

California Juvenile Justice Reform in the 21st Century (So Far)

Malcolm Gladwell's book, *The Tipping Point*, suggests that change comes when important ideas are born, spread by effective connectors, and then propelled over the top by persuasive forces. While we do not yet have a long historical timeline against which to judge recent California juvenile justice reform efforts, there is reason to believe that these kinds of forces are at work in our advocacy community. This is a brief (and surely incomplete) accounting of factors that, through a confluence of people, connectors and historic opportunities have (and hopefully will continue) to bring much needed juvenile justice reform in California.

Worsening Conditions in the California Youth Authority¹ (2000-2002)

Although conditions had been deteriorating in the California Youth Authority for more than a decade, complaints over abusive conditions intensified in the late 1990's, leading to extensive media coverage and Joint Public Safety Committee legislative hearings in May 2000. A new Director, Jerry Harper, was appointed to deal with crisis, and Youth Authority was assigned a series of corrective actions to be reported back to the Legislature.

While advocates spoke of the need to completely redo the large prison-like institutional system, this was not a part of the new Director's marching orders from then-Governor Davis. The new Director set about creating a much-needed administrative infrastructure for the system, and there were dozens of task forces and committees. However, without official recognition of the need for fundamental reform, there was little urgency for implementation even when changes were recommended (for example, use of cages).

Prison Law Office Litigation Filed (2002 –2003)

When Prison Law Office lawyers went into Youth Authority in 2001, they were astounded to discover that it was in much worse shape than the adult correctional system, which had previously occupied their attention. Prison Law Office, with the assistance of several law firms, filed a federal civil rights lawsuit in 2002. They later sought a dismissal of the case, and filed the action as a taxpayer case, *Farrell v. Allen* (now *Farrell v. Hickman*) in state court in January 2003.

¹ As of July 1, 2005, the California Youth Authority became the Division of Juvenile Justice (DJJ), in the Department of Corrections and Rehabilitation (CDCR), as part of the restructuring of the correctional system in California. In this document, the agency names are used as they existed at the time of the relevant events.

At the beginning of the litigation, it appeared that Youth Authority was going to fight the case, and the Attorney General asked for millions of dollars just for discovery. As it became abundantly clear that conditions in the system truly were as bad as reported, the parties wisely realized that everyone would be better off putting energy into finding out what really was wrong and then moving to fix things. So, the parties jointly selected 5 experts, and sent them out to do reports in their area of expertise.

Senate Bill 459 (effective April 2003)

Among the Youth Authority's many problems was a parole board that held youth twice as long as they would have served for the same offense at the county level, and added time in a way that caused a large percentage of youth to "max out" their confinement time. In the waning days of Senator John Burton's last term in the Legislature, he took on this issue. His Senate Bill 459 did away with the old board, created a new governance structure for parole, added case planning requirements, and called for regular reporting to the counties about individual wards. It also made changes to Welfare and Institutions Code section 779, the statute allowing juvenile courts to recall or modify Youth Authority commitments, clarifying that the court may recall or modify the commitment if the youth is not receiving the services on which the commitment was premised. Senate Bill 459 also amended Welfare and Institutions Code section 731 to give juvenile courts the power to set the maximum term of Youth Authority commitment at something less than the maximum term an adult could get for the same offense. Until then, courts had been required to impose the maximum term.

Farrell Expert Reports (January 2004)

The *Farrell* expert reports came out in January 2004. They described a system rampant with abusive practices, and very short on staffing and resources to provide needed services. The reports immediately garnered a great deal of media attention, and the Senate Committee on the California Corrections System held hearings to review their contents. Shortly thereafter, Governor Schwarzenegger, who had taken office the year before, said he didn't want kids in cages in his administration. The Governor also convened the first ever Juvenile Justice Working Group, a broadly based stakeholder group whose mission was to discuss and reach consensus (to the extent possible) on juvenile justice policy.

