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John A. Wallace
Office of Probation for the Courts of New York City

Marion M. Brennan
Office of Probation for the Courts of New York City

INTAKE AND THE FAMILY COURT

JOHN A. WALLACE*
MARION M. BRENNAN**

FROM the standpoint of any probation service, one of the most interesting facets of the Family Court Act of the State of New York is its provision for preliminary procedure in matters involving neglect, delinquency, persons in need of supervision, support, and family offenses. Specifically, the probation service is authorized to confer with any person seeking to file a petition, the potential respondent, and other interested persons concerning the advisability of filing a petition and to attempt, through conciliation and agreement in proper situations, to adjust suitable cases before a petition is filed over which the court apparently would have jurisdiction.[1]

HISTORICAL REVIEW OF INTAKE

The concept of a preliminary procedure, particularly in juvenile courts, is not new. This procedure is more familiarly known as intake. Basically, it involves the process of screening cases and effecting adjustments in some matters without the necessity for judiciary intervention.

A brief examination of the history of intake reveals that intake, under one name or another, has been practiced in various ways in juvenile courts since such courts were first organized in this country. The following statement was made by Judge Ben Lindsey in 1904 about the Juvenile Court in Denver: "The result is that in Denver all complainants must first submit their case to the probation officers or the district attorney. The district attorney has properly turned all such cases over to the probation officers. It is then investigated and *often settled out of court.*"[2] (Emphasis added.)

In 1916, various communities in the United States made reports to the National Probation Association describing the organization of their courts and probation service. The Juvenile Court of Philadelphia reported:

> The complaint department, as its name implies, takes all complaints as they come into the probation department. All petitions are filed there and through it all investigations are conducted. . . . I am very glad to say there is an increasing use of the complaint department for police business of this kind and in many instances satisfactory settlements are made without it being necessary to bring the children to hearings of any kind.[3]

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* Director of Probation, Office of Probation for the Courts of New York City.
** Deputy Director of Probation, Office of Probation for the Courts of New York City.

1. N.Y. Family Ct. Act §§ 333 (neglect), 424 (support), 734 (juvenile delinquency), 823 (family offenses).

2. Lindsey, *Additional Reports on Methods and Results*, Children's Courts in the United States 61 (U.S. Gov't Printing Office 1904). These reports were prepared for the International Prison Commission.

3. Parris, *The Organization of a Probation Force in a Large City*, National Probation Association Proceedings 51 (1916).

At the same time, the Domestic Relations Court of Philadelphia referred to intake as the "application unit."[4] The Municipal Court of Chicago reported:

> Outside the court itself we have a social secretary who has with her a number of assistants. . . . This department of our court is fully as important, needful and useful in my opinion as the court itself, . . . and it is remarkable how many cases can be settled in that department without ever at all coming to the attention of the court.[5]

The movement toward informal adjustment of cases developed spontaneously throughout the United States to the extent that its growth and impact was studied by the Committee on Juvenile Courts of the National Probation Association. The report of this Committee, made in 1922, begins in this fashion:

> With the approval of the General Secretary the Chairman undertook as the work of your committee an inquiry into a special field of work associated with juvenile courts, namely unofficial treatment of quasi-delinquents. As far back as 1910, the bulk and unstandardized methods of this extra-legal case-work were to be noticed. In 1913, when a first-hand study of leading courts was made, it was found that nearly every probation office visited had spontaneously developed some practice of this sort, in several courts to a considerable extent. Ever since the organization of the juvenile court in Chicago, some unofficial work has been carried on there, according to the statement of several police officers. One officer, the first to file a petition in a juvenile court in America, stated that he has always handled some complaints without court action. Thus, unofficial work is not new in the sense that it lately came into practice; it is merely receiving closer attention.[6]

Many factors led to the practice of adjusting certain cases informally. Prominent among them was the recognition that some offenses brought to the attention of the courts were too trivial to warrant any action other than a warning not to repeat the act. Moreover, there were other situations which merely required advice or direction rather than the disciplinary intervention of the courts; and still others in which favorable home conditions and responsible parents augured well for favorable results without the formality of a court hearing and adjudication of delinquency. The rationale for the practice of informally adjusting cases has not changed substantially through the years.

