Re-Thinking Juvenile Justice: Using the IEP Concept to Create a New Juvenile Justice Paradigm

by Claudia Wright

Editor’s Note: Claudia Wright is both a Legal Skills Professor and Director of Gator Team-Child, the juvenile law clinic at the University of Florida Levin College of Law in Gainesville, FL. Over the course of her career, she has represented children involved in the juvenile justice system and observed its shortcomings. In this article, she suggests we look to the special education system for ideas on how to craft effective solutions to address delinquent behavior. Of this article, Professor Wright says, “All of the ideas presented here were profoundly influenced by the writings of the late scientist and philosopher, R. Buckminster Fuller. Fuller was a genius, the inventor of the geodesic dome, who also coined the term ‘synergics,’ the geometry of thinking. I use both these terms in this article. While I confess an incomplete understanding of many of Fuller’s ideas, what I am able to understand of his work has permeated my thinking about systems. I recommend Operating Manual for Spaceship Earth and Anthology for a New Millennium to anyone who is interested in general systems theory. Much of Fuller’s work is out of print now, but copies can be acquired from the Buckminster Fuller Institute, www.bfi.org.”

Professor Wright welcomes comments.

The Idea

In his writing, R. Buckminster Fuller urges the abandonment of systems that lead to more and more narrow specialization. According to Fuller, unwarranted specialization imposes limitations on thinking that prevent us from operating with a comprehensive world view. Comprehensive thinking will maximize our understanding of the effects of all of the components of a system on the whole. Fuller describes the benefits of utilizing whole systems to solve individual social problems by taking advantage of the inherent energy that is gained by crossing over boundaries to efficiently utilize all our ideas and resources. By integrating ideas that have been tested in foreign systems, we can apply this philosophy to juvenile justice to free ourselves at last from the narrow, outdated ideas that have guaranteed the failures that permeate our juvenile justice systems.

A recent conversation with a colleague who is in the last stage of a long impact litigation case included an invitation to participate in proposing reform. She asked, “If you could start from scratch, how would you build a new juvenile justice system?” This article will outline my ideas in response to that question.

Idea Fostered by Clinical Experience. I am the Director of Gator Team-Child, the juvenile law clinic at the University of Florida Levin College of Law. I developed this clinic after 20 years of observing systems that involve the intersection of government, children and families. A unique characteristic of the clinic is that we do not acknowledge traditional boundaries between the various types of legal cases.

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Our clients are children, and when we accept a client we accept and address all the legal issues they face, regardless of the type of case or forum. I decided to develop this format because I had seen over and over again that all the legal issues a child may face are connected to each other. I decided to try to deal with them all as a whole to see what would happen. This was a new format for a clinic and for a law practice in general. What I have learned over the last six years is that the use of this model allows us to see and think across boundaries, to see and think in terms of whole, or synergetic systems. I use the phrase "synergistic systems" here to refer to systems in which the connections between the interacting and repeating components are of equal or greater value than the sum of the components themselves. The ideas presented in this article are a direct result of this experience.

Clinic Children Are Routinely Delinquent, Dependent, and in Trouble at School. Almost all the children we represent have at least three kinds of cases: delinquency, in which the child has exhibited some behavior that has attracted the attention of a law enforcement entity; dependency, in which the child has been the victim of abuse, neglect or abandonment by his family or by the state; and education, which involves some kind of failure in school, usually academic or disciplinary.

Delinquency Systems Focus on the Negative. My observation is that delinquency systems are linear systems. By that I mean that in a juvenile justice system the child follows a straight path alone. The path is entered by the child when his negative (socially unacceptable) behavior attracts the attention of the government. Once this happens, no subsequent demonstration of positive behavior can cancel out the negative behavior, and each event of negative behavior moves the child a step further down the path. The adults involved or connected in some way to the child may observe from the sidelines, may offer support, or may be prepared to pounce on the next negative, but they are not an integral part of the process that moves the child along the path. The path only responds to the negative behavior of the child. The path is one of increasing restriction of freedom and indifference to the unique humanity of the child. It is a path that does not change even when it proves to be ineffective in changing the negative behavior of the child. The juvenile justice system as it now exists is a failure.

Dependency Systems Fail to Prepare Children for the Future. Similarly, the dependency system, from the point of view of the subject child, is also a linear system. Once a child has been removed from his parents and reunification ceases to be an option, the child walks down the path alone. Instances of negative behavior, a predictable consequence of child abuse, move the child further away from family and closer to the end of the path. In dependency, the end of the path is often simply a crossover to delinquency. In other cases, the child may simply age out of state care. Many children who age out of dependency systems, with no resources or family support, join the ranks of our homeless. The point is that, like delinquency, this system is driven by the child's negative behavior. It does not respond to the child's positive behavior. For a child well down the path, the behavior of parents or the other adults is merely irrelevant. As with delinquency, our dependency systems have not contributed in any meaningful way to a better life for our citizens.