The County Connection (Spring 2004)

In late February 2004, Youth Law Center wrote to every presiding juvenile court judge and chief probation officer in the state, alerting them to the *Farrell* expert reports, and to the recent statutory amendments clarifying the court's ability to pull wards back from the Youth Authority if the expected services are not being provided. Counties quickly expressed concern over the well being of wards. Some sent probation officers to visit all of the wards from their county. Some also declared a moratorium on Youth Authority commitments.

California Rule of Court 1479 (effective July 1, 2004)

In 2004, the California Judicial Council enacted California Rule of Court 1479, clarifying that lawyers in juvenile delinquency cases must stay involved at every stage of the proceedings, including the post-dispositional stage: “A child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including post-dispositional hearings.” The Rule clarifies that ethical obligations include making sure that treatment plans are carried out and representing clients in any review or modification hearings. It represents a landmark event in giving defenders a basis to argue for staffing levels that enable them to meaningfully represent their clients in post-disposition status.

Farrell Consent Decree (November 2004)

The parties in *Farrell* entered into a consent decree in November 2004, calling for corrective action plans to be developed in each of the areas covered by the expert reports. The initial decree was a fairly standard kind of agreement for institutional litigation – directed at remedies for specific constitutional and statutory violations.

Exploring Other Models – The Administration and the Advocacy Connection (Mid to Late 2004)

In the meantime, there had been much public discussion about whether the Youth Authority could ever really be fixed if it continued to rely on the use of large prison-like institutions. By this time, newly elected Governor Schwarzenegger had appointed another Director for the Youth Authority, Walter Allen III. Advocates convinced the new Director that the problems in the system would be difficult to resolve with the current institutional structure, and encouraged him and other officials to visit good programs in other states. A selling point was that such programs cost a little over half what we spend on Youth Authority wards per year, with much better recidivism rates.

In the second half of 2004, several delegations from California, including high-level Youth Authority and corrections officials and legislators visited Missouri and other systems, but there was still nothing in the *Farrell* consent decree that specifically referenced a commitment to changing the state system. Advocacy groups were very successful in getting press coverage of the need to move to an alternative kind of system. Grass roots advocates joined more traditional legal advocates in giving voice to the need for change.²

² The range of groups was impressive, including among others, Books Not Bars, Youth Justice Coalition, National Council on Crime and Delinquency, Commonweal, Center for Juvenile and Criminal Justice, Youth Law Center.

Inspector General Reports on Conditions (January 2005 to Present)

A year after the *Farrell* expert reports came out, and a couple months after the consent decree was signed, the Inspector General's office came out with a blistering report on conditions at Youth Authority institutions. The report confirmed that wards receive only 30 to 40% of required educational services at most institutions; do not receive the minimum required counseling; and that, despite assertions that 23 hour lockdowns have been discontinued, hundreds of wards are still subjected to those conditions. The report served as a cautionary measure to anyone who might think that things have been fixed.

Subsequent Inspector General reports focused exclusively on ongoing deficiencies at the Chaderjian facility (May 2005) and the suicide of an 18 year old car thief who had been held in solitary confinement for 8 weeks up to his death by hanging (December 2005). Also, the Little Hoover Commission held a hearing in September 2005 to receive information about progress on DJJ reform efforts. By this time, the corrections restructuring had taken place, and yet another administrator, Bernard Warner, was appointed to head the renamed agency, the Division of Juvenile Justice. At the Little Hoover Commission hearing, the overall sentiment expressed was that no matter how good the reform plans might be reform is not yet reaching day-to-day institutional life.

Legislative Efforts (Senator Romero – January 2005)

In January 2005, Senator Gloria Romero introduced legislation to transform the Youth Authority. That legislation would transform the system into a model similar to Missouri's, call for the girls to be taken out of Youth Authority, and for the Chaderjian facility (which is the most like an adult maximum security prison) to be closed. Senator Romero also introduced legislation to move the parole function to the counties, and away from Youth Authority.

