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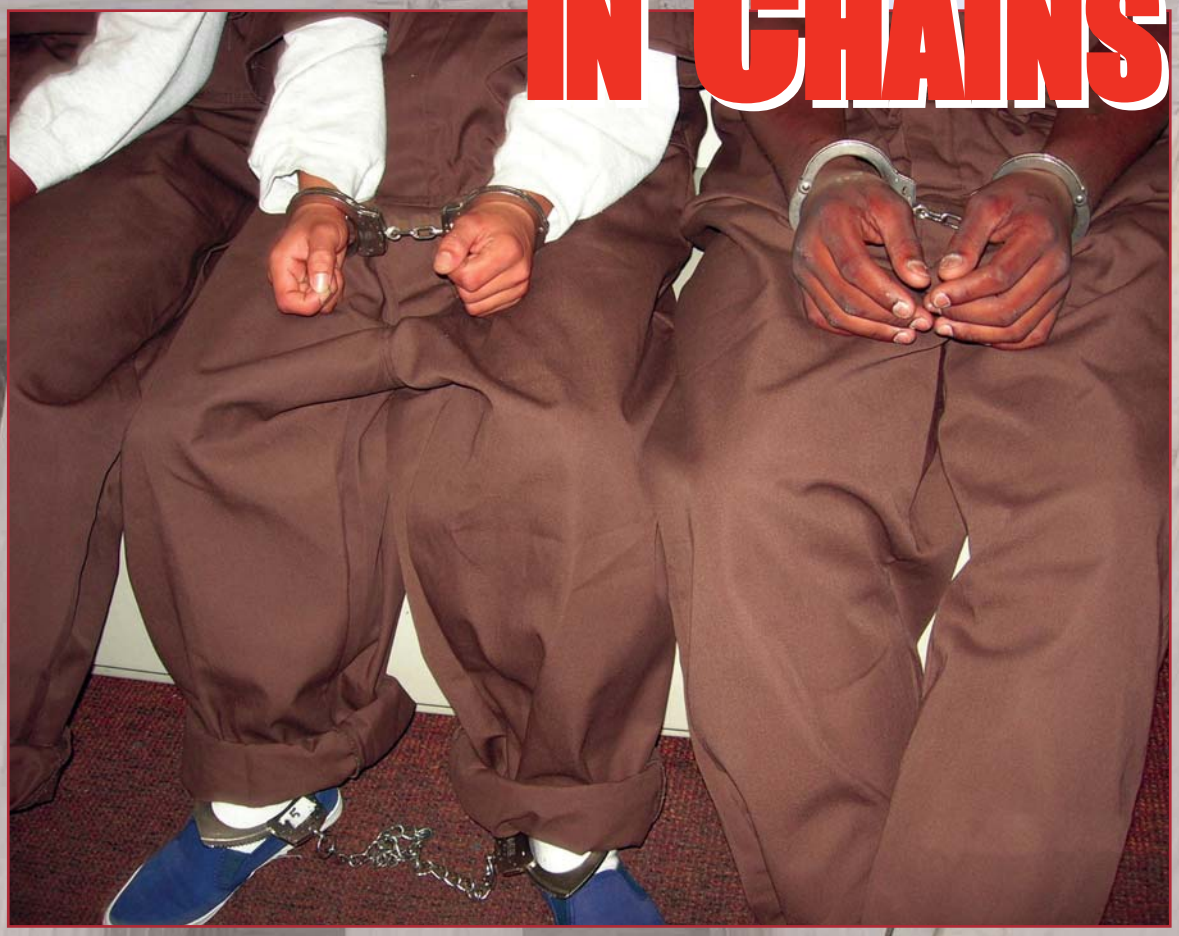
Cornerstone

Children in Chains



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Page 10

Inside:

"The right to freedom and equality of justice is the cornerstone of the Republic."
— Reginald Heber Smith

Why are Children in Florida ...

Photo Courtesy of Carlos Martinez

By Carlos Martinez

Last year, after a couple of months of fruitless discussions with court administration to end the routine shackling of detained children in Miami Dade juvenile courtrooms without litigation, we filed more than 100 individualized motions to unchain the detained children. On September 11, 2006, courageous Miami juvenile court judge William Johnson was the first to conduct individualized hearings and grant the public defender motions. Today, more than 95 percent of our child clients appear without chains and shackles before all four juvenile judges. With more than 3,000 detained children having appeared in court since our first motion, we have had no incidents of a child injuring or attempting to injure anyone in court, and no detained child has escaped from the courtroom.


Carlos Martinez

Surprisingly, even after Florida Gov. Charlie Crist declared that routine shackling is wrong and that shackling should be judged on a case-by-case basis, in almost all juvenile courtrooms in Florida children appear in court wearing a bright orange or brown jumpsuit, metal handcuffs, belly chain connected to the handcuffs and metal leg shackles, regardless of age, size, gender or alleged offense. There is no individualized factual finding of dangerousness or risk of flight. Pregnant girls and children with epilepsy have been shackled, all in the name of courtroom security.

