

Prologue

AS A TEENAGER growing up in Manhattan's Little Italy in the 1950s, I saw how easily a careless choice could draw one into a situation that carried "the appearance of a culpability not necessarily justified by the true facts."¹ Perceptions of such a childhood, to those who have not had a similar experience, may be shaped by films such as *Mean Streets* or *A Bronx Tale*. To be sure, as children we encountered many crossroads, pinpoints in time where a step to the right could lead to accomplishment and honor, a step to the left trouble and tragedy. But I also remember Mulberry Street as a place where America's promise could become a reality, a place where with hard work, diligence, and the support of family a child could fully realize his or her potential.

In the 1950s, Little Italy hadn't changed very much from the early 1900s when Jacob Riis described the area as more like a suburb of Naples than a part of America. My parents and I lived across the street from the "Tombs," as the Manhattan House of Detention was known. The Tombs was connected to and a part of the Manhattan Criminal Court building. We lived in a three-room apartment on the top floor of a five-story tenement at the corner of Baxter

and White streets. My father did the work of a longshoreman at the Brooklyn Army Terminal, my mother was a seamstress in a factory on lower Broadway.

How I went from playing stickball against the walls of the Criminal Court building to presiding over cases as a judge in that very same building is a story more aptly reserved for a memoir than an academic argument against trying children as adults. Suffice it to say that my parents prepared me as best they could for those inevitable pinpoints in time when as a teenager I would be confronted with choices. Although they did not have a formal education, my parents saw the value of education as the only way to change the circumstances of life. As soon as I was old enough, they enrolled me in kindergarten at Transfiguration, a Maryknoll missionary school located on Mott Street which was then the heart of Chinatown, a few blocks from where we lived. I spent nine years with this group of Catholic missionaries. Despite their religious commitment, there was something about them—a worldliness in the best sense. I didn't realize it at the time, but most of the priests and nuns who taught us were only in their early 20s. They came to teach at the school to perfect their Chinese for service in China.

There were about 300 students at Transfiguration when I attended, about 30 in each class. The children and grandchildren of Italian immigrants were by far the majority of students in the 1940s and 1950s, although the number of Chinese students was growing. The school had been established in the early 1800s in the center of the city's poorest slums. It drew children from the old neighborhoods of the Five Points and Mulberry Bend, educating successive waves of Irish, Italian, and Chinese immigrants who sent there children their to learn English, religion and American principles. After Transfiguration, I attended Power Memorial Academy. I was now in the hands, literally, of the Irish Christian Brothers. Like the Maryknollers, they were strict disciplinarians; corporeal punishment was not unheard of nor condemned at the time, at least for the first two years of my attendance. Thereafter, the Brothers adopted a less physical but no less tormenting form of discipline—"detention"—an hour after school for every detention slip received during the day. An hour

of silence seated, arms folded with your fellow miscreant classmates in the school lunchroom. Academically, the school provided a sound classical education: four years of Latin, literature, history, French, or Spanish. The Brothers insisted we attend a Catholic college. I enrolled in St. John's University. It was near to my home, just over the Brooklyn Bridge in downtown Brooklyn; it had a relatively small student body and it was the only coeducational Catholic college in the city. The law school was in the very same building as the undergraduate school. After receiving a liberal arts degree in social science, law school seemed like a natural and convenient transition.

I like to think that I had the benefit of two educations: one formal and traditional, the other taught by less conventionally distinguished educators but no less astute observers of the human condition—the Mulberry Street Boys. I learned firsthand about the concept of accomplice liability, circumstantial evidence, and the neighborhood's repulsion for informers. I have been able to put both educations to good use in my professional life. Both have helped me understand and cope with the challenges presented to me: first as an assistant district attorney in the Office of Frank Hogan in New York County from 1969 through 1973; and then as a criminal defense lawyer and as a judge since 1980 presiding in New York's criminal courts.

As a young prosecutor, I was frequently assigned to a special part of the Criminal Court—"Part 3."² This Part heard cases involving youths between the ages of 16 and 21. My experience in the Part helped shape and focus my interest in the way the law treated these offenders and ultimately helped me to develop the approach I have taken in the Youth Part. Working for "Mr. Hogan," as we respectfully and affectionately referred to him, was probably the most momentous event in my professional life. Frank Hogan was a legendary public servant renowned for his professionalism, independence and fearless integrity. His policy toward young offenders was especially significant to me. That policy was reflective of the conventional wisdom of the time; that courts and prosecutors had a special obligation to make sure that young people were treated fairly and effectively, recognizing that young offenders were malleable and could be positively influenced. The District Attorney's office worked closely with

a special program called the Youth Counsel Bureau (YCB). The Youth Counsel Bureau had been established in 1941 by then District Attorney Thomas E. Dewey and expanded by Mr. Hogan, his successor. YCB worked closely with the judges presiding over the New York County Youth Part in identifying and counseling troubled youth when they first entered the system. The Bureau functioned as an independent and unofficial agency operating out of the District Attorney's office. It furnished, through referral to various private agencies, vocational guidance, psychiatric services, medical attention, and overall supervision. Its core principle was that proper guidance and assistance at a critical period in a youth's life might save him from a life of crime. As prosecutors, we were encouraged to send suitable youths to YCB. If they succeeded in the regimen provided by the Bureau, we were authorized to withdraw the charges against these youthful offenders.

