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THE ROLE OF LAW AND SOCIAL SCIENCE IN THE JUVENILE COURT*

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In the following article, Professor Yablonsky describes the current form and operation of the juvenile courts, and the broad impact—potential and actual—of the "juvenile court philosophy." Among the points critically discussed are the juvenile court judge's inadequate social science education and training for his powerful position as "judge, jury, defense attorney, social diagnostician, and on occasion therapist," as well as the prevalent abuses of due process and the legal rights of juveniles.

—EDITOR.

A central issue in contemporary juvenile court administration is the development of the correct balance of law and welfare practice for most effectively implementing "individualized" justice for children in court. The extreme positions of treating the juvenile under law range from reverting to strict criminal court procedure,¹ to treatment by a (non-legal) citizen board of child care.² The differential measure of jurisprudence involved in these positions, and the role of the law and lawyers in administering juvenile justice, are considerably different at one point or the other. Although there exists such extreme opinion at each end of the legal-social continuum, the current general consensus is that juvenile justice should be a mixture of adequate legal disposition and advanced social welfare practice. The proper blend is still an open-

end question, although the current emphasis seems to be upon treatment with a minimal judicial process.

Dean Roscoe Pound has expressed the necessity for maintaining the legal characteristics of the juvenile court, despite this increasing emphasis upon child welfare administration in the juvenile court:

"There are . . . special advantages in a juvenile court as a judicial tribunal rather than a purely administrative agency, such as a board of children's guardians, which was at one time much advocated as a substitute . . . experience is making us appreciate the importance of the ethics of judicial adjudication, of hearing both sides, fully, of acting on evidence of logical probative force, and of not combining the function of accuser, prosecutor, advocate of the complaint, and judge; of a record from which it can be seen what has been done and how and on what bases; and of possibility of review. . . . The juvenile court as a means of dealing with juvenile delinquency is better adapted than a purely administrative agency to keep the balance between justice and security."³

* This is a revised version of a paper delivered at The Harvard Law School Conference on Criminal Justice, Summer, 1961.

¹ This extreme position (seldom taken seriously) is sporadically called for under the panic conditions of a wave of juvenile delinquency or an outbreak of youth violence. During these periods many legislators, the mass press, and politicians make pleas for reverting to more stringent criminal justice for youths. See TEETERS & REINEMAN, *THE CHALLENGE OF DELINQUENCY* 333 (1950).

² See, e.g., Sellin, *Sweden's Substitute for the Juvenile Court*, 261 *ANNALS* 137 (1949).

³ Pound, *The Juvenile Court and the Law*. 1944 *N.P.P.A. YEARBOOK* 14-15.

Despite considerable resistance on the part of many lawyers (resistance related to: low income potential, "inferior" status of juvenile courts and judgeships, handling juvenile client defenses almost as a hobby, a belief that the administration of juvenile justice demands a low level of legal knowledge, etc.) there is a serious demand for highly qualified lawyers to enter the juvenile court arena of legal theory and practice. The need for increased involvement of capable lawyers in juvenile court justice implies several significant issues and problems connected to the central one of legal-social mixture.

THE SOCIAL SCIENCE ROLE

The social sciences tend to enter the juvenile court in a subtle manner as a theoretical guide for the juvenile court judge and his staff in developing policy and practice. The two social science disciplines which contribute most heavily to juvenile court operation, sociology and psychology, are introduced (if at all) through the judge, the social work diagnostician, and the psychological clinician, whose practice emanates from the most current social science theory and research foundation.

Ideally, usable social science theories and findings (e.g., related to delinquency causation, theories of social and personal pathology, disorganization, delinquency prediction, theories of personality, therapeutic practice, etc.) based upon hard research find their way into the operation of the juvenile court machinery, enabling the judge (who would, e.g., have a modern concept of delinquency causation) and his auxiliary services (probation officers, social workers, etc.) to implement recently developed therapeutic and diagnostic approaches. Thus social science, in a subtle fashion, is relegated to the position of a "third man," on hand to guide the juvenile court administration in carrying out the most effective current treatment program, based upon the court's fundamental legal system.

CONTEMPORARY FORM AND OPERATION OF THE JUVENILE COURT

The operation of "Juvenile Court" takes different forms depending on such variables as the judge's role behavior and the form of court operative. Professor Killian summarizes the various organizational forms of the juvenile court as follows: (1) Independent courts with jurisdiction over children; (2) Family courts with jurisdiction

over specified offenses and relations and over specified types of family conflict, including jurisdiction over children; (3) Juvenile and domestic relations courts; (4) Juvenile courts as sections or parts of courts with more general jurisdiction.⁴

An apparent problem of those juvenile courts which have mixed jurisdiction is that their processes and aims are combined with objectives other than "individualized justice" for the child. A question often raised when the judge moves from another jurisdiction (e.g., criminal court) to the juvenile court is, does he or can he make the necessary transition to the differential role behavior expected and required?

