirteen-year-old. Moore had served as a juvenile court judge for more than thirty years and was a former president of the National Council of Juvenile and Family Court Judges. Due to the peculiarities of Michigan law, he had three options. First, he could sentence Nathaniel to a juvenile sentence and commit him to a maximum-security juvenile detention center, but he would have to be released before he turned twenty-one, even if he had not been rehabilitated and still posed a serious threat to public safety. Second, he could sentence Nathaniel as an adult and send him directly to adult prison for eight to twenty-five years. Third, he had the option of using a staggered sentence that would allow him to commit the boy initially to a juvenile detention center but retain the possibility of imposing an adult sentence. The prosecutors recommended that the judge exercise this third option.

Judge Moore began his much-anticipated sentencing of Nathaniel Abraham with a history lesson. He declared:

> In 1999 we celebrated the 100th anniversary of the founding of the Juvenile Court in America. It started in 1899 in Cook County, Chicago. Its roots were in England during the Industrial Revolution. During the Industrial Revolution, two groups of people joined hands to fight the abuse of children. One group opposed the criminal justice system treating children the same as adults when

> punishing those convicted of a crime. Adults and children were punished alike. The second group was concerned about using children as chattels as a form of very cheap labor. Little food—no school—large dormitories, and working 18 hours a day was a common abuse of children.
>
> The protection of children from these abuses brought about the Cook County (Chicago) Juvenile Court in America.

Moore highlighted the centennial of the juvenile court in order to reemphasize the foundational principles of American juvenile justice. The founders of the juvenile court, he explained, believed in *individualized justice* because they "recognized that children were different from adults. They were still young, immature and not fully developed. Thus character and behavior could still be molded and they could be rehabilitated. *Rehabilitation* became the byword of the juvenile court. Few wanted to lock up children for life." He added: "There was a recognition that if we were going to protect society from future criminal behavior by the child we had better do something to rehabilitate the child so that when released by the juvenile court, the child was changed. Only by doing this would you and I be protected from further criminal activity by the child." Yet, he lamented, juvenile courts from the beginning had not been given adequate resources. Consequently, "our Juvenile Courts failed in changing many delinquents' behavior." This failure had led reformers "to advocate that our Juvenile Courts not 'try to change a child' unless *we were even more certain that the child was 'guilty.'*"[17] The United States Supreme Court had agreed, and in its landmark 1967 decision *In Re Gault* had held that children in juvenile court were entitled to most of the due process safeguards that adults had in the criminal justice system, including the right to counsel.

Judge Moore's excursion into the history of the juvenile court appeared eccentric to many commentators, but this book is an argument that a thorough understanding of the history and institutions of American juvenile justice can be of substantial