As with all other social movements and changes, intake was not without its critics. Herbert H. Lou reported in 1927 some arguments against it: "Such work will interfere with the official duties of the court, lower its efficiency by taking such additional work, and weaken authority in formal cases, or that it will be done in a haphazard and unscientific fashion and so fail to reach the

4. *Id.* at 71.

5. Hopkins, *The Domestic Relations Court, Its Organization, Development and Possibilities*, National Probation Association Proceedings 63 (1916).

6. Report, Committee on Juvenile Courts, *The Unofficial Treatment of Children Quasi-Delinquent*, National Probation Association Proceedings 68 (1922).

underlying problems that may be serious."[7] Lou himself believed that the practice was to be commended and wherever possible it should be utilized if there be an efficient and trained staff of probation officers. He commented "the development of the practice is but another step in socializing the juvenile court procedure."[8]

Difficulties were encountered when intake was defined in different ways by the various courts, and practices and procedures varied. In some jurisdictions, intake expanded its scope to include so-called unofficial probation. The MANUAL FOR PROBATION OFFICERS, 1918 edition, published by the New York Probation Commission, recognized the term and defined unofficial probation as "cases referred to probation officers for oversight and help for which persons are not brought before the court or judge at all. Unofficial cases usually arise through the desire of the parent, teacher, or someone else especially interested in having the wayward tendencies or habits of a child or an adult overcome without notoriety or other harmful effects which might follow an arrest or appearance in court. . . . Although this kind of work on the part of probation officers is *without legal sanction or authority,* it is from a humanitarian standpoint commendable, provided it does not interfere with the performance of their official duties."[9] (Emphasis added.) This definition was repeated in the third edition of the Manual (1925)[10] and again in the fourth edition (1926).[11]

The first edition of the Standard Juvenile Court Law, published in 1926 by the National Probation Association, recognized and attempted to remedy this defect. Article II, section 6 of this Act reads: "Any person having information that a child is within the provision of this act, may give such information to the court, and any peace officer having such information shall give it to the court. Thereupon the court shall make preliminary inquiry to determine whether the public interests or the interests of the child require that further action be taken . . . ."[12] The explanatory material that follows that section is particularly noteworthy:

> The act follows the procedure in many of the best juvenile courts by providing for a preliminary inquiry and investigation before a petition is filed. It proceeds upon the theory that it is better for as many cases as possible to be adjusted without a formal court hearing. The system of handling cases informally, usually through the probation department, is well recognized and in many courts half or more of the cases are adjusted in this way. This can be done without explicit

7. Lou, Juvenile Courts in the United States 127 (North Carolina Press 1927).
8. *Ibid.*
9. New York State Probation Commission, Manual for Probation Officers in New York State 57 (2d ed. 1918).
10. New York State Probation Commission, Manual for Probation Officers in New York State 58 (3d ed. 1925).
11. New York State Probation Commission, Manual for Probation Officers in New York State 58 (4th ed. 1926).
12. National Probation Association, A Standard Juvenile Court Law 14 (1926).

> statutory authority, the court having an inherent right to exercise discretion as to taking official jurisdiction, but the system has grown so wide-spread and is so generally recognized as beneficial that the committee believes it should be recognized in the law.[13]

The language and intent of this Standard Juvenile Court Law with respect to preliminary investigations and inquiries were incorporated in the juvenile court laws of a number of states. In theory, then the practice of informal adjustment of cases was legally recognized. Criticism continued but in a different vein, now focusing on the violation of the rights of the child and the family under due process.

Studies of various juvenile courts indicated that the complaints were not without validity. Thus, some courts and probation personnel misunderstood the term "preliminary inquiry." This term means merely an inquiry to determine whether the best interest of the child or of the public require the filing of a petition. It was mistakenly interpreted to mean the making of social studies to help the court arrive at a disposition. As a result, full probation investigations were made before any determination of delinquency; indeed they were often made even when parents and children denied the allegations of the petition.

Even more widespread abuses were found in juvenile courts which delegated to the probation staff such wide latitude in handling informal cases that children were held in detention for periods ranging from a few days to several months, and subsequently released without ever coming to the official notice of the court. Equally questionable was the propriety of keeping children under probation supervision for one, two or even three years without any judicial determination that an act of delinquency had been committed.

