RE-THINKING THE RIGHTS OF CHILDREN:

PROCEEDINGS OF THE GOVERNOR'S CONFERENCE ON JUVENILE JUSTICE

GRAND BALLROOM
HOTEL FORT DES MOINES
DES MOINES, IOWA

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It is relatively easy to tell young people they are wrong and to discipline them. But if we merely punish, we are not teaching the positive, behaviorial skills needed to live a happy, responsible life. With open minds and understanding of their needs, each of us must accept the challenge of guiding our young people.

We must work directly with them, not merely plan for or against them. To meet this responsibility an equitable, effective juvenile code is a requisite. But even more than good laws, we need good people - personally reaching out to our young people, offering them evidence of justice and hope.

Robert D. Ray
Governor of Iowa

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PREFACE

One of society's most powerful mechanisms of citizen control and protection is its legal codes. The Country's statutes define acts of persons which are harmful to self and others as well as State acts which are harmful to the person. We term the prohibitions of these person's acts the criminal and juvenile legal code and the limitations on the State as the rights of the individual. Such an important control mechanism as the legal code must not stand stagnant. Society changes rapidly, unfortunately the legal code often lags behind and fails to meet contemporary needs. It is society's obligation to continuously examine and revise the legal code in terms of contemporary needs. The legal code should continually be revised to incorporate new findings of law and social science.

Our juvenile law statutes have always been the victim of cultural lag and breakdown of intent. Several years ago the well known juvenile judge, Orman Ketcham, wrote about this problem. He discussed the mutual compact theory of juvenile justice and held that the mutuality of the compact was predicated upon several guarantees made by the State to the child. These guarantees were: a prompt, understandable, fair, and compatible with treatment hearing; a minimum of stigma for children; the strengthening of family ties and a minimum of removal of children from parents; treatment to be undertaken in the natural home; and a therapeutic oriented atmosphere for imprisioned children. In return for these assurances, the child and his parents gave up certain constitutional rights of due process of law (see Orman W. Ketcham, "The Unfulfilled Promise of the American Juvenile Court", in M. Rosenheim, Justice for the Child: the Juvenile Court in Transition, New York: the Free Press of Glencoe, 1962, pages 22-43).

Judge Ketcham observed that an eventual breakdown of the compact can be attributed to an adult population that was largely indifferent toward the plight of children. This neglect defeated the idea of differential treatment for children and often left them in conditions little different from those of adult criminals stored in prisons. It was because of this failure by adults to live up to the demands of the compact that the United States Supreme Court redefined and restored these constitutional rights to children during the late 1960's (in re Gault, 387 USI, 1966, in re Winship, 397 US358, 1970; and McKeiver v. Pennsylvania, 403US528, 1971). These decisions are the basis of what has been referred to as the modern juvenile law revolution.

Discussing the juvenile code is like arguing about politics and religion -- people become emotional. Some defend it to the hilt while others adamantly respond that it does more harm than good. We become ego involved with our juvenile code because it depicts our basic conceptions of childhood, parenting, family, community, and the state's intervention into the lives of citizens. This calls for continuous study of and reflection on the philosophical position represented in the juvenile code. This philosophy will either liberate the child or imprison him,

it will either liberate the juvenile justice worker so that he may become an advocator of children or force him to become a dictator over the young. The first priority in revising the juvenile code must be to reflect on the philosophical position inherent in this document. It was to this end that the Office of the Governor, the Governor's Youth Opportunity Council, and the State Office for Planning and Programming organized the Governor's Conference on Juvenile Justice.

The objectives of the conference were:

* To present and discuss the improvements of Iowa's Juvenile Justice System.

* To obtain suggestions for revisions of the Iowa Juvenile Code and the Juvenile System.

* To discuss suggested revisions of the Iowa Juvenile Code presented by legal specialists.

* To present contemporary views on Juvenile Code and Juvenile Justice System revisions.

* To discuss common concerns regarding Iowa's Juvenile Justice System.

The Conference was held on April 1 and 2, 1974, in the Grand Ballroom of the Hotel Fort Des Moines, Des Moines, Iowa. Over 400 attended the Conference. The participants included law enforcement officers, attorneys, state legislators, judges, probation officers, counselors, social workers, administrators, social scientists, students, government personnel, and others interested in the field of juvenile justice. Several nationally recognized authorities on the juvenile justice system along with State leaders gave presentations concerning contemporary views on the juvenile justice system.

Each speaker had written major works in their field of specialty. They were asked to present radical, stimulating, and controversial ideas. Such topics as the deinstitutionalization of children, alternatives to the court, children's rights, and child abuse were discussed and the experiences of other states were shared with conference participants.

Each presentation lasted about 50 minutes. This was followed by a 45 minute to an hour Speaker and audience interaction period. The conference proceedings consists of both the speeches and the Speaker and audience discussions.

Through this Conference, Iowa has become a part of the present day juvenile law revolution. Hopefully, this beginning will flourish into acheivements that will assist in the health and welfare of our young citizens.

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Programming
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ABOUT THE SPEAKERS

Ms. Margaret Stevenson is an attorney who is corporate Counsel for the City of Davenport, Iowa. She was formerly a State board member for the League of Women Voters in Iowa in charge of the Juvenile Justice Study. Prior to July, 1973, Ms. Stevenson was an attorney in private practice in Davenport, Iowa, and from May, 1972, through March, 1973, she served as Referee on the Scott County Juvenile Court. Her manuscript titled "The Juvenile Justice Sustem of Iowa" published by the Iowa League of Women Voters, is a thorough study of the Iowa Juvenile Court.

Mr. Carl B. Parks, is the Director of Court Services for the Polk County, Iowa, Juvenile Court. He graduated from the Des Moines College of Law in June, 1937 and was admitted into the Iowa Bar Association at that time. On September 1, 1937, he began as legal aid attorney for Polk County and Polk County Emergency Relief Incorporated. Between April, 1944 and November, 1945, he reserved with the United States Navy. Since December, 1945, Mr. Parks has reserved as the chief administrative officer for the Polk County Juvenile Court.

Professor Kamilla Mazanec is a professor of law at the Salmon P. Chase College of Law, Northern Kentucky State College. Prior to her present position she was on the faculty of the Drake University School of Law. She received her B.A. from Washington University in St. Louis, J.D. from the University of Missouri at Kansas City, Missouri, and a Master's of Law from Yale University. She practiced law for three years in Kansas City before entering a career of teaching. She teaches courses in family law, juvenile law, and psychiatry and law. She is author of "Law and Society", a textbook on law for high school students.

Mr. John L. McKinney is an attorney from Ames, Iowa. He served for nearly 12 years as juvenile judge of Story County, Iowa. He is one of the founders of the Shelter House of Ames, a community-based juvenile correctional facility.

Mr. Mortimer J. Stamm, an attorney is Legal Assistant to Governor Wendell H. Ford of Kentucky. From 1971 until the spring of 1973, he was a consultant on juvenile courts for the Kentucky Department of Child Welfare and was involved in the drafting of amendments to the juvenile code which were enacted in 1972. During this time, he wrote a book explaining juvenile law and its administration to the many laymen involved in juvenile court work in Kentucky: "Law and Child Advocacy in Kentucky Juvenile Courts".

Mr. Richard Rosenthal is the Regional Program Director (Region VII, Kansas City, Missouri) of the Office of Youth Development, U. S. Department of Health, Education, and Welfare. Mr. Rosenthal previously served as Chief of the Division for Program Development of the Office for Child Development (Region VII), U.S. Department of Health, Education, and

Welfare. He was Regional Specialist in the Community Coordinated Child Care Program of the Office for Child Development. Prior to his position with the Office of Child Development, Mr. Rosenthal was administrator of welfare programs for the State Department of Public Welfare, Nebraska. He served in various social work positions and received his Master's of Social Work from the Land of the Lake College, San Antonio, Texas, in 1965.

Dr. Paul Lerman is associate professor of social work at the Graduate School of Social Work, Rutgers University, where he teaches courses on delinquency and social policy, social welfare policy and research. He recently has been engaged in evaluating community treatment programs for delinquents in California for the National Institute of Mental Health. His major interest is in understanding societal responses to youthful deviance.

Mr. Sol Rubin, an attorney, is Counsel Emeritus, National Council on Crime and Delinquency. He is considered one of our country's foremost legal experts. He was formerly engaged in private law practice and lectured on penology, criminology, and law of criminal correction at City College of New York and the New York University Law School. He has drafted NCCD's model legislation and policy statements and, for the last twenty years, has written most of the standard-setting documents produced by the NCCD Council of Judges. He also served as counsel for the Council of Judges. Mr. Rubin has an extensive bibliography.

Dr. Jerome G. Miller is Director of Child and Family Services for the State of Illinois. Prior to his present position he was Commissioner of the Massachusetts Department of Youth Services. In this role he was instrumental in the closing of Massachusetts reform schools and replacing them with a regionalized system of community-based group homes and other treatment programs, largely operated by private groups.

Dr. Truce Ordoña is the Director of Adolescent Services, Scott County Mental Health Center, Davenport, Iowa. Formerly he was Director of Patient Care, Department of Child Psychiatry, State University of Iowa. He has extensively studied the child abuse problem and is active in formulating child abuse legislation. Recently he testified before the Iowa Senate Committee on Child Abuse.

Mr. William E. Gluba is a member of the Iowa Senate representing Scott County. He was born in Davenport, Iowa. He graduated from Assumption High School and received his B.A. in policital science from St. Ambrose College. He completed post-graduate work in state and local government at the State University of Iowa. Senator Gluba is a volunteer member of the Board of Directors, Scott County Commission on Aging. He was a candidate for mayor of Davenport in 1969. He is a member of the Izaak Walton League, Ralph Nader's Public Citizens, Inc., Common Cause, Sierra Club, Americans for Democratic Action, Jaycees, ACLU, Knights of Columbus, and the American Academy of Political and Social Service. He is a former member of the AFL-CIO and the United Auto Workers. Senator Gluba is the sponsor of child abuse legislation.

Mr. Harold Young is an assistant county attorney for Polk County, Iowa. He received his J.D. from Drake University School of Law in 1967. For the past two years he has been assigned to the Polk County Juvenile Court. He specialized in the determination of parental rights as a consequence of battered children. Prior to his present position he spent three years in private practice in Des Moines specializing in family law.

1. OPENING ADDRESS

The Honorable Robert D. Ray, Governor of Iowa

You know we have all been young at some time and, therefore, we all claim to be some kind of an expert when we talk about youth.

We like to have everyone know that, after all, once we went through that period of life and we know all there is to know about kids. When we think of young people, we often think, well, that's a time just for fun and games and lack of responsibility.

Being young is not always the lark that youth is often portrayed to be. Youth can be a very painful stage of life. This is particularly true today with society becoming so complex and so ambiguous. The ambivalence of today's society, all of this, makes it pretty difficult for a young person to find his or her role, or his or her place, or his or her identity.

Every society and every generation has been conscious about the special status of youth. Each has tried to define that status in both laws and in custom. Under Roman law, minors were divided in three categories on the basis of responsibility. Those under seven were not held to any degree of responsibility and those from age seven to puberty usually were punished as adults if the magistrate felt that they understood the nature of their act. But even then, between puberty and 25, the judge could take age into consideration.

Then, as you know, under common law in England, no child under seven would be held responsible. But under 14 they were held punishable according to their understanding and that even included death. Not until 1824 in this country were child delinquents separated from adults and that came in New York with the establishment of the House of Refuge and which was followed by a cottage-type reform school in Ohio in 1855.

Then along came boys' clubs and girls' clubs and religious agencies and child guidance clinics. More recently, boys clubs, Big Brothers and Big Sisters and then at the turn of the century special children's and juvenile courts came into existence. Those, of course, were as they are today to deal with the dependent and the defective young people as well as the delinquent.

We held the philosophy that minors should not be subjected to the rigidity of adult processes. I recall when I practiced law here in the City of Des Moines, we used to adhere very closely to everything that had to be done or could be done to protect the rights of our clients according to the Constitution and the laws.

But when we would represent a young person in Juvenile Court, we would waive that. We would toss it to the winds. The reason we could do that was that we had some confidence, some faith in the juvenile judge and the juvenile authorities and Carl Parks - people that we respected and people who did not mislead us; people who had credibility; people who I was always convinced were interested in the welfare of that youngster, my client.

Now maybe I made mistakes by my willingness to waive some of their constitutional rights but I was never disappointed in all those years I practiced before Juvenile Court here.

I found that a lawyer has a responsibility, not just to collect a fee, but to find what was best for that client and to offer alternatives, options, and choices to a court and juvenile authorities. I found that they were interested in exactly the same thing.

I never found at any time that there was a great desire on the part of any of those people with whom I worked to send a youngster to a training school. I'm not suggesting that they never did or ever would because, naturally, they did. But they were looking for whatever would be better before that last step was taken.

I found that there was a need for some compassion, some understanding, but some firmness. I also found we could find that if we just understood there were those sitting on the bench and there were those that were trying to help young people in juvenile courts that really wanted to solve problems we could help.

And I suspect that is the reason you are here today because I doubt there is anyone of you who doesn't have something else you could be doing today.

If you are a student, in many cases you could be home. This is vacation time.

If you are a public official, you probably could be at some other convention some place. But in any event, you are here because you want to be and I thank you for that.

This conference is an attempt to confront on a statewide basis the many problems that flow from Iowa's system of administering juvenile justice.

I'm delighted with the broad-based representation of you people. It's reflected in the different kinds of people that Phil Smith just mentioned, from the lawyers to the judges, to the sociologists, probation officers, counselors, students, and on down the line.

This program is designed to identify problems.

And you might say, "Why do that?, That's our job! We have been doing it for years. We don't need any more of that". Well, if that is true, then this won't take long.

Yet I suspect there are many problems that maybe we could identify if we took time to identify them. Rarely do we have time to do that which is not directly a part of our job. And then it's designed to delineate improvements that might be made.

All of you, everyone here, with your wide diversity of interests and experience can contribute very significantly during these two days to the exploration of juvenile justice at the levels of both principle and practice.

You are going to be considering today our social welfare research policy of this State, the delinquency and social aspects of young people, society's response to youthful defiance, family law, juvenile law, juvenile courts, alternatives to juvenile courts, community involvement, the rights of children, the institutionalization of children, and juvenile code revision.

Your deliberations should help provide us with a much deeper understanding of youth, of reciprocal responsibilities between youth and the community, of children's rights for care and to care, education and the process of the need to improve community programs for children in trouble, the child-abuse tragedy, the state's role in youth development and delinquency prevention, of ways to revise Iowa's juvenile code and juvenile justice system and then, hopefully, all of this can be brought into focus in specific and practicable recommendations.

This conference isn't going to be one bit better than the people who attend and participate. But I can tell you from knowing some of you personally and knowing what you represent that it has great potential to get right at the very heart of what all of us are interested in and what we want to accomplish.

So I wish you very well as you engage in two days of activity which we hope will be very meaningful and very profitable in our endeavors to do a much better job with people who are so very important in spite of the fact they are still young.

2. PANEL: AN OVERVIEW OF IOWA'S JUVENILE JUSTICE SYSTEM
Margaret Stevenson

I'm pleased to be here. I have been given the impossible task of presenting an overview of juvenile justice in Iowa and my own thoughts concerning it in twenty minutes. I am, therefore, grateful to the Governor for leaving fifteen minutes of his alloted time because I might possibly be able to accomplish my task in thirty-five minutes.

I don't pretend to be an expert in the field. I could claim to be an expert because I was once a juvenile or because I have four daughters or because I am an attorney, or because I served for a brief period as referee with the juvenile court. None of these experiences makes me an expert, but they have made me knowledgeable and concerned. Because of my personal experiences I have made a commitment to the perfection of the juvenile justice system in Iowa. Last year I decided that the time had come to speak out and that is why I am here today.

In viewing the juvenile justice system in Iowa we are reminded of the statutory rule of construction contained in the Code governing dependent, neglected and dependent children -- the clientele of the juvenile court. This rule states that these statutes shall be liberally construed to the end that each child coming within the jurisdiction of the juvenile court can receive, preferably in his home, the care, guidance and control that are conducive to his welfare and the best interest of the state and that, when he is removed from the control of his parents, the Court shall secure for him care as nearly as possible equivalent to that which he should have been given. I trust none of us here today are advocating that we rescind this noble purpose. It is the fact, however, that as a society we have been unable to live up to such purpose and while we may disagree as to what should be done, most of us are not now satisfied with the present system.

I have found it difficult to discuss changes in the juvenile justice system in Iowa because such discussions lead to extremely paranoiac responses from those who work within the system. If we are going to have any success in making changes for the better we must all agree at the start that in criticizing the system we are not criticizing the people who try to work within it. We must be willing to accept each other as good people of good will, all of whom sincerely want to do a better job for our youth. Defensive reactions from those who work within the system will not be conducive to satisfactory solutions to the problems.

As an attroney I am, of course, primarily concerned with the rights of people. I will limit my comments here today to those changes I feel are necessary and which should be codified in order to protect the rights of poeple coming before the juvenile court. I am concerned not only with the rights of the juvenile but also with the rights of the family. And I would like to remind you we should not limit our concern to juvenile delinquency; there is another broad field under the jurisdiction of the juvenile court involving the neglected and dependent child.

In general, a child is neglected if abandoned by his parents or guardian or if without proper parental care because of the faults of one sort of another of the child's parents or guardian. A child is dependent if living under conditions injurious to such child's mental or physical health. A child is delinquent if the child has violated any law or is uncontrolled by the child's parents or guardian by reason of being wayward or habitually disobedient, or conducts himself or herself habitually in a manner which is injurious to the child or others.

The first issue I wish to discuss deals with the jurisdiction of the juvenile court. I believe that we should eliminate from the designation of juvenile delinquency the so-called status offenses of being beyond control of parents or guardian or habitually conducting oneself in a manner which is injurious to one's self or others. One of the most frequent applications of the status offenses is to label as delinquent and to institutionalize female children because of sexual promiscuity. We also label children as delinquent for being truant from school, being runaways and similar types of activity which are not violative of any criminal law. It is my belief that most of the problems which occur in the life of a child becasue of behavior which would now label the child delinquent as a status offender can be sucessfully handled and treated under the present definition of a dependent child. If the intervention of the court is necessary to work out a positive treatment program for the child and his family, jurisdiction in the court can be retained without differentiating and creating some other kind of label for the so-called status offenders, such as "children in need of supervision", "unruly children", "incorrigable children", etc. The labeling of a child as delinquent or in need of supervison generally produces negative results. It is my observation that a more positive approach through the dependency provisions of the statute meets the dependency needs of youth in a much more positive manner.

There is another matter pertaining to the jursidiction of the juvenile court which needs attention. Under the law of Iowa primary jurisdiction over a juvenile offender is in the juvenile court except in motor vehicle law violations. It has been my observation that many of our young people who spend time in jail, spend time in jail as a result of sentencing by a court for such things as speeding charges which do not come under the jursidiction of the juvenile court. I believe that there should be no exceptions to the primary jursidiction of the juvenile court in all law violation cases.

Our law also permits the juvenile court judge to waive jurisdiction and transfer a juvenile to the criminal system for adjudication. Before this is done a hearing must be held. But what a judge is supposed to determine at such a hearing is not clear. The criteria in the Iowa statute is highly subjective requiring the juvenile court judge to weigh the best interests of the child together with the best interests of society. I think it important that we as a society set forth in our statute those considerations which we feel most important to be considered before a juvenile is transferred to the adult system. A judge should be commanded to consider both the seriousness of the offense and the suitability of the juvenile for treatment. The judge in the transfer hearing must

find probable cause that the juvenile committed the alleged offense before transfer to adult court. The court should transfer only after it has determined that there are reasonable grounds to believe that the youth has committed the offense. In the adult system the first question to be determined by the criminal judge is probable cause and therefore, probable cause should be of paramount importance in waiver procedures. Conversely, the juvenile should have the privilege of choosing to be tried as an adult. For certain offenses dismissal or conviction on a lesser charge or a shorter sentence or probation may be more easily obtained in the criminal justice system.

Another matter of paramount importance to which we should give attention is the whole field of detention. In Iowa juveniles can be and are frequently detained in jails. At this point I am speaking of detention which is practiced prior to the filing of a petition or after filing of a petition but prior to an adjudicatory hearing. In the adult criminal system the objective of detention is to ensure that the accused does not flee the court's jursidiction prior to trial. In the juvenile justice system, however, ensuring the juvenile's appearance in court is only one of the justifications for pretrial detention. Unlike the adult system, pretrial detention is rationalized in the juvenile field as preventative not only for the protection of the child but also for the protection of society. Detention prior to trial in the juvenile area is also justified in that it is somehow or other therapeutic. All of this, of course, presupposes the existence of facts that justify the intervention of the court before these facts have been established at a judicial hearing. The unfairness of this procedure is pointed up by a little episode I am sure we all remember from Alice Through the Looking Glass. The Queen says to Alice, "There is the king's messenger. He is in prision now being punished, and the trial doesn't even begin until next Wednesday, and, of course , the crime comes last of all." All Alice says, "Suppose he never commits the crime?"

We need to enact legislation making detention hearings mandatory. I believe the hearing should be held within twenty-four hours after the child is placed in detention. There are some who will argue that is too soon and I would urge that the maximum period of time should be no more than forty-eight hours. At such hearing the child should have his own attorney and the parents as well, should have their own attorney, to be court appointed attorneys if necessary. I further believe that we should have some rather specific conditions in the statute as to when a child may be kept in pre-trial detention. I don't believe that detention should be used unless there is clear evidence that the child will do permanent harm to himself if he is not kept in detention. If detention is to be used to assure the child's appearance at a trial, the statute must command the setting of reasonable bail. Detention should never be used to assure that the child will not commit another offense anymore than it is in the adult area.

A juvenile court normally finds out that a child may be in need of the intervention of the court by referral from others. While technically juvenile court officers under the statute are empowered and perhaps even

directed to go around making investigations, this is not in most cases a matter of practice in this state. We should eliminate this function of the probation officers.

The majority of the referrals in the delinquency area come through law enforcement agencies and in the dependent and neglect situations comes through the Department of Social Services, schools, other social agencies in the community and, frequently, parents. When a child is brought to the attention of the juvenile court it is necessary that there be some administrative screening before formal court action is initiated. The juvenile court staff through in-take procedures makes a decision as to whether or not the case warrants the intervention of the Court. I am concerned about this because we have not spelled out the guidelines under which the juvenile court should take jurisdiction. I think it necessary that we define in our statute specific principles to be used to determine those cases in which the court should intervene and those cases in which the child should be directed either back to the home or to other agenceis in the community. In this conference we are going to be talking about this later, then we discuss diversion. Whenever a juvenile court declines the filing of a petition this is a diversion. Just as something to think about, I would suggest that the statute could be amended to provide that at the intake level that the court should not take jurisdiction and a petition should not be filed unless there is reasonable cause to believe that if the court does not intervene permanent damage, physically, mentally or emotionally, will occur to the child. I would also suggest we should provide that the juvenile court should not take jurisdiction unless it would appear to be reasonably probable that if the allegations of the petiton were proven the treatment remedies available to the court have a reasonable chance of being effective.

In connection with these initial intake procedures we have a practice around this state that I generally refer to as pre-judicial adjustment. Expect in certain limited circumstances involving temporary jurisdiction for the purposes of taking a child out of his home and placing him in detention, the jurisdiction of the juvenile court does not attach until there is a petition filed which charges or states facts alleging that the child is either dependent, neglected or delinquent. Quite frequently, however, when a child and his family come to the probation office at the intake level there are certain decisions made under which the child is placed on informal probation. There is no statutory authorization for such procedure. Abuses can and do develop under such an ambiguous procedure. The problems which can occur will be illustrated by a simple example. A child, claimed to have committed some offense is told by the probation officer, "Johnny, if you're not a good boy and don't cut your hair and go home on time after school and stop associating with those bad companions of yours, we will file a petition and charge you with being a delinquent or dependent child and bring you before the court." Now you don't fool kids with that kind of procedure and I myself cannot regard it as a useful treatment tool. While everything should be done to encourage the handling of a child and his family in such a way as neither one are labeled as being bad, this must be done in such a manner that we can assure ourselves that the proceedings are fair. Many will disagree, but I firmly believe that even at the intake level, counsel should be provided for both child and parent. This may be the time of the making of the most significant decisions affecting

those persons. I also suggest that the juvenile court staff itself should not be a treatment agency. If there is to be or should be tried some treatment measures prior to the rather traumatic step of filing a petition, rather than using the informal adjustment procedure, the child should be referred out of the system for treatment by some other agency and the law should provide that no petition can ever be filed except on a new set of facts.

If a petition should be filed, I do not want to change the Iowa Statute which does not permit just anybody to invoke the jurisdiction of the court. Some juvenile codes do this. In Iowa the petition must be approved by the county attorney or the probation officer or the judge before a petition can be filed and I would encourage this practice to remain.

With respect to the formal procedures I have a number of concerns. I am concerned about the interrogations of the juvenile and his family made by the probation staff at the intake level. The law permits the use of such statements in the later proceedings. In order for the probation staff to know how to deal with the case appropriately, full and complete disclosurees by the parents and the child are to be encouraged and are encouraged. However, when the parent in the trial where such parent may lose custody of the child is confronted with the entire sad story that the parent poured out to the probation officer at the intake stage, believing everyone was trying to help, used against him in the adjudicatory process we have gone an awfully long way toward the destruction of that family. I firmly believe in a rule that no statement made by parent or child at the intake level should be admissible in any subsequent action.

Another matter that concerns me in connection with the filing of the petition is the fact that while the law requires a clear statement of the facts upon which the jurisdiction is based, it has been my observation in most situations the petition simply repeats as a matter of conculsion the language of the statute, such as, the child is a neglected child because of the faults of his parent. While the same formalities need not prevail, I believe the law should make it clear that the same essential facts should be stated in a petition in juvenile court as would be required in civil court or in adult criminal court.

Once a petition is filed it is necessary to hold an adjudicatory hearing. I think it should be spelled out more clearly in the statute that there must be first an adjudicatory hearing and following that at a separate hearing, unless the parties agree otherwise, there is a disposition hearing. The reason for this, I think is obvious. We have no business delving into the affairs and the personalities of the family unless it is first determined that allegations of the petition are established clearly and convincingly, in dependency and neglect situations, or beyond a reasonable doubt, in delinquency situations.

In order for the child and the family to be treated fairly it is necessary that they each be represented by attorneys. Our statute permits but does not require that the family and the child have separate attorneys. This should be made mandatory. The attorneys and the parties should have full and complete access to all reports in the juvenile

court file. There should be adequate time to prepare for the hearing. Our statute permits a hearing on a notice as short as five days. This is ordinarily not time enough to prepare a case adequately. Discovery processes should be permitted. Funds should be provided to effect discovery in the event the parties are unable to afford these expenses. Funds should also be available to the family to hire experts. In dependency and neglect situations the court decision should be based upon expert testimony from the witness stand. As it is, the experts are available to the juvenile court staff and other involved agencies but usually are not available to the family.

It is my observation that not very many lawyers and judges have an understanding of their proper roles in the adjudicatory and the disposition hearings. In my opinion, this system works best if the court operates as a court and not as a social agency. Where the judge uses the normal and usual rules that we have concerning what is evidence and the weight to be given the evidence and the case is decided only on evidence which is clear and convincing, we have the most successful results in the best interests of all concerned. While what I have just said should be obvious, it is not accepted or even practiced in many situations in this state particularly in connection with the disposition hearing. Nevertheless, the judge should not use his own gut reactions. He cannot be the expert. He must decide the case from competent evidence presented. It is my observation that the system does not work well unless the attorneys involved fulfill their duty to act as an advocate. The American Bar Association has had occasion to comment on this in an informal opinion and states that the attorney who has a client in juvenile court, be it a parent or child, has an absolute duty to act as an advocate to the fullest extent, securing all rights available to his client to conduct the trial the same as he would in the civil or criminal sector and when it comes time to make the deal, to consider and be bound by the wishes of his client. If the lawyer feels his client is not old enough or otherwise not capable of making decisions, it is essential that a guardian ad litem be appointed for the child so the attorney can remain the advocate, the judge can remain the finder of fact and the applier of the law, and the guardian ad litem can negotiate and make adjustments for his ward. We should also provide the witnesses from the social agencies who come to court to make a case they firmly believe in, to have legal represenation to help them make the case and to get them through what seems to them to be the unduly rigid requirements concerning the presentation of evidence. In fact, most social workers have no idea as to what constitutes evidence.

The Iowa law now interdicts the taking of any social history prior to adjudication unless the parties concede the allegations of the petition. The reason for this I have pointed out before. The getting of all this information, much of which the parties regard a confidential, in order to arrive at an effective and worthwhile disposition of the case will also produce frequently the very same evidence that would establish the allegations of the petition and gives the court the power to intervene in the life of a family. It is, however, a matter of practice that

social histories are taken before adjudication. This is certainly in order to make a wise decision concerning whether or not the petition should be filed in the first instance. As possible solution would be to adopt a rule that nothing in the social history may come before the court until the disposition hearing.

The problem is that over and over again in Iowa the court as he proceeds to the adjudicatory hearing has already read everything in the probation worker's file. This is wrong. It is wrong even under our present statute and something effective must be done in order to stop the practice. Certainly severe sanctions should be imposed upon any judge who engages in such a practice.

This is perhaps the best time to discuss another problem in the Iowa juvenile justice system which relates to the court structure itself. Under our system, and many others, the judge operates not only as a court but also as an administrator because the probation staff is hired by and serves at the pleasure of the judge. The judge is the chief executive officer of the probation staff. The probation staff ought to be the protector of the child. Under our statutes, however, he is not only the protector the child, he is also the prosecutor of the child and child's family. Even as a protector of the child, if he is to serve the child's intersts before the court, the conflict of interest is clear. We must establish a structure whereby the probation staff is independent of the court.

Before I conclude I would like to comment about the fact that in Iowa a child can be and is frequently placed in jail. I don't think there are two sides to this question. We should have a flat rule that under no circumstances can a child ever be placed in jail. The alternative, of course, if a child must be placed in detention, is to provide a more favorable facility that could be used for treatment as well as for detention. I want to warn against the building of alternative facilities and then their overuse as detention facilities. No matter how nice the surroundings, if the doors and windows are locked and the person is not free to leave, such person is in "jail". When a detention must be used, the law should mandate the providing of counseling, education and recreation.

I would also like to give some attention to what the statute permits in terms of informal adjustment in lieu of formal hearing and adjudication. As the statute now reads, if everybody comes in and pleads guilty, it is not necessary to go through a hearing and the parties can go into a period of informal probation which must be reviewed by the court within 90 days. There are no limits as to length of time during which this informal judicially supervised adjustment can go on. The statute should provide a maximum period. I recommend that the period not be allowed to extend beyond the first 90 days but others suggest one additional 90 day period. The same criticism applies to the informal probation which is judically supervised as applies to the prejudical informal adjustment at

the intake level. You do not have a genuine situation of corporation so long as there is the threat that a formal decree will be filed. Once the parties have admitted the allegations of the petition, the court has an implied threat becasue if the parties don't perform as the court expects then all the court needs to do is enter a decree of adjudication and go to the disposition hearing. I do not understand why we require that everybody admit the allegations in the petition before we permit informal adjustment, judically supervised. Why can we not just operate by the consent of the parties and with some guidelines which make it clear that at any point in time any party may withdraw and have a hearing concerning whether or not the allegations in the petition are true.

I wish to comment briefly upon what some have referred to as "child snatching" by the state. This involves dependency and neglect situations and the power of the court, upon affidavit, to make a determination that the welfare of the children demands that they be immediately removed from the home. The court issues a warrant, the kids are snatched out of the home and placed in temporary shelter facilities and we go from there. We need to emphasize in our statute that the removal of the child from the home prior to adjudication cannot be done unless a true emergency exists and permanent damage would be done to the child if he were left in the home.

We must constantly remind ourselves of the awesome power of the court, that we ask on a daily basis to intervene in the lives of families. We must exercise the utmost care that this power is not used unless absolutely necessary.

I would like to postulate a case. A family, an ADC mother, we'll say, with three children, one of school age and two under school age, is voluntarily working with the Department of Social Services and other social agencies in the community. For one reason or another she is inadequate to cope with the care of her children without supportive services. She is receiving, and I believe we should have much more of this, substantial input from the community in terms of helping her to make it with her children. But one day, and those who work in the system will recognize this symptom, she "has had it up to here", and she tells them to get out of the house and won't let them back into her house. So the social agencies or her concerned neighbors who are upset about this rush into the court with the affidavit and the children are removed from the home. As the court should do, a time was set in the near future for a hearing concerning this removal and as to whether or not it should be continued pending hearing on a petition not yet filed. In the interim, this procedure brought the mother to her senses and she entered into a "voluntary" contract with the social agencies to permit their continued intervention into her home. The matter was then approved by the court and the court proceeded no further. However, as part of the "voluntary" arrangement only one child was returned to the home and the other two were left in foster homes, in my view, as hostages for her good behavior. From that point of view of the social workers and the

court, this is not the way it was and yet the facts as I have described them are accurate and you see what the threat of the awesome power of the court and its exercise can do to people. The end result may have been right, but the method clearly is not. We must humanize the process; we must deal with those subjected to the jurisdiction or the possible jurisdiction of the court humanely with full due process at every stage of the proceedings - we can improve our procedures, we can provide adequate protection for the rights of people, we can postulate the maximum in terms of treatment. All these things will not improve the juvenile justice picture unless the community is willing to give to the system tools with which to work. The ones we have are not sufficient. I don't have a great deal of hope that what we do here at this conference and what we can do legislatively are going to do a bit of good unless we can persuade the community, the broad community, to devote more resources to our youth than it has been willing to devote to this point in time. The reshuffling of resources is not going to do it. We need to provide more resources for helping families with these children. We need to provide at times, intensive services in the home, and that needs to be more than seeing a social worker once a week. We need alternative programs. It is going to cost money. I don't know who is going to get this money because the kids don't vote. Where is political clout going to come from, the kids? Who is going to advocate for the children? Unless we all make ourselves advocates for them, nothing really worthwhile is going to come out of this conference.

PANEL: AN OVERVIEW OF IOWA'S JUVENILE JUSTICE SYSTEM - A JUVENILE JUDGE'S PERSPECTIVE

John L. McKinney

As your program indicates my expertise, if any, in the field will come from the fact that for a number of years I had served as Juvenile Court Judge in Story County. My overview of the Juvenile Court system in Iowa will come from a Judge's view, and hopefully it will be a practical type of approach. As I see the situation in Iowa, we don't do a terrific job in our Juvenile Court system. My feeling here is, that this is not caused by the laws that we have in the books. Personally, in working in the Juvenile Court area for a number of years, I felt quite comfortable with the Code, especially as we have it now. But I think our problem in this State is two-fold; one is lack of resources or alternatives for the Court and two, the general lack of priority or emphasis. Now, I'm going to talk about these two areas and I'm going to confine my talk primarily to the judicial system. I'm not going to get into the community relations type situation. I would like to say at the outset here that a Juvenile Judge has two main concerns; one is to help the child that has come before him, and the other is to protect society. They are both very important. Now, from my experience I have found that it over-weights toward the help of the child; that most children are not a threat to society and for that reason, at least my experience has been, that the detention of children, either in a jail or at another facility, is very very limited and we just don't do so much of that anymore. But there are times when it is absolutely necessary that a child be detained so that you know he is going to be present when the time comes for a hearing.

Lawyers are not comfortable in Juvenile Courts. This is a never-never land, especially in dependency and neglect cases for them. They are trained in an adversary system, and when we get to the dispositional stages in the Juvenile Court, and prior to the Gualt decision, actually in the adjudicatory stage, the rules are not as clearly defined. I know, and I'm sure we'll hear about this from the Professor from Drake, but when I was in law school, and it hasn't been that long ago, we just indirectly heard of the Juvenile Court. If we happened to take family law, which was a seminar, there was reference to it in that course. So that was not great emphasis placed on that particular area. Looking at the whole system, we have the District Court which serves as the Juvenile Court for a particular county. We have in other than the metropolitan areas such as Des Moines, a system known as a rotation of Judges. We have eight judicial districts. Depending on the district, you have a certain number of counties and a certain number of Judges, and generally you have more counties than you have Judges. The Judges, they used to call them circuit riders, move around the district. And under the law now, as I understand it, each Judge in that district is assigned a certain county for Juvenile Court work. Now, many times the Judge, who would be the Juvenile Court Judge of a certain county, is not even a resident of that county. The Juvenile Court is open at all times upon need. But it may well be, and is very frequently, that the Judge is over in some other county holding court when a problem arises back in

his juvenile county. And, so I think the tendency is in that particular situation that only the most serious types of cases ever get before the Court, that much responsibility is heaped on the probation staff, and the staff has really more judgment than they should have in determining whether cases should get in before the Judge or not. The emphasis in Iowa in upgrading our judicial system has been for more training for Judges, and this has primarily been in the trial area and most Judges go to the National Trial Academy for new Judges. But if you look down through the list of all the Judges, you'll find the vast majority of them do not belong to any national organizations dealing with Juvenile Courts. Most of them have not attended the National College of Juvenile Justice that's held in Reno, or the school that's held at the University of Minnesota. The emphasis just is not on Juvenile Courts. Now, the Court if it is to be effective, at least in my view, has to be somewhat of a catalyst in its individual community to marshall resources, come up with some imaginative plans and attempt to set up a Juvenile Court for that particular county.

One point I would like to digress on just a second. We have heard here about the official informal hearing. Now, as I understand the Code, and I didn't really realize this until I read it in Miss Stevenson's article, before you have an informal hearing you are supposed to have a petition on file. Well, we used that first paragraph of the Juvenile Code to a great extent in Story County to construe everthing very liberally, and quite frankly, this is what we did, and I just throw it out as an idea. Maybe you can codify this and maybe it will be worth something. I think the informal adjustment is a great tool for future prevention, but I think the informal adjustment should not be done by the probation staff, should not be done at the probation office. I think the informal adjustment should be done by the Judge. Also, if you are going to use the official informal hearing and you have to file a petition and then you have a record to contend with. That's one of the things that's always bothered me; that is, the permanency of the record that you have in Juvenile Court. And so the system that we used was this; we set up certain guidelines and types of cases upon which would normally file a petition. On those that we were not going to file a petition, we still had the parents and the child come down for a hearing in Court. This was all explained so they understood it was not a formal hearing, it was informal, no charges, no petition filed, no court record. Typical examples would be shoplifting, possession of beer, things of that type. The child would be there with his parents. I don't think the child really understood that this was formal or informal, but he knew who the Judge was. The Judge was sitting up there, he had a robe on. We used this type of technique, and I would venture a guess that if you went back and checked you would find that very few of these children came back a second time. It wasn't just a big scare procedure. It was an educational thing; and an attempt to explain to the child his role, his responsibilities, trying to explain to him what it would mean if he did have a petition filed against him as far as his record. I think that this type of procedure is very important. Now, I realize that in Polk County, in some of the areas where the Judge has to travel a bit also, maybe it's impossible. I don't know. But this is one way that we felt that we could do something a little different in an attempt to prevent future delinquency.

Now, some of the things we can do on a positive side to create more emphasis as far as the judicial area is concerned, would be for a State Council of Juvenile Judges to be formed; to require the Judges who have juvenile jurisdiction to go to the National College or something similar to that; to require that at least every year, or maybe every two years, that they continue their education by attending various conferences that are held throughout the country.

