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**PROTECTING THE CHILD IN THE JUVENILE COURT**

Sol Rubin

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**THE AUTHORITY OF THE COURT**

The first half century of the juvenile court movement in the United States has seen the extension of juvenile court laws to all of the states. This progress has been noted with a general feeling of great achievement in the national acceptance of an idea which has become an integral part of the community's program for the protection of special groups of children.<sup>1</sup> The acclaim given this historic development has not been unmixed with acknowledgment that much remains to be accomplished for the ideal standards of the court to be realized. Under the challenging title, "Most Courts Have to Be Substandard!", Lowell Julliard Carr writes that outside of the 200-odd "big city" counties (counties with cities of 50,000 or over) "the juvenile court in its dealings with children is actually a kind of legal fiction. It has the name, it has a presiding officer—probate judge, common pleas clerk, or what-have-you—chosen without regard to his understanding of children. It has sundry sketchy documents called case records, compiled, of course, without benefit of any trained caseworkers, and sometimes not even compiled."<sup>2</sup>

The challenge is one that many communities are striving to meet, recognizing the need for specially qualified judges, competent, trained probation staffs, and necessary related facilities. The materials of the court are needed and are being sought. Meanwhile, and indeed, particularly while these inadequacies exist, is the work of philosophical and legal creation complete? Probably not. That there is a continuing problem of legal creation is the significance of the periodic, even frequent, revisions of the Standard Juvenile Court Act.<sup>3</sup> And the fact that most of the state legislatures have been slow and backward to modernize their juvenile court laws has its own meaning. Katharine F. Lenroot,

1. For example, FEDERAL PROBATION, September 1949, "A Special Issue Commemorating the Fiftieth Anniversary of the Juvenile Court."

2. *Ibid.* See also his book, DELINQUENCY CONTROL, Harper & Brothers, 1950, pp. 234-240.

3. Five editions, 1925 to 1949. Published by the National Probation and Parole Association.

then Chief of the United States Children's Bureau, pointed out several areas in which there is today a marked difference of opinion, or need for further exploration—the jurisdiction of the court, the geographic area served by the court, whether the court is (or should be) a legal or social agency, the relationship between the court and administrative social welfare agencies, the relationship between the court and the police.<sup>4</sup> Carr puts it another way, emphasizing the court's protective role: "How realize the values implicit in socialized procedures, on the one hand, provide needed *legal* protections for the child, on the other, and at the same time avoid the red tape and superficial procedures connected with traditional methods?"

What should be the direction of further legal development? The motivation and justification of the court is that it is a superior agency for the *protection* of children, specifically, superior, for children, to a criminal court and its criminal procedure. On behalf of this purpose a great deal of power has been given to the court which in itself has raised problems. It is not enough to say—"The more power to the court, the better it can deal with the problems brought to it." We must stop to consider that the power of the juvenile court is over the *child*, for the most part, rather than over the things affecting the child. We may exercise that power to protect the community against the child, at times, as we do with adult criminals. The court is justified, however, not so much as an agency with authority over the child, but as an agency which has been given authority in order to carry out its responsibility to protect the child. This protective role is in fact the constitutional basis of the juvenile court. The juvenile court disposition is non-criminal—the court exists to protect the child from the condemnation of a criminal conviction. Constitutionally the juvenile court law stands or falls turning on whether the child within the jurisdiction of the court may be punished as a criminal. If he may, the court is a criminal court and the rights of defendants in a criminal court must be applied.

The proceeding, the statutes declare, is to be entitled not *against* the child, but *on behalf of* the child.<sup>5</sup> But we do not pretend that the constitutional validity of the court and its social validity are one and the same. We have as illustrations the many courts in the smaller areas, as Carr points out; and, in fact, some courts in the larger cities.

The increased flexibility of the court, its informality, have been

4. FEDERAL PROBATION, *op. cit.*

5. *The Standard Juvenile Court Act*, section 11, provides, "The Petition and all subsequent court documents shall be entitled 'In the interest of . . . . ., a child under eighteen years of age.'"

achieved principally by the sacrifice for the child of rights which a defendant in a criminal court has. It becomes doubly necessary, therefore, to protect the child from abuse of the authority of the court itself. Roscoe Pound writes, "Child placement involves administrative authority over one of the most intimate and cherished of human relations. 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.*"<sup>6</sup>

The problem of further legal development perhaps includes, then, the seeking of the best means of protecting the child in the juvenile court. Perhaps the work of legal creation is not complete with the grant of authority to the courts. The power of the court must be examined; is it in fact the best protection to the child, or are limitations to be sought, which would provide a better protection? Can this protection be provided without obstructing the treatment process of the court, which is also a protection to the child?

