

Judge Steve Teske: The Blame Game – The Winner Loses and The Kids are Hurt

Written by Judge Steven Teske on Dec 9, 2010

It was 1999, I was recently appointed to the juvenile bench, and we had a new presiding judge. A meeting was called to discuss the direction of the court. Among several issues, we were concerned about the number of complaints filed by School Resource Officers (SRO) and decided to meet with the Chief of Police to discuss other alternatives to filing complaints. We were prepared for the meeting. We had data reflecting an increase in referrals by over 1,000 percent since the inception of the SRO program in the mid nineties. The data was broken down by offenses and most were misdemeanors primarily involving school fights, disorderly conduct, and disrupting public school.

It was a frustrating meeting to say the least. Despite our preparedness, we were not talking the same language. To our surprise, the Chief (who has since retired) was excited about the numbers. He interpreted them to mean his officers were doing an excellent job. Looking back at it, he was right – from his perspective! We failed to consider the work culture of law enforcement. Police grade themselves, in part, by the number of arrests they make. After all, isn't that what police do? The Chief made it quite clear to us: if my officers witness a crime, they are trained to make an arrest. We walked away disappointed and scratching our heads. We felt we had to accept what was referred to us – that we had no control over the decisions of police in schools. As frustrating as this was, we were jurists. We must respect the sound constitutional principle of separation of powers. We had to find another approach.

It was just as well, at least for the time-being. This forced us to do some introspection of our own court process. As much as we wanted the police to refrain from arresting kids for conduct once handled by the school disciplinary process, maybe we could make changes in how we responded to these kids when they were referred to us, to minimize the negative effects of arresting kids for minor school offenses.

One would think that common sense would have us question the use of handcuffs and court appearances as an appropriate response to school infractions. I know what some of you right brain functioning readers are thinking, "Steve, isn't this conduct a crime?" You're right, it is a crime, but it's been a crime since the genesis of the public education system and was never treated as a crime until we placed police on school campuses. That's because we knew then what the research today supports – that the stigma of being arrested is difficult for many kids to accept and have to shoulder.

For example, we now know that court appearance hinders educational attainment, increasing the probability of dropping out, and that dropping out, in turn, may set in motion a number of negative outcomes including unemployment (Bernburg & Krohn, 2003) and increased criminal involvement (Jarjoura, 1993, 1996; Thornberry, Moore, & Christenson, 1985). Kids arrested on school campus are twice as likely to not graduate and four times more likely if they appear in court. (Sweeten, 2006). This research makes clear, even for the most punitive minded person, that a kid's contact with the juvenile justice system, particularly for youths with limited prior delinquency, may have unintended negative consequences.

It was for these reasons we wanted to stop the flow of referrals into the court. Why? Because the harm was occurring on campus and was likely irreversible. The irony was that kids were being arrested and referred to court for "rehabilitation." Yet, the mere arrest or appearance in court made rehabilitation efforts useless and a waste of time and resources. The damage was already done, and made worse by sending the kid to court. And it still continues in most jurisdictions throughout the country.

Before we go further, I want to make clear what some, I am sure, will not see so clearly. It's not about "slapping" kids on the hand. It's not about blaming the police or the schools. It's not about arresting students when they commit violent crimes. On the contrary, it's about common sense – about arresting the kids that scare us – not the kids that make us mad. It's about letting police be police, not disciplinarians. It's about better management of our resources and time. Every time the police leave the campus to transport a student on a misdemeanor offense, the campus is left open and unprotected for the scarier students to pounce on other students – or worse, for an intruder with a weapon to enter the campus with no defense. It would be unfortunate if, God forbid, a student or intruder shoots up the school while the school resource officer is at court intake booking a kid for mouthing off or fighting. Most important, it's about improving outcomes for our students by keeping them in school and punishing sensibly.

It begs the question – is there a correlation between overuse of arrests on school campuses and the continual decrease in graduation rates? The graduation rate across the country reached its peak at 77 percent in 1969. This rate fell to 68 percent by 2007. In Clayton County, during the time we engaged the Chief of Police, our graduation rates were beginning to decline. By 2003, the rates hit an all-time low of 58 percent, and the school arrests hit an all-time high of 1,400 (an increase of more than 2,000 percent since the employment of SROs), and felony juvenile crimes were rising at a fast pace.