One method for measuring the degree to which the juvenile court fulfills its objectives (and is in fact a juvenile court) is to examine its functional expectations or standards. In a report prepared by Professor John Ellingston, a noted authority on juvenile courts, 13 factors were described as necessary in order for a juvenile court to discharge its responsibility:⁵

"(1) A judge chosen for his sensitivity to human rights and his mature understanding of and interest in children; (2) A sufficient number of emotionally mature and professionally trained probation workers; (3) Facilities for medical, psychological, and psychiatric study of children with problems; (4) A well-equipped detention home and shelter care facilities; (5) Exclusive original jurisdiction over children up to 18; (6) Jurisdiction over adults in children's cases; (7) Private court hearings; (8) Informal non-criminal procedure with full protection of the civil liberties of children and parents; (9) A variety of treatment facilities in the community and state adequate to meet the varied needs of children with problems; (10) An efficient record and statistical system; (11) Adequate clerical help; (12) Effective cooperation with other agencies serving children; (13) Community support through interpretation to the public of the court's task and needs."⁶

A review of juvenile court research reveals that

⁴ Killian, *The Juvenile Court as an Institution*, 261 ANNALS 89, 90-91 (1949).

⁵ This list encompasses and enlarges upon a similar list recommended in a manual prepared by the U.S. Children's Bureau, U.S. DEPT OF HEALTH, EDUCATION, AND WELFARE, STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN (1954).

⁶ Ellingston, Hennepin County Juvenile Court and Probation Services to Children (mimeo, Community Welfare Council, Minneapolis, Minnesota, 1956).

very few juvenile courts adequately fulfill these standards. A study in the 1920's of 2,034 responding "juvenile courts" by the United States Children's Bureau revealed that only a small number (about 16%) fulfilled standards on separate hearings, probation services, and special court and probation records. There is no evidence that the current situation has significantly changed. Professors Bloch and Flynn in a recent (1956) delinquency textbook conclude that "there is actually no such thing as a juvenile court system in the United States today; in fact, there are hundreds, even thousands of systems."⁷ A specialized juvenile court, with a judge giving full time to the juvenile court, exists in very few jurisdictions. The juvenile court is generally a branch or part of another court, which frequently has objectives and purposes altogether different from those of the juvenile court.

Despite the usual failure of the "juvenile court" to fulfill expected standards, the movement has "caught on" and is a vital part of all state, county, and local jurisdictions in the United States. Tappan states that legislation providing either for separate juvenile or children's courts, or for specialized jurisdiction and procedure in juvenile cases in courts of more general jurisdiction, now exists in all of the United States and Puerto Rico.⁸

It may be concluded that although there exists some type of juvenile court in most jurisdictions in the United States, their form and the degree to which they fulfill expected standards are greatly varied and highly limited. This is often a direct function of the way in which the juvenile court judge defines and implements his role.

THE JUVENILE COURT JUDGE

The Judge's Role: Personal and Legal

The central administrator of all juvenile court justice is the judge. It is from his powerful position that all legal and social welfare functions radiate. In most instances he assumes the functions of judge, jury, defense attorney, social diagnostician, and on occasion therapist. Even though he relies on his social service staff for diagnostic reports, he is the final arbiter of what action should be taken vis-a-vis the child. Thus the judge's temperament,

⁷ BLOCH & FLYNN, *DELINQUENCY, THE JUVENILE OFFENDER TODAY* 315 (1956).

⁸ TAPPAN, *COMPARATIVE SURVEY ON JUVENILE DELINQUENCY IN NORTH AMERICA* 25 (U.N. Pub., 1952).

training, and orientation are critical factors in the implementation of juvenile court justice.

In a Children's Bureau publication on standards for the juvenile court the following criteria are indicated as necessary for a juvenile court judge: In addition to having legal experience and being admitted to the bar, the manual specifies that he should be:

"(1) Deeply concerned about the rights of people; (2) Keenly interested in the problems of children and families; (3) Sufficiently aware of the findings and processes of modern psychology, psychiatry and social work that he can give due weight to the findings of these sciences and professions; (4) Able to evaluate evidence and situations objectively, uninfluenced by his own personal concepts of child care; (5) Eager to learn; (6) A good administrator, able to delegate administrative responsibility; (7) Able to conduct hearings in a kindly manner and to talk to children and adults sympathetically and on their level of understanding without loss of the essential dignity of the court."⁹

A central characteristic of these specifications is their apparent vagueness. The standards go on to specify that it is not necessary for the judge to have training or experience in social welfare or social sciences. They further state that the judge need not be "an expert in the sciences of human behavior and in the art of adjusting human relations."¹⁰

Among the basic and controversial issues requiring greater definition for deciding who is most qualified to be a juvenile court judge, those which relate to personality characteristics have a high priority. Since there are limited legal restraints on the judge's actions, his personality is a significant element which regulates his courtroom demeanor and behavior.