The basic value of intake continued to be recognized, and advocates of the socialized procedure of juvenile courts were giving thoughtful attention to rectifying abuses. STANDARDS FOR SPECIALIZED COURTS DEALING WITH CHILDREN was one of the early national publications concerning itself with this problem. This publication discussed at length the arguments for and against intake. It set forth that informal adjustments should be limited to the following:

1. Referral of the child or the family to a social agency offering services which may be of help. Such a referral should not be compulsory or cause the child or family to feel obligated. Rather, it should be considered as advice as to where help is available in the community.
2. A conference between the complainant and the child or his family or, in the case of non-support, between the parents. The purpose of such a conference should be to make adjustments that will obviate the filing of a petition. Attendance at a conference cannot be enforced, nor can conditions be imposed on the child or his family as a result of it. It should be offered simply as a service which may help to adjust matters without the necessity of formal

13. *Id.* at 15.

> action by the court. When the matter warrants the filing of a petition, the intake worker may, however, authorize such filing if the child and his family ignore the call to the conference, or if the conference discloses that there is need for the child to be brought before the court.[14]

The use of the term "unofficial probation" continued to be a matter of concern and was a subject for discussion by the Advisory Council of Judges of the National Probation and Parole Association at its meeting in 1954. Those judges, representing a cross section of juvenile courts throughout the country, stated in a resolution that: "The granting of probation is a judicial function to be exercised only by a court after adjudication in accordance with the law, and probation is not to be confused with the official but non-judicial service of limited duration that may be rendered to a juvenile by the same court."[15]

The phrase "non-judicial service" more precisely describes the work of screening and effecting informal adjustment. Significantly, this term has been used since 1957 by the U. S. Department of Health, Education and Welfare in reporting juvenile court statistics.

The concept and delineation of non-judicial service was further explored in GUIDES FOR JUVENILE COURT JUDGES. This book presented, for the first time, criteria for the determination of which cases required judicial handling and which did not. It stated:

> The jurisdictional foundation for non-judicial cases rests upon the voluntary acceptance of this disposition by the family and child concerned. This means that, in all cases handled non-judicially, the intake worker must first make certain that the fact of delinquency or neglect is not disputed and the parents and child must be aware of the fact that they have the right to judicial hearing if they so desire.[16]

It was stated further that the court had responsibility for establishing controls, which would include the maximum time for the non-judicial cases to be held open. Recommendation was made that no non-judicial case should extend beyond three months without review by the court.[17]

PRELIMINARY PROCEDURE UNDER THE FAMILY COURT ACT

The Family Court Act of the State of New York is unique in the fact that not only does it make provision in a general way for preliminary

14. U.S. Children's Bureau, Standards for Specialized Courts Dealing with Children 44 (U.S. Gov't Printing Office 1954). These materials were prepared in cooperation with the National Probation and Parole Association and the National Council of Juvenile Court Judges.

15. Minutes, National Probation and Parole Association, Advisory Council of Judges, Second Annual Meeting, May 14-15, 1954.

16. National Probation and Parole Association, Advisory Council of Judges, Guides for Juvenile Court Judges 40 (1957). This was prepared in cooperation with the National Council of Juvenile Court Judges.

17. *Id.* at 41.

procedure or intake but it describes in considerable detail the procedural requirements which must be observed. These requirements in turn incorporate many of the sound basic principles which have been evolved through the years. Section 333 of article 3, section 424 of article 4, section 734 of article 7, section 823 of article 8, and article 9 provide that the rules of court *may* authorize the probation service to undertake preliminary procedures.[18] The Rules of the Family Court as adopted by the Administrative Board of the Judicial Conference of the State of New York, effective September 1, 1962, provide that the probation service *shall* undertake these preliminary procedures. Under these provisions, the probation officer at intake in the Family Court will confer with any person seeking to file a petition, with the potential respondent and with any other interested person concerning the advisability of filing a petition.

If the facts presented do not appear to place the matter within the court's jurisdiction, the person bringing the matter to the attention of the court will be so informed. Should the prospective petitioner be insistent about his right to file a petition, an opinion will be sought from the judge there presiding.

