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On the Front Lines: Interview With Judge David B. Mitchell

Juvenile Justice: You have become increasingly recognized as a leading juvenile court judge and as a leader in the area of juvenile justice. Why do you consider this important, and could a nonjudge do the same?

Judge Mitchell: It's important and traditional for the juvenile judiciary to take a leadership responsibility locally and, in some instances, nationally because we're the ones who see the situation in its most difficult form. In other words, the judge is always there and sees what's occurring in the community.

The judge, in most instances, is in the best position to address the needs of the families that come before the court. The judge, in many instances, is in the best position to speak to the issues because he or she is not seeking voter approval for the court's policies. The judge can go before the public and the policymakers and advocate from a position of respect and responsibility for the needs of the system as opposed to setting forth political solutions.

Juvenile Justice: It sounds like a tall order for a juvenile court judge.

Judge Mitchell: True. When you sit in the civil or criminal court, your impact is upon the litigants. That's important; however, you have no real opportunity to effect the changes needed within the

community. You may help streamline the system so that the cases move more smoothly. You may even be able to address some aspects of the problems of the community as they relate to the courts. When you sit in the juvenile court, however, you have the opportunity to speak to the broader social problems of your community, to really participate in making things better overall as opposed to what happens in this one case.

Juvenile Justice: What are the requisites for being a judge?

Judge Mitchell: Maryland has one of the unique statutes on that. It says as a general principle that no person may sit in a juvenile court unless they want to do so. Secondly, the person must have some training, experience, or interest in the field. Finally, the person requires the approval of the chief judge of the State.

Juvenile Justice: There are so many functions in the juvenile court for which the judge is responsible. Many courts delegate some of this work to referees and others. Do you? And is it a good thing?

Judge Mitchell: Unfortunately, we do. Baltimore city historically has been a master-dominated court. We have masters, who in other communities are called referees and in others commissioners. These are nonjudicial authorities. They are competent experts in what they do,

Judge David B. Mitchell is associate judge of the Baltimore (Maryland) City Circuit Court and has long been active in juvenile and family law. The interview was conducted for Juvenile Justice by Irving Slott, former director of OJJDP's Information Dissemination Unit.

but they do not carry the imprimatur and authority of a judge. The decision to operate the court this way is fiscally driven. As such, we have become a court that has only one judge and eight juvenile masters. There's no way for one judge to hear all those cases.

I believe cases should be heard by persons who have the final authority to make decisions, rather than have the judge act as a rubber stamp to what has happened. When it comes to the ultimate decision of what's going to happen to that child, to that family, or to the community, judges should make those decisions just as they decide whether you're going to be evicted from your home, whether you have to pay a parking ticket, or whether you are going to be separated from your family and incarcerated for the offense you have been found guilty of committing. Children and family issues are no less significant, and should be accorded the same level of responsibility.

Juvenile Justice: Let's turn to the subject of waiver, which has received quite a bit of interest lately. When should a juvenile case be waived to the criminal court? How and by whose authority?

Judge Mitchell: Only the judge should make the decision on when a case should be waived out of the juvenile system. Although some jurisdictions allow that decision to be made by the prosecutor, in most jurisdictions it is a judicial determination, and that is the way it should be. The judge is impartial. The prosecutor, no matter how competent, is a partisan in the process and subject to political and community pressures.

We use waiver too much! I'm using waiver broadly to encompass not just the judicial decision on a charge where the juvenile court has the original jurisdiction but to include cases where by statute the juvenile court no longer has original

jurisdiction. For example, in Maryland, if a child is 16 years of age or older and is charged with a handgun offense, the juvenile court doesn't have jurisdiction in that case. It is lodged in the criminal system originally, and the juvenile court can only gain that case if a transfer or waiver occurs from the criminal system to the juvenile system.

We use waiver too much. We have not consistently addressed the needs of the juvenile system, so we blame the kids when they commit offenses that anger us. We send them to the adult system. Because of the intensity of crime in the urban setting, you find waiver being sought in a lot of cases.

Juvenile Justice: The other way juveniles who commit offenses don't go to court is through diversion. How should diversion be effected?