In chains, shackles and jumpsuits, the children look just like the Guantanamo enemy combatant detainees that we have seen on television. The children are typically herded into court in large groups, each doing a short-step leg shuffle while trying not to fall. The child that is detained and shackled on day one, and is released from secure detention, appears in court without shackles at the next court hearing. Shackling is not limited to delinquency cases. Even the detained "cross-over" children (those with a delinquency offense who also have a dependency case because a parent abused, neglected or abandoned the child) are brought to dependency court hearings in chains and shackles to face the parent who is accused of abusing, neglecting or abandoning the child.

In a recent survey of defender offices in the state, we found that in some counties children have been shackled for more than 20 years, in many others less than 5

years. Jailed adult defendants are not routinely shackled in court in many Florida counties. In Miami Dade, wholesale shackling of children began in 2004. We had a situation where a child was shackled in juvenile court, but if that child were transferred (direct filed) to adult court, he would not be shackled in adult court if he did not pose a physical danger to himself or others or was not an escape risk.

Reasons for Ending Indiscriminate Shackling

For our litigation, we obtained affidavits from experts in adolescent development, childhood trauma, therapeutic jurisprudence and international law. In their opinion, the indiscriminate practice of all detained children appearing in court in chains:

- Is irrational.
- Is inhumane and degrading.
- Causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired.
- Is anti-therapeutic and is troublesome because a large number of children in delinquency proceedings have suffered physical and sexual abuse, have mental illness or retardation, or have disabilities.
- May further traumatize children who have been previously victimized by physical and sexual abuse, loss, neglect and abandonment, and can trigger a flashback where restraint was a part of the abuse.
- Is an affront to the dignity of the children and juvenile court proceedings.
- Undermines the rehabilitation focus of juvenile court.

The routine shackling practice is punishment before a finding of guilt. In Florida, the practice is contrary to the legislative intent of "fair hearings by a respectful and respected court," ensuring the "dignity of the courts" and the preservation of "a sense of personal dignity and integrity." The wholesale policy is too generalized and uses one level of extreme restraints for all children alike, irrespective of their potential to cause bodily harm in the courtroom. A more reasonable approach would be for the judge to have guidelines, as to when mechanical restraints, if any, should be used, to what extent and for what length of time.

Typical Excuses for Continuing Indiscriminate Shackling of Children

This section outlines the four top reasons I have heard and responses to those arguments.

Deterrent effect. Detained children will see each other chained and shackled and will therefore not commit other crimes, because they will no longer want to be treated like they were in court. There is no data or evidence to support this deterrence argument. It is clear that proponents of this rationale see shame and humiliation as being a deterrent. It is appalling to find judges and others who practice in juvenile court who do not know about, or refuse to acknowledge, the opinion of the medical and psychological professions that deterrence does not work the same way for teens and adults. In its recent decision ruling that the death penalty is unconstitutional when applied to juveniles, the United States Supreme Court stated, "the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable suggest as well that juveniles will be less susceptible to deterrence." It's worthwhile to note that when proponents for the status quo welcome chaining presumed-innocent children for "deterrent effect," they are advocating pre-trial punishment. No one who respects the American idea of justice could.

For the safety of the children. It is impossible to control juveniles in the courtroom because children are impulsive and may hurt each other or escape from the courtroom if they are not chained and shackled. In most of the juvenile courtrooms, sheriff's officers carry guns and tasers, accessible, to any adult who is present in the courtroom. However, the proponents of this rationale typically fail to explore reasonable inexpensive alternatives to maintaining security and decorum. They justify bringing eight or more juveniles into the courtroom at a time by saying it is more efficient. Such assembly line justice and bureaucratic expediency over individualized attention (one child at a time) does not belong in juvenile court. There are other less restrictive alternatives to protecting public safety in the courtroom while maintaining the dignity of the children and the court proceedings. For example, bringing one child into court at a time and not having guns in the courtrooms. Due process, fairness and proportionality demand that we treat children in a more humane and dignified manner in the courtroom.

Children today are more dangerous than children in the past. The detained juveniles are dangerous and have already been determined to meet secure detention criteria, which means that they pose a public safety risk. This is the argument that if made about a racial or ethnic group would be appropriately described as prejudiced and solely based on stereotyping. However, proponents of this have couched it as scientifically based by saying that routine shackling is justified on the fact that the child meets secure detention criteria. Florida uses a detention risk assessment instrument that has never been scientifically validated to measure dangerousness or anything else. Defenders should not be shy about calling it like it is – it is prejudice. A judge who has not heard any facts or valid legal argument to justify shackling a child has already prejudged that child as being dangerous. That judge should not be presiding over juvenile court cases.

