IN SEARCH OF A NATIONAL JUVENILE JUSTICE POLICY

by

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FOREWORD

The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) established an Assessment Center Program in 1976 to partially fulfill the mandate of the 1974 Juvenile Justice and Delinquency Prevention Act. NIJJDP currently maintains two Assessment Centers: the National Center for the Assessment of Delinquent Behavior and Its Prevention located at the University of Washington, Seattle, Washington; and the Center for the Assessment of the Juvenile Justice System, which is administered at the American Justice Institute in Sacramento, California. The purpose of the Assessment Center is to collect, synthesize, and disseminate knowledge and information on all aspects of juvenile delinquency.

At the American Justice Institute, the Center for the Assessment of the Juvenile Justice System continually reviews areas of topical interest and importance to meet the information needs of practitioners and policymakers concerning contemporary juvenile justice issues. Methodology includes: search of general and fugitive literature from national, State, and local sources; surveys; secondary statistical analysis; and use of consultants with specialized expertise.

These assessments are not designed to be complete statements in a particular area; instead, they are intended to reflect the state-of-knowledge at a particular time, including gaps in available information or understanding. Our assessments, we believe, will result in a better understanding of the juvenile justice system, both in theory and practice.

This assessment, "In Search of a National Juvenile Justice Policy," examines the evolution of public responses to juvenile delinquency problems, particularly focusing on historical and contemporary patterns of Federal involvement with juvenile justice policies and programs. After tracing sociological, legislative, and judicial roots of current juvenile justice efforts, the report highlights relevant national policies shaped by recent Federal legislation.

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PREFACE

"In Search of a National Juvenile Justice Policy" focuses on two major objectives:

(1) explicating the historical, sociological, legislative, and judicial precedents comprising current Federal juvenile justice policies and practices; and

(2) elucidating the evolutionary nature of juvenile justice policies.

Such efforts originated in the private sector, and shifted to the public sector as American society became more complex. By the early 19th century, local and State governments assumed primary juvenile justice responsibilities. Indeed it was not until the 1960's that large-scale Federal intervention in juvenile justice policies and programs was deemed both appropriate and necessary.

This report traces a complex series of Federal, State, and local youth-serving efforts that have resulted in a fragmented approach to a national juvenile justice policy. The lack of an integrated policy and service system for children and youth is the historical legacy of dissensus among American policymakers who have shifted the responsibility among the separate layers of government. Nevertheless, the report suggests that should a coordinated national juvenile justice policy be a definable and desirable goal of the Federal government, such an objective should be carefully scrutinized by Congress.

Foremost among these initiatives are two efforts stimulated by the 1974 Juvenile Justice and Delinquency Prevention Act: the national standards for juvenile justice, promoting a comprehensive, integrated system of justice services and policies for youth; and the current recommendations of the Federal Coordinating Council for Juvenile Justice and Delinquency Prevention, suggesting mechanisms for interagency collaboration. Although such endeavors represent positive steps forward for the creation of a national juvenile justice policy, these are still policy recommendations awaiting practical application and rigorous evaluation.

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EXECUTIVE SUMMARY

"In Search of a National Juvenile Justice Policy" is a title describing the frustrating pursuit of an elusive research goal: producing a state-of-the-art summary of the national juvenile justice policy. To this end, the report explored two often-accepted beliefs about juvenile justice policy: the juvenile court's establishment in 1899 created a revolutionary set of public juvenile justice policies; and a comprehensive national juvenile justice policy which grew out of subsequent legislative and judicial reforms. Historical evidence, however, fails to support these beliefs, requiring the acceptance of two alternative premises which ultimately formed the basis for this report's conclusions:

(1) a comprehensive, well-defined, and cost-effective juvenile justice policy identifying a carefully integrated Federal system of juvenile support services has not materialized; and

(2) the United States has a rich history of public and private policies affecting misbehaving youth, stimulating evolutionary rather than revolutionary juvenile justice policies.

To support these conclusions, the chapters describe several evolutionary stages. The roots of America's juvenile justice system were formed during Colonial times. Since children were considered evil by nature, it did not occur to most Colonists that misbehavior could be prevented. Rather, they believed offensive conduct should be controlled by familial, and when necessary, community punishment.

Only after major societal changes were stimulated by the Revolutionary War did the demand arise for legally-defined, external measures to control and define juvenile misbehavior. By the 19th century, increased urbanization and growing industrialization lessened the nuclear family's impact. With less authority vested in the family, a new period of outside intervention and protection began during the Jacksonian Era as public and private authorities assumed responsibilities for punishment and reform.

Creation of the juvenile court in 1899 introduced a third stage characterized by expanded traditional external controls. Through parens patriae, the new court extended its rights to make coercive predictions about children based upon its perceptions of parental unfitness. In reality, however, early 20th-century reformers did not create new treatment philosophies. Instead, they replaced punitive methodologies with newer rehabilitation mechanisms based upon traditional intervention and protectionist attitudes.

It was not until the 1960's that historical philosophies and treatment measures were questioned. These criticisms prompted challenges to the juvenile courts and their enabling statutes, encouraging children's advocacy movements and Federal involvement with juvenile justice policies. Such reform, in turn, stimulated a series of anticipated and unanticipated consequences that caused further fragmentation in the already confused and uncoordinated juvenile justice policymaking arena.

The changes incurred from era to era did not bring radical systemic alterations. Instead, changes were gradual and evolutionary in nature, borrowing and building upon some traditional ideas and methods while discarding others. Because the evolutionary process largely took place at the State and local levels before the 1960's, reform was sporadic, inconsistent, and uncoordinated. Policymakers, practitioners, and professionals hoped to remedy such fragmentation when the Federal government entered the reform process two decades ago. Instead of the revolutionary changes envisioned by Great Society architects, the Federal government's entrance into juvenile justice policy stimulated further evolutionary reform. Consequently, no period produced a consensual, comprehensive national juvenile justice policy.

While the absence of a unified, single policy is not startling to juvenile justice practitioners or policymakers, most remain unaware of the reasons behind its nonexistence. This report's primary objective is to elucidate these reasons by tracing the legacy of dissensus among American policymakers who shifted juvenile justice responsibilities between governmental layers over several decades--first to the local, then to the State, and finally to the Federal level. Thus, the report ultimately concludes that because Federal involvement in the juvenile justice policy arena did not begin until the early 1960's, the inability to construct a Federal solution to this immense problem is neither feasible nor startling. In short, Federal responses are still in evolutionary stages.

A secondary objective is to delineate the historical, sociological, legislative, and judicial dynamics obstructing the creation of a consensual, comprehensive national juvenile justice policy. More importantly, the report encourages policymakers to consider the historical juvenile justice record and then determine whether a federally-directed national juvenile justice policy is either appropriate or desirable. While its intent is not to decide the wisdom of such a policy, the report does urge policymakers to consider several unsettling questions resulting from the Federal government's two-decade policy construction effort:

- What are the parameters of Federal intervention? Should the Federal government become a capacity builder for strong local programs, or should it centrally control all policies and programs as they are funneled downward?

- Can a centralized Federal policy deal with the very real differences between geographical regions as well as urban and rural juvenile justice needs? Can different youth in different environments be treated by the same objectives and programs?

- Upon what foundations would a federally-determined policy be built? Will policymakers, theorists, youth service providers, and juvenile justice personnel be able to concur on centralized definitions and treatment techniques?

No answers to these difficult questions are provided herein. Our conclusions are intended to be constructive rather than critical for two reasons. First, little more should be expected from a mere two-decade Federal commitment. Second, this historical examination, revealing a myriad of obstacles confounding the development of a national juvenile justice policy, encourages policymakers and practitioners to consider the feasibility and desirability of a centralized, Federally-directed national juvenile justice policy. Thus, this assessment of previous public juvenile justice efforts clarifies <u>how</u> we got where we are today, in the hopes it will inspire contemporary policymakers to ask hard questions about <u>what</u> future Federal role should be appropriately assumed in the juvenile justice arena.

INTRODUCTION

Beginning with the landmark passage of the Juvenile Delinquency and Youth Offenses Control Act in 1961, the Federal government committed a multitude of resources to augment and create community juvenile justice and delinquency prevention services. This was the first of several large-scale Federal juvenile justice and delinquency prevention grant allocations producing thousands of programs, encouraging the formation and application of new delinquency theories and treatment, and stimulating needed juvenile justice system reforms. In 1980, the extent of the two-decade commitment could be measured in dollars--over $15 billion was allocated to 45 direct assistance Federal juvenile justice programs spread over several departments and two independent agencies* (U.S. Department of Justice, n.d.:Executive Summary).

Evolving concurrently with new programs were a series of Federal policies designed by separate departments sharing little interagency communication or coordination, making it "...graphically clear that the Federal delinquency effort consists of a highly fragmented and overlapping collection of programs," posing "...significant challenges to the provision of consistent policy direction." (U.S. Department of Justice, n.d.:Executive Summary.)

The evolution of an uncoordinated, fragmented approach to national juvenile justice policy is not surprising given the history of shifting, and often conflicting private and public policies affecting American youth (revealed in Chapters 1 through 4).

Each chapter supports three distinct premises: the United States has a rich history of public and private policies affecting misbehaving youth founded on philosophical consensus and methodological dissensus; fragmented responses to juvenile delinquency stimulated evolutionary rather than revolutionary changes in juvenile justice policies; and a comprehensive, national juvenile justice policy defining a carefully integrated system of children's support services or providing planning and coordinated mechanisms assuring youth access to such services has not materialized.

METHODOLOGY

The methods used in this search included: numerous traditional historical studies about family, childhood, education, and 17th-, 18th-, and 19th-century American society; recently-written interpretations of early community and family life revising more traditional analyses; sociological theories about early and modern American families and children; 19th- and 20th-century criminological theories about causes, treatment, and prevention of juvenile delinquency; historical and contemporary

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*The following departments--Agriculture, Education, Interior, Justice, Labor, Health and Human Services, and Housing and Urban Development--and two independent Federal agencies--ACTION and the Community Services Agency--expended $15,748,320,000 for juvenile justice related programs in 1980 (U.S. Department of Justice, n.d.:7-10).

studies and evaluations of the juvenile justice system; Supreme Court and lower court cases involving juvenile justice issues; legal and advocacy studies about children's rights; government documents explaining programs and policies; government publications describing juvenile justice and delinquency prevention research; Congressional acts creating youth programs and determining youth policies; and governmental and independent analyses and evaluations of government-sponsored programs and legislation.

STRUCTURE AND CONTENT OF THE REPORT

The report is divided into four chapters, followed by a conclusion and several appendices. Chapter 1 explicates America's first 300 years when influential middle class members largely concurred that unacceptable youthful conduct should be controlled and reformed. Misbehaving youth, child philanthropists reasoned, required removal from poverty-stricken, immoral families and placement in God-fearing, middle class environments. Consensus, however, was confined to philosophy, not treatment methodology. Disagreement about how such control and reform was to be conducted formed the basis for the Nation's earliest public youth policies. Thus, as each generation proposed new and sometimes conflicting control mechanisms--community trials, apprenticeships, institutionalization, education--new public policies arose based upon traditional protectionist attitudes about participants in and causes of juvenile misbehavior.

In Chapter 2, the historical approach is augmented by a sociological explanation of factors leading to disagreement among the architects of 20th-century juvenile justice policy. The first half of the century witnessed dedicated professionals and philanthropists promoting a variety of new, conflicting philosophies and techniques --rehabilitative juvenile courts, professionalization of child-serving personnel, and new causation and treatment theories. The rebelliousness of those decades generated a new series of conflicting sociological and criminological delinquency causation and treatment theories; however, the discord contributed to evolutionary changes in juvenile justice policy rather than revolutionary transactions.

The gradual assumption of Federal juvenile justice policies is the subject of Chapter 3. Again, evolution is a key factor as policymakers moved the Federal government into an area traditionally assumed by families and local and State governments. Early 20th-century legislators sponsored national child-saving forums and created the U.S. Children's Bureau; New Deal bureaucrats hastily constructed familial and children's relief measures, demonstrating a short-term Federal commitment that dwindled during World War II; policymakers of the 1960's allocated millions of dollars to a centralized Federal response, envisioning a rational, comprehensive plan to solve juvenile delinquency. Each era blended into the next with common inconsistencies: little agreement among policymakers and child-serving personnel about delinquency causation or treatment, and little coordination between Federal, State, and local agencies combatting the problem. Consequently, by 1980 at least eight cabinet departments dispensed youth service grants* and nearly every Federal agency

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*Department of Justice; Department of Health, Education and Welfare; Department of Housing and Urban Development; Departments of Labor, Agriculture, Interior, Defense, and Commerce.

sponsored a funding or service program affecting youth. Thus, many national policies affecting the employment, health, education, welfare, and adjudication of youth existed within a myriad of Federal agencies, each operating autonomously and contributing to further fragmentation.

Chapter 4 explores the evolution of and resulting fragmentation within four evolutionary juvenile justice system phases: Early American Justice, 1607-1898; The Growth of the Juvenile Justice System, 1899-1967; Due Process Reform, 1967-1974; and System Response and Consequences, 1974 to the present. During the first two periods, American juvenile justice policies were characterized by paternalistic and elitist philosophical consensus. However, with the exception of the Colonial era, such agreement historically mingled with disagreement about types of juvenile control and treatment facilities. Although such dissension was never strong enough to initiate revolutionary changes, it encouraged evolutionary changes culminating in procedural and substantive reforms of the 1960's. Such changes brought the first real revisions in America's juvenile justice system: due process in the juvenile courts; national juvenile justice standards justice; Federal and State juvenile justice related grants; and children's and youth rights organizations.

Additionally, Appendices D-G provide helpful chronological tools. Appendix D, "A Brief History of Federal Juvenile Justice Policy," summarizes such involvement from 1607 to 1980; Appendix E illustrates important juvenile justice policies and precedents; Appendix F presents several major children's rights statements; and Appendix G explicates juvenile court cases relevant to this study.

Chapter 1

HISTORICAL PERSPECTIVES: PHILOSOPHICAL CONSENSUS AND TREATMENT DISSENSUS, 1607-1900

From Colonial times through the 19th century, policymakers generally agreed juvenile misbehavior was caused by poverty-stricken, lower class environments. This ideological consensus of a predominately white, middle class America governed the course of public and private youth policies.[1] Developing concurrently was agreement about the need to control objectionable behavior, protect underprivileged youth, and rehabilitate nonconforming juveniles. For the first three formative centuries of American life, attitudes about what caused juvenile misbehavior were characterized by continuity of thought.

By the 20th century, provocative questions challenging traditional consensual views about delinquency causation and control were introduced. Since delinquent behavior infiltrated middle class environments, could the lower classes still be held responsible for its occurrence? Why had rehabilitation and institutionalization failed to curb youthful misbehavior? Was it the individual's immoral, poverty-stricken background that led to a life of crime, or unsound societal foundations? What right and obligation did the public sector have in juvenile justice policy development? What was the proper role of the Federal government in the lives of children?

As policymakers and reformers hastened to find answers, the face of American juvenile justice changed: academics and practitioners debated new treatment theories; professionally trained youth-servers replaced philanthropic child-savers, and a public juvenile justice bureaucracy supplanted the 19th century's sporadic private efforts. Consequently, 20th-century philosophies and methods stimulated dissensual rather than consensual approaches to juvenile justice policies.

Disagreement, however, was not an entirely new phenomenon. While philosophical consensus characterized early American attitudes about the reasons for and types of children committing societal offenses, little agreement existed about treatment methods. Further, youth policies originated from a wide array of independent, local, and State entities that seldom communicated or shared methodological or organizational experiences. Thus, philosophical consensus and methodological dissensus governed development of juvenile justice policy during its first three decades. Predictably, such conflicting messages encouraged fragmented responses, thereby blocking the evolution of a comprehensive juvenile justice policy during this period.

THE ROOTS OF CONTROL, 1607-1776

Original sin dominated Colonial thought, influencing adult attitudes toward young people. The contemporary luxuries of childhood and adolescence were unknown to Colonial children who were forbidden to engage in playtime, leisure, or idleness--all known works of the devil (Aries, 1962; Demos and Demos, 1973; de Mause, 1974). Simple solutions to societal deviance were possible in early America's small

community structure. Punitive measures were administered by the family whose powers were usurped only if the family and community felt it necessary. Orphaned and neglected children were either supported by other family members, taken in by neighbors, or apprenticed out to local merchants or craftsmen. Misbehaving children received familial, communal, and religious punishment, stressing the importance of suffering for sin. Reform through institutionalization and incarceration (other than almshouses for the poor in the largest cities) was not a general practice among the Colonists.

Historian Philip Greven (1977) identified three parental types within the Colonies, each advocating careful limitations upon childlike conduct: "Evangelical" parents, guided by Calvinist and Puritanical concepts of infant depravity, waged a war of wills with their children, demanding "unconditional surrender" and a "total victory" of obedience to the parents (Greven, 1977:37); "Authoritative" parents felt their children needed careful shaping to make them dutiful and compliant societal members; middle class "Affectionate" parents revered their children and controlled them by administering positive, guiltless lessons in societal obligations. The emphasis on societal responsibility became an early concern of "Affectionate" parents who felt obligated to protect their unoffending children from bad influences by controlling the behavior of less fortunate youth.

Colonial children defying internal familial controls were punished: youthful offenders accused of criminal actions were judged in the British common law tradition; children between one and seven years-of-age who performed a criminal act were not responsible for its commission; children between seven and 14 who committed a crime were responsible for it, and received appropriate punishment decided by an adult court; and children beyond 14 years-of-age were believed capable of both the act and the intention to carry it out, making them eligible for more severe punishment.

Another category of misbehavior existed exclusively for children.[2] This distinction stemmed from early convictions that certain childlike misconduct warranted swift punishment; the community should oversee the welfare of neglected, orphaned, and delinquent children and youth; and certain offenses existed for which children alone could be punished. These predecessors to contemporary status offenses permitted community legal systems to punish Colonial youth engaged in immoral conduct like rebelliousness, disobedience, playing ball in public streets, or sledding on the Sabbath. An example of such statutory authority can be found in a 1646 Massachusetts Bay Colony law:

> If a man have a stubborn or REBELLIOUS SON, of sufficient years and understanding sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not harken unto them: then shal his Father and Mother being his natural parents, lay hold of him, and bring him to the Magistrates assembled in Court and testifie unto them, that their son is stubborn and rebellious and will not obey their voices and chastisement, but lives in sundry notorious crimes, such a Son shal be put to death....(Bremner, 1974, Vol. 1:38.)

Additionally, parents who failed to train their children "...in some lawful Calling, Labour, or imployment" could be committed to a house of corrections and their children placed elsewhere by concerned middle class public officials (Powers, 1966:528). Thus, a policy developed in Colonial America allowing governmental bodies to separate poor or neglected children from parents deemed undeserving by community policymakers (Rendleman, 1971:212).

Where would such children receive proper care? The first evidence of a specific community child care service was New Amsterdam's Orphan Master's Court, established in 1655 to find relatives or new families for orphaned children (Whittaker, 1971:396). Boston built the first Colonial almshouse in 1660, designed to care for the town's aged and infirm poor, but quickly extended its services to poor and neglected children. America's first charitable children's institution was founded in 1729 by the New Orleans Chapter of Ursuline Nuns after a Natchez Indian raid left many children orphaned. In 1741, the first planned children's orphanage was built by George Whitfield in Savannah, Georgia. Each of these child-serving efforts was created to aid neglected and orphaned children with charitable and public monies. Neither almshouses nor orphanages were designed to be punitive. Punishment was the family's responsibility.

Several patterns emerged in Colonial America. First, children were assumed to have no natural rights other than those of parental protection and control. Within one decade of their founding, all the Colonies passed laws demanding children obey their parents (Bailyn, 1960). Second, a middle class bias developed identifying youth crime with poverty and requiring enlightened protection and control over lower class children. Third, a specific set of youth activities (known as status offenses over three centuries later) were targeted for lawful familial and communal punishment. Fourth, a few Colonies set a precedent for private and public charitable intervention into the lives of neglected and orphaned children by constructing almshouses and orphanages. Because the lack of reliable Colonial communication prohibited cooperative sharing of child care or youth punishment methods, all policies arose independently and were designed to <u>react</u> to local needs as they arose, not to <u>prevent</u> potential problems.

AN ERA OF INSTITUTIONALIZATION, 1776-1865

America's independence prompted thousands of families to abandon their rural security and seek new economic opportunities in the flourishing urban environment. Concomitant with this large-scale migration from country to city was an even greater wave of foreign immigration permanently altering America's urban landscape and disrupting communal ties and traditional family roles. Urban America's economic realities forced many parents to work outside the home and fostered an increased reliance upon public institutions to take over educational, moral, and religious duties formerly assumed by the family. Thus, a growing reliance upon external punishment and protection dominated the treatment of nonconforming youth. Concerned philanthropists, driven by a need to save lower class children from an idle, immoral life, encouraged new control measures.

> Children thus brought up in ignorance and midst the contagion of bad example, are in imminent danger of ruin; and too many of them, it is to be feared, instead of being useful members of the community, will become the burden and pests of society. Early instruction and fixed habits of industry, decency, and order are the surest safeguards of virtuous conduct. (1805 Statement of the New York Public School Society as quoted in Bourne, 1870.)

Before identifying societal cures, philanthropists in many States broadened legislative definitions of youthful misconduct to include begging, lying, cheating, fighting, and swearing (Pickett, 1969; Empey, 1978:71; Klempner and Packer, 1981). Next, they identified delinquency causations--poverty, uncontrolled immigration, and

lack of moral guidance by lazy, lower class parents.[3] Finally, they indicated the solution--removing children from offending circumstances by placing them with new families or under institutional supervision.

The "age of the asylum" marked America's first formalized external attempt to control misbehaving and neglected juveniles (Rothman, 1971). New York's House of Refuge, built in 1825, opened the new era. Its goal was to prevent crime and delinquency, concentrating primarily on pre-delinquent youth (Pickett, 1969).

> This concept of predelinquency was one of the central concepts of juvenile justice for well over a century following its emergence in New York....Major offenders were, from the beginning, left in the adult criminal system....This central concern for morally untarnished minor offenders has been a characteristic of American juvenile justice from the outset. (Fox, 1970:1191-92.)

Neglected and delinquent youth "deserving" refuge treatment were grouped into one indistinguishable category. The only 19th-century distinction between nonconforming juveniles was between minor and serious offenders, with less concern displayed for the latter group who were considered unsalvagable. This emphasis was common, not only in the growing number of houses of refuge, but also in a second juvenile corrections model. When the Chicago Reform School opened in the mid-1850's, many reformers praised its innovative family plan of rehabilitating neglected youth and minor offenders. Shunning the military discipline of "large institutions for children, where individuality is destroyed, and where there cannot be any home influence," the family plan required "parental control be delegated by the State to the managers of the institutions, and the loving spirit of a family be infused by the resident officials by voluntary benevolent efforts." (Carpenter, 1875:68.)

Public protection and control of less serious young offenders and lower class children were the goals of both the refuge and reformatory movements. These philosophies were further legitimatized through an important 19th-century judicial decision--Ex parte Crouse.* A minor, Mary Ann Crouse, was committed to New York's House of Refuge when her mother charged her with incorrigibility. The girl's father, arguing that Mary Ann was denied her constitutional right to trial by jury, sought a writ of habeas corpus for her release. The Philadelphia Supreme Court's decision set the precedent for State intervention in family life:

> The object of the charity is reformation, by training inmates to industry; by imbuing their minds with principles of morality and religion; by furnishing them with means to earn a living; and above all, by separating them from the corrupting influence of improper associates. To this end, may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the parens patriae, or common guardian of the community? (Ex parte Crouse, 4 Whart. Pa. 9,11 1838.)

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*Appendix G, "Influential Juvenile Court Cases," contains detailed descriptions for most of the following cases.

Recent juvenile court revisionists argue Crouse misused parens patriae by making it "into a branch of the poor law where it was used to justify the state statutory schemes to part poor or incompetent parents from their children." (Rendleman, 1971:219.) However, the only widely-publicized legal challenge to the State's control over the moral welfare and intellectual improvement of youth was the 1870 People ex rel. O'Connell v. Turner (55 Ill. 648 (1847)) decision. After Daniel O'Connell was sent to the Chicago Reform School, his father petitioned for his release arguing there had been no criminal conviction. The court discharged Daniel from custody, stating:

> In our solicitude to form youth for the duties of civil life, we should not forget the rights which inhere both in parents and children. The principle of the absorption of the child in, and its complete subjection to the despotism of, the State, is wholly inadmissable in the modern civilized world. (O'Connell, 55 Ill. 648 (1870).)

The court's decision held that the State had no authority to institutionalize destitute and neglected children. The ensuing controversy led to O'Connell's short-term impact. The dominant public view supported Crouse's parens patriae doctrine.

No substantive standard for the State's right to protect children from poor and immoral parents was universally accepted in the 1800's. Such dissensus carried over into the procedural realm. Unanswered questions included who held the power for institutionalization,[4] whether parental notice was needed,[5] what kind of hearing was required,[6] and whether a parent could use a writ of habeas corpus to challenge existing commitments.[7] The result was substantive and procedural confusion before the 20th century:

> Procedural guarantees are of no use if the substantive standard is open ended, and as may be assumed, the parents by definition lacked the intellectual and economic resources necessary to contest the issue. The lack of an intelligible substantive standard and the existence of only the flimsiest procedural protections reveals an unspoken assumption that the state had an equal if not superior interest in the children and the burden was on the parents to show to the contrary. The procedural laxity allowed the state to assume its conclusion. The legal rubric was that the parent had violated his duty to the child and, therefore, had no rights to his custody. (Rendleman, 1971:246.)

Substantive change occurred in attitudes and methodological reactions to juvenile delinquency during the Jacksonian age. Middle class, self-styled philanthropists vowed to protect America's poverty-stricken and neglected youth from unhealthy, lower class parental influences. Control over misbehaving youth shifted from an internal family/community liaison to an external public and private consortium, and formalized methods of rehabilitating delinquent and dependent children were created in the form of institutions. However, consensus about the need to control lower class youth developed concomitantly with multiple control mechanisms: public statutes, legal decisions, public education, and custodial institutions.

THE EXPANSION OF PUBLIC INTERVENTION, 1865-1899

Public intervention heightened after the Civil War left thousands of children homeless, dramatizing the need to alleviate individual and societal child-related conflict. Post-war, industrial America was besieged with problems, many of which

affected youth. The Nation's juvenile institutions and reformatories overflowed with young inmates;[8] a rising number of youth gangs haunted street corners (Asbury, 1927; Thrasher, 1927; Keniston, 1962); and children's institutions were prison-like facilities, rather than sculptors of model youth envisioned by Jacksonian architects (Pickett, 1969; Fox, 1970; Rothman, 1971; Schlossman, 1977).

Three strategies were promoted by late 19th-century middle class reformers who hoped to turn the tide of rising youth problems: a reinterpretation of child-rearing objectives, the creation of private organizations for alternative youth opportunities, and expansion of the government's role into lower class children's lives. As parents searched for better ways to raise their children, they became familiar with new behavioral theories of European social scientists.

For almost 100 years after the Revolutionary War, Americans accepted the Utilitarian or "classical school" of thought postulating the commission of crime resulted from an individual's free moral choice (Beccaria, 1809; Bentham, 1948). According to the Utilitarians, children and adults who violated societal norms were deliberate criminals and deserved swift punishment. The 1876 American release of Cesare Lombroso's Criminal Man stimulated the "positivist school" of thought. Positivists focused on criminal motivation and behavior rather than the crime's seriousness. They denied the free will hypothesis; instead, theorizing criminals often act from external and internal fears beyond their control. Positivists differentiated between compulsive lower class delinquents and conventional middle class youth, making the former a bad example for conforming children. Individualized investigation into criminal behavior and motivation patterns instead of suitable punishment for certain crimes, was urged (Ferri, 1884).

American theorists, encouraged by these ideas, suggested youthful misbehavior was involuntary, and a necessary part of maturation (Kett, 1971; Empey, 1978; Ryerson, 1978). To counterbalance such tendencies, theorists suggested parents tutor their children about proper lifestyles so their children could blossom into responsible, respected adults. Children from less fortunate backgrounds, they continued, had little hope of such upbringing without upper class intervention.

Assimilation became the goal of many private groups who hoped their efforts might save more unfortunate children. The Young Men's Christian Association (Hopkins, 1951), Children's Aid Society (Langsam, 1964), Society for the Prevention of Cruelty to Children (Hawes, 1971), settlement houses (Addams, 1910; Davis, 1973), and the George Junior Republic (Holl, 1971) were all designed and partially financed by middle and upper class philanthropists to help lower class youngsters whom they perceived needy of a healthy and moral environment.

However, if urban newcomers were to adopt middle class values, blend into the economic and social order, and discard their "cultural baggage," private efforts would not be enough. Thus, the "Americanization" process involved further governmental intervention. First, new educational techniques expanded State power: industrial and vocational schools were established in State reformatories and refuges (Mennel, 1973; Schlossman, 1977); manual training opportunities were created for working class children (Nasau, 1979); and compulsory education was believed to be an ideal assimilation technique[9] (Cremin, 1951; Bailyn, 1960). Second, a successful lobbying campaign for immigration restriction was employed.[10] While the hysteria engendered by immigration reform did not directly affect juvenile justice policy, it did temper their attitudes and perpetrate fear of the lower classes. Third, the government

became a stronger participant in creating, financing, and administering reform institutions. By 1880, almost every State, excluding the South, had a government-supported boys reformatory and a separate girls institution. Massachusetts augmented this role in 1863 when it organized State boards to inspect, report on, and recommend almshouse, asylum, and reform school improvements. Nineteen years later, nine States had created boards to "coordinate and regulate existing institutions...."[11] (Mennel, 1973:65-68). Massachusetts initiated the country's first family visitation or probation system in 1869 setting a precedent for further governmental involvement in juvenile justice policy.[12]

At the same time more control was exerted over troubled children's lives, little concern was expressed for their natural or legal rights. Any question of legal rights was confined to adult and societal privileges to control and protect children through institutionalization, compulsory school attendance, or caretaker organizations. The emphasis was on enforcing laws, which were determined by the middle class social, cultural, and political status quo, and rescuing children from lower class influences.

Despite dissensus, the refuge, reformatory, and parens patriae tradition gained credence. Each emphasized regenerating predelinquent youth, espoused protective philosophy, and utilized external means to control nonconforming behavior. The dominant substantive motivations behind early 19th-century reform were not dissimilar to Colonial American juvenile justice philosophy--only the means or procedural methods of control changed. Children, primarily of poor, lower class origins, were to be protected from immoral and unhealthy environments. If the family failed in its duty, society was obliged to save them through public intervention. Thus, early 19th-century philanthropists, acting on a firm foundation of philosophical consensus, abandoned sporadic communal punishment methods, erected child-saving institutions, and devised public policies and legal doctrines enabling the State to use morality as grounds to institutionalize children (Rendleman, 1971:252).

While theoretical consensus guided early statutory and philosophical decisions about youth, reformers planted the seeds of dissensus, disagreeing about how control ideologies could be translated into policies and programs. Public education advocates, institutional and custodial staffs, philanthropists, and criminal theorists shared similar paternalistic and assimilationist assumptions, but were unable to reach a common agreement about the best ways to achieve the desired societal conformity. As the 20th century unfolded, its child-serving efforts continued to evolve in confusion--consensus about the need to control offensive youthful behavior versus diverse dissensus about how that control should be implemented.

FOOTNOTES

1. Contrary to some scholarly literature (see Platt, 1969; Ryerson, 1978), this research concludes the intent of most policymakers and reformers was judicious rather than malicious. Reforming lower class youth was a beneficent impulse rather than a well-designed, elite social strategy to control unyielding urban masses. The Anglo-Saxon, Protestant morality upon which most reformers operated was the day's standard, and seldom challenged during America's first three centuries. Whether or not the lower classes resented middle class interference remains largely undocumented; therefore, it has not been ascertained whether these standards were widely accepted or rejected by all classes. Evidence exists, however, that some of the 19th-century urban poor resisted child labor public education movements because their children's wage-earning power was needed to supplement family income and because a middle class education was biased against immigrant children who embraced non-Protestant faiths. Such resistance was seldom widespread, never substantially organized, and basically ignored by middle class reformers who controlled local and State governments and influenced policymakers. Thus, it is fair to say the philosophical and methodological consensus described in this chapter was shared by those in control of policy and popular opinion rather than a consensus of American society as a whole.

2. Some scholars contend that since the Calvinists and Puritans believed human beings were tainted by original sin, they did not legally differentiate between children and adults. Such arguments indicate there was "no special place in the life cycle" for children, that a period of childhood was "invented" only with the 19th-century evolution of the modern family, and that children were "providential accidents" destined to quietly blend into adult society (Aries, 1962). A reinterpretation of the historical evidence, however, shows children were segregated from adults in early society, were not treated equally, and were relegated to the bottom of the social scale (Demos and Demos, 1973; Greven, 1977; Kett, 1977).

3. Reformers gained most of the their ammunition against the lower classes from the following kinds of statistics: in 1835, the almshouses of New York City, Philadelphia, Boston, and Baltimore held 4,786 native-born and 5,303 foreign-born paupers; in 1837, New York City spent $279,999 to support its poor, three-fifths of whom were foreign-born; by 1860, 86 percent of New York City's paupers were foreign-born (Glaab and Brown, 1976:77).

4. Milwaukee Industrial School v. Supervisors of Milwaukee County, 40 Wisc. 328, 334 (1876).

5. Goodchild v. Foster, 51 Mich. 599 (1883); Cincinnati House of Refuge v. Ryan, 37 Ohio 197, 202 (1881); Farnham v. Pierce, 141 Mass. 203, 205-06 (1886); Reynolds v. Howe, 51 Conn. 472, 477 (1884); People ex. rel. Van Heck v. New York Catholic Protectory, 101 N.Y. 195 4 N.E. 177 (1886).

6. Wilkinson's Board of Children's Guardians, 158 Ind. 1, 8-9 (1902); Cincinnati House of Refuge v. Ryan, 37 Ohio 197, 198 (1881); People v. Giles, 152 N.Y. 136, 139-40 (1897).

7. Kennedy v. Meara, 127 Ga. 68, 80-81 (1906); Hibbard v. Bridges, 76 Maine 324 (1884); Roth and Boyle v. House of Refuge, 31 Md. 329 (1869); In re Wares, 161 Mass. 70 (1894); In re Knowack, 158 N.Y. 482 (1899); Cincinnati House of Refuge v. Ryan, 37 Ohio (1881).

8. Accurate juvenile delinquency statistics were never compiled in the 19th century. The only real data available to researchers are some U.S. Census Reports. Results from the Tenth and Eleventh Census show that in 1880, reformatories housed 11,648 inmates and in 1890, they held 14,846 inmates (U.S. Census Bureau, 1880, 1890).

9. Ironically, most of the reformers' children attended private schools and were exempt from the benefits lauded by the middle class. This thinly disguised effort to use public education as an "Americanization" tool was finally challenged during a late 19th-century Midwest political battle. An earlier migration of farmers to Illinois, Iowa, and Wisconsin created large pockets of Lutheran, Catholic, and Anglican families objecting to the Protestant anti-liquor, anti-foreign bias of the public schools. Their loud denunciations and refusal to oblige the reformers kept compulsory education from becoming a reality in many parts of the country (Kleppner, 1970; Jensen, 1971).

10. The 1882 Chinese Exclusion Act forbade Asian immigration; the 1885 Foran Act excluded immigrants brought to America on contract labor agreements; the 1894 organization of the Immigration Restriction League gained Congressional support and culminated in the passage of the Literacy Test in 1886. President Grover Cleveland vetoed the 1896 Literacy Test which would have required immigrants to read a language prior to settling on American soil. Similar tests failed Congressional approval in 1906, 1913, and 1915; however, the test was passed in 1917.

11. State boards of inspection were originally set up to reduce and eliminate the need for State expenditures. Ironically, the monies allocated to diminish State support actually increased the States' welfare functions and financial commitments.

