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Now to Make the Criminal Courts More Like the Juvenile Courts

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NOW TO MAKE THE CRIMINAL COURTS MORE LIKE THE JUVENILE COURTS

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During the past decade, the American juvenile justice system has been criticized,[1] scrutinized,[2] and proceduralized.[3] As a result, juvenile courts have adopted many of the best procedural features of the criminal courts.[4] In doing so, however, the juvenile justice system has gone even further, effectuating a number of positive procedures that are both presently lacking and strongly needed in the criminal justice system. After briefly describing what the juvenile courts have learned from the adult criminal courts, this article will examine five major dimensions of practice unique to the juvenile court in an attempt to show why such dimensions should be incorporated into the adult criminal justice system.

PROCEDURAL EDUCATION OF THE JUVENILE COURTS

Early in this century, the founding of the juvenile court was heralded as "a revolution in the attitude of the state toward its

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1. *See* Evans, *Constitutional Rights of Juveniles, or Parens Patriae v. Due Process,* 4 WILLAMETTE L.J. 152 (1966); Polew, *Juvenile Court: Effective Justice or Benevolent Despotism?,* 54 A.B.A.J. 31 (1967); *Constitutional Law—Due Process—Juvenile Court Hearings,* 18 CASE W. RES. L. REV. 1362 (1967); Note, *A Boy's Day at the Zoo—The Kangeroo Court: In Re Dennis M.,* 3 LOYOLA L. REV. 431 (Los Angeles 1970).

2. Dembitz, *Ferment and Experiment in New York: Juvenile Cases in the New Family Court,* 48 CORNELL L.Q. 499 (1963); Paulsen, *Juvenile Court and the Whole of the Law,* 11 WAYNE L. REV. 597 (1965); *Symposium: The Juvenile Court in Ferment,* 52 WOMEN LAW J. 146 (1966). *See also* Glen, *Juvenile Court Reform: Procedural Process and Substantive Stasis,* 1970 WIS. L. REV. 431 (1970).

3. *In re* Winship, 397 U.S. 358 (1970); *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

4. *See, e.g.,* N.Y. FAMILY CT. ACTS § 741 (McKinney 1963), giving rights to counsel and silence; D.C.C.E. §§ 16-2304 *as amended,* Pub. L. No. 91-358, Tit. I, § 121(a) (July 29, 1970), counsel; D.C.E.E. §§ 16-2303 (West Supp. 1972), notice; CAL. WELF. & INST'NS CODE § 627 (West 1966), notice and telephone calls; CAL. WELF. & INST'NS CODE § 627.5 (West Supp. 1972), self-incrimination, counsel, silence.

offending children."[5] Later, however, Roscoe Pound tempered this optimism and cautioned that: "The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts . . . 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."[6]

Calls for such legal checks and numerous other criticisms have been hurled at the juvenile system in the last decade.[7] The primary issue has been to what degree the legal and constitutional standards erected in the criminal justice system should apply to its juvenile counterpart. In 1966, the United States Supreme Court gave its first official attention to the juvenile court system.[8] Since then, case by case, the Court has revised the juvenile court's informal social agency style of operation and limited that court's enormous grant of judicial power. In *Kent*,[9] *Gault*,[10] and more recently, *Winship*,[11] the Court has effectuated a monumental realignment of the system, insisting that juvenile court procedures meet recognized standards of fundamental fairness. To date, the Supreme Court has rejected only one adult parallel. In *McKeiver v. Pennsylvania*,[12] the Court ruled that the Constitution does not provide the absolute right to a jury trial on a petition[13] alleging juvenile delinquency. Thus, appellate courts have repeatedly affirmed the necessity of procedural rights for juveniles.

As a result of this increased appellate action, a basic legal format and a certain procedural regularity have evolved within the juvenile court. While the degree of uniform implementation of procedural protection remains somewhat spotty, lawyers ap-

5. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909).

6. Pound, *Foreword* to P. YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY at xv (2d ed. 1952).

7. *See, e.g., In re* Gault, 387 U.S. 1, (1967); JOINT COMMISSION ON CORRECTIONAL MANPOWER AND TRAINING, A TIME TO ACT (1969) [hereinafter cited as A TIME TO ACT]; THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967) [hereinafter cited as CHALLENGE]; Wheeler, Cottrell and Romasco, *Juvenile Delinquency—Its Prevention and Control*, in PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME (1967) [hereinafter cited as T.F.R. JUVENILE DELINQUENCY].