With these considerations we examine the jurisdiction of the court, detention of children before the court, the procedure, and finally the treatment process, to point out existing provisions which require stressing, and to suggest others which would provide additional protection to the child in the juvenile court.

## JURISDICTION

The basic jurisdiction of juvenile courts is a taking over of cases which would otherwise belong to the criminal court. We shall turn to this presently. Meanwhile we find that the jurisdiction of the juvenile court has become much broader than this, to include cases of dependency (in some courts) and neglect (in almost all courts). Here we find dangers to be guarded against. The child who is neglected or dependent has done nothing requiring judicial action, nor does his condition require any more than the providing of aid. Yet courts whose jurisdiction includes dependency and neglect are given legal authorization to *commit* such children to the same training schools to which delinquent children are committed, subject to release in the same manner as delinquents. Neglected and even dependent children are to be found in our training schools, in small numbers, to be sure.

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6. *Foreword to SOCIAL TREATMENT IN PROBATION AND DELINQUENCY*; PAULINE V. YOUNG, McGraw-Hill Book Co. Inc., 1952. Our emphasis.

Can legal protection to the child be provided to guard against abuse of dependency and neglect jurisdiction? The 1949 revision of the *Standard Juvenile Court Act* moved specifically against dependency jurisdiction in juvenile courts. In contrast to earlier editions of the act, the 1949 revision recommends that dependency jurisdiction should not be given to the juvenile court. The explanatory comment to the jurisdiction section reads: "It is generally agreed that the court should intervene only when there is need of authoritative action with respect to a child or the adults responsible for his care or condition. Cases of dependency without an element of neglect, or where no change of legal custody is involved, should be dealt with by administrative agencies without court action." Probably there is little disagreement concerning the position of the Standard Act on dependency, but many acts include this jurisdiction.

Neglect jurisdiction too requires close examination. In some juvenile court acts, no legal distinction whatever is made as between the dispositions available for delinquent and neglected children. This is true in those jurisdictions which, like the Standard Act, principally to avoid the stigma of a delinquency adjudication, do not attach the terms "delinquency" or "neglect" to the different categories of jurisdiction. It is also true in jurisdictions which, although using the terms "delinquent," "neglected" and "dependent," authorize all the same types of disposition for any case.

Perhaps the simplest protection to the neglected child in juvenile court would be to exclude training school commitments from dispositions available in such cases. This is done in some acts by simply authorizing training school commitments for delinquent children, and not for neglected children. It can also be done in acts which do not use the labels "delinquent" or "neglected" by nevertheless limiting the types of disposition as to the cases which are in fact neglect cases without being so tagged.

The justification for taking jurisdiction in neglect cases is that authoritarian judicial action is needed against a culpable parent or other custodian. The fact is, however, that the juvenile court proceedings in neglect cases are not against parents, but the children themselves are subject to the order of the court, are subject to probation and commitment. The legal necessity for this is that the neglectful parent may be deprived of custody over the child. Nevertheless the authority goes to the *child* when he is committed or placed away from home, rather than to the parent. And when probation is used, often the legal form is placing the *child* on probation.

The problem is to avoid action against the child while still intervening to overcome the neglect. Action may be needed to coerce the parent to cease his neglect. In such a case should not the order run against the parents? Most juvenile court laws do not so provide, except in prosecutions against parents under "contributing to delinquency and neglect" statutes,<sup>7</sup> and direct actions against parents to enforce support.<sup>8</sup>

The *Standard Juvenile Court Act* suggests the following: "In support of any order or decree the court may require the parents or other persons having the custody of the child, or any other person who has been found by the court to be encouraging, causing or contributing to the acts or conditions which bring the child within the purview of this act, to do or omit to do any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the child. In case of failure to comply with such requirement, the court may proceed against such persons for contempt of court."<sup>9</sup>