The latter statistic begs another question: is there a correlation between graduation rates and juvenile crime? Common sense, at least, suggested there was a correlation. We already knew that arresting kids for minor school offenses, and at an alarming rate, were harmful. Certainly it can't be good for community safety when more kids are dropping out and therefore wandering the streets, unemployed, hanging out, and doing who knows what.

By 2003, it was time to take drastic action. It was time to bring the schools and police together. They were not going to come together on their own. It would require the juvenile judges to make this happen. We discussed our role as judges in engaging community stakeholders to talk about juvenile justice and other related concerns. How could we, as judges, watch this happen and not take any action? We certainly didn't have any legal or ethical barriers. In fact, our juvenile code in Georgia authorizes judges to engage stakeholders for the purpose of developing protocols to address delinquency cases and for prevention (O.C.G.A. 15-11-10). Furthermore, our judicial canons encourage judges to "engage in activities to improve the law, the legal system, and the administration of justice." (Canon 4). This includes allowing judges to "consult with an executive or legislative body or official, but only on matters concerning the administration of justice." (Canon 4).

We agreed that the harm to many kids was a systemic failure and involved "matters of administration of justice." There is no justice when the system harms kids. We had a moral and legal obligation to do something. We also considered our position in the juvenile justice system. It made practical sense that we take the lead, and not acting would be an injustice.

Practical sense because juvenile justice as a "system" is an atypical system. Consider the definition of a system, which includes a boundary with inputs and outputs. Inputs enter the system in the form of demands and supports and the system works to produce a desired outcome. We can all agree that the desired outcome in any juvenile justice system is the reduction in recidivism among juvenile offenders. However, we now know from what has been dubbed the "What Works" research that reduction in recidivism requires a system to:

- Target high risk juvenile offenders
- Assess their delinquent-producing needs
- Match those needs with evidence-based programs
- Provide intensive supervision.

Although simple in concept, it's complex in application because the delinquent-producing needs (cognition, family function, school-connectedness, substance abuse, anti-social peers, and weak problem solving skills) are addressed using treatment programs provided by different systems, as opposed to a single system as contemplated by the traditional definition of a "system."

For example, consider the following groups whose unique function can be tailored to combat those factors that produce delinquency in youth:

- Schools – School connectedness is the second greatest buffer against delinquency. (US Surgeon General. (2001), *Youth Violence: A Report of the Surgeon General*). We know that school connectedness is linked to lower levels of substance abuse, violence, suicide attempts, pregnancy, & emotional distress. (*Journal of School Health* 72/4).
- Social Services – Family function is the greatest buffer against delinquency. Kids raised in poor functioning families bring their baggage to schools and oftentimes dump it on teachers and other students or commit crimes in the neighborhoods. These kids and their parents require social services in the home to address their poor functional traits. These families may require multi-systemic therapy (MST), functional family therapy, or intensive wrap-around services.
- Mental Health – Many youth are using marijuana and other illicit substances and require mental health services for education and treatment. The use of drugs connects kids to poor social peers and decreases their school connectedness due to truancy and inability to learn in the classroom when they attend.
- Probation – School based probation and other surveillance tools play a crucial role in breaking up the anti-social network of friends contributing to a kid's delinquent behavior. Probation officers can move the court for protective orders that restrain other youth from having contact with a delinquent kid, if the kid refuses to follow the instructions of his probation officer to not have contact with his anti-social peers. This tool has proven to be quite effective when non-court involved kids are brought to court with their parents. It is embarrassing to say the least.
- Other Community Service Providers – There are a number of non-profit and for-profit providers with expertise in evidence based programs on the "What Works" list. These include programs previously mentioned and others such as cognitive restructuring, mentoring, and other behavioral treatment programs.
- Courts – On the bench, judges have at their creative disposal legal tools to assist probation officers in their efforts to break up a delinquent kid's anti-social network of peers including, but not limited to, protective orders, restraints on freedom of movement and contact with others, and conditions requiring pro-social involvement in after-school programs. Off the bench, judges, especially in Georgia, possess the authority under OCGA 15-11-10 to engage the aforementioned groups and develop protocols that connect them to better serve kids in the community.

Consequently, troubled youth with multiple needs may require multiple programs provided by multiple systems – systems that possess their own budgets, rules, regulations, and agendas. In other words, they often do not communicate although they are oftentimes working with the same child.

