

5-15-1980

Status Offenders Should Be Removed From the Juvenile Court

Luke Quinn

Peter M. Hutchison

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>

 Part of the [Courts Commons](#), [Jurisdiction Commons](#), and the [Juveniles Commons](#)

Recommended Citation

Luke Quinn and Peter M. Hutchison *Status Offenders Should Be Removed From the Juvenile Court*, 7 Pepp. L. Rev. 4 (1980)
Available at: <http://digitalcommons.pepperdine.edu/plr/vol7/iss4/5>

This Article is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.

Status Offenders Should Be Removed From the Juvenile Court*

LUKE QUINN**

PETER M. HUTCHISON***

Inadequate financial resources and overcrowded juvenile placement facilities have frequently been cited as grounds for the abrogation of the juvenile court's practice of retaining jurisdiction over status offenders. In this article, Judge Quinn suggests the existence of even more compelling reasons which support diversion of status offenders to programs better suited to their particular needs. The author contends that the juvenile court's jurisdiction should be confined to matters of fact-finding and adjudication, rather than intruding into areas within the domain of the parents, and into areas in which the court lacks the necessary expertise. It is argued that diversion of status offenders would also eliminate the traumatic experience of courtroom appearances and the frequently unnecessary period of incarceration. Abrogation of jurisdiction would enable the court to devote its energies and resources to its primary concerns of abuse and juvenile crime.

I. INTRODUCTION

Each year hundreds of thousands of children run away from home¹ and as many as two million skip school regularly.² Such

* The authors would like to acknowledge the assistance of Gerald Thalhammer in the preparation of this article.

** B.A., Western Kentucky State University; J.D., Wayne State University; Assistant Attorney General, Michigan 1964-66; Genesee County District Judge, 1968-70; Genesee County Probate Judge 1970 - present.

*** B.S., Michigan State University, 1973.

1. INGRAM, *THE INNOCENT CRIMINAL—LEADERS GUIDE* 28 (1977).

2. *NEWSWEEK*, Aug. 27, 1979, at 44, for a discussion of the truancy problem.

children are labeled status offenders and, as a group, account for approximately fifty per cent (50%) of the case load of the juvenile courts in this country.³ Many of these children will be adjudicated delinquents, and a great number will be sent to the same institutions as serious felony offenders.⁴ In fact, a status offender is nearly as likely to be institutionalized as other adult criminals,⁵ and may be placed in an adult jail.⁶ Institutionalization is done under the guise of "helping" these children, but the evidence is strong that such "help" often violates the children's right to due process and frequently takes the form of abusive and brutalizing treatment.⁷ Based on this harsh treatment and the belief that juvenile courts, at best, can do little to aid these troubled children, there is a growing movement to abolish jurisdiction over juveniles.

Naturally, this sentiment is creating much opposition, especially from those entrenched within the juvenile justice system. Some claim that such a move would be tantamount to abandoning the children most deserving of help⁸ and that the court may be the only entity to help these youngsters. Others claim that the act would destroy the American family and that it would amount to a consent for children to leave home and quit school in droves. Others feel that the courts can provide help better than anyone else.⁹

There are some judges who apparently believe that certain chil-

3. C. SILBERMAN, *CRIMINAL VIOLENCE*, CRIMINAL JUSTICE 312 (1978).

4. *Id.* at 20. See also National Council of Jewish Women, *Symposium on Status Offenders: Manual for Action* 10 (1977), wherein Milton Rector states:

We think about 600,000 to one million children are detained every year. And about a third of those, the sampling data would indicate, are non-delinquent children, status offenders. Of the youngsters committed to correctional institutions or residential care, about a fourth of the boys are status offenders, and about 70% of the girls are status offenders. . . we should ask why they often stay longer both in detention and in commitment institutions than those who have committed what would be major felonies if adults.