Judge Mitchell: Diversion is a viable tool for the juvenile justice system. Given the appropriate resources, a diversion program keeps the kid from having to come into the court system as a charged child. I don't believe it should be run by the police, and I don't think they do either. It should be run by an executive agency that will take a number of factors into consideration before a diversion decision is made.

Even after a decision has been made to charge the child, a diversion program



Judge David B. Mitchell

should be available through the courts. You need the opportunity to get the attention of the family by bringing them to court and then to be able to divert the youth.

Juvenile Justice: I understand that some problems have occurred where a social work agency responsible for troubled kids does not want offenders around nonoffending youth.

Many of these youthful offenders are only offenders because that's what we call them when we interact with them.

Judge Mitchell: That is a problem, but I harken back to something one of my colleagues said some years ago. Many of these youthful offenders are only offenders because that's what we call them at the moment we interact with them.

Juvenile Justice: We caught them.

Judge Mitchell: Yes, we caught them or someone complained about them. It goes in almost a circle. If your son takes your car, is that misbehavior on his part, or do you decide to call the authorities and make it a delinquency offense? We're not talking about the hardcore situation such as when a child seriously assaults someone. We're talking about petty thefts and acting-out behavior. I agree with you about mixing the populations, but when we examine who these kids are, they're the same kids.

Juvenile Justice: They're troubled kids.

Judge Mitchell: Yeah, they're troubled kids, and troubled kids have the same needs.

Juvenile Justice: The juvenile court originally was entrusted with determining treatment, to rehabilitate and set juveniles on the path of becoming good

members of society, but since then proceedings have become more litigious to insure constitutional rights. Has this helped the juvenile? What's it done to the court?

Judge Mitchell: I think the fact we are a constitutional court is very good. I have not the slightest quarrel with that. Bear in mind, I'm from a generation that has known no difference. I started practicing law in 1970 when *Gault* had already changed the courts. I don't have a problem with lawyers in the court, but I confess to some concern about the kinds of messages kids are getting. I recall as a practicing lawyer representing a kid and being torn with a conflict whether to perform my "legal obligation" to my client and ignore what the consequences might be for this kid, or to do what I think is best for this child.

Sometimes the adversarial system is in conflict with what is in the best interest of the child. The perfect example of that is the case of two young ladies, 10 or 11, very tender years, that I had as respondents before me about 4 years ago. They were very innocent children. Their mother was a day care provider. These young ladies had been fondling the kids who were coming to their mother for care. It was more out of curiosity than anything malicious or criminal.

The authorities discovered it, and the kids were brought before the court. They had a lawyer; the lawyer couldn't explain anything to these little girls. The State would have had difficulty prosecuting these little girls, yet these little girls needed to understand what was happening. The lawyer said to me, "Judge, I don't know what to do. If I play my role as lawyer for these children, they won't get the help they need, unless I can persuade the family to get it on a private basis."

There are critics who say that the court is not constitutional enough, that we do not uniformly provide protection for children's rights. I know that in Maryland and particularly in Baltimore city, every child that comes before the court has an attorney. Every child! In most instances when parents are brought before the court for purposes of abuse, neglect, or dependency issues, they are provided counsel. At least for the adjudication and disposition stages of the case.

Juvenile Justice: Then would you have three attorneys?

Judge Mitchell: Oh yes, three, sometimes four. Mom and Pop might be in conflict, so we'll have a representative for each one of them. We may have intervenors from the grandparents or other relatives, or even interested parties who have representative counsel. We may have six or seven lawyers here for one family.

I don't know if I would go so far as other jurisdictions and have jury trials for these kids. I think that's going too far. I have a concern about legalistic messages being sent to kids. Kids receive messages and filter them differently than adults. I'm concerned that they'll get the impression that they can hire somebody and beat the case.

Juvenile Justice: This has been a problem for prosecutors. Dedicated prosecutors have told me that they feel a responsibility for the juvenile as well as for society. It annoys them when they come against a defense attorney who really doesn't know how to handle such a case.

Judge Mitchell: It should be a specialized bar. The family will go out and hire the same lawyer that they would have hired if a 25-year-old person were charged with a crime. The needs of the person charged are completely different. Prosecutors who

spend time in the juvenile court understand the differences and it frustrates them. It frustrates the court as well. We work very hard to educate the bar on the differences.