12. Massachusetts' probation program was based upon a simple methodology aimed at minimal juvenile contact with the courts: an agent of the Board was responsible for the delinquent before a court appearance and tried to secure either probation or release in the promise of future good behavior.

Chapter 2

SOCIAL PERSPECTIVES:
THE GROWING AMERICAN DISSENSUS, 1900-1980

Frustrated by the failure of 19th-century charitable measures to alleviate the poverty and squalor of the Nation's cities, Progressive Era reformers opened the new century with a "search for order" replacing society's inharmonious elements with organized, rational improvements (Wiebe, 1967). Foremost on the list of many who demanded change were the "child-savers."[1] Driven by the desire to rescue youth from urban society's criminal dangers, the child-savers began with a uniform objective. However, as the century progressed it became obvious the desire to save children was the only consensual thread shared by the cast of characters who shaped youth policies--middle class philanthropists wishing to impose their morality upon uncooperative youth,[2] progressive scholars and scientists seeking a cure-all for the causes of youthful deviance, child-serving professionals urging the adoption of treatment standards and methodologies, and juvenile court personnel hoping to rehabilitate delinquents via an innovative, non-punitive system.

How young persons were to be rescued was the question upon which the child-savers would divide. At first the dissensus was confined to professional child-serving circles; however, by the 1950's many reformers adopted a new mode of expressing their discontent. While minority groups verbally and physically demanded their civil rights, liberal politicians sought widespread credibility, and women tentatively tested the waters for economic equality, the lives of American children were being altered. The family would not maintain a primary influence over children, nor would the amelioration of youth problems be left to the juvenile justice system. Instead, children of the 1950's-1970's would be greatly affected by several new sociological factors: the breakdown of the traditional American family; the emergence of an increasingly vocal youth culture; heated disagreement among professional researchers about the causes and treatment of delinquent behavior; and growing demands for children's rights.

Twentieth-century America's sociological ingredients contributed to a period of philosophical and methodological dissensus about juvenile delinquency causation and treatment. Philanthropists, sociologists, police, or local policymakers could no longer agree on the most effective ways to control or treat youthful offenders. As each faction argued its particular theory, the Nation moved further away from the development of any comprehensive juvenile justice policy.

THE ERA OF PROGRESSIVE REFORM, 1899-1919

Deeply embedded within the Progressive blueprint for societal change were modernized attitudes about children as well as new methods to control their conduct. Adult sentiments about youth were tempered by the "discovery" of a unique period of biological and emotional transition from child to adult. Reformers asserted that adolescence, a normal yet awkward maturation phase fraught with special vulnerabilities, necessitated greater adult guidance[3] (Addams, 1910; Bowen, 1926; Breckinridge

and Abbott, 1912; Hall, 1904). Such watchful intervention was especially important to middle class parents who increasingly feared the lower class influence of the "boy over the back fence in your alley." (Nasau, 1979:9.)

The Progressives focused their child-saving efforts in three main areas: the creation of a juvenile court system; the establishment of a professional cadre of child-serving personnel and researchers; and the escalation of public intervention into the lives of children. Illinois reformers took the initial step forward on July 1, 1899 when they created the world's first juvenile court.[4] (See Chapter 4, pp. 50-54.) During the new century's fledgling years, this landmark legislation stimulated a pioneer stage of American juvenile court development (Fox, 1970; Platt, 1969; Ryerson, 1978; Schlossman, 1977). Within two decades, all but three States had adopted laws supporting the Court's right to determine dependent, neglected, and delinquent children's best interests.

A movement to professionalize the study of criminal behavior coincided with statutory changes. A logical evolution of the 19th-century positivist school of thought was the "sociological school," asserting impersonal factors as the root causes of criminality. Building their delinquency theories around children's inherent innocence, sociologists identified urban poverty and social disorder as major causations of crime. Empirical and scientific examinations of the entire social network were recommended to determine ways to prevent and treat criminal activity. A Progressive Era manifestation of sociological thoughts about delinquent children was the creation of Chicago's Juvenile Psychopathic Institute in 1909. Supported by private donations, clinicians worked with juvenile court referrals to determine the causes of youthful misconduct and make treatment recommendations. County government assumed operational expenses in 1912, and five years later the Illinois legislature took over the Institute's financial and administrative capacities. On this model, several government-supported clinics opened between 1915 and 1921 to work in conjunction with juvenile courts nationwide (Hunter, 1925).

The growth of these clinics spurred the training of a new array of youth-serving professionals who staffed the new research institutes and government bureaucracies. Opposing methodologies arose within the child-serving profession: juvenile court employees embraced benevolent, paternalistic strategies that clashed with legalistic police control methods; philanthropic and bureaucratic welfare workers debated social versus efficient control measures; clinical and social scientists developed new, often conflicting theories about juvenile misbehavior. Each group concurred with the need to control non-conforming youth; however, little agreement was reached about the most effective coercive devices. The professionals and the public sector developed a pattern of response to youth problems with diverse and uncoordinated policies and philosophies.

THE GROWTH OF PUBLIC INTERVENTION, 1920-1950

The three decades prior to mid-20th century were distinguished by the emergence of new delinquency and crime theories. Additionally, this period experienced much legalistic change--nationwide expansion of juvenile courts, law enforcement experimentation, new juvenile programs, and the rise of vocal children's advocacy groups.

The major issues confronting child-serving professionals were not legalistic, but focused on the causal factors of youthful criminality. The emerging Freudian "psychological school" brought these theories to the public's attention. To the Freudians, delinquency was caused by conflict within the individual as he/she attempted to mediate between their own drives and society's demands. Individual counseling, psychological therapy, and social casework became accepted treatments for offenders.

The seeds of two other schools, which would receive profuse attention in the 1950's, were planted during this era. The "sub-cultural school" claimed crime and delinquency were results of structural and geographical causations needing reorganization (Healy and Bronner, 1928; Shaw and McKay, 1969). The "labeling school" discounted crime's physiological and psychological origins; instead, it asserted social control efforts like arrest, punishment, and treatment created criminals through labeling, tagging, and identification (Tannenbaum, 1938). Although both theories were provocative, neither gained widespread credibility until mid-century. Their emergence several decades earlier was indicative of a growing theoretical dissensus within professional circles about juvenile delinquency origins and treatment.

Substantive philosophical and structural debates were taking place in another sector as law enforcement agencies nationwide ventured into four areas providing specialized juvenile services.[5] First, between 1909 and 1940, many police departments developed formal juvenile bureaus. The units' tactics were traditional. They were based upon controlling youth by increasing surveillance of questionable businesses and activities thought contributive to juvenile delinquency (Kenney and Pursuit, 1965; Kobetz, 1971; O'Connor and Watson, 1964). Second, a few prevention programs were adopted by innovative police chiefs[6] (Bopp, 1977; Carte and Carte, 1975). These, however, remained unique in law enforcement during this period not only because they were considered unorthodox, but because no one could prove they helped reduce juvenile crime. Third, the need to establish specialized training programs and facilities for juvenile officers became reality with the opening of Southern California's Delinquency Control Institute (DCI) in 1946. Finally, juvenile officer associations were formed to facilitate the sharing of professional programs and experiences dealing with juveniles.

By mid-century, several well-defined, independent delinquency causation theories were debated. Each was marred by growing methodological and theoretical dissensus as theories about delinquency causation were debated among those advocating environmental, psychological, and sociological labelling origins. Consequently, fragmented responses to youth problems historically characterized the reactions of child-serving professionals, sociologists, criminologists, and juvenile justice personnel toward juvenile delinquency.

Almost three and one-half centuries of familial practices and social and governmental policies dealing with non-conforming youth produced a confusing legacy: a high degree of ideological and methodological dissensus about juvenile delinquency causation and treatment and much fragmentation and lack of coordination between public, professional, and reform efforts identifying delinquency causations and recommending treatment. By the 1950's, all remnants of consensus had disappeared as critics of past policies demanded change. The dissenters represented a wide spectrum of conflicting interests--due process advocates arguing for youthful autonomy, professional child workers demanding new rehabilitation strategies, theorists hypothesizing incongruous causation factors, and conservatives embracing a "crackdown" on juvenile delinquency. This diversity would be further complicated by the widespread social changes that began germinating in the 1950's.

SOCIETAL UPHEAVAL, 1950-1980

As the Nation tried to settle into a post-war pattern of "normalcy," its young people's lives were drastically altered by several sociological factors: the breakdown of the family structure; the rise of a vocal and visible new youth culture; and the emergence of new theories about delinquency causation and treatment.

As the 1950's evolved, America's family structure underwent a metamorphosis. The rural American family's image as a patriarchal, stable, and self-reliant economic unit and institution of primary socialization rapidly faded into myth (Keniston, 1977). Historian Edward Shorter (1977) suggests three aspects of family life contributed to this breakdown: (1) youths drifted away from family structures that relied upon "old-fashioned" parental authority, and began forming new alliances with peer groups, whose values often contradicted those of the family; (2) marital instability, which often resulted in divorce, disrupted the family and ushered in the unprecedented era of the one-parent household; and (3) the comfortable "nest notion" of the nuclear family was further shattered by the increase of unmarried mothers as well as single persons living together in communal situations.[7]

A correlation between changes in family structure and several economic shifts directly affecting the family unit was recently made by Keniston (1977). First, he suggests the individual family as an economic unit has given way to a separation of work and family life. The family farm or business has almost disappeared; most adult family members work outside the home and children do not work at all. Second, children have become more of an economic liability than an asset. Most children now use family income for 17 to 24 years, creating additional financial stress, pushing many mothers into the marketplace to maintain the family's standard of living. Finally, the growing necessity for geographic mobility has altered the family unit. Frequent uprooting has contributed to the breakdown of extended family ties and increased isolation of the nuclear family from traditional family social supports (Cumins and White, 1973).

This breakdown, however, was not new to the mid-20th century: the nuclear family and its presumed stability had been in jeopardy for more than a century. What was new by this period was that the public recognized the dissolution of family ties at the same time that so many other areas of American life were unstable. As more families failed to maintain a support system for young people, the "homogenized society" described by social scientists as having a high degree of conformity (Leuchtenburg, 1973; Riesman, 1950) had been replaced by the "counter culture."[8] Popularized by frustrated college-educated youths of middle class parentage, counterculture dissatisfaction centered around alleged distortions of the basic values implicit in the Bible, the Bill of Rights, and the Declaration of Independence. Only a return to historical principles could replenish their faith in "the system." For some members of the counterculture, however, intellectual or nostalgic challenges were useless. Instead, they encouraged active rebellion against the family, the military, the educational system, and the government, which they insisted were in need of total restructuring. The new youth culture, wishing to make their protests more visible, adopted flamboyant appearances and lifestyles as they took their causes to the streets.

The impact of the developing youth culture resulted in lack of communication from one generation to another and a discontinuity of values from parents to children (Shorter, 1977). A chronological and ideological "generation gap" arose which was

difficult and sometimes impossible to bridge throughout the 1960's. Conflict between parents and children heightened the familial schism already caused by marital stress. Changes in family structure, and the emerging youth culture made the family more dependent upon outside mitigating forces and influences such as child care, education, health, and social welfare services. Young people lessened their dependency upon the family and increased their reliance upon immediate peer and communal values, often contradicting family values. The nuclear family's influence had been usurped by the values of neighborhood youths, schools, social workers, and the marketplace. It would be difficult to develop a singular juvenile justice policy to meet the needs of increasingly independent youths from varying cultural and economic environments.

The growing freedom of youth in society, coupled with the increasing dependence of families on outside agencies, encouraged further development of numerous theoretical explanations of delinquency. The foundations of these theories were present in previous years; however, the increased responsibility within the juvenile justice system to absorb and correctly resocialize juvenile offenders provided strong impetus for major sociological developments.

The major theoretical model, the "control" perspective, delineated basic differences between delinquents and non-offenders about strength of inner control factors. New social control research concluded that "good" boys had positive self-images, insulating them from the harmful influences of other delinquents and of a delinquent subculture (Reckless, Dinitz, and Murray, 1956; Reckless and Dinitz, 1967). Within this framework, sanctions were viewed as powerful forces, reducing future rule-breaking behavior. Behavioral psychologists following these general concepts developed extensive research and basic rules for reinforcement processes, including the effectiveness of punishment as a modifier of behavior (Bandura, 1969). Sociologists using these conditioning principles argued for both negative and positive sanctions (Homans, 1961; Scott, 1971; Tittle, 1975).

Many sociologists of the 1950's and 1960's produced significant work using the assumptions of subcultural delinquency theories that contended delinquent behavior was the result of subculturally shared norms, values, and motives, generated by perceptions of social or economic discrimination (Schichor and Kelly, 1980). A central premise was that subcultural delinquency was endemic in working class community areas because it offered a solution to problems of low status (Cohen, 1955). Miller (1958) theorized that lower class cultural values were results of economic disadvantages and the general precariousness of life's circumstances. Cloward and Ohlin's (1960) youth gang delinquency research focused on perceptions of youth that reflected less favorable chances to move up the economic ladder. The identification of culturally transmitted values as the primary source of socialization implies sanctions may either play no part in the production of conformity (Parsons, 1951) or may actually reinforce deviant tendencies where subcultural norms reward deviance (Sutherland and Cressey, 1966).

Labeling had far-reaching effects on both juvenile justice policy and the juvenile justice system. This approach emphasized deviance as a product of the response of social control agencies and of society in general. Punishment, then, caused the offender to be labeled a deviant by others (Payne, 1973). Becker (1963) noted, "social groups create deviance by applying those rules to particular people and labeling them as outsiders." Labeling theorists differentiate between primary and secondary deviance, with the former being the initial offense that causes someone to be labeled and the latter being the behavior produced by placement in a deviant role[9] (Gove, 1980).

One consequence of the prevalence of labeling theory has been greater scrutiny of the juvenile justice system and correctional organizations by sociologists (Schichor and Kelly, 1980). The sanctions applied by the system were viewed as additional motivational forces for delinquency, not deterrents. A number of organizational patterns and goals were recognized across the juvenile justice system, each with differing levels of recognized or official delinquency (Wilson, 1968) and each with differing effects on the life chances of youth processed through the system (Cicourel, 1968; Emerson, 1969). Labeling theory supplied the theoretical foundation for arguing a lessened juvenile court role and for many of the juvenile justice system changes described in the following chapter.

These various theoretical perspectives support alternative approaches to juvenile justice policy.[10] Each has generated a plethora of research, often with equivocal results (Schichor and Kelly, 1980). These empirical investigations, employing a variety of methodological and sampling problems common to difficult social science research, have provided general correlational support for broadly-based theories, yet virtually no support for hard causal statements. The net effect for juvenile justice policy development is a confusing array of abstract theoretical propositions, each focusing on different solutions and, more importantly, each choosing to ask different questions. Unfortunately, this fragmented theoretical framework has been carried into the Federal arena where policymakers have attempted to apply certain theories to certain programs without uniform guidelines or goals.

The state of juvenile justice policy leading into the 1980's is one of growing dissensus on several levels. Families rely more heavily on outside experts to intervene in their problems. The youth culture's growing independence led to militant demands for social and legal freedom, often alienating the adult power structure. Theoretical disagreement between professional researchers uncovered no consensual philosophies about delinquency's causes and treatment. Dissensus fully permeated youth-serving efforts; however, at the same time such disagreement was growing a new hope was germinating. If unified and systematic planning could fill the gaps left by traditional agents of control--the family, community, police, and local government--then perhaps some sort of juvenile justice policy could evolve.

The administration of such centralized philosophical and financial programs was to become the Federal government's responsibility. During the decades when so much philosophical dissensus had arisen, the groundwork was being laid to expand the bureaucratic machinery of the Federal government into the juvenile justice policy arena.

FOOTNOTES

1. The term "child-savers" became a popular description of philanthropic child-serving interests via the publication of Anthony M. Platt's book, The Child Savers: The Invention of Delinquency, in 1969. However, when researching this philanthropic role throughout the latter 19th century, references will occasionally be found in minutes to meetings and reports of conferences to "child-savers." The term was apparently used, but not widespread.

2. For readings about these "middle class philanthropists" and their various motives for working with delinquent children, see Lubove (1965), Mennel (1973), Platt (1969), Rothman (1971), and Ryerson (1978).

3. The word adolescent was not created in the 20th century. It had been in use by the middle of the 19th century to refer to a time of life experienced by children of the elite when they went off to school or to learn a distinguished profession.

4. Before the establishment of the Illinois Juvenile Court in 1899, there had been several precedents for court intervention undertaken in other States. In 1869, Massachusetts passed a probation act that is described above. In the next decade Massachusetts adopted, in principle, the notion of separate trials for juveniles. The Cincinnati Prison Congress of 1870 adopted a formal "Declaration of Principles" that stressed separate, specialized treatment for juveniles. Then, in 1892, New York added a new section to its penal code allowing for separate trials, dockets, and records for cases under 16 years-of-age.

5. Before the first organized police response to rising delinquency rates in the 1930's, juvenile crime had not been completely ignored. In 1845, a police matron was appointed in New York City to work with juveniles and, by the last decade of that century, police matrons had become an integral part of most urban police departments. Boston's City Council assigned one officer the sole responsibility of handling children and young people in 1850. A special squad of juvenile officers was established in Chicago in 1899 to work in a probationary capacity with the new juvenile court. At the 1905 World's Fair in Portland, Oregon, the Nation's first woman police officer was hired for child protection duties of young women. In 1903, the first juvenile unit of a police agency in the Nation was created in Portland.

6. In 1929, Berkeley, California, Chief of Police August Vollmer hired a trained woman social worker to deal with delinquent and predelinquent youth. Vollmer's protege, Orlando W. Wilson, followed his mentor's example in Wichita, Kansas, by hiring a woman social worker to head his newly enacted crime prevention unit.

7. As late as 1940, over twice as many children lost one parent from peacetime death as from divorce. By 1965, however, divorce had surpassed death as a cause for the loss of a parent. It must be remembered that outside factors such as World War II and the Depression added to the dissimilarity in figures; nevertheless, the differences are significant for an understanding of the breakdown in the traditional nuclear family. For more information, see Degler, 1980.

8. Several important anthologies exist that describe, in detail, the cultural milieu of the 1950's. Rosenberg and White (1957), White (1970), and Larrabee and Meyersohn (1958) are very useful works. Riesman (1950) had much influence on views of the national character. For a vivid portrayal of 1950's college graduates, see "Arise Ye Silent Class of '57," Anon., Life, 17 (June 1957).

9. Classic work on labeling theory began with Lemert (1951), Garfinkel (1956), Becker (1963), Erikson (1962), Goffman (1961), Kitsuse (1962), and Kitsuse and Cicourel (1963).

10. For comprehensive reviews of juvenile delinquency theories, see Task Force on Juvenile Justice and Delinquency Prevention, National Advisory Committee on Criminal Justice Standards and Goals (1976); Johnson, Bird, and Little (1979); and Johnson, Bird, Little, and Beville (1981).

Chapter 3

NATIONAL PERSPECTIVES: THE GROWTH OF FEDERAL FRAGMENTATION, 1900–1982

Unlike State and local government, Federal involvement in juvenile justice policy is recent. Before the 20th century, child welfare services were assumed on an "as needed" basis by State and local government: Colonial families controlled and punished misbehaving children, requiring community intervention only for rebellious, neglected, or orphaned youth; Jacksonian philanthropists founded the first child welfare institutions turning to local and, eventually, State governments for partial support as institutionalization became popular; and Gilded Age reformers relied upon local institutions and charitable societies, believing collaboration between private charity and public legislation might save youth from destitution and delinquency.

Juvenile justice responsibilities originally were delegated to State and local governments. However, as the 20th century's urban and industrial complexities became too great for local resources, the Federal government incrementally shouldered new child welfare responsibilities including juvenile justice issues.

Recent Federal involvement in juvenile justice policy parallels the fragmented course adopted by earlier public and private efforts. The primary point of departure from its predecessors was that little consensus characterized Federal juvenile justice policy origins. Instead, they were built upon dissensual philosophies and methods. Such disagreement guided the fragmented Federal course through four phases of juvenile justice policy involvement.

(1) From 1909 to 1932, the Federal government assisted professional child-savers by sponsoring national youth-serving conferences, as well as collecting and disseminating national research and data.

(2) From the New Deal through the 1950's, Federal agencies responded to several national juvenile justice issues with tentative, noncommittal youth-serving proposals.

(3) In the 1960's, the Federal government offered minimal financial assistance to States, localities, and private agencies wishing to develop general juvenile justice programs.

(4) Throughout the 1970's, several Federal departments devised juvenile justice grants-in-aid programs and attempted to coordinate national juvenile justice policy efforts.

BUILDING THE FOUNDATIONS, 1909-1932

The Progressive Era's child-savers had two primary goals, both concerned with child welfare. The first was protective, designed to stimulate housing, public health, education, and child labor reforms to protect lower class youth from poverty-stricken surroundings. The second goal was structural, aimed at establishing a National Children's Bureau. Both objectives were discussed at the first national forum on children's issues--the White House Conference on Children and Youth.[1] In late 1908, President Theodore Roosevelt invited 216 people to a January 1909 meeting at the White House to discuss "the care of the children who are destitute and neglected but not delinquent." The invitation stressed, "The problem of the dependent child is acute; it is large; it is national." (Stretch, 1970:367.) One of 14 White House Conference endorsements stated that the " . . . Establishment of a Federal Children's Bureau is desirable, and enactment of a pending bill is earnestly recommended." (White House Conference on Children and Youth, 1909.)

During the conference, President Roosevelt defined the right and need for Federal involvement in all youth issues:

> The national government not only has the unquestioned right of research in such vital matters, but is the only agency which can effectively conduct such general inquiries as are needed for the benefit of our citizens....In the absence of such information...many abuses have gone unchecked; for public sentiment, with its great corrective power, can only be aroused by full acknowledgement of the facts. (White House Conference on Children and Youth, 1909:6-7.)

In 1912, the newly created U.S. Children's Bureau began to:

> ...investigate and report...upon all matters pertaining to the welfare of children and child life among all classes of our people, and...especially... the questions of infant mortality, the birth rate, orphanage, juvenile court, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several states and territories. (Tobey, 1925:2.)

With the Bureau's establishment, the Federal government made its first commitment to juvenile justice related research and investigations. During its first two decades, the Bureau launched many juvenile delinquency-related research endeavors: supporting studies of the District of Columbia's juvenile court law (1914) and of children before Connecticut courts (1914); a report on juvenile delinquents in selected countries at war including the United States (1918); a questionnaire measuring the extent of the American juvenile court movement (1918); a survey of organizations and methods of 10 juvenile courts (1921); a "Standards for Juvenile Courts" conference co-sponsored with the National Probation Association Conference (1923); a uniform recording and reporting plan for juvenile courts (1927); and a summary of juvenile delinquency causes, treatment, and prevention for the Wickersham Commission (1930) (Bradbury, 1962:18-19, 37-38). Additionally, the Bureau lobbied for and administered the first Federal law providing human service grants-in-aid to States--the Shephard-Towner/Maternity and Infancy Act. Its 1921 passage moved the Federal government closer to youth and family related commitments previously assumed by State and local governments.[2]

In 1929, President Herbert Hoover made an Executive Commitment to criminal and juvenile justice by appointing the Wickersham Commission (i.e., Commission on Law Observance and Enforcement) to investigate the national crime problem. Among the recommendations submitted in 1930 was a plea to halt theoretical approaches to juvenile problems which characterized past endeavors. Instead of limiting the Federal role to promoting national research, investigations, and discussions, the Commission suggested a more pragmatic, programmatic emphasis, outlining the direction of future Federal policy.

INCREMENTAL COMMITMENT, 1932-1960

New Deal legislators first cast the Federal government directly into youths' lives when they created the Civilian Conservation Corps (CCC), the National Youth Administration, and the Social Security Act. The Civilian Conservation Corps (1933) developed a reforestation program for jobless males 18 to 25 years-of-age and enlisted over two and one-half million young men in CCC camps (Leuchtenburg, 1963:174; Holland and Hill, 1942). During its brief lifetime, the National Youth Administration (1935) employed over 600,000 college students and one and one-half million high school pupils in part-time jobs. The Social Security Act (1935) provided Federal grants-in-aid to States for care of dependent mothers and children, the crippled, the blind, and youth in danger of becoming delinquent.

During the Depression, the Children's Bureau expanded its juvenile delinquency prevention and control interests by studying court and probation reports, investigating institutional care and treatment of delinquent children, providing technical assistance to public and private agencies dealing with delinquents, and creating guides for community and court services for children on probation. However, the need or desirability of forming a unified Federal approach to juvenile justice policy for delinquent and/or needy youth was not discussed.

World War II limited Federal juvenile justice and family related policymaking efforts. The government sponsored only three major youth-serving forums in the 1940's--the Fourth White House Conference on Children and Youth (1940), the National Commission on Children and Youth (1942), and the National Conference on Prevention and Control of Juvenile Delinquency (1946). The decade's most serious Federal effort was the creation of the first Interdepartmental Committee on Children and Youth. Established in 1948 to coordinate youth-serving activities sponsored, organized, and funded by several Federal departments, the Committee hoped to diminish the fragmented national response to youth issues.

Throughout the next decade, the Federal government developed new, diverse ways to combat juvenile delinquency. The Federal Youth Corrections Act of 1951 provided training and rehabilitation methods for youths violating Federal laws. The following year, the Children's Bureau impaneled a group of experts, asking them to recommend ways to decrease rising delinquency trends. As a result, a two-year series of conferences, planned and led by Bureau personnel and financed by private foundations and citizens, sensitized youth-serving personnel to the need for delinquency programs. In 1954, the Children's Bureau assumed a larger interest in juvenile delinquency by creating a Juvenile Delinquency Service to provide technical assistance to States, localities, and public and private agencies; prepare and publish standards and guides for these agencies and the courts; and recommend necessary Federal and State legislation (Eliot, 1972:6).

The Federal government's most influential decision during the 1950's was the creation of a Senate Subcommittee to Investigate Juvenile Delinquency. Hearings conducted between 1953 and 1958 recommended a comprehensive Federal program assisting States and localities to strengthen and improve delinquency programs and youth services. Fifty years after its initial thrust into youth services, the Federal government recognized the need for a coordinated juvenile justice programmatic effort.

From the New Deal forward, congressional leaders dabbled with emergency plans to help impoverished, idle, and unemployed youths; the White House encouraged and co-sponsored national forums to discuss youths' needs; and the one Federal agency empowered to research and investigate delinquency problems--the Children's Bureau--called for action without having the authority to create programs. An incremental commitment to delinquent youths' needs had been made, but a rational, comprehensive Federal statement did not materialize.

INITIAL FEDERAL LEGISLATION, 1960-1970

Developing a plan for large-scale Federal intervention in juvenile justice coincided with the declining popularity of society's traditional assumption that such issues were the local school, police, juvenile court, and family responsibilities. The failure of local resources to contain the frequency and severity of juvenile offenses necessitated a new Federal commitment to juvenile delinquency prevention and control. The Federal response was predictably sporadic considering its inherited legacy--neither professionals nor politicians agreed about youths' needs, a delinquency definition, misconduct causations, or effective treatment methods. Such dissensus bred more confusion and set a pattern that dominated the Federal approach for two decades.

When the Federal government responded to a critical report condemning the absence of a comprehensive youth policy, it made a new commitment to juvenile justice. The 1960 "Report to the Congress on Juvenile Delinquency," co-authored by the Children's Bureau and the National Institute of Mental Health, paved the way for the Juvenile Delinquency and Youth Offenses Act of 1961. This Act, the first national law aimed at controlling and preventing delinquency, set the framework for future Federal juvenile justice policy. By empowering the Department of Health, Education and Welfare's (HEW) Secretary to provide direct categorical grants to communities, institutions, and agencies to plan and initiate innovative demonstration and training programs, a precedent-setting flow of Federal dollars was ensured to States and localities. The Act was more than a State insurance policy; it indicated the Federal government was willing to assume a major role in defining policies and funding programs affecting the Nation's troubled youth. Thereafter, major policy efforts would target a population previously ignored by the Federal government--pre-delinquent and delinquent youth.

The 1961 Act was not the only legislative device offering youth-serving grants. In 1963, HEW became the administrator of the Vocational Education Act funding vocational instructional programs and Head Start's pre-school program for culturally-deprived children. The Equal Employment Opportunity Act of 1964 drew the Department of Labor into the youth-serving arena through its Job Corps project training high school dropouts with no marketable skills. The Manpower Development and Training Act of 1962 assigned a similar objective to the Department of Labor--training

jobless teenagers for eventual employment. Two years later, the Department of Education developed a grants-in-aid program to remedy the imbalance of differential opportunity in schools by providing supplemental monies for compensatory education.

By the mid-1960's, Congress expressed a clear interest in assisting youth. When President Lyndon Johnson appointed the President's Commission on Law Enforcement and Administration of Justice in 1965, the Executive Branch expanded this concern to include youth involved in the juvenile justice system. One mandate was to examine the juvenile justice system and make recommendations for future Federal efforts. The Commission's 1967 Juvenile Delinquency Task Force report suggested a blueprint for such involvement: active support of diversion and prevention projects to reduce unemployment; improved standards of living; new community-based residential facilities and youth service bureaus; increased educational opportunities; and heightened quality of public education. Additionally, the Commission suggested reforming the juvenile justice system (President's Commission on Law Enforcement and Administration of Justice, 1967b).

The Juvenile Delinquency Prevention and Control Act of 1968 was designed to meet Commission recommendations. By broadening HEW's powers, the Act initially authorized a three-year $150 million grants-in-aid program to strengthen State and local juvenile justice and delinquency prevention efforts, and to coordinate all Federal youth development activities.[3] Like its 1961 predecessor the Act lacked specific focus. Its objectives were prevention and control, but no substantive distinction between the two approaches was made nor were differentiations made between treatment needs of certain types of youth. Additionally, most funds assisted State organization of juvenile planning bureaucracies rather than creating new youth programs (Bayh, 1971; Ohmart, 1969).

Overshadowing the Juvenile Delinquency Prevention and Control Act was the Omnibus Crime Control and Safe Streets Act of 1968 and its creation of the Law Enforcement Assistance Administration (LEAA). LEAA's primary emphasis was to augment law enforcement for a more effective battle against increasing crime (Carey, 1973; Feeley and Sarat, 1980; Harris, 1968; Twentieth Century Task Force, 1976). Before LEAA's creation local law enforcement officials were expected to control crime by apprehending offenders and sending them to court. Few efforts existed dealing sensitively with special problems of youths in the system. Without adequate funding for specific juvenile training, most local police work with juveniles was mediocre and inconsistent. Many Federal officials hoped the infusion of LEAA dollars would stimulate police/juvenile programs.

LEAA's interest in juvenile delinquency, however, was never pronounced. Because its enabling legislation excluded delinquency from its crime reduction charge, LEAA avoided juvenile justice responsibilities during its initial years. The next decade's intense lobbying for greater Federal commitment to delinquency prevention and control forced LEAA to appropriate some Federal monies to this end.

As the 1960's concluded, the Federal government had adopted new responsibilities for delinquent youth. Grants-in-aid programs for family services, health, education, employment, recreation, and juvenile justice existed; yet, the belief of many Great Society legislators that Federal assistance would provide solutions encouraged the hasty development of policy and some unanticipated consequences: little agreement about children and youths' needs; no clear differentiation between delinquent, neglected, abused, or exploited youth; no consensual body of professional knowledge

pointing to delinquency causation factors or efficient treatment methods; and no coordination between Federal agencies dispensing monies to State and local youth-serving programs. Consequently, at least four major Federal departments independently administered programs designed to meet the often misguided assumptions of policymakers--the Departments of Labor (DOL), Agriculture (DOA), Justice (DOJ), and Health, Education and Welfare (HEW).

The primary responsibility for coordinating the diverse net of Federal programs belonged to HEW. The overlap inherent in such a "nonsystem" made HEW's mandate difficult. The two most generously funded agencies shared ambiguous functions. Under the 1968 Act, HEW was to assist States in the preparation and implementation of comprehensive juvenile delinquency plans. Yet LEAA, housed within the DOJ, received more Federal funds for block grants to States addressing criminal justice problems--delinquency included.

DESIGNING A NATIONAL JUVENILE JUSTICE POLICY, 1970-1980

Overlapping and confusing departmental roles accompanied the fourth era of Federal juvenile justice policy involvement. The 1960's witnessed unprecedented involvement in youth employment, education, and delinquency issues shared by several autonomous Federal agencies. In 1970, the Department of the Interior (DOI) joined the growing list of agencies with its joint administration with the Department of Agriculture (DOA) of the Youth Conservation Corps Act creating a summer employment program for youth 15 to 18 years-of-age. Amendments to both the Safe Streets and the Juvenile Delinquency Prevention and Control Acts encouraged conflicting juvenile justice roles for LEAA and HEW. The Crime Control Act of 1970 required LEAA include "programs relating to prevention, control and reduction of juvenile delinquency." An amendment extended the Act until 1972, creating an Interdepartmental Council to Coordinate All Federal Juvenile Delinquency Programs, and assigning new boundaries to HEW and LEAA--HEW would concentrate on delinquency prevention and rehabilitation programs administered outside the traditional criminal justice system (i.e., health, welfare, and runaway issues), while LEAA would be involved with programs within the system (i.e., police, courts, and correctional institutions.)

The 1971 appointment of the Congressional Subcommittee to Investigate Juvenile Delinquency was indicative of the Federal government's growing but inharmonious role in juvenile justice and delinquency prevention. It recommended additional LEAA allocations to create national juvenile justice policies and innovative delinquency programs. At the same time, Congress amended the Juvenile Delinquency Prevention and Control Act by extending HEW's administrative and programmatic capacities for two more years and creating a new HEW agency--the Youth Development and Delinquency Prevention Administration (YDDPA). HEW and LEAA roles were again confused when the 1973 Omnibus Crime Control Act amendments expanded LEAA's jurisdiction by requiring each State to submit a juvenile component with its comprehensive plan, and mandating the allocation of at least 19.15 percent of all State grants to juvenile justice or delinquency prevention.

The Department of Labor (DOL) expanded its youth-serving efforts in 1973. The Comprehensive Employment and Training Act (C.E.T.A.) utilized economic incentives by providing local governments with funds to create jobs in public agencies for the disadvantaged and unemployed. Its youth component, Youth Employment Programs and Projects (YEP), was aimed at employing disadvantaged youths.

Between 1973 and 1975, financial and programmatic assistance for juvenile delinquency projects was available through at least 10 separate Federal entities, each with its own grant qualifications and goals (OJJDP, 1975). A solution to such confusion was sought with the passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP Act), designating the Office of Juvenile Justice and Delinquency Prevention (OJJDP) as the official Federal agency financing and administering grants and projects.[5]

The JJDP Act's passage was a landmark Federal action for several reasons, two of which are important to this study. First, the responsibility for youth issues, traditionally delegated to HEW--the Nation's largest social welfare agency--shifted to the Department of Justice (DOJ)--the Nation's foremost law enforcement agency. This jurisdictional transference altered Federal commitment to youth programs and policies. Thereafter, Federal juvenile justice policies would be formulated by the Department of Justice rather than HEW. Future youth-serving energies would focus on the juvenile justice system rather than the traditional human services area.

The DOJ's new commitment, shaped by the JJDP Act, pledged:

> ...(1) to develop and implement effective methods of preventing and reducing juvenile delinquency; (2) to develop and conduct effective programs to prevent delinquency, to divert juveniles from the traditional juvenile justice system and to provide critically needed alternatives to institutionalization; (3) to improve the quality of juvenile justice in the United States; and (4) to increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation and training services in the field of juvenile delinquency prevention. (JJDP Act, 1974, Section 102(b).)

With OJJDP's establishment, deinstitutionalizing and decriminalizing status offenders, diverting juvenile delinquents from the system, and separating juveniles from institutionalized adult offenders became programmatic guidelines for Federal juvenile justice reform. Second, the JJDP Act assigned coordination of all Federal juvenile delinquency programs to its other new creation, the Coordinating Council on Juvenile Justice and Delinquency Prevention.[7] The independent Council's role required an annual report to the President and Attorney General about Federal policy priorities including recommendations for future Federal direction. The creation of both OJJDP and the Council signalled Federal recognition for the need, feasibility, and desirability of coordinated Federal juvenile justice policies..

