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## Foreword

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## FOREWORD

CHARLES B. SCHUDSON\*

Hints of horror sometimes surface first in a phrase.

"Where do you live?" I asked the ten-year-old burglar sitting before me in court. He stared back at me.

"Where do you live?" I repeated as sympathetically as possible. He stared. Perplexed, I looked at his lawyer who conferred with the child, apparently explaining something to him.

"Where do you live?" I repeated gently.

"Stay by my cousins," he answered.

It was 1982, and I was just beginning my judicial career in the juvenile courts of Milwaukee. I quickly learned that many of the children coming before me could not understand, "Where do you live?" because they had never "lived" anywhere. They had no concept of residence, or permanence, and they rarely knew their current address. They often answered questions about their "family" by telling me of their "people." They almost always knew their mothers, usually they could identify their fathers, but rarely could they distinguish connections to their siblings and cousins. These children did not "live," they "stayed."

Of course, I was meeting most of these children because they had broken Wisconsin's criminal laws. Given their circumstances, their crimes were not surprising. The poignancy, however, was surprisingly powerful: literally, and figuratively, many of these children had been arrested as they tried breaking *into homes*.

In the early 1980s, I regularly visited reform schools, treatment centers, and group homes. Eating, talking, and playing basketball with hundreds of children I had committed to these facilities, I tried to encourage their progress. I also visited public schools to stay in touch with children who, it seemed, were not in trouble. Whether from behind bars, or from behind

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school desks, children expressed their outrage at the dangers they faced.

"Before the gangs . . ." they said, they could enjoy attending school. "Before the gangs . . ." they felt relatively secure on the buses and playgrounds, and in the parks. Some children broke laws. Other children seemed broken. All were victims of gangs — and guns — that denied children the chance to safely struggle for their futures.

Within a few years, the phrase vanished from our conversations. Although I still heard "before the gangs" from teachers, social workers, police officers and lawyers, I no longer heard it from children. The gangs, by that time solidly in place for only about five years, had consumed the consciousness of a young generation. During those five years, a child who, for example, aged from six to eleven, or nine to fourteen, or twelve to seventeen, had lived a critical, conscious period of life knowing of no time *without* gangs. For these children, the very memory of "before the gangs" had disappeared and, with it, their power to yearn for that earlier, unknown condition had been lost.

"Stay by my cousins . . . ." "Before the gangs . . . ." Of course, these words were but the semantic symptoms of excruciating pain and deadly danger. If, somehow, the pain and danger were inevitable eruptions of a complex and troubled society, they would be sad enough. For me, however, they became even more dramatically tragic when I encountered other words that exposed government as a crucial accomplice in violence against our own children.

"What do you recommend?" I asked the county social worker.

"Department policy requires that I recommend . . . ."

"But what do *you* recommend as the placement in the best interests of this child?" I emphasized.

"Department policy requires that I recommend . . . ." the social worker maintained.

Finally, after being warned of contempt, the social worker explained that superiors required recommendations not necessarily in the best interests of children, but in the best fiscal interests of the social services department. Thus, even when prosecutors, defense attorneys, guardians ad litem, psychologists, social workers, and probation officers all agreed that a child's best interests would be served in a specific treatment center, the department would replace that recommendation with a less expensive alternative. Then when, despite that,

judges ordered placements according to children's best interests, the department would ignore the court orders and place the children elsewhere, anyhow, according to fiscal considerations. Finally, when a child would run away from placement, the department would not inform the court; the judge then would not know to order a warrant to return the child, and the department, for fiscal advantage, could open that vacated space to another child. Eventually, however, most children would return to court, as perpetrators or victims of new crimes.

When the violations continued despite assurances from the department that it would comply with court orders, I held the department in contempt and placed it under the court's supervision. The contempt order was simple. It required the department to provide adequate staff and training to assure compliance with court orders, as the law required, in the best interests of children. Instead of obeying the contempt order, and perhaps even using it to persuade the legislature to increase social services funding, the department fought the order and appealed, unsuccessfully.

Government's complicity in violence became apparent not only at the corrective end of the juvenile justice system, but at the preventive end of the social services system, as well. By the mid-1980s, in a pathetic pattern repeated throughout the country, the social services department acknowledged that because it did not have enough child protection workers, it was violating the law that required prompt response to reported child abuse. So, to meet that crisis, the department terminated all child abuse prevention programs, and transferred their social workers to the abuse response teams.

Responding to the termination of prevention programs, a county legislator proposed an abuse prevention plan in the next session. No sentimental liberal, this conservative legislator explained that funding child abuse prevention would produce less abuse, less crime, and lower taxes in the future. He specifically documented how every dollar invested in preventing child abuse would save many more dollars in the health and criminal justice systems. His colleagues, however, rejected the plan, cloaking their votes in claims of fiscal responsibility. The truth, however, was that his program would have cost the average tax payer \$2.63.

For years, Wisconsin had demonstrated how progressive government could combine comprehensive human services and fiscal responsibility. Carefully coordinated programs to strengthen families, educate children, and prevent violence had assured healthy and safe communities — communities that, as a

result, needed fewer police and prisons. Losing its progressive way in recent years, however, Wisconsin accepted the approach of all-too-typical government that focuses almost exclusively on the immediate fiscal year. In doing so, government fails to meet the classic challenge of progressive leadership: to anticipate needs and develop excellent, humane, cost-effective policies for future generations.