5. *Id.* at 335. See also Serrin, *Status Offenses*, Detroit Free Press, Oct. 9, 1975. A senior attorney for Michigan Legal Services related the story of two youngsters he represented the same day, one who was a boy charged with first degree murder. Because he had an aunt who would take custody of him, he spent less than ten minutes in detention. The second youngster was a girl who, after being beaten by her stepfather had run away. Because her parents did not want her, she spent 5 months in a youth home.

6. INGRAM, *supra* note 1, at 27. "18 percent of the children incarcerated in adult jails are status offenders."

7. See SILBERMAN, *supra* note 3, at 312. See also WOODEN, *WEEPING IN THE PLAYTIME OF OTHERS: AMERICA'S INCARCERATED CHILDREN* 106 (1976).

8. Arthur, *Status Offenders Need A Court of Last Resort*, 57 B.U.L. REV. 632 (1977).

9. Change within the Criminal Justice System has always been slow and painful and judges traditionally have been a cautious lot. For an interesting account of the debate in 19th century England on removing the death penalty for

dren will benefit from detention.¹⁰ A recent article claimed that one young man's reading level went up two grades after twenty-seven days in "the slammer." This prompted one individual to venture that if the judge had kept that kid six months, he'd either be teaching school or practicing law. A national survey revealed that nearly half of the juvenile judges believe that placing a youngster in detention provides a means whereby the serious nature of the juvenile justice system can be impressed. It is interesting to note that only 28% of those in charge of detention centers agree with the judges.¹¹ Juvenile judges are not malicious or even unfeeling in their dealings with children. On the contrary, the author is convinced that, in most instances, they do what they think is best for the child.

However, the fact remains that many children are being emotionally, physically, and legally abused as a result of the belief that the court can operate as either a super-parent or as a social

shoplifting, see HIBBERT, *THE ROOTS OF EVIL* 62 (1963). The warning of The Lord Chief Justice is interesting:

I trust your Lordships will pause before you assent to an experiment pregnant with danger to the security of property . . . and before you repeal a statute which has so long been held necessary for public security. I am convinced, with the rest of the judges, that public expediency requires there should be no offenders. Such will be the consequence of the repeal of this statute that I am certain depredations to an unlimited extent would immediately be committed. . . . My Lords if we suffer this Bill to pass, we shall not know where we stand; we shall not know whether we are upon our head or our feet. . . . Repeal this law and see the contrast—no man can trust himself for an hour out of doors without the most alarming apprehensions, that, on his return, every vestige of his property will be swept off by the hardened robber.

10. A study of Michigan's juvenile justice services revealed:

A disturbing number of responses were concerned with increasing the punitive power of the court. These comments are somewhat difficult to understand in relation to the juvenile court philosophy or even modern corrections theory and practice generally. A judge that tells an interviewer he wants the power to *sentence juveniles to jail terms* does not appear to have a basic grasp of the juvenile court concept.

JOHN HOWARD ASSOCIATES, *MICHIGAN JUVENILE JUSTICE SERVICES* 60 (1973). See also M. RECTOR, *PINS CASES: AN AMERICAN SCANDAL*, NCCD 4 (1974), "At this moment 66,000 boys and girls are confined in the country's training schools or equivalent institutions. Depending on the state, from 45 to 55 percent of those youngsters are labeled 'persons in need of supervision.'" This attitude is apparently shared by parents. See *Lilly and Indiana Juvenile Justice Task Force Promote Change*, III CHANGE: A JUVENILE JUSTICE QUARTERLY (1979), "Unfortunately for the youth, his stepfather was a friend of the deputy sheriff. In anger, the stepfather asked the deputy to 'lock him up to teach him a lesson.' Seven weeks later, the child was still in jail."

11. See SILBERMAN, *supra* note 3, at 322.

agency.¹²

In the early days of the author's judicial career, he regularly sent, (when space was available) status offenders to the same institutions as felony offenders. In the early 1970's, the author, along with several other Michigan judges, placed children in a program located outside the country. The concept of treatment was culture shock. Supposedly, after a few weeks, the child would become psychologically disoriented and thus become more receptive to treatment.