The Office of Juvenile Justice and Delinquency Prevention (OJJDP)

Under LEAA's auspices, OJJDP began operating in 1975. Its organization, functions, and relationship to the Coordinating Council on Juvenile Justice and Delinquency Prevention are outlined in Figure 1. Built into its structure was the backbone of the new Federal effort--State Formula and Special Emphasis/Discretionary Grant programs. Formula Grants were available to States primarily for programs deinstitutionalizing status offenders and separating juveniles from institutionalized adult offenders. Discretionary Grants were allocated directly to local statewide and private nonprofit organizations and agencies to establish special emphasis programs in the priority areas described in Table 1.

Figure 1

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
1975 to 1980

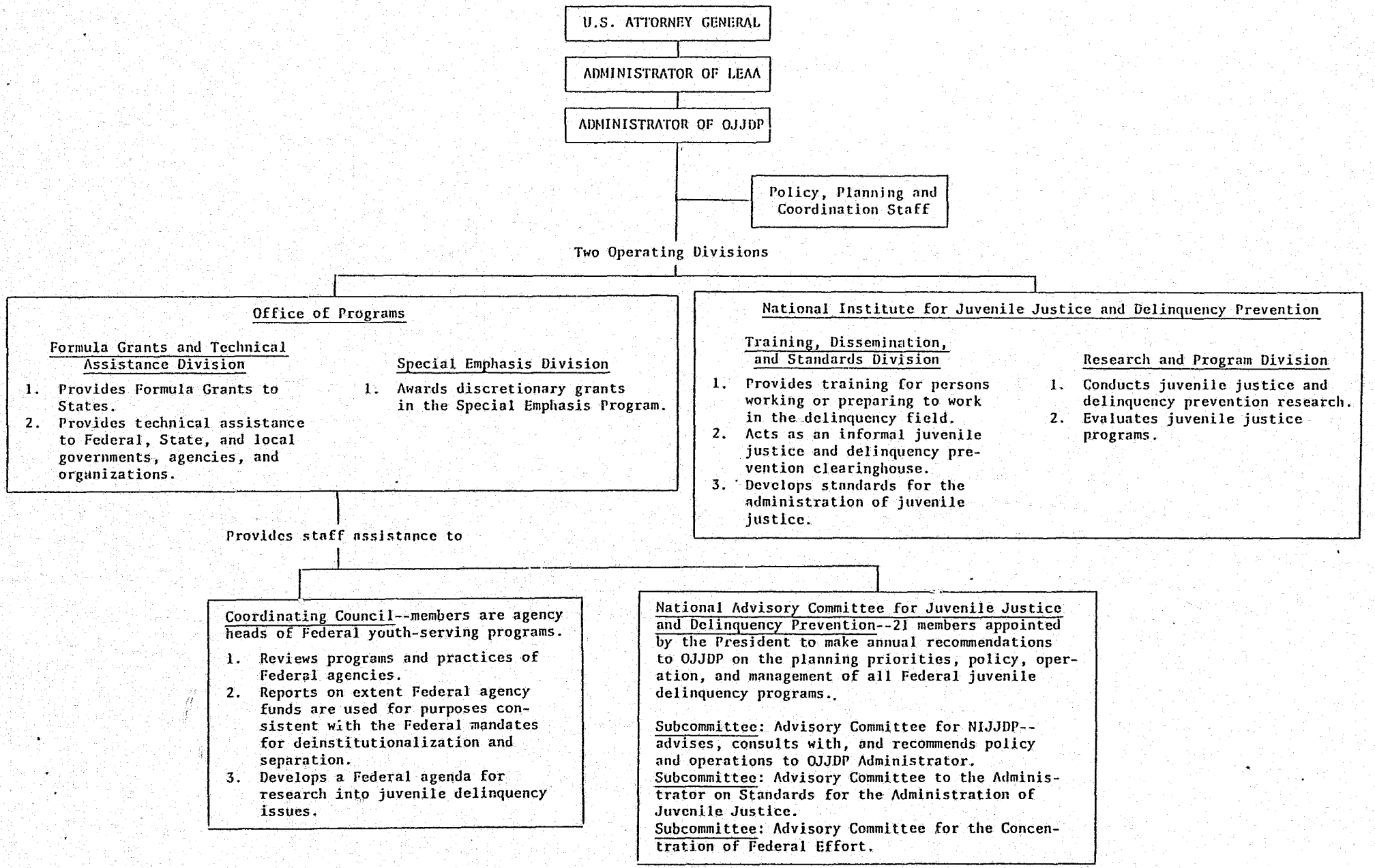

Figure constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

Table 1

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION
SPECIAL EMPHASIS PROGRAM INITIATIVES
1976 to 1980

1976 Initiatives	1977 Initiatives	1978 Initiatives	1979 Initiatives	1980 Initiatives
Deinstitutionalization of Status Offenders: created to keep status offenders from being institutionalized upon contact with the legal system. (March, 1975) 460 applications; 13 grants awarded from Dec. 1975 - Dec. 1977 $12 million awarded for two years *Diversion of Juveniles from the Juvenile Justice System:* Focused on juveniles who would normally be adjudicated delinquent and are at greater risk of further juvenile justice system penetration (April, 1976) 260 application; 11 grants awarded from Nov. 1976 to Nov. 1978 $13 million awarded for three years *Reducation of Serious Crime in Schools:* In Sept., 1976 $4.1 million was transferred to 2 offices in HEW's Office of Education *Teachers Corps* (1976-1978; $2 million) *Office of Drug Prevention* (1976-1978; $2 million.)	*Prevention of Delinquency Through Programs By Youth Serving Agencies:* Designed to strengthen the capacity of private, not for profit youth serving agencies to help youth at risk of becoming delinquent (Announced Nov. 1976 but no grants were activated until 1977) 16 grants awarded from Sept. 1977 - Sept. 1978 with option for second year based on fund availability and project performance. (Refunded in Sept. 1978) $6 million awarded 1977-1978; $6.3 million for 1978-1979. *Deinstitutionalization, Diversion, Reduction of Serious Crimes in the Schools Initiatives all were continued.*	*Restitution by Juvenile Offenders: An Alternative to Incarceration:* Developed programs where victims or community affected by juvenile offender receive payment in cash or service within jurisdiction but in lieu of incarceration in juvenile justice system. (Announced February, 1978) 117 applications; 23 grants awarded $13.2 million awarded for one year *School Crime/National School Resource Network:* A national and four regional centers created to provide training and technical assistance to help schools decrease violence and vandalism. *Unsolicited Innovative Grants* 13 grants awarded to juvenile delinquency prevention and control programs $7,637,990 awarded for fiscal year 1978	No new initiatives were begun in 1979, but a total of $26 million was awarded to continue the following programs already in operation: *Restitution* (20 grants; $6.7 million) *Prevention* (13 grants; $3.7 million) *School Crime Prevention* ($2.5 million) *Diversion* (7 grants; $2.6 million) *16 innovative grants awarded outside of the initiative* ($6.5 mil.)	*Project New Pride:* Supports projects using community-based treatment for more serious juvenile offenders instead of incarceration. *Delinquency Prevention Through Capacity Building* *Alternative Education:* Supports prevention projects that promote institutional change in schools and provide alternative educational experiences for juveniles who have difficulty adjusting to the traditional educational setting. *Youth Advocacy:* Funds projects that help terminate arbitrary decision-making on the part of institutions dealing with youth. *Delinquency Prevention Research and Demonstration:* funds projects to test organized approaches to prevention and provides technical assistance to states for initiating local prevention programs. *Removal of Juveniles From Adult Jails and Lock-Ups in Rural Communities* *Violent Offender Program*

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

The Federal, State, and local partnership envisioned by OJJDP's architects was hindered by a variety of philosophical, organizational, and political factors. Congress constructed OJJDP upon confusing philosophical foundations. Because the JJDP Act specifically targeted deinstitutionalization, diversion, decriminalization, and separation programs for Federal assistance, the needs of many serious and violent juvenile offenders were not addressed. Further, Congress did not clarify its motivation for youth-service subsidies. Were the Federal dollars to be short-term "start-up" grants-in-aid, or long-term continuous funding packages? Was the purpose to retain Federal support, or provide "seed money" to encourage self-sufficient programs? Would continued Federal funding be contingent upon programmatic success determined by national or local priorities and guidelines?

Organizational problems hampered OJJDP's development. Although the creation of State Planning Agencies (SPA's) was required before receiving Federal funds, critics declared SPA's represented a wasteful bureaucratic layer by functioning only as a monetary funnel to localities.

> State Planning Agencies have not been adequately responsive to the need for meeting the crisis of juvenile delinquency and the needs of youth to obtain needed services to prevent delinquent conduct. (U.S. Congress, October 4, 1977.)

Further, OJJDP was attacked for its "missionary zeal" by "forcing" Federal priorities upon States and localities--deinstitutionalization, decriminalization, diversion, and separation of juvenile and adult offenders in jails (Woodson, 1979:2).

However, the political problems were the most persistent obstacle to OJJDP's development. OJJDP has never experienced financial security. In 1974, Congress authorized $75 million, $125 million, and $150 million for each fiscal year beginning in 1975. Only $25 million was actually designated for 1975, $40 million for 1976, and $75 million for 1977. In the next three years, OJJDP's budget continued to suffer in legislative hands. Despite the $150 million, $175 million, and $200 million appropriated for fiscal years 1978 to 1980, only $100 million was allocated each year. OJJDP's 1981-82 fiscal year budget remained $100 million, while 1982-83 suffered a cutback to $70 million. Second, a report submitted to the Subcommittee on Crime of the House Committee on the Judiciary in December, 1978 claimed:

> ...OJJDP's funding pattern reveals that the majority of its money goes to the less juvenile delinquent populations in the country. The most severe and most difficult youth crime problems occur at one end of the problem/program continuum while the OJJDP program and research efforts are being concentrated at the other. (Woodson, 1979:1.)

The report particularly chastised OJJDP for ignoring the needs of serious and violent juvenile offenders and concentrating too heavily on the deinstitutionalization of status offenders. Specifically, Congress was concerned with the input and organization of required juvenile justice plans for each State, as well as the deinstitutionalization clauses. The 1977 Amendments to the JJDP Act sought to remedy these weaknesses in three ways: by broadening the functions and membership of SPA Advisory Groups to include the private business sector, youth workers involved in alternative youth programs, and persons with special experience in school violence and vandalism problems; by giving States participating in the Formula Grant program an additional year to achieve "substantial compliance" of deinstitutionalization and by requiring

monitoring of all State juvenile detention and correctional facilities to determine suitability for status offenders. Final Amendment provisions included expansion of the Special Emphasis program to include funding school violence and vandalism, youth advocacy, and model youth employment programs.

When the second set of JJDP Act reauthorizations began in 1980, it appeared past criticisms of budget, grant programs, and policy procedures would continue to inhibit OJJDP's development. However, these issues took a temporary back seat while another congressional battle ensued. OJJDP's administrative agency, LEAA, had experienced its own precarious history since 1968. Targeted for total reform or eventual destruction by Presidential hopeful Senator Edward Kennedy in 1976, and cited as a bureaucratic nightmare by newly-elected President Jimmy Carter, it became clear LEAA would not survive the decade. The passage of the Justice System Improvement Act (JSIA) on December 27, 1979 replaced LEAA with the Office of Justice Assistance, Research and Statistics (OJARS), and created a new LEAA (with OJJDP included under its jurisdiction), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). (See Figure 2.)

For three months, OJJDP was assured its survival under LEAA; however, in March 1980, the 1981-82 fiscal budget revealed the elimination of all LEAA monies. Only OJJDP was left intact. But the Office lost important financial support with the demise of LEAA. The "maintenance of effort" monies, 19.5 percent of LEAA's block funds, specifically designated for juvenile justice and delinquency prevention programs since 1973, would no longer be allocated.

After a heated series of Congressional discussions, President Jimmy Carter signed OJJDP's second reauthorization on December 8, 1980, extending the JJDP Act another four years and adding major changes. First, as Figure 3 indicates, OJJDP's structure was altered for the first time in its brief history. OJJDP became a separate entity under OJARS, operating under the general authority of the U.S. Attorney General. The OJJDP Administrator, a Presidential appointee, received full authority to implement JJDP Act provisions as well as staff support and coordination assistance through OJARS. A maximum appropriation of $200 million per year was set, although the actual 1981 appropriation was $100 million. Second, the Formula Grant program was revised to include requirements for comprehensive and coordinated statewide juvenile justice program efforts; the modification of deinstitutionalization provision to exempt habitual runaways, juveniles who refused to accept court-ordered treatment, or those who flaunted the court's orders; and extension of deinstitutionalization requirements for two years. Third, the Special Emphasis Program was revised: programmatic funds would be equally available to disadvantaged youth including females, minorities, mentally retarded, emotionally and physically handicapped youth, and serious and violent juvenile offenders.

Despite large budgetary cuts, OJJDP emerged from the Amendments with renewed confidence. This feeling grew with President Carter's January 1981 announcement of 1982 fiscal year proposals. The recommended $27 million increase represented a total budget of $127 million. However, the incoming Reagan Administration dealt OJJDP a new blow on March 10, 1981: a Presidential proposal suggested terminating OJJDP at the same time the Executive Branch substantially trimmed most other Federal criminal justice agencies. While explaining the Administration's rationale for eliminating OJJDP, Attorney General William French Smith responded:

Figure 2

LEAA/OJJDP STRUCTURE, 1979

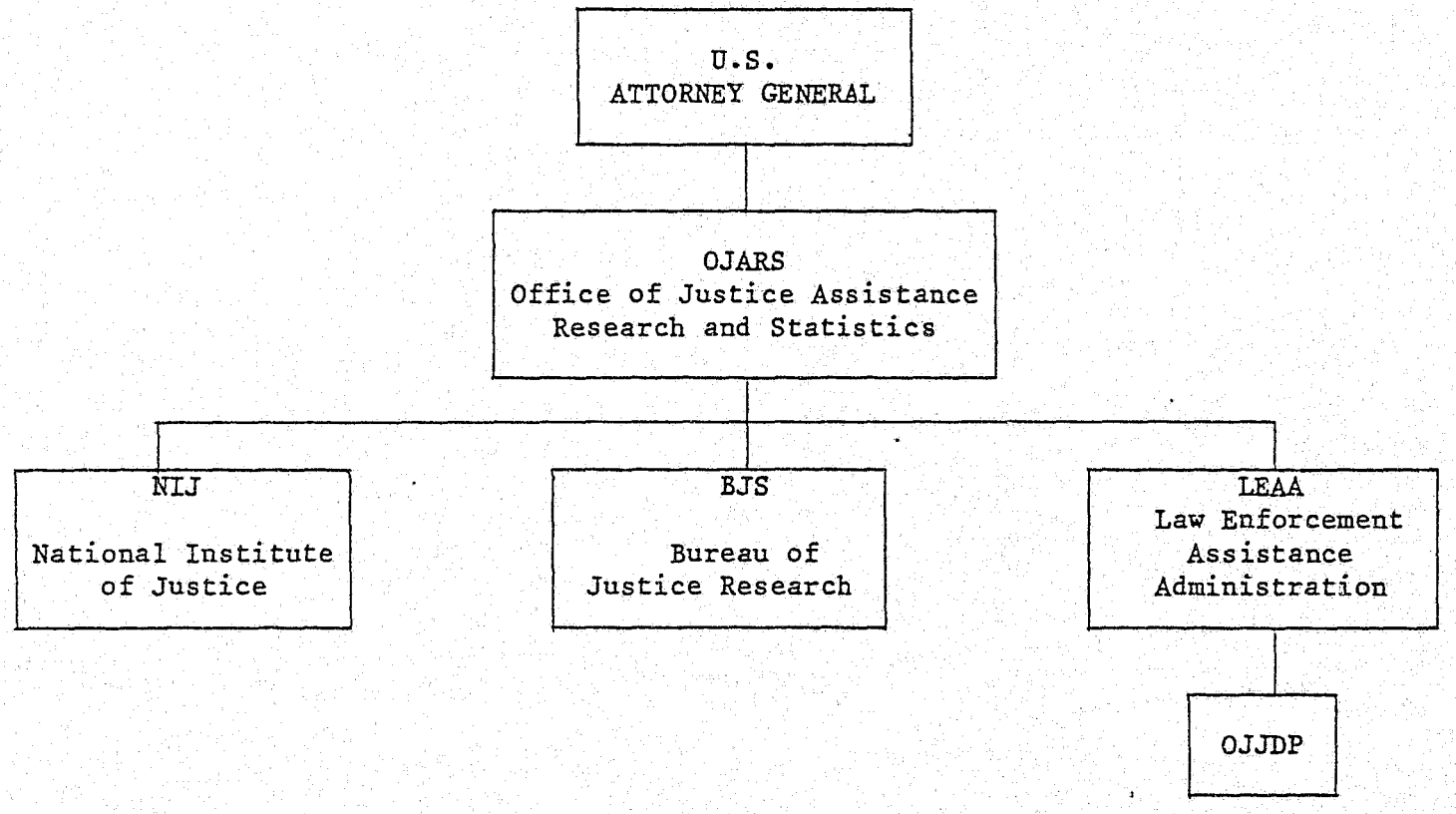

Figure constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

Figure 3

LEAA/OJJDP STRUCTURE, 1981

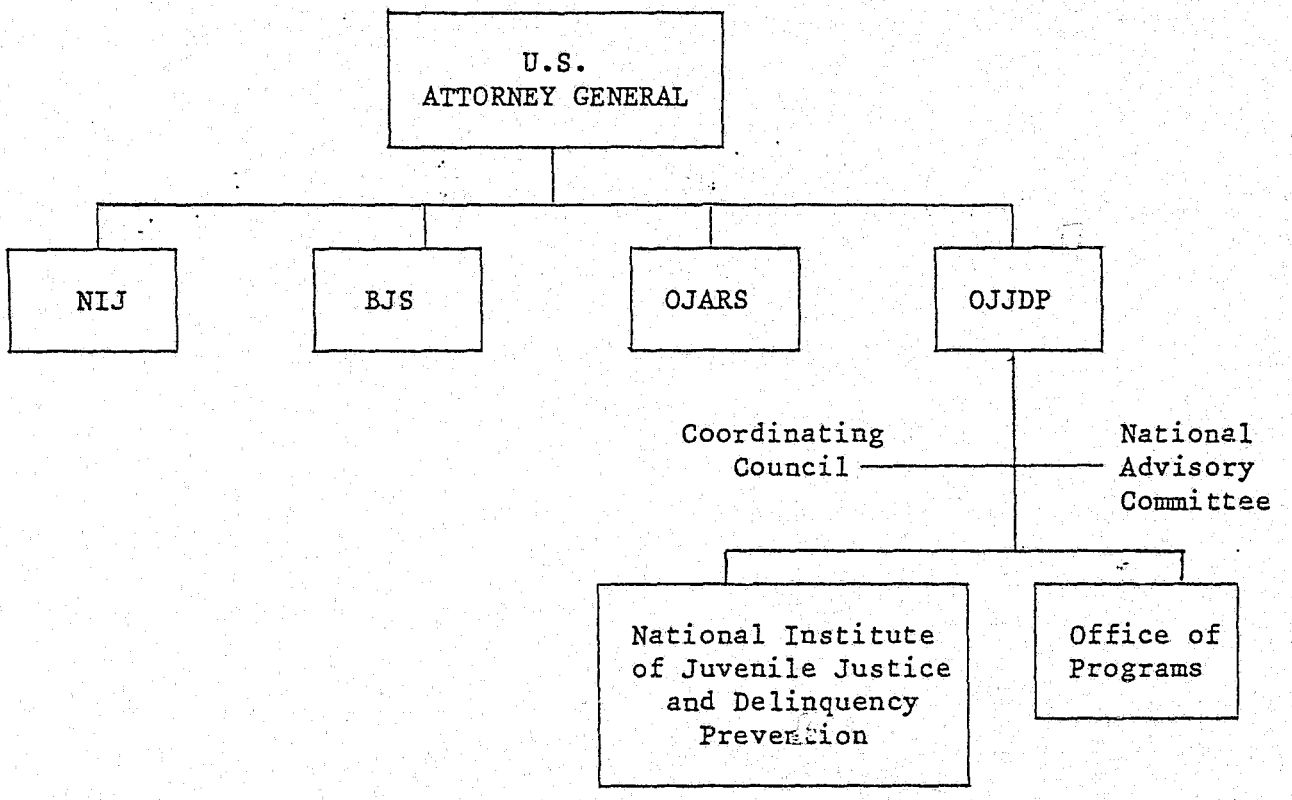

Figure constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

> This does not mean that the administration believes that the juvenile justice program was not a worthwhile effort. We believe that the juvenile justice program is primarily designed to ensure that juveniles are not forced, through a variety of circumstances, into a criminal justice system in which they do not belong. (Anon., 1981.)

The Reagan Administration's alternative strategy was to return management of social and health service programs to the States so they could spend the money any way they wanted as long as such expenditures addressed social and health service needs.

It was not until late December 1981, that OJJDP was reinstated into the Federal budget. However, only $70 million was authorized to OJJDP and its future remained uncertain. OJJDP's ultimate fate rests with the third round of JJDP Act reauthorization hearings scheduled for 1984.

The Coordinating Council on Juvenile Justice and Delinquency Prevention

In addition to creating OJJDP, the 1974 JJDP Act established the Coordinating Council on Juvenile Justice and Delinquency Prevention as an independent cabinet-level body chaired by the Attorney General with OJJDP's Administrator serving as Vice-Chairperson. Included in its legislative mandate to coordinate all Federal juvenile delinquency programs are several objectives:

- determining appropriate Federal roles and overall policies;
- improving the effectiveness of Federal programs in reducing delinquency;
- increasing the efficiency of the organization and management of Federal activities; and
- facilitating implementation of effective programs at the State and local levels. (U.S. Department of Justice, n.d.:2.)

Coordination and national juvenile delinquency policy determination are central Council functions shared by an annual tripartite investigation and analysis by the Council, OJJDP, and the National Advisory Committee. Coordinating Federal youth programs has been an evasive role. As early as 1948, the Federal government appointed an agency to pursue a coordinated approach to youth programs and policy. The Interdepartmental Committee on Children and Youth was replaced in 1960 by the President's Committee on Juvenile Delinquency and Youth Crime. Rather than coordinate the growing Federal effort, it produced the Juvenile Delinquency and Youth Offenses Control Act of 1961. One decade later, an Interdepartmental Council to Coordinate All Federal Juvenile Delinquency Programs was established to work closely with HEW in carrying out its mandate. Thus, when the Coordinating Council was created in 1974, it faced a coordination challenge that three previous agencies failed to achieve.

The Council's task was further complicated by the tremendous increase of Federal involvement in youth programs. Between 1973 and 1975, 117 federally-funded juvenile delinquency programs operated: 10 were devoted to delinquency treatment; 36 provided direct prevention services; 13 handled law enforcement or criminal justice improvement programs including, but not targeting juveniles; and 57 were indirectly related to delinquency control and/or prevention (U.S. Department of Justice, 1977b).

The following year, 144 delinquency related programs were identified: 11 separate Federal agencies spent $42.1 billion, yet only $22 billion was targeted for youths under 21 years-of-age, and the majority of programs concentrated on family rather than juvenile problems (U.S. Department of Justice, 1977b:53-54). (See Table 2.)

The most recent Federal juvenile delinquency program survey was conducted by OJJDP, the Coordinating Council, and the National Advisory Committee (1980). Forty-five direct assistance Federal programs spread over seven cabinet-level departments and two independent agencies were identified.* Three departments--Education, Labor, and Health and Human Services--encompass 64 percent of the programs and 95 percent of the total obligations. The 45 programs are authorized under 25 separate congressional acts, and more than half are based on congressional action since 1970. Approximately $5.5 billion was expended on services to youths under 18 years-of-age in fiscal year 1980 (U.S. Department of Justice, n.d.:Executive Summary).

Table 3 lists the specific programs sponsored by Federal agencies, while Table 4 identifies the programs with their enabling legislation.

When the extent of programmatic involvement in delinquency prevention and treatment was measured, the analysis found:

(1) Of the 45 programs studied, only nine (20 percent) have the reduction or prevention of delinquency explicitly stated in their legislation. Five others refer to juvenile delinquency in their regulations, guidelines, or other official documents. These 14 programs are administered by six cabinet-level departments and one independent agency.

(2) Only one-third (13) of the 39 programs responding to the survey reported they serve youth who have had formal contact with the juvenile justice system. Even for these programs, the percentage of clients having formal contact with the justice system is generally low. (It should be noted that many programs were not aware of whether any of their clients had formal contacts.)

(3) Nine programs reported that some portion of their expenditures was specifically targeted for delinquent youth. In seven of the nine programs, this was less than 10 percent of the total funds. The total amount targeted for delinquent youth was $60.98 million, or about 1 percent of the entire amount expended on services to youth by the 45 programs.

(4) Only five programs outside of OJJDP indicated any significant involvement in efforts to deinstitutionalize status offenders and dependent and neglected youth, a specific mandate contained in the JJDP Act. Those programs involved in deinstitutionalization indicated that a major obstacle to success has been the scarcity of alternative direct service programs at the community level. (U.S. Department of Justice, n.d.:Executive Summary.)

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*Federal planning, technical assistance training, and research programs were not included.

Table 2

INVOLVEMENT OF FEDERAL AGENCIES IN JJDP PROGRAMS
FISCAL YEAR, 1976

Department	Programs	Expenditures (in billions)
Health, Education and Welfare	81	$24.2
Department of Justice	6	.2
Department of Justice (Bureau of Prisons*)	11	.6
Department of Labor	12	5.0
Department of Agriculture	11	8.1
Department of Interior	9	.2
Housing and Urban Development	4	3.1
Other**	10	.7
TOTAL	144	$42.1

* Bureau of Prison funds helped maintain juvenile facilities.

**Other includes Department of Transportation, Appalachian Region Commission, Civil Service Administration, and the Community Service Administration.

Source: U.S. Department of Justice, Second Analysis and Evaluation, Federal Juvenile Delinquency Programs, Volume I. (Washington, D.C.: Government Printing Office, 1977b), pp. 53-54.

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

Table 3

FEDERAL PROGRAMS SURVEYED BY OJJDP AND COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION FISCAL 1980 OBLIGATIONS

DEPARTMENT/AGENCY	PROGRAM TITLE	FISCAL 1980* OBLIGATIONS
ACTION		
• Older Americans Volunteer Programs	The Foster Grandparent Program	46.90
Community Services Administration	Community Action	383.80
U.S. Department of Agriculture		
• Forest Service	Youth Conservation Corps--Grants to States	14.60
• Forest Service Human Resource Program/DOI--Manpower Training and Youth Activities	Young Adult Conservation Corps--Grants to States	62.70
• Science and Education Administration	Cooperative Extension Service 4-H	262.00
Education		
• Division of Alcohol and Drug Education Programs--Office of Education Research, Improvement	Alcohol and Drug Abuse Education Program	3.00
• Office of Elementary and Secondary Education	Educationally Deprived Children--Local Educational Agencies	2,630.02
• Office of Elementary and Secondary Education	Educationally Deprived Children--Migrants	209.00
• Office of Elementary and Secondary Education	Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children	37.66
• Office of Elementary and Secondary Education	Emergency School Aid Act--Basic Grants to Local Educational Agencies	137.60
• Office of Elementary and Secondary Education	Emergency School Aid Act--Grants to Nonprofit Organizations	15.00
• Office of Elementary and Secondary Education	Indian Education--Grants to Local Educational Agencies	47.28
• Office of Elementary and Secondary Education	Indian Education--Special Programs and Projects	12.50
• Office of Elementary and Secondary Education	Indian Education--Grants to Non-Local Educational Agencies	4.73
• Office of Elementary and Secondary Education	Instructional Materials and School Library Resources	171.00
• Office of Elementary and Secondary Education	Improvement in Local Educational Practice	197.40
• Office of Post Secondary Education--Division of Student and Veterans Program	Upward Bound	57.50
• Office of Vocational and Adult Education	Vocational Education--Basic Grants to States	474.77
Health and Human Services		
• Alcohol, Drug Abuse and Mental Health Administration	Drug Abuse Community Service Programs	142.10
• Alcohol, Drug Abuse and Mental Health Administration	Alcoholism, Treatment and Rehabilitation/ Occupational Alcoholism Service Programs	60.82
• Alcohol, Drug Abuse and Mental Health Administration	Drug Abuse Demonstration Programs	3.61
• Alcohol, Drug Abuse and Mental Health Administration	Alcohol Formula Grants	54.80
• Alcohol, Drug Abuse and Mental Health Administration	Drug Abuse Prevention/Education Programs	8.32

*In the millions of dollars.

Table 3 continued

FEDERAL PROGRAMS SURVEYED BY OJJDP AND COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION
FISCAL 1980 OBLIGATIONS

DEPARTMENT/AGENCY	PROGRAM TITLE	FISCAL 1980* OBLIGATIONS
Health and Human Services (cont'd)		
• Alcohol, Drug Abuse and Mental Health Administration	Community Mental Health Centers--Comprehensive Services Support	256.90
• Office of Human Development Services	Administration for Children, Youth, and Families--Runaway Youth	11.00
• Office of Human Development Services	Child Abuse and Neglect Prevention and Treatment	22.93
• Office of Human Development Services	Administration for Children, Youth, and Families--Youth Research and Development	1.47
• Office of Human Development Services	Social Services for Low Income and Public Assistance Recipients	2,697.00
• Office of Human Development Services	Child Welfare Services--State Grants	56.50
• Office of Human Development Services	Administration for Children, Youth, and Families--Adoption Opportunities	5.00
• Office of Human Development Services	Office of Domestic Violence Program	-
• Office of Human Development Services	Adolescent Pregnancy Prevention and Services	13.00
Housing and Urban Development		
• Public Housing and Indian Programs	Urban Initiatives Anti-Crime Program	-
Interior, Department of (DOI)		
• Bureau of Indian Affairs	Indian Social Services--Child Welfare Assistance	13.59
• Bureau of Indian Affairs	Indian Education--Assistance to Schools	28.20
• Bureau of Indian Affairs	Indian Child Welfare Act--Title II Grants	5.50
Justice, Department of (DOJ)		
• OJJDP	Juvenile Justice and Delinquency Prevention--Formula Grants	61.62
• OJJDP	Juvenile Justice and Delinquency Prevention--Special Emphasis	37.24
• LEAA/ACTION	Urban Crime Prevention	5.50
Labor, Department of (DOL)		
• Employment and Training Administration	Job Corps	420.21
• Employment and Training Administration	CETA--Titles II, IV and VI	6,996.68
• Employment and Training Administration	Employment and Training--Indians and Native Americans	78.87

*In the millions of dollars

Source: Table adapted from U.S. Department of Justice, Fifth Analysis and Evaluation of Federal Delinquency Programs. Office of Juvenile Justice and Delinquency Prevention. (Washington, D.C.: Government Printing Office, n.d.).

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

Table 4

FEDERAL PROGRAMS SURVEYED BY OJJDP AND COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION: ENABLING LEGISLATION AND OPERATION/EXPIRATION DATES

ENABLING LEGISLATION	PROGRAM NAME	OPERATIONAL/ EXPIRATION DATES
Smith Lever Act of 1914	Cooperative Extension Service (4-H)	1914-1981
Snyder Act of 1921	Indian Social Services-Child Welfare Assistance	1948-1981
Johnson-O'Malley Act of 1934	Indian Education-Assistance to Schools	1890-1981
Social Security Act of 1935	Administration for Children, Youth, and Families-Youth Research and Development	1973-1981
Social Security Act of 1935	Child Welfare Services State Grants	1935-1981
Economic Opportunity of 1964	Community Action	1964-1981
Elementary and Secondary Act of 1965	Educationally Deprived Children-Local Educational Agencies	1965-1981
Elementary and Secondary Act of 1965	Educationally Deprived Children-Migrants	1966-1981
Elementary and Secondary Act of 1965	Educationally Deprived Children in State Administrative Institutions Serving Neglected or Delinquent Children	1967-1983
Elementary and Secondary Act of 1965	Instructional Materials and School Library Resources	1975-1983
Higher Education Act of 1965	Upward Bound	1965-1981
Youth Conservation Corps Act of 1970	Youth Conservation Corps-Grants to States	1977-1982
Alcohol and Drug Abuse Education Act of 1970	Alcohol and Drug Abuse Education Program	1970-1981
Prevention, Treatment and Rehabilitation Act of 1970	Alcoholism, Treatment and Rehabilitation/ Occupational Alcoholism Service Programs	1970-1981
Indian Education Act of 1972	Indian Education-Grants to Local Education Agencies	1973-1983
Indian Education Act of 1972	Indian Education-Special Programs and Projects	1973-1983
Drug Abuse Office Treatment Act of 1972	Drug Abuse Community Service Programs	1974-1981
Drug Abuse Office Treatment Act of 1972	Drug Abuse Demonstration Programs	
Drug Abuse Office Treatment Act of 1972	Drug Abuse Prevention Education Programs	1973-1983
Comprehensive Alcohol Abuse Prevention Control and Treatment Act of 1972	Alcohol Formula Grants	1972-1980
Comprehensive Employment and Training Act of 1973	Job Corps	1965-1981
Comprehensive Employment and Training Act of 1973	Titles II, VI and VII CETA	(Titles II and VI) 1974-1982 (Title VII) 1978-1982
Comprehensive Employment and Training Act of 1973	Title IV CETA Summer Youth Employment Program (SYEP)	1974-1981
Comprehensive Employment and Training Act of 1973	Title IV CETA Youth Employment Training Program (YETP)	1974-1981
Comprehensive Employment and Training Act of 1973	Title IV CETA Youth Community Conservation and Improvement Projects (YCCIP)	1974-1981
Domestic Volunteer Service Act of 1973	The Foster Grandparent Program	1965-1981
Juvenile Justice Delinquency Prevention Act of 1974	Administration for Children, Youth and Families-Runaway Youth	1975-1980
Juvenile Justice Delinquency Prevention Act of 1974	Juvenile Justice and Delinquency Prevention-Formula Grants	1975-1983
Juvenile Justice Delinquency Prevention Act of 1974	Juvenile Justice and Delinquency Prevention-Special Emphasis	1975-1984
Community Mental Health Centers Amendments of 1975	Community Mental Health Centers-Comprehensive Services Support	1965-1981
Youth Employment and Demonstration Project Act of 1977	Young Adult Conservations Corps-Grants to States	1977-1982

Table 4 continued

FEDERAL PROGRAMS SURVEYED BY OJJDP AND COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION: ENABLING LEGISLATION AND OPERATION/EXPIRATION DATES

ENABLING LEGISLATION	PROGRAM NAME	OPERATIONAL/ EXPIRATION DATES
Health Services and Centers Amendments Act of 1978	Adolescent Pregnancy Prevention and Services	1979-1981
Indian Child Welfare Act of 1978	Indian Child Welfare Act-Title II Grants	1980-1982
Indian Child Welfare Act of 1978	Employment and Training Indian and Native Americans	1974-1982
Child Abuse Prevention and Treatment Act of 1978	Child Abuse and Neglect Prevention and Treatment	1974-1981
Child Abuse Prevention, Treatment and Adoption Reform Act of 1978	Administration for Children, Youth, and Families-Adoption Opportunities	1978-1981
Public Housing Security Demonstration Act of 1979	Urban Initiatives Anti-Crime Program	1979-1981
Justice System Improvement Act of 1980	Urban Crime Prevention	1980-1981

Source: Table adapted from U.S. Department of Justice, Fifth Analysis and Evaluation of Federal Delinquency Programs. Office of Juvenile Justice and Delinquency Prevention. (Washington, D.C.: Government Printing Office, n.d.).

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

Because nine programs professed delinquency prevention to be a goal, 13 reported serving youth formally involved in the juvenile justice system, and nine claimed some budgetary portion was allocated for delinquent youth, it may be concluded that the vast majority of Federal funds allocated in 1980 were directly expended for programs "potentially related to the prevention of delinquency," while few "appear to be concerned with the treatment of delinquency or response to delinquent behavior." (U.S. Department of Justice, n.d.:Executive Summary.)