8. Kent v. United States, 383 U.S. 541 (1966).

9. *Id.*

10. *In re* Gault, 387 U.S. 1 (1967).

11. *In re* Winship, 397 U.S. 358 (1970).

12. 403 U.S. 528 (1971).

13. A petition in juvenile court is analogous to a complaint in criminal courts. *See* CAL. WELF. & INST'NS CODE § 656 (West 1966); COLO. REV. STAT. § 22-3-2 (1967).

pearing in the juvenile court can now rely on more or less standardized procedures.

In contrast, critics of the juvenile justice system have discounted procedural niceties for juveniles, scorned the courts' "permissiveness," held little concern for the negative effect of a juvenile record, urged lengthier incarceration, and suggested that criminal courts deal with the older, more serious, and repetitive youthful offender.[14] There is extensive agreement that the juvenile justice system has not dealt effectively with spiraling caseloads, with the more hardened and chronic youthful offenders who pour in and out of the system, or even with those youngsters whose offenses are no more serious than being a repetitive runaway.[15] Recidivism rates are high,[16] and few contend that the promise of the system has been fulfilled.

Despite its many critics, the juvenile justice system has progressed from Pound's Star Chamber to a sense of procedural regularity. This has been brought about because the basically humanistic juvenile courts have adopted many of the standard methods of the criminal courts.

HUMANIZATION OF THE CRIMINAL COURTS

While it is true that the juvenile justice system has undoubtedly benefitted from adoption of many of these procedures, it is also a fact that the juvenile justice system has a number of historic strengths. It may well be that the criminal system could benefit from some of these.

One line of argument as to why the criminal system should adopt some of the more effective methods of the juvenile court system is set forth in the President's Crime Commission Report.

> Although its shortcomings are many and its results too often disappointing, the juvenile justice system in many cities is operated by people who are better educated and more highly skilled, can call on more and better facilities and services, and has more ancillary agencies to which to refer its clientele than its adult counterpart.[17]

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14. See references to J. Edgar Hoover's statements in Carrington, *Speaking For the Police,* 61 J. CRIM. L.C. & P.S. 244 (1970); Geis, *Publication of the Names of Juvenile Felons,* 23 Mont. L. Rev. 151 (1962). *See also* Pub. L. No. 91-358 (July 29, 1970), which excluded from District of Columbia juvenile jurisdiction certain specified offenses allegedly committed by sixteen and seventeen year old youths.

15. *See* Gough, *The Beyond Control Child and the Right to Treatment: An Exercise in the Synthesis of Paradox,* 16 U. ST. LOUIS L.J. 182 (1971).

16. *See* CHALLENGE, *supra* note 7, at 55, 78.

17. *Id.*

In advocating that the criminal justice system should humanize itself, accept greater responsibility for its clients, and rechart its goals so that the best interests of the defendant as well as the protection of the community receive paramount focus, one should not be unmindful that many adults who are processed through the criminal courts commit and are prone to commit serious crimes and present serious threats to the welfare of other individuals. It is also evident that the present state of the "helping services" leaves much to be desired. Certain types of offenders, although fewer than at present, will continue to need to be confined in maximum security facilities, since we have not yet learned how to help these individuals conform to the rules of a free society. The crime problem in America is a grave one, and few contend that the American criminal justice system—i.e., police, courts, probation offices, correctional institutions, parole agencies—is working all that well.[18]

One must keep in mind the realities of the crime picture. In many instances, law violators simply do not get caught. If a violator is arrested, the present system favors restricted freedom rather than incarceration. In 1969, approximately 50 percent of some 9,000,000 "serious crimes" were reported; only one out of four reported offenses resulted in apprehension; of those apprehended, only about half were convicted; and of these, approximately one in four was incarcerated.[19] Even these limited numbers overburden our courts. The courts are vital—though limited—instruments that have enormous difficulty in functioning when asked to accomplish too much and deal with too many.[20]

One must further recognize that while there is a potential for substantial advances in the prevention of crime and in more effective treatment of offenders, certain problems may have no complete solution. Nevertheless, a problem which cannot be solved may be ameliorated. The President's Crime Commission declaration on juvenile delinquency is equally applicable to adult crime:

> What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a

18. *See* A TIME TO ACT, *supra* note 7, at 62-64, setting forth a public opinion survey showing that only 5 percent of those interviewed considered the degree of success of the correctional system in rehabilitating offenders had been very high. More than 6 out of 10 adults were of the opinion that our system of law enforcement did not really discourage people from committting crimes. Further, only 7 percent believed that the main emphasis in prisons should be punishment.

19. NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE, TO ESTABLISH JUSTICE, TO INSURE DOMESTIC TRANQUILITY xviii (1969).

20. *See* Clark, *Introduction, Judicial Reform: A Symposium*, 23 U. FLA. L. Rev. 217 (1971); Ogilive, *The Crisis in Our Courts*, 58 ILL. BAR. J. 94 (1969).

pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist.[21]

THE UNIQUENESS OF THE JUVENILE COURT

What, then, can juvenile justice contribute to the improvement of the criminal justice system?

Five major dimensions of the juvenile system should be absorbed into the criminal justice system.[22]

The five major dimensions proposed are:

1. The declaration of purpose clause of juvenile court acts.
2. Programs provided at juvenile detention facilities.
3. The juvenile intake system.
4. The dispositional hearing process.
5. Latitude in dispositional alternatives.

DECLARATION OF PURPOSE CLAUSE

Beginning in 1899 with enactment of the Act establishing the Cook County (Illinois) Juvenile Court,[23] legislators set forth high-minded objectives for the consideration of juvenile cases. The analogous Colorado section, as readopted in 1967, is typical. It states:

22-1-2 (1) (a) The general assembly hereby declares that the purposes of this chapter are:

(b) To secure for each child, subject to these provisions, such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;

(c) To preserve and strengthen family ties whenever possible, including improvement of home environment;

(d) To remove a child from the custody of his parents only when his welfare and safety or protection of the public would otherwise be endangered; and

(e) To secure for any child removed from the custody of his parents the necessary care, guidance, and discipline to assist him in becoming a responsible and productive member of society.[24]

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21. *See* CHALLENGE, *supra* note 7, at 80.

22. Other, less significant, juvenile justice innovations will not be considered here because of space limitations.

23. Act of April 21, 1899, [1899] Ill. Laws 131. For an historical perspective see Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970).

24. COLO. REV. STAT. 22-1-2(1) (1963), *as amended.*

While the juvenile justice system sometimes fails to adhere to its own precepts, this declaration of purpose sets forth a standard that aids juvenile authorities in determining whether or not a child should be detained in a juvenile hall; whether or not a formal petition should be filed against the child; and whether or not a child found to be an offender should be retained in community residence or committed to a state delinquency facility. Clearly, release to parents is favored, and probation rather than institutionalization is preferred. Where institutionalization is found necessary, such institutions must meet high standards of performance.

It is time that a similar declaration of purpose be enacted—with appropriate modifications—for processing adults charged with crimes.

Historically, criminal sentencing priority has favored imprisonment. Probation sentences for adults found guilty of felonies were usually limited to first offenders committing lesser felonies and to middle-class defendants. Probation, if granted, was a matter of grace because the sentencing judge could have ordered incarceration.[25] Jail conditions were virtually intolerable. Prisoner riots against inhumane conditions were frequent, and prison administration procedures were often arbitrary and unfair. Reformers have long been calling for greater use of adult probation, halfway houses, work-release programs, and shorter sentences.[26] The public is now swelling the chorus of concern.

> Five years ago, the President's Crime Commission stated: Institutions tend to isolate offenders from society, both physically and psychologically, cutting them off from schools, jobs, families, and other supportive influences, and increasing the probability that the label of "criminal" will be indelibly impressed upon them. The goal of reintegration is likely to be furthered much more readily by working with offenders in the community than by incarceration.[27]

More recently, the American Bar Association has promulgated Standards which, if adhered to, would bring criminal court sentencing practices much more in line with the approach of juvenile court judges. These Standards include:

> 1.2 Desirability of probation.
> Probation is a desirable disposition in appropriate cases because:

25. *See, e.g.*, People v. Hainline, 219 Cal. 532, 28 P.2d 16 (1933); People v. Payne, 106 Cal. App. 609, 289 P. 909 (1930).