However, the author now feels that while the court was helping many deserving youngsters, court action simply was not necessary. It appeared to the author that most of the children and their parents were in court because the court either owned the services or controlled access thereto. Regretably many of these children had spent a few days in detention before appearing in court.

Because of the author's nine year judicial experience, he became firmly convinced that status offense jurisdiction should be abolished. The purpose of this article is to explain some of the reasons behind this assertion after the author discusses the nature of what constitutes a status offender.

A status offender is commonly defined as one whose acts are proscribed solely because of his age.¹³ Runaways and school truants account for the largest number of these youngsters.

The mere act of running away from home is insufficient to sustain a guilty verdict, a fact often overlooked in many courts (as it must be if the court is going to provide services). There must be a further showing that the child left home without sufficient cause.¹⁴ Such showing is simply not possible in the great majority of cases.¹⁵ Thus, it seems fair to conclude that many children who run away from home are erroneously labeled as status offenders.

The same argument can be made concerning the act of truancy. It is reasonable to assume that some children fail to attend school because their parents either refuse or neglect to send them. This

12. See WOODEN, *supra* note 7.

13. See National Council on CRIME AND DELINQUENCY, 21, 97 (1975).

Status offenses are acts committed by children (truancy, running away, consensual sexual behavior, smoking, drinking, curfew violation, disobeying authority, ungovernability, waywardness, etc.) which would not be considered crimes if committed by adults but which subject children to the jurisdiction of the juvenile court.

14. See MICH. COMP. LAWS § 712A.2(2)(A)(2). "Who has deserted his home without sufficient cause. . . ."

15. See Blua, *Why Parents Kick Their Kids Out*, PARENTS MAGAZINE, April, 1979, at 66, "Throwaways' or 'push-outs'—30 to 60 percent of the total—are youths who are told to leave home."

reasoning promulgated the Michigan child attendance law directing that parents who fail to send their children to school can be found guilty of a misdemeanor.¹⁶ The author knows of no case where the statute has been enforced.

It has also been asserted that many children labeled as status offenders are actually delinquents, but that such behavior cannot be proven. A child, like an adult, should account for what he or she has done, not for what society thinks he or she may have done. No one should be penalized for one act when the community is really concerned about another. If an adult armed robber is charged with a lesser crime, the law does not permit him to be sentenced for armed robbery. In the juvenile system, no such distinction is made, and the runaway may be incarcerated for a longer period of time than the robber.¹⁷

II. COURT JURISDICTION OVER STATUS OFFENDERS SHOULD BE ABOLISHED

A. *Juvenile Court Judges Do Not Have The Expertise To Make The Decisions They Must Make*

"Not every determination by state officers can be made most effectively by one of the procedural tools of judicial and administrative decisionmaking."¹⁸ It is a rare instance in which a status offense case goes to trial. Of the thousands of such cases which have been heard in the author's court, he knows of only one case in which a trial was held. One judge, in referring to what he termed the evidentiary obviousness of such cases, stated that "[a] trial serves little purpose."¹⁹ While the author strongly disagrees with his statement, he feels that it accurately reflects the thinking of many individuals within the juvenile justice system.

The juvenile judge is actually deciding whether the youngster requires treatment, and if so, what type of treatment is most appropriate, unless he merely rubber stamps that which has already been decided. The author does not believe that the above statements slight the many fine, hard-working juvenile court judges,

16. See MICH. COMP. LAWS § 340.743 (1975 Rev.).

17. See INGRAM, *supra* note 1 at 27. "The average period for commitment of juveniles to correctional institutions is 9.9 months. Those held for status offenses remain an average of 4 to 5 months longer than children convicted of criminal offenses."