But the action against the parent may be ineffective or inadequate. Often the court must see that care is provided by other than parental means. What power does the court have in such cases? In neglect cases judges often have a feeling of helplessness because the tools of the court—authority and casework—are not the solution. *Facilities* are needed, placement facilities, or assistance of one kind or another for the family, and the community may not have them. The judge's only recourse is to do what he can with the family and perhaps console himself with the thought that the legal definition of neglect is ultimately governed by what support the community gives to families in trouble—the juvenile court law standard of neglect cannot be on a much higher plane than community facilities. It is no triumph for the court to substitute court neglect, or community neglect, for parental neglect.<sup>10</sup>

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7. Such proceedings have their own difficulties, particularly that the criminal proceeding would be a duplication of the neglect proceeding; there are other difficulties. The merit of the proceeding itself is doubtful; see PAUL W. ALEXANDER, *What's This About Punishing Parents?* FEDERAL PROBATION, March 1948.

8. Standard Act, section 21.

9. Section 18 (4). The 1951 Georgia juvenile court act and the 1952 Kentucky act adopted this provision. The New York City Domestic Relations Court Act has such a provision applicable in neglect cases.

10. See, for an illustration, *Simple Arithmetic About Complex Children: A Study of Temporary Shelter for Dependent and Neglected Children in New York City*, by BERTRAM M. BECK, (Community Service Society of New York, 1952). ii. "Only a minority of the children for whom shelter is sought are placed in shelter on the day for which it is sought. . . . Others must wait from one day to more than two weeks before being admitted to shelter. . . . The delay means that they must stay in situations to which they may be accustomed but which are less than desirable. For still others the delay means that they must stay in homes in which they receive inadequate physical care or in which they are in grave moral danger . . . And for some children a placement cannot be found at all." 61. "The court workers point to an unknown number of cases in which shelter is

If the community does not have the means of curing the neglect of the child, and the court tools are merely those of coercion and casework for the parents, the court is frequently faced with the choice of becoming a punitive agency or returning the child to an unsatisfactory home. In either way the neglect is not cured; in either case the neglect jurisdiction is not useful. If the community *does* have the means of curing the neglect, organization of its facilities on a welfare basis should enable the court neglect-jurisdiction to fall into relative disuse. Perhaps we should have in mind also that, as Dorothy Hutchinson commented, "Sometimes the neglect is one that offends the community more than it hurts the child."<sup>11</sup>

It is particularly neglect and dependency jurisdiction that more and more in recent years brings criticism upon the role of the juvenile court. Martha Branscombe, for example, points out that "at the time the juvenile court idea was developed, the only public administrative agent was the poor relief official. It is, therefore, understandable historically that the courts became one of the first specialized public services for children." But "in the past three decades, the development of public child welfare services throughout the country, together with the recognition of the inherent limitations of the court as a casework agency, have given rise to difficult jurisdictional questions. Today, however, it is essential to recognize the principle establishment by our tradition that distinguishes between judicial functions, which are the responsibility of courts of competent jurisdiction, and those of an administrative nature, which must be performed by an appropriate administrative agency. It is clear that legal questions relevant to compulsory commitment or removal of the child from his parents, and those affecting the status of the child, must be decided by a court. In the light of our experience, however, we should not continue to expect the court to decide what should be done beyond resolving the legal problem, or to provide the service for the child requiring not legal but social services or other treatment."<sup>12</sup>

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not requested, although it is needed, simply because the Justices and the probation workers have had experience during that given day indicating that shelter will not be available." One of the unique features of the shelter program in New York City is that a large part of the bed capacity is provided by private agencies over which public officials have only limited control.

11. "The Parent-Child Relationship as a Factor in Child Placement," *THE FAMILY*, April 1946.

12. *Basic Policies and Principles of Public Child Care Services—An Underlying Philosophy*, *CHILD WELFARE*, February 1952. Similar comment is made by George B. Mangold in *Problems of Child Welfare* (The Macmillan Co., 1936; p. 49)—"since the treatment of neglect and cruelty is largely a casework problem, it may be desirable, if possible, to reverse the present tendencies and to invest in other public departments, such as county boards of public or child welfare, the duty of child protection. Gradually states are granting