The Judge's Personality

In very few roles in our society is the personality of the role-occupant so crucial and important as that of the juvenile court judge. The prosecutor, the defense attorney, the criminal and upper court judge are sharply restricted by law, and by the critical eye of other lawyers with some power. In the juvenile court, under law, (with some minor

⁹ U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, *STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN* 83 (1954).

¹⁰ *Ibid.*

restraints) the judge is the supreme commander of the child's destiny.

If the judge has emotional difficulties (and he may) his judicial decision may be governed not by rational assessment but by emotional outburst. If he permits his personal or emotional reaction to the religion, race, or type of offense characteristic of the offender to govern, he will be sharply biased and distort justice. In the juvenile court he is freer to act out his personal problems than in other legal settings. The juvenile court tends to allow for great extremes in judicial practice.

At one extreme we have a ranting and raving New York judge dealing with adolescents who is given to comments like: "get this vicious animal in human form out of my sight. This animal is not fit to associate with human beings." This comment about a youthful offender before him was made by this judge in the presence of a group of children visiting his court to observe the judicial process.¹¹ In this same tough vein a juvenile court judge reveals his "approach" to youth:

"What you need is for me to have you in a two-by-four room. What I would do to you! I'd blacken your eyes and give you some real American spirit and do for you what your parents should have done. We spend billions in this country for schools and what have we educated here—a mongrel and a moron! I have six kiddies myself and my oldest girl is ten. She knows who God is and the laws of the country. Down at my house we have a cat-of-nine-tails. I show it, and that is all. Get out of this courtroom. You are not fit to be here."¹²

At another extreme we have recommendations for what some might consider an overly solicitous, friendly judge. Judge Beckham recommends another approach to the young offender in court:

"After the probation officer has finished presenting his side of the case, the judge with a friendly smile and sympathetic voice should then ask the juvenile to tell his side of the story. If the juvenile is reluctant to talk, or is slow in responding, the judge, in order to establish friendly relations, should make a few typical inquiries about other things rather than the case before the court, such as what hobbies the boy is interested in, what he does at home, "does he have a dog," and similar questions. If the

¹¹ The incident is reported here as quoted in a New York Times article.

¹² Reported in CANTOR, CRIME, CRIMINALS, AND CRIMINAL JUSTICE 209 (1932).

juvenile continues to be hesitant or defiant, the judge should simply and patiently explain that it is a welfare proceeding and not a criminal court, and that the purpose is to help and not punish.

"At the beginning, it is always helpful for the judge to find some opportunity to say something nice or complimentary about the juvenile, even commenting on a fine physical appearance, if nothing else."¹³

The approach called for by Judge Beckham is, in his words, "a court of human relations rather than a court of law."

These two extremes, which reflect the personality of individual judges, are too prevalent in the juvenile court. Moreover, the fact that they exist with limited legal check or control on the judge emphasizes the need for developing more effective methods for selecting and training juvenile court judges.

The Selection and Training of Juvenile Court Judges

It is clear that the personality and philosophy of the judge are crucial determinants of the type of justice carried out in the juvenile court. It is perhaps equally clear that in the hierarchy of the judicial stratification system the juvenile court judge appointment is generally considered a lower level political position. According to Vedder: "Because he is 'low man on the totem pole' in the judicial hierarchy the office of the juvenile court judge does not, as a rule, attract top-level personnel. And the short tenure of office in many jurisdictions often discourages qualified men and women from seeking this job."¹⁴

Selection. The selection of competent judges is therefore complicated by the various issues indicated, plus the primary factor that the juvenile court judgeship is not an especially attractive position for most lawyers.

Among the variety of methods for the selection of juvenile court judges are: selection from a list of elected judges; appointment by the governor, city or county government, mayor, a state commission, or a juvenile court committee; or mixed systems.¹⁵ The approach currently in vogue is the

¹³ Beckham, *Helpful Practices in Juvenile Court Hearings*, 13 Fed. Prob. 10, 11 (June, 1949).

¹⁴ VEDDER, THE JUVENILE OFFENDER 232 (1954).

¹⁵ For a fuller discussion see Consulich, *Juvenile Court Laws of the United States*, 1939 N.P.P.A. YEAR-BOOK 304-28.

so-called Missouri plan. In 1941 Missouri adopted this plan, which has found favorable acceptance and endorsement by the American Bar Association. Under the "Missouri Plan" the juvenile court judge is appointed by the governor from three names submitted to him by a commission. The appointee is essentially on probation for 12 months, then may run for election for a full term, his success dependent upon popular vote. This plan with some modification (perhaps a mayor receiving the list on the city level) is considered by experts to hold the most promise for adequate selection.