18. Parham v. J.L. & J.R., 47 U.S.L.W. 4740, 4746 (1979).

19. See Arthur, *supra* note 8, at 640.

but that when taken as a group, they are almost totally unprepared by education, training, and experience to deal with the family dynamics presented by the typical status offense case.²⁰ Normally, a juvenile court judge brings his legal training and his experience as a child and a parent to his job. Inasmuch as it is likely that neither the judge nor the judge's children have ever come within the jurisdiction of a juvenile court, it is difficult to apply his or her experience as a parent or child to the cases that come before his or her court.

The training of the staff of the court does not compensate for the lack of expertise of the judge, since the staff work for, and often retain their jobs at the pleasure of the juvenile court judge. It is likely that these employees are influenced by the style, whims and prejudices of the person who approves their paychecks. Although the juvenile judge is influenced by the professional advice of the court social worker, such advice may be tailored to fit the judge who requested it.

*B. Court Proceedings May Do More Harm Than Good*²¹

In the case of *Parham v. J. L.*, the United States Supreme Court reaffirmed the principle that "parents possess what a child lacks in maturity, experience and capacity for judgment required for making life's difficult decisions,"²² and the Court recognized that "natural bonds of affection lead parents to act in the best interest

20. See JOHN HOWARD ASSOCIATES FINAL REPORT 151:

The judges were asked to estimate the percent of their time which they devoted to juvenile court matters, since it was known in advance that almost all of them would have some other judicial responsibility—or be only part-time judges. Responses from 69 judges indicated that this group devoted only 54.3 percent of their time to juvenile work.

In the same report it is stated that the "judges were asked how much in-service training they had obtained during the past year. . . . Fifty-seven of 71 interviewed reported some training during the past year. The number of days totalled 545 for an average of 9.56 days each in the last year." *Id.* at 152.

21. Haney & Gold, *The Juvenile Delinquent Nobody Knows*, PSYCHOLOGY TODAY, Sept. 1973, at 49.

And in spite of a vigorous and verbose legal machinery, catching a delinquent does little to stop his or her illegal acts. To the contrary, getting caught makes adolescents more likely to commit delinquent acts. . . . In only 10 of the 35 pairs did the unapprehended control commit more offenses. Whatever it is that the authorities do once they have caught a youth, it seems to be worse than doing nothing at all, worse even than never apprehending the offender. Getting caught encourages rather than deters further delinquency.

Id. at 52. For an excellent discussion of the theory that involving the status offender in the juvenile justice process produces the behavior it was intended to prevent or deter. See NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION, V A COMPARATIVE ANALYSIS OF STANDARDS AND STATE PRACTICES, U.S. DEPARTMENT OF JUSTICE (1977).

22. *Parham v. J.L.*, 47 U.S.L.W., at 4744.

of their children."²³ The Court went on to hold that, an adversarial hearing was not required before a parent could have a mentally ill child admitted to a hospital for treatment, and that such a hearing might actually be harmful:

Another problem with requiring a formalized fact finding hearing lies in the danger it poses for significant intrusion into the parent-child relationship. Pitting the parents and child as adversaries often will be at odds with the presumption that parents act in the best interests of their child. It is one thing to require a neutral physician to make a careful review of the parents' decision in order to make sure it is proper from a medical standpoint; it is a wholly different matter to employ an adversary contest to ascertain whether the parents' motivation is consistent with the child's interests.

Moreover, it will make his subsequent return home more difficult. These unfortunate results are especially critical with an emotionally disturbed child; they seem likely to occur in the context of an adversary hearing in which the parents testify. A confrontation over such intimate family relationships would distress the normal adult parents and the impact on a disturbed child almost certainly would be significantly greater.²⁴

The above rationale may have a stronger application in the typical status offense case. Usually the tension between parent and child is very high with each of the two convinced of the other's blame. The child, particularly if a runaway, is likely to be hostile toward the parent because he or she will likely have undergone a period of detention prior to the hearing. The parent, of course, is convinced in many cases, that a period of detention is the appropriate sanction. Sometimes this is a temporal feeling, the product of the parent's anger. The parent may later be thankful that the judge did not accede to such wishes.