In 1973 I left the District Attorney's office and specialized in the practice of criminal law. I represented many young offenders. One of the youngest was a 12-year-old boy accused of murder. Only after several meetings was I able to gain his trust and confidence. I learned that he was taking responsibility for the crime for an older boy who faced more severe punishment if charged because of his age. When he was arrested he did not deny the accusation—he was afraid of this boy and didn't want to be labeled a "rat." I was able to persuade him that there was a way to defend him without directly implicating the older boy but he had to trust me. What I had in mind was to have him take a lie detector test wherein he could freely express his innocence without specifically naming the actual perpetrator. The juvenile court prosecutor was receptive to my proposal. She apparently had doubts about the credibility of her only witness (who was actually the perpetrator of the crime). I suggested that she could select the polygraph expert who was to administer the test. She chose Detective Nat Laurendi of the New York County District Attorney's Squad, who had pioneered the use of the lie detector in criminal investigations for the DA's office. I knew Detective Laurendi and had worked with him when I was a DA. He was a skilled interrogator and I had confidence in his judgment. It took some time to explain the polygraph concept to my young client but he came to understand that

the most important thing was to tell the truth. I reassured him that he would not be asked to name the person who committed the crime. He passed and the charges against him were eventually dismissed.

At first it appeared I had little in common with my youthful client, who was African-American and living in Harlem, but the similarities of growing up in neighborhoods such as Little Italy and Harlem proved greater than the dissimilarities; respect, honor, survival, all matters of great import to the street kids of both of those neighborhoods. Of course, there are significant differences between the neighborhood of my youth and the inner-city neighborhoods of today. Drugs, guns, and the breakdown of family cohesiveness render inner-city life for many children an experience that often leads to fear, futility, despair, and a sense of alienation and isolation.

In 1978 Ed Koch was elected Mayor of the City of New York. One of the centerpieces of his mayoralty was the establishment of an independent judicial screening committee whose responsibility was to search for and evaluate candidates for the Criminal Court. In May 1980 I was selected as one of his appointments to that court.

In 1982 and 1983 I was assigned to preside over one of the two remaining Youth Parts maintained in the New York City Criminal Courts. Youth Parts were gradually phased out and replaced by all-purpose Parts. By 1978 the only remaining Youth Parts were in Queens County. That assignment reinforced my belief in its value. The Queens Youth Part served as a focal point for myriad counseling programs available to young people. Many programs had court workers who attended sessions of the court each day. The mandate of the court, as I understood and applied it, required a judge to assume functions not customarily considered within the traditional realm of judicial responsibility. This included, for example, monitoring the progress of youths referred to counseling programs during the pendency of their cases and acquiring familiarity with the nature of these programs and their services. The proper functioning of the Part also depended upon the cooperation and support of the District Attorney. The Queens District Attorney's office, through the "Second Chance" program initiated by then District Attorney John J. Santucci, diverted many teenage defendants from the traditional process

of the courts. In many respects, the Second Chance program was similar in function to that of the Youth Council Bureau. Defendants considered eligible for the Second Chance program had their cases adjourned for a lengthy period with the consent of the court. After satisfactorily completing counseling or community service their cases were adjourned in contemplation of dismissal or were dismissed.

In 1984, I was assigned to the Criminal Term of the Kings County Supreme Court. Shortly thereafter, I presided over my first “juvenile offender” murder case. A 13-year-old boy was accused of brutally murdering an elderly neighbor by stabbing her repeatedly with a screwdriver and then setting her body on fire. The boy was convicted and sentenced pursuant to the Juvenile Offender Law to an indeterminate term of nine years to life. The case highlighted the special problems of trying children as young as 13 in adult courts—the impact of their immaturity on the admissibility of incriminating statements, on their interaction with counsel and ultimately on their understanding of the consequences of their behavior.

In 1990 my concern for the issues presented to judges dealing with juvenile offender cases, led me to synthesize my thoughts in an article that I wrote for the New York Law Journal. It was entitled “Youth Parts: A Constructive Response to the Challenge of Youth Crime.” The article traced the history of New York’s special treatment of young offenders, describing the operation of the special Youth Parts that had existed in the adult courts, arguing that reestablishment of Youth Parts was even more crucial than ever, as the jurisdiction of the adult criminal courts was expanded in 1978 to include children as young as 13. I suggested that there were several advantages that could be realized in reestablishing such Parts: uniform treatment of teenage defendants; the concentration and integration of court and private agencies dealing with youths; and a greater diversion of teenage offenders to private agencies for supervision and counseling, thereby supplementing an already overworked and overburdened Probation Department.

The article set in motion a series of events that culminated in the creation of Manhattan’s Youth Part in 1992. I have presided over that Part since its inception.

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The Youth Part has become a catalyst for many projects involving at-risk children. The jurisprudential basis for the part has proven to be more than merely pragmatic. The court has served as a model for the mobilization and coordination of treatment and social services for children prosecuted in adult courts. Through the combined efforts of prosecutors, defense counsel, program representatives, and court personnel, children who might otherwise be incarcerated are instead under the supervision of the court and alternative-to-incarceration programs, continuing in school, living in their communities, earning diplomas, working, receiving counseling, and being held accountable for their actions in an attentive setting.

This special court has attracted the attention of social scientists, child advocates, criminologists, scholars, authors, the national and international press, criminal justice officials, and private foundations. The constant stream of Youth Part observers and the interest they having demonstrated in both the children and the process by which we adjudicate their cases is a powerful source of inspiration and encouragement. I hope this work will constitute a record of what we have tried to do and lead to reform of laws that are not responsive to the special issues created by prosecuting children as adults.