I think that emphasis in the judicial area perhaps might come from the Supreme Court, and in addition, it has to come, of course, from the community. The Judges that I know who handle Juvenile Court are very much aware of the rights of children, and they are very much aware that the child has to be protected, and they do everything that they can to do this. But, as Miss Stevenson indicated, there have to be some alternatives. When I first took the bench, the only alternatives that I saw in a delinquency case was either to send the kid home on probation, or to send him to Eldora or Mitchellville, as the case may be. In between there was nothing. Now, due to the fact that we have some people in Ames that have been also concerned, community people, we have developed other alternatives that we can use. It's an awesome thing to think about when a kid comes in, the kid that really needs help, and there isn't anything you can do. You have to let him progress along until the time there just isn't anything you can do, and then you ship him off. So, the communities are going to have to develop some resources. But I think that rather than going ahead and have a wholesale revision of the Code, I would like to see a wholesale revision on emphasis in Iowa as far as the Juvenile Court is concerned.

PANEL: AN OVERVIEW OF IOWA'S JUVENILE JUSTICE SYSTEM - A LAW PROFESSOR'S PERSPECTIVE
Kamilla Mazanec

One nice thing about coming at this part of the program is that much of what I was going to say has probably already been said so therefore I will cut it down a little bit. I would like to repeat, though, some of the things that Margaret has said. My primary concern with the present juvenile code is the fact that there is no real distinction in the procedure for handling delinquency cases on one hand and the neglected and dependent cases on the other hand. It seems to me this is a big gap in the statute which has to be handled in any kind of code revision that you talk about. In delinquency cases, for example, the only way that the juvenile court really gets jurisdiction is if it is proved that the child, in fact, committed a particular act. When you are talking about procedure for handling that kind of case, you are talking about something that is like adult criminal procedure, which includes all of the rights and protections that an adult defendant, would have. On the other hand, when you are talking about the neglected or dependent child, the main function of the court seems to be protection of that child. You don't have to have this split in personality in the juvenile court staff, where on the one hand they are investigating whether the child committed the act and on the other hand they are trying to act as his or her friend. The juvenile court staff in the neglected or dependent case is acting basically for the best interest of the child. (Parenthetically, I should say that in this kind of case it's probably the parent's rights that need the legal protection.)

It seems to me that we must consider separating these two functions of the court and setting our very different procedures in these two different areas. We need standards for distinguishing between these two areas and then we have to have different procedures, perhaps different staff, perhaps even different institutions.

The other thing I would like to do this morning as part of my presentation is talk very quickly about two legal trends that I see that may affect our juvenile justice system. The first of these is the practice in many states of lowering the age of majority. I think this is going to require complete rethinking of the functions and purposes of our juvenile justice system and require us to more specifically choose whether that juvenile justice system is going to be protective and rehabilitative, for treatment purposes, or on the other hand, for punitive purposes.

The lowered age of majority hasn't been in effect long enough in any state to get good statistics about what's happening. But my intuition says that the number of waivers to adult court from juvenile court will increase, simply because the state can't hold a juvenile once the age of majority is obtained if he was sentenced as a juvenile. So in order to increase the sentence of a child, the child may be waived over to regular criminal courts, where a longer imprisonment can be imposed after a trial as an adult. This has some protective features for the child because, of course, then he gets a whole array of criminal constitutional rights that the adult ordinarily gets.

This may also be a step back in time because the first efforts towards juvenile reform which occurred early in the 19th century were efforts to separate juveniles from adults in the penitentiary setting. That's where the whole juvenile justice reform system started; to keep children from being exposed to the hardened adult criminals and the degenerating practices in most of the adult penitentiaries. If you take the juvenile waived to adult court because of the seriousness of the crime and because he is close to the upper age limit in juvenile court, eventually he is going to end up in that adult penitentiary when he does reach the age of majority or maybe earlier. Once again you have a young person in a very venerable stage of his life being exposed to all the adverse effects of adult penitentiaries that we tried to take him away from back in 1824. I think this must be considered any time we talk about juvenile reform.

The other legal trend that I see right now that must be considered when you are talking about juvenile reform is a couple of right-to-treatment cases in the juvenile area. I think that this may have a tremendous effect on the treatment, the remedies, the rehabilitation that must be available to anyone who gets into this juvenile system. The right to treatment basically says that if a person has not committed a crime, the only justification for detaining him basically is for his own protection, treatment and rehabilitation. If he does not receive treatment or rehabilitation he must be freed. It started in the mental health area. There have been a couple of cases recently where this right to treatment has been extended to the juvenile level, under the right to treatment theory, we can't hold juveniles even if they are found guilty of committing an act which would be a crime as an adult, unless we provide effective rehabilitation or treatment for them. Martarella vs Kelly, which came out of New York, and (349 F.Supp. 575) Morales v. Turman, an unreported Texas case, and Nelson v. Heyne (355, F. Supp. 451) - all these cases said the juvenile does have the right to treatment.

What is the minimum right to treatment the child has when he is being institutionalized? Once you start setting out, minimum constitutional standards for treatment of the juvenile, it's going to require a tremendous reordering of the state finances. It's going to require a tremendous re-thinking about what kinds of rehabilitative facilities should be available for the juvenile.

I think that any discussion about juvenile code revision must consider both the effect of the lowering of the age of the majority and the effect of the right-to-treatment cases.

PANEL: AN OVERVIEW OF IOWA'S JUVENILE JUSTICE SYSTEM - A JUVENILE COURT ADMINISTRATOR'S PERSPECTIVE
Carl B. Parks

I speak to you from the experience of 28 years as the chief administrative officer of the largest juvenile court in our state.

The advance printed information issued to invitees to this comference stated that the objectives of the conference are to present, suggest and discuss improvements of Iowa's Juvenile Justice System and Juvenile Code. First I want to comment about Iowa's Juvenile Code. In 1959 our State Senate divided the Legisiative Research Bureau, an on-going bureau of the legislature, to make a thorough study of all laws in Iowa affecting children and to make report of and recommendations to the 1961 session. Obediently to this directive the Legislative Bureau set up a lay committee of 50 persons to assist it. This committee was divided into ten-subcommittees, each of which was assigned a particular area of the law such as child labor, child welfare, guardianship, adoption, etc.

I was on a sub-committee to study juvenile court laws and procedure, meaning Chapter 232 of the code, the chapter that gives the juvenile court jurisdiction over dependent, negelected and delinquent children and which prescribes the powers, duties and responsibilities of juvenile court. This sub-committee, under constant guidance of the Legislative Research Bureau, met four to six times a year during the next several years, studied our Juvenile Code and the juvenile codes of neighboring states and in 1965 submitted to the Legislature a new juvenile court act. This act was accepted and enacted by the legislature and the then existing Chapter 232 was repealed in its entirity. The depth and validity of the sub-committee's study and the strenth of our new juvenile court act was firmly demonstrated in May of 1967 when the U.S. Supreme Court, in a critical, far-ranging opinion, set basic standards for all juvenile courts to follow in order to protect the constitutional rights of all children alleged to be delinquent. This was the landmark case of Gault vs. Arizona and in its opinion the Supremen Court declared that all children alleged to be delinquent must be notified of the nature of all the accusations against them, must be advised of their right to remain silent at interrogation, of their right to legal counsel, of their right to confront the witnesses against them, etc. Every requirement of the Gault decision had been met in the new juvenile court act enacted in Iowa in 1965. Therefore Iowa did not experience the resentment, confusion and disruption of process that the Gault decision caused in many States.

I have given this review of the history of our new juvenile court act, now only eight years old, as a preliminary to stating that in my opinion I doubt that any extensive study of the our Juvenile Code is needed at this time. I think what is needed is more conscientious and courageous use of Chapter 232 as it now stands. In Polk County, where we have the greatest volume and perhaps the widest variety of cases, we have found that Chapter 232 has provided the juvenile court with the ways and means to take advantage of any private or public service,

program or resource that might be of benefit to a delinquent child. I believe there is more need to protect and preserve our present juvenile code than there is need to revise it and I will comment later or some present legislative threats to it.

Now I want to take a few minutes of your time to make some suggestions as to needs existing in our juvenile justice system in Iowa. There is a critical need for more leadership by our judges especially those having responsibility for the juvenile court. Juvenile Court is the ugly duckling of the courts, very few judges welcome the assignment, perhaps because their education and practice has not prepared them for making social work decisions within a legal framework. It is not an easy job to make critical and sometimes irrevocable decisions affecting the lives and futures of children and parents. Nevertheless the job must be done and if the juvenile justice system is to continue in Iowa on the concepts on which it was founded 75 years ago all judges must give it closer attention and protection than they have to date. The juvenile court jurisdiction and authority is being encroached upon from many angles. Several times a year I see newspaper stories of children under eighteen years of age being fined and jailed by courts which have no jurisdiction over them. Almost every session of our legislature sees bills introduced attempting to remove certain offenses from the jurisdiction of juvenile court. An example was a bill in the 1973 session which sought to provide that child violators of the fish and game laws would be handled in the ordinary criminal process. In the present session of our legislature are several bills which in my opinion are a threat to juvenile court and I will comment briefly on them later.

There is a need in Iowa for more contact and communication between the juvenile court judges and the probation officers. There is a juvenile judges committee of the District Court Judges Association and there is an organization of probation officers. These groups meet twice yearly, independently of each other. There is no continuing liaison between these groups. There is need for each to appoint a liaison person to maintain contact with and to attend the meetings of the other. Then they can work continuously and effectively toward improvements in the juvenile justice system. On those occasions when these groups have joined forces they have achieved some significant results. In 1967 they got legislation enacted setting standards for appointment of probation officers and now all such appointees must qualify under the standards of the National Council on Crime and Delinquency. In 1959 they got legislation enacted providing a flexible system of setting salaries of juvenile court employees. This combination of standards of appointment and fair salaries has resulted in great improvement in the quality of juvenile court personnel. Unfortunately this salary system was destroyed by hasty action of the legislature in the last few hours of its 1973 session. Very recently the probation officers' association has developed a plan to require that every newly appointed probation officer must attend a six-week special training course some time during the first year following his or her appointment and this plan has the firm support of the juvenile judges' committee and will be submitted to our State Supreme Court for approval and activation.

Despite these accomplishments there is need in Iowa for the judges and probation officers to wake up to the fact that our independent juvenile court is gradually disappearing and is becoming more and more a

service bureau of the Department of Social Services. This is not the result of any particular desire or plan of the department to absorb the juvenile courts. It is more directly the result of the failure of the juvenile courts to provide their communities with the full range of services provided by the juvenile court act. That act gives juvenile courts jurisdiction over children alleged to be delinquent, dependent or neglected and also cases where it is alleged that the best interests of children require that their parents' rights to them be terminated and severed. In all four types of cases it is the statutory duty of the probation officer to make a social investigation, to develop a plan in the best interests of the child, to attend the juvenile court hearing and thereafter to carry out the instruction and order of the court. The statute specifically provides that the judge can make no adjudication in a case until such social investigation has been make and has been submitted to him in written form. However the fact is that in the great majority of juvenile courts in Iowa the probation officers are handling only delinquency cases. The Department of Social Services gradually has assumed responsibility for the pre-hearing investigations and planning in the other three classes of cases. Thus, as the role and image of the probation officer diminishes, the inevitable question will become - why not disperse with the probation officer and let the Department of Social Services handle delinquency cases also? As time passes and as the services of the Department of Social Services are enlarged and improved it will be increasingly difficult to justify continuance of the probation officer to handle only delinquency cases and if the juvenile courts are to preserve their independence from bureaucratic domination, benign as that may be, they must provide to their communities the full range of services required of them by the juvenile court act. The vital question is - do we want a juvenile justice system where, as independent judges work with trusted officers responsible administratively only to them and have unlimited authority to make decisions in the best interests of the child whose case is before them, or do we want a system wherein the only responsibility of the judge is to preside at hearings on cases investigated by the Department of Social Services and to make dispositions only within alternatives prescribed by that department? Such a situation is closer to becoming reality than you may believe. There are two bills in the present legislature which propose big steps in that direction.

Another important need in Iowa is the need for our legislators to extend more consideration and recognition to the judges, officers and others in the juvenile justice system. In many instances investigations and studies are made, plans developed, legislation drafted and introduced which affect juvenile courts and its judges and officers and the judges and officers are the last to hear about them, if they hear about them at all. It would seem to be just good practice for legislators to seek the opinion of juvenile court judges and officers at the outset of their consideration of projects and legislation affecting the juvenile system. Not to do so is comparable to an army commander ordering an attack without first asking his front line troops for reports as to the strength and location of the enemy. Let me cite a few examples and I will close.

In the last hours of the 1973 legislative session the District Court Judges' salary bill was considered and passed. While it was being considered, an amendment was attached to it putting a ceiling on salaries of probation officers and juvenile court secretaries. This action destroyed the flexible salary system which I mentioned earlier and which had brought about an up-grading in the quality of persons coming into the juvenile justice system. This action also demonstrated clearly the lack of understanding by the legislature of the type of skilled personnel needed in the system because the salary ceiling they imposed on deputy probation officers is slightly below the amount being paid to persons who are performing unskilled common labor in central Iowa as members of the labor union. To my knowledge no juvenile court judge or probation officer was given an opportunity to express an opinion in the legisiation before it was submitted a vote. The least I can say about such legislative callousness is that it is unfair.

There is a bill in the present legislature to make the salaries of juvenile court probation officers subject to the approval of the board of supervisors. This is a repeat of a bill introduced in the 1971 session and which did result in the juvenile court secretarial salaries being made subject to approval of the board of supervisors. Fortunately the probation officers and juvenile court judges were able by their combined efforts to extricate the probation officers from that bill. How many of your judges and probation officers were consulted before this dangerous legislation was introduced, either in 1971 or 1974?

There is a bill in the present legislature to prohibit private adoptions and to provide that, except in adoption by step-parents, no child can be adopted in District Court until all parental rights to it have been terminated by termination poceedings in Juvenile Court. This bill is an unwilling, hard to read combination of the present Code chapters on juvenile courts and on adoptions. If enacted into law it will be an added burden for the juvenile courts and will require additional personnel in the large county juvenile courts that are still providing the full services required by the juvenile court act. Have any of you judges and probation officers been contacted by the legislators about this bill?

There is a bill in this session which limits greatly the alternatives of the judge when in his judgement a child needs placement outside his parental home. If he should decide the best interests of a child required direct placement in a private foster home, private institution or with a licensed child placing agency the entire cost of the child's care would have to be paid from the county poor fund. None of the $5,500,000 appropriated to the Department of Social Services for foster care during the present biennium would be available for the care and support of children in such placements. That money would be available only for the care and support of children placed in the legal custody of the Department of Social Services or for the support of children whose parents voluntarily had arranged with the Department of Social Services to place them in foster care. Thus the judge's decision for proper placement of a child

who cannot return to its own home is coerced in every case by the facts of funding and there will be few instances in which the judge will ignore the funds available from the Department of Social Services and will place a child in the custody of a child-placing agency at the total expense of the poor fund. How many of you judges and probation officers have been contacted about this bill which very greatly affects the juvenile justice system?

There are other needs in our juvenile justice system but these I have mentioned seem to me to be of greatest importance at the moment. In concluding I want to say to legislators, the Department of Social Services, the Governor's Office for Programming and Planning and others interested in improving the juvenile justice system that the judges and officers of the juvenile courts, I feel certain, will welcome your confidence, your cooperation and your trust in matters affecting the best interests of the children of this State. I am certain we can be of help to you.

PANEL AND AUDIENCE INTERACTION

Audience Respondent

I thought I would take advantage of the large number of lawyers sitting up here. I don't have any specific person I would like to address the question to. There's three. I'll just list them all and sit down and you can pick one or all, whatever. The first one is: Do you see any advantage or necessity for codifying the evidentiary rules that are applicable in juvenile proceedings? The evidentiary rules on occasion being different in the juvenile proceedings than they are in various adult or civil kinds of proceedings. The second one is what do you see as the present juvenile theory being used by the courts, is parens patriae still a valid theory in Iowa? Myself, I've seen a lot of apparent confusion here on the part of courts and people working in the field. And third, if you can answer it, a question that has sort of troubled me. Exactly what kind of record stays with the juvenile after he has been adjudicated either a dependent or a delinquent since there may be a different answer for each one; I hear a lot of people saying a lot of different things about exactly what kind of record exists for the juvenile and I would be interested in hearing some sort of response.

John McKinney

Okay, starting with the last question. When I was referring to a record when a petition is filed, especially if the person is adjudicated a delinquent, that is a permanent record and to my knowledge there is no way that it can ever be expunged. We don't have an expungment statute in the State and so this is a very critical thing because five years after he has been adjudicated, then the problem hits as to whether he can get into the service, whether he can get a security clearance, things of this nature. I might add that I think most of the judges are now, at least I hope they are, trying to stay away from "adjudicating people" especially first offenders even second offenders. The procedure that I think usually happens is somewhat akin to a deferred sentence procedure. A person comes before the court on the petition and normally has pled guilty or found guilty of the specific act and then rather than the court adjudicating that you are delinquent, the court continues the matter for six months or nine months. The court keeps the child under the supervision and refers him to probation staff. If the kid makes the probation alright, then a motion is filed to dismiss the petition. It makes the record look an awful lot better and I think this is the way most courts handle it now.

Carl Parks

I would like to speak on this man's second question. He asked what's the present theory in the juvenile court as to the overall philosophy

of the courts. Is the so-called parens patriae concept still valid? That's the theory where the state is exercising its parental function toward the child. Now when the juvenile courts blossomed at the turn of this century, they were founded on the parens patriae theory. In other words, the juvenile court and particularly the juvenile court judge would be friendly and the children would be counselled as to their wrongdoing and would be persuaded to adopt a better way of life. The theory was good and is good. The trouble with that theory was that the juvenile courts across the country were not given the implementation to make it work. In too many cities and counties all the juvenile court consisted of was the law and the judge and many wrong things happened to juveniles under that situation and I refer to this lack of implementation as the built-in timebomb which almost destroyed the juvenile court. That timebomb went ticking along over the years and finally became real prominent after World War II and culminated with the big explosion which we call Gault vs Arizona. Now when we get to Gault vs Arizona, the Supreme Court said, "the juvenile court is a noble concept and it must and shall be preserved." Then the court went on to say that in as much as it has been applied so unevenly across the country, we, all the juvenile courts, must back up in their social work endeavors to the point where they can afford minimum constitutional protections to all children. So this leaves the juvenile courts in the position today on the one hand of trying to apply the parens patriae theory being in effect doing social work within a legal framework; on the other side having the duty to protect children under all the restrictions of the Miranda and Escabedo decisions. So that's where we are now. The first question, if I can repeat it, I don't want to comment on it though. Is there any advantage of codifying evidentiary rules?

Kamilla Mazanec

Okay. I would like to comment on that one. It seems to me that evidentiary rules are a vital part of the process by which an adjudication is made whether it's for delinquency or whether it's for neglect and dependency. And it seems to me unless there is some sort of certainty and the kind of certainty that you get ordinarily where the rules are laid down which, you know, means some sort of confrontation. Then what you are really talking about is not rule of law but you are talking about rule of men. It simply depends on, you know, who is on the bench at that time and whatever the lawyers are arguing to that person. I'm, of course, a believer in the rule of law, and therefore, I am in favor of codification of all the procedures for the juvenile justice system.

Audience Respondent

I'm a police officer - former juvenile officer. A few things I would like to get off my chest a little bit from listening today. I know

money is a bad situation to talk about but why can't each county or counties two or three at a time, in conjunction have a family-type court? It seems like smaller communities have no choice except to run them into the juvenile court system. Why can't the small communities have the same advantage also? Some other things on juveniles in the small communities; they have no choice but to run them to the juvenile court as the code says, either that or do nothing except warn them. How do we make the parents more responsible? Does the parent have the right to a decision on whether the young person needs an attorney or not? Does the parent have the right to make this decision or does the child? If someone would like to answer that, I'll sit down. About detention in an adult facility. I think the guidelines are in the code. They are not placed in the detention facility by anybody other than a court, other than protective custody for 12 hours, those over the age of 14. In an adult facility separate, I'm talking about. The court makes the decision on whether they are held any longer or not in their interests or in the interest of society. That's a few comments plus I would like to have some of the questions about responsibility answered, about why we can't have a family court. We talked about the age of majority, just one more comment if I may. We talked about the age of majority being lowered in most states and our state has come down to 18. We have eliminated a little area of minors, so to speak, between 18 and 21. We jump right now from juvenile to full adulthood and I think maybe we overlooked this when the law was changed. We talked about not throwing them into jail, but an adjudication of delinquency in court is by far more of a stigma on a young person than paying a $25 fine in court, seems to me. I have talked several times in reference to lowering the age of juveniles. I know a lot of people get up tight about this but lowering the age to 16 for the prosecution of all simple misdemeanors. This would take them into the juvenile court system and maybe get an adjudication which, as the judge says, follows them the rest of their life under the present system. But he goes to the adult court for the possession of beer, some towns have curfew violations, stuff of this nature. These are simple misdemeanors. Why not fine them $10 or $15 and give him two weekends in jail? This is not going to be near as much of a stigma on his future as an adjudication of delinquency. You might think that over when you are talking about revising the code. I guess that's about all I have. We have in our particular community, at least, resources which most communities don't have unless they are of our size or larger. We have a juvenile officer and a juvenile bureau. Small communities don't. We have probably 13 or 14 services, some funded county, some of them funded state, some of them federal, that are available to the young people in our community from vocational to psychiatric and all in between in our particular community. I think the juvenile code as it reads basically, if used properly, I don't think you need

to change Chapter 232. There may be some other portions of the juvenile code such as the interstate compact and judges and so forth but on Chapter 232, I don't think there has to be much change made on it if it is enforced. It states in the interest of the youngster involved and basically that's what we're trying to do, in the interest of.

John McKinney

I just have one comment with reference to the question as to why we can't have courts in each town to deal with the young people. This is somewhat similar to the mayor's courts and JP court situation. One thing that I would point out with respect to that type of a system would be the fact that the act that the juvenile has committed may be regarded by the law as perhaps a simple misdemeanor but in many cases it is a sympton of much more serious underlying problems. To make a law or pass a law that that type of case would be automatically sent to a court of that nature where there would be little or no expertise, does an injustice to the children and is the type of situation we are trying to get away from. The reason for referring all kids to the juvenile court is the hope that the underlying things can be reached. Now where we fall down is that we refer the kinds into the juvenile court but then we don't have the personnel or the expertise to do the job that we say we are going to do and so that's where I feel the emphasis should be placed. Diversion of kids from court can mean a lot of things but I certainly would hope it is not diverting them from the people who might be able to give them some help.

Margaret Stevenson

The question was asked concerning how can we make parents live up to their responsibility. I wish the answer were really simple, we could then issue a court order or put them in jail for contempt if they didn't do what the court thought they ought to do. But we all know perfectly well that the problem of helping our young people to grow up into reasonable secure adults with a feeling they have got some sort of place in life isn't really all that simple. Part of the problem we face is the fact that society gets all up tight with a so-called deviant youngster or one that appears to be headed for trouble and engaging in some misdemeanor type activity, and insists that we do something, you know, wave a magic flag and produce an immediate cure. One of the things that everybody that works in the system knows is that it's extremely doubtful that we really do anything helpful at all. There are studies that would seem to indicate that the most help we can give them is literally do nothing. I am sure that every court judge here has had the experience of simply saying to the parents, you take that youngster home, and you deal with the

problem. If he falls down, what do you do, you pick him up and you dust him off and you spank him or do whatever you have to do and then you deal with it all over again. The problem is society isn't really too happy with that and yet there is just no way that you are going to solve the problem of a youngster that leads to proper behavior overnight. Some of us were talking in the hallway before we came into this session with some young people who are in college and, quite frankly, they conceded, as I would, that they sometime or other in their growing up life would have been a subject for juvenile court action. Why I was not is because in the little town where I grew up we were more tolerant of misdeeds and gave the parents a chance to try to deal with the problem. But there isn't any magic answer to make the parents deal with the problem. This is a simplistic approach that isn't really going to solve anything. While I may be somwhat defensive on the point, I would still like to put in another plug for the fact that Chapter 232 is a good chapter. It has a lot of good things in it if we make it work right. The purpose of suggesting that we beef it up and provide the procedural safeguards and give the court some criteria is that judges can measure what is in the best interests of society and what this phrase "for the welfare and the best interests of the child" means. It's really for society to spell out for the court the rule we expect him to follow and the clearer we are the better we'll carry out the intent and purposes of Chapter 232.

Carl Parks

The gentlemen asked the question, does the child have a right to choose an attorney of his own choice or does he have to accept the attorney selected by his parents? In Polk County we follow the practice that if the child expresses an interest for an attorney different from the one appointed by his parents or different from the one selected by his parents to represent them, then we will have one appointed for him. Even if the parents hire an attorney for their child, and the court senses a diversity of interests between the parents and the child, the court will appoint a guardian ad litem to represent the child. Now the comment about lowering the age of juvenile jurisdiction down to 16 years and leaving a two year gap there where people 16 and 17 could be processed in the inferior criminal courts for misdemeanors; I don't think that would be good because the juvenile court's adjudication of guilt in a misdemeanor to me is still a criminal record so to speak. And I would rather have the juvenile court record.

Margaret Stevenson

When we get these long lists of questions sometimes we forget our comments. I did want to make this comment. I think this conference

should give some thought to, or go home and give some thought to, the idea of a family court. It is worthy of some consideration because it's impossible to deal with the youngster without his family and as you know, most of your case load is going to be children from multi-problem families. One of the things that happens in the probation field is that you constantly have the feeling that whatever service delivery you've got it's terribly fragmented. You'll have one social agency dealing with the family and you are trying to deal with the kid and another social agency dealing with the kid. A family court would serve as a medium to bring this together and provide for some sort of continuity to the family. I think we also ought to take a look at a youthful offender act. The federal government, if I understand it at all, permits the cleaning of a record. It covers youths between the ages of roughly 18 and 25. If national statistics on crime mean anything for males at any rate, the greatest age for committing crime will have ended approximately the time he reaches the age of 25 and you will see a marked drop off in the age of people committing reported crimes. Well, you know, all those people who were committing crimes up to the age of 25 didn't go away. I'm sure there are people here far more familiar with the statistics in the field, but it would indicate to me that by the time a young man has reached the age of 25 much of the things that led him to commit crimes have gone and he has become stabilized and is turning out to be a pretty decent citizen. I think we ought to look at some concept like that because maybe you're mature about a lot of things at 18 but you've still got a lot of settling down and growing up to do. A lot of problems we have to be worked out and we, of course, are very definitely leaving those people venerable to the adult criminal justice system which is not really all that good.

Audience Respondent

I am an employee of the Department of Social Services whatever that means. In that capacity, I run the Group Home and I am a parole officer for juveniles. My question is, are there any juvenile justice systems within the states where a youngster deals with the same worker after he gets out of an institution as before he was committed to an institution? And, if perhaps there are, do they also have different kinds of workers to work with those kids who are dependent and neglected so that perhaps a kid who goes to say Toledo does not have somebody to go to that he sees as a "parole officer" working with him after he gets out?

Margaret Stevenson

Well, if I understand the system which is under the control of the Department of Social Services and the framework that you have given

me, the youngster does not work or see the same people when he is returned from a state institution as he did before he went. Now I'm well aware of the fact that there have been some programs and some efforts at the various state institutions dealing with our youth to involve the family with the institutional worker during the time the youngster is at the institution. To this extent there is some drawing together. Unfortunately back in the community a family is probably dealing with another set of workers or another set of problems. I don't know of any situation where there is that continuity and that's one of the things that does disturb me.

Carl Parks

I have heard of instances where the child coming back from an institution does by permission of the local area office of the Department of Social Services work with the same officer he worked with before he was committed to the institution. That's a request that some courts are making in certain cases in cooperation with the State Department of Social Services. It is not a system that is authorized by statute, but something that a local area office of the State and the juvenile court has worked out.

John McKinney

Well, just a brief comment. One of the weaknesses in probation is that a good relationship is formed with a kid and the problem comes if he is going to be committed. That relationship pretty well terminates and he is dumped, so to speak, or the kids think this way, "Well, they're getting rid of me. They'll send me over to Toledo" (not so much to Eldora or Mitchellville) and then the kid is supposed to adjust back into the community with an entirely different person. We have group homes, as you know, for kids coming out of institutions. My point has always been, why don't we have group homes or more of them for kids that we would like to give some help to before they get to the institution. This again, I should think, should be coordinated some way when we talk about costs so you can have group homes prior to people going to institutions and they should be somewhat regional so that each county doesn't have to have one if they don't need one. But this idea of being shifted from one probation officer or parole officer to another is a big problem and a big weakness in the system.

Audience Respondent

I guess I've got a separate concern here and that is the fact that once a family seems to get into the system, you end up with an awful lot of people who are concerned and who have some sort of authority in the area. The mother, for example, if she is on ADC or something

like this, may have one social worker. Another child in the family who has problems in school may have a separate school counselor. You may have a child who is in an institution having a probation officer and then a parole officer. You've got an awful lot of people involved in a family problem and it seems to me that that many people who are getting involved sometimes has to be destructive to the family structure. I'd like to figure out a way to sort of centralize all of their problems under one office and I don't know whether, in the long run that's better for them or not because you may lose some expertise that you have by separating the functions, but I do think that sometimes it's destructive to have that many different people who are involved with the family sometimes.

Audience Respondent

I'm the new Youth Services Coordinator for the State Department of Social Services and you've been speaking about the one point that I'm very concerned about and that is to somehow develop a flow of services that guarantees some stability to the kids. And we do have the structure that does exist. We have the field staff for the various areas around the state and I'd like to see them working more closely with the court in that they may be involved with the child as early in that procedure as is possible. If the court decides that the kid ought to go to Eldora, Mitchellville, or wherever, it should be the field worker's responsibility to follow him into that institution and be involved in the experience he has there and act as a bridge when he returns to the community. So you have one worker and one kid and you don't have X number of people involved. That's where I'm headed.

Carl Parks

The other side of that is that the good juvenile court worker exhausts all his abilities besides his resources trying to keep the child from going into an institution and in a sense has failed when it is necessary to commit the child. Therefore, it seems somewhat illogical to say to this child after he leaves the institution or while he is in the instituion that he maintain contact with this fellow who hasn't been able to help you anyway, he probably won't have any better ideas than he had in the first place. Another aspect of that is that you may happen to have a punitive minded probation officer and I hope there are very few of them. When the child comes back to the local community to this officer, he could say, "Now, see what happened to you because you didn't do like I told you to in the first place, and if you misbehave, you are going back there again." So there are two sides to that situation.

Audience Respondent

I'm a student from Iowa State University. Why hasn't the juvenile code been simplified so that the people for whom it is intended can understand the code? Also so the people who enforce the laws can understand them?

Margaret Stevenson

In defense of what I've been talking to you about today, that's what I'm arguing for. What are the rules of the ball game and how is the ball game going to be played? I'm saying they should be spelled out very clearly and very precisely. Actually I don't think the code is really all that difficult to understand. What's difficult to understand is how it works in practice and what I'm saying is that's what we've got to spell out and establish that framework.

3. THE NEED FOR JUVENILE CODE REVISION

Mortimer Stamm

This morning you were presented with an overview of Iowa's juvenile justice system. It has been part of your state law since 1904, and was intended, by the idealists who drafted it at the turn of the century, to provide a unique forum of truly individualized justice - let us say individualized care and solicitude - for children who, for one reason or another, and whether through their own fault or that of another, are in need of special attention because their natural domestic and societal lifelines have failed to any longer ensure their youthful well being. The original draftsmen and social philosophers clearly felt that the power of the state should be able to be brought to bear on such instances and to provide a child with the care, love, attention, and human needs that the natural associations of the child had failed to provide.

They based this new legal creature upon an old and questionably relevant concept known as the doctrine of "parens patriae," which they felt was a sufficient historical foundation upon which to erect their new system of dealing with children's problems. There is a lot of academic discourse about the legal adequacy of this doctrine, but it is not important that we address ourselves to that discussion. The theory is firmly implanted in American jurisprudence as the cornerstone of the juvenile court movement and it will not be easily removed.

What is important is that a legal institution has been built upon that cornerstone, and it, in turn, has built instituions to serve it which will be the subject of Dr. Miller's presentation tomorrow. We are concerned this afternoon with the legal institution because all others are predicated upon it and it has been found wanting. Many call for its renovation; others for its destruction. This conference is indicative of a feeling in Iowa that it is time to renew and to build rather than to destroy - and while you won't start from scratch in 1974, as you did almost three-quarters of a century ago, 70 years of experience has shown that the blueprints and architectural concepts of the juvenile justice movement need to be re-evaluated in order to overcome the weaknesses of the past, to accommodate the short comings of the present, and to prepare as best you can for the uncertainties of the future. What has stood the test of time should remain; what has not should unhesitatingly be cast aside.

I have mentioned concepts and blueprints and have spoken allegorically of legal institutions and architecture. It is vital that you engage in this analysis at the outset of reform so that premises can be clearly established as touchstones to which reference can continually be made as you strive for consistency in the development of the outlines and internal mechanics necessary for achieving the goals of the juvenile justice movement.

The disparity between the rhetoric of rehabilitation and the reality of recidivism cannot be overlooked by an serious student of reform. How can anyone pretend that reforming the juvenile justice system will do away with the problems of abused, neglected, needy, dependent, and delinquent children? The real answer to those problems lies in a re-structuring of local and national priorities so that competition, profit and self-seeking are not allowed to destroy the basic human values upon which decent life in this society must depend. Such a reappraisal will not soon take place or produce results, however, so you must think of juvenile justice reform in terms of building a system which does not aggravate the condition of children who have become unwilling victims of the often de-personalized ethic which has so rent the fabric of our national life. Many acts of delinquency do not so much point up problems in children as they do problems in society. We know the effects; let's get after the real causes.

If you wonder at the need for such a serious re-evaluation of our children's laws, let me call your attention

to the hundreds of thousands of children who are jailed each year;

to the children who take their lives while in jail or who are otherwise physically or mentally abused;

to the brutality which pervades many of our juvenile institutions and the mentality which openly opposes the abolition of blood-hounds, the hole, and the strap as part of the institutional program;

to overworked, understaffed, and, many times, indifferent courts and court personnel;

to agencies more concerned with bureaucratic stability than with real service to children and to courts;

to children who have, in many instances, become dollar signs and arrest and grant statistics for local officials seeking federal law enforcement monies;

to lawyers and bar associations that take little or no interest in the problems of the juvenile court;

to judges and prosecutors who make political law and order rhetoric out of poor white and non-white young lives, and a travesty out of equal protection by sending well-to-do offenders home in response to political pressure and returned or intended favors;

to the thousands of children who are unnecessarily prosecuted as adult criminals when they might have been helped by the juvenile court;

to the mixing of young and old, serious and status offenders in children's institutions;

to laws which make hurting an animal sometimes more serious than hurting a child;

to monies spent on animal shelters while children languish in jails unfit for human life;

to indifferent communities and political figures at every level and in every branch of government;

to the widespread apathy which continues to menace the vitality and integrity of the juvenile court movement; and

to all the Bobby Fergusons whose usefulness and social stability and security were originally destroyed by the very system which was supposed to save and rehabilitate them.

No one can say that the juvenile court system has not done a lot of good, for indeed it has. Nor can anyone say that it does not have a very long way to go before it achieves the goals for which it was originally established. That is as true in Iowa as it is across the country. If it were not so, we would not be here today.

From its statutory inception in Illinois, in 1899, the juvenile court laws of this country have been predicated on the idea that the court or the state can be trusted to do its duty with respect to the care and solicitude toward children I mentioned earlier. They have also been predicated on the idea that the state can be trusted to fulfill this obligation without any insistence upon a granting of constitutional rights to the children involved. Some have discerned a mutual compact in this arrangement whereby the child gave up constitutional protections in exchange for the special

benefits extended by the juvenile court. Whatever the arrangement, the state and the courts have not kept up their end of the bargain. It was precisely because of this failure of adults to live up to the bargain they had made on behalf of children that the United States Supreme Court re-defined and restored these constitutional rights to children during the late 1960's and early 1970's. Those decisions are the basis of what has been called the modern juvenile court revolution, and this conference is only one aspect of that movement.

Now, how did this breakdown come about? Certainly, a large part of it must be laid at the feet of apathy and half-hearted commitment to the ideals of the juvenile court movement. At the same time, an analysis of the traditional juvenile code, and the operational problems it generated, will show that the law created problems for itself and that much more can be expected from a code structured along somewhat different lines than those set down at the turn of the century. We have learned a lot about parens patriae in seventy-five years, and it is in its re-examination that we discover some of the imperatives which must be dealt with if there is to be an attempt at serious reform.

If we subject an old juvenile code to the analysis of political science, we find that its procedural format is contrary to almost every other legal mechanism we have used to resolve our social problems. Our continued abuse of the rights of the mentally ill is based on the same sort of big brother benevolence which has yet to be entirely domesticated by the constitution. If we look at the juvenile court, however, we find that not only did it not partake of the normal processes of conflict resolution, but that it was singularly devoid of the checks and balances which are the much-heralded hallmarks of democratic society - and the juvenile court was to be the epitome of the democratic ideal in its respect for the needs of the individual child.

In spite of these obvious conceptual and mechanical shortcomings, the new juvenile courts were upheld in every state by well-meaning high courts that dutifully and conscientiously reiterated the principles of the founding fathers of the juvenile court movement. In Iowa this was done in 1929 in the case of Wissenberg v. Bradley, 229 NW 205 (1929). The courts wanted to give this new social experiment a chance, and should, looking back, be commended for their initial indulgence.

But indulgence and a recourse to lofty principles became an obstacle to progress. As far as the courts were concerned, the absence of

constitutional rights, juries, lawyers, appeals, and, in fact, any kind of serious substantive review whatsoever, came to be looked upon as essential to the proper operation of the court. Many still believe that today, in spite of the harsh lessons of the last seventy-five years.

This refusal to seriously question the operation of the juvenile justice system lasted all the way up until Kent v. United States, in 1966, when the U.S. Supreme Court first called national attention to the fact that the juvenile court movement had become, in large part, a form without substance. The juvenile court received its first infusion of due process through this case, and it was followed by similar observations and due process considerations in the cases of Gault in 1967, Winship in 1970, and McKeiver in 1971.

The only problem with these pronouncements is that while the Supreme Court has set forth specific details on procedural due process, it has refrained from an equally prescriptive comment on the parens patriae doctrine which is the cornerstone of the right to treatment. Lower courts, agencies, and treatment personnel in all phases of juvenile court work have, until very recent times, shown a puzzling reluctance to take the obvious initiatives necessary to maintain equilibrium within the juvenile justice system by balancing procedural due process with an equally comprehensive right to treatment. Rather than make a concerted effort to bring consistency and balance to the post-Gault juvenile courts, a great many courts, legislators, and legal commentators plunged into the work of honing the procedural aspects of the court to a very fine constitutional edge. There has been a near obsession with procedure to the exclusion of almost any concern for improving the care, treatment, and rehabilitation which are the primary reasons for the existence of the juvenile court.

These well-meaning people defend themselves by saying that recent Supreme Court cases have so constitutionalized the juvenile court that it is impossible to implement the philosophy upon which it was originally based. They say that a wholesale adversary system has been imported into the traditionally informal forum of the juvenile court. They say "parens patriae" has been thrown out by the court with the result being little more than a minor criminal court for children. Many court decisions and juvenile code revisions reflect this misinformed state of mind.

Those who have pursued this course are wrong and will find little basis in the great cases of Kent, Gault, Winship, and McKeiver to support them. Rather, the court has said time and time again that

procedural due process and the doctrine of parens patriae are not mutually exclusive and that the states should continue to experiment with both of these elements of juvenile justice. If we do not respect this reality and latitude, the juvenile court will, in fact, be destroyed.

