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THE JUVENILE OFFENDER, SOME PROBLEMS AND POSSIBLE SOLUTIONS

Sam Jones, age fifteen, was arrested for breaking windows out of an abandoned house. He was picked up at ten o'clock Thursday morning in the city of Lexington. Harry White, age fourteen, was arrested in the county for malicious cutting and wounding at three o'clock Friday morning. These two arrests confront law officials and the public at large with a complexity of problems. To understand these problems and the possible solutions, it is necessary to consider three distinct phases of juvenile law enforcement: (1) The preliminary disposition of the offender with special emphasis on background research; (2) the juvenile court theory and procedure with discussion of juvenile judge; (3) theories of juvenile punishment and their evaluation.

Preliminary Disposition

Approximately one-third of all juvenile arrests in Lexington during 1964 were made during regular working hours, nine o'clock in the morning to four-thirty in the afternoon. These day-time arrests were made pursuant to a complaint and warrant as provided by Kentucky statute.[1] Upon arrest the juvenile is either placed in the custody of the state, the detention home or county jail, or is released to his parents. If it appears to the court at the time the summons is issued that the child is in such condition or surroundings that his custody should be immediately assumed by the court . . . , the juvenile is placed in detention.[1]

The juveniles arrested at night or early morning are handled differently; for, the immediate disposition is at the discretion of the arresting officer. Fayette juvenile officers generally apply the standard that if the juvenile is intoxicated he is taken to the county jail, otherwise he is taken to the Kincaid Home.[4] The parents are notified and the juveniles are released to the parents unless the nature of the offense indicates the necessity of keeping the child in secure custody.[5]

Separation of juvenile offenders in accordance with the seriousness of the offense, need for custody and more efficient disposition should be practiced throughout the preliminary stages. Minor violations such as truancy or breach of peace should never come before the juvenile

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[1] . . . Statistics City of Lexington Juvenile Division (1964). (Hereinafter referred to as statistics.)
[2] Ky. Rev. Stat. 208.080 (1952).
[3] KRS 208.110(3) (1952).
[4] . . . Interview with juvenile officer, Fayette County, Kentucky.
[5] KRS 208.110(3) (1952).

court; for, all misdemeanor offenses should be disposed of in the preliminary stages. Juvenile officers and workers could, upon a preliminary hearing, efficiently dispose of many cases through conference with the offender and parents. The City Juvenile Division has such a program to some extent. In 1964, only 817 cases of the 1293 arrested offenders were referred to the juvenile court.[6]

In 1964, approximately one-third or all juveniles arrested were detained, either in the Kincaid Home or the County and City Jail.[7] Detention has been described as the weakest link in the juvenile process.[8] Throughout the country the average length of detention is over twenty days.[9] In Lexington, the juvenile is usually detained, if at all, from the time he is arrested until the juvenile court hearing. Since the court convenes once a week, this initial period is never more than seven days.

However, if the case is continued at the first hearing, the juvenile is held over in the jail or detention home. The purpose of holding him over is often to teach him a lesson, or to show him what it is like in jail. It is questionable whether either of these purposes is a valid basis for detention. Nevertheless, when he is detained in the county jail he is placed in a cell block away from the more criminal of the inmates.[10] This procedure does prevent the juvenile's contact with hardened criminals; thus, protecting against a criticism often leveled at the juvenile system i.e." In one community, girls who had been charged with truancy were discovered sharing quarters with experienced prostitutes and in another community twelve-year-old boys and girls were held with adults in a dirty jail from June to August waiting for the juvenile court to reconvene after summer vacation."[11]

Detention is not effective as a deterrent to the juvenile offender. If the offender is arrested on Wednesday night, and is detained, he legally is allowed to lay out of school, read comic books and generally do what he likes—nothing. This could be corrected if the court would prevent him from enjoying his free time, week-ends and nights. He could be forced to attend school during weekdays, then confined to the detention home on weekends. This procedure would deter, rather than encourage, his idleness during the week.

Detention does afford the juvenile officers an opportunity to investigate the background of the offender prior to disposition. Investiga-

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[6] Statistics, *supra* note 1.
[7] *Id.*
[8] Ellington, *Protecting Our Children From Criminal Careers* 196 (1948).
[9] Bloch and Flynn, *Delinquency, The Juvenile Offender in America Today* 291 (1956).
[10] . . . Interview with the Fayette County, Kentucky Jailer (1965).
[11] Ellington, *supra* note 8 at 195.

tions, however, take considerable time and personnel, both of which are lacking in the juvenile department. The Lexington department has seven juvenile officers who are responsible for answering complaints, apprehending offenders and personal preliminary conferences. Fayette county has two juvenile officers to undertake the same duties. Neither department can be expected to conduct investigations of the environment, attitudes and general reputation of each juvenile.