26. For shorter sentence recommendations see NATIONAL COUNCIL ON CRIME AND DELINQUENCY, MODEL SENTENCING ACT, (1963); AMERICAN LAW INSTITUTE, MODEL PENAL CODE (1962).

27. *See* CHALLENGE, *supra* note 7, at 165.

(i) it maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of law;

(ii) it affirmatively promotes the rehabiliation of the offender by continuing normal community contacts;

(iii) it avoids the negative and frequently stultifying effects of confinement which often severely and unnecessarily complicate the reintegration of the offender into the community;

(iv) it greatly reduces the financial costs to the public treasury of an effective correctional system;

(v) it minimizes the impact of the conviction upon innocent dependants of the offender.[28]

The Standards also set forth:

1.3 Criteria for granting probation.

(a) Probation should be the sentence unless the sentencing court finds that:

(i) confinement is necessary to protect the public from further criminal activity by the offender; or

(ii) the offender is in need of the correctional treatment which can most effectively be provided if he is confined; or

(iii) it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.[29]

Redesign of the criminal justice system so that its purposes are both humanistic and more likely to achieve rehabilitative success is the goal. Success will not follow, however, unless several changes in implementing the standards are made. Probation manpower should be increased, the probation officer's function should be redefined, and services and programs now available in the community to facilitate more effective offender adjustment should be utilized and expanded.

DETENTION AND EDUCATIONAL PROGRAMS

Most juvenile court acts direct that children not be detained in jails, or if detained, that they be kept separate from adult offenders.[30] Despite the estimate that approximately 100,000 children are detained in jail annually,[31] the statutes underscore the

28. AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO PROBATION 10 (Appr. Draft 1970).

29. *Id.*

30. *See, e.g.*, CAL. WELF. & INST'NS CODE § 507 (West 1966); COLO. REV. STAT. § 22-5-6 (1963).

31. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION

belief that youthful offenders are contaminated by adult offenders and that the American jail has more destructive than constructive features.

Juveniles awaiting hearing, if detained, are detained in special juvenile facilities commonly known as juvenile halls.[32] While a number of juvenile halls are administered by probation departments or by governmental agencies independent of the juvenile court, the author believes that a substantial number of juvenile halls are directly within the administration of the juvenile court.

In theory, juvenile halls have formal educational programs for their residents.[33] Many employ counseling programs. Medical—and not infrequently psychological and psychiatric—assistance is available. Living units are generally small. Counselors and supervisors, rather than guards, represent the basic staffing pattern, and there is often a milieu of solicitous concern for the residents. While many juvenile halls fail to meet these standards, this type of setting is maintained by many and is the goal to which the remaining juvenile halls aspire.

Juvenile court acts, police manuals, and other operational regulations call for the release of the child to his parents within a reasonable time, unless detention is required to protect the person or property of others or of the child or to ensure the child's presence at the next court hearing.[34] Juvenile laws also provide that further review shall be given by detention home administration or the intake probation staff when police officials believe detention is necessary.[35] These acts empower detention home decision-makers to reverse the police decision to detain, inasmuch as the police department does not administer juvenile hall, and because there is an overall priority on release. Juvenile court acts typically also require that a judicial officer review the status of detained children within 24 to 72 hours and that he make his own independent determination as to whether the facts of a particular case warrant reversal of a detention decision made by police and detention officials.[36]

Juvenile court acts, then, favor a policy of minimum detention, while adult jails are jammed with hordes of defendants who

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OF JUSTICE, TASK FORCE REPORT: CORRECTIONS at 24 (1967) [hereinafter cited as T.F.R. CORRECTIONS].

32. *See* CAL. WELF. & INST'NS CODE § 850 (West 1966).

33. *See* CAL. WELF. & INSTNS CODE §§ 856, 858 (West 1966).

34. *See* CAL. WELF. & INST'NS CODE § 631 (West Supp. 1972); COLO. REV. STAT. § 22-2-2 (1967).

35. *See* COLO. REV. STAT. § 22-2-3 (1967).