I read the recent Supreme Court cases broadly as standing for the principle that when the juvenile court seeks to officially intervene in a child's life, it will only do so through the medium of due process. When it seeks to commit the child to the state for treatment, to probate him, to order restitution, or, in any way, to deprive him of life, liberty, property, or happiness, then it shall respect the Constitution.

At the same time, I read them as saying that the juvenile courts may still sit down informally with a child and try to resolve problems, no matter how serious. These resolutions must, however, be limited to consensual agreements behind which there is no enforceable court order - because enforceability requires due process. In this way, both the modern requirements of due process and the traditional informality of the old juvenile court can exist side by side in the same code. This co-existence should be made crystal clear, however, lest the vast potential of the informal adjustment be drowned in the details of formalized procedures. I would suggest that very little can be left to the imagination in the delicate art of juvenile court legislation. The code must be, perhaps, the most understandable set of laws on the books. There are too many inter-acting parties that must contribute many different viewpoints within procedures which should tend at all times to resolve the child's problem as quickly and fairly as possible. This cooperative effort can no longer be left to the haphazard development of roles which has taken place over the last seventy-five years. In 1974, you should draft juvenile legislation to precisely define procedures, roles, and expectations so that everyone will know how their professional expertise is to fit into developing a disposition for each child's case. The past has taught us that this cannot be left to chance. It is a matter, therefore, that deserves your closest attention.

The gravest problems of juvenile justice have clearly been, and continue to be, those of administration. I would count them greater than the apathy to which I have heretofore alluded. These problems are tied directly to the vague and superficial codes through which the administration of juvenile justice has been attempted over the years. I would like, therefore, to address myself to problems and considerations that have been given very little attention by modern

reformers of juvenile codes. All too often it has been felt that the simple incorporation of constitutional due process was the only thing needed to give the system a renewed vitality. That is simply not the answer, and I hope I can give you a convincing demonstration in support of that statement.

The essence of the administrative problem is the wholesale lack of respect for and definition of the roles of the various principals who act in the arena of juvenile justice. The ambiguous position of probation workers, alluded to this morning, is a good example of this. Who will not attest to the gaps and overlaps between the functions of those principals: the judge, the prosecutor, the defense attorney, the social worker, the police officer, the probation officer, and the state or local treatment and rehabilitation agency? Who has not seen or heard of judges wanting to call <u>all</u> the shots in the juvenile court - or <u>none</u> at all?

Or a treatment staff standing passively by while the judge harasses a child in court and refuses to follow the recommendations made on behalf of the child?

Or a prosecutor who wants only to cut another notch on his prosecutorial gun?

Or an appointed defense lawyer who doesn't know if he is coming or going with the child's case?

Or police who view the arrest of children as more dollars from a federal grant?

Or agencies that do what is politically and administratively convenient rather than what is in the best interest of the child?

Or agencies that institutionalize children <u>not</u> because they need it, <u>but</u> because judges or communities want it done and because it is <u>easier</u> than good, hard, honest social work in the community?

Or agencies that make glowing promises to a judge who sees the same child the next week on a more serious charge?

These variables can be shifted about indefinitely, but they all point to one thing: a confusion about the proper professional roles to be played by the various individuals who are supposed to make the system work. This confusion has come about because these roles have never been clearly defined in juvenile court statutes. Like Topsy, they "just growed." I submit to you, however, that the growth has been stunted by lack of nourishment from codes which have long

said little or nothing about the expectations these roles were to fulfill. Therefore, it is especially important that they now be clearly defined because the unique nature of the juvenile court has no parallel from which to draw role models against which to measure performance as a participant in the juvenile justice continuum. These roles could be most effectively defined by paying attention to the details of procedure and seeing to it that the various role expectations at every step of the process are clearly set forth in the law.

Juvenile justice has been called the essence of democracy because of its concern for the welfare of the individual. Crucial to an honest democracy is a system of checks and balances. I said this earlier and I think that the interaction of professionals set forth above presents a good model for an effective system of checks and balances which will insure that the child receives just the sort of unique attention his case deserves. It has been the lack of checks and balances which has characterized and made fairly unworkable the juvenile court system which has drawn so much criticism in recent years. A great deal can be done to correct this problem by giving close attention to the details of drafting clear-cut professional responsibilities into a revised Iowa code. Just this simple act of clarification will go a long way toward improving the administration of juvenile justice.

Another dilemma, to which all too little attention has been paid, is the professional demand placed upon those who work within the juvenile justice system. Within a context of rehabilitation, every professional participant must view the child as an individual human being rather than a "suspect", "defendant", "patient", or what have you. Since rehabilitation should be an integral part of every step of the juvenile process, each professional should also be an <u>advocate</u> for the best interests of the child. And, I'm talking about police, prosecutors, judges - not just social workers or defense lawyers. Unfortunately, this is seldom the case. Rather than advocating on behalf of a child, we usually see individuals advocating their own professional interests with no concern for their net divisive effect on the welfare of the child. (I read with interest the article in this morning's edition of the Register detailing the NCCD report on the prosecutor's office here in Polk County. It says there are administrative problems which are hurting the conviction rate. The defense bar's reaction to this state of affairs was found to be one which sought no alleviation of the problem because it makes dismissals and acquittals easy to obtain. The conflict here is that lawyers have a duty to promote their clients interests <u>and</u> to work for the improvement of the administration of justice. When they opt out on the latter, in favor of the former ethical responsibility, the administration of justice and the community are hurt by their

self-seeking.) When, with respect to the same child, the police look no further than the arrest, the prosecutor no further than conviction, the defense no further than acquittal or dismissal, and an agency no further than the federal dollars generated by youthful clients, what hope can there be for the child? The problem is not solved by the arrest or the prosecution, or even by probation or commitment to a state agency. It should really be solved by each of these contributing to the solution of the problem instead of just passing the rehabilitative buck on to the next person in the administrative line.

Advocacy is a suspect word and concept. Where children are concerned, it simply means that everyone, at every step of the way, should be pushing for the earliest and most effective resolution of the child's problem. It means police officers settling matters on the street with some common-sense counselling, instead of an arrest. It means prosecutors opting for informally adjusted cases instead of traumatic and unnecessary prosecutions. It means a judge who will see to it that all the other parties do their job before he agrees to sit in judgment on a child. It means a judge who will truly seek the best interests of the child in his disposition and respect the contributions others make toward that disposition. It means social workers and probation officers who will speak up on behalf of the child and present realistic and constructive alternatives based on solid information which will aid the child's rehabilitation. It means treatment personnel who are conscientious about their duties to the child and who are not content to simply be the passive instruments of overworked and uncreative courts. It means agencies that seek to work with a child in an atmosphere that is as normally home-like as possible, instead of simply using their young bodies to fill beds in an institution which would be closed if it were not for considerations of job security or patronage for staff and a reluctance to diminish the size of an administrative empire. Advocacy, in short, means everyone doing their part to make sure that the child gets the care, treatment, and rehabilitation intended by the juvenile code. I would ask you, how harmonious is Iowa practice with the policy statement found in the opening sections of Chapter 232? This statement is the starting point for the work of defining roles in terms of juvenile court philosophy and legislative intent.

The professional dilemma is further compounded by the various codes of ethics which guide the several professional disciplines that are essential to an effectively administered system of juvenile justice. To what extent do they conflict with the philosophy of a court which is dedicated to the best interest of the child? To what extent can they be made to bend to accommodate this paramount philosophy? I think that you will find that they can all fit the work of the court if they are interpreted within the spirit of the

juvenile code. But, how many times have these professional codes come into conflict with the best interest of the child or the administration of justice? (The Polk County example I cited earlier is a good one because all lawyers have a duty to clients and to the improvement of the administration of justice.) This issue should be resolved with an explicit statutory declaration about the roles of those working in juvenile justice. It should be made clear that the welfare of the child comes first. If there are any energies left after that - and there really shouldn't be - then, perhaps, they can be spent on wooing voters, the pursuit of federal dollars, and empire-building.

The "best interest" aspect of the ethical considerations immediately raises the issue of public versus individual good. How shall this be resolved in a court based on a philosophy of individualized justice? I would submit that, in a very philosophical way, to promote the good of any individual is to promote the public good. What aggravates this analysis is the fact that so often we wait until it is too late to truly help and are forced to baldly protect the interests of society in a manner in some way detrimental to the individual. Perhaps, if we collectively and individually started looking out for the good of each person before it gets to be too late, this disparity between public and private good would be diminished in many cases. This question has to be one of the most difficult for those who work conscientiously within the rehabilitative philosophy of the court. The code should be drafted to help resolve this conflict.

A final thorn in the side of the diligent professional is the spectre of political or community pressure being brought to bear on the exercise of discretion within the juvenile justice spectrum. I would submit that this issue can most honestly be handled by a reliance on the ethical imperatives of the various disciplines and the philosophy of the juvenile code itself. The ethical professional can also be a diplomatic and persuasive advocate in the face of considerable pressure to subvert his principles to the whims of public passion. It is not a matter wherein every point is won, but it makes the rehabilitative discussion much more manageable until the truth of young potential under the guiding hand of an experienced professional is put forth for all to see. And that professional can be a judge or a prosecutor as well as a social worker. I would submit that if we are to improve the image of law enforcement officers and the courts, then this guiding hand should more often than not be that of a policeman, a prosecutor, or a judge. When it happens enough times, the opponents of individualized justice will find it difficult to reject.

Now, all of these somewhat spacy considerations have a direct impact on the way in which a juvenile code is administered. The law is

handled by these people for better or worse, and children are helped or hindered by it. If they work together, a good result can be expected. If they do not, then a child may be lost. To those who say that there is little hope for juvenile courts, the answer must be that such a statement is sheer nonsense. Juvenile courts have seldom, if ever, been administered properly from top to bottom. How can anyone say they won't work? They have never been given a chance! And when I make this point, I do not speak of a system full of high-paid professionals working under optimum conditions. I am speaking of individuals who are all functioning as the law requires them to function if it is to produce the result it was set up to achieve.

Over the space of one year in Kentucky, in the wake of our 1972 amendments to the juvenile code and without increases in staff or salaries, the institutional population was reduced by 50%, mainly by stressing that institutions be made a last resort in the treatment of children and by telling the social work staff to do their best to keep children in communities. This agency policy forced people to come up with resources they didn't even know existed prior to the time they were told to go out and use them. It brought a great deal of honesty to working with children. One administrator, in particular, has reduced the number of institutionalized children from his 15-county area to zero from around one-hundred only two years ago. His philosophy is simply to let the courts do their job and to let him do his. What he is really saying is that if everyone does a good job and plays their special parts in this difficult work, the benefit to children and to others can be tremendous. That is all I'm saying here. I have seen simple adherence to the intent and philosophy of a code produce results some would call impossible.

It should be obvious by now that the revision of the Iowa code along strictly procedural lines will not do much to enhance the administration of justice. Due process is an important ingredient, but it is only the beginning of the solution to the ills of the modern juvenile court. There must be a broad commitment to the development of rehabilitative mechanisms at every stage of the process. Unless due process is tied directly to treatment and rehabilitating resolution at each step of the way, it will be a useless exercise. If polished due process leads to nothing more than a dingy cell in an antiquated children's prison, then I ask you: what has been accomplished?

In the light of all we have said up to now, it should be clear that the system will operate best if its potential is tapped at the lowest possible level of intervention by professionals who know their role in the process and are dedicated to fulfilling those roles. It

will also operate more effectively if the official court and official sanction are held back as a last resort. There is a tendency to overkill on all too many cases which could be dealt with on a much less formal plane. Official intervention should be used only after all else has failed, and it should be supported by a rigid adherence to due process of law. This is what modern parens patriae and the right to treatment are all about.

Now, how can all of this be translated from the theoretical to the practical? How can it actually be written into a juvenile code?

I think that first of all we have to put procedures into perspective. In the adult criminal court, as long as you follow proper procedures, you can inflict anything ranging up to death on a person. It is the public which is to be protected and promoted, rather than the individual. In the juvenile court, the individual comes to the forefront to be helped through the procedures developed for the court so that it can be fact tender real assistance. Since we are dealing with children, we should ensure that all children are amenable to the jurisdiction of the juvenile court. The widespread exclusion of those who commit motor vehicle offenses is a gross anomaly which subjects a relatively innocuous class of children - when compared to those who rob, rape, and murder - to all of the very things that are thought to be so destructive of every other child: jail and contact with adult criminals.. There is no rational explanation for the decision to put traffic violators in jail and treat them as adults while extending special procedures and treatment to the more serious public offenders. If we believe in juvenile court philosophy and goals, then all children should be subject to the court's jurisdiction.

This raises the currently-debated issue of whether or not the needy, dependent, and neglected should be subject to the court's jurisdiction. The National Council of Juvenile Court Judges says yes; the National Council on Crime and Delinquency says no. I think that at this point in time, I am forced to side with the Judges because no one has made me feel comfortable about the fate that would befall the children who would be excluded from the court. Shall we subject them to administrative agencies only? The record of such agencies does not move me to support such a proposal. Too often, their most creative effort has been the building of another institution. I would submit that if the juvenile court experiment is to be given a renewed chance in the 1970's, then its jurisdiction must be comprehensive.

(It is interesting to note that while many states, and Iowa is included in that number, have recently moved to lower the age of those subject to juvenile court jurisdiction, study groups and diversion projects

all over the country are saying that juvenile court-like processes should be used on many young adult offenders. This would seem to indicate a raising of the age for juvenile court purposes, rather than the lowering we have seen in recent years. The juvenile court people say it is necessary so as to be able to treat as adults those children who pose a problem to the resources of the juvenile justice system. Those on the adult side are saying that non-punitive procedures are needed for young adult offenders. These contrary movements on the age question are evidence of a lack of communication between these two systems of justice - and this is hurting both systems at a time when they need all the support and assistance they can get.)

Once we have collected all of these children under the shield of the court, we must devise very special means of bringing them before the court, if indeed we bring them that far at all. The alleged delinquent certainly poses the most difficult problem in this regard. Therefore, street adjustments should be used in as many cases as possible and detention in as few cases as possible - and then in a children's facility rather than a jail. The stages of apprehension and detention should clearly provide for the contributions of defense counsel, social workers, and probation officers. This is perhaps the most critical stage because vital decisions are made with respect to how far a child will be drawn into the juvenile process. If this introduction to the system is punitive, the chances for the child's later cooperation and rehabilitation begin to lessen.

Rehabilitation should be the keyword here as elsewhere and the official profile should be kept low and effective. This is especially important because of the great harm that comes to children in jail - harm that is physical, psychological, and lasting. I have stated, and I'm sure you are aware, that children do unpredictable things in jail. But when they cut their wrists and throats and hang themselves, or are burned to death, then their actions are no longer unpredictable and we should make sure they do not happen again. We can go a long way toward this by making sure that as few children as possible are detained; and that when they are, that it is only after a due process hearing at which the state shows convincingly that the child is such a menace to himself and others that his movements simply must be restricted. If this sounds like preventive detention, then so be it. I would remind you that children have a right to proper custody - not absolute freedom. If we undermine the concept of custody, we undermine the idea about a right to treatment - and that philosophical basis should not be imperiled. Beyond that, restriction should be for a very short time and a right to a speedy hearing and disposition should be respected. The different evaluations made throughout the stages of apprehension and detention point directly

at the need for procedures whereby knowledgeable professionals can make decisions that the law will respect in arriving at a decision on the child's best interest. That best interest will generally be served by moving him out of the system as soon as possible and through any one of the many exit routes which exist at various points along the continuum of juvenile justice.

The different kinds of adjudications possible within the juvenile system should be clearly delineated within the code. It won't do for the police to pass the buck on to the court and for the judge to pass it on to the agency. If we operate from a perspective which pays heed to the principle of the lowest level of official intervention, then the implications are clear: everyone has to strive to get the child out of the system as fast and at the least involved level that his particular fact situation permits. Arbitrary processing of cases without screening for those that can be handled informally is a waste of the court's time and an abuse of the philosophy of rehabilitation.

On the informal side of adjudications, there should be wide latitude for consensual agreements between the parties involved. And when I say consensual, I mean <u>without supporting or coercing court orders</u>. You should not have to deal with confusing and deceptive concepts like "official" informal hearings and adjustments. Things are either official or they are not. If they are, then let's talk about the Constitution. There are many ways these cases can be resolved and most of them require little more than good common sense and a little creativity. This is one of the areas in which the law must lean heavily and demand a great deal from social workers and probation officers working with the court and the community, because there are alot of unorganized and undiscovered resources that can be of immense use to courts and to children. The code should, in some way, require that these be exhausted before a child is given up for formal adjudication.

By showing what can be done with this approach, the community will be educated away from the generally punitive attitude which has so long frustrated the work of the court. This will also allow court workers to develop alternatives that will decrease the use of formal adjudications and institutions which are often a major aggravating factor when it comes to working toward a child's rehabilitation. In this way, the child gets help with an environment which may have led to his involvement in public offenses, rather than simply a kick-in-the-rear and a cell in an institution. The latter approach has been a dismal failure; the former has not been given half a chance.

When it comes to formal adjudications, the process should be replete with due process mechanisms which guarantee that if the state invokes official sanctions against the child it will be only after it has been fairly established that he has done something deserving of formal adjudication and disposition. Too often in the past, children have been found delinquent after sham hearings on baseless charges, and then thrown into institutions where their lives have been effectively destroyed in terms of future social utility. When we speak about law and order we should remember these acts of official outlawry and the many people who have become real criminals because of this earlier de-humanizing treatment. No one gains from such an abuse of power and when we talk about the causes of crime, we should not forget this important contributing factor. It most pointedly demonstrates the need for the system of checks and balances and independent contributing professionals that I spoke of earlier. A system under the complete control of the court has not worked in the past, and it will not work in the future. It is too hard to control.

The disposition should be a stage at which the court is presented with every available shred of information which bears upon the future care and custody of the child. The code should require the compilation of this information and make its review and consideration at a separate hearing a condition precedent to disposition. It should also provide that the court shall not abuse its discretion by turning its back on this information. Courts should find the need for and order treatment. They should not get involved in the prescription and administration of treatment. Courts should not run the whole show. They have a job in the system which is hard enough to administer without their trying to administer comprehensive treatment programs at the same time.

Needless to say, the information submitted by treatment personnel should be subjected to intensive examination by counsel so that the worth or worthlessness of the findings and recommendations will be clearly demonstrated to the court. This may mean hardship for social workers and probation officers who have been accustomed to submitting a lot of uncontested hearsay information as the basis of their work, but it will improve the picture of what has been and should be done for the child.

The implementation of the disposition is equally critical because so often nothing is done for the child once the court orders treatment for him. This is what causes courts to push for control over the whole system. In this area we need creative and constructive kinds of probation to replace the traditional "be in early", "go to church",

and "be good" kinds of orders. We need inventive new approaches which will help the child work through his problems and gain something positive from the experience of ever having been involved with the court.

We need agencies that understand their role in this treatment process to be one greater than that of simply maintaining custody over children stored in institutional warehouses. We need agencies that will stand up and fulfill their statutory mandates to care, treat, and rehabilitate the young people committed to them. We need agencies that are community-minded and interested in doing such a good job with kids that they may one day put themselves out of business. Ineffective and uncooperative agencies are a prime reason for judicial frustration and power plays. The independent agency provides an important check and balance and should assume that role as responsible as possible.

Agencies have too long been passive bystanders in the system when in fact they could have exerted great leadership in providing better care for children. This can be especially true when one agency has statewide jurisdiction over commitments, institutions, and other forms of rehabilitation needed by courts. This is the sort of administrative design we have had in Kentucky since 1960, but its potential has only really been tapped since 1972. You set up this same kind of system in 1967. I would encourage you to use it with great care and expectation. It will produce a real change in the way children are treated if it is made to live up to the statutory mandate under which it operates. Agency administrators wield great authority with respect to the treatment of children and are usually free from any legal interference by juvenile courts because of laws which terminate the court's jurisdiction at the point of commitment to the state. There is a lot of ill feeling between judges and agencies because of this, but most jurisdictions have seen fit to make this power relationship a part of their codes. I commend it to you as a very valuable part of any good, modern system. There are higher courts to review the work of agencies. They need that kind of review because providing good, honest services to children and courts takes strong, sustained, progressive leadership and sometimes that is in short supply. This kind of relationship should be retained and it should be made to work. You cannot, under any circumstances, permit arbitrary bureaucratic practices to violate a child's right to treatment.

Every child needs a right to appeal in order to check any of the excesses of the juvenile court. It is part of our judicial system and the child should have it at his disposal. Unfortunately, there are all too few appeals, even at this point in time. It is, however,

the only way that the system has been improved. Without Kent, Gault, and the other cases, we would still be today where we were ten years ago.

The problem of transfer of jurisdiction is a national scandal and many children are unnecessarily sent each year to criminal courts which are as unfit for them as the children are for the adult courts. Many of these transfers are judicial cop-outs or bad faith prosecutions or the result of lazy and inadequate social or probation work. It is a punitive measure in many instances, even though it is used in a court of rehabilitation. It is one place in the juvenile law where courts have looked too closely at procedure and not enough at substance. Fortunately, many jurisdictions are now beginning to say that there can be no transfer if the child can be helped within the juvenile justice system. This is the essence of the right to treatment and our failure to pay more attention to it is costing us dearly in the children we waste each year by sending them to criminal court. The confidential protection and the absence of any civil liabilities resulting from juvenile court action are a tremendous shield against the disabling realities of a felony record, the loss of civil rights, and the trauma of a sentence in prison.

The crucial problem with transfer is that it runs counter to the whole idea of special status and a right to treatment. Do we know for certain that every child sent to criminal court cannot be helped by the juvenile court? Have we really tried to help them? Do we only send them when we are sure that they can't be helped - or are there other less acceptable, less child-oriented, more punitive and political reasons? A survey of this critical area of law shows it to be almost without standards. It is, consequently, one of the most abused practices in the juvenile court. It is a proper area for legislative action because what is in effect being determined is what is crime (as opposed to delinquency) and who shall be tried for crime - and that is a legislative prerogative under our theory of separation of powers. If the legislature is inclined to take a strong stand on this issue and assure children their right to treatment, then the whole system will benefit from it. If it does not, it will continue to be used for going around the juvenile court to avoid dealing with the really difficult child. When that happens, the juvenile court system becomes a hypocrisy and a joke. The serious offender and really troublesome child need the system more than anyone, and yet they are the very children for whom it often does the least. The law on transfer of jurisdiction should receive very special attention during the process of revision and reform. The integrity of the system is very much focused on the procedures established for dealing with the very serious offender. The juvenile court should be at its finest hour when it comes to grips with such a case, because to transfer is to admit failure and you should strive to limit those admissions to as few as possible.

I should like to wind up by repeating what I stated earlier; that one of the greatest problems of juvenile justice is that of maladministration. It has been perpetuated by the lack of information about and communication within the juvenile justice movement. Critics of the system have often imputed its problems to the bad faith of one or another of the principals involved in it. This has led to bad feelings among this crowd of professionals and tensions which have served no constructive end.

The most recent amendments to the juvenile code in my state produced a long overdue discussion of the various roles, relationships, and responsibilities which exist within the system. It has not been an easy reappraisal for anyone, but a great deal has been achieved simply by bringing the issues out into the open. The old we-they suspicion and hostility is giving way in many places to honest differences among people who have come to see that they are only part of the system and not the system itself. It is not the court, or the probation officers, or the social workers, or the lawyers, or the agency that make up the system, but a combination of all these working together for the good of children. Each must know its role and do the best job possible in carrying it out. This discussion was carried throughout the state by a lot of public speaking and the publication of a lot of written material on the operation of the juvenile court in Kentucky. This is producing an attitudinal change which is becoming the basis of a more honest way of addressing children's problems. I submit to you, however, that we still have a long way to go. We have made progress though, because there was no attack made on the 1972 amendments during the legislative session which just ended.

I would say that right now we are consolidating the first stage of our reform - that of cutting way back on the number of children who go into institutions and developing local community resources to deal with these same children. A considerable burden has been put back on communities and they are in varying ways learning how to cope with it and absorb it - to accept responsibility for their own problems, if you will. That is one of the critical answers to the modern problems of juvenile justice. Some volunteer citizens' groups have organized to work with courts on the informal adjustment of cases, and their work touches everything from felonies to truancies. The success of their work, and it has been tremendous, in some cases, has been based on a truly parental approach to problems which have plagued the court for years. Eye-to-eye apologies to offended parties; working for offended parties to pay restitution for destroyed property; one-to-one relationships with volunteer members who make themselves available when the child needs help or someone to talk to. This is a lot different from going to court and reporting to a probation officer, because that kind of resolution takes place outside the

context which originally gave rise to the problem. The fact that it is working goes to show what a little concern can accomplish. There are many other ways that can be useful. Someone just has to care enough to find them, and they will if they look. It is happening in Kentucky and it can happen here.

I have tried to address some important concepts and show how they relate to the actual provisions of a juvenile code. They are equally applicable to the Iowa code because at this point in time the Iowa code is still a code which does not reflect all of the very vital mandates which have come from the Supreme Court of the United States since the Gault and Kent cases. With all respect to the gentleman this morning, I do not find any of the Kent precedent set forth under the law of transfer, or the special notice provisions of Gault, or the Winship rule requiring proof beyond a reasonable doubt in delinquency cases, or a number of other items needed in a modern code. I know your Supreme Court has commented on these points, but the Code does not reflect this law. I submit also that I have not been as idealistic as I might have been, because it behooves us to speak within the realm of the possible at this point in time. If we lose too much touch with the real world, reform will be in trouble. As you move to revise your code, I urge you to involve the public and all of the different representative disciplines we have discussed this afternoon. The process of revision should be an educational process for everyone in the state. Informed and well-directed publicity can go a long way toward laying the groundwork for real reform, and reform is meaningless without public support.

I would also urge you to remember that you have a lot of latitude within which to mold your code around Iowa's needs and Iowa's potential. Make it flexible enough to fit all parts of Iowa - both urban and rural. Do not try to solve generic problems with your draft. Look hard at Iowa and give thought on how to apply the principles we have discussed to the specific problems with which Iowa must content. Don't legislate around your best courts but around the practices of the worst courts. Build in protections and use the lowest common denominator in this work. Your chances of making a successful revision will be enhanced if you try to adhere to some of these principles, because they will help you get the most out of a society and a juvenile court system that will be imperfect and short on resources for some time to come.

I have seen great things happen in Kentucky with a few substantial revisions and a lot of leadership and hard work. The same thing can happen here if you have the patience, diligence, and good faith to see it through - and I am sure you do!

SPEAKER AND AUDIENCE INTERACTION

Audience Respondent

I'm from the Iowa Training School for Boys at Eldora. I'm afraid that Mr. Stamm did a very nice book report but I'm not sure that he did his homework very well. I think he did read the Iowa code but I think the Iowa code goes a little bit further than what you are reading into it. I'm not sure how much you contacted people who were going to be involved in this conference here. But the things that I heard you saying I'm going to have to resond to and I'll try to keep my response to something that relates to my own job and that would be the training school. I think you painted a dark picture of training schools across the country and probably the picture is pretty dark. Myself, I feel that the Iowa Training School for Boys is probably the best residential treatment program in the State of Iowa. Let me say this also, I think I will probably be accused by many people here of talking in platitudes. Attitudes are not changed by platitudes; human conduct is changed by human contact. Throughout the State of Iowa I work with many people who are in this room and I don't know of any more interested people than we have in the State of Iowa concerning juvenile offenders and boys who are on probation and are eventually sent to the training school. I came here from the state of Ohio and I had my juvenile court training through the late Honorable Paul W. Alexander and I think that after coming here approximately 12 years ago, I found that there are courts and institutions in the country which generally are trying as hard as the juvenile court in Toledo, Ohio, tried under Paul W. Alexander. So I think you are talking about Kentucky and you're now in Iowa.

Mortimer Stamm

In all deference to your good will, in my young political experience that's a typical flaw that people throw at the outsider. I would submit that if you still have a rock institution in Iowa with more than 40 or 50 people in it, you've got trouble. I think I would really prefer to leave that to Dr. Miller tomorrow who will get a little more pointed than I've been because he closed Massachusetts down period. And he is in the process, I understand, of closing Iowa or Illinois down and he's the expert on it.

Let me ask a question with respect to institutionalization and this was the critical hump we had to get over in Kentucky. For, I guess

ever since 1906 in Kentucky, if the judge wanted a kid in an institution, he said put the kid in the institution and the institutional people did what the judge said. In 1972 the state agency in Kentucky in clear conformity with the law and with a great deal of moral fortitude, I would say, stood up squarely on the law and said if the child goes into an institution from now on, we will make the decision not the judges. I would ask who is making that decision in Iowa right now?

Audience Respondent

I can't help but sit back here, and I'm definitely in the minority group here as a member of my organization. I'm County Sheriff, and we sit here and visit about code revision and things like this and this is all well and good but from my standpoint alone as an individual who gets involved probably at the initial point with a lot of these juveniles, we've had a bill in front of our legislature for a year or two years I know for sure to expand our law enforcement academy to update the quality of law enforcement personnel in the state and our legislators can not seem to get it off the floor and get this promoted so that we as individuals might be prepared to do a better job in handling these juveniles and until the state sees fit to update every phase dealing with juveniles, we're not going to have a complete program and by updating law enforcement this is one way we are going to get it.

Mortimer Stamm

I would agree with that 100 percent because personally I believe that with properly trained police, you can solve just an immense amount of problems right at that very contact with the official system. In Kentucky, we're lucky to have, now, two at least, university programs. We have the Southern Police Institute for Law Enforcement in Louisville; we have the Eastern Kentucky University School of Law Enforcement in Richmond with full scale programs for upgrading police and granting degrees in law enforcement; graduate degrees in law enforcement work, with graduate specialities in just any number of different varieties of specialized work within law enforcement. I agree entirely.

Audience Respondent

With all due respects, I have to agree somewhat with the gentlemen from the training school and feel that you have missed many of the things that are happening in Iowa and that you have missed some of the interpretations of the re-codifications that we had in the 60's and if you are speaking from Kentucky experience, I would have to assume you are probably one decade behind us. And this bothers me to a certain extent because there are areas in our code now that

need some bringing up-to-date. Ms. Stevenson hit a large number of these but the basic structure is pretty sound and what it needs is to be brought up to date. For example, it's a pre-Gault code and yet it does require notice, it does require a petition with the facts in the petition, it does require a recording, it does guarantee appeal, it does authorize the appointment of counsel not only for the juvenile but for his parents and one for each of them, if necessary, and if they are split, we may have three counsels appointed. It did miss the burden of proof by using clear and convincing when they finally went to beyond reasonable doubt on delinquency petitions. But all in all in pre-dating Gault, it did a rather good job of anticipating it. On the lines you were talking about, I'm certain that at least if your county is any example, the commitments to the training school have dropped more than 50% since '67. Ours dropped way more than 50%. We have had volunteers since '67 that you are talking about as some sort of a new idea with approximately 400 trained. We have group homes. We are trying to do community-based corrections. The things you are talking about I'm afraid might distract the group into thinking they are the things we need to work on when there are a large number of things we do need to work on that are outside the rather drab which I gather was stated as some sort of an overall of the United States.

Mortimer Stamm

Well, a very brief response to it. I did not come out here unprepared. I'd be happy to discuss this code with you in private rather than take up the time here. And I was honest enough to call several people out here in Iowa to talk to about what actually was going on within the confines of this code as it's written. I didn't think it would be fair at all to come out and just look at the code and try and say well it's defective, you know, because as it was pointed out a number of times this morning, the written code can be administered any number of ways and I was interested to find how, in fact, the Iowa code is being administered and I did call several people. If they have prejudiced me, you have heard their prejudices and not my own....on certain points. I'm very obviously prejudiced on other points.

Audience Respondent

I'm personally very reluctant to become involved in a statistical game of deciding whether your juvenile program is a success by using the population of your institutions. I see no logical connection between the success of your juvenile program and the juvenile population of your institutions. You have to tell me what you are doing for the juveniles. Okay. I do have a question here also. You were

talking about advocacy and protecting the best interests of the child. As you know, that's a phrase that runs throughout Iowa law. I happen to be an assistant county attorney in charge of juvenile and welfare matters and I find that phrase both in terms of my own job and in terms of the jobs of the other people in the system as being very perplexing. I don't know how you really resolve all of the different ramifications of the best interest of the child. Who knows what the best interests are? Who knows how those interests are to be served? It seems to me that Ms. Stevenson, who was speaking this morning, indicated that she felt that the child's attorney should in fact be an advocate for this child and if he differed with the child, that a guardian ad litem should be appointed and it seems to me that that perhaps is not consistent with what you implied as being serving the best interests of the child. You see what I mean? So maybe if you could respond a little more specifically on how you decide who. It gets back, I guess, to your definition of roles and maybe I'm asking for something more specific than you gave.

Mortimer Stamm

I'll try. Let's start with your role. The most undiscussed topic in juvenile law is the role of counsel. There's all kinds of stuff on the role of defense counsel, but the role of prosecutor is the role of defense and is the role of the judge. My own theory on that is that you have to start again. Let me lay this ground. I think the basic problem with juvenile justice in terms of defining these roles and these ethical considerations I was talking about, is the fact that the development of the logic that's involved in being consistent in the system is very clouded. You start off with things like the right to treatment, parens patriae, and all that stuff. You get very easily diverted from that somewhere down the line. You as the prosecutor, perhaps, or the defense lawyer wanting to play constitutional games with you in the court room or the judge. What happens to parens patriae on something like that? My own theory about a prosecutor (let me get back to Kentucky law), in Kentucky, let's take auto larceny, we have a no-joy riding statute in Kentucky. If a child is in the back seat of a moving automobile that does not belong to the driver, he is charged with auto larceny. If he gets in a car and moves it, without even starting the engine, one inch, one hundredth of an inch, one billionth of an inch, that's auto larceny. Now I would submit to you as a prosecutor within the court of rehabilitation and looking for the best interests of the child, it would not be doing anybody a favor to prosecute that child on auto larceny. There are those children who steal cars and there are those other children who are silly enough to ride in stolen cars. It takes a completely different type of mind.

If he steals, fine, let's try to determine that, but if he was riding in the car, let's get on him for that. And those are the kind of things, I think, when you analyze specifically what the child might have done, you have to back way back sometimes from a felony charge to get down to maybe an informal adjustment. Prosecutors have a very difficult role in juvenile court. Under the constitutional way, the way things have been done now, you have to really literally charge the kid with a formal offense that's found in your criminal code and you don't really have a whole lot of latitude to play with that charge. He's either charged with it or he's not. In Kentucky you charge a guy with auto larceny for the fact that he was riding in the car doesn't make any difference at all legally. It does from a treatment standpoint which I think is where everything gets derailed. You start confusing the legal requirements for a prosecution or a finding of delinquency with what kind of treatment the child actually needs. Now if you have to formally file the child for auto larceny, just to treat him for riding in the car, I think the system gets mixed up there. Same way with defense counsel, I am very adamantly opposed to the defense lawyer playing constitutional games in the court room. I think it breeds disrespect for the children who have many times done what they are charged with. To have a lawyer come in there and pull a few technicalities on the court and get the thing dismissed, that serves nobody's interest. The opinion that the lady was talking about this morning is a very informative opinion. It says the lawyer will be an advocate and he'll do what he has to do for the best interest of his client. Now if that means not being constitutional, he's within his ethical bounds of not playing constitutional games. If he can serve the best interests of that child playing advocate, big brother, daddy, something, that's fine. And that's what I tried to make a point about how professional ethical obligations get all confused with the best interests. Now the bigger part of your question was how do you determine what the best interest is and that is exactly the point in a case called Nelson v. Heyne (C.A. Indiana, 491, F2d, 352, 1974), a Federal court case. It says that children in an Indiana institution have a state constitutional right and a Federal constitutional right to treatment. I don't know if that case was ever decided, because the last time I heard about it was last summer and they were all balled up with figuring out: Well, you've got the right treatment now what does it mean? And as she said this morning, they are soliciting everybody's opinion on what the right treatment might mean. In the Morales v. Turman (364 F.Supp., E.D.Texas, 1973) decision in Texas, they went a step further than Heyne and said that the right to treatment means: Close to home as you can get. So in the Morales decision, they are trying to define the right to treatment as the least restrictive, most homelike, normal situation that a child can be left in to get

himself straightened out. But all those cases have come up against a brick wall in terms of what exactly does the right to treatment mean. The Wyatt vs. Stickney (325 F.Supp. 781, M.D. Alabama, 1971) case in Alabama pertaining to the mental health hospital, they set a bunch of guidelines down there for right to treatment but it's just terribly nebulous. You talk about right to treatment and you're talking about individualized treatment oriented as you can get and I am really going to be interested to see what kind of guidelines they come out with. I'm trying to resolve that problem and pushing for in my address when I stated let's stop overlapping all these roles and let's delineate how does the probation worker plug into this system in terms of helping the court define "best interest"? How does the social worker? How does the judge? How do you? How's the defense lawyer? How does the policeman? You know, right now it's just all overlapped, it's all messed up. Nobody is quite sure of if he's the probation officer is he supposed to be law enforcement or social worker. Lots of social workers like to play cop. You know, it's just confused, in my experience in Kentucky. If those roles are sorted out (and that too has been a big part of what's been happening at home), a lot of the social workers find out that they don't really don't want to do any social work. If they can't get out there and play what is essentially a very stiff law enforcement role, well, then they really find out who they are, and they get out of social work. Maybe they make a darn good law enforcement people but at least as far as that social work input, you know, you get over some of those problems. That's why if you can delineate and just separate things out, the police officer is going to do this, he is going to give us this help in terms of deciding on the kid. The prosecutor is going to do this; the defense lawyer would do this and don't confuse them. And that's why in the ultimate political analysis. I see a great deal of trouble in putting those people, all of those different sources of information under any one authority. I think you need independence, different independent professionals to make the system work. If the court can call all of the shots and I've seen it 100 times in Kentucky, in urban areas especially where they do have a big probation staff that answer to the judge, the judge calls the shots and, if the judge wants to do a certain thing, nobody on his payroll is going to buck him. But somebody on the state's payroll will buck him or the state will buck him. If he tries to institutionalize a kid that really doesn't need it, maybe he's under political pressure or something, the state can stand up to him because the state is not on his payroll. It's just that basic. That's why I think there is a lot of strength in keeping independent entities within the system. There is some talk around the country to put the dependent, needy, neglected type of children into an agency proceeding first. If they don't like that, then let them go to court. Well, you know, I just really have reservations about that. I think the court that operates properly,

plays this particular role which is well-defined in all the areas of justice, in civil proceedings, in criminal proceedings, the judge has a definite role. You have to cut all those things apart and make them so they are very well defined in the juvenile justice system too. Right now, it's too confusing.

Audience Respondent

At the time of the revision and reform in the Kentucky juvenile justice system was any consideration given to going to a family court model? What were the results of that and why was it rejected?

Mortimer Stamm

Well, the answer to that question is very difficult. In Kentucky they have been playing a number of years with the idea of judicial revision, judicial reform, the whole thing. Their idea of reform has turned out to be changing a three-tiered system into a four-tiered system. I don't see reform in that. I think your system out here, I don't know how long its been in effect, but I understand the district court is basically the court and it comprehends everything with different types of branches to deal maybe with family matters, juvenile matters, that kind of stuff. In Kentucky a juvenile judge has to be 24 years old and a resident in the county. About 90 plus percent are lawyers and the political power too in Kentucky; they are the county judges. There are 120 counties and they are very very powerful political people. The family court talk came up in 1972 and it was killed instantly because it was going to take their jurisdiction away over certain matters. The revision of the whole court system passed this last legislature but not without a considerable amount of catering to political realities. And, like I say, they turned a three-tiered system into a four-tiered system just to accommodate the people, to dilute us from reform. Family court, I don't know, I think family court is a long way down the line in Kentucky. But they did talk about it. They gave it that much.