Training. The issue of proper judge selection is closely bound up with the type of training which may or may not prepare the lawyer for a juvenile court judgeship. There exists the possibility that a group of stimulating courses for the student in law school might develop lawyers trained and interested in pursuing this challenging work. These courses might include such areas as the sociology of law, crime causation, juvenile delinquency, as well as perhaps a special course on "The Juvenile Court" per se. There is certainly sufficient material in these areas to justify such courses. The current limits of legal-social training for juvenile court judges is described by Judge Alexander: "I know of no law school that gives any courses in handling juvenile delinquents or in juvenile court philosophy; and chances are a hundred to one he never learned anything of consequence about the juvenile court in his law practice. The painful fact is that with exceedingly few exceptions every lawyer who ascends the juvenile court bench must go in green as grass."¹⁶

The judge's training certainly determines his conception of the juvenile delinquency problem and his treatment prescription. The judge should have some adequate conception of delinquency causation and rehabilitative prescription in order to function effectively. If he believes that a quick censure or having a youth write a letter on some patriotic theme or "Why I Won't Do It Again" has any impact on a crystallized delinquent, his concept of delinquency causation and what might be done about it is sadly limited. Yet these are the judicial prescriptions too prevalently carried out in the juvenile court.

The disturbing element of such instant and emotional judgements is that they reflect a minimal awareness of the social-psychological dynam-

ics which cause delinquency. The quick sermon ignores a consensually validated social science finding that personality (be it delinquent or not) is a resultant of a long socialization process which is affected in a very limited way by the judge's brief emotional indignation, or even heartfelt sermon.

A juvenile court probation officer, Charles Boswell, with long experience in working with juveniles in the community suggests to the juvenile court judge:

"[D]on't rely on a mere scolding or 'bawling out' to accomplish much with an immature, misdirected, and unhappy youngster who is brought before you in court. Any judge who depends on lecturing to accomplish the results for which juvenile courts were established is defeated before he starts. It is unreasonable to expect to reform parents or change youngsters by a sermon."¹⁷

As indicated, the main fact of this problem is that judges who administer justice in this way reflect a limited conception of any knowledge of social science principles. With all of their limitations the social sciences have developed a body of theory and research about delinquency which should be part of the juvenile court judge's professional training.

A model program for effectively training juvenile court judges is currently being developed in Minnesota under the auspices of a U. S. National Institute of Health grant to Professor John Ellingston of the University of Minnesota Law School. This program for training juvenile court judges integrates relevant legal and social science courses. It includes such areas as: (1) Procedures and rules of evidence in juvenile courts; (2) Factors contributing to delinquency (causation); (3) Growth, change, and behavior of the child; (4) Organization and administration of the juvenile court; (5) Communication (speaking and public relations); (6) Treatment of delinquent behavior (principles and agencies).¹⁸

This program represents the type of training which should be minimal for a judge presiding in the juvenile court; yet most juvenile court judges receive practically no educational experience of this type. Moreover, it would seem logical to reverse the educational order. Training for a ju-

¹⁷ Boswell, *If I Were a Judge*, 15 Fed. Prob. 26, 28 (March, 1951).

¹⁸ Program, Juvenile Court Judges Institute (mimeo, University of Minnesota, Summer, 1961).

¹⁶ Alexander, *Of Juvenile Court Justice and Judges*, 1947 N.P.P.A. YEARBOOK 187.

venile court profession should come earlier in the lawyer's educational process. The student in law school should receive courses in such areas as the "Juvenile Court as an Institution," "Sociological Criminology," "The Juvenile Court and Child Welfare," "The Socialized Court Movement." He would be on firmer ground with reference to career selection and training since he would be more aware of what he would be doing on the job. In addition, if there existed concrete legal training programs, legislation related to methods of juvenile court judge selection might be more clearly attuned to the law school training programs.

If law schools began to focus legal and sociological training in this specialization, stimulating capable young men toward careers of this type, the channels for in-service training and judiciary opportunity might develop and expand. Such careers services, more common in foreign judiciaries, might be encouraged in the United States. Special professorships, attached to the law school, for example in law and sociology, might serve as an initial spearhead to involve and direct capable young law students interested in pursuing training in this significant area of criminal jurisprudence.

LEGAL CRITIQUES OF THE JUVENILE COURT

The greater involvement of capable lawyers in the juvenile court might help untangle and modify some of the questionable legal directions and practices currently operative. Recent theorists and researchers into juvenile court structure and function have been sharply critical of tendencies toward a breakdown of adequate legal safeguards for children appearing in the juvenile court. Professor Paul Tappan and other prominent leaders in the assessment of legal policy have called for a critical re-examination of current juvenile court process, focussing upon some challenging legal problems which demand solution.