36. *See Public Law* 91-358 (91st Cong.), an act to reorganize the courts of the District of Columbia, including the juvenile court. *See also,* CAL. WELF. & INST'NS CODE §§ 631, 632 (West 1966).

are unable to make bail and who often languish for long periods awaiting trial.[37]

The call for curtailing pretrial jailing of adult defendants is nothing new. Use of a summons or citation in lieu of an arrest for misdemeanants is frequently advocated, though less frequently implemented.[38] Criminal bail reforms have been trumpeted loudly, but effectuated softly. Still, in recent years gains have been made in devising approaches for releasing adult defendants on their own recognizance or by having defendants deposit ten percent of the amount of bail with the court or with an independent bail agency, rather than paying this amount to a private bonding company.[39] American Bar Association Standards have called for abolition of the private bonding system and for implementation of methods designed to substantially reduce pretrial jailing.[40]

In praising certain advantages of the juvenile detention system, the author is not recommending that criminal court judges become administrators of jails. He would, however, recommend that operation of the jail be shifted away from police and sheriffs' departments. A professionalized department of corrections is urgently needed to provide efficient and fair administration of jails. Criminal court judges should accept primary responsibility for remaking city and county jails into humanistic centers by setting up mandatory minimum standards.[41] These centers would be set up to ensure that, even though an individual is suspected of a crime, he is treated with dignity. The center should offer helpful information and rehabilitative services during the individual's jail experience. If a center fails to meet these minimum standards, a writ of habeas corpus would issue for noncompliance with the governing legislative enactment.

Jails should follow the lead of juvenile detention facilities in providing educational programs, vocational experiences, and social, medical, and mental health services. There should be greater opportunities for visitation by families and friends. There should

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37. *See* CHALLENGE, *supra* note 7, at 131.

38. LAFAVE, ARREST, THE DECISION TO TAKE A SUSPECT INTO CUSTODY 168 (1965).

39. *See* Portman, *"To Detain or Not to Detain?"—A Review of the Background, Current Proposals, and Debate on Preventive Detention*, 10 SANTA CLARA LAW. 224 (1970); Wisotsky, *Use of a Master Bond Schedule: Equal Justice Under Law*, 24 U. MIAMI L. REV. 808 (1970); Note, *Bail—An Examination of Release on Recognizance*, 39 MISS. L.J. 303 (1968).

40. *See* AMERICAN BAR ASSOCIATION, STANDARDS RELATING TO PRETRIAL RELEASE (Appr. Draft 1968).

41. *See* Brenneman v. Madigan, Civil No. C-701911 (N.D. Cal., May 12, 1972), (Zirpoli, J., mem.)

be substantially increased use of programs of work release, educational release, and even family visitation release of jailed defendants pending trial. To accomplish these objectives, jail personnel will need a large amount of retraining, resensitizing, or replacement. This will admittedly be a difficult process, but a beginning is vital to the overall humanization of the courts.[42]

INTAKE

The concept of "intake" in the juvenile court refers to a decision making process whereby juvenile authorities investigate a complaint lodged against a juvenile from the standpoint of legal, social, psychological, family and educational considerations. The investigators then decide to file or not to file a petition in juvenile court. In the juvenile justice system, a petition may be filed without any request for detention of the child. Conversely, a child may be detained for an alleged offense where no petition is subsequently filed by probation intake staff. This intake flexibility is frequently written into a statute which may say that (in response to receipt of a complaint) ". . . the court shall have a preliminary investigation made to determine whether the interests of the public or of the child require that further action be taken."[43]

The statute usually then continues with language like the following: "(2) (a) On the basis of the preliminary investigation, the court may: (b) Decide that no further action is required, either in the interests of the public or of the child; (c) Authorize a petition to be filed; or (d) (i) Make whatever informal adjustment is practicable without a petition (provided certain conditions safeguarding the informal adjustment practice are adhered to)."[44] Undoubtedly, intake staffs in many cases have misjudged individual situations, and many cases are filed that could have been better handled otherwise. In many cases no petition need be filed at all.[45]

Discretion in filing is a very prominent feature of the juvenile court approach, and it is used to some degree in the criminal intake process as well. The initial decisionmakers in the criminal

42. *See generally* CHALLENGE, *supra* note 7, at 159-185; T.F.R. CORRECTIONS, *supra* note 31.