In response to these findings, the Coordinating Council, OJJDP, and the National Advisory Committee outlined three "potential arenas" for future Federal action: Federal juvenile justice and delinquency prevention policies, organization of the Federal effort, and intergovernmental relations. In the Federal policy area, the analysis states:

> There is a need to clarify Federal policy and priorities in order to provide a clearer focus and direction with regard to strategies for reducing delinquency and improving the juvenile justice system. (U.S. Department of Justice, n.d.:Executive Summary.)

The authors suggest developing policy statements on the following issues "might provide greater focus to a widely diverse set of Federal programs":

- the relative emphasis to be placed on the disposition and treatment of delinquent youth, as opposed to the prevention of initial delinquent behavior;
- particular services or program strategies considered to be most effective and needed (e.g., employment sevices, educational change, counseling);
- the degree of emphasis placed on providing direct services to youth, as opposed to seeking ways to modify or improve some of the organizational components of the juvenile justice system; and
- the relative focus on general youth populations, populations defined as being at "high risk," or adjudicated delinquent populations. (U.S. Department of Justice, n.d.:Executive Summary.)

A second statement suggests the Federal effort be reorganized or consolidated as policy becomes clear. Any reorganization necessitates one organizational unit with lead responsibility to:

- ensure adequate Federal resources are directed toward programs dealing with delinquent youth, whether they are in institutions or other parts of the juvenile justice system; and
- provide coordination for the larger set of Federal programs and policies that impact on efforts to prevent delinquency.

The final statement outlines two ways the Federal government can further intergovernmental relations:

- disseminating information about State and local coordination models that have been successful, and providing technical assistance to State and local governments in designing or implementing a coordination effort; and

- providing a structured feedback mechanism regarding the operational impact of Federal programs to allow for the development of more flexible and innovative approaches at the local level.

Consequently, seven recommendations submitted to Congress were "geared toward enabling Federal programs to work together and with State and local governments to develop and implement strategies to increase program flexibility." (U.S. Department of Justice, n.d.:115.) As can be seen in Table 5, these fell into three categories:

- an emphasis on serious and violent juvenile crime;
- coordination of Federal agency efforts in research, training, technical assistance, program planning, and policy development; and
- simplification of Federal eligibility and target population criteria to permit State and local program flexibility.

This analysis refers to a "Federal policy" on juvenile delinquency issues comprised of several legislative actions and cooperatively shared among various agencies, of which one is mandated to assume coordination and analytical functions. Such an approach requires a continual redefinition of youth issues, needs, and ongoing efforts to refocus and reorganize Federal directions. What it does not suggest is a comprehensive, federally-directed, and centralized national juvenile justice policy be developed.

CONCLUSION

OJJDP and the Coordinating Council concluded in their 1980 analysis of Federal juvenile delinquency programs:

> It is graphically clear from this report that the Federal delinquency effort consists of a highly fragmented and overlapping collection of programs. The system poses significant challenges to the provision of consistent policy direction and the efficient use of multiple resources to solve youth problems that are both complex and critically important to American communities. (U.S. Department of Justice, n.d.:5.)

Fragmentation of the Federal effort is not surprising historically. Before the 20th century, moralistic philanthropists assumed child-saving duties and rarely relied on large-scale public assistance. The Progressive Era witnessed greater State and local involvement in youth issues and some tentative interest from the Federal government--conducting a White House Conference on Children and Youth, and creating the U.S. Children's Bureau. Research and investigation dominated Federal youth involvement until the New Deal's youth and family relief measures. World War II excused the Federal government from youth policymaking decisions, and it was not until 1953 that the role was reassumed. The Senate Subcommittee to Investigate Juvenile Delinquency conducted five years of hearings, leading to eventual passage of a bill to assist States and localities with delinquency prevention, control, and treatment programs. The 1961 Juvenile Delinquency and Youth Offenses Control Act not only signalled the first Federal leadership and financial commitment to troubled youth, but also shifted the national focus. Although previous Federal efforts were aimed at health, education, and welfare issues, the 1961 Act directly targeted

Table 5

RECOMMENDATIONS OF OJJDP AND COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 1980

1. The Administration should undertake an interagency effort to test promising approaches to reducing and controlling serious and violent juvenile crime. This effort should involve the coordination of resources among agencies in research, training, technical assistance, evaluation, and information dissemination as well as program development. The input of State and local elected and appointed officials, and of organizations representing these officials, should be actively sought and incorporated into Federal program planning and development activities regarding serious and violent juvenile crime.

2. The Administration should support a process that would facilitate interagency planning to coordinate technical assistance, training, research, and program development for Federal juvenile delinquency-related programs.

3. Federal agencies providing financial or other forms of assistance to remove status and other non-offenders from secure facilities should coordinate their efforts to develop and implement community-based programs, services, and facilities. Agencies that provide financial or other assistance to juvenile institutional programs should undertake efforts to assure that those institutions meet the statutory provisions of Federal youth-related legislation such as the Juvenile Justice and Delinquency Prevention Act, the Adoption Assistance and Child Welfare Act of 1980, the Indian Child Welfare Act, and the Mental Health Systems Act.

4. The Coordinating Council on Juvenile Justice and Delinquency Prevention should provide input to the Office of Management and Budget on priorities for Federal delinquency-related programs to assist OMB in reviewing the budgets of Federal programs. This process should have as its goal the concentration of Federal resources and the consistency of Federal policy with respect to juvenile delinquency prevention and control. The Coordinating Council, as part of the process outlined in recommendation 7, should solicit the views of State and local elected and appointed officials, to assist them in the formulation of priorities for forwarding to the Office of Management and Budget.

5. The Administration should undertake an interagency evaluation of successful models of coordination of planning, administration, and delivery of youth services at the State and local level. The Federal government should assist State and local governments by providing technical assistance in developing and implementing coordination models. This effort should examine the impact upon the delivery of services or changes in the funding patterns for youth services.

6. The Administration and the Congress should undertake efforts to increase program flexibility at the State and local government level. Among the issues such efforts should consider is the development of standard target population definitions and reduced and more uniform eligibility criteria. OJJDP's Fifth Annual Analysis and Evaluation identified 64 target groups and 111 eligibility criteria for service among the 39 Federal programs responding to the survey of Federal youth programs. Reductions in the number and development of standard criteria should be accomplished either through legislative or regulatory change or through the design of mechanisms to permit waiver of such requirements in joint funding efforts. The Coordinating Council on Juvenile Justice and Delinquency Prevention should examine a limited number of areas to determine the feasibility of this process and submit its findings and recommendations with respect to the simplification of eligibility criteria and development of standard target group definitions. The Coordinating Council should pursue these efforts in conjunction with representatives of State and local elected officials.

7. The Coordinating Council on Juvenile Justice and Delinquency Prevention, in conjunction with the Advisory Commission on Intergovernmental Relations, should conduct hearings, meetings, conferences or other such forums as necessary to permit State and local governments to provide input to Federal agencies regarding the operational impact of Federal youth programs. The development of a participatory partnership to implement this process is encouraged. Cooperative agreements should be developed to carry out tasks that would permit State and local officials and private not-for-profit agencies to present their views to the Federal government. This mechanism would permit the Federal government to assess the impact of its guidelines, regulations, and legislation while permitting more flexible and innovative approaches to service delivery at the State and local level.

Source: Table adapted from U.S. Department of Justice, Fifth Analysis and Evaluation of Federal Delinquency Programs. Office of Juvenile Justice and Delinquency Prevention. (Washington, D.C.: Government Printing Office, n.d.).

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1983).

predelinquent and delinquent youth for Federal assistance. Program Administration was delegated to the Nation's largest human service agency--the Department of Health, Education and Welfare (HEW).

For the next decade, philosophical commitment remained but Federal assistance dwindled. It was not until 1974 that the Federal government finally created an agency to deal directly with predelinquent and delinquent youth by dispensing grants-in-aid to States and localities. Again, the focus on predelinquent and delinquent youth remained, but the administrative emphasis shifted--HEW lost control when OJJDP's administration was assigned to the Department of Justice. Thereafter, youth policies were closely identified with delinquency prevention and juvenile justice.

Programs and policies shifted between private philanthropists, State and local governments, and the Federal bureaucracy throughout the 20th century. Policies were developed through factional approaches. Each faction's basic goals and orientation are defined by the unique historical foundations upon which it was built, the professional make-up of the advocacy groups, and the available funding. There is still no unified approach to the overall status of predelinquent and delinquent youth in our society, and no certainty about the causes of, or best treatment for delinquency. Although we have made great strides uncovering the complexities of youth in our society, only recently have we made any progress fitting the pieces together into viable legislation and programs.

Because such progress is recent, it might be wise to consider the challenges faced by the bureaucratic structures mandated to develop juvenile justice policy, coordinate the Federal effort, and dispense funds to and evaluate State and local programs. Perhaps OJJDP's architects were too ambitious with their expectations. The Office originated 22 years after HEW entered the juvenile justice and delinquency prevention arena, 11 years after the entrance of the Department of Labor, nine years after the arrival of the Department of Education, and four years after Agriculture and Interior Department involvement. Its accomplishments have not been insignificant if one considers the historical perspective. The landmark Federal agency has been plagued by continual political struggles, unstable budgets, confusing philosophical foundations, and the lack of a definitional cohesiveness throughout its brief life span.

Similarly, the Coordinating Council on Juvenile Justice and Delinquency Prevention has faced a difficult, if not unrealistic, challenge--the coordination of all Federal juvenile delinquency related programs. Is it possible for a comparatively new agency to stimulate and achieve interagency cooperation between entities operating autonomously and independently for over two decades?

The development of a cooperative and coordinated input from involved Federal agencies remains a goal for both OJJDP and the Coordinating Council. By 1980, they shared an optimistic belief:

> Under a more austere Federal budget, OJJDP and the Coordinating Council could play an important role in helping to focus the Federal effort on selected priority areas. (U.S. Department of Justice, n.d.:Executive Summary.)

The selection of such "priority areas", however, reintroduces the 20th-century dilemma of dissensus: few professionals, practitioners and policymakers can agree

about the causes of and treatment for juvenile delinquency, nor can they consensually develop a Federal response to the issue. Thus, historical dissensus continues to thwart legislative efforts to create a Federal juvenile justice policy. However, the above analysis indicates the creation of such a policy is not a current OJJDP goal. Instead, the Office appears to support a coordinating rather than Federal policymaking role.

FOOTNOTES

1. With the exception of 1980, each decade since 1909 has seen Federal sponsorship of a White House Conference on Children and Youth. The 1970 Conference was particularly interesting as it split between two groups--the caretaker philosophy was expressed in the 1970 White House Conference on Children held in Washington, D.C., while the autonomous philosophy was addressed in the 1970 White House Conference on Youth held in Denver, Colorado.

2. The Shephard-Towner/Maternity and Infancy Act was the first Federal law providing human service grants to States; however, it received only a small annual appropriation of $1,240,000 and was discontinued in 1929.

3. In its final form, the Juvenile Delinquency and Control Act of 1968 received an annual appropriation of $5 million (Bayh, 1971; Ohmart, 1969).

4. National interest in the role of law enforcement with juvenile delinquency prevention and control was originally stimulated by the 1967 Report of the President's Commission on Law Enforcement and Administration of Justice. The "blue ribbon" committee concurred police work with juveniles should include the formation of specific departmental juvenile policies, creation of juvenile units in larger departments, and the utilization of community youth service bureaus as central diagnostic and coordinating facilities (President's Commission on Law Enforcement and Administration of Justice, 1967b:79-83).

5. Other provisions of the Act included a $350 million three-year authorization of funds; mechanisms for both block and categorical grants; origins of a National Runaway Program to be jointly funded by OJJDP and HEW, but operated by HEW; continued direction of LEAA's 19.15 percent "maintenance of effort" funds to juvenile programs; the creation of the National Advisory Committee for Juvenile Justice and Delinquency Prevention made up of major Federal agency directors; and the establishment of a National Institute for Juvenile Justice and Delinquency Prevention to act as both an information clearinghouse and a training and research branch.

6. The availability of Federal monies via OJJDP encouraged many community police and sheriff's departments to establish delinquency prevention programs, support community diversion and statewide deinstitutionalization efforts, and assign liaison officers to elementary and secondary schools. Another national effort undertaken in the 1970's to define police/juvenile roles was the 1976 publication of the National Advisory Commission on Criminal Justice Standards and Goals Task Force on the Police recommendations--all police departments should adopt a written juvenile policy, provide special juvenile training for all officers, establish cooperative policies with local public and private youth-serving agencies, and participate in youth programs within communities. It was further suggested that larger police departments establish formalized juvenile units as well as officer-school liaison projects (National Advisory Committee, 1976:38, 221).

7. The Coordinating Council's enabling legislation, the JJDP Act of 1974, was amended in 1977 to define a Federal juvenile delinquency program as any federally-operated, sponsored, or assisted program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity for neglected, abandoned, or dependent youth and other youth to help prevent delinquency. (JJDP Act, 1974.)

Chapter 4

JUDICIAL PERSPECTIVES: CHANGES IN JUVENILE JUSTICE, 1607-1982

Until the 1960's, consensual attitudes about the need to control and protect children dominated American thought; children's justice measures were defined by parens patriae, allowing State intervention into the lives of troubled youth; treatment was designed to be rehabilitative rather than punitive; and gradual procedural alterations in the juvenile justice system were based upon protectionist beliefs denying youthful autonomy and individual rights.

However, methodological dissensus historically mingled with such philosophical consensus. Excluding the Colonial period, little agreement existed about delinquency causes, the types of treatment facilities needed to control delinquent behavior, or the juvenile justice system's structure. Although dissensus was never strong enough to initiate revolutionary changes in actions and attitudes, it encouraged evolutionary procedural and substantive changes in the 1960's.[1] Such changes stimulated the first revisions in America's juvenile justice system: due process in the juvenile court; national standards for juvenile justice; Federal and State grants-in-aid programs affecting juvenile offenders; and organizations for children's and youths' rights. Consequently, American attitudes about societal responsibilities for dependent, neglected, and delinquent youth gradually altered.

This chapter traces the evolutionary changes in America's juvenile justice system in several sections: The Growth of the Juvenile Justice System, 1900-1966; Due Process Reform, 1967-1974; Initial System Responses to Judicial Change, 1967-1978; Recent System Responses, 1978-1982; and Consequences of Judicial Reform.* Questions affecting the American juvenile justice system's substantive and procedural development are asked[2]: What were predominant adult attitudes about children and youth? What general philosophies guided the treatment of misbehaving, neglected, and incorrigible youth? What youthful actions were designated societal and/or criminal offenses? What formal procedures arose to deal with offenders? Further questions aided comparisons between eras. How did attitudes and philosophies about nonconforming youth change? How widely was the control "net" cast over offenders from era to era? Were treatment philosophies and methods altered? How did formal procedures change? How were substantive and procedural changes translated into public policy?

The search for answers uncovered a complex series of local, State, and Federal juvenile justice policies rather than one tightly articulated national juvenile justice policy that affects the Nation's youth. An historical analysis of such policies points to a "non-system" of loosely coordinated agencies working with diverse populations and each maintaining different objectives; police intervening between the

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*The historical roots of America's juvenile justice system from Colonial times through the establishment of the Nation's first juvenile court in 1899 are discussed in Chapter 1, pp. 5-11.

young offender and the public; juvenile courts acting in children's "best interest" by releasing them or declaring them delinquent; corrections departments dealing with both status offenders and serious juvenile offenders; and a myriad of social welfare departments providing a wide array of youth services for justice agencies (Gibbons, Thim, Yospe, and Blake, 1977:43-63). Such fragmentation is hardly startling after exploring the roots of the juvenile court movement.

GROWTH OF THE JUVENILE COURT MOVEMENT, 1899-1966

Developers of the world's first juvenile court ushered in a formalized era of juvenile justice predicated upon two new assumptions held by an emerging group of professional "child savers."[3] First, a period of adolescence was identified during which children underwent biological and emotional maturation that encouraged peculiar, but not abnormal behavior (Kett, 1977:133-34). Second, because this awkward period was beset by special vulnerabilities, adolescents required close observation by concerned adults who could mold and control their conduct (Hall, 1904). Such assumptions furthered traditional beliefs that juvenile misbehavior threatened societal harmony. To avoid conflict, child philanthropists designed a myriad of legal, professional, philanthropic, and bureaucratic child-saving controls. The establishment of the Illinois Juvenile Court on July 1, 1899 was one such plan.

What began as an experiment in Chicago's Cook County soon spread nationwide. Juvenile court advocates praised the development of a revolutionary juvenile justice system. As Table 6 indicates, the court's philosophical and organizational underpinnings were both new and appealing: delinquency petitions instead of criminal charges would be filed; court proceedings were to be civil rather than criminal; nonadversarial conditions encouraged the court to act in both the child's and the State's best interest; rehabilitative rather than punitive treatment was to be prescribed by a team of professional specialists; probationary placement in the child's home, foster families, or an apprenticeship was preferred to institutionalization; and special "schools" were created for adjudged juvenile delinquents needing secure detention and supervised rehabilitation.

The overriding philosophy was the court's right to officially intervene in its clients' lives through parens patriae. In theory, the court was to act in the best interest of both the child and the State. Its architects maintained confidence in the American justice system's social superiority, solidifying the historical belief that the State could best determine the fate of dependent, neglected, and delinquent children (Platt, 1969; Rothman, 1979).

Almost immediately the juvenile court became a popular target of public scrutiny. Although claims made between 1911 and 1950 were too diffuse to stimulate major systemic change, two major criticisms formed the basis for reform in the 1960's: disappointment in the court's inability to achieve its objectives, and the propriety of the court's parens patriae jurisdiction.

Questioning Juvenile Court Accomplishments

Initial criticisms questioned court procedure and personnel policies. The first official recording of such dissatisfaction occurred in 1912 when the Illinois legislature voted to abolish its juvenile court system (Ryerson, 1978:78). Saved by the governor's veto, the court was immediately attacked in a public campaign charging

Table 6

PHILOSOPHICAL FOUNDATIONS AND ORGANIZATIONAL STRUCTURE
OF THE ILLINOIS JUVENILE COURT
1899

PHILOSOPHICAL FOUNDATIONS	ORGANIZATIONAL STRUCTURE
• Parens patriae principle justified State intervention in the lives of dependent, neglected, and delinquent youth.	• Civil jurisdiction eliminated the implication that children under certain ages were capable of criminal intent.
• Juvenile court proceedings were rehabilitative, therefore, in the best interest of both the child and the State.	• Nonadversarial, informal courtroom hearings enhanced the court's ability to determine the best treatment for each individual.
• All troubled children, regardless of their background or type of crime allegedly committed, could be rehabilitated through fair court and disposition procedures.	• Petition filed on child's behalf alleging delinquent conduct rather than information against criminal activity.
• Children's rights included the right to be protected, fed, educated, cared for, and sheltered.	• Professional partnership of judges, police, social workers, and probation officers assessed each child's background and needs, and recommended individual rehabilitation strategies.
	• Confidentiality of juvenile records guaranteed; hearings closed to public and access to juvenile court hearings prohibited.
	• Juvenile court judges were to be fair, sympathetic, and fatherly, seeking to discover motivation rather than intent.
	• Probation recommended as best treatment for delinquent offenders.
	• Indeterminate sentencing through the child's age of minority encouraged State agents to make educated conclusions about release.

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

probation officers with carelessness and neglect. Six years later, the U.S. Children's Bureau initiated its first major survey of courts hearing children's cases (Beldon, 1920).[4] Its findings, released in 1920, surprised many contemporary reformers: few States had provided minimal standards requiring the physical separation of children in pre-trial detention from adult offenders; only 23 full-time court judges served in the entire Nation; and 55 percent of the surveyed courts used no regular probation services.

A second Children's Bureau study of courts in large cities uncovered similar problems in 1925: few courts conducted thorough physical and psychological examinations of children before disposition; only three cities made probation appointments based on competitive exams; probation caseloads ran between 36 to 156 per officer; and probation staffs received little supervision although they exercised much discretionary authority (Lenroot and Lundberg, 1925:94).[5] Writing that same year, Los Angeles Juvenile Court Referee Marian Van Waters commented, "the system has already become larded with tradition and encrusted with red tape." (Van Waters, 1925:217-237.)

Vociferous criticisms about court goals and accomplishments did not surface for several decades. Arising primarily from practitioners and academics, new questions asked if the court's goals were unrealistic, if not improper; whether procedural informality was more harmful than helpful; and if court personnel acted consistently with the court's philosophical origins. Noted criminologist Paul W. Tappan summarized the criticisms:

> It is wholly unrealistic for the courts to attempt to operate as general social agencies: they bear the indelible stamp of public stigma and ostracism....The expansive drive in some courts toward problem-solving for all comers has resulted in attenuated, inexact, and ineffectual service. The proper sphere of social agencies and behavior clinics should not be usurped by the courts, however benevolent the motivation. (Tappan, 1949.)

District of Columbia Juvenile Court Judge Orman Ketcham expressed further frustration with the court's "disorderliness [amounting to] chaos, thus defeating the implicit aim of equitable, understandable, and wise adjudication." (Ketcham, 1962:22.) Wheeler and Cottrell were dissatisfied with the inability of correctional institutions to maintain standards set by philosophical and procedural origins of juvenile court law:

> ...The reality in most jurisdictions is that these facilities are so underdeveloped and understaffed that one cannot speak of them as in any sense the equivalent of parental care and protection....And although the institutions for young delinquents usually have more treatment facilities and programs than do those for adult offenders, the basic fact of coercive confinement remains, and the actual treatment resources available are often too far below any reasonable minimum to qualify as meeting the needs of the juvenile court philosophy. (Wheeler and Cottrell, 1966:32.)

Several independent studies expressed disappointment that the court was not the panacea envisioned by reformers, some specifically citing its failure to reduce delinquency. In 1912, two of the court's original supporters published The Delinquent Child and the Home. Based upon transcriptions and tabulations of Cook County's juvenile court records from July 1, 1899 to June 30, 1909, and interviews conducted with parents of boys whose cases were heard between 1903 and 1904, Sophinisba Breckinridge and Edith Abbott concluded that juvenile courts could

"restore some children, partly restore others, and sometimes fail, but they never seal up the sources of delinquency." (Breckinridge and Abbott, 1912.) The court was useful as a last resort, but it was no "cure all."

In 1926, Dr. William Healy and Augusta Bronner wrote that 50 percent of those children served by the Chicago Juvenile Court between 1909 and 1914 had adult criminal records 12 years later, and that 37 percent were committed to adult penal institutions (Healy and Bronner, 1928:64). A 1934 probation study showed 55 percent of the adjudicated males surveyed were recidivists five to seven years after their first court appearance (Beard, 1934:147-48). Eleanor and Sheldon Gleuck's study followed the conduct of adjudicated boys five years after court treatment and found:

> 88% of them continued their delinquencies during this period. They were arrested on the average of 3.6 times each....The major conclusion is inescapable, then, that the treatment carried out by clinic, court and associated community facilities had very little effect in preventing recidivism. (As quoted in Beard, 1934:233.)

The 1936 F.B.I. Uniform Crime Report focused attention on rising juvenile arrests which aroused public fear. The statistics revealed that 10.9 percent of all persons arrested for rape, 30.7 percent of those arrested for auto theft, and 27.6 percent of those brought in on burglary charges were youths 18 years-of-age or younger. In 1942, two new facts emerged: there was a large increase in juvenile institutional commitments, and the average American juvenile delinquent's age decreased from 19 to 17 years-of-age (Walker, 1980:201-202). While it appeared court operations were not preventing delinquency or decreasing recidivism, criticism of delinquency schools and reformatories arose.

> Employees, who were often little more than caretakers and custodians, were called "cottage parents." Whips, paddles, blackjacks and straps were "tools of control." Isolation cells were "mediation rooms." ...Catch-words of the trade--"individualization of treatment," "rehabilitating the maladjusted"--rolled easily off the tongues of many institutional officials who not only didn't put these principles into practice but didn't even understand their meaning. (Deutsch, 1950:15.)

Sixty years after the first juvenile court was founded, dissatisfaction with probation, judge selection, and separation policies was well documented. Other studies citing disappointing arrest, correctional, and recidivism figures questioned the court's ability to reform juvenile offenders. Besides criticism of the court's performance, its substantive and procedural foundations were questioned.

Challenging the Juvenile Court's Substantive and Procedural Foundations

Before the 1960's, only three higher court cases challenged the court's parens patriae principle and the subsequent denial of procedural rights to children. It was indicative of the times that all three higher courts denied each appeal and upheld the juvenile court's authority.

Commonwealth v. Fisher (213 Pa. 48 (1905)) was the first case to challenge the court's authority. After Frank Fisher was committed to the Philadelphia House of Refuge in 1903, he submitted an appeal claiming the absence of due process in the

court. The State court's denial and subsequent support of paternalistic court functions stated that the tribunal existed:

> ...not for the punishment of offenders, but for the salvation of children, and points out the way by which the state undertakes to save, not particular children of a special class, but all children under a certain age, whose salvation may become the duty of the state, in the absence of proper parental care or disregard of it by wayward children. (Commonwealth v. Fisher, 213 Pa. 48 (1905).)

Five decades passed before another substantial challenge. In re Holmes (377 Pa. 599, 605 (1954)) held that because juvenile courts were not criminal courts, children were not entitled to constitutional procedural rights; some customary legalistic rules of evidence may be waived in juvenile court; privilege against self-incrimination was not applicable to children; and parents of a child involved in a juvenile court proceeding should be notified of any hearing.

The Washington, D.C. Court of Appeals in In re Bigesby (202 Atl. 2d 785 (1964)) substantiated the juvenile court's civil jurisdiction, ruling that children were exempt from criminal law, penalties, and safeguards of criminal proceedings and that preponderance of evidence rather than proof beyond a reasonable doubt applied to a delinquency judgment.

Before the 1950's, legal and academic criticism of the court's jurisdiction received little attention.[6] In 1959, Francis Allen raised pertinent questions about the State's power over a child's liberty. Arguing that "substantial and involuntary deprivation of their liberty" was punitive, he questioned the court's right to punish undesirable but innocuous behavior (Allen, 1959:230). Although Allen's queries gained some attention in criminological circles, the court's substantive jurisdiction was not vociferously criticized until several years later. These criticisms, initially quiet and nonthreatening, gained credibility by the 1960's. However, they did not impede the juvenile court's growth. By mid-century, every State in the Nation had passed a juvenile court law, changing the face of American juvenile justice. State legislatures enacted policies giving the legal system widespread authority over youth. These policies were evolutionary rather than revolutionary mechanisms to legitimize traditional attitudes about the need to control and protect children:

> ...the Chicago juvenile court of 1899 was the product of conservative political groups and a consolidation of legislative precedent from Illinois and elsewhere....There was nothing new in any of these ideas, and there was no sharp break from tradition. The statutory definitions of dependency and neglect were from the poor law; the population at-risk was poor; commitment to institutions was an improvement over, but a descendent from, commitment to poorhouses; apprenticeship was the expedient available to overseers of the poor from the earliest times; and adoption, a nineteenth century addition, reveals the growth of state power as much as the development of state benevolence. (Rendleman, 1971: 255-56.)

Such ambiguous roles were never clarified during the juvenile court's formative years. Indeed, it was not until the 1960's that the court's premises were significantly challenged which, in turn, stimulated a new era in juvenile justice reform.

DUE PROCESS REFORM, 1967-1974

By the late 1960's, passive disillusionment with the juvenile court's ability to rehabilitate young offenders was replaced by vociferous demands for reform among practitioners, academics, policymakers, philanthropists, and attorneys. The juvenile justice system, some loudly proclaimed, needed extensive revision to respond to the needs of youth and society. Although most advocates recognized changes in American juvenile justice since its inception, they declared past philosophies and procedures were outdated, irrelevant, and ineffective.

The primary culprit, claimed many court critics, was the principle of parens patriae giving States statutory legitimacy to usurp parental prerogatives (Platt, 1969). Indeed, the concept gave the State "an equal if not superior interest in the children." (Rendleman, 1971:246.) Additionally, both its historical legitimacy and current application were questioned:

> Though we keep on prating parens patriae, we might as well burn incense. Historical idiosyncrasies gave us a doubtful assumption of power over children. With the quasi-legal concept of parens patriae to brace it, this assumption of power blended well with the earlier humanitarian traditions in the churches and other charitable organizations regarding child care and childsaving. The juvenile court is thus the product of paternal error and maternal generosity, which is not unusual genesis of illegitimacy. (Morris and Hawkins, 1970:157.)

Further, the court's revolutionary nature was doubted by some critics who theorized progressive reformers perpetrated a "myth of procedural reform" stating that juvenile court procedures--civil jurisdiction, nonadversarial courtroom hearings, professional assessment of treatment strategies, delinquency adjudication, probation, and indeterminate sentencing--revolutionized America's handling of troubled youths; in reality, "children's courts served to insulate them [children] from traditional procedural requirements." (Stapleton and Teitelbaum, 1972:18.)

Finally, the historical premise that societal institutions like the juvenile court could prevent juvenile crime was questioned:

> The greatest functional loss the juvenile court has suffered in the twentieth century...is its role in the predelinquency system of crime prevention. The predelinquency concept rested on the belief that society could recognize, and the law could describe, the conditions of childhood that would give rise to adult criminals, and that techniques were available--institutions, foster homes, probation, psychiatry--that could arrest the conditions and prevent the crime. Loss of any of the elements of this belief would undermine the fundamental function of the juvenile court; the twentieth century has eroded all of them. (Fox, 1970:1233.)

The Federal government first articulated the need for juvenile justice reform when in 1967, the President's Commission on Law Enforcement and Administration of Justice wrote, "The juvenile court has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender." (President's Commission on Law Enforcement and Administration of Justice, 1967a:80.)

The latter issue, delivering justice and compassion to juvenile offenders, formed the basis for the first major juvenile court reform movement: due process guarantees. Because traditional juvenile courts observed few procedural formalities, reform efforts constituted an extremely complex and controversial era. Prospects for abuse within this system of unfettered judicial discretion motivated civil rights advocates to insist upon stricter adherence to constitutional guarantees of fairness. Reform proponents simultaneously pressed their claims in all three branches of government. Their success in persuading administrators and legislators to investigate the problem and initiate reforms owed substantially to several Supreme Court cases. Those cases, discussed more thoroughly in Appendix G, are summarized here to place discussion of system responses in context.

Initial Supreme Court review of juvenile justice procedures occurred in Kent v. United States (383 U.S. 541 (1966)). Though Kent rested narrowly on statutory interpretation, it signalled that Court dissatisfaction with juvenile court procedures had a constitutional underpinning. While its holding had little direct effect on administration of juvenile courts, Kent provided judicial impetus to the President's Commission on Law Enforcement and the Administration of Justice and laid the groundwork for In re Gault (387 U.S. 1 (1967)) the following year. At issue in Kent was waiver of a youth from Washington, D.C. juvenile court to District Court for trial as an adult. Sixteen-year-old Morris Kent, Jr., had been implicated in housebreaking and rape. Despite the findings of two psychiatrists and a psychologist that Kent was "a victim of severe pathology," the juvenile court judge, without holding a hearing, found Kent unsuitable for trial as a juvenile. Based on a statutory provision predicating waiver upon a "full investigation," the U.S. Supreme Court ruled that failure to conduct a hearing violated the law.

The Supreme Court avoided a constitutional ruling in Kent; however, its conclusion in Gault that "the condition of being a boy does not justify a kangaroo court" (In re Gault, 387 U.S. 1, 28 (1967)) rests on the Fourteenth Amendment's due process clause. After a summary hearing, 15-year-old Gerald Gault had been sentenced to the Arizona State Industrial School for up to six years for assisting in an obscene telephone call. Acknowledging the need for constitutional protections, the Supreme Court decreed that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." (In re Gault, 387 U.S. 1, 13 (1967).)

Specifically, Gault recognizes the applicability of the following rights in juvenile court:

- notice of charges to juvenile and parent;
- right to counsel (at State expense for indigents);
- privilege against self-incrimination; and
- right to confront and cross-examine witnesses.

Critical to subsequent due process development, Gault did not hold that juvenile court hearings "must conform with all of the requirements of a criminal trial or even of the usual administrative hearing." (In re Gault, 387 U.S. 1, 30 (1967).) Subsequent U.S. Supreme Court cases have answered some of the questions raised by this non-uniform approach, but many uncertainties remain.

In re Winship (397 U.S. 358 (1970)) held that delinquency findings must rest on proof beyond a reasonable doubt, the same standard applying in criminal trials. Another protection was guaranteed when Breed v. Jones (421 U.S. 519 (1974)) extended the constitutional prohibition against double jeopardy to juveniles.

In each of these cases, the Court asserted that the newly imposed safeguards would not interfere with salutary aspects of juvenile court: separation of the juvenile from adult offenders, confidentiality of proceedings, use of the label "delinquent" rather than "criminal," and individualized dispositions tailored to the offender rather than the offense (Ryerson, 1978:153.) Only in McKeiver v. Pennsylvania (403 U.S. 528 (1971)) did the right at issue seriously imperil preservation of those features. Confirming its pledge to avoid a blanket approach, the Court ruled that the right to a jury trial does not apply to juvenile court.

Clearly, substantial procedural change occurred in the juvenile court system during this initial eight-year due process reform wave. Consequently, a series of legislative and programmatic responses arose attempting to incorporate due process procedures into juvenile justice policies.

INITIAL SYSTEM RESPONSES TO JUDICIAL CHANGE, 1967-1978

The unprecedented wave of Supreme Court decisions affecting the juvenile justice system prompted policymakers and practitioners to design reforms compatible with new due process requirements. Thus began a series of legislative and programmatic juvenile justice system reforms closely associated with the judicial due process rulings.

Federal Legislative Reforms

Legislative reform affecting juvenile justice policies was also stimulated by the critical findings of the President's Commission on Law Enforcement and Administration of Justice:

> There is increasing evidence that the informal procedures, contrary to the original expectations, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers. (President's Commission on Law Enforcement and Administration of Justice, 1967a:85.)

In response to Commission recommendations and the resulting due process judicial reforms, Federal legislative activity began. The Juvenile Delinquency Prevention and Control Act of 1968 was the first Federal act promoting delinquency prevention reform by providing rehabilitation services to predelinquent and delinquent youth, and coordinating all Federal delinquency and youth development activities. The Omnibus Crime Control and Safe Streets Act, passed the same year, established a new agency designed to stimulate reform: the Law Enforcement Assistance Administration (LEAA). Because delinquency prevention and control was not specifically targeted in LEAA's enabling legislation, the juvenile population was not specifically served by this Act.

Despite 1971 and 1973 amendments to the Omnibus Crime Control and Safe Streets Act mandating LEAA assume a stronger role in delinquency control and prevention, the emphasis was not strong enough. A separate act creating another new agency was required before Federal priorities focused specifically on juvenile justice and related youth issues. Passage of the Juvenile Justice and Delinquency Prevention Act (JJDP Act) in 1974 and the establishment of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), discussed in Chapter 3, aimed to escalate Federal involvement with troubled youth.

The 1974 JJDP Act reflected concerns of both the President's Commission and recent due process cases: systemic alterations held the key to future effective juvenile justice programs and policies. The direction of such reform was detailed in OJJDP's enabling legislation requiring that "not less than 75 per centum" of Formula Funds be made available to States for juvenile justice reform:

> ...shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities. (JJDP Act, 1974.)

Further, OJJDP's Administrator was authorized to make Special Emphasis reform-related grants to:

- develop and implement new approaches, techniques, and methods with respect to juvenile delinquency programs;
- develop and maintain community-based alternatives to traditional forms of institutionalization;
- develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system;
- improve the capability of public and private agencies and organizations to provide services for delinquents and youths in danger of becoming delinquent;
- facilitate the adoption of the recommendations of the Advisory Committee on Standards for Juvenile Justice and the Institute as set forth pursuant to section 247; and
- develop and implement model programs and methods to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions. (JJDP Act, Section 224(a)(1-6), 1974.)