While the original plan was to coordinate the legislation with corrective action in *Farrell*, it was thwarted by the lag in corrective action and (as best we can tell) internal disputes in the Governor's office, making it less certain that the legislation would make it through. The shells of the legislation are still available for action in 2006.

Also in the 2005 session, the Legislature imposed quarterly reporting requirements on Youth Authority (which by now had become Division of Juvenile Justice) on long-term reform plans and *Farrell* corrective action. The September 1 and December 1, 2005 plans were filed; the March 1 and June 1, 2006 plans are yet to come.

Farrell Stipulation on Remedial Efforts (January 2005) and Stipulation Regarding Safety and Welfare Remedial Plan and Mental Health Remedial (December 2005)

In the meantime, in early 2005, when corrective action plans were due to be submitted in *Farrell*, Youth Authority was unable to produce the required plans, realizing that it would be difficult in the existing institutional system. After an intense all day meeting, the parties entered into a January 31, 2005 stipulation for corrective action that included, for the first time, a commitment to move to a different kind of institutional system. The stipulation also set new dates for the filing of corrective action plans and imposed requirements for targeted short-term corrective action, including the implementation of a classification system, open programming, and reduction of lockdown.

The stipulated agreement called for plans to be submitted for the safety and welfare and mental health issues on November 30, 2005. When drafts of those plans were found to be lacking in sufficient detail on implementation, the parties re-entered negotiations, and an additional stipulation was filed December 1, 2005. The new stipulation requires the Division of Juvenile Justice to employ four subject matters experts to assist in producing a revised safety and welfare plan by June 30, 2006, a revised mental health plan by June 30, 2006, and imposing additional short-term measures for institutional care, classification, closure of the Inyo unit at the O.H. Close facility, use of lockdowns, restricted housing, use of force, use of restraint chairs, behavior management, and architectural guidance on the continued use of Chaderjian.

Defender Mobilization: Contested Dispositions, 779 Motions, and Parole Hearings (2004 to the Present)

While serious talk about reform was welcome and exhilarating, the initial events had been of little practical benefit to the thousands of youth currently incarcerated in state facilities or those at risk of commitment. Defenders quickly recognized, however, that the net effect of these developments was to create a vast documentary record of the failings of the current state level system, and new statutory and court rule authority to use it on behalf of clients.

Shortly after the expert reports came out in *Farrell* in early 2004, the First District Appellate Project began to post arguments, briefs and background materials for defender use in finding out what was happening with clients, trying to get them out of the system, and trying to keep them from going in. In April 2004, a defender "list serve" was created through the Pacific Juvenile Defender Center (PDJC) to provide a forum for discussing practice with respect to Youth Authority issues. In July 2004 the San Francisco Public Defender's Office and PDJC convened the first ever statewide Youth Authority roundtable, and followed it up with a second in September 2005. Appellate defenders succeeded in confirming the changes brought through Senate Bill 459, and developed appellate challenges based on the growing documentary evidence of problems in the system.

PDJC members presented a workshop on defender driven reform at the National Juvenile Defender Summit held in Los Angeles in October 2005. The Center for Juvenile and Criminal Justice sponsored a full day statewide workshop on restructuring juvenile corrections in California, featuring prominent veterans of other state juvenile justice reform efforts. Grassroots advocacy groups such as Books Not Bars and Youth Justice Coalition engaged in media campaigns, and held rallies at the gates of institutions and in communities, keeping past tragedies in the public eye and calling for strong measures.