Despite the lofty intentions of implementing equity proceedings and the *parens patriae* philosophy in the juvenile court there is evidence and argument that in practice under these conceptions "due process" and adequate protection of the child's legal rights have been abused. A statement by Professor Tappan in 1949 succinctly describes the issue which remains today a relevant problem in juvenile court administration:

"The presumption is commonly adopted that since the state has determined to protect and save its wards, it will do no injury to them

through its diverse officials, so that these children need no due process protections against injury. Several exposures to court; a jail remand of days, weeks, or even months; and a long period in a correctional school with young thieves, muggers, and murderers—these can do no conceivable harm if the state's purpose be beneficent and the procedure be 'chancery'! Children are adjudicated in this way every day without visible manifestations of due process. They are incarcerated. They become adult criminals, too, in thankless disregard of the state's good intentions as *parens patriae*."¹⁹

Socio-legal authorities such as Professor Tappan are often incorrectly accused of desiring a regression to older criminal justice for juveniles with a punitive emphasis. This is of course not the case. Maximum protection through due process is not necessarily inconsistent or in conflict with the effective social treatment of the child through the juvenile court. Arguments for the reassessment and improvement of legal practice in the juvenile court should be viewed as an effort to strengthen the court's operation.

Many common abrogations of a child's rights prevalent in the juvenile court today are not necessarily legal abuse per se but relate to informal court practices which seem to emerge and persist without plan. Following are some notable examples of this problem, some of which the writer has personally noted in his work related to the juvenile court.

Incarceration for excessively long periods of time during remand for diagnosis

Since the child has no right to bail he may be held in custody at the court's discretion until sufficient diagnostic data are available for the judge to implement disposition of the case. Two summary cases from the writer's own experience while working in a juvenile detention facility attached to the court reveal typical examples of this abuse.

Case I. Two juveniles were brought into detention for stealing automobile hub-caps. The following day a closer examination of the records revealed that one youth was over the legal age for delinquency status in the state. He was tried in a criminal court. The case was quickly disposed of, and the youth released for lack of evidence. His delinquent partner was shuffled around through

¹⁹ TAPPAN, JUVENILE DELINQUENCY 205 (1949).

diagnostic facilities for six months and then finally sent to a state reformatory.

Case II. The writer inquired of a probation officer about the status of a youth who had been in detention for about four months awaiting a juvenile court hearing. He was informed by the probation officer:

"This kid needs a lesson. We don't have enough on him to send him away—so I'm seeing to it that he sits it out for a few months by holding up submitting my P.O. report to the judge."

The youth involved presented a serious problem in detention, partly related to his uncertain status, and he was becoming increasingly more difficult.

In another case Diana reports a blatant violation of legal rights in the incarceration of a youth subjected to a reformatory term for "protective placement":

"This may be illustrated by a type of disposition which is called a 'protective placement.' When applied to cases of delinquency, it usually turns out to be a new name for an old practice, commitment to a correctional institution. For example, the writer was once assigned to a case involving homosexuality. A boy of limited intelligence, whose I.Q. was about 80, had been forced to submit to a college student. Afterwards the boy ran home to his father who called the police and had the adult charged with a criminal offense. The police also took the boy to the juvenile detention home. On the police paper no charges were stated, only the circumstances leading up to detention. (The boy had had one previous appearance for truancy, after which his attendance had improved.) At the hearing the boy was sent to a reformatory 'for his own protection.'"²⁰

Informal denial of right to appeal and counsel

The juvenile can appeal a case, yet it is seldom done, essentially because of legal ignorance. The defense attorney in the juvenile court is a rarity. The child may be informally penalized by a paternalistic judge if he enters the court with a lawyer. In one jurisdiction a court clerk informed the writer that the judge viewed the child with a lawyer as a "wise guy." This judge would find the presence of another lawyer threatening and would

²⁰ Diana, *The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Procedures*, 47 J. CRIM. L., C. & P.S. 561, 566 (1957).

rationalize him away as being someone unaware of the juvenile court's treatment philosophy.²¹

Admission of hearsay evidence

Hearsay evidence, inadmissible in other courts, is often the foundation for collecting information about the child. More often than not the child is not even present to confront an accuser or a person who may be maligning him with evidence which will be used by the judge. Much of the "social history" of the child is based upon data collected about him from (possibly hostile) neighbors, or others who may have a negative attitude toward the child "on trial."

Diana states that the informality characteristic of juvenile court hearings does not mean that rules of evidence are to be disregarded. However, in practice, hearsay evidence is admitted and recorded, and the statements of complainants and witnesses are admitted without their presence being required in court. It is usually taken as sufficient that their statements appear in the record of the investigation made by the probation officer before a case is heard in court.²²

Limited Reported Opinions and Decisions Available as Precedents

Seldom are juvenile court proceedings and dispositions reported as reference points for future judicial decisions. A logical and persuasive plea for writing of opinions in the juvenile court is made by Judge Dudley Sicher. He recommends the writing and selective publishing of opinions by juvenile and domestic relations courts judges as indispensable to building up a body of case law.