Special Education System Offers Model for Child-Centered Services. I see something quite different and immensely heartening at work in the field of education for disabled students. The heart of the special education model, set forth in the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq.; 34 C.F.R §300 et seq., is the Individualized Education Program. The use of the Individualized Education Program—the IEP—changes the movement of children from a linear system to a geodesic, or curved, system. In the ideal model for the
development of the IEP, the child is surrounded by the adults who are involved in his life and who are charged with the responsibility for the success of his educational program. The behavior that drives the system is the behavior of the adults. The behavior that is subject to judgment is the behavior of the adults. The measure is how well the adults are able to construct an environment in which the child can succeed. The child moves down the path encircled by adults who must regularly interact and connect with each other, who must return to the beginning again and again, back to square one, to review progress, to create new connections and to explore new synergies. The team collaborates to provide the child with the resources he needs. If there is a failure, the adults must try again to create a plan to assist the child to make progress. The stated goal of all the participants in the system is the success of the child.

Although not perfect in practice, the idea of the IEP works. It is a completely different model, or paradigm, than exists in the juvenile justice system. But I can see no reason why the concept would not work successfully, for all the same reasons, in delinquency cases as it does in education. It would be developed and implemented in essentially the same way. But in adapting an idea developed for the education system to a system with the power to deprive children of their freedom, certain fundamental principles should be examined and applied.

Fundamental Principles

This model holds enormous potential. It would not be difficult to implement. The heart of the system would be a plan akin to the IEP, what could be called the ICP—the Individualized Correctional Program. Because a juvenile justice system includes the power to restrict freedom, all Due Process protections that have been recognized by the courts over the years must remain intact, and must be fully honored. The ICP team would be created and approved by the court, with the assistance of the attorneys for the child and for the state, at the point of government intrusion into the child’s life. This could occur at diversion, if the child is offered and accepts to participate in such a program, or at disposition, after a child has pled guilty to a charge or has been found to have committed a delinquent act. Instead of simply reviewing a predisposition report and meeting out punishment from a limited array of choices, the court would set the ICP team into action to create and carry out an individualized, comprehensive correctional plan for the child. The court would retain the responsibility for approving the plan and ordering its implementation. The court would decide, through the traditional hearing processes, when success had been achieved and the case could be dismissed. Crucial to the process would be the following:

1. Assessment is Essential: Of the Community, the Family and the Child

Community Assessment is First Step. If we accept the premise that “adults are responsible for all the children,”* then adults must be prepared to meet the challenge to create environments in which children can succeed. To do this, participants in the enterprise must collect and share information. Only then can they determine what an individual child needs.

The first step requires a complete, thorough and objective assessment of the strengths and weaknesses of the resources of the community. One of the most destructive misconceptions under which we have operated is that any one resource—orphanage, boot camp, mentor, medication—is all bad or all good for everybody. My observation is that even the most unlikely programs will work for a few, and that nothing is the answer for all. The goal of this first level of assessment is a non-judgmental catalogue of everything available to the community—good, bad or mediocre, public or private, faith-based or secular, educational, vocational, artistic, spiritual, medical—everything that is available to become part of a child’s environment for success. As we begin to catalogue what we have, we will begin to see what is missing. We have to know what we have before we know what we need, and to know where we should spend our money to obtain new resources.

Identification of Family Strengths and Weaknesses. An assessment of the strengths and weaknesses of the biological, extended and community family of the child is the next essential component. There can be no doubt as to the critical role of the family to the success of the child. To implement this new paradigm, we will need a clear picture of the strengths and weaknesses of the family, particularly the family as defined by the child, including parents, siblings, grandparents, aunts and uncles as well as pseudo-relatives, and coaches, teachers, preachers and neighbors. The assessment should include all those persons who comprise the home and community family of the child. Special care must be taken in situations where the family is limited, fragmented or transient, such as when children are in foster care, living with friends or neighbors, in group homes, being reared by grandparents or great-grandparents. These situations should be addressed realistically and objectively to determine what contributions can be made by all those adults who comprise the child’s family, and what deficits exist which must be addressed or cured if the child is to be able to succeed.