Two studies of truancy<sup>13</sup> and the court may be used as illustrations, one in which the court jurisdiction was used, one in which it was avoided by the use instead of highly developed administrative facilities. A study by Herbert A. Landry of the effect of court process on attendance rates indicates that "for the great majority of children, court action does not seem to accomplish the purposes for which it was established."<sup>14</sup> Landry concluded that the attack on the truancy problem should emphasize prior responsibility in the school. The second study is a report of remarkable success by a school system (Gary, Indiana) which accepted this prior responsibility. Mark Roser reports that an experimental group of chronic truants, children with poor attendance records, and children with serious behavior problems, were placed in small classes, held for only half time, and emphasis was placed upon giving them a feeling of some success each day. The setting of the separate school centers was made as permissive as possible; casework counseling was provided for the parents. After two years truancy in this group completely disappeared. At the present time, Roser states, "The Gary school system does not use the juvenile court for problems of truancy. As facilities have been increased and trained staff made available, referral of truants to the juvenile court has been reduced from an average of 350 cases per year out of an enrollment of 23,000, to zero. . . . Insofar as we can determine, the rates of school attendance have not been lowered."<sup>15</sup>

Such views and experience may foretell a decline in the use of neglect jurisdiction by juvenile courts, but not its disappearance, since court authority is needed where neglect is such that change in custody is necessary. The statutory form of this limited neglect jurisdiction would be to confine it to cases where change in custody is alleged to be necessary for the welfare of the child.<sup>16</sup>

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wide powers to such local units, and since they are administrative and executive rather than judicial, they are theoretically the most logical agencies for this form of service. The White House conference suggests that the juvenile court relinquish the care and protection of neglected children and that public units, such as boards of children's guardians on a city-wide or county-wide basis, absorb this function."

13. Truancy as juvenile court jurisdiction is better defined as neglect than delinquency. *The Standard Juvenile Court Act* gives truancy jurisdiction in the following words—It gives jurisdiction over any child "who is neglected as to proper or necessary support or education as required by law. . . ."

14. *The Prosecution of School Non-Attendants*; quoted in *CHILDREN ABSENT FROM SCHOOL*, Citizen's Committee on Children of New York City, Inc., 1949, p. 68. Dr. Landry's study is described as the "first compilation of objective data as to the effect of the court process on attendance rates, school adjustment and social adjustment."

15. *The Role of the Schools in Heading Off Delinquency*, YEARBOOK, National Probation and Parole Association, 1951.

16. Court jurisdiction over neglected children is by no means an innovation of juvenile court laws. For many years, for much of our national history, in fact, courts have had such jurisdiction. See *THE CARE OF DESTITUTE, NEGLECTED AND DELINQUENT CHILDREN*, by



We return to delinquency jurisdiction. We note first that some delinquency definitions, including such things as waywardness (being beyond the control of parent or guardian), have the effect not of taking children out of the criminal court, but of bringing into the juvenile court children who should not be in any court. This jurisdiction is not explained by the purpose of providing a more sympathetic, less punitive forum than the criminal court for children who would otherwise be tried criminally. Probably it can be explained only on the basis of the court as a preventive or protective agency. It is a survival of ancient, and archaic, provisions. Judicial authority for such activity, like dependency and neglect jurisdiction, can be questioned.

Conversely, many juvenile court laws leave large loopholes, permitting criminal prosecutions of children. For example, some juvenile courts are excluded from taking jurisdiction where certain felonies are involved; others permit the criminal court to take jurisdiction; others provide for transfer of cases from juvenile court at the discretion of the juvenile court judge. The Standard Act excepts only, at the discretion of the juvenile court judge, cases of felonies committed by children 16 and over.

This provision also establishes the exclusive jurisdiction of the juvenile court, one of the most basic elements in the *Standard Juvenile Court Act*. To the degree that a court's exclusive jurisdiction is compromised, and exceptions exist, it is not protecting certain classes of children from criminal procedure. In addition, a danger in the existence of concurrent jurisdiction in juvenile and criminal court is that instead of the juvenile court being a refuge for the child, it becomes, with its lesser evidentiary rules, its dropping of constitutional safeguards of the defendant, the recourse of a weak case. A California court recently wrote of the need to "reduce the number of occasions when for lack of evidence to convict in a criminal court, cases acknowledged to be unfit for juvenile court procedure have, nevertheless, been retained in juvenile court, or on being remanded to the criminal court have been dismissed for lack of evidence."<sup>17</sup>

#### DETENTION

The breadth of juvenile court jurisdiction has important consequences, and must be considered in connection with other aspects of

HOMER FOLKS (The Macmillan Co., 1902), particularly chapters VIII—"The Boarding-Out and Placing-Out System," and IX—"Laws and Societies for the Rescue of Neglected Children." This jurisdiction was a concomitant of inadequate care by the community. It will be a mark of growth, of maturity in caring for children, if neglected children can be taken care of without court authority, except where a change in custody is necessary.

