U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention
National Institute for Juvenile Justice and Delinquency Prevention

MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING:

Services to Children in Juvenile Courts: The Judicial-Executive Controversy

MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING PROJECT

This volume is one of a series of books and monographs of Project MIJJIT, to be published by the Academy for Contemporary Problems in 1981.

- The Out-of-State Placement of Children: A National Survey
- The Out-of-State Placement of Children: A Search for Rights, Boundaries, Services
- Youth in Adult Courts: A National Survey
- Youth in Adult Courts: Between Two Worlds
- Services to Children in Juvenile Courts: The Judicial-Executive Controversy
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MAJOR ISSUES IN JUVENILE JUSTICE INFORMATION AND TRAINING:

Services to Children in Juvenile Courts: The Judicial-Executive Controversy

Authors

John M. Pettibone, *Principal Investigator*
Robert G. Swisher, *Research Associate*
Kurt H. Weiland, *Research Associate*
Christine E. Wolf, *Research Associate*
Joseph L. White, *Project Director*

ACADEMY FOR CONTEMPORARY PROBLEMS
Columbus, Ohio

National Institute for Juvenile Justice and Delinquency Prevention
Office of Juvenile Justice and Delinquency Prevention
United States Department of Justice

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PREFACE

From their beginnings, juvenile courts and delinquency-related services have been understandably intertwined. Social control, coupled with social services, seems to be the American way, and when these two disparate objectives are directed toward children, the mixed results of success, failure, repression, and license will inevitably lead to heated controversy, public introspection and, ultimately, to social change. Children are, after all, the source of our posterity.

One would expect to find, given such a condition, libraries full of credible research and pertinent case law specifically directed toward the propriety and wisdom of operating social or full-service juvenile courts. Such is not the case. What actually does exist can be catalogued, for the most part, into legislation, a handful of cases, and a fairly substantial body of literature which relies upon strong moral values and anecdotal situations. To be sure, there are systematic and intensive studies to be found, but they are few when compared to the volume of available literature.

If one were to look for causes for the skimpiness of reliable references, they could be easily discovered. Government in general and courts in particular shun close scrutiny because it brings controversy in its wake. The safe road, therefore, is to discourage research in an effort to protect hard-won prerogatives. As a consequence, available studies generally concentrate upon a particular court or county where consent could be obtained.

The absence of a large body of case law stems from a different cause. Individuals generally do not fare well when they litigate against the "system" which government represents, both in the area of children's services and in any other area as well. Most of the cases which do exist either found for the state or else were brought by one governmental agency against a sister agency. In the former instance, the few precedents should discourage reasonable people from litigation. In the latter case, the circumstances required for intragovernmental litigation simply do not arise all that often. Therefore, the volume of these cases is small.

Because of the issue, as well as the state of the art, the Academy was pleased to be able to undertake the research activities represented by this report. We were especially flattered and encouraged by the manner in which the opportunity arose.

In 1978, as the result of determined efforts by a number of courageous people, the National Council of Juvenile and Family Court Judges and the National Association of Counties established a joint committee to discuss and resolve, if they could, points of disagreement between them. Historically, these organizations had little to do with each other, each believing its interests to be unique. I use the term "courageous" advisedly, for many members of

both organizations opposed such a joint venture, preferring instead to meet their organizational needs through confrontation.

Despite the opposition, the joint committee convened, found that there were many areas of agreement in principle, and that they could even agree to disagree on certain issues without invalidating the process. The question of whether courts or county commissioners should operate the programs directed at children in juvenile courts was one issue upon which they could not agree. In an unprecedented move, they agreed to ask a mutually acceptable research organization to resolve the matter for them.

It was never intended that the research findings would bind either organization. There was a hope, instead, that the hyperbole could be eliminated through careful examination of the serious legal and administrative implications of the questions.

It should be apparent why the Academy felt flattered at being chosen to conduct the research. We hope that this report has not only justified the trust inherent in the joint request, but that it will strengthen the resolve of both organizations to resort to this method of problem resolution in the future. Everything we know about public administration tells us that well-informed public officials make better public decisions. We will be content with our effort if we have contributed to the improvement of public policy decisions affecting our nation's children.

Joseph L. White
Project Director

November 1980

ACKNOWLEDGMENTS

The Academy wishes to express its gratitude to the three organizations and its leaders who made this report possible. They are the National Association of Counties (NACo) and its executive director, Bernie Hillenbrand; the National Council of Juvenile and Family Court Judges (NCJFCJ) and its executive director, Louis McHardy; and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and particularly to Dr. James Howell, Director of the National Institute of Juvenile Justice and Delinquency Prevention. Because of a request made jointly by NACo and NCJFCJ, the Academy undertook this research effort. Donald Murray, criminal justice specialist for NACo, and Judge Andy Devine from NCJFCJ encouraged us, interpreted our research design to their respective memberships, and endorsed our proposal for funding to OJJDP and to Dr. Howell. We are indebted to all of them for their confidence.

We would also like to acknowledge the several hundred state and local officials who assisted us to better understand the operations of their agencies and state systems. Those persons who were personally interviewed in the six case study states are listed in Appendix A. But, beyond that, we want to report on the extraordinary cooperation we received everywhere we went. One might expect to find a few public officials who would refuse to share their time and experience with us for any one of a number of reasons, but it never occurred. We appreciate their availability, their openness, and their concerns for the results of our research.

Because the Project MIJJIT Advisory Committee has been so central to the success of this effort, we would like to thank them in a special way, by introducing them to you in the following pages. We appreciate their thoughts, criticism, and encouragement during the past two years.