Audience Respondent

I'm a juvenile and I'm in the Iowa State Training School at Eldora. I've seen people go in and out of the institution and come back just the same. I don't see why they can't work with them in the community like in half-way houses, and places like this, I'd like to see more of them come up. As far as field social workers, seeing them come into the family once a week, I don't know, out there it's been once a month for me that's as often as I've seen her. I don't really have too much to say. In the training school the boys were asked their opinion and I guess that's what I'm doing right now.

Myself, I've known the institution, this is my second time out. I don't really see how much reform is done for me. If this is the best way, it might be the best way but there should be a better way.

Mortimer Stamm

I hope you can come back tomorrow and listen to Dr. Miller.

Audience Respondent

Yes, thanks for an opportunity for a brief kind of comment. I work at the state juvenile home in Toledo. I screen all in-take information and screen all referrals to our institution from wherever they come and if we don't have the program that I think best fits the needs of the kid, I call it as such. And so we have a say in what kind of kids we can best work with. The other thing is that we have a system I kind of want to offer as a model and it has worked for us for a number of years and we're beginning to perfect it to some degree and I see that it could fit into the community and I think we have a little community in the institution and sometimes we can experiment a little more clearly with different roles as you were talking about. The roles of the staff in the institution are very clearly spelled out. People very clearly know what their job is and what the jobs of the other staff personnel are and what are the resources that the other staff person has to give the kid. And I think that's a necessary first step but once that is done at the institution in Toledo we meet together with the kid and his parents, his area social worker and all of the resource people at the institution, be it a teacher or a cottage parent or a service worker, a social worker, a vocational rehabilitation person, psychiatrist, whatever. We each help the kid or the family identify the problem from their point of view and from our own point of view. We do that in a formal meeting with a secretary present who is taking shorthand of everything that's said. These notes are then typed down and passed on to the kid, to the parents, to the cottage parent, to the school person, to everyone who was at that meeting and who will be involved working with that family, working with that kid. The notes specifically are identifying what is the problem to be worked on and then how are we as staff people going to work on them. What's our contract; what's our commitment; what are we going to do and what are you going to do. Every month then this group of people pulls back together and reassesses that. They either have made progress or they have not. If they have made progress, they pick out the next thing to be accomplished. If they have not made progress, they simply re-negotiate what they are going to do to try to make progress and it seems for us anyway to be a useful kind of system to do a couple of things. One of them is to make people accountable

for what they are trying to do and to see that they do do what they are going to do. But, secondly, I think in terms of things that have been identified today, that's a way to coordinate all of the various disciplines and all the various skills that you have been talking about that get all messed up in terms of what is their role. It simply brings a group of people together with the kid and the family on a monthly basis and re-negotiates that and then it's laid out on paper. Everybody pulls back together in another month and assesses what they have done or they haven't done and then makes plans for the next month. And I wanted to throw that out especially for some of the courts' consideration.

4. ALTERNATIVES TO THE JUVENILE COURT: COMMUNITY PROGRAMMING

RICHARD ROSENTHAL

Let me define in the beginning what I mean by the "juvenile justice system". It is that array of agencies, usually locally-defined and with some statutory authority, which concerns itself with the juvenile offender. In its narrowest sense, it is comprised of the police organization which has contact with offenders, the court which judges those who come into its purview and the institutions which "treat" those whom they receive. For the youthful offender, this represents the avenue along which he will be pushed from the point of penetration to the end result of his offense; that is, whatever his community deems to be the acceptable method for dealing with him or her as the perpetrator of it.

In a very real sense, there is no "juvenile justice system" in some communities. The word "system" denotes, at least, a correct and appropriate inter-working of essential elements toward a predetermined and measurable end. In many U. S. Communities, the system is characterized by (1) conflicting philosophies relative to what is or is not "correct and appropriate"; (2) the absence of "essential elements" unless the "measurable end" is to remove the offender's presence from his community; (3) distrust between policy officials and the courts which causes "inter-working" to be almost non-existent; and (4) the application of authority based upon prejudice rather than reason.

It is possible to find one example after another, taken from communities within the four states of Iowa, Kansas, Missouri, and Nebraska which will illustrate these points. And because they are probably illustrations within your own communities, it would serve no purpose to dwell on it here.

I will not belabor the point; the "juvenile justice system" is acutally a "non-system" in most of our communities.

The title of this presentation, practicularly the word "alternative", hints that there is a place along a developmental continuum at which the administration of juvenile justice might be, in the society, other than the place at which it is. Further, there is the strong suggestion that other place would be preferable to this one.

It is an easy task for me to relate to this topic because that is also the thesis which underlies the Youth Services System program of DHEW.

Socially and emotionally, this society has a way of dealing with young people in general that is an interesting product of societal evolution. According to Dr. Egon Bittner of Brandeis University in an article entitled, "Policing Juveniles: The Social Bases of Common Practice", soon to be published by University of Chicago Press in a book entitled Justice for the Child (Revisited), our current concept of family and

childhood began to evolve in the seventeenth century. Prior to that time in western civilizations, "everyday life in its more secular aspects was a matter of all the people to partake in, without regard to age, virtually from the time a person has been freed from the physical dependency associated with early childhood." From that point our treatment of persons under age eighteen or so has been in relation to behavioral norms which are age-related. In the exercise of our authority over their conduct, we constantly remind children that they are always and in every way accountable to their parents (or some other authority-figure when a parent is not there); we shelter them from the real world of adult decision-making but demand that they consider their behavior in relation to their functioning in the adult world later; we romanticize about their innocence while resenting their opportunity to function without the pressure of responsibility that are real to us; we provide a very poor example of the meaning of recreation while, at the same time, worry about any aggregation of young people in the name of "fun".

In short, we've "come a long way, baby" but in the evolution what has been a blessing in the legal protection of children from potential abuse--an illustration is Child Labor Laws--has brought with it a curse. We have created an environment that is suspicious, coercive, patronizing, and demeaning of youth.

You may be thinking at this point that this presentation will follow the format of an evangelistic sermon; i.e., (1) tell them how bad things are, (2) tell them how hopeless they are without "my" solution, (3) explain the solution with rhetoric that reinforces the first two points, and (4) push for a commitment. That particular format would be followed if I felt that I were here to "sell" you. Instead, I believe that it would be presumptuous to suggest that anyone has a "solution".

The organization of human services must be tailored to the conditions which exist in a community. This, however, is not sufficient excuse for traditionalists to retreat behind bulwarks of defensive behavior or for those with power to invoke the privileges of elective or appointed offices and maintain that honest questions--even challenges--represent "meddling". The "mix" of services will be right in a given community only when the process of arriving at reasonable alternatives for young people has included examination of every aspect of community life with the same precision and attention to detail that characterizes the work of a fine watchmaker.

The Youth Services System approach is an attempt in that direction. It is imperfect because it is not precise; it is imperfect because it begins with a bias, that there is something "wrong with the system". In fact, Margaret Rosenheim has characterized Youth Service Bureaus (a synonym) as a concept in search of a definition. In 1972, when a study was published entitled, Department of California Youth Authority, National Study of Youth Service Bureaus it was admitted that researchers employed a "butterfly hunter" apporach; that is, they examined any project that a governor, state planner, federal bureaucrat or public

agency thought of as a Youth Service Bureau, by whatever name it was called, and, finally, examined 272 programs. But YSSs or YSBs or Youth Advocacy Councils or Youth Development Councils do represent an honest attempt to answer very difficult questions.

YSS objectives have evolved in a process which began in 1914 when the Children's Bureau began looking into the juvenile courts and was spurred along by subsequent events, such as the establishment of a commission on delinquency by the Department of Justice in the late 1930s; the establishment of the Center for the Study of Crime and Delinquency by the National Institute of Mental Health in 1951; President Kennedy's Executive Order 10940 establishing the President's Committee on Juvenile Delinquency and Youth Crime in 1961; Congressional enactment of Public Law 87-247 signed by the President on September 12 of that same year; the creation within DHEW of the Office of Juvenile Delinquency and Youth Development in 1968, following the enactment of Public Law 87-247 signed by the President on September 12 of that year; and, finally, the creation within DHEW of the Office of Youth Development in 1973, following the enactment of Public Law 90-441. The objectives are clearly articulated and are concomitant with the diversion of youth from the juvenile justice system: (1) reduction of negative labeling of youth; (2) amelioration of alienation; (3) provision of greater access to appropriate social roles, and (4) the provision of direct services.

For reasons of time, I will seek to explain these objectives and not to defend them. (Their defense is implied in the findings of social research into delinquent behavior for the past several decades).

1. Reduction of negative labeling of youth-- There is considerable evidence that court adjudication of a young person as "delinquent" reinforces the self-concept of "bad" and, further, subtly or not-too-subtly as in the case of incarceration, pushes the young person into associations which tend toward further crime. In such association, according to Shaw and McKay in Juvenile Delinquency and Urban Areas, crime "offers the promise of economic gain, prestige, and companionship." Working with the juvenile offender, without the formality of court adjudication, would reduce this reinforcement which is a factor in subsequent criminal behavior.

2. Amelioration of alienation--A very popular phrase which one hears when discussing the subject of adult-youth relationships is "the generation gap". The environment described earlier sets the stage for a lack of interaction and communication. W. C. Fields' statement, although made in jest, that anyone who hates kids can't be all bad, strikes a chord within each of us. With a little discomfort, it brings to the surface the ambivalence that we feel. Acts of violence and crimes against property become easier when the intended victim is one with whom one feels on particular affinity or kinship. A very recent study by Midwest Research Institute of Kansas City, Missouri, illustrates this point well in relation to your crimes against the aged. Programs which reduce social distance can, also, reduce the incidence of juvenile crime.

3. Provision of greater access to appropriate social roles--As I look in retrospect at the parenting I received, it occurs to me that my parents did their best when they knew, intuitively or took time to think it out, when to "let go"; i.e. on which occasions they allowed me to exercise initiative even when it meant my becomming involved in potentially "dangerous" situations. One cannot learn methods for making reasonable decisions without having the opportunity to do so. We have tended to look upon youth without valuing--and, sometimes, without recognizing--the resourcefulness and creativity that characterizes the years of their adolescence. In Blue Springs, Missouri, the town where I lived, two high school seniors worked at odd jobs after school and on weekends until they had each saved $1,000. Then, they put their savings together, formed a partnership and opened the town's first automobile body repair shop when they graduated.

The YSS program strongly encourages that juveniles be involved in decision-making, even as bona-fide members of the boards of directors of YSS programs. Recently, at a board so constituted, one adult board member suggested that youth should, also, serve on all functioning committees. The board chairman, associated with the public school system quickly responded, then, that the committees must meet in the evenings because young people "should be in school" during the day. That is, of course, true; but all here know that young people are excused from school for a variety of reasons every day. Frankly, I wonder if anything an adolescent will learn in high school, during any two hours of any school day, would be better preparation for life than participating in decision-making on a board of directors. Such is supposed to be the birthright of us all in a democratic society.

Work, joint decision-making, opportunities to serve one another, are all valuable experiences for young people. But, we must not forget one other dimension: We must be willing to let the young, themselves, define these roles and not simply play out like actors on a stage the previous generation's definition of them. Otherwise, the best motives of adults can become translated into programs which perpetuate alienation because they disregard one's drive toward self-direction and self-actualization. Help is best received when it is "self-help".

4. The provision of direct services to youth--It is probably at this point more than in relation to any of the other objectives that a community can move prematurely and without adequate forethought, so I would like to discuss this in the context which follows, the context of "institutional change."

One sound argument for broad community participation in the development of alternatives to the juvenile justice system is this: The implications of these objectives are far too broad to be embraced by, or entrusted to, only one segment of our social institutions. To achieve them fully

would demand some basic changes in the way we "do our business" in this society; and that clearly points toward changes in our social institutions. Another thesis underlying the YSS program is this: Many of our young people do not commit delinquent acts because of something within them but, rather, because the institutions which touch their lives do not serve them well.

In the last ten years we have seen so much "confrontation politics" by so many different groups that we have become sick of hearing from anyone who espouses institutional change. Nevertheless, I'm willing to take that risk! The Declaration of Independence begins with the assertion that our largest institution--government--has no right to exist when it ceases to serve the interests of the governed. If that be true of this institution, it must also be true of all our lesser institutions. Sooner or later, because all things change, we are forced with only two choices: our institutions must change or they must die. And, in a technological society where change is so rapid that it is rampant, institutions must be quickly flexible and instantly responsive. If not, their resistance to change becomes gasoline on the fires of those who oppose their policies and operations.

In respect to juvenile justice administration, the process of change must begin with a hard look at those institutions which have a public mandate to serve the youth of our society; i.e., the police, the courts, the schools and public health and welfare agencies.

First, some remarks about police work. For most young people, police represent "the final cutting edge of the society that has liberated young people from the pressure of mundane necessity without giving them freedom...(Bittner)". They represent the point at which most young people penetrate the juvenile justice system and, as such, a discussion of alternatives cannot overlook the philosophy, practices and procedures of law enforcement offices and officers.

Recent studies indicate some interesting phenomena about police agencies in relation to juveniles: (1) work with juveniles is, perhaps, the most frustrating activity for the uniformed patrolman; (2) juvenile activity is held in a lower esteem among policemen than other activity--rarely does the juvenile officer become involved in "the big pinch". (If the detective television series "Kojak" were to do a story on juvenile work which depicted the dominate themes with which juvenile officers deal, only Telly Savalas's shaved head would distinguish the one-hour show from a documentary on social work); (3) the juvenile officer who "does his job" may find himself at variance with the values of this peer officers; (4) most of a police department's contacts with juveniles, even when there is a juvenile division, are first made by a uniformed officer "on his beat"; that which comes to th attention of the juvenile division results from the beginning of "screening" or "selection" procedures that continue through the juvenile justice processes.

Likewise, one cannot overlook juvenile court's role in the administration of juvenile justice. Juvenile court and juvenile probation services closely linked to it represent, in themselves, an "alternative" to the criminal justice system. In fact, it is a temptation to feel that more judges, more probation officers, more training and, of course, more money, would erase juvenile delinquency because these sub-systems simply suffer from a lack of public resource-commitment. Unfortunately, I must believe that this option was explored by the President's Commission on Law Enforcement and Administration of Justice which concluded:

> "...it is by no means true that a simple infusion of resources into juvenile courts and attendant institutions would fulfill the expectations that accompanied the courts' birth and development. There are problems that go much deeper. The failure of the juvenile court to fulfill its rehabilitative and preventative promise stems in important measure from a grossly over optimistic view of what is known about the phenomenon of juvenile criminality and of what even a fully equipped juvenile court could do about it..."

That statement was made seven years ago but is still true.

Thirdly, some comments of public education are in order. The role of our public schools is unclear; are they with us in order to guarantee a minimum level of education to all citizens or to act as custodians for those who fall beneath the age cut-off of compulsory attendance laws? Are they to feel that their mandate is to prepare our young for college, or for "making a living", or for living, itself? Should we expect them to "educate" (which is to demonstrate processes) or to "indoctrinate" (which is to perpetuate a particular ideology)? Is it not a measure of public support that teachers can expect to earn less for their efforts than their collegues in any other profession or that, in the last five to ten years, more bond elections have failed than have passed? Those who have sought to institutionalize such innovative programs as Head Start have clashed continuously with educators and administrators around questions of policy that emanate from these deeper considerations.

I don't know the answer, but, candidly, I do know this: My two boys, ages eleven and thirteen, have now almost completed twelve years of public education, collectively, and between them have had two teachers who knew the art of making learning a creative and stimulating experience. And, because I know that teenagers are demanding people, I wonder what attitudes they will encounter in the next seven years.

Lastly, what of public health and welfare agencies? The "service amendments" of the Social Security Act, passed in 1967, afforded the opportunity for public welfare agencies for the first time to become involved in the business of "prevention". Then, when states began to take legitimate advantage of these opportunities (knowing that 75% of the cost would

derive from federal funds), federal administrators reacted by limiting the definition of eligible recipients of services; by putting a ceiling on what had previously been an "open-ended" appropriation; and, by making new proposals to Congress that would change welfare into "work-fare". All this was done in the name of preventing abuses, either "abuses" by the recipient of services and payments or "abuses" by State governments who found "loop holes" in the Federal law and regulations.

It would be too easy to say, though, that the blame for the lack of coherent services is a direct result of inadequate Federal administration because another thing is also true: Most local and State governments did not take advantage of the opportunity to provide direct, preventive services when the opportunity was available and, today, could be doing more without reaching the federally-imposed ceiling on expenditures.

I think it is true that two factors have characterized public human service delivery: (1) no commitment at any level to paying for planning and systems-development and (2) utter confusion at all levels as to the purpose of human service delivery.

In conclusion, a community which wished to establish alternatives to the juvenile justice "system" must soul-wrestle and arm-wrestle with these considerations:

1. What are the advantages of dealing administratively rather than judicially with the youthful offender?

2. What human services are relevant to the conditions and/or attitudes which foster anti-social behavior?

3. What mandates, both explicit and implicit, have we given to youth-serving agencies and are we genuiely committed, as their "public", to their achieving these mandates?

4. To what degree is planning important and how can we find ways for the powerless to participate as equals in the process of planning?

5. How can this new agency build in safeguards to prevent institutions from becoming "closed systems" administered by professional elitists?

6. Is the goal "diversion", or "prevention" or both?

If this discussion has made you a little uncomfortable--either with your philosophy, someone else's, or the state of things in your community--it has been a success because I had hoped that I would be as bothersome as a gadfly to anyone here who has an interest in maintaining status quo. Substantive changes can occur only if you are creative and persistent when you return to your own communities.

SPEAKER AND AUDIENCE INTERACTION

Audience Respondent

I'm a County Youth Services Coordinator and I'd like to ask in light of the philosophy and goals that you have postulated in your speech, what specific assistance can your office offer to communities that are wanting to develop alternatives to the traditional justice system?

Richard Rosenthal

Let me tell you a little story to try to answer that, okay. One of these incidents occured in another state and neither of these have occured in Iowa yet. About two years ago my predecessor, who was then in the Office of Juvenile Delinquency or whatever they called it in SRS of the HEW, was traveling to a large community in the Midwest with a representative of the Law Enforcement Assistance Administration and they were going to go down to talk about programming at the local level relative to the juvenile offender. The LEAA representative said to my counterpart: "I'm taking 20 million dollars with me, how much you got in your sack?" Well the answer was: "$150,000 the first year and a promise of that much in the second year if we get it." The program that I represent is only one of several things that the Office of Youth Development is trying to do but it's the only one that OYD in Washington has chosen to decentralize. So the resources for this program in this region are $721,686 annual program budget for four states and a one-man shop. Now, the only way I know how to answer your question is to say we try to make the money go just as far as it will go and if me and my secretary can handle it, we'll answer any requests and hope that the concept catches on to the point that folks are just dissatisfied with that level of service from the federal government and do something about it. Here in Iowa, we fund the Office for Planning and Programming, specifically Mr. Smith, the State Youth Coordinator, and I would suggest that any ideas that you have about Iowa in terms of this concept be bounced off him and find out where he is in relation to it and what his office can do. But anything we can do from the regional level, we'll be happy to do. If you have a request, you know, let me know what it is no matter how absurd it seems and, no, I would rather do it this way: Let Mr. Smith know what it is and if he thinks I should be involved, I will because, believe me, he's as much an expert as I am.

5. SOCIETAL RESPONSES TO DELINQUENCY

Paul Lerman

According to the dominant appraisal of American corrections, we have progressed as a nation from a spirit of revenge and restraint towards realizing the goals of reformation and reintegration of youthful deviants. This view is not only held by professional correctional officials; it is also set forth by respected members of the academic community (Empey, 1967). But the disparity between these lofty intentions and actual practice is much greater than we have wished to believe. This disparity exists on a national level. In 1967 the National Council on Crime and Delinquency reported the results of the first nation-wide study of corrections. This study was prepared for the President's Commission on Law Enforcement and the Administration of Justice. Some of study's most significant findings have yet to be fully absorbed into an empirically-based conception of what public policy actually offers American youth on a national scale:

> ...In 1965 the total number admitted to detention facilities was more than 409,000, or approximately two-thirds of all juveniles apprehended....These youngsters were held in detention homes and jails for an estimated national average stay of 12 days at a total cost of more than $53,000,000--an average cost of $130 per child...
>
> ...The statistics show 409,218 children detained but only 242,275 children placed on probation or committed to an institution (President's Commission, 1967b. p. 121 and 129).

The figures clearly indicate that on a national level the dominant public response to arrested juveniles is likely to be a local 12-day lock-up. Since less than one-half of those brought to court, in 1965, were officially handled by the court (i.e., about 327,000 of the 697,000), the national data also indicates that more youth receive community-based institutionalization than are even formally adjudicated as delinquent (Juvenile Court Statistics, 1970, p. 12). In addition, only about 189,000 youth received probation in 1965, but over twice as many were detained. It seems extremely unlikely that these 189,000 youth received 12 full days of treatment services during the year, since not even youth in intensive programs receive this level of service (Lerman, 1975). The data indicate that more arrested youth are locked up than receive juvenile justice or probationary treatment. These empirical facts lead to the inference that restraint is still the dominant public policy response towards youth--not rehabilitative and reintegrative services.

The empirical facts also suggest that juvenile justice and treatment services are actually secondary units of a larger social control system.

It seems more accurate to conceive of law enforcement, the juvenile court, and corrections as units within a broad social control/treatment system. Within this system, once youth are formally arrested, they are more likely to receive sanctions than either justice or probationary treatment. Obviously, this outcome does not represent the ideal policy of the system, but rather refers to the manner in which it actually operates. On a national level, there is a discrepancy between what are professed as ideals and what actually emerges from empirical measurements of the system's functioning.

The national 1965 survey data indicate that local, community-based, sanctioning resources are available throughout the country, particularly in and near urban centers. Less populous areas often use local jails; in 1965, of the 409,000 detentions, approximately 88,000 occurred in local jails. The costs of constructing a detention facility can be expensive; in 1965, the cost was estimated to be at least $10,000 per bed. The costs of operating juvenile lock-ups were computed at over $11.00 per day in 1965. Given these construction and daily operating costs, it may not be too surprising to learn that an affluent state like California is considered one of the country's leaders in juvenile detention (Lemert, 1970). Since California is also considered a national leader in corrections, the state's superior statistics can help to describe more precisely the unstated, operational policy that guides the delivery of more social control than formal adjudication or probation services (Lerman, 1975).

In 1960 and 1965 the data clearly reveal that more California youth were detained than appeared on a formal petition before a juvenile court judge. This social control dominance continued in 1970, despite a statewide emphasis on community treatment and probation subsidies to counties. The data for 1970 also reveal that California local lock-ups are primarily related to charges where there is an absence of victum. The preponderant reasons for detention are delinquent "tendencies," administrative reasons, and drugs (primarily marijuana) (Lerman, 1975). It is clear that the boundaries of this state's juvenile social control/treatment system are quite broad. There is evidence that a state like New York, with comparable levels of resources, also provides similar boundaries in operating their local social control/treatment systems (Lerman, 1970).

Recent data suggest that a greater emphasis on due process within the juvenile court has not yet had an appreciable impact on detention usage. The 1970 California data reveal that statutory changes and Supreme Court decisions have not decreased the relative dominance of social control. A recently completed new national survey, conducted by Sarri and other University of Michigan researchers, provided the following empirical estimates: in 1973 at least 100,000 children will have spent at least one day in an adult jail, while nearly 500,000 other youth were confined in local detention facilities (Youth Reporter, November, 1973, p. 2). Between 1965 and 1973 the number of youth detained has grown from roughly 400,000 to 600,000--a gain of 50 percent. This gain is much greater than the 12 percent growth in the age-specific youth population that faces the risk of detention (Youth Reporter, Jan., 1974, p. 7). During this same time, the proportion of court cases handled unofficially increased from 53 to 59 percent.

A recent study offers some insights regarding how difficult it can be to try and reverse the steady rise in detention rates. In 1967, the Chief Judge of Cuyahoga County (based in Cleveland, Ohio), launched a determined effort to reduce detention. He comments about his efforts as follows:

> ...Social workers, probation officers, and police officers, who had previously for all practical purposes made the decision as to the necessity of detaining the child, reacted strenuously to our screening process.
>
> ...Naturally, these criticisms, those from within the court and more especially those from outside agencies, militated against acceptance of our new policy...
>
> ...The social agencies which staunchly proclaimed their non-punitive philosophy wanted us to detain children as part of their "treatment" process...
>
> ...Helpful in discouraging one of the social agencies from the overuse of detention was our new requirement that an official complaint must be filed concerning each child placed in the detention home...
>
> It had been a common practice for a probation officer to place a child in detention who was uncooperative, who failed to keep appointement, who truanted from school, or when upon a complaint of the parents was considered out of control at home...The 380 children admitted by probation officers in 1967 was reduced to 125 in 1971, a reduction of 60 percent...
>
> ...As we began our initial effort to reduce population, we found that many children were being detained, awaiting acceptance by various state, county, and private facilities who, often arbitrarily and for their own convenience, imposed quotas and admission requirements on the court...(Whitlatch, 1973).

This unusally frank report indicates that detention can be used as a multi-purpose resource for a variety of preventive, treatment and administrative reasons in Cleveland, Ohio, as well as in California. For three years (1967 through 1969), Judge Whitlatch was unable to demonstrate empirically that the Chief Judge was able to regulate administratively the use of detention by policy, probation officers, treatment agencies, and correctional organizations. Finally, in 1970 and 1971, his detention reduction policy began to show signs of success--particularly with police and his own probation staff. However, a separate reading of the 1971 Annual Report of the Cuyahoga County Court reveals that more local youth still received formal detention than received formal probation--3,439 to 2,387 (Annual Report, 1971, p. 26 and p. 27).

The unstated policy of America's public response to juveniles, as indicated by actual empirical data of current practices, appears to contradict the sanguine ideal image of an evolutionay correctional policy. There is a lack of empirical evidence that correctional policy has progressed from restraint to rehabilitation. In practice we may attempt to do both, but restraint appears to be the more dominant expression of our operational, unstated policy. In addition, the current unstated policy displays an historical continuity with past policies and practices. Recent historical research suggests that the advent of the modern correctional era has probably led to a growth in the degree of local social control over youth.

Beginning in 1824 with the inauguration of the first Home of Refuge, American urban centers began the development of a separate juvenile correctional system. By the time of the invention of the first juvenile court in Chicago, at the turn of the century, a substantial juvenile correctional system had been created in the more populous, industrialized states. This pre-modern, publicly-supported system relied on broad and vague status of juvenile misconduct, as well as the adult penal code, to set the boundaries for an evolving definition of juvenile delinquency. The 19th Century Houses of Refuge, Reformatories, Industrial and Training Schools, and Homes for Boys and Girls, were confining, strict, and punitive places to be sent to--even though a child saving, rehabilitative intent was proclaimed as the dominant philosophy. While some private individuals and agencies, as well as municipalities, began to experiment with "placing out" in foster homes (preferably in rural settings), it is clear that the dominant 19th Century public correctional service was institutionalization (Rothman, 1971; Bremmer, 1971; Mennell, 1973).

Prior to the creation of the juvenile court, most American urban centers also relied on existing local jails to house youth awaiting adjudication and sentencing. Founders of the juvenile court were interested in setting up a separate tribunal to hear cases involving youth, and a special facility for housing youngsters while they awaited trial in a non-criminal court. If adults and juveniles were separated at all stages of judicial and correctional processing, then the full promise of modern correctional ideas would have an opportunity to be realized. For accompanying the idea of strict age (and sex) separation was the creation of community-based probation dispositions for worthy youths. The creation of separate juvenile detention facilities seemed to be a reasonable and logical corollary of the new community-oriented approach to youth. In practice, this meant that attached to the social invention of public probation, and the invention of a juvenile court with a broad jurisdictional mandate that codified many existing juvenile statutes, there was one additional invention--a local detention facility for children of court age only.

In Chicago, the birthplace of the first modern court, reformers secured a large house, staffed by women volunteers, to operate a holding facility for children awaiting adjudication and disposition. By 1915, this

community "group home" was replaced by a bigger, sounder and more secure residence-- the Audy Home. This new, publicly-funded place of detention had bars on the windows, secure locks and doors, guards, and a more orderly correctional routine; it was also surrounded by a wall. Chicago had constructed the country's first juvenile facsimile of a local jail, along with its community-oriented court and probation department (Sanders, 1970, p. 449-53).

In the ensuing years, many professionals, reformers, and academics devoted major attention to the new probation departments that were attached to the court. Meanwhile, many more youth were exposed to local lock-ups than existed under the older, less-progressive system-since judges had been increasingly reluctant to place youth in adult jails (Platt, 1969). The use of local lock-ups appears to have been facilitated by the infusion of new public resources to help realize the broad mandate of the court. On behalf of this mandate, the larger urban centers also added new occupations and organizational resources. Specialized juvenile officers and bureaus, as well as probation officers and departments came into being to aid the work of the court. The building of detention facilities was a critical multi-purpose resource for the new juvenile police officers, juvenile judges, and juvenile probation officers--the new officials of the modern juvenile social control/ treatment system.

As new detention facilities or beds were made available, the new officials made rapid use of their community-based resources. In the 1965 survey the dominance of this local correctional resource was revealed for the first time on a national level. But it is quite probable that this dominance emerged between 1915 and the onset of World War II. It is also likely that the rates of local institutionalization of youth have been rising ever since the first Youth Homes, Halls, Reception Centers, and Shelters were built as places of segregated juvenile detention. The rise in detention rates during the decade of the 1960's and early 1970's appears consistent with the unstated policy and public investments of earlier years. The California data illustrate how the policy operated during the past decade.

The emergence and expansion of local forms of sanctions was also accompanied by the emergence and expansion of new occupations and organizations devoted to the regulation and control of suspected youthful deviants. Since 1900 we have increasingly relied on paid personnel, preferably with professionalized training, to specify and operationalize a community's policy towards its youth. In carrying out this policy the new officials were expected to make individual judgements about each case, employing such non-legal cirteria as emotional development, family composition and relationships, adjustment at school, and relationships with adults. The practical impact of using non-legal, as well as legal, criteria for deciding whether youth "needed" the rehabilitative services of the modern system, meant that the meaning of "delinquency" included more than just the commission of penal-type offenses. While the pre-modern era also included non-criminal, juvenile

status offenses, it did not have the explicit statutory permission and resources to transform a case of "tendencies" and "need for supervision" into a bona fide arrest or juvenile court complaint. Part of the rationale for obtaining a new juvenile law and juvenile court was to gain this permission. The modern era did not invent deliquency; but the new officials added a breadth to its meaning that expanded the criteria for being placed under the partental care of the juvenile control/treatment system (Platt, 1969; Mennell, 1973).

This expansion of the potential meaning of delinquency provided professionals with broad discretionaly power to interpret what constituted a deviant act, a deviant character, or a deviant situation. Recent studies of the exercise of discretion in practice indicate that professionals can make an independent contribution to increasing the rates of deviance and/or increasing the rates of social control. Wilson has documented how the growth of specialized juvenile units and police professionalization is associated with far higher rates of juvenile delinquency (Wilson, 1968). For example, Oakland, California, a professionalized department, was found to have a juvenile arrest rate that was 10 times the amount found in Albany, New York, a non-professionalized department. The status of California and New York are equally broad in their potential mandate and leeway for the exercise of discretion-- but the Oakland police were far more likely to arrest youth for "delinquent tendencies" than Albany police. In a very real sense, the Oakland police were independently expanding definitions of deviance, since both departments were likely to make "pinches" for serious penal offenses.

Beside making an independent contribution to rates of deviance, professionals exercising discretion can also make an independent contribution to rates of social control. In California, data associated with the pre- and post-Probation Subsidy periods illustrate how police rates of referral to court and detention admissions can rise quite independently of any comparable increase in rates of criminal type offenses (Lerman, 1975). California data also disclose that state parole officers can made an independent contribution to rates of parole violations and detention, even when rates of police arrests for crimes are not changing (Lerman, 1975). The historical and empirical evidence indicates that an expansion of occupations and organizations that are granted discretion to exercise powers of complaint and sanction can be associated with increased in the rates of official deviance and community-based sanctions. It appears, too, that therapeutic intentions and standards can be readily incorporated into the ongoing juvenile control/treatment system--thereby creating an additional source of deviance definition and an additional rationale for creating sanctions. The inference that social control/ treatment officials can made an independent contribution to the creation of deviance and societal responses is based on an empirical reading of a variety of studies. However, the inference is consonant with recent intellectual perspectives of the labelling theorists (Lemert, 1967; Becker, 1973; Schur, 1973). According to this sociological

perspective, deviance is not an attribute or trait of a person. Rather, it is a social invention, or definition, that arises out of the interaction between social actors and persons or organizations possess with legitimate power. Deviance, therefore, is a negative characterization of the actor by persons and organziations with sufficient power to create, interpret, and enforce social, moral, or legal standards. This labelling process is characterized by a potential variability in concensus regarding the standards for many types of behaviors and situational conditions. This process is also characterized by a potential variability in access and use of sanctioning resources to impose and enforce the standards. Until recently this perspective has exhibited a major interest in understanding how the definitions and responses of the labelers are reacted to by suspected deviants. Regarding juveniles, there has been an interest in determining how stable deviant roles and careers are facilitated by the stigmatic actions of the labeling system (Wheeler, Cottrell, and Romasco, 1967). While it is possible that future research will support some or all of the hypotheses about the impact of the labelling process on the self-conceptions of youth, it is important to note that the labelling process is socially sponsored and organized; therefore it can have objective consequences that are independent of the subjective images of either the labelers or the labeled.

Evidence has been provided that the activities of police, court, and correctional personnel and organizations are part of a larger deviance-defining and sanctioning system. For purposes of convenience and ready communication, this complex system has been termed the social control/treatment system. As members of this system, correctional personnel can have a direct and indirect impact on rates of deviance processing and sanctioning. Adding a broader mandate to correct youth can result in a widening of the deviance-defining boundaries and the creation of new forms of deviance and higher rates of sanction, as occurred in special parole programs (Lerman, 1975). Changes in the allocation and distribution of the system's financial and organizational resources can result in alterations in the deviance defining rates, the sanctioning rates, or the duration of the sanctions--as occurred in the post-subsidy period of California's program of probation subsidy (Lerman, 1975). In drawing these kinds of inferences from the empirical data, it is not necessary to assess the subjective intent of the definers and enforcers of community, organizational, and treatment standards. Nor is it necessary to assess the self-conception of those that are labeled and processed by the system.

The idea that an expanding system of social control and treatment can actually produce added amounts of deviance and sanctions poses a paradoxical problem, we are liable to be faced with two: one presented by youth and one created by adults. In practice, this means that when we read that the delinquency rate in Oakland, California, is ten times the rate of Albany, New York, we are dubious that the entire difference is due to youth behavior (Wilson, 1968). Or when we read that California rates of referral to juvenile courts have risen by nearly 50 percent in a five year period, we are dubious that the entire increase is due to youth behavior. These areas of doubt represent independent contributions to the delinquency problem.

The evidence appears to indicate that we can compound the original problem by permitting systems of control/treatment to expand and to operate under discretionary standards. Many of these standards appear unreasonable when subjected to close scrutiny. The system, if left to operate according to the unstated policy, tends to result in a dominance of social control. The evidence also indicates that merely adding more fiscal and organizational resources to the exisiting system can result in furthering the relative dominance of social control over treatment.

The community treatment strategy, as currently formulated, attempts to control the state institutional part of the social control/treatment system--while adding additional resources to local parts of the system. The evidence indicates that this limited approach can yield unintended and undesirable increases in local institutionalization rates. In order to have an impact on definitional boundaries, total state and court institutionalization rates, the balance between sanctions and treatment, and the duration of sanctions, it appears necessary to address all of the critical, discretionaly decision points. A policy of rolling back or freezing the boundaries and all types of institutional usage would probably involve the creation of a monitoring, regulating, reporting system that would be directed at police, judges, probation officers, correctional administrators, and parole officers. Even if a cooperative consensus about narrower deviance and detention standards were agreed to verbally, actual compliance would have to be monitored at all decision points.

A strategy of decreasing the definitional boundaries and coercive dominance of the total system could be coupled with a policy of searching for less extreme forms of social control and less costlier forms of treatment. However, a strategy of reducing the boundaries of deviance definition and institutional forms of sanctions need not be rationalized by claiming a rehabilitative technology where none has been scientifically demonstrated (Lerman, 1975). The reduction of excessive social and fiscal costs associated with unreasonable uses of institutionalization possesses a social value that is superior to pursuing relatively ineffective modes of treatment. From an empirical perspective a better case can be made for reducing the total system's unnecessary social and fiscal costs than pursuing treatment strategies that contribute to increasing these costs. In practice this means that our juvenile system could become less costly if we concentrated on reducing the rationales and practices associated with sanctions, rather than concentrating on expanding treatment. The delivery of treatment, limited as its impact may be, might begin to expand as the social and fiscal dominance of institutionalization at state and local levels actually diminished. The evidence suggests that we have to be clear about the priorities, or else we can unwittingly continue to incur unnecessary costs, and leave the system essentially unchanged.

At this time, it is uncertain whether a sufficient degree of agreement and political authority could be mustered on behalf of trimming down the boundaries or sanctioning capabilities of the total juvenile control/treatment system. New directions in public policy often require the support of political elites, interest group leaders, and leaders of the local and state sub-systems of enforcement, adjudication, and correction. While appeals to reason and empirical evidence can play a part in formulating public policy, it would be naive to think that traditional assumptions, values, rationales, occupational interest, and political and fiscal interests do not influence policy choices to an important degree. The blunt fact may be that fundamental reforms of the total operation of the juvenile control/treatment system may not be deemed to be politically acceptable or feasible--even when costs are documented to outweigh benefits.

In the event that local communities are unwilling or unable to engage in a fundamental re-examination of the operation of the control/treatment systems, there are other strategies that could be considered. One, of course, is a modified community treatment strategy that attempts to reduce the specific social and fiscal costs that have been identified for special programs (Lerman, 1975). A second strategy involves a policy of diverting significant numbers of youth away from the existing system into alternative institutional arrangements, and thereby mitigating the consequences of penetrating beyond the arrest or court referral stages of deviant definition and processing. A third strategy, related to the diversion strategy, attempts to create new, competing definitions of deviance and less coercive societal responses to deal with family and youth problems (Lemert, 1972). A fourth strategy favors a radical ignoring of many forms of youthful deviance by the control/treatment system, with the expectation that the benefits of non-labeling will outweigh the costs of stigmatization and inappropriate responses (Schur, 1973).

Each of these limited strategies leaves the existing system intact, while hoping that the numbers of youth subjected to discretionary definitions and sanctions will be reduced. In addition, each limited strategy requires some degree of cooperation by existing sub-units of the juvenile social control/treatment system. This cooperation can be obtained by agreement, incentives, or by the use of superior political authority. But it appears that some degree of cooperation with existing units within the system is a significant precondition for obtaining altered patterns of deviance processing in a local community or on a state level.

It is instructive to note that strategies of limited reform as well as more fundamental policy changes, often require direct political authority or cooperation of significant interest groups and elites to initiate and stabilize change (Marris and Rein, 1967). This political dimension of the delinquency problem is rarely highlighted, but the dominance of social control and the broad discretionary use of authority

could not have been permitted for the last century and a half without the acquiescence or approbation of community elites and representatives. The construction and operational maintenance of varied forms of institutional control required budgetary and political approval. The recent rise in national detention statistics, amidst a period of experimentation with community treatment and legal rights, indicates that the modern, community-based system of juvenile control continues to command widespread political support.

