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Dean's Column: Unchain the Children

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"If the presumption of innocence is to mean anything for juveniles brought before the court in Clark County, we must unchain them."

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BY GUEST WRITER PROF. MARY BERKHEISER

UNCHAIN THE CHILDREN

In 1967, the United States Supreme Court held in *In re Gault* that due process is not for adults alone, but applies to juveniles too.[1] Announcing its profound conclusion, the court noted the history and purpose of the juvenile court: "The child was to be 'treated' and rehabilitated, and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive."[2] In Nevada, as in every other state, the juvenile justice system continues to treat children differently from adults and to serve the goals of treatment and rehabilitation that are central to its existence. When the Nevada Legislature established the state's juvenile courts, it declared that the laws "must be liberally construed to the end that: (a) Each child who is subject to the jurisdiction of the juvenile court must receive such care, guidance and control ... as will be conducive to the child's welfare."[3] Thus, the welfare of the child was to be the heart of the due process that animates juvenile court proceedings.

Fast-forward to 2012 and the Clark County Juvenile Court. In any courtroom, a parade of juveniles of all ages and sizes, male and female, come before the hearing masters on any given day. Although each of these children or adolescents brings his or her unique set of issues to the court, one thing marks them all as one and the same: Every one of them, regardless of age – some as young as 8 years old – alleged offense or juvenile history, is in shackles: a belly chain with handcuffs locked at the waist and another set of chains around their ankles. These children drag their feet as they enter the courtroom so they will not trip over the ankle chains and fall to the floor. Meanwhile, in each courtroom stands a marshal who is armed for any eventuality, wearing a gun, a Taser, a can of mace and a number of other implements of control. On one day in particular, when our client is going to trial, we ask the hearing master to permit him to be unchained during the trial so that he can take notes and not feel that he's been condemned already. The hearing master denies our request. Our client has a difficult time believing that the presumption of innocence still cloaks him when all he can feel are chains.

Nevada is not alone in its practice of indiscriminately shackling juveniles.[4] Two-thirds of the states shackle all juveniles without any demonstration that the need to do so (such as danger or risk of flight) exists.[5] However, in recent years a number of states have moved to prohibit the blanket use of shackling through case law, court rule or legislation.

California was one of the first states to act through its appellate court. In *In re Tiffany*, the court found blanket juvenile shackling policies unconstitutional because they violated "the constitutional presumption of innocence, the right to present and participate in the defense and the interest in maintaining human dignity."[6] The court ruled that the decision to shackle must be made on a case-by-case basis and cannot be justified by "the inadequacy of courtroom facilities or the lack of available security personnel to monitor them."[7]

Florida reached the same result as California, though via a different route: the rule-making power of the state supreme court. In 2009, the Florida Supreme Court issued a new delinquency rule banning shackling absent a finding that the use of restraints was necessary because of a substantial risk of harm to the child or others or a substantial risk of flight.[8] The Florida Supreme Court made clear the reason for the new rule: "We find the indiscriminate shackling of children in Florida courtrooms ... repugnant, degrading, humiliating, and contrary to the stated purposes of the juvenile justice system and to the principles of therapeutic justice."[9]

Other states have prohibited indiscriminate shackling through legislation. North Carolina provides one example: "At any hearing authorized or required by this subchapter, the judge may subject a juvenile to physical restraint in the courtroom *only when the judge finds* the restraint to be reasonably necessary to maintain order, prevent the juvenile's escape or provide for the safety of the courtroom."[10] Like other statutes, rules of court and appellate decisions, this legislation requires an individualized determination by the court of the necessity for physical restraints. Thus, juveniles in these jurisdictions enter the courtroom free of the psychological and physical weight of the chains that

still bind the children of Clark County Juvenile Court.

No county in the state of Nevada other than Clark has a blanket shackling policy. It is not a creature of the legislature or of the juvenile court; indeed, the source of the policy – when and why it came into being – has proven difficult to pin down. What is not difficult to grasp, however, is the harm that the continued use of shackling in Clark County causes children every day they appear in court. Shackling treats children like wild animals, not like people that the juvenile justice system is duty bound to protect. Moreover, it denies children the due process protections that *Gault* and its progeny established decades ago. If the presumption of innocence is to mean anything for juveniles brought before the court in Clark County, we must unchain them. Then, and only then, can the juvenile justice system begin to fulfill its mission. ■

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1 387 U.S. 1, 13 (1967).
2 *Id.* at 15-16.
3 N.R.S. § 62A.360.
4 Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 J.L. & Policy 213, 232 (2012). *See also* Brian D. Gallagher & John C. Lore III, *Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone's Interest*, 12 U.C. Davis J. Juv. L. & Policy 453 (2008).
5 *Id.*
6 59 Cal. Rptr. 3d 363, 375 (2007). *See also In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007) (ruling that failure to remove juvenile's handcuffs at an evidentiary hearing and deferring to the sheriff's office's policies on courtroom security without first independently deciding the need for restraints violated juvenile's constitutional rights).
7 *Id.*
8 Fla. R. Juv. P. 8.100(b) (2009).
9 Fla. Sup. Ct., SC 09-41 (Dec. 17, 2009).
10 N.C. Gen. Stat. § 7B.2402.1 (2007) (emphasis added).