17. Knight v. Superior Court of Tehama County, 102 Cal. App. 211, 1951.

juvenile court functioning. Along with the purpose of removing children from the criminal courts by means of the juvenile court, has been the effort to remove from the jails, the most notoriously inadequate of our penal institutions, children who are before these courts.

The goal is to prevent *any* such children from being incarcerated in jails. The *Standard Juvenile Court Act* therefore provides that "No child shall at any time be detained in any police station, lockup, jail or prison; except that, by order of the judge in which the reasons therefor shall be specified, a child sixteen years of age or older whose conduct or condition is such as to endanger his safety or welfare or that of others in the detention facility for children, may be placed in a jail or other place of detention for adults, but in a room or ward entirely separate from adults confined therein."

Several detention realities may be noted. First, there is a substantial use of jails for children before the juvenile court. United States Children's Bureau figures for 1946-1949 show that twenty-five percent of the delinquency cases of children reported as being detained overnight or longer were detained in jails.<sup>18</sup> This is probably an understatement. Much of this jail detention is, incidentally, in violation of juvenile court law.

Second, there may be excessive use of detention facilities other than jail, and frequently these are no great improvement over jails, having no diagnostic or treatment service, being custodial merely, and sometimes being run in a punitive and brutal fashion. Again using the Children's Bureau data for 1946-1949, of the 64,772 delinquency cases for which information on detention care was reported, detention was ordered in 21,697 of the cases, or one-third.

Furthermore, it must be recalled that detention is used in neglect and even dependency cases also, cases in which under *no* circumstances—without the juvenile court law—would the child be detained in a jail. These children in detention are housed with children with delinquency patterns. And having in mind the broad delinquency definitions, it may be observed that many children are detained as delinquents who would never—without the juvenile court law—be detained in a jail. These are the children whose delinquency is based on behavior or circumstances other than violation of a criminal law.

These considerations are especially significant inasmuch as children detained by juvenile court, in most jurisdictions, do not have, as does a defendant in a criminal court, the right to release on bail. This is

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18. Juvenile Court Statistics 1946—1949, Children's Bureau Statistical Series No. 8, 1951.

because the right to bail is an accompaniment of criminal court procedure. It is, however, a *right* of the criminal defendant. In eliminating it as a right of the child in juvenile court, we are obligated to protect the child from unnecessary detention, and from detention in inadequate and improper facilities.

In complying with this obligation we must rely on the facilities afforded, the policy of the law, and the policy of the court. As we have noted, the Standard Act, and many juvenile court laws, prohibit jail detention. That the law is often violated is an attribute of a failure to provide suitable other facilities, as well as a policy of over-detention by the courts. Standards of detention facilities and court policy are available.

Probably the most important control would come from jurisdiction. Eliminating dependency jurisdiction (as the Standard Act does) eliminates dependent children from the detention homes. So far as the child is concerned, a neglected child is no different from a dependent child. Why then should not the juvenile court laws prohibit detention of neglected children? Their care is a shelter problem—a welfare responsibility—not a detention problem, not a problem of custody, not a court problem.<sup>19</sup> Delinquency jurisdiction too may be more limited than it generally is today;<sup>20</sup> and these limitations would automatically limit detention.

Detention of children occurs not only in jails or other detention facilities. It occurs also, as it does with adults, at the hands of the police. The *Standard Juvenile Court Act* contains a provision similar to that applicable to adults arrested; it is provided that a child not released to parent or custodian shall be taken “without unnecessary delay” to the court or to the place of detention designated by the court. The provision is not, of course, self-operative. The latest edition (1949) of the Standard Act proposes a new procedure by which police handling of juveniles may be regularized. This protective provision reads: “When any child found violating any law or ordinance, or whose surroundings are such as to endanger his welfare, is taken into custody, such taking into custody shall not be termed an arrest. *The jurisdiction of the court shall attach from the time of such taking into custody.*”<sup>21</sup> The purpose of the provision is to authorize the court by general regu-

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19. *The Detention of Children in Michigan*, SHERWOOD NORMAN (National Probation and Parole Association, 1952) page 17.