An unstated policy that has received expanding fiscal and organizational resources and continued political support, for such a lengthy period of time, may seem impervious to dramatic change in the near future. But the spread of juvenile control/treatment systems into suburbia and more affluent residential areas may lead to be a belated democratization of the delinquency problem, and the entry of new groups and individuals concerned about control and treatment issues. Further, as more middle-class youth are drawn into the discretionary boundaries of the expanding system, they are likely to be defended by lawyers. Legal representation, in turn, has only recently been legitimated by statutes and a precedent-setting Supreme Court decision. Private lawyers have been joined by lawyers assigned by legal aid, public defenders, child advocate, and civil rights groups--and have begun to attack vulnerable parts of the system on behalf of individual clients and class action categories. This newly added interest group is having difficulty in carving out a traditional legal role, but the rise in juvenile advocacy is a reality that few would have predicted in the mid-1960's (Stapleton and Teitelbaum, 1972).

The addition of advocate lawyers is producing an impact on the organizational roles and locus of decision making within one unit of the system, the court. An increasing number of states are now assigning official state prosecutors, rather than probation officers, to formulate a case against juveniles. Besides adding another segment of the legal profession into the system, the addition of the prosecutor has injected into the work of the court the notion of plea bargaining. Plea bargaining has already begun to be described in the literature, and is likely to increase in the near future (Stapleton and Teitelbaum, 1972). Plea bargaining can lead to reduced charges, dismissal of cases based on poor evidence, and pre-adjudication bargaining regarding dispositions--outcomes that have little to do with treatment preferences or techniques. Prosecutors and defense lawyers are likely to gain influence in specifying the boundaries of legal deviance and the use of specific sanctions attached to dispositional recommendations. Regardless of whether participants or outsiders applaud or decry these new developments, the injection of defense lawyers, prosecutors, legal traditions, and plea bargaining are likely to have systemic consequences that result in altered decision-making patterns and choices.

The national dominance of social control has not yet been influenced by the recent introduction of lawyers into juvenile courts, perhaps because a good deal of detention occurs at the pre-adjudication state

of decision making. But lawyers and other new interests can also attempt to influence events by engaging in outside political activities. It is possible that the advocates of legal rights, minority rights, and the rights of children will begin to forge a variety of alliances to challenge the existing system on local and state levels, and push for changes that affect pre-court, as well as post-court, processing. If this occurs, then the advocates of reason, researchers using empirical evidence to assess the actual operation of the system, may have groups outside of academia that will use their studies in the broader policy-making arena. If changes occur, further research can examine whether the system is moving from an unstated national and local policy of restraint to a policy of informed reasonableness, fairness, and humane concern for youth.

Future signs of progress should not be too difficult to discern. Rates of total state and local institutionalization and length of stay are two signs. We can also find out if the rates of formal complaint, formal adjudications, and non-coercive probation dispositions exceed the rates of institutionalization. Progress could also be noted by decreases in the arrests and coercive processing of cases of delinquent tendencies, juvenile status offenses, or children in need of supervision. In monitoring this latter indicator of progress, analysts may have to assess new alternative societal responses towards the new legal category, juveniles in need of supervision (of JINS, PINS, MINS, and CINS, depending on the jurisdiction). Since past evidence indicates that this category of youth is most likely to be detained, remain in detention longer, and be institutionalized in state institutions for a greater length of stay, it is possible that programs operated under new sponsorship and titles may recreate traditions, costly examples of restraining institutions (Lerman, 1971). It is useful to remember, too, that reforms initiated at the turn of the century also began by creating an alternative community-based response to the traditional system of social control.

During the first 75 years of this century, we have been creating a modern juvenile control/treatment system to regulate the conduct and character of America's youth. This has been accomplished while believing that we were primarily engaged in saving or rehabilitating youth. The image of non-restraining society was set forth, while we constructed new institutions that were classified as detention facilities, residential schools, and diagnostic centers and reception clinics. During this time we also created probation and other less-coercive services, but the dominance of our reliance on institutionalization is clearly revealed by national and state data. In the last part of this century we may continue to maintain the discrepancy between reality and our intentions, or we can begin the troublesome task of determining where social control ends and fair treatment begins.

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SPEAKER AND AUDIENCE INTERACTION

Audience Respondent

I'm from the Grinnell Mental Health Center. Are you suggesting that there be a clear-cut definition of delinquency spelled out in the code?

Paul Lerman

The implication of what I'm saying would be that the real code of delinquency, for me, first of all would exclude all non-criminal type, behaviors, characterization of situations, and get them out of the traditional social-control treatment system. I really don't like to use the term "juvenile justice" anymore. The other thing that would be necessary in order to begin to regulate the possibilities (and it seems to me we're faced in the juvenile justice or social-control system with the same problems as we have in regulating power to control as we have in all other areas of our society) is how tight do you make the rules and regulations standards and how much latitude do you give men and women in order to interpret them? In other words is it a country of laws or a country of men and women? And in reality it has to be both but there has to be clear boundary with the laws for the men and women to operate within. Therefore one of the implications would be that there really ought to be a degree of delinquency. Take famous court case of Gerald Gault that the U.S. Supreme Court decided on. What did Gerald Gault and his buddy do allegedly? They went to a telephone booth and they called up a lady and they made some kind of remarks. The remarks are not in the records, but there was some kind of obscene remark. Now in Arizona at that time, probably today and probably in Iowa, well maybe not, I don't know, anyway in Arizona you could get for obscene remarks a fine of $50 and or up to 60 days. That's all. Gerald Gault, he was fifteen, got an indeterminant and was sent to an institution sentenced until age 21, he got six years. So you have six years vs. 60 days. Now the Supreme Court didn't rule whether that was an unjust sentence. That would be the substantive part of the statute. What it did rule on was the process within the boundaries of that court room. So you could have now due process and fair treatment within the juvenile court in Arizona and Gerald Gault could still be sent to the Arizona State Industrial School for a term of six years instead of 60 days. There is something wrong with our statutes and operating practices where a kid does something than an adult would get 60 days. And a kid no matter how benign, how humane, how good that facility, it is still the restriction of liberties, will get up to six years. Now the average stay was not six years but if he had trouble within the system, he could have been transferred, he could have stayed longer than the actual nine months to a year. So the implications seem to me that we move away from the turn of the century and begin to define the degree of delinquency. It seems to me that it's something that kids understand and know too, that there is something different than doing what Gerald Gault did and mugging and throwing on the street a lady with a pocketbook and breaking her shoulder. It seems to me that kids as well as adults can understand the moral difference

between doing one and doing the other. But to have the same outcome is a reality not just a hypothetical possiblity, it seems to me to offend any sense of morality and justice and a part of what we can do with our system. If nothing else at least convey how adults are behaving morally and we ought to build in some degree of delinquency and thereby set the limits on what can happen and there also ought to be regulations before the definition is made that youngsters have a right to liberty just as adults do unless demonstrated in a clear and present kind of way that they are really extremely dangerous to themselves and others. So that's a long-winded response to what you asked.

Audience Respondent

I'm an assistant Polk County Attorney. I'm wondering what help, if any, you can give parents who don't have control of their child. This would be the status-type offense where you've got an uncontrolled child who is acting in a manner which is detrimental to his own best interest and injurious to his own welfare. It seems to me that a lot of delinquency petitions are based on that, and I think the practice in our court is that the parents in a lot of cases sign those petitions. The parents then have counsel. Sometimes the child does not have counsel but it seems to me sometimes we have the whole system working to do something with the child but nobody really has the solution for.

Paul Lerman

Now let me ask you a question. Where else could a parent go with those types of problems in Polk County?

Audience Respondent

I don't know.

Paul Lerman

Now wait a minute. That's the key. As long as we keep that resource and that alternative there will be no other place to go. Now what we have done historically is to have that as our mark since the old days of the poor house with the catchall for mental illness and various kinds of problems including and in a sense our juvenile control system has become a catchall for all types of problems. So where else can we go?

Audience Respondent

You seem to be suggesting that if we do away with helping the parents through the use of the juvenile court with problems of this type that some other community agencies will be forced to come up with or develop some other answers.

Paul Lerman

It would seem to me that parents with troubles with their kids in a variety of forms or kids with troubles with their parents, partly with runaways, well there ought to be a place in various communities to help family-youth problems without using the course of power as an instrument of the state. Now if it comes to the point where, in fact there has to be some kind of course of power of the state as there is in civil adoptions cases, or in marriage-divorce cases, then there ought to be the possibility of going to the civil court to, in fact, do things in the extreme stage where it has to be done. But it seems to me that until that stage is done, that there ought to be developed in communities a public responsibility for dealing with family-youth problems. If it is serious about it and it wants to help; if it doesn't want to, then to continue to pretend that we can use that social-control system to deal with that kind of problem, it seems to me to do an inservice to parents and to kids as well as to our own really basic ideals underneath.

Audience Respondent

It seems to me that what we are saying though is that we need some sort of judicial control as the intake people screen these cases very carefully and they encourage the parents to exhaust every community resource before filing a petition against their own child in affect. We don't want to do this but most of the times the parents are driven to this not because of a lack of resource but because no other resource seems to have any affect on the behavior of this child and so, you know, they are at the end of the rope. It's the most drastic alternative but it's the only one that remains in many cases.

Paul Lerman

Well it seems to be that there is a need for each community to define how much the police power of the state is going to be used to uphold parental authority. Part of the difficulty in doing away with juvenile status offenses over the years may well be that as part of upholding general parental authority that we are unwilling to risk giving up police power of the state to enforce that until the kid does something that actually crosses the legal boundary. I am also suggesting that communities throughout the country build a public resource where families and kids can go without being declared poor or on welfare or delinquent or something else like that. I mean a public resource that families and youth can feel comfortable in going to with a problem without having to define each other as being either neglectful parents or dependent or what have you and so as we begin to do that, it seems to me that it's really unwise to think that we can't do other things. The problems will be there, there's no question about it. Of course, what we are going to see is to compound the problem because that kind of kid, that incorrigible kid could have been with Gerald Gault . . . alright, an incorrigible kid, that had been sentenced by the adult system, could have been a bed partner with Gerald Gault who could only get 60 days next to somebody who may have done really some burglary and mayhem. It's an incongruent system, isn't it? You can see academics have values.

Audience Respondent

I think we are brushing off rather lightly this concept of the need for bolstering parental authority. Essentially, of course, our first obligation to the child is this concept of helping him find his place in society, help him to establish himself a feeling of well being within his family. This, of course, must come within the framework of the family. As the family begins to have difficulty with the child, what recourse do they have? Of course most communities have the family-service agency, some type of counselling service that will be available but what can these agencies do? I would like to point out that the effectiveness of any such counselling agency is extremely limited until we have more effective control of the child's behavior. I think we need to take into account the fact that concepts of treatment in delinquent behavior are changing drastically in the past ten years. Whereas I think we are still much too inclined to operate on the old psychiatric analytical model of counseling, aimed at unraveling feelings - this type of thing; whereas the modern trend, of course, is much more in the behavior modification realm and where we attempt to emphasize more the re-education aspect of treatment, the establishment of meaningful patterns of behavior in the daily life of a child. Now I find this extremely difficult to apply these behavior modification concepts in dealing with say a 14 year old girl who may be uncontrolled unless the parents have a little more authority than they seem to have in the present setup. You can talk all you want about getting the family to do things in a positive vein, to improve the communications and to meet this child's needs but if the child refuses to come home after school and doesn't come in until 2:00 in the morning; what's her mother going to do? I think it's at this level that we really have to take a look at our juvenile code if we are going to really meet the needs of our children.

Paul Lerman

Well, I still think that communities ought to have . . . if a child is going to run away, a place to run to . . . and some choice to run to, to begin to work it out. . . there's some difficulty in getting that concept in various communities. I think too that parents are having troubles. I don't agree that communities throughout the country have places that parents can go that is public sponsored and financed. It's the public's responsibility to provide a youth family service which because it is public and becuase the next stage could be involved with court would have quasi-administrative regulatory aspect. I think, as a matter of fact, we may have to have regulatory agencies and commissions in a variety of fields and we have to think of some kind of combination of an administrative, regulatory service agency dealing with family and youth problems that is independent of the court and of the child welfare system so that you don't need to be poor, be a delinquent in order to get there. Then I think that, again, separate and apart from delinquency, we must break that historical tradition that's been with us since the Plymouth Colony of those kinds of non-offenses being deemed offenses. Then on the civil side the same court that deals with adoptions and the

granting of foster homes and marriage and separation settlement, those kinds of courts ought to be the places where complaints of the family members can also be adjudicated if, in fact, it comes to some form of authority of the state. Because in many separation agreements the children are going to homes they don't want to go to either. And I think out of that we can begin to create new attempts at problems. This won't solve the problems but there isn't anything out there that's going to solve the problem or has solved the problem until now. The question is whether we can begin to use our responses to quit compounding the problem and begin to build in that kind of humane concern that we thought we were associated with all these years. We look back now on the 19th century and we find they weren't as benign, child caring as we think they ought to have been, although they believed they were certainly more child caring and concerned as the guy of the 18th century. And now, I think, as we approach the 20th century, we're only 26 years away, that we can begin to take that kind of look towards where we've been and where we might like to go and you've got the opportunity to do that, it seems to me, in terms of revising the code and through these kinds of discussions in counties, towns, and at the state level.

Audience Respondent

I would like to ask you a little more about this subject of communities providing public resources in regard to kids should have a place to run to. In fact, I believe this gentleman remembers, I used these words in asking him this morning what his feelings were about this because this is a statement that I have made in many different situations and to many people and I always get complete silence for an answer when I suggest that kids could have a place to run away to without some of the ramifications that you indicated. Are there things being done in communities; are there reasonable places for kids to run to in some communities in the nation?

Paul Lerman

Well there are communities that are experimenting with various forms and some of them run afoul of the authorities because they are aiding and abetting a runaway and so one has to work out these accomodations with the local police and court so as to not get into that kind of hassle. And it is important to work out these arrangements or else these kinds of places cannot exist. But, yes, there are things going on. There are even probation departments that are able to get built into their budget homes that are available on an emergency 24-hour basis where youngsters can go if, in fact, they have a difficulty and they may stay there a day or two. A lot of these outbursts between parents and the child blow over in a few days or a week and so these places are available. But it's still quite small and we have to blow our minds a little to think along these lines.

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Audience Respondent

I feel compelled to answer the lady in regards to runaways. There is in Polk County right now an operating runaway service. It deals specifically with the types of problems that you are alluding to. We do offer a type of counselling, shelter, food, clothing, intensive counselling with the parent, offering them a service that heretofore they have not had. And, although we've only been in operation since October, our case load is pretty heavy, particularly considering we opened up in the winter. So in Polk County right now there is a service that fills these particular needs that you are talking about.

Paul Lerman

Is it a voluntary service? Is it voluntary in the sense that a kid and family can use it without a court?

Audience Respondent

Yes, it's voluntary and we are getting incredibly good support from the police department. They are finding out it is a viable alternative to either locking them up or turning them loose or taking them home so that they can run again and it is a community supported organization, non-profit and we do use volunteers in addition to paid staff. So we are here, operating and we would be willing to talk to anybody from any other community about organizing a similar setup. I am the President of the Board of the Iowa Runaway Service and the gentleman standing next to me is the Director of the Iowa Runaway Service.

Audience Respondent

I have something I would like to add and I also would like your response on it, and it kind of follows from your opening remarks when you were talking particularly about detention. I'm Director of the Iowa Runaway Service. And it's not really a question; it's more of a comment but I would like your response to it. One of the things that I believe I understand you to be saying and I heard it in a number of different ways from a number of different people since I've been here at this conference, seems to be an interest in what I would call either legalizing or adultizing the juvenile justice system through code revision, securing more elaborate processes and procedures and things of that sort. It's pretty much been my understanding that the juvenile justice system itself is sort of based on, at least originally grew out of, not only a concern for protecting juveniles in so far as not having them mingle with adult offenders but additionally to provide them with a process that was humane and was understanding to behaviors that perhaps were more for them or at least socially acceptable more for them and were symptomatic of other kinds of needs. It seems like now what we are beginning to see is a swing toward a juvenile version of the adult criminal justice system. If there is a

question there, I guess the question is in terms of your impression, it seems like maybe we are making a mistake perhaps in the interest of being protective and constitutional and particularly protective. We may be incorporating what seems to be an apparent failure in adult criminal justice system and transferring it down to a younger age group and simply repeating some of the old mistakes that we have made with adults. I would like your impression of that and your response to it.

Paul Lerman

I don't think because a court has to follow more orderly procedures, has to be bound by some explicit boundaries, that these things make it more coercive and more punitive. The idea of having a more bounded system which we see at the adult level and all the people who are walking free in the Watergate business are not sitting in detention while their cases are being adjudicated. So you can see that the system can be quite fair when it is bounded. Now I think what we're seeing is an attempt, and I guess the Supreme Court Justices put it in, of a way that is easy to hit home, and that we are trying to domesticate the court. I think what's implied is that any time we set up any kind of social control system in any area of life, then there is always the problem of how that power and control is going to be used and in a sense one has to try and build in some controls of controllers or regulations of the regulators. Okay. And one way we do that historically in our country and other Western societies is through the means of law and of setting boundaries and through the means of guidelines to back up the laws and then some kind of monitoring of those guidelines and laws and then the possibility of an appeal. Now it would seem to me that if it can begin to be domesticated and set the boundaries more sharply of that system, then one of the things we could begin to do is to take out things that don't belong in the system which was talked about and others have begun to talk about and then if we set the boundaries so that Gerald Gault won't have to face more than 60 days of coercive treatment or coercive socialization. There ought to be limits to the rights to treatment and do good for people as well as the right to do bad for people. Alright. And we've got to begin to recognize that what gives us the right to try to change things in people is only their doing something that goes beyond the bounds of what we define as being out of boundaries. And once they do that, that would give us the right. But then how long do we have that right? and what can we do within the boundaries when we do have that right? We have to begin to address those questions because historically we're confused about where control ends and people begin. And that's one of the things I have the most difficulty with in teaching classes of future Masters in Social Work and active social workers. I have a problem in a definition of treatment in an authoritative situation that is separate and apart from any coersion. And they have a hell of a time in defining treatment independent of that and we have got to begin to wrestle with that problem.

Audience Respondent

I feel a little compelled to address myself to one point that was made a little bit ago. I'm a junior high counselor and I'm sitting here among

sheriffs, probation officers, judges, and we are here to consider revisions in the code for juvenile justice. Sitting among you I hear comments about children rebelling against authority. It seems to me that the youth are telling us something if they are rebelling against authority. If we are going to now revise the code to impose more authority, maybe we are missing what the kids are trying to tell us.

Paul Lerman

I don't think I was implying that. I think that's part of the thing you are going to have to have if you revise the code and, you know, the hot air, the more ideas get out in the open the more kinds of assumptions underlying these codes which have really been with us. What we find in the code of the Puritan Bay Colony was that servants and children who were disobedient and incorrigible shall be subject to X type of penalty. Since that time we have incorporated in the penal code that breadth of what youngsters can do and it's time we began to address whether, in fact, we can do it any differently. No state, by the way, has taken these status offenders, which are all the things kids can do that adults would not be charged for, out of the juvenile court jurisdiction. They have created another label, another category sometimes with worse consequences but none have taken it all the way out of the system. Maybe you'll lead the way.

Audience Respondent

I'm from the Christian Home Association in Council Bluffs, Iowa. A comment as I'm sitting here listening; I'm thinking of the fact that protecting the rights of children came out of protecting the rights of animals, if I'm not mistaken, and if this be the case, then I would like to relate it to the fact that you don't tame a mad dog by kicking it, if that makes any sense to you. I think also that you cannot tame the mad dog when he is on the run. You've got to have him, pet him, groom him, to tame him. The point I'm getting to is that it appears to me that there are a lot of our young children that are on the run. The age of the child is much younger. They are going a greater distance. The point being then, what do you suggest as an alternative to control or to protect the right of the child who is on the run?

Paul Lerman

I didn't mean to imply that I am against control. I think that would be an illusion, a world without any control. What I do think is necessary is to recognize when we are not controlling and when we are controlling and call a spade a spade and that we keep examining our operations and practice as to whether there is more control than other kinds of activities on a total system kind of basis. There should not be more kids detained than formal petitions in a court. It just boggles the mind if one is going to talk about juvenile justice. So that's one dimension. The

other aspect is, what are the alternatives we are continuing to build in, part of that was discussed about the runaway possibilities. And I think it very well may be that up to a certain age and that age may not be 18; it may become 16 or something else, in different states depending on the particular state, that there very well may have to be recources in civil jurisdiction in terms of youngsters who really won't even run to the places that we set up and keep running and our unable to exercise the choices. Because of this there may have to be some civil type coersion that would be separate and apart. But at that point, it would seem to me, that we would have to face up to the child's interests. The parent's interests are different and the state's interests may be different and you may need some set of advocates or defenders from an unbiased point of view, that are in the arena seeking what is, in fact, the best for the child at that particular time. Again, these complex cases, complex issues, and the only thing, I think, we are beginning to say is let's not use the old system as the modern poor house and continue to handle problems in that way and let's begin to break up that one label - one problem into many different and separate types of problems so that the runaway is a distinctive problem in itself, a unique problem we should not continue to handle this in terms of a general example of delinquency. You have got to get behind that facade and keep that problem away from other problems and begin to address it on those terms like the Iowa Runaway Service.

6. THE RIGHTS OF CHILDREN

Sol Rubin

Children's rights--are there any? When the National Juvenile Law Center issued a statement on the rights of children, this was its key sentence: "Youth or juveniles of today are the most discriminated-against class in the world."[1] Judge Lindsay G. Arthur when he was vice president of the National Council of Juvenile Court Judges wrote an article entitled "Should Children Be As Equal As People?"[2] He said in it--"Should children be as equal as people? Certainly not. They should not have equal liberty: they should have less."

If we need anything more authoritative, when the Supreme Court of the United States made a statement on children's rights, it said--they have none. It was in the famous Gault case that the Court said this: "The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' He can be made to attorn to his parents, to go to school, etc. If his parents default in effectively performing their custodial functions--that is, if the child is 'delinquent'--the state may intervene. In doing so, it does not deprive the child of any rights, because he has none.3 The Supreme Court having said that, it did nothing to improve the situation, either in the Gault case or in any other case.

In brief, the way to understand the law of children's rights is to think of the child as property of his parents in the first instance, but both child and parents are subject to many compulsions by the state, and the state may easily take possession of the property away from the parents.

Does it still make any sense to talk about children's rights? I am in agreement with the organizers of this conference that it does.

The plan of my presentation is as follows: I want to talk a little more about children's rights, and why I think it valid, indeed urgent, to deal with the subject. Then I want to talk about juvenile court laws, because the status of children's rights and juvenile court laws is intimately intertwined. I want to say just a little on juvenile court laws as they are, but more on juvenile court laws as they ought to be, if children are to have rights.

Children's Rights

I have read a number of so-called children's Bills of Rights. They are almost entirely sequences of pious platitudes, that children have a right to a healthful environment, loving and adequate parents, an education, etc.[4] But these are not legitimately called rights

unless they are established in some fashion and facilities to make them true.

But the actual situation is just the opposite. We may begin with the status of being a child, defined basically by the consequences of being a minor. The status of minority is usually said to be protective, but it is not. It is disabling. It says that the child, being immature, must be restricted. He is restricted in making contracts, buying liquor or tobacco, and may not enter various places adults may enter.

Children do not have a right to either their bodies or their minds. It is a general rule that a child may not have surgery or medical care unless the parents want it; and if the parents want it, he has it, without his having to be asked. Furthermore, if the state wants him to have an operation or medical care, it may effect this even against the wishes of the child and his parents, something it could not do to adults. In all states a petition may be presented to juvenile courts calling for medical care that somebody thinks the child needs.

Parents have a right to beat their children. The law gives other custodians of children certain parental rights, including beating the children. A commission spent years drafting a proposed new federal criminal code. It is now a bill before Congress. The commission recommended and the bill provides that a person responsible for the care and supervision of a minor under 18, or a teacher or other person responsible for the care and supervision of such a minor, may use force upon the minor "for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline" (citing the language of the commission report). It is marvellous how what is honestly called punishment of a child in one breath is also said to be "promoting his welfare" in another. It is an invitation to use corporal punishment against children in training schools and reformatories, and even in public schools, as well as in the home.[5] Is it any wonder that we find so many battered children, or that corporal punishment is used in training schools?

Children do not have a right to a natural sexual development. The statutes, the court decisions, the schools and the parents, enforce a victorian code that is beginning to break for adults, but not for children. A child may not have access to sex literature even if the United States pornography commission says it does not harm him, and it may well be good for him. Women, thanks first to legislation in one or two states, and then to the Supreme Court decision on the subject, have a right to an abortion; but a pregnant young girl does not have that right. She can have the abortion only if her parents allow it.[6]

By now I have begun to deal with controls on a child's mind. Not only does a child not have a right to free intake of intellectual matter, but he is compelled to learn things, whether true or not, whether he needs to learn these things or not, and whether he wants to or not. There are two controls on what may not enter his mind, parents and the state, and where it is inclined to, the state controls these things against the combined wishes of both child and parents. A child is exposed to intellectual fare only to the extent his parents permit. If he brings home books or pictures that his parents disapprove, they may throw the material out. If he receives mail, the parents may censor it. He sees TV programs only as the parents allow.

A child may not see certain films. Whereas a parent may bring material into the home and allow the child to see it--or impose it on him--even a parent who wants a child to see a certain movie may not take him in. A Minneapolis girl of 14 wanted to see "Midnight Cowboy," which carried an X rating, barring all under 17. This was a rating the distributor put on it; the film was generally rated R, restricted. The girl was refused admission despite the wishes of her parents that she see it. Her parents sued the theater. The suit was dismissed first in municipal court and then on appeal by the district court.[7]

A Queens, New York school board barred children from borrowing Piri Thomas' book DownThese Mean Streets from the school library. A principal, a librarian, parents, and children sued in court to assert their right to know; but they lost, and the Supreme Court of the United States refused to review the case.[8] Justice Douglas dissented. He said: "The novel described in graphic detail sexual and drug and drug-related activities that are a part of everyday life for those who live in Spanish Harlem. Its purpose was to acquaint the youth of Queens with the problems of their contemporaries in this social setting.

"The First Amendment involves not only the right to speak and publish but also the right to hear, to learn, to know.... This Court has recognized that this right to know is 'nowhere more vital than in our schools and universities.... The book involved is not alleged to be obscene....The Board, however, contends that a book with such vivid accounts of sordid and perverted occurrences is not good for junior high students....Are we sending children to school to be educated by the norms of the School Board or are we educating our youth to shed the prejudices of the past, to explore all forms of thought, and to find solutions to our world's problems?"

The reverse of the coin is that a great deal is imposed on the child's mind by the state. The mechanism is compulsory education. Reports from most places are that public schools are destructive, not only that they fail to teach, but that they are destructive of the personalities

of children. It is the compulsory aspect that causes much of this. Compulsory education means not only that a questionable curriculum is imposed on all children; it means that because it is wrong for many, compulsory education requires a huge policing system.

Nowadays most schools have police present. But even within uniformed policemen, we have always had truant officers--that is what compulsory education means. If the child does not attend, he is a culprit who must be sought out, and he and his parents must be punished. The persistently truant child may be sent to a training school as a delinquent--and many such children are in training schools today, having been committed by juvenile courts.

Well, with all that, --does it make any sense to talk about children's rights? As I said, I am in agreement with the organizers of this conference that it does. With all the negative things I have outlined, there are an increasing number of exceptions to the denial of children's rights, most of them by court decision--for example giving children the First Amendment right to freedom of speech, and sometimes protecting their right to wear their hair as long as they wish. Unfortunately, legislative grants or recognition of children's rights are rare, although legislation is the easiest way of remedying the situation I have described. But I will cite one because it is an enactment of the Iowa Legislature. In 1970, it passed an act permitting a minor to seek and receive treatment for drug addiction, and it provided that his or her doing so shall not be reported or disclosed to the child's parents without the child's consent.[9] It was the first or one of the first of such acts, which has since been passed in a number of states.

I should add that Iowa law does not allow the same right to children under 16 who want treatment for venereal disease. I leave it for another time to consider the rationale of these inconsistent provisions. But a brief comment on the inconsistency may be made: the statute encourages medical treatment of a child's drug problem, a non-contagious illness. But it makes difficult, it discourages, medical care of venereal disease, thus making its transmittal much more likely.

Juvenile Courts--the Enforcers

I have mentioned truant officers as enforcers of the status of children as nonpersons. The chief enforcers of that status--children without rights, children as property--are the juvenile courts. If children are to have rights, juvenile courts would sensibly be the chief enforcers of those rights. That is exactly what I want to spell out next--a new concept of a juvenile court, by which children are people, they have rights, some existing controls on them are abolished, and the juvenile courts are given the responsibility and the power of enforcing the rights of children.

During the years that I served as counsel to the National Council on Crime and Delinquency I was the draftsman for the committees that issued the 1949 and 1959 editions of the Standard Juvenile Court Act. We are now working on a new edition, which will be the seventh edition. Some months ago I completed a draft of a model statute that has been submitted to the Council of Judges of NCCD, which has the responsibility of promulgating the seventh edition of the Standard Act. It is that model that I want to draw on now.

Section 1 in both the 1959 Act and the proposed new model is the construction and purpose section. That section defines the philosophic concepts in the Act, and especially, the concept of what a child is. The section in the old Act reads very well--until you take it apart. It is very similar to the corresponding section in almost all juvenile court laws, and reads as follows:

> "This Act shall be liberally construed to the end that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the state, and when he is removed from the control of his parents, shall secure for him care as nearly as possible equivalent to that which they should have given him"

What does this really say? "Control that will conduce to his welfare and the best interests of the state." This is the kind of language that enables courts to take control over almost any child they want to; to do so at the request of parents, schools, police, neighbors. Then--"shall secure for him care as nearly as possible equivalent to that which (his parents) should have given him" But these words are the legal cover for putting children into training schools, most of which are atrocious, and none of which provide an equivalent of good parental care.

The words--"the best interests of the state." The state should have no interest except seeing to it that the child's rights are given to him.

The following is the section in the new proposed model:

> "This Act shall be liberally construed to assure children their specially needed services, human rights, dignity, and freedom as individuals and as functioning, responsible members of the community. Each child is an individual, entitled in his own right to appropriate elements of due process of law, substantive and procedural."

The difference is obvious. Instead of dealing with the child as property, the new section deals with him as a person with rights

that shall be enforced. Fortunately, the law, or at least some cases, are quite supportive of such an idea. The United States Court of Appeals for the second circuit, in a case upholding the right of students not to participate in flag pledge ceremonies, stated that "neither students nor teachers'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" It said, of the 14-16 year old students: they "were not fresh out of their cradles.... Young men and women at this age of development are approaching an age when they form their own judgments. They readily perceive the existence of conflicts in the world around them; indeed, unless we are to screen them from all newspapers and television, it will be only a rather isolated teenager who does not have some understanding of the political divisions that exist and have existed in this country. Nor is this knowledge to be dreaded."[10]

The Michigan Court of Appeals has held that a child of 14 can sue for his right to long hair against the wishes of his parents.[11]

This is the concept that the model act undertakes to implement. I cannot refer to all of the provisions supporting the concept, but I will refer to enough to show the tenor of this proposed new act.

The proposed model would eliminate the following jurisdiction now in the Standard Act, which is also to be found in much the same language in practically every juvenile court act: "whose environment is injurious to his welfare, or whose behavior is injurious to his own or others' welfare; or who is beyond the control of his parent or other custodian." This is the archinstance by which courts maintain the principle that children are not people; that they are the property of their parents and other custodians such as schools.

A California judicial committee comes to the same conclusion regarding the corresponding jurisdiction in their statute:

> Section 601 in effect permits irresponsible parents, overworked or ineffective school personnel and agencies unable to effectively collect evidence to establish parental neglect, to "put a record" on a youngster who, in most cases, is not the one primarily responsible for the activity involved. It is a section ofttimes used against dependent and neglected children who are difficult to handle in company with other dependent and neglected children. It is also used as a "dealing" section to encourage a plea where a delinquency conviction could not be sustained.
>
> The experience of juvenile court judges has been that the intrusion of the court often accentuates and perpetuates the family schism that is characteristic of the 601 cases.[12]

I know the argument on behalf of retention of the jurisdiction--that many of these children are in trouble, community agencies are failing to solve their problems, and therefore the court must step in. There are several answers. One is the California experience, which is typical--court intervention usually does more harm than good. There is a second answer. If the child's situation is sufficiently serious, it should be tested by whether he is neglected; neglect jurisdiction should be used, rather than the vague "incorrigibility" provision.

There is a third answer, contained in an innovative section in the proposed model act. The jurisdiction section gives the juvenile court exclusive jurisdiction:

> "Where it is alleged that the child's rights are improperly denied or infringed. Such rights shall include:
>
> (a) Rights specifically granted to children, or which inhere in responsibilities imposed on parents or others on behalf of children;
>
> (b) Any complaint by a child, his parents or next friend that an agency, public or private, which provides services or care to children has discriminatorily denied such service or care, whether based on race, religion, nationality, or a child's or a family's social or economic status.
>
> (c) Any other right of children established by constitution, common law, or statute.

This section does a lot more than relate to the problem of dealing with the incorrigible or beyond-control child; but for those cases it gives the court the power to order care if anybody in the community is responsible to provide it.

Neglect Jurisdiction

It is not only in the incorrigibility jurisdiction that children are deprived of autonomy. It is true also in neglect jurisdiciton. There are many abuses in the exercise of neglect jurisdiction, in which, as in the non-law violations just discussed, the main ingredients are two: court intervention in minor or less than serious cases, usually involving the poor; and second, testing the question not merely on the needs of the child, but on the conflict (which sometimes is artificially contrived) between parent and child.

Early cases in neglect law declared that the courts did not have neglect jurisdiction unless the parents were totally unfit. One of the cases says, "Before any abridgement of the right (to custody)

gross misconduct or almost total unfitness on the part of the parent, should be clearly proved." The author of a recent article on neglect says: "Certainly it cannot be questioned that where the child has been subjected to or threatened with serious physical harm, such as a brutal beating or starvation, the right of a parent to deal with his child as he sees fit must give way to the state's fundamental interest in protecting the lives of children. Short of some such severe and fairly objective danger, however, the state's interest becomes much more speculative."[13]

Statutorily, the remedy is simple: limit the jurisdiction to serious cases; and make court intervention dependent on the condition of the child, without the necessity of finding fault on the part of the parents. I have added something else in the model I submitted, so that a finding of neglect shall not result in an indeterminate removal of the child's custody. The decree section reads, on this point:

> "Supervision or transfer of custody shall continue only so long as is needed to remedy or remove the dangers to the child that exist; or to administer the medical care authorized by section 20. Upon application of the institution or agency having custody, or the child or his parents or guardian, the court shall conduct a hearing to determine whether the child's original custody shall be restored or the supervision terminated." Why not?

Earlier I was critical of the wide powers juvenile courts have to order medical examinations or medical care. The draft model act alters this. It draws on a policy statement put out by the Council of Judges some years ago entitled "Guides to the Judge in Medical Orders Affecting Children." The draft model statute would give the court jurisdiction "concerning any child who requires emergency medical treatment in order to preserve his life, prevent permanent physical impairment or deformity, or aleviate prolonged agonizing pain." Non-emergency medical care comes under neglect, and again, only serious cases are within the court's jurisdiction. The passage I read a moment ago on the duration of supervision in neglect cases applies to medical neglect as well as other instances.

Practically every juvenile court act permits the judge to order a medical examination of any child before the court without any restraint or criteria. The provision in the 1959 Standard Act is not much (if any) better, reading--"The court may order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist." In the model act this is permitted only if a petition for emergency medical care has been filed, or information that a child appears to be in such need.

Other Provisions

I will briefly describe three other provisions in the model act, and I will then have given you all the main provisions, and the innovation in the act.

The constitutionality of the whole juvenile court structure turns on the indispensable provision that the proceeding is non-criminal, and an adjudication in juvenile court is not a criminal conviction. Courts uphold the procedure in the face of clear violations of the principle and of specific statutory provisions. Juvenile court records are commonly made accessible to government and private agencies, and applications for private or civil service jobs must usually reveal not only criminal records but juvenile court records.

To remedy this defect the model act contains this provision: "The disposition made of a child, or any evidence given in the court, shall not operate to disqualify or prejudice the person in any civil service or military application or appointment or in any employment, license, or service. On any application or in any proceeding a person may state that he has not been arrested or taken into custody if such arrest or custody occurred when he was under 16 years of age. On any application or in any proceeding a person may not be asked questions to elicit information of juvenile court proceedings or adjudication, or apprehensions when a child."

Next: I believe no provision more perverts the concept of parens patriae, no pretense of rehabilitation is more fictional, than the common provision permitting a child to be committed to an institution for longer--sometimes far longer--than an adult for the same offense.[14] The commitment is especially grievous when the commitment is for behavior (beyond control, etc.) for which an adult may not be committed at all. The model act would not permit this.

One more. If probation of children is to be a helping process, a violation less than a new crime should not result in commitment but in further efforts at counseling and other help. Accordingly, the model act provides: "Probation shall not be revoked unless the child or minor is convicted of a law violation resulting in commitment, in which case a decree of revocation shall be entered, and the child or minor noted as subject to the commitment."

Juvenile Courts Enforcing Children's Rights

Do the foregoing provisions add up to a juvenile court act that recognizes children as people with autonomy, rights, and responsibility? I hope so, and if so, I hope an act of this kind will be favorably considered by the legislatures.

Should it have the support of judges and others in the juvenile justice system? It gives judges and probation officers a power and a responsibility that they do not have now, namely, enforcing children's rights that are specifically spelled out in the act. This is a power to begin to solve problems, not sweep them under the rug--which is how I would describe putting children in trouble into training schools. For the first time juvenile courts would have the power to turn to public and private agencies and require them to provide services, rather than shopping for an agency that is willing to accept a child on referral from the court.

The fact is that courts are recognizing children's rights, as evidenced in several cases I cited earlier. The model act proposed that this jurisdiction be in the juvenile court, which would be a division of the court of general jurisdiction.

In one respect the courts would lose power. That is in the elimination of truancy, incorrigibility, and the other definitions of the same kind. But for the life of me I have never been able to discover how a year in a training school improves the sexual orientation of a teen-age girl; or solves the problem of a chronic truant.

Many of the things I have described as needing correction in a new approach to juvenile court law are illustrated in a Des Moines case that has not only hit the newspapers here but received coverage in the New York Times of March 22, with a banner headline--"Iowa Couple Fight to Regain Children Taken Summarily in 1969." In 1969 after a visit by a county probation officer the six children of Charles and Darlene Alsager were rounded up in the back yard without prior notice (according to the report), and without a court order, and placed in the Polk County Juvenile Home.

A neglect petition was filed. The juvenile court judge permanently dissolved the Alsagers' parental relationship with five of the six children, he was upheld by the Iowa Supreme Court, and the parents have now, five years later gone to the United States District Court to renew their attempt to obtain the return of their children.

What was the evidence in juvenile court? There was no testimony that the parents had physically abused their children, or that the children suffered from malnutrition or other deprivation. But there was testimony that the youngest child had been born at home, which aroused neighborhood indignation. Mrs. Alsager had twice gone to the hospital with false labor pains before giving birth at home. There was testimony that the oldest boy, George, who has emotional problems, used raucous language, tore up his neighbor's geraniums and broke a neighbor's swing. There was some truancy; and testimony that the Alsager dwelling was in a disordered state.

Was the family helped during these five years? Were the children helped? The greater likelihood is that they were grievously hurt by being shunted from county shelters to a series of foster homes.