²¹ A worthwhile contribution to the solution of this problem is found in an excellent report, *The Attorney and the Juvenile Court*, L.A. Bar Bull., Aug., 1955, p. 1. The position of the report is specified as follows:

"Most attorneys infrequently are called upon for assistance in Juvenile Court matters. As a result, when a member of the Bar is called upon to appear before the Juvenile Court, his unfamiliarity with its functions and procedures may lead to embarrassment, and certainly will prevent his making his full contribution in connection with the disposition of the case. The Committee on Juvenile Court has learned of a number of instances in which attorneys actually have declined to appear in Juvenile Court cases because of unfamiliarity with the proceedings of that Court. . . . It is the Committee's conviction that informed participation by more attorneys in Juvenile Court proceedings would be highly desirable and that many attorneys who never have appeared in a Juvenile Court case would welcome an opportunity to do so."

²² Diana, *supra* note 20, at 565.

This he believes would raise the stature of these courts, which are now, with few exceptions, "inferior tribunals of limited jurisdiction and unrecognized importance."²³

Involuntary Subjection to Treatment Procedures and the Invasion of Privacy

A primary rationale for abrogating due process is to enable treatment procedures to be expedited and implemented for the benefit of the child. A former probation officer, Diana, takes what many would consider a most provocative position on this issue:

"With the sanction of the state a juvenile court may intervene to train children according to vague and conflicting standards, and to help them 'adjust' when in fact those who are hired by the state for this enterprise are often far from being adjusted themselves and seldom in agreement, even about the meaning of adjustment. There must be limitations upon the kind of power which leaves the matter of public interference with individual lives to the discretion of well meaning judges and social workers. . . . It should be undeniable that parents and children have a perfect right to lead unadjusted lives, if they please, without the authoritarian influence of court or any other agency, so long as their behavior does not interfere with the rights of others as specifically defined by law."²⁴

To conclude, the foregoing critique should not be construed as a total attack on what has been referred to as "the modern concept of sociological jurisprudence."²⁵ Critical legal authorities have not called for an all-out dismantling of the juvenile court philosophy and procedure, but for a tightening-up of due process to insure greater legal protection for the child. The proper balance of law and authoritative child welfare practice is not an easy potion to administer, for it demands the rare combination of an extremely capable legal administrator with an adequate behavioral science orientation.

THE IMPACT OF JUVENILE COURT PHILOSOPHY

The effect of the juvenile court movement on all criminal justice can not be over-estimated. The

²³ Sicher, *Writing and Publishing Opinions in Children's and Family Courts*, 33 FOCUS 6, 9 (1954).

²⁴ Diana, *supra* note 20, at 564.

²⁵ For the use of this term in this way see TEETERS & REINEMAN, *op. cit. supra* note 1, at 277-343.

juvenile court in its brief span of some sixty years has touched the administration of criminal justice in the United States at many significant reference points.

Reaching the Young Offender

The juvenile court judge is confronted with crime in its embryonic form. Consequently, such courts, which "adjudicated" about 483,000 juvenile cases in 1959,²⁶ were in a prime position to help control the overall crime problem through effective disposition of the young offender. (It is estimated that about one million youths will appear in the juvenile courts in 1965).²⁷

Court Welfare Services

The juvenile court judge is in a position to affect the kind and quality of the many welfare and other services which are the foundation of juvenile court procedure and radiate from his court. (Many social services which originated in the juvenile court have become standard procedure in courts of other jurisdiction.) The juvenile court judge's power in controlling such services becomes even more significant when one considers that in some jurisdictions *the juvenile court may have a monopoly on, or complete control of, all of the child welfare resources available in the community*. Thus in order for a child to receive "treatment" in certain communities he may necessarily have to be processed through the juvenile court administration.²⁸

The many social services which have radiated from the juvenile court include some or all of the following:

1. *Probation*. The type of probation officer employed, the size of his case load, the type of case investigation carried out, and the proportion of children referred for probation attention (rather than incarceration) may be appreciably affected by the juvenile court judge.

2. *Juvenile Court Judicial Procedure*. The physical and emotional tone of the juvenile courtroom, the admission of evidence, the degree of confidentiality of the hearing, the writing of briefs

²⁶ CHILDREN IN COURT (U.S. Children's Bureau Statistics, 1959).