Future Federal policies and programs would take three major avenues, each related to due process reform: decriminalizing status offenses, diverting youth from the juvenile justice system, and deinstitutionalizing juveniles.

Decriminalization, Deinstitutionalization, and Diversion

Decriminalization, or eliminating noncriminal conduct from juvenile court jurisdiction, was a primary Commission recommendation:

> The movement for narrowing the juvenile court's jurisdiction should be continued....Serious consideration, at the least, should be given to complete elimination of the court's power over children for noncriminal conduct. (President's Commission on Law Enforcement and Administration of Justice, 1967a:84.)

Decriminalization efforts evolving from the JJDP Act aimed to halt a century-long trend increasing State intervention in parental roles. Over the years, most States broadened their jurisdictional nets to include almost every nonconforming youthful behavior.[7] These status offenses, illegal only for those under the State's age of majority, were not punishable crimes for adults. It was hoped that decriminalizing status offenses would "liberate children from the restraints imposed by an outmoded set of morals and antiquated juvenile justice system." (Empey, 1978:171.)

Deinstitutionalization reforms also stemmed from the President's Commission recommendations. Citing a growing concern that secure settings rehabilitation was becoming obsolete, the Commission recommended reducing reliance on traditional juvenile corrections institutions without increasing the use of other types of facilities (Lerman, 1980:282). Joining such criticism were several scholars charging that traditional facilities--jails, detention homes, public training schools, ranches, and camps--lack human dignity while fostering corruption, brutality, and mismanagement (Pabon, 1978); imprisonment conditions inevitably produce "anti-organizational" sentiments, confirm negative perceptions of authority, and heighten resistance to change (Empey, 1973); and the absence of daily contact in a "normal" societal environment encourages offenders to conceive of themselves as delinquents (Goffman, 1961; Empey, 1973).

Similar criticisms had propelled 19th- and early 20th-century reformers into action. The desire to save children from the criminalizing influences of punitive institutions prompted the growth of houses of refuge and reformatories between 1825 and 1899. The juvenile court was heralded as another way to halt the brutalization of children practiced in the Nation's children's institutions. Thus, deinstitutionalization was not a new concept. However, the status offense population to which it was applied in the 1970's did shift the deinstitutionalization emphasis. Prior to major changes stimulated by Federal legislation, such youth were handled by the court, often receiving secure placement as a disposition.

The intent of legislative deinstitutionalization reform, then, was to take such youth out of the institutional environment, decrease the stigmatizing affects of delinquency labels, and "normalize" misbehavior by treating youth in community rather than secure detentional facilities (Kitsuse and Cicourel, 1963; Lemert, 1971; Rosenhein, 1973). The deinstitutionalization philosophy suggests community programs can effectively deal with all offenders. Dedication to deinstitutionalization programs can be seen in OJJDP budgets: in 1979, 59 percent of all Formula Grants were allocated to deinstitutionalization programs in 48 of the 51 participating States (U.S. Department of Justice, n.d.:88). Additionally, a large portion of Special Emphasis monies supported deinstitutionalization endeavors (Woodson, 1979:8).

Diversion was a third juvenile justice reform endorsed by the President's Commission. Diversion methods include suspended action by the police, home referral, or private placement in some community-based remedial programs independent of the justice system. It was hoped diversion programs would reduce the number of youth referred to juvenile courts, thereby increasing the Court's effectiveness; defuse the stigmatization effects of the delinquency labeling process; and stimulate the growth of community services for youth, providing more flexible and accessible care for the child and his/her family. The concept of diverting children to agencies other than the courts is not new. Early police relations with youth indicated warnings and counseling were preferred to custody (Empey, 1978, Chapters 15 and 16). As early as 1926, the National Probation Association recommended diversion become a formalized juvenile justice element:

> 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. (National Probation Association, 1926.)

By 1968, over 52 percent of all delinquency cases referred to juvenile court received nonjudicial dispositions (Maron, 1975:26). The widespread creation of alternative agencies to deal with status offenders was new. Since decriminalization statutes forbade officers to handle noncriminal offenders through legal channels, such youth could only be diverted to community resources for assistance. A community treatment prototype was suggestd by the President's Commission:

> Communities should establish neighborhood youth-serving agencies--Youth Service Bureaus--located if possible in comprehensive neighborhood community centers and receiving juveniles (delinquent and nondelinquent) referred by the police, the juvenile court, parents, schools, and other agencies. (President's Commission on Law Enforcement and Administration of Justice, 1967a:83.)

The Youth Service Bureau's (YSB) popularity is demonstrated by its growth: in 1967, about six YSB's operated nationwide; by 1970, 40 of the 55 States and territories established YSB's; and by 1971, more than 150 Bureaus operated nationwide (Howlett, 1976).

In addition to these three juvenile justice programmatic avenues--decriminalization, deinstitutionalization, and diversion--legislation embodied in both the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Justice and Delinquency Prevention Act of 1974 suggested a new Federal policy strategy: setting juvenile justice standards.

Juvenile Justice Standards

It was not until the 1970's that widespread national and Federal interest in juvenile justice standards surfaced.[8] During the decade, four separate standards efforts were conducted: two were initiated and funded by the Federal government--the National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Juvenile Justice and Delinquency Prevention; and the National Advisory Committee for Juvenile Justice and Delinquency Prevention. The other two were national efforts originating in the private sector and partially funded through Federal assistance--the Institute of Judicial Administration/American Bar Association (IJA/ABA); and the American Correctional Association/Commission on Accreditation for Corrections (ACA/CAC). While Table 7 summarizes the scope, origins, funding, and product for each standards-setting project, a more detailed discussion of their goals will clarify these reform efforts.

The Institute of Judicial Administration/American Bar Association Standards Project (IJA/ABA Standards), cosponsored by both nongovernmental organizations, addresses the full spectrum of juvenile justice issues. In its 1977 Summary and Analysis of its 23 volumes, the reasons for formulating national standards were listed:

- Lack of Uniformity Among the Various Jurisdictions...It clearly is essential to a concept of fairness in juvenile law that an effort be made to remove inconsistencies in a juvenile's rights and liabilities that are caused by the accident of geography. Another area in need of uniformity is the delineation of acts or behavior that will bring a juvenile within the court's jurisdiction as a delinquent or status offender or an adult as a neglectful or abusive parent....There also are broad disparities in the organization of the juvenile courts independent of questions of jurisdictional scope...Procedure affecting the juveniles and families involved with the juvenile justice system also are unpredictable...But the area of

Table 7

NATIONAL JUVENILE JUSTICE STANDARDS

	IJA/ABA	TASK FORCE	NAC	ACA/CAC
TITLE	Institute of Judicial Administration/American Bar Association, Joint Commission on Juvenile Justice Standards	National Advisory Committee on Criminal Justice Standards and Goals, Task Force on Juvenile Justice and Delinquency Prevention	National Advisory Committee for Juvenile Justice and Delinquency Prevention	American Correctional Association/Commission on Accreditation for Corrections
PRODUCT	23 Volumes Tentative Draft Standards (1977) 20 ABA Approved Volumes (1980) 3 IJA/ABA Joint Commission Approved Volumes (1982) 1 Summary and Analysis Volume (1982)	Juvenile Justice and Delinquency Prevention (1976) 9 Volumes of Working Papers: A Comparative Analysis of Standards and State Practices (1976)	Standards for the Administration of Juvenile Justice (1980)	4 Volumes dealing with juvenile justice (1979) (2nd edition January 1983)
ORIGINS	ABA Standards for Criminal Justice, 17 Volumes (1973)	National Advisory Commission on Criminal Justice Standards and Goals, 6 Volumes (1973)	1974 Juvenile Justice and Delinquency Prevention Act Section 247(d)	Commission on Accreditation of Adult Corrections, 6 volumes (1979)
FUNDING	NILECJ (NIJ), OJJDP, Private Foundations (1971-1981)	LEAA (1975-1976)	OJJDP with NIJJDP Staff Support (1975-1979)	LEAA (1977-1979)
SCOPE	Comprehensive: --Intervention in the Lives of Children --Court Roles and Procedures --Treatment and Correction --Administration	Comprehensive: --Delinquency Prevention --Police --Judicial Process --Intake, Investigation, Corrections --Planning and Evaluation	Comprehensive: --Delinquency Prevention --Administration --Intervention --Adjudication --Supervision	Limited to Corrections: --Community Residential Services --Probation and Aftercare --Detention Facilities and Services --Training Schools

Table adapted from U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, National Institute for Juvenile Justice and Delinquency Prevention, Draft Solicitation for Applications: National Juvenile Justice Standards Resource and Demonstration Program. (Washington, D.C.: Government Printing Office), June 1982.

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

greatest significance in the juvenile justice field and, unfortunately, in greatest disarray, is the dispositional or sentencing stage. The process of applying the various declared juvenile justice goals--treatment, rehabilitation, deterrence, protection of society, serving the best interests of the children, preserving the family--need not be mutually self-defeating, but an understanding of purposes and a recognition of consequences is lacking.

- Failure of Coordination Within the System...every critique of the juvenile justice system singles out lack of coordination; defects in delivery of services; confusion of the roles and responsibilities of judges, social workers, counsel, public and voluntary service agencies, child protective agencies, police and correction officers, and state, local and federal officials; and failure to achieve its dual objective of protecting society and helping children and their families.

- Need to Review Basic Premises...One serious problem that is expected to be encountered in seeking state by state adoption is resistance to change. But equally serious is the possibility that legislatures may fail to recognize the inseparability of some of the concepts from those that can be rejected or approved without destroying the standards as a whole.

- Producing a Model Act...The standards have been drafted in a style designed to be easily transformed into statutory form. Not all the reporters observed the instruction that the bold-face standards without commentary be in simple, concise language, but neither do most legislators. The adaptation of the standards into a juvenile code generally should be a routine task. (Institute of Judicial Administration/American Bar Association, 1977:3-14.)

The National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Juvenile Justice and Delinquency Prevention was part of the Law Enforcement Assistance Administration's (LEAA's) Phase II general standards and goals effort. The Commission, comprised of criminal justice professionals, identified five major juvenile justice and delinquency prevention goals to which each standard was directed:

(1) Reduce Juvenile Violence...So far the juvenile justice system has been incapable of coping with youthful violence. Predictive techniques have been of doubtful value in identifying potential delinquents. It is essential that those whose behavior poses a threat to the lives and safety of others be isolated and supervised.
(2) Reduce the Number of Juveniles Who Repeatedly Commit Delinquent Acts...It is believed that high priority must be given to the problem of dealing with the repetitive delinquent. The public will have to make hard decisions in terms of cost and risk; but if this type of delinquent is to be dealt with effectively, these decisions must be made.
(3) Provide Due Process for All Children...Every effort must be made to provide youth with just, equal, and lawful treatment. To insure this end, the operations of the justice system should be monitored constantly.

(4) Integrate and Coordinate the Present Fragmented Juvenile Justice and Delinquency Prevention System...It is believed that a more efficient mode of operation is necessary and that this can be achieved by a substantial reorganization, the application of sufficient resources, and the use of specially qualified personnel.

(5) Provide Protection for Children Who Need It...It is believed that the entire justice system must work not only to offer protection for children but also to see that they get it. Reorientation of both legislative and agency policy is needed in order to establish the juvenile justice system as the protective institution it was intended to be. (National Advisory Committee on Criminal Justice Standards and Goals, 1976:14-15.)

The third standards effort, the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC), is the only panel mandated by statute. Section 247 (a-d) of the 1974 Juvenile Justice and Delinquency Prevention Act (JJDP Act) describes the Committee's organization and composition; its goals and dissemination of findings; and the ways it should assist States, local governments, and private agencies in adopting such standards.[9] Its three primary goals were:

- To propose a set of recommendations addressing the full range of law enforcement, judicial, prevention, correctional, service and planning activities affecting youth;

- To organize these recommendations so that groups and agencies performing similar functions would be governed by the same set of principles; and

- To distill the best thinking from the standards, models, and public policies proposed and adopted by national and state standards, commissions, professional organizations, advocacy groups, and agencies. (U.S. Department of Justice, 1980c:xi.)

The Committee then identifed five specific juvenile justice functions and created standards for each: prevention, administration, intervention, adjudication, and supervision.

The final standards effort was compiled by another nongovernmental organization, the American Correctional Association's Commission on Accreditation for Corrections (ACA/CAC). Its juvenile justice recommendations, exclusively devoted to correctional standards, dedicated individual volumes to four areas: juvenile residential facilities, juvenile detention facilities, juvenile training schools, and juvenile probation and aftercare services. Every suggested standard was built upon three major principles:

> First, juveniles whose activities would not be criminal if committed by an adult and neglected, abused and dependent children should be removed from juvenile corrections. Second, juvenile and adult offenders should be maintained separately at all times. For ACA purposes, juveniles are from age 8 to 21 years, or as specifically defined by state statute. The maximum age of 21 years is included because there are jurisdictions which statutorily continue juvenile status beyond age 18 years. And third, services and opportunities for all juveniles should be equally distributed throughout each jurisdiction of the country. Male and female juvenile offenders should have equal access to services which are designed to meet their needs as well as receive similar sanctions for misbehavior in the facility. (American Correctional Association, 1983d:xvii.)

A recent effort to compare the four sets of standards, representing approximately 30 volumes, was commissioned by the National Institute for Juvenile Justice and Delinquency Prevention. The four-volume Comparative Analysis of Juvenile Justice Standards and the JJDP Act (McCulloh, 1981) contrasts the four individual standards' responses in eight programmatic areas: delinquency prevention; diversion; deinstitutionalization of status offenders and nonoffenders; separation of juveniles from incarcerated adults; reducing detention and commitments; community-based alternatives to incarceration; advocacy for services; and due process/procedural safeguards.

In order to gain a clearer understanding of how the four standards efforts compare and contrast, McCulloh's analysis of deinstitutionalization recommendations is useful. Table 8 summarizes the NAC, Task Force, IJA/ABA, and CAC positions on deinstitutionalization. The four responses indicate disagreement about pre- and post-adjudicatory placement of children committing noncriminal behavior as well as abused or neglected children.

- Pre-adjudicatory placement for noncriminal misbehavior: NAC, Task Force and IJA/ABA Standards specifically recommend placement in nonsecure facilities while CAC recommends removal from correctional facilities but infers placement in nonsecure facility; NAC and Task Force criticize commingling with delinquent youth; IJA/ABA Standards establish criteria for emergency psychological or medical commitments and abolish court's traditional jurisdiction over status offenders.

- Post-adjudicatory placement for noncriminal misbehavior: NAC, Task Force, and CAC Standards prohibit placement in correctional institutions, while IJA/ABA recommends similar results through abolishing court's jurisdiction over status offenders.

- Pre-adjudicatory placement in abuse and neglect cases: NAC and IJA/ABA specifically recommend placement in nonsecure facilities, while the Task Force and CAC infer the same; NAC explicitly criticizes commingling with delinquents: NAC, Task Force, and IJA/ABA list criteria for removing child from the home.

- Post-adjudicatory placement in abuse and neglect cases: NAC, Task Force, and IJA/ABA specifically limit dispositional alternatives to placement in nonsecure facilities, while CAC infers the same.

Consensus about the need to place status offenders and abused and neglected children in alternative, nonsecure facilities exists in all four sets. However, they disagree about the type of alternative care or types of youth commingling in alternative care situations. Thus, four sets of standards, each claiming adaptability to States and localities, recommend similar and divergent deinstitutionalization policies.

A further and more relevant difference to this analysis are the philosophical underpinnings motivating these standards efforts. Three sets—IJA/ABA, the Task Force, and NAC—state specific philosophies guiding their recommended policies.

Table 8

SUMMARY OF POSITIONS RECOMMENDED BY STANDARDS GROUPS DEINSTITUTIONALIZATION

	NAC	Task Force	IJA/ABA (Tentative Draft, 1977)	CAC
Preadjudicatory Placement: Noncriminal Misbehavior	Authorizes placement only when the juvenile is "in danger of imminent bodily harm" and "no less coercive measure" will suffice or when no person is willing and able to provide supervision and care. Requires placement in "shelter facilities"; prohibits placement in "secure detention facilities." Specifies that contact with alleged or adjudicated delinquents should be "minimized."	Authorizes placement in "shelter care" only if it is "clearly necessary to protect the juvenile from bodily harm" and requires that "all available alternatives" to placement be exhausted. When it is employed, "every effort should be made" to assure the "least restrictive setting" and that the juvenile "does not come into contact with" delinquents.	Abolishes the court's traditional jurisdiction over status offenses. Allows "limited custody" of a juvenile "in circumstances which constitute a substantial and immediate danger to the juvenile's physical safety" and in cases of running away. Authorizes placement only in a "temporary nonsecure residential facility." Also establishes criteria for emergency, 72-hour commitments to psychiatric or medical facilities.	Specifies that status offenders should "be removed from juvenile corrections" and should not be placed in "juvenile detention facilities." Does not prescribe criteria for removal from the home.
Abuse or Neglect	Allows placement only when there is a "substantial risk" of neglect if the child were returned home and "no other measure" than placement "will provide adequate protection." Recommends custody "in the most homelike setting possible." Specifies that neglected or abused children should not be placed in facilities housing accused or adjudicated delinquents.	Authorizes emergency removal of a child from the home only when it is "necessary to protect the child from bodily injury" and the parents are unwilling or unable to provide such protection. As to removals from an environment outside the home, requires that "no other satisfactory means is available." Inferentially prescribes deinstitutionalization by requiring that the child be "delivered immediately" to a specially designated State agency.	Authorizes "emergency temporary custody" when there is probable cause to believe that such custody is "necessary to prevent the child's imminent death or serious bodily injury" and the parents are unwilling or unable to prevent the death or injury. Requires that a special State agency be contacted "immediately" and that it "thereupon take custody," placing the child in a "nonsecure setting" that will adequately safeguard the child's well-being.	Recommends that neglected or abused children "be removed from juvenile corrections" and not be placed in "juvenile detention facilities." Does not list criteria for removal from the home.

Summary of Positions: I. Preadjudicatory Placement

A. Noncriminal Misbehavior--Three groups explicitly recommend placement in nonsecure facilities, and the fourth does so inferentially. Two groups specifically criticize any commingling with delinquent youth.

B. Abuse or Neglect--Two groups explicitly call for placement in nonsecure facilities; the other two do so inferentially. One group explicitly condemns commingling with delinquents; at least one other group does so inferentially.

Table 8 continued

SUMMARY OF POSITIONS RECOMMENDED BY STANDARDS GROUPS
DEINSTITUTIONALIZATION

	NAC	Task Force	IJA/ABA (Tentative Draft, 1977)	CAC
Postadjudicatory Placement: Noncriminal Misbehavior	In general, recommends dispositions constituting "the least restrictive alternative" appropriate. As to placements, authorizes "foster care, a nonsecure group home, or other nonsecure residential facility." Prohibits confinement in "a secure detention or correctional facility or institution."	"In no event shall the family court disposition confine the child in an institution to which delinquents are committed."	Abolishes the court's traditional jurisdiction over noncriminal misbehavior. Creates a special, limited jurisdiction for judicial approval of "alternative residential placements"--which must be nonsecure.	Urges that status offenders "be removed from juvenile corrections" and specifically directs that they not be placed in training schools.
Abuse or Neglect	Overall, suggests dispositions that will protect the child "while causing as little interference as possible" with family autonomy. Requires clear and convincing evidence that the child "cannot be adequately protected from further neglect or abuse unless removed" before a placement "in a day-care program, with a relative, or in a foster home, group home, or residential treatment center" can occur.	Allows placement only after a finding that the child has been endangered and that removal is necessary to protect the child from further harm of the type precipitating the intervention. Authorizes placements "with a relative, in a foster family or group home, or in a residential treatment center."	Authorizes removal only after a finding that a child has been endangered and that the child cannot be protected from further harm of the type justifying intervention unless removed. Allows placements "with a relative, in a foster family or group home, or in a residential treatment center."	Recommends that nonoffenders "be removed from juvenile corrections." Prohibits placing these youths in training schools.

Summary of Positions: II. Postadjudicatory Placement

A. Noncriminal Misbehavior--Three groups prohibit placements in correctional institutions. The fourth achieves the same result by abolishing the court's traditional jurisdiction over status offenses.

B. Abuse or Neglect--Three groups (explicitly) limit dispositional alternatives to placement in nonsecure facilities; the fourth does so inferentially.

Source: Table adapted from Robert W. McCulloh, A Comparative Analysis of Juvenile Justice Standards and the JJDP Act. Vols. I-III. (Washington, D.C.: Government Printing Office, 1981).

The IJA/ABA standards outlined 10 principles:

1. Proportionality in sanctions for juvenile offenders based on the seriousness of the offense committed, and not merely the court's view of the juvenile's needs, should replace vague and subjective criteria.
2. Sentences or dispositions should be determinate....
3. The least restrictive alternative should be the choice of decision makers for intervention in the lives of juveniles and their families....
4. Noncriminal misbehavior (status offenses, PINS) and private offenses (victimless crimes) should be removed from juvenile court jurisdiction. Possession of narcotic drugs, however, has been retained as a basis for court jurisdiction....Voluntary community services to deal with these problems, such as crisis intervention programs, mediation for parent-child disputes, and alternative residences or "crash-pads" for runaways, are proposed as more suitable responses to noncriminal misconduct....
5. Visibility and accountability of decision making should replace closed proceedings and unrestrained official discretion.
6. There should be a right to counsel for all affected interests at all crucial stages of the proceeding.
7. Juveniles should have the right to decide on actions affecting their lives and freedom, unless they are found incapable of making reasoned decisions.
8. The role of parents in juvenile proceedings should be redefined with particular attention to possible conflicts between the interests of parent and child.
9. Limitations should be imposed on detention, treatment, or other intervention prior to adjudication and disposition.
10. Strict criteria should be established for waiver of juvenile court jurisdiction to regulate transfer of juveniles to adult criminal court. (Institute of Judicial Administration/American Bar Association, 1977:22-23.)

Similarly, the Task Force identified 12 major concerns guiding its standards effort:

1. Family Stability...The collective impact of these standards is intended to produce within society an environment that is most conducive to the strengthening of family relationships and the maintenance of the family unit....
2. Families With Service Needs...It is urged that the use of vague criteria to gain jurisdiction over noncriminal juvenile misbehavior be discontinued. Only conduct that is clearly defined and clearly harmful to the child and family should be subject to family court jurisdiction under the Families With Service Needs concept. Five forms of behavior meet this criteria: truancy, running away, disregard for or misuse of parental authority, use of intoxicating beverages, and "delinquent acts" by children under 10 years of age.
3. Endangered Children...By limiting coercive intervention to cases where specific harms to a child have been identified, the State can insure that intervention will take place only when it will be likely to improve the child's situation.
4. Delinquency Prevention. It is believed that no issue is of greater import in the field of juvenile justice than the prevention of delinquency....

5. Diversion...There are at least three principles that should guide the operation of all diversionary practices within the juvenile justice system. First, diversion should not be offered unless there is some effective service or treatment in which the juvenile may participate. Second, the expansion of diversionary programs should not increase the total number of juveniles that are under some type of supervision of the juvenile justice system. Finally, candidates for diversion should be guaranteed the same due process rights as juveniles who are processed formally within the juvenile justice system.
6. Least Coercive Disposition. It is urged that juveniles be institutionalized only as a last resort....
7. Due Process...The standards in this report reflect the view that due process procedures should be extended to juveniles....
8. The Violent and/or Repeated Delinquent...The juvenile justice system is, at present, not adequately equipped to deal with the growing tide of youthful violence or with the violent or repeated offender. It is urged that public attention throughout the Nation be directed to these problems.
9. Minority Representation...Minorities should be given the opportunity to become more involved at all decisionmaking levels of the juvenile justice process.
10. Coordination Among Agencies. It has become clear that the institutions that traditionally have been thought to make up the juvenile justice system--the police, courts, and corrections--often work at cross purposes and that it is difficult to view their combined operations as constituting a true system....It is believed that juvenile justice will continue to operate in a fragmented fashion until some consistent policies are established.
11. Improved Research...There is a need for research that is geared toward problem solving.
12. Resource Allocation...States must begin to provide solutions to the sorely neglected problems of the juvenile justice system. Existing resources must be reallocated to reflect more fully the seriousness of the problems of youth in this society. (National Advisory Committee on Criminal Justice Standards and Goals, 1976:12-14.)

The NAC listed five "basic themes" underlying standards development:

1. The family remains the basic unit of our social order--governmental policies, programs, and practices should be designed to support and assist families, not usurp their functions;
2. Together with any grant of authority by or to a governmental entity must be the establishment of limits on the exercise and duration of that authority and mechanisms to assure accountability--guidelines and review procedures should be established for all intervention, intake, custody, and dispositional decisions;
3. Age is not a valid basis for denying procedural protections when fundamental rights are threatened--juveniles should be accorded the best of both worlds...;
4. Whenever there is a choice among various alternatives, the option which least intrudes upon liberty and privacy should be preferred...; and

5. When rehabilitation forms a basis for the imposition of restraints on liberty, an obligation arises to offer a range of services reasonably designed to achieve the rehabilitative goals within the shortest period of time--governmental intervention justified upon the doctrine of parens patriae triggers at least a moral duty to provide the resources necessary to fulfill the promise of care and assistance. (U.S. Department of Justice, 1980c:xiii-xiv.)

While the three endeavors share similar philosophies, particular nuances defining attitudes about youth and juvenile justice are evident in each set of standards. The IJA/ABA Commission--primarily composed of attorneys, judges, and other judicial personnel--recommended statutory revisions to shape juvenile justice reform. The Task Force—comprised mainly of juvenile justice experts and practitioners--strongly emphasized that juvenile delinquency prevention should form the foundation for any juvenile justice reform. The NAC--again made up of juvenile justice experts and practitioners--premised its efforts on belief in the utility of due process procedures and rehabilitative treatment.

Clearly, the 12 years devoted to national juvenile justice standards has produced a confusing legacy: four separate sets consisting of 30 volumes, all fully or partially supported by the Federal government. However, it has also provided:

> ...a range of policy choices for virtually every issue critical to the administration of juvenile justice....They present policy options which recognize the need for a balance in juvenile justice--a concern for public safety as well as a concern for the rights and needs of those affected by the juvenile justice system. They also recognize the need for coordination among agencies in formulating and adopting procedures that will assure consistent application of policies and instill confidence in the system. (Allen-Hagen and Howell, 1982:34.)

Thus, the four sets of standards offer models and options that clearly could shape State and local juvenile justice policies. These national and Federal efforts, conducted with Federal assistance since 1971, represent an evolutionary approach to the Nation's juvenile justice problems.

State Legislative Reforms

Again, the President's Commission and Supreme Court's due process recommendations provided the impetus for three types of statewide statutory revisions: status offender, abuse and neglect, and family court statutes.

Status Offender Statutes

As early as Colonial times, certain offenses were declared illegal for children but legal for adults. This practice was incorporated into 19th-century statutes making begging and cheating punishable offenses for children. By the 20th century, these crimes fell within the juvenile court's jurisdiction and became known as status offenses. The President's Commission on Law Enforcement and Administration of Justice brought national attention to the potential injustice of status offenses:

> In accordance with the protective and rehabilitative theories of the juvenile court, the definition of conduct making one eligible for the category of delinquency was not limited by conduct criminal for adults but rather amounted virtually to a manual of undesirable youthful behavior...the juvenile court was to arrest the development of incipient criminals by detecting them early and uncovering and ameliorating the causes of their disaffection. Experience of over half a century with juvenile courts has taught us that these aspirations were greatly overoptimistic and chimerical. The court's wideranging jurisdiction thus has often become an anachronism serving to facilitate gratuitous coercive intrusions into the lives of children and families. (President's Commission on Law Enforcement and Administration of Justice, 1967a:84.)

Accordingly, the Commission recommended:

> The conduct-illegal-only-for-children category of the court's jurisdiction should be substantially circumscribed so that it ceases to include such acts as smoking, swearing, and disobedience to parents and comprehends only acts that entail a real risk of long-range harm to the child....Serious consideration, at the least, should be given to complete elimination of the court's power over children for noncriminal conduct. (President's Commission on Law Enforcement and Administration of Justice, 1967a:85.)

Consequently, many States adopted two major types of statutory revisions affecting offenders: persons in need of supervision (PINS) categories; and statutes limiting court authority to sanction status offenders. Generally PINS, MINS, and CHINS cases (Persons, Minors, and Children in Need of Supervision) involved subjecting "one's own child to the juvenile court process and to the possibility of being institutionalized in a correctional facility." (Mahoney, 1977:162-167.) Such petitions may "signal" a family crisis, show "parental power," act as a "dumping device," or "call for help." (Mahoney, 1977:162-167.)

Statutory prohibition for institutionalizing status offenders was initially introduced by California's Assembly Bill 3121 (AB 3121). Upon AB 3121's operation, runaways, incorrigibles, and truants could no longer be locked up in secure facilities; instead, they were to be referred to nonsecure community treatment. Most States have followed California's example, thus decreasing State control over nonoffending youth.[10]

Abuse and Neglect Statutes

In 1962, a controversial medical article (Kempe, 1962) focused national attention on the sociological and emotional plight of America's "battered children" who ranged:

> ...from the severely battered infant to the runaway adolescent who cannot tolerate the abuse any longer. It is ever with us. The end results are teenagers and young adults who are ill prepared to function with their peers, much less raise our next generation. (Helfer and Kempe, 1976:viii.)

Parental mistreatment of children had legal ramifications since juvenile courts traditionally retained jurisdiction over abused and neglected children. Most States adopted new laws and strengthened protective statutes by 1970. Designed primarily to tighten community reporting procedures and define proper investigation methods,

common legislation incorporated several basic components to deal with child abuse and neglect:

(1) Laws that define the rights and responsibilities of the child, the parent and the community.
(2) A visible, simple reporting system which encourages detection.
(3) Prompt investigation coupled with constructive action.
(4) A legal system readily accessible to parent and child alike.
(5) Backup resources to provide care for children in protective custody (shelter facilities, foster homes, group homes, treatment centers); to offer therapeutic services to abusive or neglectful families (legal assistance, marriage and other counseling, psychiatric care, nurseries, day care centers, homemaking services, lay therapists). (Delaney, 1976:341.)

It was hoped that such statutes would ensure protection and define the boundaries of legal intrusion into the lives of families.

Family Court Jurisdiction

Gaining popularity concomitantly with abuse and neglect statutes was the family court concept. Designed to handle family law--marriage, dissolution, support, maintenance, child custody, delinquency, abuse and neglect--the family court's role is not only representing and protecting the best interests of children, parents, and the community, but also "...modifying and formulating community and State policy." (Delaney, 1976:338.) As such, it strives to:

- preserve family unity whenever possible;
- provide for the care, protection, and wholesome mental and physical development of children;
- achieve its purposes in a family environment whenever possible;
- separate children from families only when necessary for his or her welfare or in the interests of public safety. (Sheridan, 1969:1.)

The family court idea, however, is not new. As early as 1914, a family court division was established in Cincinnati, Ohio. In 1948, the American Bar Association supported the family court concept, and in 1959 the National Council on Crime and Delinquency published its first Standard Family Court Act. It was not until 1962 that the Nation's first formal family court was established in New York.

Rather than creating a separate court, most States have incorporated new family laws into whatever judicial structure serves juveniles and their families: juvenile court, separate family court, or a general trial court exercising family and juvenile jurisdiction. As such, the court's role is "to define and protect the rights--and enforce the responsibilities of the parent, of the child, and of the community." (Delaney, 1976:338.)

Thus, between 1967-1978, the Supreme Court, Congress, and many State legislatures seriously addressed juvenile justice issues. The results produced a wide array of statutory changes tending to guarantee due process rights for juveniles, decriminalize status offenders, deinstitutionalize many youthful offenders, divert troubled youth from the juvenile justice system, create family court jurisdictions, and establish protective procedures for abused and neglected youth. At the same time

public legislative reform gained due process rights, some youth-serving professionals from the private and public sectors developed youth advocacy programs.

Advocacy Programs

Today's visible children's advocacy network of lawyers, social workers, physicians, and lay persons culminates a century-long child protection effort conducted by public and private agencies.[11] While initial action on behalf of abused, neglected, wayward, handicapped, and delinquent youth originated in the 19th century's private sector, by the 1970's the bureaucratization of New Deal, Great Society, and New Federalism legislation transferred most of this responsibility to the public sector.

The earliest organized child protective efforts were local or regional private philanthropic creations. New York child-savers took the lead by organizing the Society for the Reformation of Juvenile Delinquents (1823), Children's Aid Society (1853), Society for the Prevention of Cruelty to Children (1875), and the Neighborhood Guild Settlement House (1887). These societies were comprised of well-meaning citizens with a moralistic interest in saving youth and assisting their families. (See Chapter 1.)

By the 20th century, improving conditions adversely affecting the well-being of children became the goal of philanthropic child-saving agencies nationwide. Leaders in the child protection field promoted and organized programs for troubled children, publicized children's needs, and campaigned for better legislation to safeguard youthful interests. However, private protective efforts were seldom coordinated and never national in scope until the National Child Labor Committee's (NCLC) creation in 1904 and the Child Welfare League of America (CWLA) in 1920.[12] These first national efforts initially relied upon traditional, protective interpretations of child welfare objectives--providing substitute care and developing a legal rationale for public intervention in family life to protect society's children.

This caretaking philosophy was based upon several traditional premises:

(1) Children are not merely property, they are also God's property and must be raised accordingly.
(2) Children have their own futures and are destined to take their place in the moral and social order as individuals.
(3) Children lack human capacities, and need care and guidance to learn reason.
(4) The child's weakness is a source of parental authority, which in turn is a source of parental obligation.
(5) Parents can know and do what is best for children. (Cohen, 1980:5-7.)

Protective philosophies dominated public and private endeavors during the 20th century's first six decades. The Federal government's tentative entrance into child protection issues--the White House Conference on Children and Youth (1909), U.S. Children's Bureau (1912), Child Labor Legislation (1917), and Social Security Act (1935)--demonstrated new ground for public intervention to protect children. (See Chapter 3.) Further, the first national statement of children's entitlement to the natural rights of child protection and a healthy environment emanated from the public sector. The protectionist stance of the "Children's Charter" (quoted in full in Appendix F) was adopted by the 1930 White House Conference on Child Health and Protection.

Public protection efforts were not organized on a national scale. Public programs sponsored by the Children's Bureau and Social Security legislation and the private efforts of organizations like CWLA and NCLC affected only a minute portion of America's troubled youth. Seldom were the problems of those enmeshed in the juvenile justice system included in any public or private endeavor. Before the 1960's, protective philosophies extended to a minority of needy youth and dominated child-serving efforts organized on a local and/or statewide basis. Few efforts were coordinated, nor did they utilize sophisticated advocacy techniques to achieve their goals.

In the 1950's, children's rights became a prominent part of a larger societal push for civil rights. As children's advocates gained credibility, the movement took four distinct avenues: traditional protectionist pledges made by well-meaning adults, public sector youth employment programs, demands for equal rights voiced by and for young people, and publicly and privately organized child advocacy organizations.

First, adults adhering to the traditional protectionist stance made new pledges to make the world a better place for children and youth. The White House Mid-century, 1960 and 1970 Conferences on Children and Youth, and the 1959 United Nations Declaration of the Rights of the Child best reflect this position. Protectionists claimed that children, because of their "physical and mental immaturity," needed special care and protection including safe and loving environments, compulsory education, and instructions about their future acceptance of societal responsibilities.

Second, Federal and State governments gradually designed programmatic and financial opportunities to fulfill youthful needs for employment. The underlying assumptions of such programs were that young people had the right to be trained for, seek, and receive employment. The first large-scale, federally-funded attempt was the 1957 Mobilization for Youth Program in New York City that identified and trained youths in need of, or desirous of a job. In 1965, the Federal Department of Labor created the Job Corps and Neighborhood Youth Corps programs. The main goal of these Federal programs, as well as other more recent government-supported efforts like the Comprehensive Employment and Training Act of 1974, is to train young people to become more responsible, employable, and productive citizens through skills, training, and job search preparation.