43. COLO. REV. STAT. § 22-3-1(1) (1963), *as amended.*

44. *Id.*

45. Nationally, 56 percent of all juvenile court complaints in 1969 were handled without formal filing. *See* NATIONAL CENTER FOR SOCIAL STATISTICS, SOCIAL AND REHABILITATION SERVICE, U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE, JUVENILE COURT STATISTICS—1969 (1970). *See also* Fenster & Courtless, *The Beginning of Juvenile Justice Police Practice & the Juvenile Offender,* 22 VAND. L. REV. 567 (1969).

process are police officers, who arrest many suspects whom they later release without charge.[46]

Cases channelled into the criminal system by police are usually brought to the attention of a screening prosecuting attorney. He may issue an affidavit to file the case as presented or with modification, or he may reject certification because he finds insufficient justification for filing an action. Certain offenses are settled without charges being filed through payment of restitution or damages; a defendant's agreement to leave town; a defendant's agreement to seek psychiatric assistance; or a complaining witness' decision not to prosecute.[47]

Most criminal court procedures allow discretion in proceeding with an information or indictment. Such action could and should be enhanced by amendments expressly approving specified informal adjustments.[48]

Hundreds of thousands of juvenile cases have been handled by informal counseling without filing of petitions, or by diversion for social or mental health services to some other community agency. Juvenile courts have long recognized that rather than going to court, a child and his family may benefit more from a family counseling agency, a mental health clinic, placement at a private children's institution, placement with a relative, or redesign of a school program. The diversion and rerouting of youngsters away from formal juvenile courts without the filing of petitions are procedures now seen by many as matters of national priority. Many communities are organizing youth service bureaus in order to obtain guidance and provide programs more conducive to rehabilitation than are the formal processes of the juvenile courts.[49]

In urging wider use of pre-judicial disposition in juvenile court, the President's Crime Commission has recommended the use of informal conferences between complainants, juveniles, parents, and court personnel (with certain procedural safeguards

46. *See* INSTITUTE FOR COURT MANAGEMENT, THE FELONY PROCESSING SYSTEM, CUYAHOGA COUNTY OHIO (1971), which reports that in a study of the first 52 persons arrested for felony offenses by the Cleveland Police Department in January, 1971, 17 were released without charge. The researcher was of the opinion that most of the 17 were released by police decision alone and without the rejection of filing by a screening prosecutor.

47. *See generally*, CHALLENGE, *supra* note 7, at 133-134.

48. For a discussion of informal adjustments and consent decrees in the juvenile justice system see Gough, *Consent Decrees and Informal Service in the Juvenile Court: Excursions Toward Balance*, 19 KAN. L. REV. 733 (1971).

49. *See* CAL. DEPT. YOUTH AUTH., YOUTH SERVICE BUREAUS: A FIRST YEAR REPORT TO THE CALIFORNIA LEGISLATURE (1970); Note, *A Proposal for the More Effective Treatment of the "Unruly Child" in Ohio: The Youth Services Bureau*, 39 U. CIN. L. REV. 275 (1970).

built into this process), and the use of consent decrees that provide the arbitrating and treating authority of the juvenile court without the disadvantages of formal adjudication.[50] The President's Crime Commission has also recommended an expansion of non-judicial disposition for adult offenders and has noted:

> The pressures and policies responsible for development of pre-judicial dispositions in the juvenile system are in part the same as those that have led to the use of alternatives to the adult criminal process. The felt overseverity of the formal process in the circumstances of the particular case, the broad reach of the definition of the forbidden conduct beyond what is appropriately dealt with by the criminal or juvenile justice system, and the sheer volume of workload are among the most important considerations.[51]

Dangers inhere in unsupervised and unregularized informal dispositions. But the criminal justice system itself, and its clients, who are part of its problem, would both benefit by a structure of procedures that uses as its taking-off point the diversion, informal adjustments, and consent decree concepts of the juvenile intake system.

THE DISPOSITIONAL HEARING

The juvnile court dispositional hearing is analogous to the criminal court sentencing hearing. Historically, it has been the primary judicial hearing in the juvenile system. While juvenile court hearings are too often hurried,[52] the care and skill with which many juvenile court judges approach the individualization of justice at the dispositional hearings constitute a major source of pride in the system.