The background investigation is the most important practice in familiarizing the judge and probation officers with the particular case. In some countries every offense committed by a juvenile is investigated by a member of a section and a report is given with a recommendation.[12] To follow this practice, the personnel shortage in the Lexington department must be remedied. One possible solution is for the university law students to work in conjunction with the juvenile department. A program could be established similar to the Legal Aid Program, or in conjunction with that program. Students interested in the juvenile problem could be assigned (after the arrest) to cases on which they would conduct a thorough investigation. This investigation would reveal pertinent information that could be incorporated into a recommendation to the juvenile judge. This recommendation would familiarize the judge with the personal problems of the juvenile prior to his initial contact at the hearing.

Juvenile Court: Juvenile Judge

It is estimated that one million youths will appear in juvenile courts in 1965.[13] In 1964, 817 juveniles were referred by the City Juvenile Division alone to the Fayette Juvenile Court.[14]

The juvenile court movement grew out of the reasonable conviction that child offenders should not be treated in the same manner as adults.[15] The guiding principle is that the care, custody and discipline or the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.[16]

The distinguishing feature of the juvenile court is that it is conducted under a cloak of informality.[17] The court room consists of a long table with chairs on each side. The juvenile judge sits at the

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[12] . . . *Current Projects in the Prevention, Control and Treatment of Crime and Delinquency*, vol. IV 190 (Winter 1963-64).
[13] Yablonsky, *The Role of Law and Social Science in the Juvenile Court.*
[14] Statistics, *supra* note 1.
[15] Bloch and Flynn, *supra* note 9 at 412.
[16] Rosenheim, *Justice for a Child* 8 (1962).
[17] KRS 208.060 (19).

head of the table with the juvenile offender and his parents on one side and court officials on the other. The proceedings are characterized by informal questioning by the judge and rambling, narrative answers by the juvenile and his parents.

The basic criticism of the informal procedure is that the child is often denied due process of law. One area of concern is legal representation for the offender. Even though every defendant is advised that he has a right to be represented by counsel, very few heed the advice. They do not desire counsel either because of the expense or because they are not aware of the necessity of legal assistance. Lawyers are indispensible because of the necessity of careful questioning, review of facts or possible appeals.[18] An example: John was arrested in Clark County for auto larceny. He claims he was hitchhiking through Bourbon County when the actual thief gave him a ride. The thief allegedly left John in Clark County with the car. John wrecked the car, but was never in Fayette County and was a resident of Campbell County. The Fayette juvenile court, however, ordered John's parents to pay for the car and then transferred the case to the child's home county. This lack or jurisdiction would have been recognized by a lawyer; thus, the entire case could and should have been transferred to the county where the defendant was known.

Due Process is especially important in detention prior to the hearing, right to counsel and record by court reporters.[19] In considering due process for the juvenile, the purpose and principle of juvenile court must be kept in mind. To guarantee the juvenile all the rights of a defendant in a criminal trial would defeat the purpose of the juvenile court. The principle of the court is to aid the juvenile and generally, the question of guilt or innocence is secondary. Most juveniles admit their connection with the crime either prior to or during the proceedings. Because of this, to allow an attorney for the juvenile to prevent disposition by the court through trickery or other special trial techniques is contra the juvenile court principle.

The juvenile court hearing is closed to the public. Many people believe that closed court is a shelter that does not belong in our society. I strongly disagree. The closed court is essential to the ascertainment of the pertinent facts of the case. An example: a seventeen year-old boy was accused of rape by an eighteen year-old girl. Throughout the girl's testimony she consistently had to refer to the

[18] Kahn, *A Court for Children* 101 (1953).
[19] Rosenheim, *supra* note 16 at 100.

intimate details of the event.[20] Even in closed session such testimony was both difficult and embarrassing. With the court room full of curiosity seekers and court house loafers, the findings of facts would have been next to impossible.

I would suggest that the witnesses not be allowed in the hearing except to testify. In the rape case just mentioned, as a court observer, I got the impression the plaintiff was dramatizing the alleged event for the benefit of her friends who were in the court as character witnesses. Such testimony could obscure the real facts and place the defendant in a much worse position.