I have three comments on this case. One: it is not exceptional. A New York Times reporter--or a Des Moines reporter--could go into any county in New York and find numerous similar cases of removal of children on flimsy charges of neglect. And they could be found in almost any juvenile court in the country.

Two: the juvenile justice system not only defends the breakup of this family, it fights tooth and nail to prevent its restoration.

Three: assuming an average cost of $10,000 a year to maintain each child away from home, it costs the county and state $60,000 a year to keep the family broken. Suppose instead $3,000, $4,000, or $5,000 a year was invested in services to keep the family together and improve its lot. Removing five or six children from one family may be unusual; removing two or three is not--that is, spending $20,000 or $30,000 a year to keep the family broken, instead of investing a pittance to help them, a pittance, and good will.

The system that does this is indefensible. A better way is needed.

NOTES

1. National Juvenile Law Center, St. Louis University, St. Louis, Missouri, July 6, 1970, mineo.

2. Lindsay G. Arthur, "Should Children Be as Equal as People?" 45 North Dakota L. Rev. 204 (1969).

3. In the Application of Gault, 387 U.S. 1 (1967).

4. E.g., American Humane Association, "Termination of Parental Rights--Balancing the Inequities," at 8 (1971). Foster and Freed, "A Bill of Rights for Children," 6 Family L.Q. 343 (1972) does include specifics to which the child "has a moral right and should have a legal right."

5. Delaware, the last state to repeal its provision for whipping of adults as a sentence, recently passed a law authorizing whipping of school children; letter of Carole Duncan, Citizens Against Physical Punishment, Dallas, Texas, in Playboy Magazine, January, 1973. A challenge to the constitutionality of the Vermont statute authorizing school officials to beat children was rejected by a federal court; Gonway v. Gray, 361 F. Supp. 366.

6. The 1970 Washington statute that removed almost all legal restrictions on abortion through the fourth month specifically provided that if the woman is married, the husband's consent is required, and if she is under 18, that of the parents.

7. Silberman v. Mann Theatre Co., appeal dismissed, Minnesota Supreme Court, March 31, 1971.

8. President's Council, District 25 et al. v. Community School Board, 93 S. Ct. 308 (1972).

9. S. F. 1276, Iowa Session Laws 1970.

10. Russo v. Central School District, 469 F. 2d 623 (2d Cir. 1972).

11. Buckholz v. Leveille et al, 194 N.W. 2d 427 (1971).

12. Report to the Governor and legislature of the Special Judicial Reform Committee of the Superior Court of Los Angeles County, February 22, 1971. That community agencies can do better in these cases is supported by another California study, "Preventing Delinquency Through Diversion--The Sacramento Probation Department," noted in 3 Crim. Justice Newsletter 151, Sept. 25, 1972. See also Jill K. McNulty, "The Right to be Left Alone," 11 American Criminal Law Rev. 141 (1972).

13. Note, "Child Neglect: Due Process for the Parent," 70 Columbia L. Rev. 465 (1970).

14. Commitment of a 9-year old child for his minority was upheld in Ex parte Walters, 221. 2d 659 (Okla. Criminal Court of Appeals, 1950), the court saying, "the object of detention in these cases is not punishment, but reform and moral training."

SPEAKER AND AUDIENCE INTERACTION

Audience Respondent

I'm the Director of Court Services for the Polk County Juvenile Court. I have heard Mr. Rubin on several occasions. I'm a great admirer of his. I've read much of his writings and know about his career. I'm amazed that at a meeting of this kind he would comment on the case that is under consideration by a Federal judge and affects the Polk County Juvenile Court. You have downgraded our court and I can't reply to it because my counsel is sitting here saying it would be prejudicial. It would make the papers and might affect the decision of the local judge. I'm further amazed that you would comment on a case from a mere newspaper clipping. That's all you know about it. I've known about this case since 1962 continuously and this undertaking of our court was not done on a 20 minute visit by a probation officer. There's a lot to this case that you don't know about it. You are out of order commenting on it to a group of this kind. I wish the case had been decided and then I could reply to you by explaining it in full detail to this audience. That's all.

Sol Rubin

I appreciate having that comment and I'm glad it was made. If I had encountered this case either by visiting the juvenile court or by examining the juvenile court records, as I have, I would not have spoken about the case and I am not so naive as to credit a newspaper account with full credibility. I think it's obvious that when a case has been reported as this one has been that I am not disclosing any confidential relationship or anything else. And I took pains to be critical of the manner in which the report was presented to a New York readership. Presuming that the facts as presented are approximately correct and approximately they are correct for many, many neglect cases. Assuming that, the point I was making was that you could go into any New York family court or almost any juvenile court in this country and find similar cases. I felt justified in using it as an illustration because whether you like it or not the case is being litigated and it's public knowledge. It is also possible that an error was made and we know very well that it is very difficult to remedy an error without the kind of publicity that only rarely is accorded to a juvenile.

Audience Respondent

I'm a juvenile judge and I have been distressed and stimulated by what you said this morning and I would like to thank you for that. I hope everybody here is a little bit distressed at hearing what we do bounce back at us this way. It seems to me that there is another aspect, you know, there are many aspects to this total situation and my reaction is that you pretty much have spoken from one point of view. I wonder if there is not some room to discuss that child's rights to a better way of life than he appears to be getting before most of us in this room get

involved with that child. It's a very difficult thing for me and I'm sure for nearly everyone in here. It seems to me when you encounter a very small child who is starving for stimulation, who is not physically abused, or you encounter an early teen and you look at his situation and your gut reaction is that if his life isn't changed, he's going to have a very restricted chance at a good life. That's my value judgement. I hate to see us have to take and save every child we see who isn't having as good a life as we think we're having or living it the same way. But I'm also distressed that all those children that we don't seem to be able to get at. I wonder if the prospective you are presenting today doesn't deprive children of a right to a good piece of the action as they grow up?

Sol Rubin

Thanks very much for an excellent question. I would like to expound in terms of my experience as a parent and then in broader terms. You speak of the need for changing the life of a child who is at a period of great difficulty and possibly great aggravation. I think of the time when my son was 12 or 13 and a psychopath over his appearance. We really did nothing about it. I held my wife back and we left him alone and life changed for him. He was exposed to a school system; he was exposed to peers; he was exposed to accidents and so on. Although it is pure chance, he is a very fine man of 32, legitimately married, pursuing his career as an engineer. Now, this is sheer accident. We left him alone. Now I agree that changes have to be made or have to occur in the lives of many children. The courts with the jurisdiction that they use, do not succeed in ameliorating the condition of those children, and recall that I have said when a child is seriously neglected, there is a need to intervene. But when the neglect is not serious, that child isn't doomed. There are several studies, I wish I had when I first entered this field and I would not have been so naive, that seem to support the proposition that children of this kind are slanted toward delinquent careers, if the juvenile justice system gets hold of them. Other children who are not so taken do better. But I wish I could start now and give the paper that the question really asked because neither the juvenile court system today nor the system of juvenile courts that I would like to see exist are going to solve the problem of society for children and parents. The real point of this, and I haven't made until this moment, is that if we ever achieve a society, and it's not a revoluntionary idea, in which children are respected, had rights, had the freedom to run away, which is evidenced usually of desperation or maturity, usually both; if this kind of approach to the rights of children would have the expected effect on the parent-child relation, you would then have an approach to a system in which we would not have to worry about incorrigibility jurisdiction and in which neither my system nor the old system would have much meaning. The real point of children's rights is to elevate the notion from what is, to the notion that children are people with empathy, with intelligence, and that parents aren't always right.

Audience Respondent

I'm a child psychiatrist. Like most of the audience probably, I enjoyed your speech a lot better than a lot of speakers I've heard during this conference. As I listen to all this cry for child rights, I'm wondering whether there should be a bill of rights for parents. Do you know of any? Because we deal with very insecure parents; parents who have had no training and education to become parents. I'm wondering if we are adding a burden of becoming a "right parent". When there is indeed no authority, there is no child psychiatrist, no social worker, no probation officer who has written a definite approach that says this is the only right way to parent. Is there a bill of rights for parents?

Sol Rubin

There is no right way to be a parent. Parents differ; children differ; we are all individuals. Any parent of more than one child who undertakes to treat each child, even if they are identical twins, identically, is making a mistake. This is again making me feel that I want to start on a new paper. What I tried to imply a moment ago is that granting these rights to children liberates parents. Parents are controlling, the great defect of being parents, because the state requires them to be or their religion requires them to be, or the culture requires them to be. These change and what I'm hoping is that a change will occur by which a relationship between child and parent becomes a more mature one. I'm almost tempted to use the analogy of women's lib. My wife went to work at a point when she wasn't needed at home for the children and we had a poor time of it. I don't think she invented the term "Male Chauvinist Pig" for me but it could have been used. But we resolved that problem. Women's lib liberates men to the extent that it succeeds and I have to gain in maturity. The point I'm making is, and I could give you so many instances of it, that granting children these rights does not damage a parent-child relationship; it improves it.

Audience Respondent

When you said allow parents to be as natural as can be, it gives me the distrubing feeling that you have a feeling that there is a thing as a maternal instinct. What I hear from you is that by giving children rights and then resulting in a quasi-type of union everything will be hunkey-dorey. The studies of David Levy disagree with you, sir. He showed that overpermissiveness is as bad as over-protectiveness and it can be as bad as being too severe on children. Now about the parents of more than one child. I would like a guideline from you, who is a very well known guru, to tell me how to be a parent. Whether it is wrong to spank a child or whether I should let children run away. I'm in a position in child care work where I'm consulting with runaways. I know damn well that the runaway problem is not a simple problem. That psychopathology of running away can be as simple as a child trying to be a Huckleberry Finn or a Tom Sawyer and it can be as complex as somebody on the verge of a schizophrenic break. Now how do you make a bill of rights that allows respect for the child and at all the same time allows the respect for the rights of the parents?

Sol Rubin

I don't want to impose on Iowa's hospitality by inviting myself back. I would love to deal with that issue because I have gotten into discussions of exactly that kind with judges, probation officers and, God help them, parents, and children. I'll be very brief. There is no bill of rights for children that's going to establish a comprehensive pattern for what children should have and be in our society or any other. And you cannot do it for parents. You can establish a few points of departure, points of contact or what you have. I do not believe that there is any uniform pattern for parents and I would not undertake to tell a parent, if I presume that much in any event, about his relationship to a child unless I think I'm with the child more than with the parent. I don't know how many of you have read Jane Goodall's book on chimpanzees. It's a wonderful beautiful book and from it you can learn a great deal about the art of social work and the art of being a parent. There are some vivid descriptions in there of a neurotic mother, a neurotic chimpanzee mother. Now, if we take one step back from man to Jane Goodall's client, the chimpanzee, we presumbly are getting a more natural state of affairs. If you find neurotic parents among the chimpanzees, agressive children, children who are not aggressive, this is inevitable among chimpanzees and it's inevitable among us. There isn't any pattern and I have not suggested that we should never intervene, but experience demonstrates, and this was the conclusion of the California committee, and other people, that for less than serious cases we do more harm than good by intervening. That was really the whole point of the philosophy I've been attempting to incorporate in this model. As I say, I would love to do a paper on your subject "parent's rights".

Audience Respondent

I'm Director of a Youth Corrections Project. Most of the young people that we work with who are juvenile court referrals are facing very serious family crisis situations. My question is concerning the fact that lots of these young people are also involved in incorrigible hearings where the parents are coming to court and charging this child, boy or girl, with incorrigibility. I found through our experience that in working with these children and working cooperatively with the probation officer that very often the authoritative intervention of the court is very helpful in resolving these situations and working toward family reconciliation within the family. I'm wondering at what point do you think court intervention (and in what situations) is helpful in dealing with incorrigible behavior?

Sol Rubin

I have tried in fact to spell that out. The medical order statement that I read to you which was drafted some years ago by a counsel of judges spells it out in terms of a serious damage or a serious threat to the child's well being. It's possible to spell that out with additional language and some of it is in here and I quoted some of this. I suppose we could be more elaborate on exactly what we mean but this is the best that we have done to date, and it provides tighter controls than we have today. I seriously question that you could provide several instances

where less than serious conflicts in the family was followed by intervention that was helpful. We can't do it today, but I can assure you that over the years I have participated in many workshops with judges and probation officers and I did what I did today. I have attempted to be provocative, to challenge. Why? Because I want somebody to get up and say, "Mr. Rubin, here is a case that contradicts everything you've said" and when we sit down in a workshop and examine these cases, they are rarely provided and rarely sustained. I don't know how else to handle this except if anybody wants to take the trouble to submit to me a case record that you believe demonstrates the error of my ways. I have put this challenge out to others and I remember once receiving a batch of neglect cases from a child protection agency and I kept it because it's invaluable to support the point of view I have held. So, I invite you. I promise to respond to any such case records that are provided to me and you can do with it what you will on the basis of that exchange. I don't know how else to handle that.

Audience Respondent

I'm a cop. I'm curious what is the criteria used for a court to decide whether the child should be pulled away from his parents or not?

Sol Rubin

Practically, none. The discretion of the judge is so broad that a finding of neglect is rarely overturned and unlike the delinquency cases which must now be established by proof beyond a reasonable doubt, this does not exist in neglect cases. There is a great deal of assertion riding on the point but the Des Moines case that the Times reported on involved retardation, retarded kids or kids said to be retarded. I will command to your attention just one article that just appeared in the current Criminal Law Bulletin. It is an analysis of IQ tests and how they are used in juvenile court and if that isn't an education to anybody dealing with the manner in which a child is found neglected on the basis of presumbly objective tests, we have a long way to go. I really suggest you read it. And if anybody wants it, I will provide additional references analyzing neglect cases and how they fair on appeal with respect to the burden of proof alone.

Audience Respondent

I'm a parent of three from Sioux City. I sat there and I didn't want to respond for quite a time, but I certainly recognize the message that you were trying to deliver to this group, at least the way I interpreted it, concerning the case of the Des Moines couple. I heard the comments of the individual that stood up and defended our great court system and I listened to the huge amount of applause that he received after that. This case deals exactly with what the Indian people in an Indian community have been facing for years and years by our children being ripped off. It was rather ironic that we had a group together in Sioux City here in the past few weeks and this had been talked about because it's in a non-Indian community and because it's received a great deal of publicity. We recognize the fact that the press many times can misquote, misinterpret, etc. It was our feeling that here is a case of taking the children from the mother and the father, removing the love that they should have and it looked like the only alternative for this family was to call attention

to the people in Iowa and it reached New York. I wasn't aware of that, of what is really going on and it looked to me like they were backed into a corner and this case was publicized. I know very little about the case except what I read in the newspaper and I know the very people that may have applauded here may be the very individual that got up and defended what he was doing that for years judged the Indian community and the Indian people on press releases. Our attitude in discussing this is that it's about time that there is some positive changes in the attitude of the court in removing children from their parents. I would add this in our locality. There has been a very positive attitude in change of direction on the part of our juvenile courts, on the part of our social service department.....on not gearing toward trying to remove the children from the parents. We look at it like this in relationship to this case, as far as taking children away from their parents, that the non-Indian community have got themselves a Wounded Knee situation and it was called attention to the people and from that case alone people across the country should take that direction and try to change some of the rules and regulations where there is not physical abuse to children and start thinking of the mother's love and the father's love for their children. I got that message and we're for that. The court system can change and the court system has made mistakes and they defend themselves but they should be willing to change. They have to eat a little crow sometimes. I know the people that we deal with have and they are working positively with us so we don't run into situations like this poor family in Des Moines, Our heart is with the family.

Audience Respondent

I'm with Community Survey, Inc. in Des Moines and am Chairman of the Polk County Committee for Juvenile Justice. I admire your approach this morning in getting beyond some of the rhetorical platitudes in your remarks and tying down some of your comments in rather concrete terms. I'm intrigued about the model act that you are talking about. A state legislator mentioned to me the other day that in the past couple of years everybody is being involved in juvenile justice except possibly the Daughters of the Confederacy, and wasn't sure about them. I think we are seeing that happen now at all levels. In the room today you see not only professionals but a number of concerned lay people and a number of organizations that have been involved in Des Moines and a number of other cities in looking at the juvenile justice system. I think I have some concern when I see another model act being proposed. The National Advisory Commission on Criminal Justice Standards and Goals has completed a very lengthy study. The Juvenile Justice Standards Act, the National Center for Juvenile Justice in Pittsburg, the NCCD operation, whatever it is in Texas that is involved in this area. I guess the question is at the local level where there are diverse opinions among professionals, where there are a number of approaches that various people would see being taken, how do people sort out the varied approaches that are recommended by highly respected professionals and what kind of a process do you see being used in a community or in the state as a whole to objectively analyze the recommendations that are coming forth from all these sources and arrive at some solutions that really will be workable for the situation in any given community in any given state?

Sol Rubin

That's a wonderful question. Somebody said to me once or I may have asked someone in connection with an illness: "How do you know who is an expert and who is a quack"? I've never been able to discover the answer. Years ago the Standard Juvenile Court Act was the only model. The first edition was published before I was around, or at least active in the field as a lawyer in 1925, and at that time it was co-sponsored by the NCCD and the U.S. Children's Bureau. That was true continuously until after the 1959 edition. At which point various agencies became involved in their own promulgating standards which they have every right to do, although like combating my wife who wanted to work, I fought it. Obviously I didn't win there is no way of resolving this except in the free exchange in the market place of ideas. Years ago the American Law Institute promulgated a model penal code. I was then a member of the Model Penal Code and I fought the model penal code tooth and nail and lost right down the line. Fortunately I had other access namely through my own agency and we promulgated the Model Sentencing Act and I remember writing an article that appeared in the American Bar Association's Journal being severely critical of the Model Penal Code especially it's sentencing provision and then taking about our own act. I wound up by saying at least it has the advantage that a legislative study group or a legislature or a citizen's group has access to competing ideas. In many instances I have worked with legislative study groups on the approach that they would adopt for legislation they were drafting including penal codes and including juvenile court laws. Sometimes I have prevailed and sometimes I have not. I don't know any way of determing that; I don't know any way in which any legislative group or any citizen group or any individuals can know who the true reformer is and who the quack is. There are certain instincts that some can be guided by and I personally am guided by certain instincts. I am very suspicious of legislation or administrative procedures or social work practices that are controlling, to justify control you have to have a grievious situation and you have to have good evidence. And I am very suspicious of punishment. I don't recall who it was but I'll use the analogy. It was the question of beating a mad dog to make him behave. I don't know any instance in which punishment works. What is punishment? It took me quite a while to discover that the rehabilitative ideals that I believe in were very often punishment. Now you take the Gault commitment. The Arizona Supreme Court said Gault is not being committee for punishment. He is being committed for treatment for six years. These are two guidelines by which I personally judge an operation. If I were to be involved with the legislative study group, besides dealing with the technicalities as I have today, I would adjure them to be guided by a conscience.

Audience Respondent

I'm a school teacher, a special educator. I am very happy to hear you finally mention something about IQ scores. I have taught 30 years in special education and I have yet to find that an IQ score measured feelings and caring. I've been at both ends of society. I've taught the deprived child; I've taught the sharecropper's child; the black ghetto, in the public schools, in the rural areas and it is a rare

parent that really does not care what happens to his child. I hear the cries of the children but I also hear the cries of the parents asking for help from wherever they can get it. There are only 24 hours in a day. I, as a teacher, go out at night many times and help parents. There isn't enough of this. I am interested in prevention. The high-risk families, in special education we are dealing with high-risk families, because they don't know. They have potential, true, it is limited, but they need guidance from all of us. I don't care what the dicipline is and I am asking what is in our code to make it possible that money is spent so that these parents get this help. If necessary day by day guidance so the children do not end up in the courts but they are rescued far before that time.

Sol Rubin

I am going to remind you of a passage that I read in the course of my speech and I described it as an innovation and that is the section of the Model Act that gives the courts the right to order agencies to provide help to children. Courts do not have that right today. I don't know of anything in the code today that enables courts to seek out the kind of help that seriously disturbed children need. They don't. They typically shop around or the Director of Social Services makes 10 calls to find a place that will accept a child for services. So I am not proposing a juvenile court system that leaves people alone when there is a serious situation in which their intervention is needed. Just the opposite, just the opposite as this section demonstrates. We need something like that for exactly the reason you spell out. It's the first statutory language that I know of that says: "any complaints and so on and so on where services or care to children has discriminatorily denied such services here were based on race, religion, nationality or a child or a family's social or economic status". Now we ourselves as an agency have published more than one study that demonstrates, and I don't think it has to be demonstrated to you, that discrimination exists, dependent on a child's or a family's social or economic or ethnic status. So I appreciate what you've said. I don't think we are in disagreement.

Audience Respondent

I would like to hear your comments as to why this power should be given to the court rather than to some administrative agency over on the Executive arm of the government?

Sol Rubin

Administrative agencies today have the power without any court telling them what to do and without any legislation of the kind I propose. Who runs these services? Not courts, administrators. They have the power and what I've just read suggests that courts intervene not to run agencies in place of their natural born administrator, but intervene only when discrimination of this serious kind is evidenced which means when the administrators aren't doing the job they should be doing. Administrators in this country have far more power than legislators, judges, residents. I hope that I'll have time to hear Jerry Miller speak this afternoon.

I've heard him speak before on what he achieved in Massachusetts. He closed down the training school as an administrator. I don't know of any judge or any body of judges, including the Supreme Court, the Courts of Appeal; I don't know of any legislature that has undertakin as sweeping a deal as Jerry Miller dealt in Massachusetts. Administrators have the power. Let them use it properly. Since the meeting is coming to a close, I'm going to take one more minute to speak of the applause that came more than once. I like that because it communicates something to me about how what I am saying is received and what the sentiment of a community is or at least those who are present. I remember a few years ago at a Congress of Correction and I was up in an analogous position and I'm afraid my style is not to compose the feelings of an audience but to stimulate them. So, in respect to the prison problems, I spoke about the role of an attorney and I recall one corrections officer or administrator got up and made the most vehement, violent attack on attorneys. I'm an attorney. Not attorneys necessarily in the correctional system but attorneys in general and in toto. I never heard such a burst of applause.

7. THE DEINSTITUTIONALIZATION OF CHILDREN

Jerome G. Miller

I appreciate the opportunity to share a few ideas on juvenile corrections with you today and perhaps outline a few of the problems. I notice I was supposed to speak on institutionalization and I will speak on that. But there are a few other things I'd like to include today. Now for those who don't know what we accomplished in Massachusetts, I'll outline that very briefly. In January of 1972, we left the last of our training schools or reform schools. The first shall be last, because the Lyman School for Boys was the first training school in the world: It was visited by Charles Dickens on his travels in America. And now the state has been without training schools for a bit over two years and all of the upset within the state and all of the concern around whether or not the crime rate would go up or whether or not the recidivism rate would go up, I think for the most part has gone by the wayside. And I don't think really anyone much misses those places. The Speaker of the House was quoted about a month or six weeks ago as saying there's virtually no political support now in Massachusetts to reopen training schools. That would not have been so maybe a year and a half, two years ago. I think there is every indication that they will stay out of them, the alternatives will continue to grow and develop. That has tremendous implications nationally. I think ultimately it may have some implications around recidivism rates and that sort of thing, but I don't think that's the major benefit of the move. Now the reason we did that; the reason we moved entirely out of them was that we felt that training schools are institutions that coerce their clientele. Many of these institutions are not in corrections. A lot of them are in child welfare. But institutions that have people inside them who are there basically against their will, such large bureaucratic state-run institutions are unreformable. I'll just state that straight out. There is no way that [illegible] is going to sustain, and I stress that word, sustain, decent and caring programs in such bureaucracies. That does not mean that there will not be good programs from time to time or that there will not be decent and caring superintendents or administrators or program supervisors. It does mean however, that historically there is no indication at all that decent programs have been able to be sustained in such settings over an extended period of time. I think the best one can hope for is a charismatic superintendent or an accidental coming together of certain number of committed staff and a decent program developing out of that. Then one sees the program go down the drain whenever that staff or that superintendent leaves or whenever there is a change in the political structure in the state. Characteristically, that's been the story of correctional reform--that every five or ten years there's an incident, suicide, a killing, an escape, a riot, calling attention of the community to conditions in the institution followed by a demand for reform, followed by an infusion of funds into programs and depending on the ideology of the times, the programs that are brought in fit that ideology. So

you have a period of vocational programs, a period of clinical programs, and a period of this and a period of that. And the situation seems to have gotten better and everyone relaxes. But then you look at it five or six years later, and you realize it's right back where it was before the reform. There may be a few differences. The more liberal states will be redoing the old programs in new buildings. But basically it's pretty much the same. There is some progress. But in no way does it keep pace with the progress in the society that surrounds these institutional settings.

We tried initially, to humanize the institutions in Massachusetts. I think we succeeded to quite a degree. The research reports that will be coming out of the study at Harvard, for instance, will show that during that first year and half when we moved toward therapeutic communities, guided group interaction programs, a democratic process in cottages, that we had significant changes in the kids. The changes, using the same measures, were as significant as those in more planned programs such as the Silver Lake experiment. But we saw that as a dead end. It was very clear to me as an administrator of that agency that I would wear myself out and my more committed staff out, just trying to sustain those decent programs, fighting the bureaucracy, fighting the staff malaise, fighting the political influence, fighting the political patronage, fighting all of the things that sustain our correctional system at this time and in the end we would be worn out. If by chance we could sustain the programs, they would be a bit better than when we started. However, one has to plan on being replaced by a staff and administrators who would be willing to do the same thing and I don't think anyone is willing to do that indefinitely. Eventually they wear down. I think the reason that places are unreformable is more political than clinical or professional, basically, you have societies in corrections that are unaccountable to their clientele. You have a system that is hell-bent on stagnancy. I submit that if you ran Phillips Exeter Academy, one of the finest prep schools in the country, with nothing but a captive group of clientele in it, that despite the best efforts and the best motivations of the finest facilities and administrators in prep schools in the United States that over a period of four, five, or six years the place would stagnate and go down hill. This is because all of the compromises that have to be made in such a situation where the clientele are relatively powerless, will be made at the expense of the clientele. The best one can hope for is a certain paternalism and the worst one can expect is despotism. That's been the history of correctional institutions nationally, adult and juvenile. So we decided we would get out of them, we moved fairly quickly once we made that decision. We did it backwards from what's called sound correctional practice but being we were the only state that did it, I challenge any other state to show that it was unsound. We moved first out of our maximum security institutions for the most dangerous, the most "vicious" kids; our Bridgewater--the so-called "Institute for Juvenile Guidance". It's hard to keep up with the semantics of these places because they do change. It was a walled, solidly secure institution built in the 1800's, originally it had been an institution for "defective delinquent" women which was a diagnosis of the 30's and 40's. In fact we had one youngster who

subsequently committed suicide who had been kept in the same isolation room that his mother had been kept in previously. This is something of a commentary on the life of institutions. They have a life of their own and we trot through them various populations, depending on the needs of the rest of us for social control, for social isolation, for social stereotyping, and for false reassurance. So we closed Bridgewater first. We decided on a Monday and a week from Wednesday it was closed, and we got out of there with a minimum of difficulty. We didn't have any major incidents in the community. We paroled the majority of youngsters home. We kept about 15 kids who were with us on very serious offenses. We opened a small closed cottage on one of the other institutional grounds with a special program there. We got out of there with a minimum of difficulty. What we found when we went through the population what you would find in virtually every state, is that the majority of kids classified as "vicious" and "dangerous" were really management problems from other institutions. The institution for the vicious and dangerous is there to hold together the other institutions and we end up blaming the victim, scapegoating the victim for what our problems in other institutions are. It is very similar in many ways to the so-called status offense; given many of our schools systems for instance, it's an eminently reasonable thing to be truant....but rather than deal with that issue, from what kind of system is a youngster truant? For what reason? It's much easier to scapegoat, a relatively powerless and vulnerable individual and, of course, children are the most easily scapegoated. We also learned that it's easier to get out of institutions quickly and massively than it is in slow, phased change. No matter how many times I say this around the country, it's always viewed as a naive sort of statement. Once again, we in Massachusetts did it, and until someone else can show me they've done it with their slow phased change then they should keep silent. Because, in fact, no other state has done it. Margaret Mead commented last year at an Anthropological Convention in Chicago that these days, massive and quick change is much more reasonable and less upsetting to the social structure than slow change. That is quite true, because slow change in corrections ultimately is no change. All the interests that would keep the present system going are only peripherally related to the purpose of that system, which is to guarantee public safety and to guarantee a certain modicum of rehabilitation of the clientele within that system. You can survive forever as an administrator of a correctional agency in the United States if you keep your staff happy, if you stay within your budget, and if you avoid incidents that overflow into the community. Of course, that's a totally irrational way to be held accountable for a system. As I said before, it's very often akin to running a large city hospital on the basis that the doctors and nurses are comfortable, that no paitents are jumping out the window and that they are staying within their budget. However, 60% to 80% of the patients get worse while they are there or die. No one asks about that. If we ran any other enterprise on such a basis, we would be considered quite irrational. In corrections, those questions are not asked. I think that's the tragedy, but it's time that people ask those questions. If they did ask questions, they'd demand basic and massive change. You are more often asked questions as an administrator that relate to whose jobs will be affected, what effect will it have on the local economy, which politician will be upset, etc. All of these kinds of issues, that are

very real, should not be the major consideration around whether one moves to different sorts of modalities in dealing with delinquency or crime. And I think we've forgotten because we have fixed a false ideology in concrete and walls and large buildings from state hospitals to "homes" for the retarded, through prisons through training schools. We feel that those places have been around forever; that we are overthrowing a whole culture by overthrowing them. In fact, they haven't been around that long. I'd refer you to David Rothman's book, Discovery of the Asylum. Such institutions are an American invention. They have been around somewhat more than a hundred years. They have never worked and it shouldn't be that radical to suggest that perhaps we should get totally out of them. I'm not so much an idealist to think, for instance, that Massachusetts would never go back to institutions for delinquents or that other states are going to get out of them. I think it's a very difficult thing to move away from them because they reassure us all. Michael Novak, the Catholic philosopher, commented that institutions exist not to be effective but to reassure. So when you talk about closing institutions, you are not talking just about a technology for closing them or new treatment techniques to replace them; you are talking about people having to do a turnaround in their heads, about social deviance and about who these folks are that break the rules the rest of us supposedly keep, and that's a difficult thing. Durkheim commented the last part of the 1800's that if the society didn't have persons to scapegoat about crime, that they would create them. That, if in fact, we were a society of saints in which no one broke the law, that we would create new laws so that someone would have to break them. This allows us to isolate, scapegoat, punish and extrude from the group, those who are unlike ourselves and thereby gain our own social cohesiveness. There's a great deal of truth in that. But maybe we've evolved enough as a society that we should begin to confront that rather destructive approach to human problems.

We learned a number of other things in Massachusetts; that the classic way of getting out of institutions - of establishing first the alternatives and then moving into them - doesn't work, and that most states that speak of doing it that way, will never succeed. It's related to the fact that the clientele are relatively powerless. What you'll see happen if you start to establish alternatives and then move the youngsters into those alternatives after they are set up, is that the alternatives will be established, but they will never be an alternative. They will rather be a whole new net to bring in another group of people, that were previously left alone. The institutions will be left basically untouched while we do what we call "preventive" work with delinquents. We will interview articulate and interesting people and will have a very good batting average and will show how good our group homes are at cutting recidivism and how good our interviewers and our counselors are. In the end, we'll find that we are dealing with double the population we were initially, half of it in the institutions and half of it in the community and our second condition is worse than our first. It seems to me that we have to deal with both simultaneously. We learned that you don't get alternatives for kids kept in training schools unless

those alternatives are forced. As long as there are warehouses and dumping grounds, kids will be warehoused and dumped. As long as those places exist, they'll be used. It isn't a matter of there being used by police in repressive ways or by right wing individuals to be punitive toward people in trouble, it's not that at all. In fact, it seems to me the real opposition to basic correctional reform comes from our liberal friends who would be first to use those places but under a psychiatric nomenclature. It really doesn't matter whether we call an individual "possessed" of a couple hundred years ago, or a "sinner" of 150 years ago, or a "moral imbecile" of the 1800's, a kind of a medical-religious diagnosis, or a "Constitutional psychopathic inferior" of the 1920's, a medical diagnosis, or a "psychopath" of the 30's and 40's, or a "sociopath" of the 50's and 60's, or a "person unresponsive to verbal conditioning" of the 70's. Basically we do the same thing and that is that we objectify that individual through words, through diagnosis through labels of whatever the prevailing ideology calls for; it somehow or other sets another human being apart from ourselves as quite a different animal from the rest of us. It really doesn't matter much to an individual thusly classified, whether he is put in a "hole" in a penitentiary, (there's at least something authentic about calling that place a hole), or whether he is put in "intensive care" in a hospital for the criminally insane or whether is put in a "freedom room", (as I saw one of these places called in a children's institution). I asked how one could justify the term "freedom room" when you take a kid's clothes off and lock him in a room and they said that the child has the ability to be free in there and to shout and to kick the walls and to give free expression. It's very orwellian. In many ways the prison is more authentic than the treatment center because at least a "kick in the ass" is called a "kick in the ass" and not "treatment". It seems to me that the only way we are going to deal with the crime problem is to get out of the institutions. I think we could get out of them totally and I think we could get out of them in adult prisons as well. One state is going to do that in the next decade or two. I think one European country will do it first. You know we've always had the technology for handling dangerous rich without prisons. We never had to do great research projects, we never had to justify whether a new program works or not, when speaking of rich people who are dangerous. Now I'm not suggesting that we have always been terrible effective and I'm not suggesting that we are going to be terribly effective now. I'm not even suggesting that community programs are necessarily that much more effective than prisons. I would hope they are. I think it's a deeper issue than that. It's really a matter of whether we are going to treat other human beings as we would treat ourselves. It's really a matter of whether we are going to continue to objectify other human beings, even dangerous human beings, from ourselves. You go to Menninger's or the "Institute for Living" or McClean Hospital or Chestnut Lodge or any of the more posh settings where one would pay $30,000 to $40,000 a year for treatment. You find on the grounds an "annex", a building, a ward, that's maximum security; that has in it people who have done-in their grandmother, people who have engaged in

strange and violent sex crimes or people who have been terribly dangerous on the street. The difference is that they are well-to-do people. They are not misused, they get decent care, public safety is guaranteed thereby and it's all a fairly reasonable approach. We've always had that technology. We've never done to people in those places what we've done to people in state hospitals. We've never experimented with the wealthy the way we have with the indigent. We've never called all this horrendous violence, "treatment". It seems to me that's the issue and that's an issue that could have been faced 20 years ago. It shouldn't have to be at such a late time. There is humane and decent treatment for people who are dangerous and one doesn't have to trade off his humanity to ensure public safety, because we've never had to do it with dangerous affluent. We forced our alternatives in Massachusetts. We set a date we were going to close the last training school. We developed as many alternatives as we could. We closed it and when we started to get more kids than we had alternatives, we sent them home, rather than back to the training school. The alternatives began to create themselves. We did this in an informed way. It wasn't done out of bleeding heart, "mollycoddling", motive. It was done because of what research tells us about training schools. As Milt Rector of the NCCD, has said, here in Des Moines, if you look at when Lester Maddox was Governor of Georgia; he released from the state prison a number of people, because he kind of felt like it and he didn't really do any study as to why. Well some sociologist looked at the results and he found that those released did significantly better than the control groups who went out under normal parole procedures or those who completed their sentence. Following a Supreme Court decision in the State of Florida, the state had to release hundreds of prisoners because of the illegal way in which evidence was gathered against them. There is no question the majority were guilty of crimes for which they were in prison. Again someone did a follow-up study and found that those sent home did significantly better than the control group that went out under normal parole procedures or the control group that completed their sentences. The most danger lies in sustaining the present system which is actively creating crime and violence. No alternative would probably in the long run be a little bit safer. We didn't have significantly more crimes in the street involving our kids following the closing of institutions. Maybe we were lucky. I don't know, but, in fact, it didn't happen. In fact, for that three or four months in early 1972 when we didn't have enough options and were sending the kids home, we didn't find any great upsurge of recidivism violence. Eventually we created more alternatives and it worked out, I feel, quite well. We made a couple of mistakes; one of the biggest mistakes we made was thinking there had to be residential alternatives for most of the kids in training school. In fact the number that need residential alternatives are very small and we should have developed a lot more non-residential supportive alternatives. Eventually we did so. We did most of it administratively, most states in the Union could be out of training schools without the need for laws or a new act of the Legislature. I think it's unkind to legislators to expect them to take the lead. If we administrators are supposed to be the experts in the field, it seems to me that we should then put our money where our mouth is and we should move in those directions that we talked about for so many years. How many years have we heard from the average prison warden or the average superintendent of a training school or the average commissioner of correction or of juvenile services that 60% to 80% of the kids in our facilities don't need to be there or of the adults in prison that don't really need to be in prison.

The problem is when you ask that administrator to pick the 60 to 80 percent, it's very difficult and most won't do it. They fall back on the need for new legislation. It's a matter that to do this involves not so much risk to the public safety or risk in terms of the kids or the clientele but involves risk in terms of one's career within this field and I'd say you would have to take it as a given fact that any administrator who wishes to get involved in basic change in this field can't have a career in it. Plan to survive, if you're lucky, six years, and then plan to do something else. Those who want change should plan that way and those who don't shouldn't deceive themselves that there will be change. I think ultimately the value of what we did in Massachusetts will be much deeper than simple correctional reform. The value of community corrections is not that it cuts the crime rate so much, the value of community correction is that it forces people to rethink some things. There is a British psychiatrist by the name of Ronald Laing who comments that diagnosis is a "social prescription". We often think that our labels, our diagnoses relate to some scientific entity. In fact, I don't think that's true in areas of social deviance. The diagnosis that we set up relates to the options that we set up to fulfill the diagnosis. If you have repressive treatment options, you will have repressive diagnoses. There is no more repressive a diagnosis than "sociopath". Once someone has been labeled a sociopath, one can do whatever he will to them, either under professional or unprofessional auspices and no one will much object. If one did to the people in one's own family, what we do to "labelled" people in institutions, one would be so labelled oneself. Therefore, it seems to me the value of the community program will ultimately be that it will widen the treatment options. It will widen the options available to the diagnostician and as a result the diagnoses themselves will change and as they change we'll all humanize a bit. To the degree that one knows another, even someone who has committed a heinous and tragic crime, to that degree it's very hard to be punitive toward that person, because to the degree that someone knows someone, to that degree they understand them. Even though we may not excuse behavior, at the very least we can do another the dignity of understanding them as human beings. Ultimatley the value of community corrections will be that it will put more people in face-to-face relationships and it will make our social problems more obvious and more able to be dealt with in the community. I think one can't blame the average Joe on the street for being disgusted with corrections and even more importantly, one can't blame him if he says "I've had enough of mollycoddling and therapyzing of kids when it doesn't work and they are out mugging and beating people, etc. etc.". Particularly when we in the field have misled the public into believing that we have been "therapyzing" and that we have been rehabilitating and "mollycoddling" when, in fact, that hasn't been happening. Would that there were a little "mollycoddling" going around. In fact that hasn't happened. Our rhetoric has been far askew from our service. I can understand when Nelson Rockefeller backs repressive drug laws saying publicly that we've "tried everything". "We've tried all these drug programs; we've tried all this rehabilitation and it doesn't work". Well, I can understand that, because someone has obviously led him to believe they've tried all that in liberal New York state. But if you look at the situation, very little has been tried. There has been very little in terms of rehabilitation. It's understandable that the average Joe on the street gets confused and upset. I think

that it is time we start doing what we <u>say</u> we have been doing. It's time we start exposing our own problems because thereby we might make ourselves more useful as human beings. The Dostoevsky comment about judging the degree of civilization in a society by entering its prisons is a very sublime one. It speaks to those in corrections. Because people who are involved in corrections are not just involved in another human service or just another helping agency; they are involved in working with a system that reveals the underbelly of our society. What we do to those people that most threaten us, that are most despicable, that are most dangerous, that are most easily stereotyped and dealt with in punitive ways - what we do with those tells us a great deal more about ourselves and about our society than it does about them. And by the same token, if we can show that we can treat those people decently and humanely as human beings, we can show a much more sublime society and we can in a sense help the society evolve a bit. Because it seems to me as well that we have short lives to live and that we spend too much of our time sustaining systems that tear us apart from one another and that teach us fear and hatred. The time is ripe. It is critical because if we don't move quickly, the technology to repress will be upon us and then ultimately it will destroy us all. So the time is ripe to move away from what has hurt us all so much.