Generally what is needed here is a wise friend and counselor rather than a judge. Obviously, the family is in need of services, which the court, if functioning as required by the *Gault* decision,²⁵ may not be able to provide.

To illustrate, consider the offense of running away. As noted earlier, running away, of itself, is not sufficient to sustain a guilty verdict for a status offense. The child must have run away with-

23. *Id.* at 4744.

24. *Id.* at 4746.

25. *In re Gault*, 387 U.S. 1 (1967). The Court imposed the following requirements on delinquency adjudication:

First, adequate and timely notice of the charge must be given to the child and his parents; Second, both child and parents must be advised of right to counsel and that if they are unable to afford counsel, one will be appointed; and Third, that the privilege against self-incrimination applies, and last, the child has the right to confront and cross-examine the witnesses against him.

out good cause. In the author's experience, most runaways have cause or feel their action is justified. As soon as the alleged offender says, "Yes, I ran, but. . .," the judge must halt the proceedings. The youngster is entitled to the services of an attorney and the state must prove his guilt beyond a reasonable doubt. If the state fails to sustain its burden, the case is dismissed and a troubled youngster may receive no help.

The United States Supreme Court in *Parham* points out another shortcoming of the adversary process:

[T]he *parens patriae* interest in helping parents care for the mental health of their children cannot be fulfilled if the parents are unwilling to take advantage of the opportunities because the admission process is too onerous, too embarrassing or too contentious. It is surely not idle to speculate as to how many parents who believe they are acting in good faith would forego state-provided hospital care if such care is contingent on participation in an adversarial proceeding designed to probe their motives and other private family matters in seeking the voluntary admission.²⁶

Just as aversion to or fear of the adversary proceeding may deter parents, it may be more likely to deter young people. Again, it surely is not idle to speculate as to the number of children who stay on the run or perhaps who stay in abusive situations because of fear of the court.

C. Courts Lack Resources To Deal With Status Offenders

There is a presumption in the law that most parents can and will act in the best interests of their children. Admittedly, however, some do not. There is also general agreement that most parents can manage their children. Admittedly, however, some can not. In the case of the former, the child abuse and neglect laws are adequate to assure the protection of children if suspected cases are reported to appropriate authorities. It is with the latter that this article will deal.

According to one writer, the courts are not seeking status offense cases and are diverting more than half of their efforts and funds to other programs. He asserts that the courts deal only with those youngsters who need involuntary help.²⁷

Ideally, the only time a child will appear in court is when the parent wishes the child to receive services and the child has refused. In this context, the court is being used as a last resort and is placed in the position of providing services where educators, psychologists, social workers, and other specialists have failed. The options available to the courts are limited. The child can be ordered to be good, can be ordered to cooperate with the specialists who have already failed, and can be warned of the conse-

26. *Parham v. J.L.*, 47 U.S.L.W. at 4745.

27. See Arthur, *supra* note 8, at 632.

quences of his failure to do so. The ultimate decision, of course, is to incarcerate. Once this decision is made, the frustration of trying to find an appropriate placement begins. The difficulty is encountered where the juvenile offender population significantly exceeds the resources available causing any success to be more likely to be by accident than by design.

It would probably be safe to assume that the situation in Michigan is typical of what might be found in other states. In Michigan, as of 1977, the state had about seven hundred spaces in its training schools. The year before, 29,834 youngsters were arrested for serious felony offenses.²⁸ It is suspected that the national picture is not much brighter. In 1965, 93% of the country's juvenile courts serving 44.3% of the population, had no place for detention other than the county jail.²⁹ Kenneth Wooden explains that at least twenty-eight states send children to placement facilities all over the country.³⁰

Judge John P. Collins of the Juvenile Court Center in Tuscon, Arizona remarked that "[t]he state reform schools could do a creditable job if they only had to deal with the violent youngster."³¹ Many agree with this view but argue the solution is to increase resources, not abolish court jurisdiction. However, in this age of tax limitation movements, such thinking appears to be fanciful.³²

The problem was recently stated by one of Michigan's leading juvenile court judges:

We need at least 400 state training school spaces for Wayne County Juvenile Court alone, but I doubt the legislature will come up with more than

28. Ball, *Training Schools Crowded*, THE DETROIT NEWS, Sept., 1977.

29. See PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE; TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 37 (1967).