20. See above, page 7.

21. Italics added.

lation, and in individual cases, to supervise police detention of juveniles.<sup>22</sup>

#### PROCEDURE

The characteristic procedural tool in a juvenile court is its informality, in contrast to the highly developed formalities of a criminal court. The criminal court trial is public, governed by strict rules of evidence and procedure, and attended by a number of constitutional limitations and requirements; whereas the juvenile court proceeding is private, informal and free of limitations on its procedure.

The merit of informal juvenile court procedure is that it is gentler in its impact on the people in the court, less dramatic, less threatening. It replaces a public trial which is heavily laden with authoritative individuals as well as authoritative law. At the same time, however, the informality is achieved at the expense of a formality which is also protective. The juvenile court has the responsibility of using its informality as a protective device, to compensate for the loss of the procedural protections given to the defendant in the criminal court.

The most markedly informal procedure in juvenile court is the practice, now being used in about half of the cases, on a national average, of disposing of cases without the filing of a petition, and hence without a hearing before the court and without an official juvenile court disposition being recorded. The power has been derived, as a legal matter, from the authority given to almost all juvenile courts to make an inquiry prior to the preparation of a petition, to determine (in the language of the *Standard Juvenile Court Act*) "whether the interests of the public or of the child require that further action be taken." Thereupon "the court may make such informal adjustment as is practicable without a petition, or may authorize a petition to be filed."

As a method of treatment, the "unofficial" procedure reflects a desire to achieve a voluntary atmosphere. The responsibility of the court is to see to it that the informal procedure does not become a cloak for actions which would be improper or which would not be taken if the case were before the court on a petition. Probably the first caution for the court is to be fully cognizant of the fact that there exists a clear legal limitation upon the use of unofficial casework. It must be remembered that an unofficial case, like an official case, is authorized

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22. None of the states have such a provision in their laws; the Hawaii juvenile court law, antedating the recommendation of the Standard Act, provides, "The judges of juvenile courts shall make such rules and set up such standards of investigation as they consider necessary to guide the police in the handling of cases of minors under the age of eighteen years."

*only when the child is in fact within the jurisdictional purview of the juvenile court act.*

Referring back to the statutory source of unofficial casework, we note that the preliminary inquiry and the unofficial adjustment may follow only when the court is informed that a child is within the purview of the act. In other words, unofficial casework is legal only if the information presented to the court is such that if verified, the filing of a petition could follow. The juvenile court is not given *carte blanche* to delve into any problem affecting children and families which comes to its attention. In its unofficial casework, as in its cases brought to petition, the court must find its authority in the jurisdiction section of the juvenile court law.<sup>23</sup>

Since the unofficial casework is voluntary, the investigation must be made without coercion. Without a petition there is no authority to require the appearance of any individual. Perhaps more difficult is the problem of developing casework standards in unofficial proceedings. What are sound criteria for unofficial cases; what precautions are necessary to guard against coercion in the voluntary relationship? Some courts have produced written criteria for unofficial cases (for example, the Connecticut State Juvenile Court, and the New York City Children's Court), but a greater elaboration and justification of the practices in use seems called for.

In some courts it is the practice to consider that the legal authority for unofficial casework is at the same time legal authority for detention pending efforts at informal dispositions without petition. This is a highly dubious procedure. Of course detention conflicts with the voluntary setting of unofficial work. But "unofficial" detention is dubious from a legal point of view. Detention is derived not from the section authorizing unofficial procedures, but from the section on detention. It is clear from a reading of the detention provisions of the juvenile court laws, and it must be so in any event, that detention of juveniles, whether in the custody of an officer or of a detention home, is an exercise of legal authority which must be reviewed by the court promptly and which can be continued for only a minimum period of time without the filing of a petition. Unofficial casework seems clearly to be excluded where a child is in custody.

