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OP-ED: Why You Won't See the Sheep in My Court

By: **JUDGE STEVEN TESKE** | April 22, 2015



A key factor in effective policymaking in juvenile justice is not grounded in what we see, but in what we don't see.

After introducing the Juvenile Detention Alternatives Initiative (JDAI) (<http://www.aecf.org/work/juvenile-justice/jdai/>) model to my county, a judicial colleague came to me frustrated and in a depressed tone said, "Steve, it seems that about every kid I see in court these days has done something really bad."

After a pause and a deep sigh of exasperation, she asked, "Are we doing something wrong?"

I smiled and said, "No, you should only see the kids who scare you – not those that make you mad."

I reminded her of the JDAI core strategies, with emphasis on objective assessment tools to help us separate the sheep and wolves so the two shall never meet. We discussed how the wolves go to court, but the sheep are shepherded to alternative programs in our restorative justice division.

We talked about "what works" research dating to the 1980s and targeting high-risk offenders for supervision by diverting the sheep, who are (it so happens) the majority of cases filed. We ended the talk with the recipe for improving community safety – divert the sheep, increase supervision and treatment of the wolves.

Let's not forget the flipside of this recipe – that overtreatment of sheep turns them into wolves.

"So, what makes it work is what we don't see," she exclaimed.

It was a light bulb moment for her, and one that gave her relief.

That was nine years ago. She has since moved on and so the education of newbie judges in the nuts and bolts of best practices starts again.

Some start the bench already enlightened by the empirical research and jump into the deep end wearing the life jacket of best practices while others seem to get it, but still cling to "get tough" practices, regardless if the kid is a wolf or sheep.

There is something about our gut thinking that makes it difficult to process empirical data.

I have surmised from my encounters with the few that the fear of jumping into the deep end emanates from a lack of trust in the life jacket of best practices – it's either defective or doesn't suit their political well-being.

These few could easily be written off as a nuisance but for the harmful impact of their opinionated practices.

If committing malpractice on our vulnerable kids is not enough, some of these few promote harsh detention practices by trying to humiliate the users of detention alternatives. They shout “soft on crime” rhetoric with a clanging of cymbals effect that gives them the appearance of greater numbers.

Although the cymbals effect falls on deaf ears for the educated many, it can be effective in swaying the uneducated public, including those uninformed lawmakers.

It is frustrating when the opinionated few outweigh the educated many due to their inflammatory rhetoric.

The rub for some is wanting perfection in a field where we can only get the best if we do the best – there is no perfection.

The next rub is understanding that if we work best practices as they should be worked, what we see is not always what it seems. And, what we don't see is always better than what we do see.

Before I continue, I must clarify the phrase “best practices.” I use it to include any program or practice that adheres to the characteristics of effective programming even if they have not been declared an evidence-based program. Otherwise, we risk cutting off our nose to spite our face by foreclosing on the development of evidence-based programs of the future.

What works tomorrow is dependent on the promising work of today. We must keep in mind that today's evidence-based programs once were termed “promising.”

To that end, most of our best practices (restorative justice, JDAI, school-justice protocols and more) from the viewpoint of the bench are never seen because they are practiced on the many kids who make us mad; reserving the scarier few for the courtroom.

For example, a recent three-year recidivism study of youth diverted from our court showed that 70 percent never returned, which begs the question: Was a complaint necessary in the first place?

It gets more provocative the deeper we mine the data historically and in relation to other decision points in the system.

After having experienced a 62 percent decline in arrests, we continued to divert 68 percent of the cases referred to court.

Although our 86 percent decline in detention rates and a 76 percent decline in commitments to state custody made us appear soft on crime, our juvenile arrests continued to decline because we employed best practices at every decision point.

We have concluded that the recidivist reduction equation includes increasing the diversion of kids who make us mad. That will decrease probation caseloads and in turn increase the surveillance and intensive treatment of the kids who scare us.

What we DON'T see in the courtroom is the key to improving public safety.

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