30. See WOODEN, *supra* note 7, at 182.

31. Proctor, *Has the Time Come to Get Tough With Juvenile Criminals*, PARADE MAGAZINE, Nov. 14, 1976, at 22.

32. See RECTOR, PINS CASES: AN AMERICAN SCANDAL, NCCD 4 (1974), where he states:

In not a single case is the cost of keeping a youngster confined *less* than the cost of keeping him in a college in the state, room, board, and tuition included, and in most cases, it costs quite a bit *more* than maintaining a youth in the finest college in the state. . . . In fact, Dr. Rosemary Sarri, Project Director for the National Assessment of Juvenile Corrections, has pointed out that there is at least one juvenile institutional program which costs an astonishing \$36,000 per child. But irrespective of the cost, the training school cannot cure the status offender's problems. These are in the home, the school, and the community at large.

200 units for the entire state. [The state is] substituting hope for common sense to think Michigan is going to provide sufficient institutional space for case hardened juveniles before the year 2000.³³

It becomes readily apparent that the promise of help by the courts is more myth than reality and has done much to undermine confidence in the court.

Perhaps more significantly, however, is the fact that scarce resources are being used to incarcerate status offenders to the exclusion of serious felons.³⁴ This is undoubtedly a contributing factor to the court's failure to effectively deal with serious juvenile crime.

D. Court Jurisdiction Impedes The Use Of Existing Community-Based Resources And Slows The Development Of New Ones

There are many fine community-based resources such as community mental health clinics, runaway houses, hotlines, and drop-in centers capable of dealing very effectively with the problems presented by the status offender. While the evidence indicates that the courts are now diverting many status offenders to such programs in addition to developing diversionary programs of their own,³⁵ there is strong evidence these programs are not being fully utilized.

Unlike the juvenile courts, private agencies are able to restrict their caseloads and often will accept only those cases which seem to offer a good prospect for their services. There is no pressure on the agencies to act otherwise because it is commonly known that the juvenile court must accept all cases presented to it.

Many of the referring agencies are simply reluctant to use services outside the court. Generally, this is either because they are ignorant of other available services or because all they really want is a few days of detention for the youngster.

A case in point involves the author's own county. In 1977, a new voluntary program called Runaway Emergency Action Center Hotline (REACH) was developed outside the jurisdiction of the court to provide voluntary services to runaways, including out of home placement up to fourteen days. The success of this program drastically reduced the number of runaway children who came to court. But still many of the police agencies, despite the best efforts of the court and juvenile service agencies, were reluctant to use the program and the court continued to supply about 40% of the REACH referrals.

33. See Ball, *supra* note 28.

34. See SILBERMAN, *supra* note 3, at 347.

35. See Arthur, *supra* note 8, at 632.

Finally, came the proverbial straw that broke the camel's back. This case involved a young man who, to paraphrase the police report, was a male black, 6' 2" tall, 195 lbs., and apparently a good student. The problem revolved around continued social security funding. His mother told him he could live with some friends, but when she found out that she could no longer draw social security on him, she asked him to come home and he refused. The mother proceeded to file a runaway complaint with the police.

Acting upon the complaint, the young man was arrested at 11:00 a.m. at the high school which he attended and was taken to police headquarters where he was booked. He was held until 2:00 p.m. for a hearing before a juvenile court referee.

In the wake of this case, a policy was immediately implemented prohibiting the detention of status offenders. This policy generated a fair amount of criticism and concern but it also produced some dramatic results.

In the nine months preceding the "no detention" policy, 541 runaways were referred to court. Of this number, about 273 had been detained.³⁶ In the twelve months following the policy, the number of runaway youngsters referred to court dropped to 153, and the number detained dropped to nineteen.³⁷ Court referrals now comprise only about 10% of the REACH caseload.