If a matter does appear to be within the court's jurisdiction, the person bringing the matter to court must be informed of his right to file a petition if he so desires. This principle is derived from the statutory provision and safeguard that "the probation service may not prevent any person who wishes to file a petition under this article from having access to the court for that purpose."[19]

When the matter appears to be within the court's jurisdiction and there is a basis for believing that the matter may be adjusted suitably without the filing of a petition, the consent of all interested persons should be obtained. Many students and leaders in the field of probation believe that this includes securing the consent of a minor if he is of the age of 13 years or over. The service performed by intake in adjusting suitable cases without the filing of a petition rests upon the voluntary acceptance of this disposition by all parties involved, including the family and the child. This is one of the principles enunciated in GUIDES FOR JUVENILE COURT JUDGES which points out that in cases being handled without judicial action, the intake worker must first determine that the facts alleged are not disputed and that the family or the parents are aware of the fact that they have the right to a judicial hearing if they so desire.[20]

By statutory provision, the probation service may not compel any person to appear at a conference, produce any papers or visit any place. For example,

18. Article 9 of the Family Court Act calls for preliminary procedure in conciliation matters but only *after* the filing of a petition. Although adjustment procedures are involved, in the opinion of the authors the preliminary procedure in conciliation does not conform to the classical pattern of intake. For this reason, this paper does not address itself to preliminary procedure in conciliation cases.

19. N.Y. Family Ct. Act §§ 333(b), 424(b), 734(b), 823(b).

20. See National Probation and Parole Association, *op. cit. supra* note 16.

if the need for psychological, psychiatric, or physical examination should arise at a point in the adjustment process, the consent and cooperation of the individuals toward securing such examinations or referrals must be secured.

This statutory provision is particularly significant when contrasted with the statement made by Lou: "The weapon used in informal adjustment of cases is moral suasion, backed by the potential authority of the court."[21] Too often that moral suasion became "either-or else" and the children and families were then forced to subject themselves to informal adjustment against their wills. The provisions in the new Family Court Act will prohibit any such actions.

There is a further protection in the Family Court Act which provides that no statements made during the preliminary conference at intake may be admitted into evidence at any adjudicatory hearing under this act or in any criminal court at any time prior to conviction.[22]

The probation officer at intake will attempt, by a variety of techniques, to adjust suitable cases as an alternative to the filing of a petition in matters in which the court would appear to have jurisdiction. Efforts at adjustment under articles 3, 4, 7, and 8 may not extend for a period of more than two months without leave of a judge of the court, who may extend the period for an additional sixty days.[23]

Decision Making at Intake

The process of screening cases which go to the court occurs at several levels. A potential petitioner will have studied or examined the merits of going to court before he decides to seek to file a petition. Police departments which present the bulk of petitions in family and children's courts have more or less clearly defined intra-departmental criteria by which they determine which child will be dealt with at the police level and which child shall be referred to court.

In courts which do not have provision for preliminary procedure, the next level of screening is done by the clerk who prepares the petition and whose decision would be made largely in relation to whether the court has jurisdiction, rather than in terms of the needs of the child and/or the community. The final level of screening in any court is that done by the judge at the point of hearing.

The provision of the Family Court Act of the State of New York, and the Rules of Court thereof, that the preliminary procedure shall be executed by the probation service, presents probation services everywhere in this State with an enormous challenge to provide the kind of staff that can meet this grave responsibility. The individuals chosen for this type of assignment must have not only superior knowledge and skill in interviewing, knowledge of the law and familiarity with community resources, but they must have as well

21. Lou, *op. cit. supra* note 7, at 124.
22. N.Y. Family Ct. Act §§ 334, 735, 824.
23. N.Y. Family Ct. Act §§ 333(c), 424(c), 734(c), 823(c).

the ability to gain a client's confidence quickly and the capacity to make sound decisions on the basis of short contacts and limited information.

Decision making at intake is very important and cannot be overemphasized. Two basic decisions must be made at the point of intake. The first is a relatively simple one—the intake worker must decide whether the matter appears to be within the jurisdiction of the court. To give an example, if the situation involves a delinquency and the child was 16 years of age when the act was committed, there is clearly no jurisdiction in the matter. The potential petitioner can be so advised and can be given information regarding alternate courses of action.