Third, by the mid-1960's, many youths and adults pursued vociferous demands to terminate legal and social treatment that they asserted amounted to discrimination against young persons. By rejecting the caretaker/integrative approach historically associated with the juvenile court's foundations, opponents emphasized a sphere of autonomy and freedom from control known as "liberty interests." (Teitelbaum, 1980.) Preferring to maximize individual freedom except where injury to others is possible, liberty interest proponents called for new, autonomous rights for children and youth. An initial liberty effort separated the traditional White House Conference on Children and Youth into two separate forums: a White House Conference for Children, attended by persons comfortable with the traditional caretaker/integrative approach, and the first White House Conference on Youth, for adults and youth devoted solely to youth needs and rights. As illustrated in Appendix E, the essential issues of the latter Conference were decided by and for youth and dealt with equal rights, suffrage, student freedom, and release from a mandatory draft. From these foundations, the youth advocacy movement adopted the "Youth Participation" model (Kohler, 1979). Beginning with the 1967 establishment of the National Commission on Resources for Youth (NCRY), opportunities for responsible youth

participation in and advocacy for relevant issues have been promoted through a variety of organizations.[13]

Fourth, in the late 1960's human service practitioners created new child advocacy organizations based upon civil rights premises:

> Once the connection had been made, the rationale seemed obvious: children--an inarticulate and powerless group--required advocates from among parents, substitute parents, community leaders, and professionals....In short, child advocacy was to be an organized, publicly funded method of implementing children's rights. (Kahn, Kamerman, and McGowan, 1973:33-34.)

As these new children's advocates demanded social, economic, and legal equality for American youth, the initial shift from child protection to child advocacy was made. By the early 1970's, the movement infiltrated both the public and private sectors. Public efforts began with the publication of the Joint Commission on Mental Health of Children Report (1969) and was followed by HEW's new Office of Child Development (OCD) (1969), the 1970 White House Conference on Children, the 1971 White House Conference on Youth, and OCD's creation of the National Center for Child Advocacy (1971). Similarly, many national nongovernmental children's advocacy groups arose, including the National Center for Youth Law (1970), the National Commission on Resources for Youth (1967), Children's Defense Fund (1973), National Youth Work Alliance (1973), and the National Coalition for Children's Justice (1977). Consisting of professionals and lay persons, organizations from both sectors addressed a wide array of issues, advocated extending constitutional guarantees to young people, lobbied for legislation creating and funding children's programs, and intervened on behalf of children to assure the receipt of needed services.

By the end of the 1970's, the due process and youth advocacy movements had achieved much philosophical and statutory success: Federal deinstitutionalization, diversion, and decriminalization programmatic guidelines were established; national juvenile justice standards and goals were formulated; States passed statutes guaranteeing more equitable treatment for status offenders as well as abused and neglected youth; new family court procedures were established by some State legislatures; and many visible, effective youth advocacy groups had arisen. Coinciding with such progress was a second reform wave that reacted to the juvenile court's due process changes.

RECENT SYSTEM RESPONSES, 1978-1982

Recently, many State legislatures have critically reexamined the results of juvenile court due process reform. These newest suggestions for statutory revision focus on waiver provisions removing more serious juvenile offenders from juvenile court jurisdiction and trying them as adults. While every large State legislatively allows waiver provisions in special cases, growing public concern about "hardcore" youth has encouraged tougher legal responses (Whitebread, 1977; Whitebread and Batey, 1981:208-211; Zimring, 1981:193).[14] A well-publicized, 44-percent increase in violent crime committed by youths under 18 years-of-age from 1969 to 1978 has fueled that concern (U.S. Department of Justice, 1978:Table 33). Consequently, three legislative strategies to try young offenders in adult courts have developed over the past decade.

First, State legislatures may mandate that a particular class of offenders must be tried as adults. Delaware requires juveniles accused of murder be heard in the criminal courts. Connecticut requires transferral to criminal court of any youth 14 or over who commits murder or who is a recidivist Class A or B felony offender. Nevada automatically transfers youths 16 years or over who commit murder or attempted murder.

Second, State legislatures may delegate decisionmaking authority over where a youth will be tried to the prosecutor, grand jury, or criminal court. Nebraska delegates such discretion to the prosecutor. Minnesota requires the prosecutor to provide "clear and convincing evidence" that juvenile court jurisdiction should be waived (Minnesota Statutes 260.125 (2)(d)(1980)). Michigan may try any youth over 15 years-of-age accused of any felony in adult court.

Third, State legislatures may designate restrictive custody proceedings. Georgia's Designated Felony Act, applicable to youths 13 or older who have committed one of 10 designated violent acts, does not allow the youth's discharge from the Division of Youth Services without a court-granted motion made after at least three years of custody. Delaware's mandatory sentencing provision requires that youth committed under its terms cannot be released without approval of the juvenile court judge.

Two recent New York statutes combine mandatory waiver and sentencing approaches: the 1976 Designated Felony Act requires minimum periods of secure placement for adjudicated juveniles; and the 1978 Juvenile Offender Law requires adult court jurisdiction for juveniles as young as 13 years-of-age for murder and 14 years-of-age for other violent offenders charged with designated felonies.[15] Thus, in New York, a 13-year-old charged with murder and a 14-year-old charged with rape must be tried as adults.[16]

Coinciding with such legislative changes was an immediate recognition by most juvenile justice practitioners that waiver legislation required difficult philosophical as well as policymaking choices:

> The waiver decision is a choice to allocate an alleged offender to one of two courts which differ markedly in basic philosophy....In aspiration, at least, the juvenile court is committed to rehabilitation of the offender, while the primary commitment of the criminal justice process lies elsewhere, in the theoretical realms of retribution and deterrence...the waiver decision is a choice between courts with fundamentally different perspectives. (Whitebread and Batey, 1981:213.)

Thus, the movement to "tighten up" waiver statutes has engendered an emotional battle between two forces. One side, citing Gault and other Supreme Court due process cases, recognizes that waiver hearings are important to the welfare of any juvenile brought to court. The other side, responding to public fears about violent juvenile crime, proposes circumventing waiver hearings by reducing or eliminating juvenile court jurisdiction over serious and violent offenders.

Two additional factors add to this conflict. First, jurisdictional transfer has made the court system more complex. An example of this complicating factor has already been uncovered in relation to New York's Juvenile Offender Law of 1978:

> On the whole the law brought more delayed, complex, and less-efficient processing; generated considerable sentencing disparities; and increased the discretion of prosecutors, judges, and admininstrative agencies, even though the law was intended to mandate more uniform treatment. In effect, it turned waiver upside down; instead of sending a few serious offenders up for adult sanctions, it made the Family Court a backup for hundreds of cases too trivial for the adult system, and left the adult system less capable than the juvenile system of taking seriously even those cases that remained. (Roysher and Edelman, 1981:266.)

Second, the consequences of trying youths as adults have not been fully examined:

> Without any evidence that prosecuting juveniles as adults results in tougher sentences, reduces juvenile crime, improves services of procedures in either court, or has any other positive impact, whether for social protection or the best interests of children or their families--in fact, with substantial data to the contrary--the shift in jurisdiction is popular with only one segment of the juvenile justice system, the prosecutors. However, the public and the press also seem to prefer a system in which serious offenders can be tried in criminal courts. (Flicker, 1981:352.)

This most recent reform effort differs greatly from the due process reform thrust suggested by the President's Commission on Law Enforcement and Administration of Justice and the Supreme Court decisions: automatic remand to adult court is clearly inconsistent with such reform. The implications for juvenile justice policy are many, as suggested by Table 9. Undoubtedly, as policymakers address these questions, the subsequent debate will shape another evolutionary chapter in juvenile justice history.

CONSEQUENCES OF JUVENILE JUSTICE REFORM EFFORTS

Reforms affecting youths subject to juvenile court jurisdiction--delinquents, status offenders, and abused and neglected children--stimulated the above-mentioned changes. However, these endeavors did not bring about the revolution promised by many. Instead, evolutionary philosophical and judicial changes occurred. Developing concurrently were several anticipated as well as unanticipated consequences of statutory reform, Federal and State legislative changes, and youth advocacy proceedings which impeded the establishment of consensual national juvenile justice policies. Consequently, a fragmented system of juvenile justice continued to evolve as a result of recent reforms.

Judicial Reform Consequences

U.S. Supreme Court due process decisions, along with the Federal and State legislation they stimulated, produced three major unanticipated consequences, all of which continue to frustrate the development of cohesive national juvenile justice policies: incomplete extension of due process rights to juveniles; non-uniform implementation of Supreme Court decisions; and inconsistent application of abuse and neglect statutes.

Table 9

CURRENT POLICY QUESTIONS ADDRESSING WAIVER ISSUES

• The very existence of juvenile court demonstrates this society's belief in fundamental differences between children and adults. Many attempts in the law have been made to articulate these differences and the criterion used most frequently has been age of the individual. Statutes from every jurisdiction specify at what age juvenile court jurisdiction ends and criminal court jurisdiction begins. Further, states having a judicial waiver provision frequently provide a minimum age requirement below which such transfers cannot take place. Statutes also provide for normal ages of majority, minimum ages for alcohol consumption, and voting ages. Special laws cover such technical questions as scienter, choice of parents in divorce proceedings, and minimum ages for buying firearms. Minimum age requirements are specified for contractual and real property purposes. Thus, even though the requirements may be arbitrarily defined, age is still critical in determining legal status and entitlement to rights and privileges.

The trial of juveniles as adults, therefore, presents us with a profound social dilemma. Why have we chosen the nature of alleged crimes as the criterion by which we decide whether an individual forfeits childhood? Under what conditions should society consider childhood a privilege and under what conditions is it a right? What are the implications of that choice?

• Since the establishment of the juvenile court at the turn of the century, juvenile codes have contained provisions to try certain juveniles as adults in state criminal courts. Why has it become a major issue during the 1970s? Is it solely the response to the recent increases of serious juvenile crime or is it also a response to the dissatisfaction with the juvenile court and the rehabilitation model? Can a "referral" procedure simultaneously serve as protection of the court as an institution, protection of minor offenders from the influence of serious ones, and protection of public safety? What types of juveniles should be handled by juvenile court?

• Juveniles may be tried as adults because of judicial, prosecutorial, or legislative discretion. What are the advantages and disadvantages of the various mechanisms for referring juveniles to adult court?

• One threshold issue is whether or not a juvenile can ever make an admissible confession in criminal court, since admissibility is always based upon the defendant's ability to appreciate the consequences which flow from a waiver of his right to remain silent. When being interrogated, should a juvenile be expressly warned of waiver as a possibility?

• Is there a violation of due process when psychological or social history reports containing heresay are used in a waiver hearing and form the basis for waiver?

• Should a juvenile still in juvenile court and awaiting a waiver hearing have a right to bail?

• Should juvenile delinquency records be available to the prosecutor and police officers after the case has been referred to adult court? Should juvenile files be used by adult court during the dispositional phase of the proceeding? Assuming that a juvenile is charged with a serious offense over which criminal court has original jurisdiction, is there a denial of legislated jurisdiction if the court accepts a guilty plea to a lesser offense over which the juvenile court has original jurisdiction? Should the juvenile be sent back to juvenile court if the charge is no longer an excluded offense? What is to prevent overcharging to guarantee adult handling?

• How should unamenability to treatment be defined: from the perspective that the juvenile is unamenable; because necessary treatment facilities are unavailable; or from the perspective of prior treatment failure?

• Should a waiver order be a final appealable order? What are the practical effects upon the work loads of the courts when juveniles must be tried and convicted in criminal courts before the appellate courts may decide whether or not the waiver was proper?

• Two conflicting assumptions are made about juveniles tried in adult courts: they get longer sentences of confinement, and they frequently "beat the rap." From the perspective of the researcher and practitioner, Who are they? What are the characteristics of juveniles tried as adults? How do they differ from juveniles tried as juveniles? What happens to them? How do the dispositional options differ?

• Do juveniles adjudicated delinquent in juvenile court have a right to rehabilitative treatment? Assuming that such a right does exist, do judicially waived juveniles have the same right to treatment?

• Must adult courts provide needed "treatment" if it does not presently exist? Can adult facilities lawfully provide treatment programs for judicially waived juveniles but not for adults? Does a judicially waived juvenile have the right to refuse any treatment and choose, instead, incarceration with rehabilitation as a goal?

Source: Table adapted from Donna M. Hamparian, "Introduction," in John C. Hall, Donna M. Hamparian, John M. Pettibone, and Joseph L. White (eds.), Major Issues in Juvenile Justice Information and Training: Readings in Public Policy, pp. 171-173. (Columbus, Ohio: Academy for Contemporary Problems, 1981).

Incomplete Extension of Due Process Rights to Juveniles

Because the Court did not extend full procedural protections to minors, some issues of constitutional protection remain disturbingly unsettled. Gault addressed adjudicatory proceedings only, leaving juvenile rights at other stages of the court process unclear. Further, the Supreme Court has not defined the role of counsel in juvenile court. Are attorneys to act in a traditional adversarial capacity or within a nonadversarial framework? Juvenile court attorneys have acted in both guardianship and amicus curiae capacities—guardians recommend the best course for the accused to adopt; amicus curiae requires an attorney operate as intermediary between the court, the client, and the parents (Isaacs, 1963:501, 506-507; Platt and Friedman, 1968:1156, 1184; Clayton, 1970:8-10; Schechter, 1971:22-23). Neither role fits the traditional adversarial role of counsel. Clearly, until the proper role of counsel in juvenile court is delineated, young persons will continue to receive inconsistent treatment from jurisdiction to jurisdiction. However, such a clarification still fails to solve problems of inter-jurisdictional variations.

Non-Uniform Implementation of Supreme Court Decisions

The Supreme Court's selective application of procedural requirements to juvenile courts met with varied local receptivity, and interpretations of Court decisions have created a second phenomenon: lack of nationwide procedural uniformity. For example, interpretations of Gault vary widely: in 1967, the Illinois court concluded that adversarial proceedings in a delinquency hearing were valid "only when the acts of delinquency are proved beyond a reasonable doubt" (In re Urbasek, 39 Ill.2d 535 (1967)); Pennsylvania assumed Gault did not "undermine the basic philosophy, ideals and purposes of the juvenile court..." (Commonwealth v. Johnson, 211 P. Super. 621 (1968)); and California declared "a determination whether or not the person committed the particular misdeed charged...may not in fact be critical to the proper disposition of many juvenile cases." (In re M., 75 Cal.Rptr. 8 (1969).)

Inconsistent Application of Abuse and Neglect Statutes

Adopting abuse and neglect statutes uncovered serious philosophical questions hampering the evolution of clear policies: no consensual legal or practical description exists about what does and does not constitute neglect and abuse.

> Does abuse have to be defined by the number or severity of bruises, contusions, fractures; their length, depth, or frequency? Does someone have to witness the act of abuse? Does a child have to be in imminent danger to justify legal intervention? How can abuse be proved; do the parents, or one of them, have to be identified as the abuser? Where does legitimate parental discipline stop and abuse begin? Should traditional or cultural factors in child rearing be considered? And what is neglect: an untidy home? lazy or indigent parents? those who abuse alcohol or other drugs? who quarrel and separate and reconcile and reunite? whose children are poorly clothed, who are not washed or groomed to acceptable standards? who do not attend school regularly? who do not receive periodic medical and dental checkups? (Delaney, 1976:344.)

The passage of abuse and neglect statutes unleashed two major unanticipated consequences: underutilization of the court process, and infringement of constitutionally protected parental rights. Recent critics point to underutilization of the juvenile justice system in child abuse and neglect cases:

> Although most states have had statutes that would have protected children had they been used, they have been little observed, or applied. Except for extreme incidents which goad the courts into action, most communities have been content to leave the application of those laws to the medical and social service professionals. Strong emphasis on parental rights and the "sanctity of the home" concept have barred legal intrusion into child rearing practices. (Delaney, 1976:341.)

Child abuse and neglect cases are often thought to be medical or sociological problems: few people are eager to invoke criminal prosecution. Even recent statutory changes have been unsuccessful in gaining further use of the courts in these cases. More successful efforts to exercise court jurisdiction over abuse and neglect cases have triggered protests that the State interferes impermissibly with parental authority. Although the Supreme Court long ago recognized parents' fundamental constitutional rights to custody and control of their natural children (Stanley v. Illinois, (405 U.S. 645 (1972)); Meyer v. Nebraska (262 U.S. 390 (1923))), implications of those rights for abuse and neglect have just begun to be understood. With Santosky v. Kramer (102 S.Ct. 1388 (1982)), the Court declared "when the State moves to destroy weakened familial bonds, it must provide the parents with fundamentals of fairness." Courts may intervene to protect children, but they must respect parents' rights in the process.

Federal and State Legislative Reform Consequences

Because of Federal interest in decriminalization, deinstitutionalization, and diversion programs expressed in the JJDP Act, most State legislatures adopted new statutory guidelines promoting these juvenile justice objectives. However, as the ensuing analysis discusses, few efforts have been unqualified successes, and the controversy resulting from some has further thwarted the development of consensual national juvenile justice policies.

Decriminalization

Controversy has been a constant companion to decriminalization efforts. Many national organizations support removal of status offense jurisdiction from the juvenile court. The National Council on Crime and Delinquency (NCCD) suggests all victimless crime statutes for both adults and juveniles be repealed, noting that the possible gains in adjudication are not worth the risks (National Council on Crime and Delinquency, 1975:97-99). The U.S. Department of Health, Education and Welfare excluded status offense jurisdiction from its model legislation provisions in 1974 (Rubin, 1979).[17] Conversely, the National Council of Juvenile and Family Court Judges (NCJFCJ) supports retention, claiming exclusion would not create a meaningful remedy for these youths and may result in more social, psychological, and physical damage. The full power of due process protections, NCJFCJ contends, is available only through courts, since voluntary agencies have no legal mandates (Martin and Snyder, 1976:44-47). Other retention proponents argue decriminalization eliminates important intervention authority and rehabilitative strategies for status offenders (Wilkins, as quoted in Burkhart, 1975:19-20), and that eliminating jurisdiction will leave deprived, neglected, and disobedient youth without any services (Polier, 1976).

Recent decriminalization research shows general progress in the reduction of status offenders in detention or institutional settings (Rubin, 1979). Initial California data, processed six months after implementation of AB 3121 decriminalization legislation in 1977, showed a decrease of 18,715 status offender apprehensions, and a decrease of 12,001 status offenders who were referred to probation departments (California Youth Authority, 1978). Similar reports from other States show comparable trends.[18]

Debate currently clouds decriminalization issues. Their resolution ultimately depends on strong "philosophic questions concerning the propriety of state intervention, the validity of voluntary efforts for conflict resolution and a free society's tolerance of youthful behavior it considers unwise or troublesome." (Rubin, 1979:52.) Rather than reaching a consensual point about the need and value of deinstitutionalization, juvenile justice practitioners and scholars cannot agree on the philosophy behind the policy nor on implementation strategies. Such dissensus also characterizes the issue of deinstitutionalization.

Deinstitutionalization

Shortly after massive Federal infusion of monies into deinstitutionalization, resulting programs received careful scrutiny. A 1977 survey assessing the cost and impacts of deinstitutionalizing status offenders in 10 States suggests that, at least with this particular population, deinstitutionalization can work (Little, 1977). Progress cited includes:

(1) The States examined are at different stages in the process of deinstitutionalization, but all have made clear progress. Progress has been greater on removing status offenders from correctional institutions than on removing them from detention.
(2) State strategies have varied, with major clusters of actions aimed at (a) removal or limitation of the court's original jurisdiction over status offenders; (b) limitations on possible dispositions for status offenders; and (c) development of community-based youth services. Such strategies are not mutually exclusive; some States pursue more than one. Further, the specific focus on each strategy varies among the States.
(3) The major unresolved issue is pre-adjudicative detention, not longer-term commitments to State institutions following adjudication. The States studied are simply not sending large numbers of status offenders to correctional institutions.
(4) Aside from State institutions, the next-most-important issue is long-term residence in private institutions.
(5) The mandate of the Juvenile Justice and Delinquency Prevention Act of 1974 has, in large measure, shaped the dialogue in the States about existing and appropriate treatment of the status offender population. As covered under the issues section of these conclusions, there is something less than philosophical unanimity regarding deinstitutionalization.
(6) The available data about dispositions and placements leaves much to be desired in terms of consistency, quality control, comparability (even within the same State), and accessibility. However, it seems to be improving as States take on their system monitoring responsibilities. (Little, 1977:156-157.)

Further, the Little report recommended the Federal government not consider "any major new programs directed specifically at status offenders..." as they would "exacerbate the current fragmentation which characterizes youth service systems in all the States." (Little, 1977:160.) Another study compared efforts of the statewide Illinois Status Offender Service (ISOS) for youths between July 1976 and January 1977, and youths placed in secure detention between July 1975 and January 1976 (Spergel, Lynch, and Korbelik, 1980). The authors concluded:

> The project was a partial success. Detention for status offenders was substantially reduced, but there were negative side effects: more youths were labelled as detainable and they penetrated more deeply into the justice and public social service systems than the comparable preprogram group. ISOS failed to effect lasting changes in detention practices, because it focused on one element of a highly interrelated system. ISOS also relied almost exclusively on the provision of additional services and was not aided with legal mandate or interagency policy support for deinstitutionalization. Most important the analysis leads to the conclusion that a successful deinstitutionalization policy requires an effective commitment to diversion as well, including removal of status offenses from the court's jurisdiction. (Spergle, Lynch, and Kobelik, 1980:2.)

As the above examples indicate, deinstitutionalization programs have produced ambivalent reactions: at one extreme, the State of Massachusetts closed all its juvenile institutions, initiating widespread alternative rehabilitation methods (Ohlin, Miller, and Coates, 1977). More typical of reform efforts, however, has been the gradual increase in community-based facilities. Deinstitutionalization studies are also mixed with some claiming larger numbers and types of juveniles have come under social control, some new forms of detention are as restrictive as incarceration (Pabon, 1978), reduction of secure placement for status offenders does not prove programs cause such reduction, and community programs do not decrease public fears about crime or assist the few hardcore, habitual offenders (Scull, 1977:152-153). Others declare community programs are less costly than incarceration, help decrease recidivism, and contribute to more humane treatment. Finally, some critics point to a disappointing decrease in deinstitutionalized status offenders--12,354 total number of institutionalized youth in 1977 had dropped only to 9,025 by 1979 (U.S. Department of Justice, 1980a and 1980b). These conflicting analyses of deinstitutionalization programs and statutes prompted further dissensus among juvenile justice policymakers and practitioners that also characterized diversion reform efforts (Empey, 1978:553-554).

Diversion

State and local delinquency diversion programs, many fully or partially funded with Federal monies, gained widespread popularity from 1970 forward. One of the most prevalent diversionary devices has been the Youth Service Bureau (YSB), first recommended by the President's Commission on Law Enforcement and Administration of Justice (1967a:83). A brief analysis of California's experience with youth service bureaus will provide some insight into diversion's effectiveness.

On August 1, 1968, California became the first State in the Nation to pass a Youth Service Bureau Act funding YSB's in four communities. Each community received an initial $100,000 State grant. When LEAA appropriated an additional $125,000, five more California YSB's were established. The nine bureaus were dedicated to three

primary goals: diverting youth from the justice system; preventing youthful delinquent behavior; and providing opportunities for youths to function as responsible community members.

Unfortunately, an examination of the State's funding policy reveals only a superficial commitment to the YSB. After two years, State funding for the YSB's was terminated. In an effort to save the bureaus, a Federal OJJDP grant revived eight of the original YSB's. However, termination of Federal support after three years forced the YSB's to lobby the State government for assistance. For one year, their fate lay in limbo while legislators debated renewal. It was not until August, 1976 that State funds were allocated to support YSB's, this time with the assistance of matching Federal grants. At that time, the California Youth Authority retained administrative responsibility for the eight YSB's which were to be funded for three years beginning in 1976. During that span, an evaluation report was commissioned and the results of such research were to determine decisions regarding future State support of Youth Service Bureaus. The resulting document, The Evaluation of Youth Service Bureaus: A Final Report, described the "typical" California YSB and warned that the programs did not fit into any single mold.

> The typical YSB is a private, nonprofit youth-serving agency which covers a single community and operates on funds from federal, state or local governments...YSBs work with those who (a) are willing to accept help, (b) are uncomfortable with the possible stigma attached to mental health or traditional psychological services, (c) cannot or will not pay for these services, and/or (d) are not motivated enough to seek services....In short, YSBs significantly expand that part of the community's social services delivery system which has youth at its focus. (California Youth Authority, 1980:3-4.)

The evaluation made six summary statements regarding California's YSB success:

(1) Youth Service Bureaus do not appear to be a viable mechanism for reducing delinquent behavior through the standard, nonintensive direct services that were studied; primarily counseling, but also recreation. However, there is no evidence of harmful effects.
(2) The present study did not attempt to separate out the effects of direct services from those of indirect services. It is possible that indirect services had some positive effects; however, we were unable to isolate and assess any such effort.
(3) YSB's were shown to be a viable means of diverting youths from further justice system processing.
(4) Individuals and agencies within the eight communities served by these nine programs felt that services to youth were valuable and necessary. YSB...filled gaps in service and seldom conflicted with the efforts of other community agencies.
(5) No systematic test was made of the ability of youth service bureaus to (a) increase youths' integration into society through programs aimed at specific problem areas, such as education or employment, and to (b) thereby reduce the incidence of delinquent behavior. Until such a test is made, the effectiveness of youth development activities on the part of the YSBs must remain an open question.
(6) YSB efforts on behalf of youth (in the area of community development) may be of long-term benefit relative to delinquency prevention. This evaluation did not attempt to isolate and assess the possible affects on these indirect services. (California Youth Authority, 1980:iv-v, emphasis in original.)

While the evaluation concluded that YSB's had not been as successful as delinquency prevention agencies, it suggested that such measures "may" prove to be preventive once scientific investigation of YSB functions was conducted and once the results of "indirect services" were evaluated.

Another California project, the Sacramento County California Probation Department 601 Diversion Project, demonstrated diversion's delinquency prevention validity by illustrating that:

> Runaway, beyond control and other types of 601 cases can be diverted from the present system of juvenile justice and court adjudication. Detention can be avoided in most 601-type situations through counseling and alternative placements that are both temporary and voluntary. Those diverted have fewer subsequent brushes with the law and a better general adjustment to life than those not diverted. This diversion can be accomplished within existing resources available for handling this kind of case. (Baron, Feeney, and Thornton, 1973:173.)

> At the end of its first year, 3.7 percent of the 601 Project youth as compared with 19.8 percent of the control group had been formally petitioned. Additionally, 14 percent of the diverted youths compared with 55 percent of the control group spent at least one night in jail. (Rubin, 1979:43.)

As the two above-cited programs suggest, diversion has led to "paradoxical consequences." (Empey, 1980:172-73.) First, rather than reducing the number of youth referred to court, diversion programs have affected less serious offenders who were previously counseled and released by police. Thus, the court system is still processing the same youths (Nejelski, 1976; Klein and Teilmann, 1976). Second, legal and bureaucratic controls over children have increased rather than decreased. A new system of social control has been created for less serious offenders (Kutchins and Kutchins, 1973; Blomberg, 1975; Graecen, 1975; Mattingly and Katin, 1975; Klein, Teilmann, Styles, Lincoln, Labin-Rosenweig, 1976; Nejelski, 1976.) Third, no evidence exists showing decreases in delinquency stigmatization (Empey, 1980:172-73). Finally, the "proliferation of diversion units and programs" has not demonstrated that juvenile offenders and their families "perceive their handling as materially different under the auspices of diversion than under a more traditional justice agency." (Cressey and McDermott, 1973:59-60.)

The above State and local decriminalization, deinstitutionalization, and diversion projects represent a few of many unanticipated consequences of juvenile justice reform. Two other major results have received increasing attention from observers of the process: the "widening of the net" cast over juveniles, and conflicting objectives and actions between the courts and the new community service agencies. The "widening of the net" theory views the juvenile justice system as a net functioning to regulate and control an individual's behavior (Austin and Krisberg, 1981). Advocates argue that while many reforms were designed to reduce the number of juveniles affected by the system, the unintended consequences have been a widening and strengthening of the juvenile justice nets. A recent study indicates three changes in social control nets:

(1) Wider Nets result when the proportion of societal subgroups (differentiated by such factors as age, sex, class, and ethnicity) whose behavior is regulated and controlled by the States is increased.

(2) Stronger Nets occur when the State's intervention capacity to control individuals is intensified.
(3) New Nets arise when intervention authority or jurisdiction is transferred from one agency or control system to another. (Austin and Krisberg, 1981:169.)

Each of the recent reforms--due process, decriminalization, deinstitutionalization, and diversion--have affected the above social control nets. Clearly, social and legislative reformers believe changes encouraged by the assistance of Federal funds would stimulate needed juvenile justice improvement. What they did not anticipate were a variety of consequences that widened the State's control over youth. Even though due process rights intended to provide juveniles with procedural protections, an unanticipated consequence has been increased court encouragement to waive these rights (Krisberg and Austin, 1978; Rubin, 1977). While diversion hoped to reduce the number of children referred to court, many researchers claimed the children being diverted tended to be younger and less serious offenders than those who used to be counseled and released (Klein, Teilman, Styles, Lincoln, and Labin-Rosensweig 1976; Nejelski, 1976; Rubin, 1979). Rather than lessening the court's jurisdiction over status offenders, recent researchers point to an expansion and strengthening of control (Austin and Krisberg, 1981). In short, new studies indicate that as the number of institutionalized juveniles decreases, the number of juveniles in detention and community corrections programs increases (Lerman, 1975; Lemert and Dill, 1978; Klein and Kobrin, 1980); many committed youth receive increased periods of incarceration (Lemert and Dill, 1978; Klein and Kobin, 1980); many diverted children are funneled into the mental health system by parents who find such commitment is far easier to obtain than dealing with the juvenile justice system (Teitelbaum and Ellis, 1978); and status offenders are often relabeled as delinquents if that is the only way they can receive the court's attention (Austin and Krisberg, 1981). Moreover, declining State institutionalization statistics may be deceptive because they exclude waivers to criminal court, and certain placements in private facilities and community programs (Serrill, 1978).

The nationwide increase in community programs resulting from diversion and deinstitutionalization reform stimulated conflict between community agencies and the courts. Several factors have complicated their relationship. First, the responsibilities for primary youth services are not uniform in States or localities. In many locations, jurisdictional divisions are unclear. Second, youth-serving legislation beginning in the 1960's differentiated between detention and nonsecure shelter care, thus encouraging the courts to utilize the diversion option of nonsecure facilities provided by community agencies. This action increased the agencies' role with less serious delinquent and status offenders--an unsatisfactory direction for many agencies that believe social psychiatric rehabilitation is the most viable option for serious offenders. Third, courts and community agencies philosophically disagree on intervention and treatment modes. The social work-psychiatric view employs a medical therapeutic model, emphasizing the child's need for psychotherapeutic intervention. Social workers believe psychiatric assessment should determine the court decision. The legal point of view seeks to identify and control destructive youth via fair application of the law. There is a general concern for societal safety and a belief that the judicial process can best balance the competing rights of the child, their family, and society.

Advocacy Reform Consequences

Although American interest in youth advocacy is not new and has evolved over several centuries, little agreement has been reached about the shape of the children's rights movement. Should children's advocates retain the caretaker integrative approach, or adopt autonomous viewpoints? What is the Federal government's proper role--philosophical and/or programmatic supporters, advocate for national policies affecting children's rights, or unbiased arbitrator between conflicting interests? How active should youth be in seeking their rights? Little agreement has been reached about the rights of children involved in the juvenile justice system. What rights do youth have at stages of the juvenile court process other than adjudicatory proceedings? How can the role of counsel help or hinder the protection of juvenile rights? What rights should be guaranteed to incarcerated and institutionalized youth?

Society continues to express concern for children's rights. Articulate policies at local, State, and national levels have yet to emerge for several reasons: no common philosophical agreement upon a statement of rights, little cooperation between proponents of different strategies; and no clear understanding of the Federal government's role.

CONCLUSION: A FRAGMENTED SYSTEM OF JUVENILE JUSTICE

A fragmented system of juvenile justice has continued its evolution as a result of these anticipated and unanticipated reform consequences. Consequently, it has been theorized that two separate juvenile justice system types have arisen in the Nation--one reflecting the traditional *parens patriae* notions, and the other based on formal, due process precepts. The original juvenile justice system was founded upon a deterministic conviction "...about the needs of children rather than their desires." (Teitelbaum, 1980.) If one societal function is socializing its young, the philosophy rationalized, and if the primary socialization agent (the family) fails in its duty, then the State, through the juvenile court, has a right and a duty to intervene. In this sense, the juvenile court, by intent and design, is an institution through which society can educate, integrate, and reconcile basic conflicts between youth and the social order.

Proponents of the traditional juvenile justice model say such a system cannot adhere to rigidly uniform standards. Instead, a child is remanded to custody when and where needed, not sentenced after a determination of guilt and, since it is the State's duty to provide for the juvenile when others have failed, there is no logical contradiction between the youth's "liberty interests" and the State's requirements; they are conjoint.

This protectionist model directly conflicts with the due process model. Unlike traditional juvenile court philosophy, the due process model recognizes a child's interests are not necessarily compatible with the State's. Following the tenets of American criminal jurisprudence, the due process model of juvenile justice restricts State intervention to an individual's conduct rather than his or her condition, and reinforces the juvenile's right to challenge the State.

Paralleling both models' philosophical differences are structural and procedural variations. Recent research indicates that various divisions affect case outcome. Ito, Hendryx, and Stapleton (1982) identified four types of courts among 150 metropolitan courts studied by the National Center for State Courts. Type I "Interventionist" courts centralize most decisionmaking authority within the judge's domain, stress the court's equal interest in the child and the State, and do not easily adopt an adversarial approach. Type II "Transitional" courts are "...transitional in the sense that the prosecutorial role is not combined...with the separation of the probation department from the administrative control of the court." (Ito, Hendryx, and Stapleton, 1982:16-17.) Type III "Divergent" courts stress "low centralization of authority and low role differentiation/task specification." (Ito, Hendryx, and Stapleton, 1982:17.) Type IV "Noninterventionist" courts decentralize decisionmaking, relegate specific tasks to appropriate personnel, and adhere to legal adversarial due process procedures. The differing structures, the authors conclude, support inconsistent court procedures and outcomes.[19]

Thus, it appears that recent Federal and State statutory revisions affecting abused, neglected, and delinquent children stimulated evolutionary juvenile justice reform. While many of today's juvenile courts differ from their predecessors, others still operate within protectionist, nonadversarial environments. Recent reform has not built an integrated "system" of juvenile justice: courts operate on different premises and upon varying procedural foundations; no unified national approach to juvenile justice exists; attorneys are uncertain of their role in juvenile court; waiver reforms confuse procedural and administrative aspects in both juvenile and adult courts; and procedural rights guaranteed to adults are not universally applicable to children.

A further and very real complication is that every component of the juvenile justice system is responsible to different public agencies: law enforcement officials report to the mayor or county board of supervisors; courts respond to county or State control; correctional facilities react to State government; and the welfare agencies report to a wide array of local, State, and Federal entities.

Thus, juvenile justice reform has kindled controversy and encouraged the development of a fragmented system. These consequences produced a high degree of dissensus among court and community youth-serving personnel, legislators, researchers, attorneys, child advocates, and youths themselves. Such disagreement has thwarted the development of national juvenile justice strategies and policies.

FOOTNOTES

1. Early 20th-century reformers proclaimed Illinois' Juvenile Court introduced a new era in juvenile justice history (Addams, 1925; Mack, 1925). In 1899, it appeared a separate and benevolent system meeting the special needs of troubled youth was, indeed, a revolutionary approach to juvenile justice. After several experimental decades, some scholars and juvenile justice practitioners adhered to the "revolutionary" interpretation (Lou, 1927; Teeters and Reinmann, 1950; Frank, 1953; Handler, 1965).