At present, the only time a runaway comes to court is when REACH cannot solve the problem within the framework of its time and financial constraints. The dire prediction regarding the consequences of implementing such a program have not occurred. There is no evidence that children run away more frequently than before. In fact, the largest police agency in the county made 39% fewer arrests in the first three months of 1979 than in the first three months of 1975.³⁸ Nor does it appear that the needs of children are not being met. Moreover, most, if not all, of the police agencies within the county approve of the program.

The beneficial effects are obvious. Children are being spared the humiliation and degradation of being locked up where author-

36. During the years proceeding the initiation of REACH, the number of detentions was significantly higher: 773 in 1973, 621 in 1975, and 579 in 1976.

37. The only way I can account for the fact that 19 runaways were detained despite the "no detention" policy is that such occurred because of the confusion attendant to any new program.

38. Report on the REACH Program in Genesee County, Michigan (1979) (on file in the Genesee County Probate Court).

ities exercise what amounts to good judgment. The court and police are freeing considerable time and resources to deal with other, more serious, juvenile offenders.

If such a program will work for the runaway, undoubtedly the most confounding of the status offender cases, then similar programs could be developed for other troubled children. To that end, the necessary course of action would be for the legislatures of this country to remove the authority of juvenile courts over these children.

III. CONCLUSION

The author has no doubt that most who favor retention of jurisdiction over status offenders do so because they sincerely believe that many children are being helped who otherwise would not be. In the alternative, it may be asserted that, in their zeal to help they have lost sight of the court's enormous power to harm, of the great trauma a young person suffers when locked in an institution or a jail cell and of the bitterness generated when the realization sets in that he received the same or greater punishment than the burglar or robber.³⁹

Many acknowledge that a denial of due process may occur and that some children are abused; but they argue for reform of jurisdiction, not for abolition of it. Their hope for the future ignores the past. Twelve years ago, the United States Supreme Court stated that the condition of being a child did not justify the kangaroo court and instructed juvenile courts to henceforth observe due process principles.⁴⁰ In many cases this mandate has been disobeyed. It is time that the juvenile justice system disclosed to the public its inability to deal effectively with both the serious felony offenders and the many problems simultaneously presented by status offense cases.

The entire concept of a special court for children is in serious condition and, unless drastic measures are taken, it is likely to worsen. If it is to survive, insistence must be made upon limiting the role of the court to what it does best; fact finding and adjudicating.⁴¹ We should acknowledge that the juvenile court judges

39. WHEELER AND COTTREL, *JUVENILE DELINQUENCY—IT'S PREVENTION AND CONTROL* 33 (1966) where they state:

Thus a principal current concern in the juvenile court field has to do with the provision of justice and fairness to juveniles. . . . Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.

40. See generally *In re Gault*, 387 U.S. 1 (1967).

41. In addition to the above mentioned responsibilities some juvenile judges

often do not have the education and training to identify troubled children and to determine their needs. It should be admitted that they cannot educate children or make them obedient and more likely to stay at home. These are the jobs of parents, schools, and churches.

The world will not come to an end nor will the country fall if juvenile court jurisdiction over the status offender is abrogated. Reform is seldom as bad as predicted. Perhaps then the original purpose of the juvenile court, that of ending the abuse and brutalization of children and stemming the rising tide of juvenile crime, will once again have the chance of becoming reality.

are thrust into the role of program administrator. See JOHN HOWARD ASSOCIATES, FINAL REPORT, 12 (1974),

The judiciary in Michigan is extensively involved in the direct administration of juvenile court services and child care programs. As such, juvenile probate judges in Michigan are functioning in both the judicial and executive branches of government. A Michigan juvenile court judge, under present arrangements, both hears individual cases and is responsible for administering child care programs involving the care of children placed in them as a direct result of his own order. This presents both a potential and real conflict of interest in the performance of his dual responsibilities as a judge and as a program administrator.