More often than not, the setting is the judge's chambers rather than in the courtroom. While this may bother some observers who feel that the inherent authority of the courtroom is a more impressive deterrent to antisocial youth, the author believes that court processing of a juvenile's case contains an atmosphere of authority. Some defendants also may feel a greater sense of personal worth when they can informally discuss their problems with the judge at the dispositional hearing. The formal criminal courtroom with its appointments—flags, bailiff, guards, and black-robed judge ensconced three steps high and distanced from the

50. *See* CHALLENGE, *supra* note 7, at 84.

51. *Id.* at 81-82.

52. One observer of the juvenile justice scene described "the 3 minute children's hour" in the juvenile court of Los Angeles in 1959. *See* Lemert, *The Juvenile Court—Quest and Reality*, in T.F.R. JUVENILE DELINQUENCY, *supra* note 7, at 94.

defendant by the bar of justice and the bench—sends out a cold and foreboding message to the defendant.

During trial, counsel for the defense usually carries the burden of explaining mitigating factors in a defendant's life. While most judges ask the defendant what he may wish to say in his own behalf before sentence is pronounced, the judge has probably determined the sentence before asking for the defendant's comments.[53] The informal juvenile court dispositional hearing typically includes a probation officer, the youth, his parents, and frequently a clergyman, a welfare department social worker, a staff member from the mental health clinic, a VISTA volunteer, or a community volunteer assigned to the youth, and it may include the director of a nearby community center, an employer, relatives, or a school representative.

A little-known juvenile case[54] is illustrative. A boy had committed a burglary and was judged a juvenile delinquent. As the judge considered what dispositional orders to enter, the parents requested permission to speak. The judge refused to hear them. An appellate court reversed the disposition entered by the judge, holding that the Family Court Act provides that a *dispositional hearing must be held* after completion of the fact-finding hearing. In this case there was no hearing, and the judge's refusal to hear the parents was ruled to be "at the very least an abuse of discretion, if indeed there were room for discretion in the circumstances."[55] The case was remanded for a "full and complete dispositional hearing."[56]

The juvenile court style typically embodies a discussion of the youth's problems, interests, influences, pressures, goals, and adjustments. A probation report is just one part of the hearing. The hearing encourages the youth to participate actively in the discussion. It suggests to him that his opinions and statements add value to the process. Everyone present is encouraged to present information that might be helpful to reaching an appropriate decision. The judge might even ask the youth or his family what disposition they feel is appropriate, and what conditions should be ordered to help provide guidance and adjustment assistance for the youth. If offenders can be successfully individualized by this process in the juvenile system, is this not a worthy goal for the adult system as well?

A further control is provided by law in a number of juvenile

53. Arthur, *Disposition: The Forgotten Focus*, 21 JUV. CT. J., at 71 (1970).
54. 11020, *In re* Raoul P., No. 11020, (Sup. Ct. N.Y., Dec. 14, 1966).
55. *Id.*
56. *Id.*

court statutes. This provision is generally known as a review hearing. The statutes require the court to review the juvenile's progress on probation at intervals of 3 or 6 months.[57] An objective for the review hearing is to help a youngster perform well, knowing that he will need to face the judge again soon. Another objective is to provide a control factor for probation staff and staff of other agencies, forcing them to be accountable for their services or lack thereof before the judge.

DISPOSITIONAL ALTERNATIVES

The process of the dispositional hearing is important, but its value is also related to the variety of choices available to the judicial decisionmaker. The degree of discretion in sentencing that has been used by criminal court judges over the years has largely posed the two alternatives of probation or imprisonment. Adult probation departments have typically been manned by undertrained, undercreative, overworked, traditionbound probation officers. To a large extent, they have failed to elevate their function to professional status. They have also failed in many respects to develop any serious discipline having independent status in the adult correctional system. They are, perhaps, too responsive to rigid judicial expectations, and they do not heed the humanistic requirements of their clients. Compliance with court orders is given the highest priority, while meaningful and helpful relationships with probationers take second place to control and surveillance.