If there is jurisdiction, the next decision is crucial—is the authority and intervention of the court itself necessary? When the answer is in the affirmative, the probation officer at intake is obligated to have a petition filed as expeditiously as possible. The referral should be accompanied by all available material which may assist the court in making a disposition after the judge makes his finding of fact.

When referral for petition is not indicated, the intake officer has three alternatives:

a. that there be no further proceedings;
b. that the matter be referred to a public or voluntary agency;
c. that an attempt should be made on a short term voluntary basis to make an adjustment without the filing of a petition.

The success of probation in implementing intake will depend not only upon the assignment of skilled staff but also upon the training in case selection which is given to the staff involved. Lacking necessary objective criteria, individual staff members may develop their own subjective criteria. When this occurs, the basic criterion may be the nature of the act alleged and its significance to that officer. The story is told of a probation officer in another state whose car had been stolen and who subsequently referred all cases involving automobile theft for petition and judicial action.

Some criteria are basic to all matters handled at intake whether in neglect, delinquency, persons in need of supervision, support, or family offense.[24] The following are situations which should be referred for the filing of a petition and judicial determination:

1. cases in which there is dispute about the allegations of the petition;
2. cases in which either party clearly indicated a desire to appear before the court;
3. cases in which one or more of the parties involved refuse normal cooperation;

24. The criteria suggested in this and the following paragraphs are based on Guides for Juvenile Court Judges, *op. cit. supra* note 16 at ch. VI, "Intake." A staff directive on intake to the Family Court Division, Office of Probation for the Courts of New York City provides additional criteria, as noted in the text.

4. cases in which the welfare and protection of the community is involved.

The following additional criteria requiring filing of a petition in cases of neglect, delinquency, and persons in need of supervision are suggested:

1. cases in which the child has been temporarily removed from his home and not returned thereto or in which the child has been detained prior to the appearance at intake;
2. cases in which a recommendation for temporary removal or detention is indicated;
3. cases in which there is reason to believe that placement or commitment will be necessary;
4. cases in which two or more children are involved in the same delinquent act and in which it has already been decided that one of the respondents must be referred to court on petition.

In cases involving support or family offense, the following criteria are suggested as additional guides in determining which matters should be handled judicially:

1. cases involving emergency;
2. cases in which it appears that the safety of the petitioner or other person is in danger;
3. cases in which there is reason to believe that the respondent is about to leave the jurisdiction.

Two criteria for selecting cases which should be handled without the filing of a petition are common to all matters handled at intake. These criteria are:

1. cases in which the problem presented indicates a need for a relatively short period of service;
2. cases in which the matter has not had a serious impact on the community or does not present an emergency situation.

Intake and Detention

The detention of problem children is always a serious and vexing problem facing juvenile and family courts. Basically, children have a right to be at home with their parents. However, certain circumstances require that some children must be detained pending exploration of their total situation.

Several studies have indicated that children are often unnecessarily detained. This conclusion was also reached by the Joint Legislative Committee on Court Reorganization which prepared the basic legislation for the Family Court Act.[25] As a result, the Act contains the provision that any child alleged to be delinquent or a person in need of supervision is to be released to his parents "unless there is a *substantial probability* that he will not appear in court on the return date or unless there is a *serious risk* that he may before

25. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II, (The Family Court Act) 10 (1962).

the return date do an act which if committed by an adult would be a crime."[26] (Emphasis added.)

The preliminary procedure through which the child has passed before the filing of a petition may be very helpful to the judge in making a sound decision regarding detention, after he has found that the allegations of the petition were sustained. The probation officer can provide the judge with background material secured from the family, school, social agencies, etc. Thus, his decision can be based on the total situation rather than on the offense and whatever information can be educed in a courtroom.

The Challenge Ahead

Intake under the Family Court Act is now underway. It is too early to give reports or to make predictions. What can be said is that intake has given to the probation service the opportunity to determine for and with each person coming to the threshold of the Family Court the services most appropriate and required for his individual needs. It remains for probation to demonstrate that it can satisfactorily discharge this grave responsibility.

26. N.Y. Family Ct. Act § 728(b)iii (before filing of petition). A similar provision after filing of a petition is found in § 739.