Juvenile Justice: But is there a specialized juvenile defense bar?

Judge Mitchell: If there is, it's the public defender's office. The public defender represents 80 percent, maybe 90 percent, of the kids who come before our court in delinquency matters. A specialized bar also exists for my court in dependency cases. They receive training, and they have a great deal of experience in the field. They become acquainted with what exists programmatically. They do not relinquish the rights of their clients, but they are strong advocates for the community.

Juvenile Justice: Let's turn our attention to the public. Citizens are concerned about juvenile involvement in violence, shootings, drugs, gangs. Are these your priorities?

Judge Mitchell: If you're sitting in a criminal court, violence and drugs are your priorities. If you're sitting in the juvenile court, it's the same thing. Kids are gross mirrors of the general society. They are exaggerations of what occurs generally in society.

The family will go out and hire the same lawyer as if a 25-year-old were charged. The needs are completely different.

Drugs and violence have been predominant in the criminal justice system for a couple of decades. When kids start doing the same thing, we blame them. We attack the kids as if they invented vio-

lence. There is no poppy field in Baltimore city. There is no gun factory in Baltimore city. They import drugs from other communities, but they don't bring them across the United States border.

If putting people in penitentiaries for decades was effective, we wouldn't have gotten to this stage.

The political process seizes upon these horrible figures and statistics. They blame the inability of the juvenile system to control the situation. Therefore you constantly have calls for reform of the juvenile system, that you're not tough enough.

Juvenile Justice: Whatever toughness means.

Judge Mitchell: Whatever toughness means. If you get tough with them, you're going to get results. Fallacious. Whatever toughness means, it's still fallacious.

Juvenile Justice: And yet the data show that violence has increased among juveniles, even among younger kids. This is disturbing.

Judge Mitchell: Yes. It has spread down to the subteen group, the adolescents. Sexual offenses against children by children has now spread in alarming rates to very young children. In Baltimore about 60 percent of the kids in the city, particularly the African-American kids, have witnessed a violent event. I'm not talking about Mom and Pop fighting or brothers and sisters fighting. I'm talking about a homicide or shooting. A huge number of people in the community know someone who has been killed or have had a member of their family who has been killed. It has an impact on ev-

erybody, particularly in the African-American community.

Juvenile Justice: It becomes part of normality.

Judge Mitchell: Yes, it does. Saturday I attended a funeral in Washington, D.C. The deceased was the son of a woman who was a high-school classmate of my wife. Her son was on his first date in Georgetown, the first time out with his mother's car. Someone apparently jumped out of the bushes and put a bullet in this boy's head.

It affects every one of us. I've been to a number of funerals. I have kids who have been in this court who have ended up in a violent way. It tears at the fabric of our society. I don't know what we can do about violence. I do know what does not work—incarceration. If putting people in penitentiaries for decades was effective, we wouldn't have gotten to this stage.

Juvenile Justice: That is challenged by the rare kid who simply shoots somebody without any feeling. He has never bonded.

Judge Mitchell: What imprisonment accomplishes, at the juvenile or adult level, is removal of that person from society. It provides protection for potential victims for a period of time. Unfortunately, it is not a deterrent. The other day, I sat with three drug dealers. We candidly discussed their behavior in a community forum. They understand the criminal justice system. They understand the law. They understand the possibilities not just of being caught and going to prison, but of dying. And they don't care. They are not stopping.

Juvenile Justice: Tomorrow isn't important. Next year isn't important.

Judge Mitchell: Immediate self-gratification drives them. The fact that little kids and mothers are being injured, killed in

random shootings, innocent victims of turf wars, they rationalize by saying, "Well, mothers know it's dangerous out there; they shouldn't send their babies outside."

Incarcerating these individuals is not the answer alone. The process must go back further, to fundamental values that must be provided in the home. One of the drug dealers said, "I teach my children values, but I don't have any values of my own."

It must go to the educational, housing, and social opportunities we provide within that compact community that is sometimes called the inner city, sometimes called the ghetto. It is a concentration of a permanent underclass of poverty that can see the other side through the glass but doesn't know how to get there. Until we solve that problem we're going to have this one.