Our national failure carries haunting biases based on class, and race. As long as the homeless, the neglected, and the abused are poor, or people of color, many policy makers tolerate governmental acquiescence and inaction. That attitude, unspoken yet strong, often permeates even the most apparently benign legislative discussions of child abuse prevention programs. "Where are your statistical studies to show that this prevention plan will work?" they ask, as they scrutinize every meager allocation for services to children. They choose to forget how often they failed to ask comparable questions of pork-barrel proposals or corporate bail-outs, or how willing they were to accept voodoo speculation to justify tax incentives for the rich, and "trickle down" to all others.

As the devastation of America's children grows, more and more citizens lament, "It's just so complicated . . . if only we had the answer . . ." I would suggest, however, that notwithstanding the complexity of many social, economic, cultural, political, and legal problems, our tragedy results less from "not knowing what to do," than from "not doing what we know." For years, for example, we have known that Head Start and WIC work magnificently, and cost-effectively. We know, for example, as five internationally prominent CEOs testified before Congress in 1991, that for every dollar invested in WIC, taxpayers realize a savings of between \$1.77 and \$3.13, within the first 60-days of a newborn's life, from reduced Medicaid expenditures alone. Nevertheless, we continue to deny Head Start and WIC to most of the pregnant women and children who need them. The failure to make those investments is both fiscally fraudulent and socially suicidal.

Government has become the accomplice in virtually guaranteeing that millions of America's children will be nutritionally deficient, educationally inhibited, physically disabled, and emotionally damaged. In the cold language of the court room, judges read the results: the psychological evaluations and presentence reports that relentlessly confirm our failure to prevent violence against children — abused and neglected children who become young felons. Often drugged and

psychologically numbed to their own pain, they shed empathy and conscience, but retain rage and vent violence.

The rage and violence now threaten to destroy America. Indeed, for many Americans they have already done so. No longer can citizens enjoy their parks, ride their subways and buses, and attend their schools without fearing extreme violence. Each day, jails and prisons throughout America release hundreds of violent prisoners not because they have made bail or completed sentences, but because jails and prisons are under court orders to relieve overcrowding. Today, throughout America, dangerous fugitives are released because the states from which they escaped can not afford the cost of extradition to return them to custody. America's criminal justice system, while retaining the majesty to produce justice in individual cases, is broke, and broken.

At both the preventive and punitive ends, American government remains knee-deep in denial and neck-deep in an unwitting determination to do as little as possible for America's children, and for all citizens who then suffer the results of governmental neglect. In some ways, our national failure flows from currents of our peculiar socio-economic and political character. In other ways, our failure features the common denial and short-sightedness of a world overwhelmed.

In 1991, I travelled to Jerusalem to address the First International Symposium on Child Protection. There I met practitioners and scholars from throughout the world who told of tragedies suffered by their country's children. The circumstances were so very different, but the themes so very similar. Population pressures, economic pains, social injustices, legal flaws, political weaknesses — all contributing to the abandonment of children, the abandonment of the future.

Still, in both the international and national crises, I see new and impressive signs of hope.

Children are gaining power. For the first time, children are starting to carry political clout through effective child advocacy organizations. Additionally, children are gaining the education and ability for self-advocacy: to complain when they have been abused, neglected, or sexually assaulted; to insist on help and fairness.

Public consciousness is rising. Finally, coalitions and majorities are emerging. Finally, Americans are rejecting the cynicism and deceit of political pretenders. Finally, Americans, as well as people throughout the world, are understanding that prevention and treatment efforts for children are not only

humane, but cost effective as well. Finally, people throughout the world are connecting their immediate, self-interests to the long term interests of future generations.

Law, and law enforcement are adjusting. Mandatory child abuse reporting laws quickly covered every state, reflecting and promoting a sea change in America's social and legal involvement in the welfare of every child. Child advocacy and empowerment have found receptive settings in our courtrooms. Child victims are getting the chance to participate in a justice system that is becoming more sensitive and fair. Lawyers and judges are learning to listen to children, and to make adjustments to assure that children will gain the protections of our Constitution. Class actions are being pursued to prevent the legislative and executive branches from unconstitutionally restricting resources required to serve the best interests of children.

Thoughtful and courageous leaders are emerging. Most prominently, America has new leaders who declare their refusal to accept the devastation of our children. They declare their courage to attempt to guarantee every child's chance to gain a life of health and safety. Hopefully, they will have the intelligence, honesty, and political acumen to teach as well as lead—to convey to all Americans the vested interest we all have in the quality of every child's life.

With this Symposium on The Rights of Children, the *Notre Dame Journal of Law, Ethics and Public Policy* adds its prestigious leadership to efforts on behalf of the world's children. Whether analyzing the rights of every child for protection against chronic, community violence; whether dissecting the advantages and disadvantages of videotape interviews, the role of the guardian ad litem, or the shifting perspectives of policy makers; whether focusing on the children of Eastern Europe, the Middle East, or America, these fine articles advance the international effort on behalf of all children.

Hints of horror sometimes surface first in a phrase. For lawyers and scholars, solutions sometimes also surface first in phrases, briefs, decisions, and journals. In reading these words, do not miss the hints. In turning these pages, do not overlook the passion. In shelving this volume, do not consider your effort at an end. With this Symposium on The Rights of Children, the *Notre Dame Journal of Law, Ethics and Public Policy* joins the call to arms — to your arms — for all our children.