   Recently, juvenile court revisionists questioned the revolutionary interpretation, the court's basic tenets, and the court's contemporary effectiveness. Revisionist scholars contend that during its first 350 years, the American juvenile justice system evidenced remarkable consistency based upon paternalistic and elitist philosophical and procedural controls. Reforms of the 1960's, revisionists continue, were logical extensions of past policies stimulated by changing societal conditions. They conclude, evolutionary rather than revolutionary thought and actions characterize juvenile justice history (Platt, 1969; Fox, 1970; Rendleman, 1971; Rothman, 1971; Schlossman, 1977; Ryerson, 1978). Such revisionist works reinterpreted the historical formation of American juvenile justice, claiming that consensual philosophies and methods guided the system's evolutionary growth. While recognizing dissensual trends, they postulate none were widespread or vociferous enough to engender revolutionary change in a system most Americans believed was working.

2. In a strictly legalistic sense, one cannot discuss substantive or procedural issues pertaining to the juvenile court before the late 1960's. Until In re Gault (1967), youth involved in the juvenile justice system were not entitled to due process rights. The court's substantive issue--the proper role of State intervention in the lives of children--was not legally challenged until Gault; therefore, neither substantive nor procedural rights, as defined by legal terminology, existed in the juvenile courts before 1967. For the purpose of this research and for the sake of continuity, the terms, as applied to the first two eras of American juvenile justice, will refer to philosophical underpinnings (substantive) and legal organization (procedural) of the juvenile court.

3. While the Illinois Juvenile Court is generally accepted as the first statewide tribunal for children, earlier attempts at legal distinctions had been made. In 1869, Massachusetts passed a probation act to work with adult and juvenile offenders prior to court involvement. In the next decade, Massachusetts adopted, in principle, the notion of separate trials for juveniles. The Cincinnati Prison Congress of 1870 passed a "Declaration of Principles" recommending separate and specialized legal treatment for juveniles. In 1874 and 1892, Massachusetts and New York respectively passed laws requiring separate trials for minors accused of a crime. (See Laws of New York, 1892, Chapter 217.) In 1898, Rhode Island provided for separate hearings and detention before trial for juvenile offenders. (See Laws of Rhode Island, 1898, Chapter 581.)

4. The Beldon report identified 321 "specially organized" courts, out of over 2,000 survey respondents, which conducted separate hearings for children, organized probation services, and provided social data for case investigation.

5. The Lenroot and Lundberg study included 10 cities: Buffalo, Boston, Denver, Washington, D.C., Los Angeles, Minneapolis, New Orleans, San Francisco, Seattle, and St. Louis.

6. Two of the few major professional articles questioning the court's authority appearing before the 1950's were Waite (1921) and Wigmore (1926).

7. An historical example of widening jurisdictional nets can be found in the original juvenile court act. Illinois' Juvenile Court Law of 1899 gave the new tribunal authority over delinquent and dependent children. A delinquent was "any child under the age of 18 who violates any law of this State or any City or Village ordinance," while a dependent child was one "who for any reason is destitute or homeless or abandoned...or who habitually begs or receives alms, or who is found living in any house of ill fare or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty, or depravity on the part of the parents, guardian, or any other person in whose care it may be, is an unfit place for such child...." (Laws of Illinois, Law of April 21, 1899.) Two years later, the amended definition included any child "who is incorrigible, or who knowingly frequents a house of ill fame, or who knowingly patronizes any policy shop or place where any gaming device is or shall be operated." (Laws of Illinois, 1901.) Just six years later, the definition was further extended:

> The words "delinquent child" shall mean any male child who while under the age of seventeen years or any female child who while under the age of eighteen years, violates any law of the State; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause and without [the] consent of its parents, guardian, or custodian absents itself from its home or place of abode, or is growing up in idleness or crime, or knowingly frequents a house of ill-repute; or knowingly frequents any policy shop or place where any gaming device is operated; or frequents any saloon or dram shop where intoxicating liquors are sold; or patronizes or visits any public pool room or bucket shop; or wanders the streets in the night time without being on [any] lawful business or lawful occupation; or habitually wanders about any railroad yard or tracks or jumps or attempts to jump on any car or engine without lawful authority; or uses vile, obscene, vulgar, profane or indecent language in [any] public place or about any school house; or is guilty of indecent or lascivious conduct; any child committing any of these acts herein shall be deemed a delinquent child.... (Laws of Illinois, Act of June 4, 1907.)

8. Juvenile justice standard setting was not entirely new to the 1970's. The roots of probation and parole movements indicate concern to establish minimal standards (Sechrest, 1976). As early as 1923, the U.S. Children's Bureau and the National Probation Association (now the National Council on Crime and Delinquency/NCCD) formulated and endorsed a Standard Juvenile Court Act. Its recommendations included holding separate hearings for children using informal procedures in such hearings, establishing a regular probation service to investigate and supervise cases; detaining juveniles in separate institutions from adults; keeping special court and probation records for juveniles, and providing mental and physical examinations of juvenile delinquents upon contact with the system. Although some of the Act's recommendations had been suggested decades earlier, coordinated efforts by both the legal and legislative communities to produce a uniform design for juvenile justice was a landmark endeavor. Interest in

standards, however, was not rekindled until 1949 when the Act was slightly amended and again, in 1959, when the third revision suggested giving the juvenile courts jurisdiction over all juveniles unless designated otherwise by the Attorney General. Then, in 1968, the Commissioners on State Laws, assisted by the Children's Bureau, developed a Uniform Juvenile Court Act. This latter effort brought renewed attention to the need for uniformity in the legal as well as public sectors. In 1969, the Children's Bureau published its "Legislative Guide for Drafting Family and Juvenile Court Acts." Again, the thrust was to create juvenile justice standards that would be acceptable to both court personnel and legislators.

9. Juvenile Justice and Delinquency Prevention Act of 1974. Sec. 247.
(a) The National Institute for Juvenile Justice and Delinquency Prevention, under the supervision of the Advisory Committee, shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.
(b) Not later than one year after the passage of this section, the Advisory Committee shall submit to the President and the Congress a report which, based on recommended standards for the administration of juvenile justice at the Federal, State, and local level—
(1) recommends Federal action, including but not limited to administrative and legislative action, required to facilitate the adoption of these standards throughout the United States; and
(2) recommends State and local action to facilitate the adoption of these Standards for juvenile justice at the State and local level.
(c) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Advisory Committee such information as the Committee deems necessary to carry out its functions under this section.
(d) Following the submission of its report under subsection (b) the Advisory Committee shall direct its efforts toward refinement of the recommended standards and may assist State and local governments and private agencies and organizations in the adoption of appropriate standards at State and local levels. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this Act and the standards developed by Advisory Committee. (JJDP Act, 1974.)

10. California's Assembly Bill 3121 (AB 3121) passed in 1976 and became effective on January 1, 1977. Status offenders--runaways, out of control youths, and curfew violators--could no longer be detained or admitted to juvenile hall after its implementation. This was the State's realization of the Federal government's earlier mandate: in order to receive Federal monies for juvenile justice and delinquency prevention, deinstitutionalization of status offenders was required.

The implementation of AB 3121 met with mixed reactions from juvenile justice practitioners. In particular, many law enforcement officials felt prohibiting their authority and requiring deinstitutionalization of status offenders--especially teenagers with suicidal tendencies, chronic runaways, and drug and alcohol abusers--eliminated preventive policing capacities and ultimately harmed troubled youth. Almost as soon as AB 3121 became law in January 1977, lobbying began for its modification. Consequently, the passage of Assembly Bill 958

(AB 958) stated three conditions that could warrant 24-hour status offender lockup--to discover if the juvenile had any outstanding warrants or hold orders; to determine if there was reason to believe the minor could endanger him/herself; and to find an appropriate placement for the juvenile if the court determined the minor willfully disobeyed a court order to remain in a nonsecure facility.

11. Before 19th-century child welfare efforts, children were considered the exclusive property of their parents. Because they were not responsible for their own welfare, they were assumed incapable of making proper decisions and thus were stripped of their natural rights. Much of this philosophy was derived from Thomas Hobbes who proclaimed children had no natural rights as they were incapable of making contracts and were thus subject to the power of their fathers (Hobbes, 1952:257), and from John Locke who agreed on parental obligation but felt children had natural rights requiring parental protection (Locke, 1952:34). In essence, husbands had total control over their wives and children who, in turn, had no right to disobey their husband/father. Orphans and children of the poor were dealt with by the community as it saw fit (Bremner, 1974:v.1, 54-71).

12. The National Child Labor Committee (NCLC) changed the course of its advocacy efforts as child labor exploitation decreased and national issues changed. Over the past two decades, the NCLC has been most interested in youth employment issues and educating migrant children. The Child Welfare League of America (CWLA) has also changed its functions. Currently, CWLA conducts studies and publishes information on foster care, adoption, and prevention services; recommends standards for various child welfare services; and disseminates a wide variety of child-serving publications.

13. Elements recently identified for youth participation programs include:
    - maximize decisionmaking by the youth participant;
    - address a need that is perceived as real by the young people;
    - be respected by the community;
    - include a learning component;
    - offer challenge and accountability;
    - promote maturity;
    - offer a glimpse of options available to youth in the adult world;
    - offer a communal experience of being interdependent with other young people and adults; and
    - provide opportunity for a working partnership between adults and youth. (Kohler, 1979:150-51.)

14. Early statutes allowing juvenile waiver to adult court jurisdiction in Illinois, California, Michigan, and Florida is found in Whitebread and Batey, 1981:210-11.

15. For an excellent, in-depth discussion of Minnesota's legislative waiver decisions, see Feld, 1981:167-242.

16. New York's Juvenile Offender Law mandates any youth 13 or older accused of murder and youths 14 or older accused of rape, robbery, felonious asault, and burglary be tried in adult court.

17. Other organizations following HEW's example include the American Civil Liberties Union, the National Association of Counties, the Association of Junior Leagues, the National Council of Jewish Women, the Institution for Judicial Administration and American Bar Association Joint Commission on Juvenile Justice Standards (Rubin, 1979).

18. Utah reported the percentage of status offenses as a percentage of total delinquency was 46 percent in 1970, 43 percent in 1971, 40 percent in 1973, and 29 percent for 1977; Fulton County Court in Atlanta, Georgia reported 22 percent for 1974 and 19 percent in 1976 (Rubin, 1979:43).

19. The inconsistent court procedures and outcomes claimed by Ito, Hendryx, and Stapleton (1982) are as follows: (1) Type I courts are structurally adapted to open and discretionary use of information and, lacking prosecutorial screening of cases and a fully developed adversarial procedure, will be exemplars of systems that use offender traits in making processing decisions. Conversely, a Type IV court, exhibiting multiple screening systems and highly developed adversarial procedures, will restrict decisionmaking to more formal, offense criteria except at final disposition, at which point the probation report can supply mitigating social information to be used by a judge in assessing the type and severity of the disposition. (2) The ability to predict disposition in only half of the cases in the integrative court, on the basis of the dependent variables, compared with the accurate prediction possible in three-fourths of the cases in the autonomous court, suggests that individualized justice dominates in the former and that the offense is the critical variable in the latter. (3) When case processing is broken down into two steps, intake and sentencing, differences between the courts are even more pronounced. Offender characteristics appear to be more important than the offense in deciding whether a case is to be handled officially or unofficially in the integrative court. However, an interesting difference emerges when one focuses on the sentencing decision. The relative importance of offender characteristics remains approximately the same in the integrative court, but in the autonomous court, offender characteristics rather than offense become crucial in determining whether a juvenile is to be placed on probation or committed to an institution. (Ito, Hendryx, and Stapleton, 1982:35.)

CONCLUSION

This analysis revealed a detailed history of juvenile justice policies beginning with the first Colonial settlements. For over 300 years, most policies shared a philosophical consensus that white, middle class Americans should control and protect lower class children and ultimately strive to produce conformist, law-abiding youth. Concurrent with such theoretical agreement was much methodological experimentation as these ideological assumptions were translated into treatment: Colonists controlled their chidren via internal, familial, and communal sanctions, turning to institutional public intervention only for neglected and orphaned children; Jacksonians placed children identified as endangered under the State's institutionalized care; and post-Civil War child-savers speculated that "Americanization" policies such as compulsory and vocational education would encourage lower class, immigrant children to conform to the status quo.

Despite different methods, a common thread of protectionism united strategies before the 1960's. The dominant ideology held that protection and control were necessary to gently lead misbehaving youth back to the "straight and narrow" path advocated by a well-ordered, moralistic middle class society. Twentieth-century evolutionary juvenile delinquency causation and treatment theories incorporated protectionist philosophies and methodological reform strategies: the newly created juvenile court system extolled parens patriae; Federal research efforts, conferences, and programs adopted protective ideologies; and causation and treatment theories sought to protect children from offending environments.

Beginning in the 1960's, several groups vigorously attacked the protectionist tradition: juvenile justice practitioners and academicians criticized the juvenile court's lack of due process and demanded reform; vocal children's advocates, weary of their historical reputation as paternalistic caretakers, claimed children were oppressed minorities deprived of economic, social, cultural, political and judicial rights; Federal legislators, acting upon recommended philosophical and institutional reforms, created new national programs and policies to improve State and local juvenile justice systems. Concurrent with such changes was a growing body of scholarship reinterpreting past juvenile justice practices and policies. These revisionists contended that 20th-century reforms--the juvenile court, public legislation affecting youth, rehabilitative treatment and environmental theories—represented evolutionary rather than revolutionary changes in juvenile justice policies. Instead of radical change, then, revisionists asserted that 20th-century reforms affecting juvenile courts, Federal legislation, and new theories were logical outgrowths of a three-century long struggle to develop systematic and rational responses to juvenile misbehavior.

Complicating the new interpretations of juvenile justice history are contemporary views of radical criminologists and Federal policymakers. Radical criminologists criticize traditional approaches ignoring systemic change. Defining ignorance, poverty, and racism as primary crime motivators, many theorists conclude delinquency has not and cannot be eliminated by working within capitalist society and reforming the system. Only a drastic, revolutionary reorganization of American life could solve youthful criminality. Adopting the opposite stance are many contemporary Federal policymakers questioning the nature of traditional philosophies. They claim social research, non-punitive prevention and treatment programs, and juvenile judges "soft on crime" have "coddled" young criminals and left the public vulnerable to their unbridled excesses. Salvation can be found not in overthrowing the system,

but by tightening it to make adult penal sanctions applicable to violent and serious juvenile offenders, abolishing the juvenile court, and adequately punishing offenders.

The result of conflicting interpretations, evolutionary juvenile justice endeavors, and recent reforms has been a fragmented set of policies affecting youth involved in the judicial system. Such dissention has not only blocked formation of a national juvenile justice policy, but inhibits such an outcome. Most congressional policymakers devoted to the traditional mainstream philosophy believe deinstitutionalization, decriminalization, diversion, and due process reforms can help decrease juvenile crime. The current Presidential administration favors a tightened net with more punitive consequences to deter potential young offenders. Children's advocates have further confused the formation of a consensual juvenile justice policy by arguing among themselves about the extent of autonomous legal and social rights that should be granted to children. Like reformers throughout each period of American history, change is the ultimate goal of contemporary policymakers, but no one can agree on the type of reforms that will be most beneficial. In short, juvenile justice reform has been a constant struggle to substitute one set of biases about juvenile delinquency for another.

Further, many late 20th-century American policymakers have assumed that a juvenile justice system exists which is capable of being reformed. Instead, history points to a "non-system" of loosely coordinated agencies (Gibbons, Thimm, Yospe, Blake, 1977:43-63): police intervening between the youthful offender and the public, the courts acting in the "best interests" of children by releasing them or adjudging them delinquent; corrections dealing with adjudicated youth; and a myriad of social welfare agencies providing child-centered services for the justice agencies.

That these units cannot work together toward a coherent juvenile justice policy is implied by four factors. First, each has different responsibilities--the police to enforce the law, the courts to interpret each individual's circumstances and make a judgment, corrections to provide proper treatment and rehabilitation, and social welfare to offer community-based services for rehabilitation and societal reentry. Second, the units seldom share similar philosophical ideas about the causes of delinquency, the best methods of reform, and the desirability of punishment. Third, the justice agencies are faced with the conflicting and irreconcilable goals of protecting the juvenile and his/her rights, as well as protecting the rights of citizens to a safe and non-threatening lifestyle. Fourth, each component is responsible to separate governmental entities--the police to the mayor and sheriff to the county board of supervisors, the courts to county or State bureaucracies, corrections to State government, and welfare agencies to a wide array of public and private entities. Given these factors, it is not surprising that agencies often work at cross purposes with police, mistrust the courts and probation, and vice versa. Given these diverse postures, it is almost impossible for the juvenile justice system to positively interact with child welfare services.

Consequently, the historical evidence suggests that a federally-directed, national juvenile justice policy simply may not be feasible. It further challenges policymakers to consider whether such a comprehensive policy is desirable. The most recent and clearly articulated endeavor to set national juvenile justice policies--the juvenile justice standards and goals effort--indicates a singular approach cannot address the issues of all actors involved in youth-serving scenarios. Thus, contemporary and future policymaking generations must confront the issue of both the

feasibility and desirability of a national juvenile justice policy directed at the Federal level.

In the meantime, it is important to recognize that until these questions are answered, the nonexistence of a national juvenile justice policy may be positively interpreted. Further, the progress to date is indicative of evolutionary steps made by the Federal government over the past two decades: detailed juvenile justice standards and goals have been formulated, successful model prevention and rehabilitation programs publicized, essential research conducted, and all Federal juvenile justice programs identified. Much of this knowledge was gathered via Federal grants targeting special program categories for funding.

The current administration resists the nature of the categorical grant tradition and, instead, favors a block grant structure whereby all State and local youth-serving programs compete for dwindling Federal monies. The questions posed by such a policy shift are many: Can the responsibilities for youth services be given back to the State and local levels without causing widespread program elimination? If categorical grants at the national level are terminated, will States and localities continue to identify and respond, both financially and programmatically, to the problems of youth? Will the progress made over the past 20 years be tossed aside during this decade of social and economic contraction? Again, these are questions that remain to be answered by juvenile justice policymakers and practitioners in the years ahead. The use of historical analysis should provide a helpful guide in the search for a national approach to juvenile justice problems.

APPENDICES

APPENDIX A

CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM

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APPENDIX B

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APPENDIX C

SELECTED READINGS

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APPENDIX D

A BRIEF HISTORY OF FEDERAL JUVENILE JUSTICE POLICY 1607-1980

APPENDIX D

A BRIEF HISTORICAL VIEW OF FEDERAL JUVENILE JUSTICE POLICY
1607-1980

COLONIAL REFORM 1607-1776	PHILOSOPHIES ABOUT MISBEHAVING CHILDREN: • Consentual belief that all children were inherently sinful and in need of strict control and/or punishment when necessary. • Most non-conforming children were of lower class parentage; middle class families protected their children from bad influences by controlling the behavior of less fortunate youth. METHODS OF TREATMENT: • Misbehaving children were generally controlled by familial punishment. • External, community punishment and control was necessary only when the parents failed in their duties. PUBLIC POLICIES: • Communal legal sanctions were guided by the British tradition of common law allowing children over seven years-of-age to receive public punishment. • Children could be punished publicly for several status offenses: rebelliousness, disobedience, sledding on the Sabbath, etc. Thus, a separate system of justice was set up for children and adults. • Several institutions were created that cared for orphaned and neglected children--almshouses and orphanages.
NEW REPUBLIC AND JACKSONIAN REFORM 1776-1865	PHILOSOPHIES: • Poverty was a crime that could be eliminated by removing children from offending environments and reforming their unacceptable conduct. TREATMENT: • Non-conforming children were controlled by external institutions such as houses of refuge and reformatories created by paternalistic child-savers. • Public education was used to "Americanize" foreign and lower class children. • Private groups were organized to rescue children from poor and unfit environments. POLICIES: • Local and State governments became providers of new care and treatment for neglected and delinquent children. • Joint sharing of construction and supervision costs for institutions was assumed by private and public agencies. • The parens patriae tradition, correctional separation policies for adult and youthful offenders, and indeterminate sentencing for juvenile inmates were adopted in several States. • Statutory definitions of juvenile delinquency were expanded to include a new series of status offenses: begging; cheating; gambling; etc.

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

APPENDIX D, cont'd

A BRIEF HISTORICAL VIEW OF FEDERAL JUVENILE JUSTICE POLICY
1607-1980

GILDED AGE REFORM 1865-1899	PHILOSOPHIES: • Increasing number of youth problems was due to by-products of rapid urbanization: poverty; immigration; and unhealthy environments. • Individual treatment and control of juvenile offenders could improve their behavior. TREATMENT: • Several private organizations were created to assimilate foreign and lower class youth into American culture. • Jacksonian-style institutions were constructed across the Nation. • Orphan asylums became popular ways to house and mold the conduct of those children left homeless by the Civil War and/or neglected by unfit parents. POLICIES: • State and local governments across the Nation expanded their involvement in the lives of neglected and delinquent children: adoption of new educational/assimilation tools (vocational, industrial, and manual training schools) for institutionalized and lower class youth; passage of immigration restriction laws; and assumption of a stronger role in creating, financing, and administering reform institutions.
PROGRESSIVE REFORM 1899-1920	PHILOSOPHIES: • Adolescence was accepted as a unique period of biological and emotional transition from child to adult that required careful adult control and guidance. • Misbehavior by middle class youth was to be expected and controlled by concerned families, but lower class youth were to be reformed via public efforts. TREATMENT: • Children were primarily treated by public efforts that were guided by new public policies and research. POLICIES: • State juvenile courts were created to adjudicate youths separately from adults, thereby expanding the parens patriae precedent. • The Federal government began providing direction for youth services by sponsoring conferences, stimulating discussions, passing child-labor legislation, and creating the Children's Bureau as the first national child welfare agency.

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

APPENDIX D, cont'd

A BRIEF HISTORICAL VIEW OF FEDERAL JUVENILE JUSTICE POLICY
1607-1980

NEW DEAL REFORM 1920-1960	PHILOSOPHIES: • Controlling and improving societal rather than individual conditions might decrease the incidence of youthful crime. • Children were to be gently led back to conformity, not harshly punished. TREATMENT: • Children were handled primarily by juvenile courts. POLICIES: • The juvenile court system was adopted by every State in the Nation. • The Federal government broadened its role with youth by passing legislation to improve family and youth circumstances during the Depression, creating the first Federal Juvenile Delinquency Act and supporting basic protective children's rights.
GREAT SOCIETY REFORM 1960-1980	PHILOSOPHIES: • Dissensus arose among professional child welfare workers and policymakers about the causes of and treatment for juvenile delinquency. • Consensus arose among the public and policymakers that the traditional agents of control--family, police, schools, and courts--could not curb the rise of delinquency. TREATMENT: • The juvenile court system was revised to include due process, deinstitutionalization, decriminalization, and diversion programs. • Community-based therapy rather than institutionalization became the preferred method of treatment. POLICIES: • The Federal Executive Branch expressed its concern about crime and delinquency by appointing the President's Commission on Law Enforcement and Administration of Justice. • Large-scale Federal financial and programmatic grants-in-aid were made available to States and localities for delinquency prevention and control programs. • A Federal agency was created to solely administer juvenile justice and delinquency prevention grants and to coordinate the Federal youth-serving effort--the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Table constructed by the CENTER FOR THE ASSESSMENT OF THE JUVENILE JUSTICE SYSTEM (Sacramento, Calif.: American Justice Institute, 1982).

APPENDIX E

A CHRONOLOGICAL LOOK AT JUVENILE JUSTICE POLICIES AND PRECEDENTS

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A CHRONOLOGICAL LOOK AT JUVENILE JUSTICE POLICIES AND PRECEDENTS

1660 First almshouse in America built in Boston to care for the aged and infirm poor as well as neglected and orphaned children.

1729 Ursuline Orphanage, the first colonial institution of its kind, was founded by the Ursuline nuns in New Orleans to care for children left homeless by an Indian raid.

1741 Bethesda, a private orphanage, opened in Georgia as the first planned children's institution in the colonies.

1790 The city of Charleston established the Nation's first publicly-supported orphanage.

1823 Society for the Reformation of Juvenile Delinquents created in New York City. First large-scale private effort to officially alert the State about the need for separate establishments to reform misbehaving youth.

1824 New York State Legislature passed the first act of incorporation for a House of Refuge. Funding was primarily provided by private donors. State assumed only minor funding role and no directional authority.

1825 First House of Refuge in the United States opened in New York City primarily with private monies. One year later, the New York State Legislature adopted an act stating the House of Refuge was to be the official reformatory for juveniles throughout the State.

1838 Ex parte Crouse (County of Philadelphia court ruling).*

1847 House of Refuge expanded into a State system with a new Refuge built in Rochester, New York. (Further augmented in 1876 with the building of Elmira Reformatory.)

Massachusetts State Reform School for Boys opened as the first fully State-supported institution for juvenile delinquents in the United States.

1853 Children's Aid Society established to help destitute children of New York City with private funding. Began self-help lodging houses for girls and boys; popularized the "placing out" system of delinquent children in new homes.

New York Juvenile Asylum opened as a State institution. Removed children from the corruptive influences of the city to help make them more useful and industrious members of society.

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*See Appendix G for summaries of all court cases cited in Appendix F.

1855 Massachusetts State Reform School for Girls established as the first American institution for juvenile delinquents based on the family system.

1857 First national convention of American refuge and reformatory officials held in New York with 11 States represented. Seventeen juvenile reformatories existed in the Nation housing approximately 20,000 children.

1865 Juvenile Offender Act passed as first Federal law dealing with juveniles. Stated that any juvenile under 16 years-of-age convicted of breaking any law of the United States was to be confined during the term of sentence "in some house of refuge designated by the Secretary of the Interior."

1869 Massachusetts General Court passed the first probation act in the Nation. Assigned State Visiting Agents to supervise all children coming under the care of the State and to hold hearings for committing children to State reform schools.

1875 Society for the Prevention of Cruelty to Children established in New York City by philanthropists. Focused on prohibiting child begging and keeping children out of saloons.

1877 Massachusetts' law was first in Nation to utilize principle of separate trials for juvenile offenders.

New York State Legislature passed the first concise American law dealing with police treatment of juveniles: "Any child under restraint or conviction, apparently under the age of fourteen years, shall not be placed in any prison or place of confinement, or in any courtroom or any vehicle for transportation, in company with adults charged or convicted of crime except in presence of proper officials."

1899 Illinois created the first Juvenile Court in the world.

1905 Commonwealth v. Fisher (Pennsylvania Superior Court ruling).

1907 National Probation Association formed of those interested in probation, parole, and juvenile courts. Its title was changed in 1960 to the National Council on Crime and Delinquency (NCCD).

1909 Clinical approach to juvenile delinquency causation began in laboratory research established for the Chicago Juvenile Court.

First White House Conference on Children and Youth called by President Theodore Roosevelt. Emphasized the care of dependent and neglected children and gave impetus to the formation of the Children's Bureau.

1912 U.S. Children's Bureau established to collect and disseminate information affecting the welfare of children.

1913 First juvenile unit of a police agency created in Portland, Oregon.

1916 First Federal child labor law, Keating-Owen Act, passed. Declared unconstitutional in 1918.

1918 "Children's Year" declared by Children's Bureau.

1919 Second White House Conference on Children and Youth held and child welfare standards were discussed. Resulted in the first Federal and State programs for maternal and child health and in the eventual passage of Federal and State child labor legislation.

1925 Standard Juvenile Court Act adopted and published by the U.S. Children's Bureau and the National Probation Association. Suggested that separate hearings be held for children; informal procedures be used in such hearings; a regular probation service be established for both investigation and supervisory cases; juveniles be detained in separate institutions from adults; special court and probation records be kept for juveniles, both legal and social; and mental and physical examinations of juvenile delinquents be provided upon contact with the juvenile justice system. (Revised and reissued in 1928, 1933, 1943, 1949, and 1959.)

1926 U.S. Government began first comprehensive effort to collect juvenile court statistics which measured the volume of children's cases disposed of each year by juvenile courts. (These statistics are currently compiled by the U.S. Department of Health and Human Services (HHS).)

1927 All but one State, Wyoming, had adopted juvenile court laws. (In 1945, Wyoming adopted a juvenile court law.)

1930 Third White House Conference on Children and Youth held and established a "Children's Charter" which listed the fundamental rights of children.*

1931 Wickersham Commission gave national focus to juvenile delinquency problems with its reports on the conditions of delinquents who violate Federal laws.

1933 Civilian Conservation Corps (CCC) created by Congress to help employ jobless males between 18 and 25 years-of-age during the Depression.

First National Conference of Students in Politics held in Washington, D.C.

1935 Social Security Act included provisions for grants to assist public welfare agencies in establishing and strengthening public welfare services for children, including those in danger of becoming delinquent. The public child welfare services provision of the Act (Title IV-B) was financially amended several times: $3.5 million was appropriated in 1946 and $25 million in 1960. Between 1968-1975, $266 million was authorized but only $56.5 million was appropriated.

National Youth Administration (NYA) created to administer work relief and employment opportunities for those between the ages of 16 and 25 from relief families and not enrolled in school.

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*See Appendix F for Charter provisions.

1936 American Youth Congress held. First Federal subsidies made available to States through child welfare grants administered by the Children's Bureau delinquency division for the care of dependent, neglected, exploited, abused, and delinquent youth.

1938 Federal Juvenile Delinquency Act provided the basic piece of legislation involving Federal government with the destiny of juvenile offenders. Established modernized judicial procedures for juvenile defendants. Juveniles could be processed as such only if the Attorney General directed they were juveniles. (Amended in 1949 and 1959.)

1940 American Law Institution approved Model Youth Corrections Authority Act with State government guidelines on administering institutions and agencies for youth and young adults.

White House Conference on Children in a Democracy held to discuss relationship of child development, health, education, welfare, and family life to democracy and freedom.

Minersville School District v. Gobitis (Supreme Court ruling).

1941 California enacted the first Youth Authority Act in the Nation. Gave the California Youth Authority (CYA) jurisdiction over all persons under 21 years-of-age guilty of public offenses or who required treatment, training, or education beyond the capabilities of local facilities.

1942 National Commission on Children and Youth met to review the needs of children in wartime. Adopted a "Charter for Children in Wartime" and a 10-point program for State action for children.

1943 West Virginia State Board of Education v. Barnette (Supreme Court ruling).

1945 All States had adopted juvenile court laws stating misbehaved children were not to be considered or treated as criminals, but should become wards of the State in need of its care, protection, and discipline.

1946 National Conference on Prevention and Control of Juvenile Delinquency held in Washington, D.C.

1948 Interdepartmental Committee on Children and Youth created by the Federal government to coordinate Federal agencies involved with youth programs. First effort in the Nation to coordinate existing and newly-created youth-serving agencies.

Haley v. Ohio (Supreme Court ruling).

1950 Mid-Century White House Conference on Children and Youth held; participation was broadened significantly to include professionals, labor union representatives, and youth for the first time.

1951 Federal Youth Corrections Act enacted by Congress to provide methods for training and treatment of Federal youth offenders who were not proper subjects for probation. Created a Board of Parole under the Department of Justice as well as a Youth Corrections Division.

1951 National Institute of Mental Health grants made available for research on juvenile delinquency.

1952 Department of Health, Education and Welfare (HEW) established a Juvenile Delinquency Branch.

1953 Hearings of the Subcommittee to Investigate Juvenile Delinquency held as part of the U.S. Senate Judiciary Committee from 1953 to 1958. Among its recommendations was the passage of a bill to provide assistance to and cooperate with States to help strengthen and improve State and local programs on delinquency prevention, control, and treatment.

In re Sippy (District of Columbia Municipal Court of Appeals ruling).

1954 In re Holmes (Pennsylvania Supreme Court ruling).

1955 Interstate Compact on Juveniles adopted by the Council of State Governments to encourage cooperation among States on the return of delinquent and non-delinquent youths who have run away or are on probation or parole. (By 1967, the Compact had been adopted by 45 States.)

1956 Shioutakon v. District of Columbia (U.S. Circuit Court of Appeals).

1959 National Research and Information Center on Crime and Delinquency set up by the Rockefeller Brothers Fund to serve as a first national clearinghouse and information dissemination center on juvenile delinquency.

Congress requested a report on juvenile delinquency from the Children's Bureau and the National Institute of Mental Health. Joint report submitted to Congress in 1960.

Standard Family Court Act published by the National Council on Crime and Delinquency called for the establishment of a family court division within the highest State court of general trial jurisdiction, the creation of a State board of family court judges, and a State director of the family court. Court would have jurisdiction over all delinquent and neglect cases as well as other family problems of divorce, adoption, non-support, and illegitimacy. The Act was soon adopted by New York, but very few States have followed suit.

United Nations Declaration of the Rights of Children.*

1960 President's Committee on Juvenile Delinquency and Youth Crime established to take over the role of the 1949 Interdepartmental Committee on Children and Youth which had little success in coordinating the Federal anti-delinquency effort. The Committee produced the Juvenile Delinquency and Youth Offenses Control Act later in the year.

White House Conference on Children and Youth expressed predominate concern for troubled and delinquent youth. Recommended new role for family and community in delinquency prevention.

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*See Appendix F for the Declaration.

1961 Juvenile Delinquency and Youth Offenses Control Act passed by Congress as the first Federal effort to provide both leadership and money to juvenile delinquency prevention. Thirty million dollars was authorized for three years to fund efforts to train, research, and demonstrate innovative juvenile programs. Administered by the Secretary of HEW who was given the responsibility of providing categorical grants to community institutions and agencies for planning and initiating prevention and control programs.

1962 A new legal category was created in New York and California to acknowledge in statutes for the first time the legal and correctional differences between status offenders and criminal offenders. Persons in Need of Supervision (PINS) defined the noncriminal basis of juvenile court jurisdiction and made status offenders separate from dependent and neglected youth. (By 1974, 34 States made such a distinction.)

Social Security Act amended to provide all services necessary for children to mature.

1963 School District of Abington Township, Pennsylvania v. Schempp (U.S. Supreme Court ruling).

Federal Vocational Education Act passed to fund updated vocational instructional programs, expand staff and facilities, and encourage new vocational education methods.

Equal Opportunity Act passed and established the Job Corps for high school dropouts with no marketable skills, Head Start for culturally deprived preschool children, and made funding available for Community Action programs.

Manpower Development and Training Act passed to train teenagers without jobs and marketable skills for employment.

1964 Two-year extension of the 1961 Juvenile Delinquency and Youth Offenses Control Act passed. (The Act was again extended in 1966 and eliminated in 1967. Between Fiscal Years 1961 and 1967, the total amount of money expended on the Act was $47 million.)

In re Bigesby (District of Columbia Municipal Court of Appeals ruling).

1965 Law Enforcement Assistance Act passed as the first Federal legislation that provided Federal assistance for strengthening State and local law enforcement agencies. Affected juvenile delinquency as it was the second Federal law aimed at crime control, the first being the 1961 Act. Both laws worked together to increase the national effort of juvenile crime prevention.

Congress passed the Elementary and Secondary Education Act of 1965. Designed to remedy problem of differential opportunity in schools by providing supplemental funding for compensatory education. (The Act was amended in 1967 to include two titles which dealt specifically with juvenile delinquency.)

Department of Labor began operating two programs designed to provide local employment assistance to youth: the Job Corps and Neighborhood Youth Corps. These programs were the result of the 1963 Manpower Act.

1966 Kent v. U.S. (U.S. Supreme Court ruling).

1967 President's Commission on Law Enforcement and Administration of Justice (appointed in 1965) released their report, The Challenge of Crime in a Free Society. One volume was devoted to juvenile delinquency.

People v. Lara (California Supreme Court ruling).

In re Gault (U.S. Supreme Court ruling).

1968 Juvenile Prevention and Control Act gave HEW the responsibility to provide assistance for a wide range of prevention and rehabilitation services to delinquent and predelinquent youth. Emphasis was placed upon developing new kinds of community-based programs. The Act was written with the intention of engendering an integrated approach to juvenile delinquency.

Omnibus Crime Control and Safe Streets Act created the Law Enforcement Assistance Administration (LEAA) to provide block grants to States for improving and strengthening law enforcement. Its broad crime control mandate authorized funding of delinquency control programs.