Juvenile Justice: You touched on the problem of juvenile sex offense before. Is that a serious problem?

Judge Mitchell: Yes. I have seen the incidents of criminal sexual behavior by kids against kids increasing at an alarming rate.

Juvenile Justice: OJJDP has just initiated a study to determine, not only how serious a problem it is, but to distinguish the types of offenses and offenders. When our fiscal year 1992 plan was issued, we received more comments on that, all positive, than on the entire rest of the plan.

Judge Mitchell: You touched a nerve I'm not sure you realized that you were about to touch. More and more, younger and younger sexual offenders are coming into the courts. They are pushing the envelope of the psychiatric community which had determined that you cannot classify a person as a pedophile below a certain age.

Juvenile Justice: Status offenses are often the first sign of antisocial behavior. Are they serious problems for the court?

Judge Mitchell: The reformist community quite accurately indicates the court has done a good job of botching this one. We've tried to use contempt authority. We've incarcerated kids. But the problem still exists. Kids do self-destructive things. They are not being brought to the attention of the courts. The reformist community has done an excellent job of convincing everyone that this is just adolescent aberrational behavior that kids will grow out of and become beautiful citizens. But every delinquent who comes before the court and is adjudicated delinquent was a status offender at some point early in his or her life.

Of course, not every status offender will become a delinquent or criminal. However, if you don't address these problems early, you're going to have to address more difficult problems later. In the same way, almost every person that comes before the juvenile and criminal systems has dropped out of school or failed to attend school. As long as you don't attack the attendance problem, you're going to cultivate a class of criminals, a class of individuals who eventually will violate the criminal justice system's laws.

As long as you don't address the school attendance problem, you're going to cultivate a class of criminals.

In most urban communities you are doing well if 50 percent of the kids who enter the ninth grade graduate. Now that's a status offense, truancy. The kids get the message real early on that no one is going to do anything about it.

Juvenile Justice: Early on could be the first grade.

Judge Mitchell: Yes, that's why in Baltimore we are starting a school attendance project in the elementary schools. We're going to bring parents whose kids aren't going to school into the courthouse. We're going to start enforcing compulsory school attendance laws.

Juvenile Justice: OJJDP has undertaken a major research project, a longitudinal cohort study of 4,000 kids. We find that kids who are dropping out later probably dropped out in the very early grades.

Judge Mitchell: When we have fiscal problems in urban communities, one of the first areas to cut in education is attendance monitors. Special education is one of the next areas. Many of the truancy cases are not brought to us until the kid has missed 120 days. That's too late. Thirty percent of the elementary pupils in Baltimore are chronic truants who miss at least 30 days, 6 weeks, from school each year.

Juvenile Justice: We talk about status offenses as a legal term. Status offenders, though, are all kinds of kids. The kid that runs home and hides under the bed is different from the one that runs away from home.

Judge Mitchell: One of the problems that the court has now is that the system does not have legal authority over those kids. It is very frustrating for judges to get calls from a family saying my child is doing this or that and we need services. What do I do? If I call the agency, they will say, "Wait till the child commits a crime." It's very frustrating.

Juvenile Justice: How difficult is it to involve the parents?

Judge Mitchell: The child does not exist in a vacuum. The problems of the child are not just the child's. The child's acting out often is nothing more than a re-

sponse to stimuli from the family. We are very active in that area, but we're not always successful, and that's not an indictment of the juvenile system, it's an indictment of what is happening in our society. We have to involve the family.

Juvenile Justice: How do you involve the family when there is a limit to what government can do in intruding into a family? There ought to be some humility there. How do you say, "You can do better. Your children's future depends on you"?

Judge Mitchell: We've been somewhat coercive, in that we do a lot of lobbying and persuasion in trying to establish a base level of responsibility and authority in the family. We talk with the kids in court to make sure they understand their mother's rules aren't any different than anyone else's. In some instances we have to kind of bludgeon parents to get them motivated.

Juvenile Justice: It's almost a cliché that the status of professional juvenile justice work is low. Is this true? How can it be overcome?

Judge Mitchell: That's a very difficult question. I firmly believe that the job never gives you dignity. You give it whatever dignity or lack thereof it has.