In the author's observations of a number of court systems, adult probation is a far less complex process than is juvenile probation. Different traditions have become firmly entrenched and juvenile probation is vastly more interdependent with a broad number of community agencies and welfare organizations. The juvenile court tradition is grounded on strong reliance on supplementary mental health services, close working relations with school systems, cooperative reliance on welfare departments and social agencies for placement of youngsters in foster homes or private institutions, and a rather thorough search for any and all ways to facilitate rehabilitation of youngsters on probation. This tradition has come about in part as a result of inherent flexibility in juvenile courts in dealing with youthful offenders.

The adult probation system suffers more from the problem of understaffing than does the juvenile system. The adult system traditionally has been isolated from other community helping serv-

57. *See,* COLO. REV. STAT. § 22-3-18 (1967).

ices and has seldom sat on social planning committees or shared responsibility with other social agencies in planning for rehabilitation of individuals. While it may be contended that this view represents too severe an indictment of the adult probation system, few will contend that existing adult probation programs are realizing their full potential.

NEEDED CHANGES

The author proposes the following changes:

a. Adult probation programs should utilize the services of community agencies to assist in working with probationers. The role of probation is too important and too difficult in all its ramifications to be left solely to probation officers.

   Adult probation, early in its involvement stages, should bring into play the assistance of programs available through vocational rehabilitation agencies; job training programs; the YMCA, YWCA, and other residential facilities; mental health clinics and diagnostic treatment services; family service agencies, and marital counseling services; family planning and birth control services; alcoholics anonymous; drug rehabilitation programs; the Red Cross; the Salvation Army; the clergy and church-related programs; recreation and community centers; day-care centers; programs leading to school diploma equivalencies; community colleges; and any of the many other programs under private leadership, such as United Way, Model Cities, OEO, and other tax-supported entities.

   Very real skills need to be applied in referrals of probationers to such agencies. It is not enough to simply give a probationer the name of an agency. Close working relationships with these agencies will increase referral effectiveness and will provide learning opportunities for probation officers. Furthermore, such relationships will allow sharing of certain of the responsibilities for probation effectiveness and will make probation more a community service than strictly a law enforcement service.

b. Probation departments and judges should stimulate new programs to meet specific needs in their community. Again, it is all too easy for busy and harassed probation officers and judges to bog down in the routine of their daily experiences and maintain a very limited range of communication with activities outside their own systems. These officials need to relate more effectively to community planning agencies, to private citizen groups, to

criminal justice coordinating councils, to service clubs seeking new action platforms, and to the media in search of more effective means of meeting the needs of the criminal justice system. In short, probation departments and judges must become advocates for what is needed, for what must be improved, and for what must be extended.

c. While most probation departments appear to be undermanned, simply adding more manpower will accomplish little in bringing about more effective probation services. Rigorous and high-level inservice and outservice training programs are critical to the development of a modern probation department. Probation officers need to develop skills in mixed group counseling and in family group counseling. They should decentralize by setting up branch probation offices. They also need to be supplemented by employment of paraprofessionals and ex-offenders. Large numbers of citizen volunteers should be drafted. Probation officers might well utilize employment counselors—paid or volunteer—to assist in job finding, job development, and referrals to job training projects. They should implement or help the community implement extended nonresidential and halfway-house-type programs offering day, evening, and 24-hour programs for probationers. Probation departments should innovate community work programs as sentence alternatives with the probationers painting or repairing buildings that house community programs, hopefully with payment to the probationers. Probation departments will have to *listen* (and this is where group counseling may offer enlightenment to the probation staff). It is simply too difficult for individual probationers to provide honest feedback to their probation officer; indeed, it may even be difficult in a group situation.
Judges must develop closer relationships with probation programs. They must not dominate these programs but serve as responsible consultants to them. Probation departments should make use of community advisory committees, with lay and professional membership. It is also time that adult probation programs make use of research methods so that myth yields to realistic evaluation and so that effective program planning can move ahead on the basis of up-to-date knowledge and techniques.

CONCLUSION

This article has shown that juvenile court systems in this country have adopted many of the best features of adult criminal

courts. It is now time for those responsible for administering the the adult systems—both criminal and probation—to take heed of the notable accomplishments of the juvenile systems. The experiences gained in meeting and successfully solving the varied and ranging problems of youthful offenders might well be instructive to those involved in restructuring the adult criminal justice system. The author urges that judges and probation officers take a long, hard look at the progressive trends that have taken form in the juvenile systems to ascertain what might be gained from adoption of the best of these.