Publication of the names of the convicted offenders should not be restricted. The public deserves to know the potential offender in order to protect its interest. Parents have a right to know that the boy next door has been convicted of a juvenile offense or that their daughter's friends have juvenile records. The major argument against the publication of names is the mental and social effect it may have on the juvenile. However, the juvenile who has disregarded society's laws does not deserve this protection.

My primary criticism of the Fayette Juvenile Court procedure is that the initial contact of the juvenile judge with the offender's case comes at the court hearing. Unfortunately, under the present situation the juvenile judge has no earlier opportunity to review the case. One writer suggests there should be two hearings, one to become acquainted with the juvenile and his background, the second to decide on disposition.[21] This procedure may be a solution, yet it would increase the problems of detention. The background research program suggested earlier could provide the answer. The results of research concerning the juvenile's family and environment could be made available to the judge prior to the hearing.

Juvenile Judge

The county judge serves as juvenile judge in Fayette County. This is in accordance with the Kentucky Statute which provides that the juvenile offenders be under jurisdiction of county government.[22] This procedure functions adequately in processing juvenile cases in the small rural communities; however, it is not adequate to carry out efficient juvenile disposition in the large urban areas such as Lexington.

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[20] . . . Admitted as an observer to Fayette Juvenile Court.
[21] Rosenheim, *supra* note 16 at 101.
[22] KRS.

Time is essential to the disposition of each juvenile offender's case. The offender's background, family relationship, and past record are all factors that must be considered prior to disposition. It is not sufficient that the judge's first contract with the case be at the hearing. Since the juvenile court is only one of many time-consuming responsibilities, the judge, understandably, does not have an opportunity to review all circumstances of each juvenile case.

The purposes of the juvenile court could better be achieved under the present statute if the county judge would appoint a full time juvenile trial commissioner. The commissioner would be the hub around which the juvenile department would revolve. He would be responsible for organizing the juvenile personnel, officers and probation workers, in a manner conducive to achieving the purposes and principles of the juvenile court.

The Juvenile commissioner should be chosen for his symbolic understanding of the principles on which the juvenile court is based. It would not be mandatory that he be trained in law, but it would be desirable. A legal background would assist the commissioner in finding facts through questioning, in jurisdictional problems and in the interpretation of the law. It is necessary that he be young enough to understand the problems of the juvenile and yet sufficiently mature to balance the interest of the juvenile with the interest of the public.

The inherent difficulty in finding a combination of such attributes is enhanced by the sacrifices the commissioner would be forced to make. An established lawyer would suffer financially if he accepted the position. A possible solution, however, would be a young lawyer not yet established in the profession, but with an understanding and an interest in the juvenile problem.

Theories of Punishment

Rehabilitation and punitive action are the two primary theories of treatment of a juvenile offender. The advocates of punitive theory regard the interest of society as a whole paramount to the interest of the offender. When it is known in any society that he who commits crime suffers at the hands of a stable and independent system of law, that society receives a guarantee that it will be permitted to go about its business without the interference of lawlessness.[23] When the conformist sees others defy rules without intoward consequences, he needs some reassurance that his sacrifices were made in a good cause.[24]

Historically, the reassurances to society were extremely harsh.

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[23] Hewart, *Treatment of the Young Offender* 45 (1935).
[24] Toby, Is *Punishment Necessary.*

For instance, a ten year old boy was sentenced to seven years in prison for stealing one book,[25] and another young offender was given the death sentence where he broke into a house and stole a spoon.[26] Today, such severe punishment would outrage even the most ardent supporter of the punitive theory.

The punitive theorist, however, is concerned about the apparent coddling of the repeat offenders. They are concerned when a juvenile molests a young girl, only to be admitted for psychological tests and treatment with a strong possibility he will be freed in a short time. They are concerned when their property is destroyed and the juvenile is told to love his mother and go to Sunday School. The advocates of more punitive measures are not unaware of the tendency of boys to be boys; rather, they are more deeply concerned that these juveniles learn to respect authority and learn to conform to society's laws.