Informality characterizes the procedure of the "official" juvenile

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23. PAUL W. TAPPAN has pointed out this danger in the use of unofficial proceedings. See his book, *JUVENILE DELINQUENCY* (McGraw-Hill Book Co.), pages 202-203. This book, probably more than any other recent writing on the subject, displays a concern regarding the extent of juvenile court jurisdiction, and its extremely flexible procedure.

court cases (those in which a petition is filed) as well as the unofficial cases. The probation officer is permitted to study the child and his background before the child has been adjudicated (whereas in a criminal case, in the trial of an adult, such a study can be made only after a finding of guilt). Attorneys in court (the exception rather than the rule) can not put up as aggressive a defense as in a criminal case. Of course the legal justification for this is that the consequences of adjudication are noncriminal, and there is no accusation of the child.

On the other hand the consequences of adjudication are serious, and basic rules of evidence are applicable in juvenile court cases as safeguards to reliability of information. If a finding may be based on a less rigid requirement than proof beyond a reasonable doubt, the test in a criminal case, there must still be a preponderance of the evidence, as in a civil case; while the probation officer may make a social investigation to guide the court in disposition, findings of fact for adjudication must still be based on direct evidence and not on hearsay.<sup>24</sup>

#### TREATMENT

We have observed that the constitutional basis for upholding the juvenile court laws is that they are *noncriminal*; adjudication in a juvenile court is not, legally, a conviction for crime. Of course it is recognized that the practical application of a criminal conviction comes in the form of community rejection—denial of employment, denial of the right to serve in the armed forces, and social rejection in various forms. In these respects the juvenile delinquent is, in fact, often treated as a criminal, just as a “record” of juvenile delinquency is included in a presentence investigation for crime, although it is not considered a “conviction” in relation to increased penalties for repeated offenders. The “noncriminal” nature of the juvenile court adjudication is, then, a reality in some respects, and in others it is quite similar to a criminal conviction.

The destructive attitudes of the community here indicated are a problem which the juvenile court has in common with the entire correctional field, and its personnel join in efforts at community education to overcome these limitations on readjustment of offenders. Are there also legal attributes in the treatment of juveniles which require separate consideration?

What of the form of commitment? The child committed by a juvenile court is, in every case, committed for the duration of his minor-

24. In the Matter of Arthur Lewis, 260 N.Y. 171.

ity. Potentially, this means that the *younger* the offender, the longer the possible term of his commitment. The committed seven year old could theoretically be committed for 14 years; the committed seventeen year old, close to his eighteenth birthday, can not be committed for over three years. That the suggested logical absurdity is seldom encountered in fact is not a reason for the existence of this situation; it is a reason for changing it. But very likely the indeterminate juvenile commitments do have their effects. Why should not, then, three years be the maximum term of commitment for adjudicated juvenile delinquents as in the English juvenile court system?<sup>25</sup> Children in United States institutions for delinquents who remain for three years or more probably run to five percent of all commitments. In terms of psychological development, in terms of relative punishment, is not a year of a child's commitment more severe than a year in the commitment of an adult?

The universal commitment-for-minority has another effect. Frequently children remain under the jurisdiction of the training schools until they attain their majority, no matter what their age when released. Consequently the length of time on parole depends upon the age at which they were placed on parole. The combined commitment and parole time of the older adolescent may be three to four years; for the younger delinquent, it is longer, often much longer. Such an outcome is not merely inconsistent; it is burdensome on the treatment facilities for children, and may be detrimental to treatment.

If in fact this is an unsatisfactory situation, the suggested limitation on commitment of juvenile delinquents is a possible improvement. Perhaps there should also be considered giving the juvenile court judge the responsibility of fixing the period of commitment, within such a limit. A recent study by Robert E. Coulsen led him to the following: "In discussing the training schools with the children from our county who have been committed to them, a few general reactions have been developed. For one, they are not outraged or made vengeful by moderate physical chastisement. . . . Without exception the graduates said that they preferred taking a beating to losing a privilege. *Their greatest complaints of injustice or mistreatment relate to the fixing of times for discharge.* This attitude also is widespread among the adults who have spent time in penitentiaries or reformatories."<sup>26</sup>

25. The English juvenile courts may commit a child to an approved school for a period of three years or if under twelve until the age of fifteen. See *Children's Court in England*, BASIL L. Q. HENRIQUE, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, November-December 1946.