²⁷ *Ibid.*

²⁸ This factor may also grossly exaggerate the courts' "delinquency" statistics. See *Current Notes, Juvenile Court Operations in the U. S.*, 46 J. CRIM. L. C. & P.S. 372, 374 (1955).

and opinions²⁹ are all direct functions of the judge's discretion. As indicated, since he is not bound by clear and direct legal specification—or indirect forces (the presence of another lawyer) he can judge according to his own predilection of how justice should be administered.

3. *Detention Facilities.* The physical type of detention facilities available (building), staffing, functions and form of detention, length of time a youth is held in custody for pre-trial investigation, all come within the purview of the judge.³⁰

4. *Correctional Facilities.* Although the juvenile court judge is not directly responsible, he does have an important voice in the type of long-term custodial facilities available to him for referral. These can be "doing-time prisons"³¹ for youths with the emphasis on custody, or facilities where there is some hope for a truly correctional operation to take hold. The issue of the Youth Authority movement and all of the practices which flow therefrom is also to a degree dependent on the juvenile court judge's approval or disapproval.

5. *Clinical and Diagnostic Services.* The juvenile court judge has a direct effect on the type and amount of clinical, diagnostic staff, and services available to his court. Whether a court has a highly developed diagnostic center for referral or minimal services is often a reflection of the judge's concern. Whether or not a massive amount of case material related to psychological and social diagnosis is collected and used is also a function of his discretion.

6. *Public Image and Policy on Delinquency.* Another significant impact of the juvenile court judge is his effect upon the general public's conception of the juvenile delinquent and the crime problem. The juvenile court judge is often called upon by the community as "the expert" on crime and juvenile delinquency causation and what is to be done about it. His pronouncements affect not only the general, but often the fiscal policies of local government in the correctional field.

Effecting the legal-social welfare blend

As has been indicated a central challenge for the lawyer in the juvenile court is to determine the amount and form of law which enters the juvenile courtroom. To what extent should the child's

legal rights be abrogated for his rehabilitative benefit? What is the correct blend of legal procedure and child welfare? These are questions still requiring rational answers from lawyers qualified to deal with the issues.

This issue may be refocused by examining the divergent positions taken by two judicial authorities. On the one hand a plea for nonlegal emphasis and court form is made by Judge Alexander. He makes the following analogy between the juvenile court and a hospital:

"If a person's bodily functions deviate so far from the normal that he cannot be properly treated in his home he is ordered to a hospital. If a child's conduct deviates so far from the normal that it cannot be successfully corrected in the home, he is ordered to juvenile court.

"The hospital gets the patient after he is sick. The court gets the child after he is delinquent. The hospital's function is to cure the patient and prevent him from becoming a chronic invalid; the court's, to correct the child and prevent him from becoming a chronic criminal.

"The hospital's primary concern is the individual patient; it serves society, first by curing the patient and restoring him to society as an able-bodied citizen; second, through research, developing techniques, disseminating knowledge, preventive medicine, and by quarantining the occasional dangerous patient. The court's primary concern is the individual child; it serves society, first by reclaiming the future citizen; second, through research, developing techniques, disseminating knowledge, leadership in preventing delinquency and crime, and by quarantining the occasional dangerous child."³²

In contrast to this position, Dean Roscoe Pound calls for a reemphasis of "legal checks":

"The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts and courts of domestic relations. . . . It is well known that too often the placing of a child in a home or even in an institution is done casually or perfunctorily, or even arbitrarily. . . . Even with the most superior personnel, these tribunals call for legal checks."³³

The jury is still out on this controversial issue. However, in the process of reaching a rational conclusion the perceptions of the child centrally

²⁹ Sicher, *supra* note 23, at 6-11.

³⁰ Norman, *The Detention Home*, 261 ANNALS 158 (1959).

³¹ Yablonsky, *Correction and the "Doing-Time" Society*, 24 Fed. Prob. 55 (March, 1960).

³² Alexander, *supra* note 16, at 189.

³³ POUND, *Foreword to YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY* at xv (1952).

involved in the controversy should not be ignored. What should be recognized here is that what may mean a "hospital" form of diagnosis, case study, and treatment prescription by the court for the child's benefit may simply mean "doing time" to the child caught in the welfare net.

Impacts on Other Courts

As has been indicated, the juvenile court has had a significant impact beyond its own circumscribed boundaries. The so-called "socialized court" movement obtained impetus and direction from the original juvenile court prescription. Such specialized "sociological courts" as family, "home-term," narcotics, women's courts, adolescent courts (16—21 age group), and "youth authorities" were built upon the foundation of the juvenile court movement and philosophy. Thus, the juvenile court judge has been in a strategic position and has helped to influence the overall administration of criminal justice.