What we have learned from this systems perspective is that the juvenile justice system is not only the court or probation, but a multi faceted system – a system that requires the integration of inputs from multiple systems to achieve a single desired outcome of prevention and reduced recidivism. Unfortunately, many systems are not achieving the desired outcome because the systems are not integrated with a specific aim to achieve the desired outcomes of juvenile justice. This atypical system, therefore, requires an atypical approach to connect these groups to improve outcomes for youth. This atypical approach is the juvenile judge.

It is atypical only because many judges remain uncomfortable stepping into a role off the bench. This is understandable. For some judges, it's a matter of personality. They are uncomfortable engaging the public. For others, they don't see it as a judicial responsibility, believing in the traditional notion of presiding on the bench and dispensing justice through court orders. I am sure there are other perspectives but these are the prevailing reasons opposing a judicial role for community advocacy or system reform. I want to be clear and point out that this judicial perspective does favor system reform and advocacy – but it's not a judicial function.

Regardless, there are a growing number of juvenile judges that embrace the dichotomy of judicial leadership – dispensing justice on the bench through court orders and advocating for justice off the bench through system change. This growing contingent feels compelled to take action off the bench and engage the community. They cite as support the approval of the judicial canons and the statutory authority to engage the community to develop protocols as previously mentioned.

Notwithstanding the laws and canons of ethics in support of judicial engagement of the community, there is something to be said about the moral implications of participating in a system that threatens the well-being of children and failure to take action to eliminate the threat when we know that handcuffing the wrong kids is harmful. It's all too easy to find reasons why we can't do anything. As I travel the country, I have heard judges and administrators say, "I can't help what they send me" or "I don't control who the police arrest."

These statements are true, to an extent. They are true when we elect not to engage the system to make changes. How do we reconcile a contradiction between the law which obligates juvenile courts (O.C.G.A. 15-11-1) to assist, protect, and restore children whose well-being is threatened, and a systemic practiced in many jurisdictions across this country in which the courts passively participate in conduct that hurts children?

Notwithstanding these differences, it makes sense for judges to take the lead in bringing about local system change. It is in the courtroom where we find all these groups intersecting in the lives of kids. The judges witness on a daily basis this disconnect between these groups despite treating the same child. If the courtroom is the intersection of juvenile justice, the juvenile judge is the traffic cop. (Teske & Huff, *Juvenile & Family Court Journal*, Spring 2010, 54). The judge is in a strategic position to bring stakeholders together when others cannot. The role of the judge in system reform is simple – ask and they will come.

With the assistance of the Annie E. Casey Foundation Juvenile Detention Alternative Initiative (JDAI), this multi-system integrated approach using the judge's "traffic cop" role to bring the group leaders to the table has been used in several jurisdictions around the country to reduce school suspension, expulsions, and arrests, while simultaneously building a system of care to assess and treat these disruptive students and their families. It can be done – it has been done!

Judge Brian Huff in Birmingham, AL, Judge Jay Blitzman in Middlesex County, MA, Judge Kimberly Browne in Columbus, OH, Judge James Burgess in Wichita, KS, Judge Angela Roberts of Richmond, VA, and Judge Jimmie Edwards of St. Louis, MO are a few of the many judges around the country engaging the community to revitalize juvenile justice systems to protect children against harmful decisions of adults. I am also fortunate to be working alongside many judges in Georgia who likewise engage their communities to enhance their systems. Judges Peggy Walker, Michael Key, John Sumner, Britt Hammond, Robin Shearer, Sandra Miller, and the list goes, are a few of the Georgia juvenile judges engaging the community to improve outcomes for children.

The dirty work of juvenile justice doesn't happen at the state or federal level. It happens in the local communities where the children and families live. It's at the local level where agencies, providers, volunteers, probation officers, and judges live with our children and cross paths when our children get in trouble. Juvenile delinquency is primarily a community problem to be solved by the community. We appreciate state and federal assistance to support our local efforts to prevent and treat delinquency but in the words of that James Bond movie theme sung by Sheena Easton, "Nobody does it better" than our local judges and the community stakeholders.

The fact that judges and community stakeholders can do it better brings with it the responsibility that our local systems are operating at their best to not only respond to delinquent youth, but to prevent harmful contact between the juvenile justice system and the youth in our schools and community. If the best work is at the local level, the best reform efforts to improve outcomes are at the local level. Pointing the finger at each other doesn't improve our system. It's called the blame game and it's dysfunctional. Systems must focus on problem solving and that begins with talking to each other. So, who's going to bring the stakeholders together in your community?

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