Beyond the Tipping Point

Malcolm Gladwell's theory that big changes often result from a number of timely, persuasive smaller ones, is surely borne out by this series of California juvenile justice events. The forces that have been set into motion have already had a dramatic impact on state level confinement for juveniles and the way we think about juvenile justice. At the peak of the "tough on crime" frenzy in 1996, the Youth Authority system housed 10,122 wards, and in 2004, it was still at 4,067.³ After scarcely two years of intense attention in juvenile courts, the system houses only 3,148 youth.⁴ Courts are entertaining more 779 motions than ever before, and there have been significant successes in bringing youth home. The Division of Juvenile Justice itself now has a policy for examining the rejection of wards with serious mental disabilities. Counties are consciously engaged in discussions about how to serve even more youth at the county level. There is unprecedented interest in evidence based practices and individualized dispositional plans.

The current swirl of activity has also created an opportunity to work for statewide juvenile justice policy. For the first time, California has a Chief of Juvenile Justice Policy, Elizabeth Siggins, giving us an unprecedented opportunity to consider policy issues. A California Juvenile Justice Accountability Project is under way, working with criminologists to analyze and improve our state data system for juvenile justice. The Division of Juvenile Justice reports to the Legislature will further explore the possibilities for state/county relationships and partnerships. The Division of Juvenile Justice continues to visit programs all over the country to learn more about what works.

What started as dissatisfaction with institutional abuses has passed the tipping point and produced a much broader examination of juvenile justice policy and practice in California. We have surely passed the tipping point in creating a climate where change is realistically possible and many more people and agencies are committed to making it happen. While it will be some years before we see the mature fruits of institutional reform (current plans call for a phase in to be completed in 2012), we are better equipped than ever before to minimize exposure to the current system and/or to assure accountability for needed services for our clients.

³ State of California, Department of the Youth Authority, Research Division, *A Comparison of the Youth Authority's Institution and Parole Populations (June 30 Each Year, 1995-2004)*, p. 4.

⁴ State of California, Department of Corrections and Rehabilitation, Division of Juvenile Justice, *Population Movement Summary*, November 2005), p. 1.

The community of juvenile defenders and advocates has experienced strengthened professional consciousness and renewed commitment to our work. We have found new allies among court personnel, probation, academicians, service providers and institutional staff. Our communication and support network has grown, and many offices have increased staff and resources to work on these issues. Our efforts have already helped a significant number of youth to escape the ravages of the not yet reformed state institutional structure. We have a very long way to go, but can feel proud of our part in helping to frame the public debate and produce long overdue action to protect youth in our juvenile justice system.

On Line Resources for Defenders

Most of the materials needed to understand Youth Authority/Division of Juvenile Justice conditions, the *Farrell* litigation, and pertinent practice materials are available on line.

The *Farrell* materials are available on the Prison Law Office web site. These materials include the consent decree, subsequent stipulations, expert reports and corrective action plans:

<http://www.prisonlaw.com/events.php>

The First District Appellate Project web page also includes *Farrell* materials, and extensive practice materials, including appellate briefing and case law on contested dispositions, Senate Bill 459 maximum time issues, 779 motions (to recall or modify commitments), and requests for judicial notice:

http://www.fdap.org/cya_resources.html.

The Division of Juvenile Justice web site has statistical reports and cost data, as well as the most recent Status Report on Juvenile Justice Reform (December 1, 2005) and the November 30, 2005 Health and Safety Plan in *Farrell*:

<http://www.cdcr.ca.gov/DivisionsBoards/DJJ/index.html>

<http://www.cya.ca.gov/ReportsResearch/publications.html>

Recent audits and special reports on institutional conditions are available on the web site of the Office of the Inspector General:

<http://www.oig.ca.gov/reports/audits.asp>

The 2004 Corrections Independent Review Panel, chaired by former Governor Deukemejian, echoes many of the conditions concerns expressed in the *Farrell* expert reports, and compares Division of Juvenile Justice conditions with national standards in a number of areas:

<http://cpr.ca.gov/report/indrpt/corr/report/8.htm>

The Little Hoover Commission report on corrections restructuring also has good discussion about problems at Division of Juvenile Justice and its place in the corrections system (February 23, 2005):

<http://www.lhc.ca.gov/lhcdir/179/report179.pdf>