Law and Social Science in the Juvenile Court

Both the social sciences and law can benefit from a more dynamic interaction in the juvenile court. Because of his focal position the lawyer in the juvenile court carries a great dual responsibility. Not only is he obligated to develop and define a legal line on juvenile court administration, he is cast in the role of a "super social scientist." He is in fact a lawyer-sociologist-psychologist who, whether or not he knows anything about the contributions of these fields to delinquency and criminal justice, makes daily decisions based upon and operationalizing various conceptions emanating from these fields. Ideally the best distilled knowledge obtainable from these disciplines should be readily available to him for carrying out his work.

In reverse the social sciences have benefited greatly from the analysis of social data gathered in the juvenile courts. A considerable amount of the research contributions of the Gluecks to the fund of knowledge on crime and delinquency was based upon data gathered in the juvenile court.³⁴ The juvenile and other "socialized courts" can contribute heavily to social science research by a greater systemization of case material collection, producing protocols of court trials, opinion writing, and making much generally raw case material

³⁴ See, e.g., SHELDON & ELEANOR T. GLUECK, *ONE THOUSAND JUVENILE DELINQUENTS* (1934) and *UNRAVELING JUVENILE DELINQUENCY* (1950).

more readily available for organized social science analysis. The juvenile court, if properly organized, can contribute to the social sciences by providing a vital research laboratory.

The Socialized Court Movement and the Social Structure

In some measure the administration of law in the socialized court movement—if it continues relatively unchecked—can significantly affect not only justice but the overall social structure as well. Because of this, both social scientists and lawyers specializing in jurisprudence have a great obligation.

Loosely defined legal procedure tends grossly to increase the power of the state over the individual. (This is certainly evidenced in the juvenile court and has spread to the adult socialized courts.) Korn and McCorkle make this point in a discussion of the shift from "accusatory" or "adversary" judicial procedure to "inquisitorial" methods. They argue that in the "adversary" form of judicial process (more standard criminal justice), the role of the state is severely limited. Here, they point out:

"The government merely supplies an impartial referee who decides the issue, awards the victorious 'adversary,' and determines the penalty or forfeit of the loser. This form of proceeding is in sharp contrast to that in which the State supplied not only a referee but a government prosecutor, who supplants the private accuser. The process in which the State initiates and presses the accusation is called 'inquisitorial' (from the Latin word meaning 'seek into'), and places enormously greater power in the hands of the political authorities.

"The political and social consequences flowing from the use of one or the other of these basic methods are far-reaching. Historically, a shift from accusatory to inquisitorial proceedings has almost invariably paralleled—has, in fact, been one of the principal instruments of—a shift toward more autocratic systems of government."³⁵

It may be an exaggeration to view the tone of the juvenile court (and derivative socialized court movement) as "inquisitorial"; yet it contains many aspects of this form of judicial procedure. It tends to hold secret hearings, there is greater

³⁵ KORN & MCCORKLE, *CRIMINOLOGY AND PENOLOGY* 382 (1959).

emphasis on the individual's personal characteristics than his offense, the accused has a limited legal defense, and hearsay evidence is not only admitted in court but vigorously sought after. Although this mode of justice is currently restricted to the socialized courts, if it becomes more widespread in judicial practice it could have a broad impact on the overall social system.

CONCLUSION—THE UNFULFILLED PROMISE AS
AN OPPORTUNITY

Orman W. Ketcham, Judge of the Juvenile Court of Washington, D. C., in a recent article closely examines the "promise versus the performance" of the juvenile court. He makes the point that the *parens patriae* doctrine implies a mutual contract between the state and the child. He writes that a relationship "which may be described as a mutual compact has been created between the state and the delinquent or criminally inclined child. It can be regarded as a bargain or agreement whereby the state, through the juvenile court, is permitted to intervene, under broadly defined conditions of delinquency or violations of law, in the lives of families who have given up certain of their constitutional safeguards."³⁶

³⁶ KETCHAM, THE UNFULFILLED PROMISE OF THE JUVENILE COURT 100 (1961).

Judge Ketcham does not deal with the issue of the "compact" as being one-sided and involuntary on the part of the child. However, he points out that in return for giving up "certain of their constitutional safeguards," the state has made a set of promises. He contends that, when the state fails to keep its legislative promises, "the circumvention of constitutional protection and the assertion of state control in the name of *parens patriae* are neither legally nor morally justified." Judge Ketcham's conclusion is most appropriate to this discussion. "Unless the state is required to make good its promises, American juveniles will have exchanged the precious heritage of individual freedom under law for the tyranny of state intervention whenever the state considers that its interests are affected."³⁷

The juvenile court, the fountainhead of the socialized court movement, has had its subtle yet pervasive impact on overall criminal justice and consequently on the social structure. The future practice and direction of this judicial movement should be based upon the most rational combination of legal-social science theory and research available. This condition provides both a challenge and an opportunity for lawyers and social scientists to work toward clarifying and strengthening a potential but yet unrealized ideal judicial system.

³⁷ *Id.* at 109.