Thorough Assessment of Child. Then we must have a complete, thorough assessment of the strengths and weaknesses of the child. This evaluation should create a picture of the whole child—talent, intelligence, mental health, physical health, disabilities, learning style, personality—that can inform the process of environmental modification. Because success is based on the individual child’s unique response to stimuli, we need as much information as possible about the qualities and characteristics of each child.

2. The ICP Team: Constructing a Group

Comprehensive Membership. As with the IEP, the purpose of the ICP team is to bring together those adults who know the child, interact with him, and have the ability to affect his environment. The team may include family, school teachers, neighbors, psychologists, doctors, employers, probation officers, spiritual leaders, social workers, mentors, friends. Because the ICP is a component of the justice system, the ICP team should include the child’s attorney. The state’s

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attorney should participate to assure that community concerns, victims, restitution and other such issues are adequately addressed. We should expect that every team will be different, based on the unique aspects of each child's life, and that the participants on the team may change over time. The goal of the team is to develop a plan that brings together all available resources to create an environment in which the child can become a successful citizen. Further, the members of the team will assume responsibility for implementing or monitoring the implementation of the various components of the plan.

Regular Meetings. The ICP team should meet regularly, looping back again and again to rethink old ideas and explore new connections. The team should meet consistently over time and should be creative and flexible. The ICP team will be responsible for arranging the appropriate assessments and updates of assessments. The ICP team should report regularly to the court since it has the ultimate responsibility for supervising progress; however, reviews could be documentary unless the ICP team needed court intervention to further a particular goal. The ICP would continue to operate until the court decided success had been attained, and the court decided to relinquish jurisdiction of the case.

Including the Child. The child must be a member of the ICP team. Participation, however, should not mean that the child must be present for the entirety of every meeting but should be involved whenever decisions affecting him are made. If the child is too young, unstable, or immature to participate, then that child by definition should be ineligible for processing in the juvenile delinquency system. That child’s need for assistance should be directed to a more appropriate mental health or other social service program, regardless of the seriousness of the behavior that brought him to the attention of the court.

3. Services Should Be Community-Based and the Least Restrictive Alternative

If we have learned anything over the last 50 years, it is that we cannot expect a happy ending when we send children away from their natural environment, somehow try to fix them in an artificial environment, then send them back home. With no skills or strategies and no resources to deal with the home and community environment, failure is guaranteed. Any plan to modify behavior must be offered first in the home and in the home community. We cannot fix people, but we can fix the environment. Only under the most extreme circumstances, where safety of the child is at issue, should a child be required to live away from home to receive school, counseling, mental health treatment, or to be punished or make restitution.

Assessment, as described above, is an essential part of this shift of focus. When we can understand and reconfigure our resources to ensure that every community has the resources its children need, in the right amounts, we will be able to offer an adequate array of service choices. A prohibition on placement of children in residential programs, except in the most extreme circumstances, will undoubtedly free up money and allow us to be more flexible in creating individualized plans.

ICP teams should apply the concept of the least restrictive alternative, which is well known and accepted in social service systems such as mental health and special education. Strict adherence to the idea of the least restrictive alternative will further reduce reliance on expensive and ineffective residential programs.

Conclusion

We see the effects of the operation of this synergistic philosophy in real life every day in our own small model, the Gator TeamChild program. We have learned that a concrete example of Fuller’s philosophy is the IEP—the incorporation of whole systems in a geodesic model that can maximize the potential of all the interconnections that comprise a child’s, or a community’s, life.

How can we implement this radical change? Most of the legal apparatus necessary to implement the new model already exists. We have the courts, and we have all the players already in place. A few minor word changes in the statutes and rules (the court could order an ICP team instead of a pre-disposition report, as one example) would be necessary. The changes would be almost completely procedural, and would raise no difficult constitutional issues.

How would we answer the inevitable “But it costs too much?” Here is Fuller’s answer: “... under lethal emergencies vast new magnitudes of wealth come mysteriously into effective operation.” In other words, wealth is in the eye of the beholder, it is really a matter of priorities, and it is essentially a meaningless concept in the face of an emergency. The issue is not resources, it is the deployment of resources. The change in deployment requires a paradigm shift. Moving things around does not require capital and ultimately will save money. No doubt the transition would require funding. The choice is whether we can afford to try something that has a real chance of working. How much is it worth to improve the quality of life of a society, to reduce inhumane treatment of children, to successfully create productive citizens? It’s worth a try.

Endnotes

1 Geodesic is defined as “referring to the shortest possible line between two points on a sphere or other curved surface.” WordPerfect 10 Dictionary, Oxford University Press (2004).
2 This statement is one of the operating principles of Gator TeamChild.