SPEAKER AND AUDIENCE INTERACTION

Audience Respondent

I'm from Ames. I work with youngsters who have been to the state training schools and the state juvenile homes and I'm interested in how the role of the workers in Massachusetts who worked in similar positions changed after the schools were closed and perhaps what kind of supporting services were also needed in that sort of work?

Jerome Miller

Well, we had a very difficult personnel situation in Massachusetts in the sense that virtually our total department was hired through political patronage; of about 1,000 employees, at least 800 had been politically appointed. We had approximately fifteen different budgets, and the budgets were assigned by institutions so we had no authority to transfer anyone, in fact, I really couldn't transfer someone from one shift to another without getting a call from a legislator. So we made it a voluntary thing when we moved. We didn't have authority to transfer staff but we did have authority to transfer kids and so basically what we did was to empty the institutions of children first. Then, I think, you see what goes on politically in the sense that it was more comfortable not to confront the issue of what do we do with staff and just leave them at empty institutions than it was to have to confront that in the legislature. I think if we'd had to confront that we wouldn't have gotten out of the institutions. We left it up to those staff that wished to get retraining and to help us in community programs as parole aids, or parole or community workers in group homes. We assigned some staff to private group homes to help out, that sort of thing. A large percentage did that and a lot of the old line staff really did a total turn around and were very, very helpful in the new program. A lot didn't, a number just stayed at the institutions and refused to move and we just left them there. We offered as one option simply taking your full salary in a kid, right, out of approximately 1,000 staff, one took that option. We did that on a very basic sort of a financial consideration in the sense that the average cottage supervisor's salary was a bit less than what it cost to keep the kid in the institution a year. The costs as you know, nationally now are very high. In Illinois right now it's running between $20,000 and $26,000 a year per child at St. Charles and Geneva. New York, it's $22,000. Rhode Island about the same. Connecticut about the same. Massachusetts, when we left it was about $15,000 to $18,000. So we just left that issue up to the staff. We didn't get involved in any wholesale firing. One of the reasons our budget went up dramatically is that we did leave that issue and we build a side by side system; a community system, and we left all the institutional staff alone and I think that's probably at the heart of the issue that the best institutions that I know of, are those that have staff and no inmates and they run very very well. Meals are served on time; the lawns are well-kept; everybody comes and goes and they are a very comfortable places. I'd recommend that to every state.

Audience Respondent:

I'm a School Administrator and I wish to know a little more about the alternatives. Could you expand on some of the alternatives and which one worked best for you? Was there a follow-up study done? This is what I'm interested in.

Jerome Miller

We avoided setting up state-run alternatives. Initially it was our plan to set up group homes run with state employees. When we costed it out, we found that for the state to run one it ran at least double, if not triple, what it would cost a private group to run a similar institution. You get into central purchasing; you get into having to have three shifts of cottage parents; all sorts of issues that were issues at least in Massachusetts' personnel code. So we decided to contract with private agencies and there were not a lot available when we started; but when the money became available to contract, a lot of agencies created themselves and a lot of existing agencies that never thought of handling delinquents began to handle them. We just open the doors to a lot of things from which our kids had been excluded. For instance it had been a rule in the Department of Child Welfare that delinquent kids were not put in foster homes as were welfare kids. We got that rule changed and we found a lot of our kids did very well in those kinds of foster homes. We were wide open to about any kind of treatment that was humane and decent and that was on the up and up financially. We didn't subscribe to any particular ideology. We had centers that were behavior-modification centers; we had guided group interaction programs; we had a Black Muslim group home; we had proposals for a Zen Buddhist group home; we had, well, you just name it. We sent kids to a prep school; we sent kids to those schools you see advertised on match boxes; you know, get a high school degree, call us. We enlisted kids in the art museum courses; we got a consortium of Boston artists to contract to take kids 18 to 20 hours a week. We contracted with universities for empty dorms as group homes; we contracted with university students to provide 15 to 25 hours a week in individual advocacy with kids. Some of them started up non-profit businesses run by the students and the kids together. We contracted with a very expensive private psychiatric facility; for instance, McLain Hospital. We sent a number of kids there on very heinous murder cases. We paid McLain Hospital $36,000 to $40,000 per kid per year and we were able to do all that once we weren't paying say $15,000 for every kid committed to the department by incarcerating them. And a lot of these options over a period of time will work some won't. My own feeling about it is about 10% of your options ought to go under every year. It at least tells you you've got an alive and vibrant system and you know you are getting out the ones that aren't any good and new ones are recreating themselves. I think part of the problem in corrections is that we've never been able to do that. If you have a lousy cottage, you'll spend years turning it around in the state system. There is no way to get out of a system that doesn't work. If there were, of course,

we would have been out of this total system years ago. Now in terms of the study, there will be very good studies. The Harvard Institute for Criminal Justice is doing a longitudinal study from 1969 through 1975 and their first major article is in this present issue that came out last week in the Harvard Educational Review which kind of outlines what we did. The recidivism statistics will start generating around May or June; initially, it looks really quite good. I'm not about to say it will necessarily hold up but I think it will be at least as good and probably better than the old system. All in all, I think you have to have good evaluation but, it's interesting, people keep asking for an evaluation of new programs before they move out of the old ones when all the evaluations of the old programs say they are no good. It's an odd sort of paradox that very few people have confronted. The major finding of President Johnson's Commission on Law Enforcement created LEAA; the major finding in the juvenile area was that the best service we could do any juvenile is to divert him from our treatment system; to keep him out of the system we've set up to treat him. Well, if that's real, at least we know then that we've got to do some alternatives. We've got to do something else and in fact that is real. I think it's been borne out again in a book by Wolfgang and Sellin (Delinquency in a Birth Cohort. Chicago: University of Chicago Press, 1972). We also need a lot more of what Schur calls radical non-intervention (Radical Non-intervention - Rethinking the Delinquency Problem. Englewood Cliffs, N.J.: Prentice-Hall, 1973). We need to leave a lot of folks alone.

Audience Respondent

Were the children split up into groups or singled out individually or how did it go? Did one say a church group contract for 10 students or what?

Jerome Miller

No, we assigned kids geographically on the basis of regions. We broke the state into regions. We set up regional offices, assigned regional directors and assigned kids by region unless there were very severe emotional disturbances of some sort that could not be dealt with within the region. If there were not enough kids from that region to sustain the program, we had a couple of statewide programs. We have a special program for about 35 kids who were with us on very serious charges, under mental health auspices. It was under a private non-profit psychiatric corporation, but virtually all of its staff including its director were ex-offenders and they were very, very good. It was a secure facility, but we got the kids out of there within two to three weeks at least during the day with someone with them. There are ways to have that kind of security with kids without having to lock them up. Then we moved them back to the community within a matter of three to four months on some kind of trial basis. The idea of locking someone up just doesn't make much sense anymore. Unless we are going to say they stay locked up

until they get old, you know, middle aged or something, because there is no evidence I'm aware of that locking a kid in a lock facility in anyway makes him less dangerous. You could cut the crime rate, I guess, if you locked all the dangerous kids up but eventually they come out and new ones come in. You just produce them and that's the situation we are in now; a certain number coming in, a certain number coming out and we're okay. I have a hunch that when we first started doing this there was a little respite in the crime rate when we took the first group in and locked them up. Then as they start to come out, they are more serious and it escalates. You should realize that our tradition in the United States is to lock people up a long time. We have the longest sentences in the Western World. I lived five years in England. You would have almost had to kill the Queen to do more than four years in England as an adult. They give life sentences, but average life sentences are four years because they say, and quite rightfully, if we keep an adult in prison more than four years we've destroyed him and we'll have to reap the consequences. But those options did develop; one thing that again sounds naive but it worked. I don't think it's naive in terms of social theory. We only allowed so many dangerous kids per region. We gave each regional director a certain number of slots in the maximum security unit for dangerous kids and if he had five slots and he got a sixth kid, he had to declare one of the other kids not dangerous. That worked. In fact the defining process is so easy to define people as dangerous to avoid risk to the definer at maximum risk to the definee. When I came to Massachusetts I was told by the Chief Judge of Boston Court that every kid we had was dangerous, 800 to 1,000 the words were the dregs.

Well in fact, that wasn't so and in fact of those 800 to 1,000 we ended up with 35 or 40 that needed a closed setting. I think that will creep up, I bet it will creep up to 100 - 150 in the next couple years. It won't creep up because of that judge; it won't creep because, as I say, of public outcry; it will creep up because of some psychiatrist or social worker is talking about the need to set limits and develop special units and that would be the backdoor to which we get back in training schools. The first person to call for the reopening of the hole at Bridgewater after I closed it and outlawed its use was a child psychiatrist who wanted to motivate a kid for therapy. If you want to see the worst institution in the United States go to the instituions under psychiatric auspices run for the criminally insane. They are run with people with fine degrees and they are among the worst.

Audience Respondent

I'm from Greater Opportunities and I was wondering whether the youth involved had any choice in where they were assigned and how they feel about the change?

Jerome Miller

That's a very good question and it's at the heart of what could be problems in the system eventually. They did have choice and that continues. I am very leery that that will be eroded away over a time. I think we were able to show the fact that we didn't endanger public safety, but we also kept in mind that we have a different standard and a different set of values for wealthy kids and that's been kind of in the system. We kept saying to ourselves, we shouldn't ask anymore of these dangerous kids than we would ask of well-to-do dangerous kids. If anybody in this room had a kid who was in trouble in your upper middle class and you wanted to buy care and you took him to X institution or halfway house or group home or treatment center and they mistreated him or if he didn't like it even and you went back and took him out, there wouldn't be a great hullabaloo about it. You would take him somewhere else and try it and you would ask very hard questions like when is he going to get better? Why did you do that to him? Why is this happening? Why is that happening? And we take it as a given in child welfare, as well as in delinquency, not ask those questions for the poor. Immediately it's called manipulation. They are manipulating and if a kid wanted to leave a particular place, you were playing into his pathology by allowing it. We allowed it. Now we didn't allow them to run loose in the streets but we allowed some choice and if he didn't feel that such and such a place was working out, at least it was open to discussion. We might try to talk him into going back but it was open to discussion and if he didn't seem to hack it at all, it was hoped that some other place would try it. Ultimately then the best places will survive. It's a very conservative philosophy really. I think if we had a little free enterprise in corrections we'd all be much better off.

Audience Respondent

I'm a Juvenile Probation Officer. I realize first of all that research on a project like yours is probably years in the making. I did send a personal letter in February to the Supervisor of Police Cases in Boston Juvenile Court, and he responded to me very briefly and I wonder if you would comment on this letter?

Jerome Miller

I don't know him. I know that we had major confrontations with the Boston Court while I was there and that was always the case. It was more of a personal thing between that judge and myself and the blame is equally shared. But, if you want statistics on how those kids are doing what, I would suggest that you write Lloyd Ohlin at Harvard Law School, Institute for Criminal Justice, one of the most eminent criminologists in the world. He's written at least two dozen books, and they, as I say, will have a very complete study. They are doing everything from the political implications of the change to an analysis of every type of

kid in every type of program and how they did over a number of years. Their initial analysis are based really on self-concept measures and their initial analysis are very positive. Lloyd tells me informally that he is very optimistic on the results.

Audience Respondent

Well, if I could just briefly read this statement. "I'm in receipt of your letter dated February 28th, 1974, in which you were requesting an evaluation of the success or failure of Dr. Jerome Miller and his impact on treatment of delinquent children in Massachusetts. Any response in depth to your question would require more written material than you could easily digest in this reasonable time so suffice to say, Dr. Miller effectively reduced a workable, improvable system to total and utter chaos. It is my considered opinion shared by many others that this disorder was what Dr. Miller intended from the outset."

Jerome Miller

That's right . . . .

Audience Respondent

". . . . His successor in public statement is quoted as saying I proposed a half-way house program, the purchase of service concept. Dr. Miller saw himself merely as an agent of change. It is agreed that many children had previously been confined to training school could be diverted into placement without posing any danger to themselves or to society. However, for that small percentage of chronic offenders whose anti-social activities is a source of most serious disruptions in urban areas, no service or treatment program is in effect or has been since Dr. Miller's arrival. The courts of the Commonwealth have been forced in the absence of secure facilities to send juveniles into the criminal justice system which accounts for the lowest average age in a Concord reformitory in the history of this state."

Jerome Miller

Let me respond to that because that's an out and out lie. That has been bantered about by that particular judge and by his court because most of his people are political hacks and I would take for granted they are speaking for him. I would refer you to a study just published last week by the Academy for the Study of Comtemporary Problems at Betelle Institute in Columbus, Ohio, called "The Disillusion of Training Schools in Massachusetts". There is a section in there to answer this sort of rumor. What he is referring to is the fact that that particular judge, every year I was in Massachusetts introduced legislation while we still had nothing but training schools, to allow him to confine kids in the adult jails, in

the 12th Street Jail which I was personally able to beat down two years in a row. The numbers of kids in the adult system in Massachusetts are lower percentagewise than in the history of the state and this Betelle study gives a breakdown month by month of the numbers of youngsters in the adult state correctional system under 8 or 10 statewide so it just isn't true and ask him his sources, ask him to give you a breakdown. The breakdown we got came from the Department of Corrections which runs Concord. It just isn't so. There is a great need to think that. Now probably what he is referring to is the fact that he had a few temper tantrums in court and bound kids over to adult court but by binding a kid over to adult court that does not mean that the kid is sent into adult prison. If the kid is given all the guarantees of the adult court, most of those cases are either dismissed or he is put on probation or sent back to the youth department and very, very few go on to adult prisons. Let me just add one more thing. I challenge any state in the Union which has training schools to show a lower rate of kids in the adult system. I would think you would find a fair number of kids in the adult system in every state in the Union. And I think you would find it higher in the vast majority of states than in Massachusetts and I throw that challenge to Iowa as well.

Audience Respondent

Just to finish, just one more. "Most of the offenders so incarcerated in the past would have been in training schools with youth of their own age instead of of with hardened adult offenders. Police departments in this area are constantly arresting and rearresting the same offenders who are turned over after court appearance to the Department of Youth Services only to be released without significant supervision on the day of their commitment. In effect, the same children are committing more offenses than ever before and receiving less treatment, less intensive supervision than ever before." This is signed not by the judge but by the Supervisor of Police Cases, Boston Juvenile Court.

Jerome Miller

Well, as I say the clerk would speak for the judge. It's that kind of court. I'm sure it wasn't sent out without the judge's approval. I have no response other than to say that it's untrue and it's the kind of comment I would expect from that court. I think we will have to stand on the solid statistics. Those will be developed. There is no indication that the crime rates have gone up. I think there may be some frustration over individual kids where one was used to seeing them disappear for 8 or 9 months and they didn't disappear that often and they got back into trouble again earlier. Although the old system showed them getting in trouble in more serious ways when they came out anyway. All I would suggest to that person or to the judge is to those who worry about that is that we just go on sound statistics. It's been two years now. Not on rumor, not on need to believe anything and I'll stand that program

statistically against any in the county and that's about all I can say about it. I think we'll have those with the Harvard Study. That sort of comment was made at legislative hearings beginning about the first four months I arrived all the way until I left. The idea of leaving the department in chaos and all that. We did a lot of chaotic things. It needed that. It needed a bit of that but all in all it's a much better system than it was. I wouldn't claim, incidentially, to be the best administrator around, but as Adlai Stevenson said, "Bad Administration may wound Good Policy, but Good Administration will never save Bad Social Policy."

Audience Respondent

I'm from the Metropolitan Criminal Justice Center in Des Moines. Two questions. First of all, I've heard your work in Massachusetts critized by some people who say that there are still a lot of kids from Massachusetts locked up, not necessarily in Massachusetts, but in other states. Could you please comment?

Jerome Miller

Yes, I've heard that rumor too. And the Betelle Study answers that specifically. I think that they got it confused with the Division of Child Welfare, which was not my department and which had many hundreds of kids out of state. That's something that every state should look into. When I took my job in Illinois, we found 800 Illinois kids out of state, 600 in Texas in Child Welfare. But that was not the department that I ran; of approximately 3,000 kids in the last year there may have been 40 or 50 out of state. The majority of those would have been in New Hampshire right on the border and would have been in a community thing but they were across the border. We also made use of a number of schools in New Hampshire. One of the rumors is that we sent all the hard-core kids out of state. That is just not true because the places we used out of state were either group homes or regular prep schools and there happens to be a number of those in New Hampshire. I would guess 40 or 50 of the 2,000 to 3,000 kids in a period of a year might have used one of those places.

Audience Respondent

The second question is what are you doing now in Illinois as compared to what you did in Massachusetts?

Jerome Miller

Well, in Illinois they have a much larger agency and I'm trying to deal with the bureaucracy in it right now. We have 28,000 kids there all dependent, neglected, all minors needing supervision and a number of

other things. I'm dealing with that first and then I'll take on the juvenile correctional issue. I've only been there about a year and I anticipate we'll receive all the justice department money next month to begin developing the alternatives for delinquent kids. I think that will grow and we'll have the full support of the Governor in moving this direction in Illinois. There will be similar moves in other states, some brought on by the courts, Texas for instance, one of the most brutal systems I have ever seen in the juvenile correction system. People think that we are talking pulp magazine stuff or you are talking historically in the 1800's. But in Texas as recently as last year, before the trial started that I testified at, I went and observed it myself. Kids were being teargassed, they were still being put on chain gangs without the chains but carrying shovels full of dirt back and forth. They were still kept in solitary for days and days. They still had a system where you worked on this gang at this nonsense work in silence from six in the morning until noon with 10 minute breaks in which you kneel down and bow your head. Then at noon, or thereabouts, you all are locked in individual rooms, never allowed to speak, never allowed to lay on the bed or extra bad time is added. If you fall asleep, extra bad time is added. You sit there in silence, meals are slipped to you through a slot in the door and at nine o'clock at night a man comes around and says you can go to bed. You can sleep until the next morning when you can get up and do this same thing again until noon. If you act up, you are put in a steel room and a canister of teargas thrown in after you and the door shut and you are left there until you vomit your guts out all over the walls. That was the treatment for delinquency in Texas until last year. I don't notice any declining recidivism rate in Texas.

Audience Respondent

I'm the Director of our Family and Adult Services in Iowa and have responsibility for our children's institutions and also the placement in community services that we are trying to develop. I will be frank with you. We are taking a planned approach to developing our alternatives. I agree with you wholeheartedly that it does not need to be the whole emphasis on placement. We want to do something with service. I would like to know how you were able to handle the appropriations and funding necessary to handle this kind of fast move. This is really where we are in the crunch.

Jerome Miller

Well, we were very luckly in that we got about two million dollars of law enforcement assistance money and we used that as our stretch. We used that for the period in which we got out of the training schools and then we got the state legislature to come through with some purchase and care money during that time. It was a whole process and we were very lucky and we kind of forced, I guess, the options. Ultimately, the new

programs will be substantially less expensive than the old anyway and we were able to sell the legislature on that. We had good bi-partisan support. I was a Republican appointee in the Republican administration and we had Democratic support. People should realize this as well. People think that Massachusetts because of the McGovern thing and all is a very super-liberal state and, in fact, and I say this as a Midwestern, Minnesota is my home, Massachusetts is very conservative in these areas. It is not a liberal state in certain areas and correction is one, and Massachusetts is a rural state. That might surprise people, basically it's a rural state. It's a gossipy state. If we had any problem in the far west of the state, it was on the front page of the Boston papers within six hours. I was that sort of a situation, so it wasn't an easy task based on any liberal consensus.

Audience Respondent

Did you have open-ended funding where you could just draw on the commissioned funds?

Jerome Miller

No, we had limited funding but we had an open-ended approach to what options we were going to buy, what we might use and we decided that we would spend the most on the worst. If you will, that we would deal with those kids first and whatever we had left over we would use with other kids. Again I think it flies in the face of some of the classic ideology around diversion and around prevention. But my own feeling is that we have to spend the most on the most unsalvagable first. And I think that's true in all human services. I think it's a great hypocrisy, for instance, to talk about a fine preventive program in mental retardation, if you have any profoundly retarded kids lying around in their own urine in a state hospital. That you deal first with those kids and you spend all you've got making it decent for them, knowing you might not even succeed, making it decent and the best you can do as a human being and then you work out from that. That's basically what I think human services area all about. They should ennoble us all and make us feel better about ourselves. If they don't, there is something wrong.

Audience Respondent

I have a second question. The children who come through the courts and into our institutions or to the department for placement usually have had trouble with school. This is the route through which they have come. We feel they need to go back and successfully adjust in that community again. What has been your experience with their re-entry and involvement with the educational systems in their community?

Jerome Miller

That was one of the options we bought. We bought a lot of alternative schools. We bought a lot of free schools. We bought a lot of tutors. A lot of the kids that were incarcerated could make it very well with

some tutoring help and someone to spend a lot of time with them during the week. A lot of kids that had been excluded from the school system and became a delinquency problem could make it reasonably well in a less structured school system or in a store front school. We did a lot of that, a lot of those kinds of educational services. I think ultimately in child welfare that's going to be an issue. We have one informal study in Illinois, for instance, showing that fully 30% of the kids that we've removed from homes and placed in foster homes or institutions, fully 30% of those kids could be in their own homes if there could be an alternative program for school aged kids in the community. I think we have got to develop those.

Audience Respondent

I'd like to know if you really do see an effective role for the so-called PTA?

Jerome Miller

Yes, my own feeling in child welfare, generally in correction as well is that one of the greatest dangers to it is pseudo-professionalism rushing in and putting everything under professional offices. I think I have a much greater trust in the average man in the street in this regard when he knows the facts than I do in my professional peers . . . No, I do . . . By the same token I have a much greater trust in Joe-six-pack than I do in an ultra-liberal. I say that as someone who considers himself a liberal. But I have learned from bitter experience in Massachusetts with my liberal friends when we talked of putting the halfway house next door to them, they were a little upset. When the chips were down I had to depend on lay people. I couldn't depend on the professionals and I couldn't depend upon my liberal friends that much, I think the problem is that we have not informed the average Joe about what we are doing. He doesn't know so he doesn't see the need for change and we've talked a good game when we haven't produced. We've talked about all the good things we are doing and when he doesn't see production, he gets disillusioned and wonders what the hell is going on in these places. They've got all these big programs and I still see the crime rate going up. I think that the backbone of any system of change in juvenile corrections or in adult corrections is going to have to come from that broad middle ground of average people who want to get involved and have decent hearts and want to do some good things. That's the middle ground of the service clubs, the American Legion, the Rotary and the average fellow and once they get into this, then it is going to be won. The problems is that they have been parlayed on the wrong side of many of these issues very often by some people who should know better, who are talking a liberal rhetoric but are giving out something quite different, and I think once the average Joe understands that, we are going to get significant change. In fact they are just going to demand it and, as I say, there is no great groundswell in Massachusetts to go back from the average Joe.

That just isn't there because it is their kids that are being hurt by this system and it's their families that are being hurt by the kids that get hurt by this system. Yes, one more and then that's it.

Audience Respondent

I just want to make a comment. I'm a VISTA volunteer working with youth programs in Des Moines and I taught junior high school from '69 until '73 in my hometown of Springfield, Massachusetts, where they bussed kids from this local detention center to the neighborhoods to get their schooling. This is a personal opinion, but I think I can personally account for the fact that I never dealt with a group of young individuals who were fast becoming misfits, who benefited more from any action more than they did in '72 when they were finally considered children with problems to be helped, rather than problem children that had to be taken away and dealt with.

Jerome Miller

I appreciate that because that was a very active place and still is primarily because of the association with the University of Massachusetts. One of the legislative commissions that investigated it was appalled because they said they couldn't tell the difference between the kids and the staff which I think is one of its strengths. But it was a very fine program and it still is and I appreciate that very much. We overuse detention. The City of London, the largest city in the World, never had more than 35 kids in detention awaiting trial. Now they have hundreds awaiting trial but they have developed options. Our Westfield units began to develop those options and it was a decent thing.

8. CHILD ABUSE IN IOWA: A CRITICAL PROBLEM

Truce T. Ordoña

I am going to talk about the indicators of potentials for child abuse. Number 2, the roles that are played by the parents, the child and crisis. Next, I will address myself to a bit of psychopathology, then I will address myself to their indications for treatment or correction or remediation. Then, hopefully, I will be able to cover, if I still have enough time, caveats, the kinds of things you should be aware of in this day and age where we have a good bill and the kinds of things you should look for when you go into the child abuse field.

First of all, before going further; one of the things you should realize is that a lot of people who are working with children really don't like children. In fact, a lot of pediatricians hate kids. That is probably why so many pediatricians use shots. A lot of psychiatrists don't like children either, and that's probably why our beloved friend from Massachusetts who is a very "soft spoken unassertive fellow" had a harangue against child psychiatrists. Let's talk about the kinds of things that we would call child abuse. Now there is a public law No. 93247 which was passed by the 93rd Congress. It's called the Child Abuse Prevention and Treatment Act. The definition of that act of child abuse is as follows: "Child abuse and neglect is the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." I think this is a very good but dangerous definition because, like anything, like any good thing that started out good: like sex, love, motherhood, things can be bastardized by some smart lawyer, some smart child, some smart parent. So with that as a jumping off point, let me give you two quotes. "The parent's childhood loads the gun, present life conflicts causes the parent to raise the gun, the child's specific needs help pull the trigger." That's a quote from Milowe who was a doctor who wrote a lot about child abuse. The second one, which I don't agree with much, is from a fellow who lived between 1712 and 1778, it is Jean Jacques Rosseau. He said, "Let us speak less of the duties of children and more of their rights."

Nobody can talk with authority about the incidence of child abuse because nobody has done a very comprehensive study of child abuse because very few states really have these child abuse laws that are well enforced. But one Kansas study shows that 70% of those cases reported to be severely abused were below the age of three years old. Thirty-two percent were below 6 months old. None were above 13 years old: they probably were big enough to fight back![1]. A Denver study showed that twenty-five percent were under one year, forty percent were under two years, sixty-two percent were under four years, twenty-five percent were between the ages of four years and ten years. Those cases where

1. Goldstein, Joseph; Somit, Albert and Freud, Anna. Beyond the Best Interest of the Child, 1973.

there were deaths were usually done by females. Overall, however, in the overall statistics perpetrators of child abuse, there were more males. What does that say? What that says is what Goldstein and his group are saying and what Harry Harlow has been saying and what a lot of authorities have said about the myth of the maternal and the paternal instinct. One of the things that has been bandied around is that mothers have a maternal instinct. That's a bunch of poppycock. Like a lot of apple pie is poppycock too, so is the flag sometimes. So I have already stricken three institutions: it seems to be the fad anyway in this convention so I might as well join the club. The studies of Goldstein in his book would provide you a very good list of the bibliographies. This is not my conclusion. This is a conclusion of an expert way back into Rene Spitz. Spitz studied the effects of non-mothering on the part of juveniles, teenage, and illegitimately pregnant mothers who were placed in an institution called "The Hospital" where there were children who died because the mothers disregarded them completely. There were those children who led a fairly good relationship with their mothers but whose mothers suddenly for some reason or another just disregarded them and then these children just slowly died off. It's a very painful book and there are movies that Spitz has been showing around the country. I don't know if they are still okay. But this is one of the studies. The second study is the study of Harlow. Harry Harlow from Wisconsin and there are a lot of other studies which, you know, you can go into if you get the book. Now, let me go into talking about determining the potential for abuse. The first thing one has to look at is how the parents were reared. Now this becomes more significant as we go into psychopathology. I dare any parent here to stand up and say that he or she went to graduate school in college of parenting. Nobody? We license doctors, we license attorneys, we license social workers, don't we? Why don't we license parents? So, since we don't license parents, since we teach them American history, but we don't teach them how to be parents, and since they don't have maternal instincts, where the hell are they supposed to learn about parenting? In the school bus? In the gutter? From Playboy? From the Bible (that's one of the worst sources of parenting)? Where else? Why is this a very important point? Because the study of Helfer and Kempe[2]. and his group and other groups have shown that the way a mother and/or a father was raised often times determines the potential for child abuse if there is a combination that clicks. Now there is a very elegant study by Oliver and Taylor which was published in the British Journal of Psychiatry in 1971. It talked about tracing five generations of severe child abuse in the same pedigree. I have a copy of that if you want to send me money for handling it since I am just a poorly paid coolie. And these two authors were able to pinpoint the five generations and they showed incest, child multilations, the most common of which was the genitals, filicide, (killing the child). It is very important because those mothers or fathers who were not mothered by their mother tended to have a greater than normal tendency to batter children. The kinds of severe heinous child rearing these parents were subjected to often times made them impose severe expectations on their own children and I will go into that later on.

2. Helfer, R. E. and Kempe, C. H. The Battered Child. The University of Chicago Press, 1968.

Now let's talk about the thing called "a pattern of issolation". The first book by Helfer and Kempe called "The Battered Child Syndrome" which I think was published by the Chicago University Press, they were talking about some of their patients who would keep their blinds drawn even in the middle of summer. It's not because there were as tanned as I am and they didn't want to tan anymore. It's because they didn't want the neighbors to look in. They didn't want anyone to look in and criticize them. In fact, some of their patients refused to go to car washes because the car wash attendants might talk about their cars because of the rust and the dents in their cars. So the kinds of things that you can ask your clients, you know, where you have a fair degree of suspicion of potential child abuse. (I am talking about potential child abuse, now) are the following: What kinds of things make you feel really nervous and upset? Some of them will tell you, "When somebody stares at me when I nurse, for instance, and they look on." What kinds of problems do you have with your child's behavior and what do you do to control this behavior? Like for instance, I had a friend who was a champion boxer in my country. He was my classmate and he came to me after he won the Diamond Glove Championship and he just had a one-week old child. At that time, this was before the civil war, I didn't read about Helfer and Kempe, so this fellow came to me because I was a doctor and he said, "Do you agree with me that a child should learn how to mind at the age of one week?" I said, "What?" "Well, I gave my child a swat, you know." He brought this child in and he had a big black eye. I said, "You gave the child a swat, the same swat that knocked out your friend last night?" He said, "Yes. Because I read about this doctor who said you should train your child from birth. It's called behavior mod. Have you heard of that?" I said, "no". Okay, now this is one of the questions you should ask these people. How do you handle these kids when they cry? This is called a behavior problem for some. The next thing you can ask, for instance, is what do you feel inside you when the baby cries? Some of them can answer, I feel like crying too. And I'll explain that later on, what that means. So, like for instance, what do you do when the child messes up what he eats? "Oh, I make him clean it up with his nose and his tongue. Let him taste the food that he messes the table with". Okay, so that's a very important thing. Like toilet training techniques. You'll be surprised about how many imaginative devices, like electric cattle prods, some people use, or using the penis as an ashtray. If you think I am trying to shock you, you should be grateful that I just moved to Davenport and I lost my child abuse slides because they would have made you puke. These are actual cases in the University of Iowa slide collection. How do you handle, for instance, accidents. Like a child accidentally pees on the rug? What do you do? This is a very important question.

Now let me go to the third thing that we should talk about in talking about potentials in child abuse: the inter-relationship between the parents. If an adult with a weak potential for abusing children marries a normally reared individual, then the possibilities of that adult battering a child are pretty slim. If, however, that adult has a strong potential for child abuse and he marries a passive individual; we are talking about assortative mating. There was a study of the types of women and men, paranoid schizophrenics who are aggressive and violent, tend to marry and the correlation was so striking you would have to have

and IQ below 25 not to see it. What it showed was that paranoids, aggressive, violent schizophrenics tended to marry passive individuals. Okay, now why? Because it would constantly be a fight if they didn't. You would have two bull-headed paranoids clashing with each other over child rearing, so it's nice to marry somebody who is a Casper Milquetoast or sombody who is a pusillanimous pussyfooter and then you can just browbeat her. So therefore if you marry a spouse like that, abuse will very likely occur. If both have a weak to moderate tendency toward abusing those children, abuse is very likely. Especially in moments of stress. So some of the questions you can ask are, for instance, "you are visiting friends, can you rely on your spouse?" "What happens when you and your spouse disagree on how to handle children?" "Does your spouse recognize when you are uptight?" "What does your spouse do when you are uptight?" Do you think these are silly questions? Try them one day and you'll probably win the seat as county sheriff or whatever. "Who do you turn to when you are uptight? Does your spouse help with the children at all?" "What is there about your marriage that you think can be improved?"

The next variable which we call number 4, is called "how the parent sees the child." And here we are tying in a lot of what is called psychopathology. I am now involved in a case which shall remain unnamed becasue it has been bandied around too much. But where the naming of the children have taken on a psychopathologic flavor. For instance, you probably heard that magnificant country western "classic" called "A Boy Named Sue". There is, by the way, a response to that by a women's libber called "A Girl Named Johnny Cash". They end up marrying each other. You know what happened to Sue's father? He was shot by Sue. You should listen to those magnificant classics of yours. Expectation, like for instance, when should parents start toilet training a kid? I have a parent who has bragged to me about successfully toilet training a kid at the age of six months. Either he's a genius or somebody cut off his opening. "How well do your children understand your feelings?" This is a very important consideration. I'll elaborate on it later on, if I can. Morris and Gould [3]. talked about a syndrome called role reversal where a parent expects even a new born child to see that child's primary duty as pleasing him. I have a parent who used his first born son's eyes as ashtrays because the child would look at him blankly when he would talk about football. You know how old that child was? Two months. The child has bilateral cerebral hermatomas and a bilateral linear fracture of both parietal regions and he is paralyzed from the neck down because he wouldn't talk back and respond. Next is "How have your children been of help to you?" "Can your children tell when you are upset? And do they help you then?" "Do any of them seem to have any problems being welcome and loving enough?" (There's a catch word) "Do they all live up to expectations?" I talked with a patient this morning where the patient said, "I named the child Peter" I said, "Why?" Well, he was my husband's boss for many years and he wanted

3. Op. cit., Helfer and Kempe, 1968.

to be a minister and so I thought Peter ought to be a minister. Look at him now, he is talking about being a minister." Okay, but then her child who gives her the most problems is the oldest son who was named after her own father who died when she was ten years old and that boy is nothing but trouble because he did not live up to be an electrician, an engineer, and a baker, all of which her father was and he will end up in Eldora. It's called "a self-fulfilling prophesy."

Some clues with regards to number 4. In the first four weeks to eight weeks of an infant's life, if you live, for instance, in a community where you stay in the emergency room, or you are a minister, if you are there in the emergency room, for instance, you have a parent who keeps bringing a child to you in the first four to eight weeks of life for a non-existent complaint, beware. There is a case in Cedar Rapids right now that was yanked out of my hands because I had to leave, who brought back a child who was adopted because she got a child who had the wrong "race". She wanted a Caucasian and she got a Negro but "she was not prejudiced; some of her best firends were Negro. She just didn't live with them." But she took this child three times in one month to the emergency room insisting that this child had epilepsy. Well, the doctor said they could not find anything. We did an EEG, etc. Well, the next month the child came in with cerebral hematosa and had a "blood sickness because he 'accidentally' fell off the porch and just happened to have broken an arm too."

Now let's talk about the neurotic motivations of parents for having children. This will closely tie in with my next part about children. There are very few who decide to have children for the children's reasons. Some of those neurotic motivations on the part of the mothers are the following: 1) Severe stress caused by illness or death in the family, 2) Fear of sterility, 3) The Gaiea complex? (The Mother Earth complex, where women who doubt their femininity go about serving every Tom, Dick and Harry in town? That's one of them. The fear of being unfeminine), 4) Reliving ones own childhood, 5) The pre-menopause panic. 6) The fear of remaining single 7) Anger and therefore punishing ones own parents. Those are the neurotic motivations that women have to have children. Now lets go to the men. Some of the neurotic motivations of fathers are that 1) they have such a lousy identity and self-image that they need to have a child in order to support their possibility of being men, 2) The second is sexual. People who, for instance, have microphall-neurosis, which is a fancy term; micro means small, phallue means penis. These people keep looking at the mirror and saying "Hey, it's pretty small, isn't it?" So what do they do? They become sexual athletes to combat this sense of weakness, 3) The third one is neurosis based on aggression and hostility. Have you ever tried to pay attention to people who are very violent? Listen to them when they cuss. You know I deal with a lot of juveniles. Sometimes I deal with juveniles who are 32 years old, but those juveniles who are below 15 who I deal with say "Oh, I knocked her up pretty good"...penetrate and destroy. Now let's talk about the fourth one 4) Dependency; where they identify with the maternally cared-for child. Remember one of the things I said was a lot of these people didn't have adequate mothering so they look at the child and the child suckles the mother. They feel like they

are suckling the mother in a non-sexual way. They suckle at other times but when they see the child suckling the mother, they identify with the child and when child abuse comes it is intertwined with identifying with the child and saying to the child, I don't love you - so withdrawing from the child. Does that sound okay to you? Can you understand that? Okay. It's one of those strange concepts.

Now let's go to the next variable called the child. What are the variables in the child to help a parent to achieve the potential of child abuse? 1) One of the worst fallacies that you can have as a group is that children are innocent. They are not. When children are born, they already have a temperment. There is a book which you should read. You can get it from any well-known book store like K-Mart or Osco Drugs. The name of the book is Your Child is a Person by Stella Chess, Alexander Thomas and Herbert Birch. [4] And what it tells you is that there are "difficult" children. Now this is your first-born child and you have so much love for the child and the child pushes you off. What do you feel? You feel like beating him up. Okay? 2) Another variable that the child one may have is being accidentally conceived out of wedlock. Premarital conception is one of the leading causes of people battering a child especially in those parents whose basic attitude is the conservative super-Joe that our friend from Massachusetts was talking about. A person who has a very strong fundamentalistic religious background who will say, for instance, "I have fallen away but have already internalized the religion", will condemn themselves for having allowed themselves to get pregnant out of wedlock. 3) The next variable is a child who is "uncooperative and unsatisfying", quote and unquote, because he may happen to be the wrong sex. I talked to the mother, for instance, who named her child Sue before the child was born or LaVerne or Charlotte, whatever and then didn't bother to change the name after the child was born even if the sex was wrong. Have you heard of those cases? I sure have. Or the child may have the wrong hair. It "dared" not be blond because blonds have more fun. Okay. 4) The next variable is a child who himself invites aggression. A child who was raised in an environment of being hurt all the time can be placed in one foster home after another. This is where Milowe and Lourie [5] have given their biggest contribution in the understanding of child abuse, that some children have the philosophy that "bad breath is better than no breath at all" because they feel that the only time that the parents paid attention to them was when they were beaten up. I had a patient like this who I thought I cured in six months and then after the six months came to my office and very nicely defecated on my carpet and then smeared it on my walls and then smiled and I had the tendency to abuse him a little bit. But I thought it would be untherapeutic... 5) Then you have the child, for instance, who is an irritable and hyperactive child and who has a different circadian rhythm from the parents; who is a night person where the mother is a morning person

4. New York: The Viking Press, 1972.

5. "The Child's Role in the Battered Child Syndrome", Milowe, I. D. and Lourie, R. S. J. Pediatrics, 65; 1079-1081, 1964.

and the mother is asleep and the child wakes up and says "Oh, I feel like working". And then the parent says "Ah, shut up" and then the child just aggravates the parent for attention, etc. 6) And there is such a thing as inherent qualities in the child that even a mother cannot love. For instance, there are people who are born ugly, believe it or not. And that a child, for instance, has a handicap where he has one eye missing and the parent cannot stand it, taking it as something God did to punish the parent. Or a child is born mentally retarded in a family where the parents are high striving doctors. One of the myths in child abuse is that it happens in low socioeconomic classes. The study of Vincent DeFrancis [6] totally disagrees with that, in fact, two of the places with some of the highest incidents of child abuse are in an area where the mean income is $50,000; Palo Alto, California, and Grosse Point, Michigan. 7) The nonthriving or difficult to feed child can contribute to child abuse especially in a parent, for instance, who needs only a very small amount of stress because he has the potential for child abuse.