1969 Tinker v. Des Moines Independent Community School District (U.S. Supreme Court ruling).

1970 Seventh White House Conference on Children and Youth held. Encouraged Federal government to reorder national youth priorities, called for more advocacy efforts, and suggested developing programs to bring families closer together.

Crime Control Act of 1970 amended the 1968 Omnibus Crime Control Act. Introduced new funding earmarked for corrections programs.

In re Winship (U.S. Supreme Court ruling).

Federal Youth Conservation Corps Act passed to set up a summer employment program for youths between 15 and 18 under the joint administration of the Departments of Agriculture and Interior.

1971 Amendments to Omnibus Crime Control Act redefined the role of LEAA to include "programs relating to the prevention, control, or reduction of juvenile delinquency" and authorized funding for community-based delinquency prevention programs.

Amendments to the Juvenile Delinquency Prevention and Control Act extended the legislation one year and established the Interdepartmental Council to Coordinate All Federal Juvenile Delinquency Programs. Redefined the roles of HEW and LEAA involvement in juvenile delinquency: HEW would focus on prevention and rehabilitation programs administered outside the traditional juvenile corrections system, while LEAA would concentrate on persons already entered into the juvenile justice system.

First White House Conference on Youth. Held separately from Children's Conference as primarily led by youths rather than adults.

1971 McKeiver v. Pennsylvania (U.S. Supreme Court ruling).

National Advisory Commission on Criminal Justice Standards and Goals appointed by LEAA Administrator to formulate the first National Criminal Justice Standards and Goals for crime prevention and reduction. Published a six-volume report on police, courts, corrections, criminal justice system, and prevention. (In 1975, the National Advisory Committee took the place of the Commission and one year later published an 822-page volume entitled, Juvenile Justice and Delinquency Prevention.)

1972 Amendments to the Juvenile Delinquency Prevention and Control Act extended the legislation for two more years. Created a new HEW office, Youth Development and Delinquency Prevention Administration (YDDPA).

1973 National Advisory Commission on Criminal Justice Standards and Goals organized.

Youth Development and Delinquency Prevention Administration transferred from HEW's Social and Rehabilitation Services to its newly-created Office of Human Development. Name changed to Office of Youth Development.

Crime Control Act of 1973 amended the Omnibus Crime Control Act. For the first time, LEAA's enabling legislation specifically referred to juvenile delinquency in its statement of purpose: in order for States to qualify for funding, they were required to provide "satisfactory emphasis on the development and operation of community-based correctional facilities and programs...for juveniles."

Comprehensive Employment and Training Act (C.E.T.A.) passed by Congress. Its youth component, Youth Employment Programs and Projects (YEP), aimed to employ disadvantaged youth.

1974 Juvenile Justice and Delinquency Prevention Act (JJDP Act) amended the Omnibus Crime Control Act by transferring delinquency prevention responsibilities from HEW to LEAA. The JJDP Act was the first Federal effort to establish a specific agency to coordinate all Federal programs affecting the prevention and control of juvenile delinquency. Created the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide three sources of assistance to the States: discretionary grants given directly from OJJDP to public and private nonprofit agencies, individuals, and organizations for prioritized areas; formula grants to the States which submit comprehensive plans for developing a coordinated approach to delinquency prevention, treatment, and improvement of the juvenile justice system; and technical assistance for providing juvenile justice specialists to the States.

1975 Breed v. Jones (U.S. Supreme Court ruling).

Goss v. Lopez (U.S. Supreme Court ruling).

Title XX of the Social Security Act signed into law to provide Federal reimbursements to States for several social service goals affecting youth: achieving or maintaining economic self-support to prevent, reduce, or eliminate delinquency and dependency; prevent or remedy neglect, abuse, or

1975 exploitation of children and adults incapable of self-protection; prevent or reduce inappropriate institutional care by providing for community-based or home-based care; and secure referral or admission for institutionalized care when other forms of care are not appropriate.

National Advisory Committee on Criminal Justice Standards and Goals created. The Committee then established the Task Force on Juvenile Justice and Delinquency Prevention which researched and published nine volumes of national standards titled, Working Papers: A Comparative Analysis of Standards and State Practices and Juvenile Justice and Delinquency Prevention, in 1976.

1976 Amendments passed for the Federal Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. Called for special emphasis grants to States and public and private nonprofit agencies for "undeserved populations, such as...youth."

Planned Parenthood of Central Missouri v. Danforth (U.S. Supreme Court ruling).

1977 Juvenile Justice and Delinquency Prevention Act Amendments of 1977 extended State compliance with the deinstitutionalization of status offenders from two to three years and stated that dependent and neglected children could no longer be placed in detention and correction facilities.

Institute of Judicial Administration/American Bar Association, Joint Commission on Juvenile Justice Standards (IJA/ABA) released 23 volumes of Tentative Draft Standards.

Ingraham v. Wright (U.S. Supreme Court ruling).

Youth Employment and Demonstration Projects Act (YEDPA) passed to serve a broad spectrum of youth by providing opportunities to acquire job skills, to perform socially useful work in communities, and assist poorly prepared youth to increase their education while being productively employed.

1979 Justice System Improvement Act (JSIA) provided a Congressional mandate to reorganize the LEAA. In addition to a total restructuring of LEAA (OJJDP included), three new agencies were established--the Office of Justice Assistance, Research and Statistics (OJARS) serving as an umbrella support organization to LEAA and the other two new agencies; the National Institute of Justice (NIJ); and the Bureau of Justice Statistics (BJS). In March 1980, drastic budget cuts forced a change in the 1979 JSIA intent--no money was authorized for LEAA, thus eliminating the 12-year-old agency.

Parham v. Hughes (U.S. Supreme Court ruling).

Federal Drug Abuse Office and Treatment Act of 1972 amended to provide formula grants to States and project grants to public service providers for drug use prevention among youth.

United Nations International Year of the Child proclaimed.

1979 American Correctional Association/Commission on Accreditation for Corrections published four volumes dealing with juvenile justice.

1980 American Bar Association approved 20 IJA/ABA volumes.

National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC) published standards for the administration of juvenile justice.

Juvenile Justice and Delinquency Prevention Act Amendments of 1980, in part, required participant States to remove all juveniles from adult jails and lockups by 1985. (Reauthorization hearings scheduled for 1984.)

1981 U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, National Institute of Juvenile Justice and Delinquency Prevention published three volumes of Comparative Analysis of Juvenile Justice Standards and the JJDP Act. Volume IV was published in 1982.

Rhode Island became the first State to have a juvenile training school accredited by the Commission on Accreditation for Corrections. The first juvenile detention center to be accredited was also in Rhode Island.

1982 IJA/ABA published a Summary and Analysis of Juvenile Justice Standards volume; also, the Joint Commission approved three volumes of Standards.

1983 American Correctional Association/Commission on Accreditation for Corrections published four second-edition manuals of Juvenile Correctional Standards.

APPENDIX F

CHILDREN'S RIGHT STATEMENTS OF THE 20TH CENTURY

APPENDIX F

CHILDREN'S RIGHTS STATEMENTS OF THE 20TH CENTURY

I. SPECIFIC STATEMENTS OF ORGANIZATIONS

A. 1930 Children's Charter--White House Conference on Child Health and Protection

1. Spiritual and moral training to stand firm under pressure of life.
2. Understanding and guarding of the child's personality.
3. Home and security--for foster care the nearest substitution.
4. Prenatal and postnatal care for mothers.
5. Promotion of health including health instruction, health programs, physical and mental recreation.
6. Health protection from birth through adolescence.
7. A sanitary, wholesome, harmonious, and enriching home.
8. Schools which are safe, sanitary, and properly equipped--nursery schools and kindergartens to supplement home care.
9. A community that is safe, protective, and guards against physical and moral dangers, and provides safe places to play.
10. Education to prepare him for life and earning a living.
11. Training for parenthood, homemaking, and citizenship.
12. Education for safety and protection against accidents.
13. For handicapped children, early diagnosis, care, and treatment.
14. For children in conflict with society, the right to be dealt with intelligently and returned when possible to the normal stream of life.
15. To grow up in a family with an adequate standard of living.
16. For rural children, equal schools and health care.
17. Protection against labor that is physically or intellectually harmful.
18. Extension and development of voluntary youth organizations.
19. Distinct county or community organizations of health, education, and welfare.

B. 1935 "Delcaration of Rights to American Youth"--American Youth Congress

1. Maintenance and extension of elementary rights of free speech, press, and assemblage.
2. Right to join unions of their choosing.
3. Right to steady employment at an adequate wage.
4. Right to academic freedom.

C. Midcentury White House Conference on Children and Youth

To you, our children, who hold within you our most cherished hopes, we, the members of the Midcentury White House Conference on Children and Youth, relying on your full response, make this pledge:

> From your earliest infancy we give you our love, so that you may grow with trust in yourself and in others.
>
> We will reocgnize your worth as a person and we will help you to strengthen your sense of belonging.

We will respect your right to be yourself and at the same time help you to understand the rights of others, so that you may experience cooperative living.

We will help you to develop initiative and imagination, so that you may have the opportunity freely to create.

We will encourage your curiosity and your pride in workmanship, so that you may have the satisfaction that comes from achievement.

We will provide the conditions for wholesome play that will add to your learning, to your social experience, and to your happiness.

We will illustrate by precept and example the value of integrity and the importance of moral courage.

We will encourage you always to seek the truth.

We will provide you with all opportunities possible to develop your own faith in God.

We will open the way for you to enjoy the arts and to use them for deepening your understanding of life.

We will work to rid ourselves of prejudice and discrimination, so that together we may achieve a truly democratic society.

We will work to lift the standard of living and to improve our economic practices, so that you may have the material basis for a full life.

We will provide you with rewarding educational opportunities, so that you may develop your talents and contribute to a better world.

We will protect you against exploitation and undue hazards and help you grow in health and strength.

We will work to conserve and improve family life and, as needed, to provide foster care according to your inherent rights.

We will intensify our search for new knowledge in order to guide you more effectively as you develop your potentialities.

As you grow from child to youth to adult, establishing a family life of your own and accepting larger social responsibilities, we will work with you to improve conditions for all children and youth.

Aware that these promises to you cannot be fully met in a world at war, we ask you to join us in a firm dedication to the building of a world society based on freedom, justice, and mutual respect.

So may you grow in joy, in faith in God and in man, and in those qualities of vision and of the spirit that will sustain us all and give us new hope for the future.

D. 1959 United Nations Declaration of the Rights of the Child

Preamble: Whereas the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth; Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children;

The General Assembly proclaims the following principles...

1. The child shall enjoy all the rights set forth in this Declaration.
2. The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.
3. The child shall be entitled from his birth to a name and a nationality.
4. The child shall enjoy the benefits of social security....The child shall have the right to adequate nutrition, housing, recreation, and medical services.
5. The child who is physically, mentally, or socially handicapped shall be given the special treatment, education, and care required by his particular condition.
6. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.
7. The child is entitled to receive education which shall be free and compulsory, at least in the elementary stages....The child shall have full opportunity for play and recreation, which should be directed to the public authorities who shall endeavor to promote the enjoyment of this right.
8. The child shall in all circumstances be among the first to receive protection and relief.
9. The child shall be protected against all forms of neglect, cruelty, and exploitation.

E. 1971 White House Conference on Youth

1. Right to his/her thing so long as it doesn't interfere with rights of another.
2. Right to preserve and cultivate ethnic and cultural heritages.
3. Right to adequate food, clothing, and a decent home.
4. Right to do whatever is necessary to preserve these rights.

II. SPECIFIC STATEMENTS OF YOUTH ADVOCATES

A. 1972 "A Bill of Rights for Children"--Henry H. Foster, Jr.*

A child has a moral right and should have a legal right:

1. To receive parental love and affection, discipline, and guidance, and to grow to maturity in a home environment which enables him to develop into a mature and responsible adult.
2. To be supported, maintained, and educated to the best of parental ability, in return for which he has the moral duty to honor his father and mother.
3. To receive fair treatment from all in authority and to be heard and listened to.
4. To seek and obtain medical care and treatment and counseling.
5. To receive special care, consideration, and protection in the administration of law and justice so that his best interests always are a paramount factor.
6. To be regarded as a person.
7. To be heard and listened to.
8. To earn and keep his own earnings.
9. To emancipation when family relationship has broken down.
10. To be free of legal disabilities or incapacities save where shown to be necessary and protective of best interests of the child.

B. 1977 Richard Farson's "Bill of Rights"**

1. The Right to Self-Determination. Children should have the right to decide matters that affect them most directly.
2. The Right to Alternate Home Environments. Self-determining children should be able to choose from among a variety of arrangements: residences operated by children, child-exchange programs, twenty-four hour child-care centers, and various kinds of schools and employment opportunities.
3. The Right to Responsive Design. Society must accommodate itself to children's size and to their need for safe space.
4. The Right to Information. A child must have the right to all information ordinarily available to adults--including, and perhaps especially, information that makes adults uncomfortable.
5. The Right to Educate Oneself. Children should be free to design their own education, choosing from among many options the kinds of learning experiences they want, including the option not to attend any kind of school.
6. The Right to Freedom from Physical Punishment. Children should live free of physical threat from those who are larger and more powerful than they.

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* In A Bill of Rights for Children. (Chicago: Charles C. Thomas, 1974).

**In Beatrice and Richard Gross, The Children's Rights Movement. (New York: Anchor Press, 1977), pp. 325-28.

7. The Right to Sexual Freedom. Children should have the right to conduct their sexual lives with no more restriction than adults.
8. The Right to Economic Power. Children should have the right to work, to acquire and manage money, to receive equal pay for equal work, to choose trade apprenticeship as an alternative to school, to gain promotion to leadership positions, to own property, to develop a credit record, to enter into binding contracts, to engage in enterprise, to obtain guaranteed support apart from the family, to achieve financial independence.
9. The Right to Justice. Children must have the guarantee of a fair trial with due process of law, an advocate to protect their rights against parents as well as the system, and a uniform standard of detention.

C. 1979 Hillary Rodham in a legal perspective of children's rights:*

1. Decide their own future if competent.
2. Due process rights to notice, counsel, self-incrimination, confront accusers, cross-examine witnesses, and proof beyond a reasonable doubt.
3. Individuality in schools.
4. To be cared for in their own families.
5. More than minimal necessities be provided in institutional or foster care.

*In Patricia A. Vardin and Ilene N. Brody (eds.), Children's Rights: Contemporary Perspectives. (New York: Teachers College Press, 1979).

APPENDIX G

INFLUENTIAL JUVENILE COURT CASES

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INFLUENTIAL JUVENILE COURT CASES

Ex parte Crouse 4 Whart. 9 (1838)

Circumstances: A minor, Mary Ann Crouse, was committed to the Philadelphia House of Refuge by a justice of the peace. Her father petitioned for her release on the grounds that her commitment was unconstitutional as she had had no trial by jury.

Opinion: The County of Philadelphia court determined that juveniles were not embued with the right to a jury trial; parental control was a natural but not unalienable right if they are "unequal to the task of education, or unworthy of it" and thus could be "superceded by the parens patriae, or common guardian of the community;" Mary Ann was to remain institutionalized until the age of 21 as she had been "snatched from a source which must have ended in confirmed depravity."

People ex rel. O'Connell v. Turner 55 Ill. 280 (1870)

Circumstances: Michael O'Connell was sent to the Illinois State Reform School for violating a statute allowing the State to arrest or take custody of any youth between six and 16 who "is a vagrant, or is destitute of proper parental care, or is growing up in mendicancy, ignorance, idleness or vice." Defendant appealed to Illinois Supreme Court on grounds that he had not committed a crime that warranted commitment to reform school.

Opinion: The Illinois Supreme Court decided that neither idleness nor ignorance were ground for imprisonment, and in this case the State did not have the right to intervene in parental powers to raise their child.

Commonwealth v. Fisher 213 Pa. 48 (1905)

Circumstances: Frank Fisher was committed to the Philadelphia House of Refuge in April, 1903. Appeal to comitment was made to the County of Philadelphia Court where the Refuge was supported. A second appeal was made in Superior Court on the following grounds: no due process in court, no right to jury trial for accused felony, and the tribunal which heard the case was unconstitutional.

Opinion: The Pennsylvania Superior Court determined that dependent and incorrigible children were not tried for an offense, therefore, not entitled to a jury trial, and that the juvenile court was constitutional and created "not for the punishment of offenders but for the salvation of children, and points out the way by which the State undertakes to save, not particular children of a special class, but all children under a certain age, whose salvation may become the duty of the State, in the absence of proper parental care or disregard of it by wayward children."

Minersville School District v. Gobitis 310 U.S. 586 (1940)

Circumstances: William and Lillian Gobitis, 5th and 7th graders, were expelled from Minersville Public School because they violated a 1935 public school requirement in the State of Pennsylvania to salute the flag and recite the Pledge of Allegiance. The Gobitis parents, who were Jehovah's witnesses, filed a complaint

against the Board of Education alleging that the Board had used its regulations unconstitutionally because it had taken away the rights of school children to attend school without proper legal proceedings or due process, and that it violated the First Amendment by not allowing chidlren to believe in the Bible as they saw fit. The State Supreme Court found for the school district and the case was appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court ruled that school districts could require students to salute the flag and recite the Pledge of Allegiance and that school officials could impose reasonable control or punishment if it was connected to an educational goal--such as the desire to instill national unity in this particular case.

West Virginia State Board of Education v. Barnette 319 U.S. 624 (1943)

Circumstances: Seven children were expelled from Charleston, West Virginia schools for not reciting the Pledge of Allegiance. The school took the parents of Walter Barnette to court. The parents, Jehovah's Witnesses, appealed to the Special U.S. District Court in Charleston, West Virginia, as they felt the flag salute violated their religious rights, and the school requirement, therefore, violated the First and Fourteenth Amendments to the Constitution. Upon losing their case, they appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court found that the flag salute requirement violated the "preferred freedoms" of speech and worship. The Court held that a mandatory flag salute infringed parents' and children's free exercise of religion.

Haley v. Ohio 332 U.S. 596 (1948)

Circumstances: Two juveniles robbed and shot to death the owner of a candy store in Canton, Ohio in October, 1945. Fifteen-year-old John Haley allegedly took a pistol from a trunk in his home without the owner's permission, turned it over to the two boys, and served as a look-out outside of the store where the shooting took place. Five days later Haley was arrested by four policemen, questioned for five hours beginning at midnight by relay teams of officers, and denied counsel. At 5:00 a.m. he confessed, was immediately jailed, and was not allowed to see anyone for five days. Twenty-three days after signing the confession, he was charged with an act which, if committed by an adult, would be a felony, and required to come to trial. He was found guilty. The case was appealed on grounds that the confession was obtained in violation of the Fourteenth Amendment due process and aid of counsel rights.

Opinion: The U.S. Supreme Court ruled that the confession was illegally obtained and disregarded the age of the boy as well as the circumstances of his questioning (period of time and no counsel). Further, the murder confession should be excluded because it was involuntary and extracted by methods which violated due process requirements of the Fourteenth Amendment.

Miller v. Monson 37 N.W.2d 543 (1949)

Circumstances: The case brought before the District Court of Winoma County, Minnesota found the plaintiff, a six-year-old, and her guardian, suing for damages against Harold Monson, defendant. Damages were allegedly sustained as a result of defendant enticing the mother away from the family home, causing the plaintiff the

loss of benefits flowing to her from such a relationship. Verdict was for the plaintiff and defendant appealed to the Supreme Court of Minnesota.

Opinion: The Supreme Court of Minnesota affirmed the lower court decision and found that a parent has the "duty to provide his child with support, education, and protection, and child has duty to render obedience and services to the parents." Further, children had "legally protected rights in the maintenance of the family relationship against interference by outsiders, and enticement by an outsider of child's mother from the family home would constitute invasion of the child's right for which child could maintain an action for damages."

In re Sippy 97 Atl.2d 455 (D.C. Municipal Court App. 1953)

Circumstances: One month before Camille Sippy turned 18, her mother filed a complaint with the Washington, D.C. Juvenile Court charging that Camille was habitually beyond the control of the mother. A hearing was held, and six days before her 18th birthday Camille was committed to the Board of Public Welfare for "an indefinite period" to receive educational and psychiatric treatment. The daughter, Camille, appealed the commitment to the District of Columbia Municipal Court of Appeals.

Opinion: The District of Columbia Municipal Court of Appeals ruled that prejudicial errors allowing mother's counsel to make hearsay statements about conversations between Camille and her personal physician, and disallowal of daughter to cross-examine the doctor cited by mother's attorney violated daughter's rights and divulged information of privileged nature. Further, if parents seek to commit a child, the latter is entitled to independent representation. There was no sufficient evidence that the daughter was habitually beyond the mother's control, therefore, her commitment could not be sustained.

In re Holmes 379 Pa. 599 (1954) certiorari denied

Circumstances: A delinquency petition was filed against Joseph Holmes on January 7, 1953, alleging larceny of an automobile, operating an automobile without owner's consent, and operating the vehicle without a driver's license. Holmes was found delinquent on the last charge, but five days later a new petition was filed alleging armed robbery of a church. A January 23rd hearing revoked his probation and committed Holmes to the Pennsylvania Industrial School at White Hill. Such institutionalization was based upon prior record, present actions, failure of parents to control him, and the desirability of Holmes' receipt of institutional training. Holmes appealed such actions to the Pennsylvania Supreme Court on grounds of illegal procedure and deprivation of constitutional rights before the Municipal Court.

Opinion: The Pennsylvania Supreme Court held that juvenile courts were not criminal courts, so children were not entitled to constitutional rights guaranteed to persons accused of crimes; some customary legalistic rules of evidence may be waived in juvenile court; relevant and unobjectionable hearsay evidence may be used as direct evidence in juvenile hearsay; privilege against self-incrimination was not applicable to children; parents of a child involved in a juvenile court proceeding should be notified of a hearing; and the commitment of Holmes to an industrial school was not improper.

Shioutakon v. District of Columbia 236 F.2d 666 (1956)

Circumstances: Minor was charged in a juvenile delinquency proceeding with using an automobile without the owner's consent. The Municipal Court of Appeals for the District of Columbia affirmed an order of the juvenile court denying the motion to set aside an order of commitment to training school. The 15-year-old juvenile appealed to the U.S. Court of Appeals on grounds that he was not represented by counsel nor did the judge advise him or his mother that he could be represented by counsel.

Opinion: The U.S. Court of Appeals, District of Columbia Circuit Court, reversed the decision and stated that the court was under the duty to advise the juvenile of the right to engage counsel or have counsel named in his behalf.

School District of Abington Township, Pennsylvania v. Schempp 374 U.S. 203 (1963)

Circumstances: During the school year 1956, Ellory Schempp elected to remain in his high school counselor's office rather than standing and reciting the Lord's Prayer in homeroom. As a Unitarian, he began a legal battle with the school district alleging his First Amendment rights to freedom of religion had been violated, and suing to forbid daily Bible reading and prayer exercises. The Courts decided against Schempp and he appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court found that schools are public and nonreligious, making the Bible beyond the province of public schools; the State has no duty to teach religion--religious instruction must be voluntary; and schools could not allow Bible reading or prayer reciting in class.

In re Bigesby 202 Atl.2d 785 (D.C. Municipal Court of Appeals 1964)

Circumstances: Gerald Bigesby was found via a preponderance of evidence to have knocked an 11-year-old boy to the ground and taken forcibly 45 cents in change. The 12-year-old appealed the Juvenile Court of the District of Columbia decision to the Court of Appeals on grounds that proof beyond a reasonable doubt was necessary for such a decision.

Opinion: The District of Columbia Court of Appeals held that Juvenile Court petition was a civil, not criminal proceeding, thus exempting children from criminal law; penalties and safeguards of such law and preponderance of evidence was all that was needed to adjudge against a child, not proof beyond a reasonable doubt.

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

Circumstances: Sixteen-year-old Morris Kent was taken into custody by police on September 3, 1961, and interrogated for nearly seven hours about his involvement in a housebreaking, robbery, and rape. After further interrogation the next day, and detention at the Receiving Home for Children for almost a week without arraignment or judicial explanation of his detainment, petitioner's counsel arranged for psychological exams and filed a motion to not waive the case from Juvenile Court jurisdiction, and instead hospitalized Morris for extensive psychiatric observation. The judge waived jurisdiction without a hearing, without conferring with petitioner's parents or counsel, and without giving a reason. On September 25, 1961, Kent was

indicted by a grand jury of the U.S. District Court for the District of Columbia. On November 16, Kent moved to dismiss the indictment on the grounds that the waiver was invalid. The motion was denied and a jury found Kent "not guilty by reason of insanity" in the rape, but guilty of six counts of housebreaking and robbery. Kent was sentenced to 30 to 90 years in prison. Petitioner's counsel appealed on grounds that Kent's detention and interrogation were unlawful; that police acted unlawfully by failing to notify the parents of the apprehension; that liberty was denied for a week without determining probable cause; and that Kent was not warned of his rights to remain silent or seek counsel.

Opinion: The U.S. Supreme Court found that the District of Columbia Juvenile Court order waiving exclusive jurisdiction and authorizing the minor to be criminally prosecuted in district court violated statutes governing the District of Columbia courts. The law required trial courts to grant a hearing requested by the juvenile, to give counsel for juvenile access to records, and to state reasons for an order waiving jurisdiction.

People v. Lara 253 Cal. App. 2d 600 (1967)

Circumstances: Eighteen-year-old defendant was convicted in Superior Court, Los Angeles County, of selling heroin and he appealed to the California Supreme Court.

Opinion: The California Supreme Court ruled that a minor has the capacity to make a voluntary confession and thus waive his Miranda Rights; some juveniles might not have the characteristics necessary to satisfy waiver standards required in Miranda, but no single factor like age or intelligence could determine the validity of a waiver; and each juvenile case must be decided under a "totality of circumstances" approach to every individual case.

In re Gault 387 U.S. 1 (1967)

Circumstances: Fifteen-year-old Gerald Gault was taken into custody by the sheriff on suspicion of making an obscene telephone call. He was taken into detention without notice to his parents. Later, his mother was verbally advised that he was placed in detention for making an obscene telephone call and that a hearing would be held the following afternoon in juvenile court. A petition was filed on the date of the hearing, but was not served on or shown to the boy or his parents. The petition stated only that the boy was a delinquent minor and made no reference to the factual basis for the judicial action. The complainant was not present at the hearing and no one was sworn. The juvenile officer stated that the boy admitted making the lewd remarks after questioning, out of the presence of the juvenile's parents, without counsel, and without being advised of his right to silence. Neither the boy nor his parents were advised of the boy's right to silence, right to be represented by counsel, nor of the right to be appointed counsel if they could not afford a lawyer. The juvenile court committed the boy as a juvenile delinquent to the Arizona State Industrial School for a period of his minority, unless sooner discharged by due process of law. The boy's parents filed a petition for habeas corpus which was dismissed by the Maricopa County Superior Court and the Supreme Court of Arizona affirmed. The case was then appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court reversed the lower court decision and held that the boy was denied due process of law because juvenile delinquency proceedings, which may lead to commitment in a State institution, must measure up to the

essentials of due process and fair treatment including (a) written notice of the specific charge or factual allegations given to the child and parents or guardian sufficiently in advance of the hearing to allow for preparation; (b) notification to child and parents of child's right to be represented by counsel retained by them, or if they cannot afford counsel, that counsel will be appointed to represent the child; (c) application of the constitutional privilege against self-incrimination; (d) a determination of delinquency and order of commitment could be based only on sworn testimony subjected to an opportunity for cross-examination in accordance with constitutional requirements.

West v. United States 399 F.2d 467 (1968)

Circumstances: The U.S. District Court for the Middle District of Florida found defendant West guilty of violating the Federal Juvenile Delinquency Act by knowingly transporting a stolen motor vehicle in interstate commerce. He appealed to the U.S. Circuit Court of Appeals.

Opinion: the U.S. Circuit Court of Appeals held that the mere fact that the defendant was only 16 years old did not render him incapable of waiving his rights to counsel and to remain silent. It also laid out the circumstances to be considered in determining the validity of a minor's waiver of Miranda rights: "(1) age of the accused; (2) education of the accused; (3) knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent; (4) whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; (5) whether the accused was interrogated before or after formal charges had been filed; (6) methods used in interrogation; (7) length of interrogations; (8) whether vel non the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused had repudiated an extra judicial statement at a later date."

Tinker v. Des Moines Independent Community School District 393 U.S. 503 (1969)

Circumstances: Three high school students decided in 1965 to protest the Vietnam War by wearing black arm bands to school. In anticipation of these plans, the principals of the Des Moines schools adopted a policy that any student wearing an arm band would be asked to remove it, and if the violator refused, suspension would automatically be the penalty until he or she returned without it. When the students appeared at school with the arm bands, they were suspended. Parents of the students contended that the symbolic act was within the definition of free speech protected by the First Amendment and filed a complaint in the Federal district court against the school district for unconstitutionally disciplining their children. The district court dismissed the complaint, and petitioners appealed to the Court of Appeals for the 8th Circuit where the court was divided, thus allowing the lower court decision to stand. The petitioners appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court held that students have the right to express political opinions in school as long as their conduct does not interfere with the peaceful operation of schools or with the rights of others; if school officials wish to prohibit free expression, they must show their action was based upon more than "a mere desire to avoid the discomfort and unpleasantness that always accompany any unpopular view;" "neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate;" and "students in school as well as out of school are 'persons' under Constitution and are possessed of fundamental rights which state must respect."

In re Winship 397 U.S. 358 (1970)

Circumstances: Samuel Winship, a 12-year-old boy, had stolen $112 from a woman's pocketbook, which, if done by an adult, would constitute the crime of larceny. Finding of delinquency was made in his case and Winship was placed in training school, subject to confinement for possibly as long as six years. The hearing judge acknowledged that his finding of delinquency was based on a preponderance of the evidence and rejected the contention that due process required proof beyond a reasonable doubt. Defendant's counsel argued that the New York statute authorizing determination of delinquency on preponderance of evidence rather than proof beyond a reasonable doubt violated the juvenile's right to due process. The Court decided against Winship and he appealed the case to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court overturned the New York court decision on the following grounds: (1) due process protected an accused in a criminal court except upon proof beyond a reasonable doubt; (2) although the Fourteenth Amendment did not require that a juvenile delinquency hearing conform with all the requirements of a criminal trial, nevertheless the due process clause required application during the juvenile hearing of essentials of due process; and (3) thus, juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the juvenile was charged with an act which would constitute a crime if committed by an adult.

McKeiver v. Pennsylvania 403 U.S. 258 (1971)

Circumstances: Two boys were involved in two separate proceedings in juvenile court of Philadelphia charging acts of juvenile delinquency. In one case the conduct constituted a felony and the other amounted to a misdemeanor. The trial judge in each case denied a request for jury trial, and adjudged the juveniles as delinquent on the respective charges. One of the juveniles was put on probation and the other was committed to an institution. The Supreme Court of Pennsylvania affirmed the lower court, holding that there was no constitutional right to a jury trial in the juvenile court. Petitioner then appealed to the U.S. Supreme Court.

Opinion: The majority of the U.S. Supreme Court upheld the State court's decision based upon the following: (1) although the due process clause of the Fourteenth Amendment imposed the Sixth Amendment right to a jury trial upon States in certain "criminal prosecutions," this did not automatically require a jury trial in State juvenile delinquency proceedings. Instead, the claimed right to a jury trial depended upon deciding the precise impact of the due process requirement upon the delinquency proceedings; (2) the applicable due process standard was fundamental fairness; and (3) trial by jury in the juvenile court's adjudicative stage was not a constitutional requirement, especially since such requirements might force juvenile proceedings into an adversary process which might terminate the juvenile system's expectations for intimate, informal protective proceedings.

Goss v. Lopez 419 U.S. 565 (1975)

Circumstances: During Black History Week in 1971 at two Columbus, Ohio high schools, some students clashed with administrators over which community leaders would speak during school assembly programs. Disturbance followed and suspensions resulted. In addition, suspended students received no credit for work missed nor were they given a hearing. Nine of those suspended brought a class action suit to

Federal court claiming they had been suepended for up to 10 days without a hearing and had no chance to constitutionally defend themselves. They requested protection as well as the removal of all reference to suspensions in their school records. A three-judge U.S. District Court found in favor of the students, and school officials appealed to the U.S. Supreme Court claiming due process was not at issue because students had no constitutional right to an education at public expense and "the loss of ten days...is neither severe nor grievous."

Opinion: The Supreme Court found that the Constitution guarantees young people the same protection against unfair interference with their education that adults enjoy and they "do not shed their rights at the schoolhouse door." Four "minimum procedures" were mandated for suspensions up to 10 days. Students facing suspension must be given some kind of notice and hearing; those suspended must be given oral and written notice of charges against him or her; if they are denied, an explanation of the evidence the authorities have must be given; and student must have a chance to present his or her side of the story.

Breed v. Jones 421 U.S. 519 (1975)

Circumstances: Breed was adjudicated a ward of the court based on factual findings sustaining the allegations of the petition, which charged that the juvenile had committed an act that if committed by an adult would constitute the crime of robbery. The juvenile was ordered detained pending a dispositional hearing. On the date scheduled for the dispositional hearing, the court announced that it intended to waive jurisdiction and transfer the case to the appropriate criminal court. Following a hearing at which the court determined the juvenile was not amenable to treatment as a juvenile, the case was transferred to criminal court where the juvenile was tried and convicted of robbery. Defendant's counsel appealed to the U.S. Supreme Court on the gorunds that the Fifth Amendment prohibiting double jeopardy had been violated.

Opinion: The U.S. Supreme Court found that "a juvenile cannot be prosecuted in adult court after jeopardy has attached in juvenile court." Further, an adjudication of delinquency was not necessary to trigger the potential of double jeopardy--the hearing of a delinquency petition was enough to place the juvenile in jeopardy.

Planned Parenthood of Central Missouri v. Danforth 428 U.S. 52 (1976)

Circumstances: Two Missouri-licensed physicians, one of whom performed abortions at hospitals and the other of whom supervised abortions at Planned Parenthood, brought suit for injunction and declaratory relief challenging the constitutionality of the Missouri abortion statute. Included in the provisions under attack was a statement that before submitting to an abortion during the first 12 weeks of pregnancy, the written consent of a parent or person in loco parentis was required for the abortion of an unmarried woman under the age of 18. A three-judge panel of the U.S. District Court for the Eastern District of Missouri held the statute was constitutional. The case was appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court found that "Missouri abortion statute provision requiring written consent of parent or person in loco parentis to abortion of unmarried woman under 18 during first 12 weeks of pregnancy unless licensed physician certifies that abortion is necessary to preserve mother's life was unconstitutional, at least insofar as it imposed blanket parental consent requirement, in that there

are no significant State interests, whether to safeguard family unit and parental authority or otherwise, in conditioning abortion on consent of parent with respect to under 18-year-old pregnant minor, but abortion decision and its effectuation must be left to medical judgment of pregnant woman's attending physician."

Ingraham v. Wright 430 U.S. 651 (1977)

Circumstances: Students in a Dade County, Florida junior high school brought civil rights action alleging they had been subjected to disciplinary corporal punishment in violation of their constitutional rights under the Eighth and Fourteenth Amendments.

Opinion: The U.S. Supreme Court held that the cruel and unusual punishment clause of the Eighth Amendment was not applicable to paddling children for maintaining discipline in public schools, and the due process clause of the Fourteenth Amendment did not require notice and hearing prior to the imposition of corporal punishment in the schools.

Parham v. Hughes 99 S.Ct. 1742 (1979)

Circumstances: The father of an illegitimate child, whom he had not legitimatized and who was killed along with the mother in an automobile accident, sued for the child's wrongful death. The Georgia trial court denied a judgment for the defendant on the ground that a State statute precluded a father who had not legitimatized a child from so suing. Defendant appealed to the Georgia Supreme Court on grounds that the statute violated both the due process and equal protection clauses of the Fourteenth Amendment. The case was reversed and then appealed to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court found in favor of the State and held the following: (1) the statute did not violate the equal protection clause by imposing differing burdens or awarding differing benefits to legitimate and illegitimate children; (2) the statute was not discriminatory against males; (3) statutory classification was a rational means of dealing with problem of proving paternity; and (4) statute did not violate the due process clause.