The rehabilitation of the juvenile through treatment is the basis of the modern theory. The basic inquiry is why did the juvenile commit the offense and how can he be helped. One justification given for the theory is that no one can judge an offender until he has admitted his own share of the blame for the crime committed.[27]

The rehabilitation theory is exemplified by the treatment practiced at the Highfields Institution in New Jersey.[28] Highfields stresses work, free association, self evaluation and community contact.[29] The usuage patterns of the Highfields Social System are based on the assumption that youthful offenders need informal, easy, educational experiences in a type of social world.[30] Their purpose is to create a social world which enables the boys to reorganize their conceptions of themselves, restructure their group affiliations and test a wide range of attitudes, social roles, personalities and group situations.[31]

The Juvenile court's purpose of aiding and helping the juvenile necessarily encompasses the rehabilitation theory. The basic question, however, is whether specific remedies are sufficient to reach the ends sought or whether more fundamental revamping of the social order is necessary.[32] Despite the research into the treatment theory, it seems we are still operating more on faith and intuition than on sound knowledge in the rehabilitation of juvenile delinquents.

The juvenile offender's interest must be considered; yet, the interest

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[25] Hewart, *supra* note 23 at 22.
[26] Hoyles, *Treatment of the Young Delinquent* 106 (1952).
[27] *Ibid.* at 237.
[28] McCorkle and Bixby, *The Highfields Story* (1958).
[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*
[32] Bowman, *Youth and Delinquency in a Inadequate Society* 39.

of the public should be the prime consideration. Generally, members of the public respect the laws of society. A similar respect must be developed in the juvenile offender. He must realize the disapproval of society of his conduct and this disapproval must be conveyed indirectly throughout the entire process.

Lectures by judges or ordering of new conduct patterns is observed in the regular attempts of several judges to improve behavior by enforcing religious participation.[33] These lectures are ineffective in instilling within the juvenile a respect for the law. Respect of the law is learned either through teachings in school, church and home or through direct contact with the law. Unfortunately, the lessons taught at home are outside the control of the court; therefore, only when the juvenile has broken the law does the court enter the picture.

First offenders no doubt are fearful of their fate in juvenile court. This fear generates respect—respect for law and for society. But, like a child who is not punished the first or second time, he disobeys. The juvenile gradually becomes unafraid and eventually defiant.

Offenses against property should not be considered in the same light as offenses against the person. Auto larceny, bicycle larceny, destruction of property are not as serious offenses against society as assault and malicious cutting. In 1964 in Lexington, 1035 juvenile offenses were against property, whereas 75 were against the person.[34]

Repairing the wounds of society for the destruction of property is a serious problem. First offenders should be made personally to repair these wounds. This could come in the form of financial reimbursement or probation on weekends to the property owner. Second offenders should be treated more severely and in accordance with the laws imposed on adults. There should be no third chance in auto larceny, or destruction of private property. This is the policy of a Memphis, Tennessee, judge who believes ". . . repeaters over 16 should not be coddled."[35] The get-tough policy in Memphis has had considerable effect on all juveniles in the city. I have no patience with an offender, whether first or second, in offense against the person. Any member of a social system who violates its cherished dules threatens the stability of that system.[36] The law-abiding juveniles of a city have a right to expect that their sacrifices are not in vain. There is no excuse to coddle a fifteen-year-old who is man enough physically to inflict bodily harm upon another. Nor, is there any excuse to allow a seventeen-year-old who threatens his mother's and father's life to

[33] Kahn, *supra* note 18 at 108.
[34] Statistics, *supra* note 1.
[35] (Memphis Newspaper).
[36] Toby, *supra* note 24 at 337.

mingle in society after a series of treatments. It is time society stopped worrying about why he threatened his father, and start being concerned about others who may cross his path.

Rehabilitation is and should be the basic goal in punishment. One author points out that plausible though the argument against punishment as a means of rehabilitation is, it is not borne out by research.[37] Many authorities suggest that punishment and rehabilitation are incompatible, but this theory can be questioned when you consider that many times one has to come before the other. Offenders must be shown by experience that they must conform to the laws of society; then, and only then, can a constructive program of rehabilitation begin.

Summary

"Generally speaking, the legal profession, including the part which has direct contact with children who get into trouble, has contributed relatively little in the way of leadership which would stimulate and help formulate public opinion as to the need for adequate treatment resources."[38] The public must be aroused to the importance of providing juvenile courts where none now exist, and furnishing these courts with the trained help and probation officers they must have.[39] With adequate facilities, personnel, and training, the interest of the juvenile and the interest of society can be made compatible.

Scotty Baesler

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[37] Toby, *supra* note 24 at 336.
[38] Bloch and Flynn, *supra* note 9 at 246.
[39] Rosenheim, *supra* note 16 quoted Paul W. Alexander.