Let us now talk about the "crisis". There can be a crisis that may mean nothing to others. Like for instance the car breaking down, or somebody being late for a dinner date. That can precipitate child abuse especially in those with a potential for child abuse.

What are the diagnostic clues for child abuse? In the book by Helfer and Kempe, there are twenty diagnostic clues for child abuse that you can find in that book in the chapter on diagnosis. No. 1 - The parent shows evidence of loss of control or fear of losing control. No. 2 - The parent presents a contradictory history of the childs' presenting problem. No. 3 - The parent projects the cause of injury onto a sibling or a third party. "I didn't do it". No. 4 - The parent delayed unduly in bringing the child in for help. No. 5 - The parent shows detachment when he does that. No. 6 - The parent reveals an inappropriate awareness of the seriousness of the situation either by over-reactions or under-reactions. No. 7 - The parent continuing to complain about irrevelant problems unrelated to the injury. For instance a child comes in with one eye missing, you can see the battering parent, for instance, complain about a cold on the part of the child. In fact, we saw a kid who had a broken skull who was brought in because the parent complained of sniffles on the part of the child but then some smart intern detected the fracture in the course of the examination. No. 8 - A person who is currently, personally abusing or misusing alcohol or drugs. No. 9 - A person who is disliked for one reason or another which is not known to the physician or to the person who is dealing with him. No. 10 - Somebody who presents a history which cannot and does not explain the injury, "Oh, he fell off the porch, that's why he broke both arms and had a bi-lateral ceberal hematoma. No. 11 - Gives the specific eye-witness history of abuse. No. 12 - Gives a history of repeated injury in the family. No. 13 - Has no one to "bail her out" or him out when he is uptight with the child. No. 14 - The next one who is somebody who is reluctant to give information. 15. The next one is a person who "hospital shops" or "doctor shops." The 17th is somebody who cannot be located after a child has

an injury. 18. Somebody who is obviously psychotic. No. 19 - One who has been reared in a motherless atmosphere. No. 20 - Somebody who has unrealistic expectations for the child. There are 15 points relating to the child that are good diagnostic rules. Look these up because they are quite helpful.

In dealing with the psychopathology of these parents, what you do or not do at the first interview may be the most crucial point in your future effectiveness. Know the following: No. 1: These people are isolated. They are feeling very acutely sensitive to criticism. So thats one of the worst things you can do when you come into the scene is to say "Somebody has reported to me that you are a child abuser." You think that's callous? This happens so much in university hospitals, in emergency rooms and in case work in the community. A lot of these people use certain basic defense mechanisms which can be used with a neumonic called "Purrd", like purred like a cat without the "e". A lot of them try to inhibit aggression by 1) Projection, bringing the blame to the public. "My attorney is lousy, you know, or else we would have won the case." 2) The next is undoing. They tend to undo what they did to the child, for instance, after beating up the child or neglecting the child, what they do is they buy these children color T. V. s, like three color T. V.s in a family receiving ADC or six Princess phones in a family on ADC. This is the concept of undoing. 3) Reaction - information: where people, for instance, who have the tendency to abuse their children will keep talking about being nice to their children. You talk with them and they may say to you. "My child comes first. I don't care whether I am suffering, if I cannot eat, I will not drink anything as long as my children don't have food blah, blah, blah." 4) The next defense they use is displacement. Like, for instance, when they are angry at the child, what they may do is kick their cat or their spouses. One expression of this self-aggression is: 1) for instance, a lot of these people who cannot overtly abuse their children because they have heard of the Doderer-Lamborn Bill, don't abuse their child. What they do is they abuse themselves. They do aggression to themselves whenever they are angry. These are the people who bite their fingernails a lot and who bite themselves a lot when they are angry at their child or who scratch at their scabs or bang their heads against the wall when they are angry. 2) Some of these people have a second defense against aggression, and that is, they change from direct physical aggression to something indirect, like the unconscious courting of injury. Some of these people become accident-prone. Some of them keep courting humiliation. They are successful and they make one stupid mistake so that they become humiliated. Some of them court failure. They cannot stand success. 3) Some of them form very strong consciences. 4) Some of them develop very severe depression as a sign of internalized aggression.

Let me go into the caveats. What do you watch out for? When you work in the filed of child abuse, especially with legislation like this, you should be aware that unless you know yourself, you will never work with these people very well. Because when you look at a child who is obviously mangled or multilated, you will tend to judge these parents. I have heard some of the most abominable reports from case

work histories where a case worker, for instance, goes to a home and says, "These aren't fit parents because the house stinks of urine." "These are abominable parents because they don't do their housework well." That's a bunch of baloney. Some of the best people, some of the best mothering people I have met are people who are lousy housewives. Some of the worst mothers I have known were super neat housewives. 1) "Gnoth; Seauton" - know thy-self. 2) The second cavet is when you work in this field beware of Parkinson's law. Have you heard of that law? It was in Senate File No. 1001, written by Carl Parkinson. No, I'm kidding. Parkinson's law says that you stretch and you shrink your work depending upon the time and the space allotted to you. You can pour in a lot of federal money into any program, you can pour in a lot of county money if you essentially do not like children, you will just expand your work load or shrink it depending upon Parkinson's law. 3) The next cavet is that you need to document everything. I am now involved with a case where the case worker knew everything that happened in the home. He didn't just visit the home for 20 minutes and take the child away but he had know this case for a long time, but these observations were not written in black and white. This is especially true when you deal with nurses, when you deal with teachers, when you deal with doctors who have seen the child. That's why I carry with me a Poloraid camera. I carry that all the time not only to photograph beautiful women but also to photograph my cases because that photograph with a Poloraid camera is very hard to tamper with. It's one very good prima facie evidence of child abuse. Document everything, like for instance if you have seen a child with a missing eye, you put it down, "missing one eye," or if you see the nose broken, you can say "nose broken," because it can be repaired later on. Scars or the bruises can disappear in a matter of three to four weeks. So when you go to the judge and you say, "This child came to me black and blue." And then the child is brought there by the parents combing down the hair very well with Sunday suit and without the scars, you look crazy. Document everything. 4) The next thing is two words - "follow-up." The study by Helfer and Kempe shows very clearly that 75 to 80 percent of their clients with intensive community work can be returned safely to their homes after 9 months. By the way, I don't believe that the best treatment is given by doctors or psychiatrists. Some of the worst treatment is done by psychiatrists because they have no time. If you use a psychoanalytic model, you are in trouble; if you use the medical model, you are in trouble. What you use is the Kempe model. It works. Seventy-five to eighty percent of these children returned to their homes within nine months! But the crucial thing about the Helfer and Kempe model was that not only did the medical center work with the kids and the parents, but they also involved emergency day nurseries; they also involved foster grandparents and they also involved Mothers Anonoymous. Why is this very important? Because your peers are better controllers than some perceived authority figures. Mothers Anonoymous by the way, was founded by a woman who herself was abusive, was abused and was abusive to her children, was by the age of 11 placed in 42 foster homes. Use these kinds of agencies and use follow up. That's the beauty of the central registry that's in the Minnette Doderer bill.

5) You should beware of "modelling" and the way that parents, for instance, influence the child to become a future child abuser. I can give you clinical vignettes that prove this point and also with the concept of "identifying with the aggressor". This very child who was abused can abuse his own siblings. His own brothers and sisters. 6) Then the next thing you should beware of is the adversary system. Any time you have lawyers who are hungry for a fast buck or somebody who wants to make a reputation for himself or a doctor who wants a reputation for himself, beware! I like the Amicus Curie concept, the friend of the court concept in Michigan where Eliss Benedict, who by the way happens to be a child psychiatrist, and her husband, a lawyer, are dealing with custody cases as friends of the court. They don't have interests in the child per se or the parents per se but what's best for both parties. The last topic I shall cover, after which I'll shut up is 7) the "Bill of Rights". This is the caveat that I talked about this morning. We talked about a Bill of Rights for Children. By talking about this too much we will make these parents more sensitive about criticism. There is not a single book in the world that is upheld as the final authority about child rearing. "Now how in heaven's name am I supposed to raise my child properly without raising my hand or without shouting at the child because this might be called emotional abuse. What am I to do?" This can lead to overt child battering without people knowing it. People can always change from physical abuse to emotional abuse and that can have a more lasting detrimental effect on the child. What I am talking about is: "we should not leave the parents to fend for themselves." In fact, Kempe and Helfer are talking about that. When you deal with the battered child and helping the child and his parents, you, in fact, have to focus more on the family. It would be a big mistake if you work with a child more than you work with the parents because then you intensify the "sibling rivalry," the role-reversal", the need for mothering that be underneath all of them. And you will have failures upon failures. Give abusing parents a sense of loving "The Bill of Rights of Parents". Help them have a strong sense of self-worth so that they don't have to seek those rewards through their children alone. Remember what Erich Fromm once said: "Only after man can love himself can he learn to really love others."

PANEL: CHILD ABUSE IN IOWA-A STATE SENATOR'S PERSPECTIVE
William Gluba

Well, I presume they just want us to go right on to the next topic which is Senate File 1225. I would like to take a second and point out some people who have been very active in developing the child abuse bill: Mr. William Buss, Professor of Law at the University of Iowa; Dr. Truce Ordoña from the Scott County Mental Health Center; Jo Sheeley with the Iowa Department of Social Services, Protective Services Specialist; Robert Oberbilling, Director of the Legal Aid Society in Polk County; Josephine Gittler, Assistant Professor at the College of Law, University of Iowa; and probably one of the most influential people, Dr. Gerald Solomans who is with the University of Iowa School of Medicine. The legislation that I will try to condense down in about five minutes and just touch on the high points was essentially drafted by professionals dealing in the field of child abuse as well as some of the top legal people at the University of Iowa. I think that's probably the way legislation ought to be drafted. I am sure all of you know the legislators themselves are probably the least competent of all individuals to deal in areas affecting social welfare and other fields. Now the bill itself, as you know, just passed the Iowa Senate yesterday by 39 to 1 vote. It now will go to the House where presumably it will be taken up very shortly and probably amended or at least debated to some additional degree. I would like to sort of read the five or six key provisions to you and then try to get any questions that you might have later. The purpose of the bill as stated provides for children in the state who are in an urgent need of protection from physical abuse. It is the purpose and policy of this act to provide the greatest possible protection to the victims or potential victims of abuse through encouraging the increased reporting of suspected cases of such abuse; insuring through and by prompt investigation of these reports; and providing rehabilitative services where appropriate and where possible to the abused children and their families which will stabilize the home environment so the family can remain intact without further danger to the child. The bill is not a punitive measure. We didn't set out to punish parents, punish people for child abuse. We set out to try to protect children and to see that the parents of abused children receive the kind of treatment they need. The definition under the law of child abuse provides that child abuse means any non-accidental physical injury suffered by a child as the result of acts or omissions of the child's parents, guardians or other persons legally responsible for the child. Under the definition, health practitioner includes a licensed physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, optometrist, podiatrist, chiropractor, a resident intern in any of such profession and registered nurses and licensed practical nurses. Now these are the people that come under the definition of health practitioners. Those who are

required to report, who shall report cases of child abuse are the following: 1) every health practitioner, people I just mentioned, who examines or treats the child and who believes or has reason to believe that the child has had physical injury inflicted upon the child as the result of abuses. If, however, the health practitioner examines, the examining health practitioner shall immediately notify and give information to the person in charge of the institution or the health practitioner's designated agent. 2) Section B - Every social worker under the jurisdiction of the Department of Social Services, certified psychologists, certified school employee, employee of a licensed day care facility (we had religious practitioner and took that out) or peace officer who in the course of employment who has reason to believe or believes that the child has had physical injury inflicted on the child as the result of abuse. Whenever such person is required to report under this section as the member of the staff of a public or private institution, agency or facility, that person shall immediately notify the person in charge of such institution. 3) Any other person who believes that a child has had physical injury inflicted upon him as the result of abuse may make a report as provided under this bill. In addition, under the old bill we had a problem, it says every social worker under the jurisdiction of the Department of Social Services, well it was brought to our attention that approximately 50% of social workers are not under the Department of Social Services so I think there is still some work needs to be done on this bill but we also put under that section public or private health care facilities as defined in Chapter 135 of the Code this picks up social workers connected with custodial homes, nursing homes, boarding homes, etc. There was an issue about religious practitioners having to report. In the case of report formality, there seemed to be a question there and a legitimate one of the confessor-penitant relationship. That would have been the only real group that we had a hang-up on so we got to thinking about it and rather than lose the bill and get it reconsidered or delayed, decided just to take them out of the mandatory reporting and they, therefore, come under the section of reporting any other person type situation. So they will be considered like a neighbor, a meter man, a light man, a clergyman and I don't know, I haven't found too many priests or ministers who make home visits anymore. It's like MD's they just don't do it so as far as going into the home, I don't see where clergymen is a big thing as far as mandatory reporting under this Bill is concerned. The next sections deal with procedure for reporting. Each report shall be made both orally and in writing and both reports shall be made as soon as reasonably possible. The oral report shall be made by telephone or otherwise to the County Department of Social Services. If the person making the report has reason to believe that immediate protection for the child is advisable that person shall also make an oral report to an appropriate law enforcement agency. The written report shall be made to the County Department of Social Services within 48 hours after such a report.

The County Department of Social Services shall immediately upon receipt of an oral report make an oral report to the State Central Registry as provided under this act. Now persons not mandated under this act to report, neighbors, relatives, clergymen need not make a written report, simply an oral telephone call either to the State Department of Social Services or to the State Registry will do. Duties of County Departments when they receive a report: when a report is received, the County Department of Social Services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report. The investigation shall include identification, the nature, extent, cause of injuries to the child, if any named in the report, the identification of the person or persons responsible therefore, the name and age and so forth. It also provides an evaluation of the home environment in relationship to the child named in the report. There are a few other requirements as to what goes into the report. If they find it's necessary to take immediate action, to visit the home and permission to enter the home and to examine the child is refused, the juvenile court or district court upon showing probable cause may authorize a person making the investigation to enter the home and examine the child. Based on the investigation conducted in pursuant to this section, the County Department of Social Services may offer to the family of any child believed to be the victim of abuse such services as appear appropriate for either the child or parents. I'm dropping down every couple sections here so I am not hitting every point in the bill. The County Department of Social Services shall provide for or arrange for and monitor rehabilitative services for the abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court. Another section deals with immunity. Anyone who makes a report is immune from legal follow-up or legal repercussions under the law. Anyone participating in good faith in making other reports or photographs or Xrays pursuant to this Chapter shall have immunity from any liability civil or criminal which might otherwise be incurred or imposed. Now failure to report. This is one of the problems with the existing laws. I think there was only 300 cases of child abuse reported in Iowa last year and several counties didn't even report at all. The doctors are reluctant to report child abuse cases, so by expanding those who are required to report to social workers, nurses, and so on and so forth, hopefully, we will catch more cases of child abuse and have the follow-up necessary. Failure to report. Any person, official, agency, or institution required by this act to report a suspected case of child abuse, who knowingly and willfully fail to do so, is guilty of a misdemeanor and upon conviction, shall be fined not more than $100 or be imprisoned in a county jail for no more than 10 days. Publicity and education programs. I think this isgoing to be a very important aspect of this bill to get it off the ground. It provides that the Department and County Department of Social Services, jointly and individually, within the limits of available funds, shall conduct a continuing publicity and educational program for the personnel of the State

Department and the County Department, persons required to report and any other appropriate person to encourage the fullest possible degree of reporting suspected cases of child abuse. Educational programs shall include but not be limited to diagnosis of child abuse, responsibility, obligations, duties and powers of persons and agencies under this act, the procedures of the State Department of Social Services and the County Department of Social Services, and Juvenile Court, with respect to cases of suspected child abuse. In other words, we have mandated the Department of Social Services to provide to their people proper educational programs to fully implement this law and become familiar with it. Then we have several sections on privacy. The General Assembly also finds that vigorous protection of rights of individual privacy is an indispensible element in a fair and effective system of collecting, maintaining, and disseminating of child abuse information. So then, we go into about half the bill which deals with privacy, confidentiality of information, due process for parents or anyone that might have had some reason to have a report of child abuse and takes precautions and safeguards to maintain the right of privacy. The department shall maintain a toll-free telephone line which shall be available on a 24-hour a day basis, seven days a week, in which the County Departments of Social Services shall and all other persons may use to report cases of suspected child abuse and that all persons authorized by this act may use for the obtaining of child abuse information. Then we provide in a section the access to child abuse information is very limited and only essentially to authorized people, health practitioners, County Departments of Social Services, anyway it pins down who may receive information on child abuse. There is a section dealing with expungement. I'll just read it briefly. The registry shall examine all reports of child abuse and assess their validity. Child abuse information may be expunged where the prohibitive value, yes, where the value of the information is so doubtful as to outweigh its validity. Child abuse information shall be expunged if it is determined to be unfounded as the result of either the following: investigation of a report of suspected child abuse by a County Department of Social Services; a successful appeal as provided in one of the sections of this bill; a court adjudication. The registry at least once a year shall review and determine the status of child abuse reports which are transmitted or made to the registry after July 1, 1974, which are at least one year old and with which no investigation or report has been filed by a County Department of Social Services pursuant to this section. If no investigatory report has been filed by a local department after a complaint was made, the registry shall request the appropriate County Department of Social Services to file a report. In other words, there is a requirement to file a report on all cases. There is also a section in here that says if a person feels the information in the registry is not fair or accurate, any person or that person's attorney shall have the right to examine the child abuse information in the registry which refers to that person. The registry may prescribe reasonable hours and places for examination. Any person who files

with the registry a written statement to the effect that the child abuse information is in all or part erroneous and requests a correction or expungement of that information, shall be notified within 60 days in writing of the decision. Anyway, the whole section sets up a due process procedure to get information that is not accurate out of the registry. Then there is a section which deals with or sets up a child abuse council. There is to be created a council on child abuse information, consisting of nine regular members, two shall be appointed by the House of Representatives, two from the Senate, the remaining members of the council shall consist of a judge of the District Court appointed by the Chief Justice of the Supreme Court, one local law enforcement official appointed by the Governor, the Commissioner of the Department of Social Services or his designee, two private citizens not connected with law enforcement appointed by the Governor. The council shall select its own chairman and so forth. Some of the responsibilities of the council are to periodically monitor the operation of the child abuse informtion registry, to review the implementation and effectiveness of this legislation and administrative rules and regulations concerning the law, it may recommend changes in said legislation in rules. In other words, we have a body set up to oversee the implementation and the operation and the procedures and administration of this law. Hopefully they will be back, I am sure, year after year, after this law is put into effect, making suggestions to fully implement it, to meet the difficulties that all laws have when they reach the other end in the job of carrying them out and so forth. We hope to get the kind of feedback necessary to improve upon the law. I might add, it's not written on tablets of stone and no law, of course, is perfect and those penned by your Iowa legislature seem too often times to be the least perfect. But we are making an effort to come up with a bill that we think will address itself to the issue of child abuse. I can only say that a similar law was passed in 1971 by the Florida Legislature and studies show that the reported cases of child abuse went up from some 200 reports in 1970 to some 19,000 in 1971 and are as high right now as 43,490, so that's quite an increase and we expect this to happen in Iowa. Additional staff is going to be needed. There will be, it's my understanding, an appropriations bill to fund some of the needs in this legislation coming up before the Legislature soon. So again, let me just end by saying I'm sure the law is not perfect. It hasn't passed the House yet. We do expect it to pass in some form. On behalf of Senator Doderer and others, we will welcome your suggestions in trying to carry it out and in the problems you might have in implementing it and I am sure the Legislature will be open to suggestions for improvements.

PANEL AND AUDIENCE INTERACTION

Audience Respondent

I have a couple quick questions for you. One is fairly simple. The present law had social services to report to the juvenile court within 96 hours or something like that. It seems to be a rather short period of time under the present law and I was wondering if there is any corresponding provision relating to communications with the juvenile court? That's a minor question, I guess. The second question intrigues me. In some states particularly California there have been civil suits against doctors and such for damages for failure to report parents in saying that, you know, I couldn't help myself and if you would have reported it, it might have stopped something from happening and it did. Do you see the penalty provisions for failure to report as having any bearing on the establishment of that sort of rule or law in Iowa? Do you understand my question?

William Gluba

Yes, I do. Question number 1, we leave that section intact. The County Department of Social Services upon completion of its investigation shall make a complete written report of the investigation of a suspected case of child abuse, a copy of this report shall be transmitted to the Juvenile Court within 96 hours after the County Department of Social Services has initially received the abuse report unless the juvenile court grants an extension of time for the cause shown. So I think that will probably stay as it is now. Secondly, as far as doctors, I guess your question was getting in trouble for reporting or their unwillingness to report. Do we feel that the $100 misdemeanor fine will be enough to encourage them to comply with the law. Is that essentially what you are asking? .... No, I think perhaps Dr. Ordoña could address himself to that as a physician....

Truce Ordoña

I think it will and it should. I'm tired of people saying that it should be done.... I think you should postpone the questions until after the next presentation.

William Gluba

And well, under one of the sections here too, page 8, anyone participating in good faith in the making of a report or photographs or Xrays pursuant to this Chapter shall have immunity from any liability civil or criminal which might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in good faith in any judicial proceedings resulting from such report or relating to the subject matter over such report. And the other thing is if the doctor fails to report and if you are an attending nurse, if I read this legislation (which nurses end up doing all the work any way) you are going to have to report. Presently , I guess, just the physician.

PANEL: CHILD ABUSE IN IOWA-A COUNTY ATTORNEY'S PERSPECTIVE
Harold Young

My learned colleague Mr. Sol Rubin this morning made allusions to the case presently pending before a federal court here in our area. He was responded to by one of the defendants in that lawsuit. I am the attorney who represents the defendants and I feel compelled to respond at this time. I felt I shouldn't this morning, thinking it would be better to cool off just a bit. Mr. Park's remarks I would like to echo but in addition I would like to paint a perspective in the nature of this very sensitive case. The case has received probably more publicity than any juvenile case of any kind or nature whatsoever in the history of this state. The Associated Press, CBS, NBC, Life Magazine in its last or next to last issue, The New York Times, as you heard this morning, our local paper and its reporters and editorial writers have covered this case continually for a period of longer than 1 and a half years. My opponents in the case, a team of ACLU lawyers headed by the assistant legal director of the American Civil Liberties Union in New York City, have been biographed, televised, quoted, their opinions given in column after column in print. To give you the balance of the newspaper and media coverage of this case, neither myself, Mr. Carl Parks, or Judge Tidrick of the Polk County District Court, sitting as the Juvenile Court Judge, has ever been asked a question about this case by representatives of the news media. So much for that. We are here to talk about child abuse and I will be brief. I would like to give you five points that I feel are important in child abuse. Is there anybody here who has never come in contact with what they either thought or suspected was a child abuse case? Anybody who has not? Thirty to 60 thousand per year we think are reported. Many say that this figure represents perhaps ten percent of the actual total child abuses in this nation. There can be millions of battered children out there that we don't know about. Point 1 - Child abuse must be reported. Suspected child abuse must be reported. Ministers who cop out, physicians who cop out, nurses who cop out, social workers who cop out, friends and neighbors, relatives who cop out are killing children every year. Now it is said that we are moving toward a 1984 Orwellian state when we require certain portions of society to report, spy on parents who might be beating their children and to ask the remainder of society to do the same. There is only one completely defenseless element of our society; that is these children, most of whom Dr. Ordona has told you are under the age of three who are being battered, beaten and killed. Most everybody else one way or the other for better or worse for one degree or another can take care of themselves, at least can run. The babies and the little kids cannot. I implore you to go back to your communities and do everything that you possibly can to make community awareness of the battered child a true awareness and to make the elements of your communities insist that every case of child abuse be reported and that every case of suspected child abuse be reported. I want over-reporting. Point 2 - We need more investigative people in our Department of Social Services. We are

going to have more reports and no matter how many we get, I think we should probably have more. We need sensitive, trained, skilled investigators and social work is an art form. Child abuse cases is the highest art form of social work. We need people who are dedicated, committed people, who will not react and over-react to the problem of the battered child. We need people who are compassionate and yet capable of making a decision, calling child abuse child abuse if, in fact, it really is. Point 3 - We need to provide treatment facilities the likes of which we have none of at the present time. We need a coordination of service agencies in this state and we have none. We have a number of different agencies with inter-agency wars going on all the time. We have seen some of that here in this conference. We need coordination. We need cooperation. We need money from wherever we can get it and most of all we need people; those skilled, trained, committed people who are willing to give up their own little ideas of self-esteem in their own little bureaucracy and work for the betterment of the total good, to work hand and hand with another agency; the social worker with the juvenile probation officer; the policeman with the social worker; the policeman with the juvenile court officer and so forth. We don't have it. In most communities these departments war rather than cooperate, to one extent or another. In Des Moines we have a Child Guidance Clinic. The Child Guidance Clinic tests and that's all. We need Parents Guidance Clinics. We've got the focus in child abuse backwards. I can bring you my slides and show you the picture of a lovely little four year old girl, the subject of a case that I was involved in over a year. I can show you the after picture and she is a gorgeous little blond beautiful gal and everybody will go ooh and ahh as they always do with beautiful baby pictures. Then I can show you the picture when she hit Broadlawns Hospital at age four unable to speak, 16 lbs. never been stimulated, hardly ever been fed, literally a vegetable. Testimony in court to the effect that only through heroic efforts on the part of Broadlawns Hospital staff saved her life and everybody goes "Oh, isn't that terrible." That, ladies and gentlemen, is the wrong focus. The focus is on the parents or the custodian who batters a child. Now this is not to say that we forget the child. That child will almost certainly need some help, some guidance, some training, some special education and so forth. But we have got to treat the cause not the result. The battered child is the result; the parents are the cause. A parent guidance clinic with lay people is needed. It's been shown to work all over the country. Lay volunteers who will come in and not offer that threat to battering parents that a professional in a white coat will or that the social worker will or that the cop will or that the prosecutor will. We need to understand that child abuse is not the proper subject of criminal prosecution. I am a prosecutor who does not believe in prosecuting child abuse cases except and only except in those cases where the child dies. When the kid is dead, I'll prosecute. If the kid is injured and there's any chance at all that the family can be rehabilitated and put back together, that effort should be made and all reasonable efforts toward that effort should be made and we must have the facilities to do

that. Last, what do we do if we fail? You must accept failure alternatives and here comes the bogeyman--termination of parental rights. There are some I think that have spoken at this conference over the last two days who, if asked, would say there should never be any termination of parental rights. We should never read in the paper editorials that say, family torn apart, as we saw two weeks ago in our local paper. Termination is a nasty word to some. Termination is the only hope for some. A battered child whose parents cannot be cured by even the best program we could ever put together is still, yes, still entitled to grow up in a safe atmosphere, not a succession of foster homes, not institutionalized care but a safe, loving, warm, happy home and that means adoption. Don't fear that final result, termination of parental rights. It's there as a tool and is nothing more or less simply than a tool. You must accept the fact that once, if we ever get going on some decent rehabilitation programs for the parents and that if we fail, we must terminate that child from his parents.. Now we don't allow castration or sterilization and I don't think we should. This should be done on a case by case basis. If a child cannot go back to a home with a degree of safety, without any fancy legal definitions, we all know pretty much what the degree of safety should be, then move to terminate the parental right. Take the child away and put him in a home where he can grow up to be hopefully a reasonably functioning adult.

PANEL AND AUDIENCE INTERACTION

Audience Respondent

I'm from Ft. Dodge, Iowa. Where may we secure information concerning the parents guidance clinic? Has anything been set up on this and how can we get this information?

Harold Young

Very definitely. I suggest to you the book Dr. Ordoña recommended by Helfer and Kempe. Write the National Child Abuse Clinic in Denver, Colorado. Denver has the finest set up for child abuse treatment in the country, probably in the world bar none. C. Henry Kempe is almost without question the leading proponent of child abuse therapy and treatment in the country. His team at the University of Colorado has set up a program which encompasses psychological social workers, psychiatric social workers, doctors, psychiatrists, sociologists, lay therapists, and a very important part of their program, a parents anonymous group modeled on the one that started in Palo Alto, California. The biggest success probably that's been noted in the country in this type of thing is being done in Denver, The National Child Abuse Clinic in Denver. There's a footnote to that. There is working in the clinic in Denver a team, a husband and wife, Walt and Joan Hopkins, Walt

is a psychiatric social worker and I believe Joan is a social worker. A team that has had fantastic success by taking off their white coats, rolling up their sleeves, going around in dirty old dungarees so that they don't have that threat approach to the parents and if you would write them directly, particularly Walt and Joan, JOAN is the way she spells it, HOPKINS, they will give you all the information I am sure you require. The best work is coming out of Denver but first read Helfer and Kempe's book.

Audience Respondent

I'm from the Indianola schools and I would like to ask for one correction on the Des Moines Child Guidance Clinic. We have an agreement with the Child Guidance Clinic, they do work with our parents and our children twice a week in a therapeutic setting so they do do more than testing. They come down to our county and work with the parents and with the child.

Harold Young

Is that from the Child Guidance Clinic?

Audience Respondent

The Des Moines Child Guidance Clinic.

Harold Young

Well, I'm pleased to hear that.

Audience Respondent

They have been doing this all along and they also have a day school.

Harold Young

The problem with the Child Guidance Clinic, as is, of course, is the matter with any element of this, madam, is that they are understaffed. We in Polk County can send our children to them and they will test and when we request the kind of thing that apparently you are getting, more often than not we will be told that there is just not the facility for child care, parental care, child guidance, parental guidance.

Audience Respondent

Well we do have it.

Harold Young

More power to you.

Audience Respondent

I'm of the Area of Social Services Department office here in Des Moines. I guess my question will be or comment would be directed to Mr. Young. I am also a minister. I can really understand how you feel and as a minister I have dealt with cases like this but I had some real reservations about what can happen if a parent begins to feel terribly guilty and feel if I go to anybody I'm going to squeal on them, that's how they feel. Is there and can we develop some resources here in Des Moines or say resources that could be called, perhaps, from anywhere in the state to allow a parent to say "I'm afraid I'm smashing my kid all over, can you give me some help?" "Can you tell me where to go without being reported?" I think this might be helpful.

Harold Young

The initial answer to your question would be, no, unfortunately because the way that we're set up. The reporting process will set this in motion. Now hopefully my call for a parent guidance clinic would offer that alternative where a professional person be he ministerial, medical, psychological, whatever, a school principal, a teacher, whoever comes in contact with the parent who is willing to admit a battering impulse or a battering incident, can say here is the place to go. Were we in Denver we could say, "Go see Walt and Joan, and Dr. Kempe." Now in Denver, as an example, what they will do is if they think there is any thought at all that the child is in danger, they'll put it into the system and they are quite forthright about that. My only advise to you at the present time is two-fold: One, press with every energy you have for such a system or facility, however we could implement it here in the community so that you would have that alternative of not squealing on the parents. You could then say if we had such a facility, "Go here, they will help." And hopefully they would be able to do so. Inasmuch as there is not that alternative at the moment, my only advise to you and others in your position would be to be straight forward and forthright with this parent and say "Look, the only thing we've got is thus and so." "What you should do is make your own report to the Department of Social Services here in Des Moines or wherever and they have a team who will come and talk to you." And they are beginning to implement programs now, family therapy, family counseling sessions and so forth. It's not good, but it's a start, you see. And they can get going and the thing about the report (I know there is this criticism about Orwellian Big-brotherism) is essential. We've got a mobile society as Dr. Ordona pointed out and he indicated earlier. The parents who batter children will hospital shop and doctor shop. Currently statistics say only about 2½% will come forward. Most are all afraid of criminal prosecution. Those other 97½% we've got to be able to find them and it is of much help to a medical facility or whomever to be able to find out if the child has been injured before. For that reason we need that Central Registry. I got off the point on your question. I know of no other way to handle it at the present time other than to be honest and say "You go talk with them or I feel I should."

CONFERENCE EVALUATION

The conference participants were requested to obtain an evaluation questionnaire at the registration table. The particpants were instructed to place the completed questionnaire in a box at the registration table or mail it to the State Youth Coordinator's Office as soon as possible. Twenty-eight percent (111) of the participants did return the questionnaire. Following is a summary of the evaluation responses.

Approval of Conference

What is your estimation of the general quality of the program?

Outstanding		Excellent		Good		Fair		Poor	
No.	%	No.	%	No.	%	No.	%	No.	%
13	11	39	35	39	35	17	15	5	4

Most of the respondents felt that the program was of high quality. Eighty percent rated it good to outstanding, with the majority responding "excellent" or "good".

What is your estimation of the following phases of the program?

	Outstanding		Excellent		Good		Fair		Poor	
	No.	%	No.	%	No.	%	No.	%	No.	%
Speakers	6	5	45	36	45	36	18	14	11	9
Panels	5	5	29	27	50	46	22	20	2	2
Dis. w/ Speakers or Panels	6	5	35	31	49	44	20	18	2	2

The majority of the respondents approved of the various phases of the program. Most of the respondents estimated the phases as "excellent" or "good". It should be noted that a significant proportion of the respondents felt the various phases of the program were only "fair".

Did the speakers adequately present their topics?

YES		NO		Some Did	
No.	%	No.	%	No.	%
83	75	23	21	4	4

Seventy-five percent of the respondents indicated that the speakers did adequately present their topics. Of the 23 respondents who felt they did not adequately present their topics, 19 criticized the speakers for reading their speeches.

How much value will the conference be in your work?

Great		Considerable		Moderate		Little		None	
No.	%	No.	%	No.	%	No.	%	No.	%
5	5	38	36	43	41	19	18	0	0

Most of the respondents (82%) felt the conference would be moderately to greatly valuable to their work. Few responded that it would be of great value and no one felt it would be of no value to their work.

Would you like to see this type of conference conducted again?

Yes		No	
No.	%	No.	%
91	88	13	12

Nearly all the respondents reported that they wanted another conference on juvenile justice. When asked, "for what reasons?" substantial proportions answered "for information sharing" (26%) and "to interact with other disciplines" (12%). Over half of the respondents felt it should be held every year (58%), while 26% stated they preferred such a conference to be held every two years. The majority felt that Des Moines is the best place to hold such a conference (73%).

The respondents were asked to evaluate the highlights and topics of the conference. The respondents identified Sol Rubin's presentation (34%) and Dr. Jerome Miller's presentation (32%) as the conference highlights. These speakers presentations appear to be the most interesting and needed topics: "The Rights of Children" (22%) and "The Deinstitutionalization of Children" (28%) received the highest proportions of mention. "Community-based alternatives to the juvenile justice system" (9%) and "Understanding practitioners who work with troubled youth and the problems these practitioners experience" (8%) were identified as topics which several respondents would like to have had covered more thoroughly in the conference.

State's Needs in Juvenile Justice

What are the greatest needs of the state's juvenile justice agencies?

	Needed		Not Needed		Don't Know	
	No.	%	No.	%	No.	%
Statewide Conference	69	78	4	4	16	18
Training Projects	84	92	2	2	5	6
Regional Workshops	80	85	5	5	9	10
Technical Assistance	66	78	3	4	15	18

The majority of the respondents felt that the five modes of assistance presented in the questionnaire were needed to assist juvenile justice agencies. The dominant needs for assistance appears to be "training programs" and "regional workshops".

Forty-four issues were raised as being the greatest problems facing the state's juvenile justice agencies. The problems identified most consistently were "lack of coordination" (18%), "lack of community based programs" (11%), "lack of funds" (11%), and "understanding each others roles and problems" (9%). Regarding actions to be taken in response to these problems, the most mentioned action step was "the immediate development of community-based alternatives" (10%). In all, 39 different types of recommendations were put forward.

What role should the state play in the field of juvenile justice? "Financial aid" (15%) and "leadership" (10%) were identified the greatest number of times.

APPENDIX I

AGENCY AND ORGANIZATION REPRESENTATION

Probation and Parole* (50)**
Department of Social Services (35)
Alternative Programs (Shelter House, MIDAC, etc) (35)
Police Departments (30)
School Personnel (24)
League of Women Voters (17)
Juvenile Judges (16)
Junior League (12)
Students (Junior High, High School, College) (12)
Juvenile Judges (16)
Area Crime Commissions (11)
Sheriff's Department (10)
Community Action Agencies (10)
Private Colleges and Universities (10)
City and County Attorneys and Private Lawyers (9)
State Training Schools (9)
Neighborhood Youth Corps (8)
Community Colleges (7)
State Universities (5)
Governor's Youth Opportunity Programs (5)
YMCA's (5)
Metropolitan Criminal Justice Center (4)
Private Social Services (3)
Mental Health Centers and Commissions (3)
City Government (3)
State Services for Crippled Children (3)
Juvenile Court Referee (2)
American Indian Movement (2)
Youth Commissions (2)
One representative from the following:
- Orchard Place
- Child Guidance Center
- Regional Planning Council
- Mayor
- Community Survey, Inc.
- Senator
- Representative
- Residential Correctional Facility
- PTA
- Polk County Juvenile Home
- Christian Home Association
- Department of Public Instruction
- News Media
- Iowa Civil Liberties Union
- Women's Club
- Des Moines Area Religious Council

Other (occupations not listed) (12)
Junior and senior high school students (30)

* Type of agency or organization
** Number of conference participants representing the group of agencies or organizations.

APPENDIX II

AREA OF THE STATE REPRESENTATION

Des Moines Area* (96)**
Ames (39)
Iowa City (22)
Sioux City (20)
Cedar Rapids (19)
Davenport (12)
Ottumwa (10)
Waterloo - Cedar Falls (10)
Dubuque (9)
Marshalltown (9)
Council Bluffs (9)
Fort Dodge (8)
Mason City (8)
Muscatine (6)
Clinton (6)
Eldora (5)
Keokuk (5)
Ankeny (4)
Spencer (4)
Leon (3)
Burlington (3)
Grinnell (3)
Bettendorf (3)
Indianola (3)
Sheldon (3)
Fairfield (2)
Oskaloosa (2)
Cresco (2)
Estherville (2)
Independence (2)
Mitchellville (2)
Carlisle (2)
Nevada (2)
Newton (2)
Creston (2)
Toledo (2)
Onawa (2)
Harlan (2)
Johnson (2)

One representative from each of the following:

- Decorah
- Humboldt
- Pocahontas
- Denison
- Montezuma
- Atlantic
- Red Oak
- Grundy Center
- Mount Pleasant
- Greenfield
- Storm Lake
- Garner
- Huxley
- Salix
- Corydon
- Lenox
- Chariton
- Huxley
- Marion
- Anamosa
- Perry
- Omaha, NE
- Lincoln, NE

* Area of the state represented.
** Number of participants from the area of the state.

END