26. *Evaluation of Institutional Experience*, AMERICAN PRISON ASSOCIATION PROCEEDINGS, 1948. Italics added. And the comment of Richard A. Chappell, regarding the federal

There is one situation in which the "non-criminality" of the juvenile court disposition becomes more fiction than fact. In a number of jurisdictions it is possible for a child committed to a training school by a juvenile court, to be thereafter *transferred to a penal institution* without further court order. This means simply that a child can land in a penal institution without an arraignment or trial.

The Ohio juvenile court law provides that a child 16 years of age or over may be committed to the reformatory if the basis of delinquency is an act which would be a felony if committed by an adult. In an early case,<sup>27</sup> a boy committed under this provision sought release from the reformatory. The court held that although the reformatory was a prison for adults, it was only a place of reformation for children. What this does is take the "noncriminal" phrase of the juvenile court law, the phrase which declares it to be the policy that the juvenile court law *shall* be noncriminal, as establishing that no matter what is done to the child is noncriminal, no matter how apparent the clash with reality.<sup>28</sup> As legal reasoning, it is dubious.

A similar outcome is possible, as to younger children as well, under the laws of other states, and even where the act was not a violation of a penal law. The proper concept would seem to be in the passage quoted in a leading case on the constitutionality of juvenile court law: "The basic conceptions which distinguish juvenile courts from other courts can be briefly summarized. Children are to be dealt with separately from adults. Their cases are to be heard at a different time, and preferably in a different place; they are to be detained in separate buildings, and, *if institutional guidance is necessary, they are to be committed to institutions for children.*"<sup>29</sup>

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juvenile delinquency law: "Some of the courts which follow the practice of committing an offender for the period of his minority have been disappointed to learn that the juvenile frequently serves a long sentence, before being granted parole. As a rule the parole board is more likely to grant parole to a juvenile than to an adult, but if a long sentence is imposed originally and parole is violated, the juvenile may have to serve as much as five to six years for an offense for which an adult may have been sentenced to 18 months to two years. Therefore, in cases of juveniles who cannot be placed on probation, the courts may wish to consider sentences for a definite period rather than for the minority of the juvenile. If the welfare of the juvenile is the primary consideration it would appear that a sentence of about 2½ or three years is best, as this will provide for a year and a half in an institution and a similar additional period for parole supervision following institutional treatment." ("The Federal Probation Service," *Federal Probation*, December 1947.

27. *Leonard v. Licker* (1914), 23 Ohio Cir. Ct. (N.S.) 442.

28. The decision is criticized as going too far in upholding juvenile court legislation, by BERNARD FLEXNER and REUBEN OPPENHEIMER, *The Legal Aspect of the Juvenile Court*, U. S. Children's Bureau Publication No. 99, 1922, p. 9.

29. *Cinque v. Boyd*, 99 Conn. 80, quoting Flexner and Oppenheimer, *op. cit.* Italics added.



## CONCLUSION

In plain sharp terms which well warrant repetition, Alan Keith Lucas declared to the Midcentury White House Conference on Children and Youth: "We are much more aware of the needs of children than we used to be and much more concerned about them. But, although some of us feel that we have some answers, actually there is far less agreement than there was fifty years ago. . . . When, for instance, we advocated juvenile courts around 1900, I think we were not concerned that the personal opinion of a single official, however well-informed and speaking with authority but with little or no well-trying legal procedures to keep him within bounds, was a somewhat dubious way of deciding whether a family should continue to exist. We were concerned perhaps if the judge wasn't social-minded and didn't see things as we did, but the idea that he might be taking away the parents' rights to their child, or his rights to them, without any semblance of 'due process,' didn't occur to us too often. We were too sure we knew what was right."<sup>30</sup>

The concept of the juvenile court is a noble one—that the child should not be punished for his acts or condition, but should be helped and protected. The law has been creative enough to have established this special court with its purpose humanitarian rather than punitive. Fulfillment of this purpose has not yet been fully achieved. Creative law can still make a contribution to means of protecting the child in trouble, not only by taking him into this court, but by protecting him in the court. It appears that important reorientations in jurisdiction may support the protective role of the court. Existing legal provisions relating to detention, procedure and disposition have given unusual powers to the court. Are they in balance with provisions to protect the child and parental rights? Improvement may well come from additional protective provisions, even if—perhaps because—they limit the power of the court more than at present.

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30. PROCEEDINGS; Health Publications Institute, Inc., Raleigh, N.C., p. 127.