It is the sheriff's and not the judge's responsibility to maintain a secure courtroom. It's up to the sheriff to maintain order in the courtroom; sheriffs don't tell us how to judge, we don't tell them how to secure the courtroom. In Florida, judges have authority over what happens in the courtroom and the juvenile courtrooms are open to the general public. Deputy sheriffs and bailiffs are there to assist the judge in maintaining order. The irony here is that allowing

See SHACKLING on page 15

SHACKLING - Continued from page 11

anyone to have guns in the courtroom increases the likelihood that the judge, courtroom personnel, the children and the general public will be killed or seriously injured. Yet, most juvenile court judges have abdicated their authority over courtroom decorum and safety. In Miami Dade, the general public is checked for weapons prior to entering the courthouse, and officers are not allowed to carry guns inside the courtrooms.

Advocacy to End Indiscriminate Shackling Practices

Our efforts did not begin or end in the courtroom. We spoke to the media, reached out to the faith community, academics, social justice groups, other defenders and child advocates of all stripes. We also drafted a bill that was filed in the Florida Senate and House. The bill establishes a presumption that securely detained children will not be chained or shackled in the courtroom, except in extraordinary circumstances, and for the shortest period of time possible necessary to protect the people in the courtroom; and that the use of exceptional restraints must be reserved for the rare case where the court makes an individualized determination that unusual facts warrant such an extreme measure. While the bill has not been heard in committee, a key legislator promised to attempt to resolve the issue administratively with the courts, the Florida Department of Juvenile Justice and the child advocates trying to end the routine shackling practice.

Audrey Edmonson, a Miami Dade County Commissioner, introduced a resolution calling for the legislature to end the practice and for the county lobbying team to lobby in favor of the bills. The resolution was unanimously approved in December 2006. We have worked with faith community leaders who have signed a resolution in support of our efforts. We succeeded in persuading The Florida Bar Board of Governors to take a position supporting a ban on the indiscriminate shackling of children through legislation, court rule or administrative procedures.

Florida's Children First, a non profit child advocacy group, also lobbied on behalf on the bill and has been instrumental in keeping the legislation and the issue alive. Another key partner has been the National Juvenile Defender Center (NJDC) because it has provided technical assistance and training to defenders who want to challenge the shackling practice. In its recent assessment of the quality of representation and access to counsel in delinquency cases, NJDC recommended that Florida end the routine shackling practice.

Conclusion

Children in Florida are treated as enemy combatants because we have not done a good job of educating the general public and demanding that our elected officials correct this unjustified mistreatment of children in our courtrooms. There has been a tremendous amount of fear mongering and knee jerk responses without facts or data to support the policies and practices that end up hurting children and making us less secure.

Miami Dade has the second highest number of securely detained juveniles in the state, about 5,000 a year. We do not have guns in the courtroom, our judges see one child at a time, few of our children are determined to be a flight risk or safety risk to justify shackling and we have had no incidents since our judges stopped the routine shackling. We hope that defenders will continue to take on this fight. Tackling this issue will not be easy and will require the effort of many of your defenders who are already overworked. It's the moral thing to do. Our appellate attorneys Andy Stanton, Shannon McKenna and Valerie Jonas were instrumental in our effort, as were Marie Osborne, administrative, appellate and juvenile division support staff. Please visit our Web site, www.pdmiami.com/unchainthechildren.htm, to view the motions, appendices, photographs, news articles and editorials.

My boss, Public Defender Bennett Brummer, said it best. "If defenders are not going to fight so that every child is treated as an individual with dignity and respect, who will?" ✯

Carlos Martinez is the chief assistant public defender, Law Offices of the Public Defender, 11th Judicial Circuit Court of Florida (Miami-Dade).

NLADA Movers & Shakers

Transistion

Southern Minnesota Regional Legal Services (SMRLS) announces that Bruce Beneke, who has served with great distinction as its executive director for the past 30 years, has decided to step down from that role effective August 1, 2007. He will continue working at SMRLS in a new senior role.

Promotion

The board of Southern Minnesota Regional Legal Services (SMRLS) is also pleased to announce its selection of Jessie R. Nicholson to become the new executive director of SMRLS. Nicholson has been an outstanding leader at SMRLS for nearly 22 years, including 10 years as its deputy executive director. She is the first African American woman to lead a civil legal aid program in the Upper Midwest.

Appointment

Anthony Young, a protégé in LSC's recently-completed Leadership Mentoring Pilot Project, has been named the new executive director of Southern Arizona Legal Aid. Young is currently the managing attorney of the Yuma office of Arizona's Community Legal Services.

Appointment

The Board of Directors of the Legal Assistance Foundation of Metropolitan Chicago (LAF) is pleased to announce that Diana White has been selected as LAF's new executive director effective July 13, 2007. White has been LAF's deputy director of Special Projects since 1997.