That photograph on the wall is of the seven judges that ran for election as a team in 1986. We went around Baltimore visiting community associations. I was introduced as a juvenile court judge. They didn't ask the criminal court judges about crime. They didn't ask about civil issues or issues of rent or housing. They wanted to talk to that juvenile court judge. The community has a great deal of respect for that position.

Juvenile Justice: Well, is it the law fraternity that doesn't respect juvenile work?

Judge Mitchell: Absolutely. The law fraternity looks upon this as less than significant. You must be less talented, because if you were more talented as a judge or professional lawyer, you'd be dealing with the million-dollar cases.

Several years ago, I substituted for an administrative judge. A major civil case with quite complicated issues came up, an injunction of a restaurant. The lawyers met with me at the end of my juvenile docket, and we discussed the problem and resolved the case. Later, one of the lawyers, in a backhanded compliment, said, "Judge, I didn't think it was possible to resolve this case, because you're sitting in juvenile."

It's the legal fraternity that has given juvenile law a low regard. It's not the social work community. This is their life. It's not the juvenile professionals or the case workers. It's their life. The legal community has made it less than significant.

You're not talking about giving someone a death sentence. You're not talking about giving someone 50 years! You're not talking about that medical malpractice case or bank dissolution. You're talking about kids. It's the same in family law. Divorces, marriage dissolutions, custody issues are given less respect in the legal community and other areas.

Juvenile Justice: How do you change that?

Judge Mitchell: You have to work with the leadership of the bar and the individual members. You have to go to the law schools. We're trying to build the responsibility of law students in this process through clinical education programs. I work with my colleagues on the bench to accept rotation to the juvenile court not as purgatory but as a challenge.

Juvenile law is a specialized area that many people don't know anything about.

What they do not know, they do not understand, and what they do not understand, they do not respect. A judge who had just completed his term in the juvenile court wrote me to say that it had been the most exciting and challenging responsibility in his legal career. "I want to return, I want to stay involved," he advised me.

Juvenile Justice: My last question is: Would you predict the future? We've discussed many different problems affecting juvenile justice. Will things get better?

Judge Mitchell: One of the greatest challenges facing juvenile justice is to provide consistent services both before cases get to the court and afterwards. It is of no value for the court to work miracles in rehabilitation if there are no opportunities for the child in the community and if the child is simply going to return to the squalor from which he or she came.

For one of the first times in our Nation's history, we have a permanent underclass of poor black, white, and Hispanic kids. These kids see no opportunities. They reside in intense, comprehensive poverty. They are served by inadequate housing. They are provided with educational systems that do not function. Until we deal

I work with my colleagues on the bench to accept rotation to the juvenile court not as purgatory but as a challenge.

with the environment in which they live, whatever we do in the courts is irrelevant.

Meanwhile, fiscal constraints, if left to continue, will decimate our efforts to reform the juvenile justice system. Services will be concentrated in institutions and few resources will remain in the commu-

nity. All the studies show that institutions don't work. Most juvenile institutions are simply little prisons, networking places where inmates make contacts for future criminal activities.

Most juvenile institutions are simply little prisons where inmates make contacts for future criminal activities.

Innovation in community services and treatment is no longer being fostered. In fact, it's being suppressed. No one wants to pay for it. These are some of the biggest challenges facing the justice system. People expect the criminal justice system to be the savior of the community. We are not. We do not have a policy to deal with drugs. Unless a solution is found to the crisis of alcohol, drug, and substance abuse, we're going to continue to have problems.

A higher rate of kids in rural environments use cigarettes, smokeless tobacco, beer, wine, and liquor and binge drinking than kids in urban environments. Unless we recognize that substance abuse affects all of America, not just our cities, and start attacking the broad scope of the problem, the juvenile court, the criminal court, and all the courts will be irrelevant. All we shall be is conductors on the railroad to prison.

Juvenile Justice: Are there any signs of improvement?

Judge Mitchell: Not on the front end. The political community is dealing with this rhetorically. They're wringing their hands and they're pointing fingers. On the back end, there's no investment in the future. We are investing in buildings. We're building prisons, and they will not solve the problem. More and more, bigger and bigger.

Juvenile Justice: Judge Mitchell, I thank you very much.

Judge Mitchell: I thank you.