PROJECT MIJJIT
ADVISORY COMMITTEE

We are very much indebted to the individuals who served as the Advisory Committee to this Project, and to their respective organizations which made their participation possible. Individually and as a group, the Advisory Committee members acquitted themselves with distinction. The meetings were frequent and intensive; the reading material was both technical and voluminous. Through it all, they persevered, motivated by their concerns for children and by their own personal standards. Through this introduction, their contribution to the production of this volume is gratefully acknowledged.

MaryLee Allen, Program Specialist for the Children's Defense Fund, is primarily involved in legislation and litigation associated with child welfare and juvenile justice. She served on the Model Adoption Legislation and Procedure Advisory Panel, which was concerned with national legislation on adoption and termination of parental rights. She is a coauthor of *Children Without Homes*, which deals in part with the interstate placement of children.

John P. Conrad, researcher, author, and corrections specialist, is currently associated with the American Justice Institute. He was formerly Chief of Research for the California Department of Corrections and the U.S. Bureau of Corrections. He has also served as Chief of the Center for Crime Prevention and Rehabilitation in the Law Enforcement Assistance Administration and was Co-Director of the Dangerous Offender Project for the Academy for Contemporary Problems.

Honorable Andy Devine is Judge of the Court of Common Pleas, Juvenile Division, Lucas County (Toledo), Ohio. He is a former state legislator, county commissioner, city councilman, and municipal court judge. He is a member of the Legislative Committee of the Ohio Juvenile Court Judges Association and Chairman of the National Council of Juvenile and Family Court Judges Committee on Cooperative Efforts of Judges and Local Government.

Honorable Ray Farabee, Senator in the Texas legislature since 1975, serves as Chairman of the Senate Jurisprudence Committee and is a member of the Finance and Natural Resources Committees. He is a member of the Texas Judicial Council and serves on the Law and Justice Committee of the National Conference of State Legislatures.

James Girzone is Commissioner for Youth, Rensselaer County (Troy), New York. He was instrumental in the passage of legislation to establish state subsidies for youth programs in New York and is a nationally recognized public official active in the promotion of better services to youth.

Bruce Gross is a social worker with the American Public Welfare Association (APWA), which provides secretariat services for state administration of the Interstate Compact on the Placement of Children. He served as Project Manager of the Department of Health, Education, and Welfare's (HEW) Advisory Panel on Model Adoption Legislation and Procedures.

Gwen Adams Holden is the Director of Program Coordination for the National Criminal Justice Association, which represents the directors of state criminal and juvenile justice planning agencies. She formerly served with the Governor's Commission on the Administration of Justice in Vermont, specializing in correctional and juvenile justice program development.

Honorable Carolyn Lathrop is Southern District Associate Judge (County Commissioner) for Boone County (Columbia), Missouri. She has been active in efforts to generate legislation favorable to county governments, especially home rule and enforcement of laws relating to fathers who abandon their dependent children. She serves as a member of the Board of Directors of the Missouri Association of Counties, Board of Directors of the Boone County Group Home for Severely Disabled, and National Association of Counties Criminal Justice Task Force. She is also a past-President of the Missouri Judges (County Commissioners) Association.

Honorable Edward McLaughlin, Judge of Family Court in Onandaga County (Syracuse), New York, is also Adjunct Professor of Family Law at Syracuse University, College of Law, and a lecturer in criminal justice administration. He has served as U.S. Attorney for the Northern District of New York State. He was also a consultant to the National District Attorneys Association's symposium on the IJA-ABA Standards of Justice Task Force.

Honorable John Mendoza is Chief Judge of the Eighth District Juvenile Court in Clark County (Las Vegas), Nevada. He is a former district attorney and city attorney. He is serving a fourth term on the juvenile court bench and is a faculty member of the National College of Juvenile Justice, President of the Nevada District Judges Assocation, and Vice President of the National Council of Juvenile and Family Court Judges.

Rod O'Connor is Project Director, Juvenile Justice Program, National Association of Counties. He has served as Corrections Coordinator for the New Hampshire Association of Counties, a coordinator for a county

department of corrections, and a state representative. He has been actively involved in planning and implementing change and reforms of local jails in the United States.

Barbara Wells Sarudy is Director of Youth Care, a counseling service for troubled youth in Greensboro, North Carolina. She serves as Chairperson of the Juvenile Justice Committee of the Governor's Crime Commission and is a member of the North Carolina Juvenile Code Revision Committee. She is also past-President of the North Carolina Association of Community Based Services for Children and Youth.

Jim Shine is Executive Assistant and Special Counsel to the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration. He has served on the Mayor of Boston's Safe Streets Advisory Committee and as Director of Planning and Program Development for Penal Institutions. He was also Director of Prisoner Services for the Sheriff's Office in San Francisco.

Alvin Taylor is Secretary of Florida's Department of Health and Rehabilitative Services. He has also served as a local and regional administrator of state-operated youth services. He is active in many state and local youth organizations.

Carol Vance is the former District Attorney for Harris County (Houston), Texas. He is a past-President of the National District Attorneys Association. He has also served as a member of the Texas Organized Crime Council, the Governor's Criminal Justice Division Advisory Board, the Board of Regents of the National College of District Attorneys, and the American Bar Association's Special Committee on the Administration of Criminal Justice. Currently, he is in the private practice of law.

Richard Williams is District Attorney, Atlantic County (Atlantic City), New Jersey. He is Vice President of the National District Attorneys Association and President of the Atlantic County Bar Association. He is also a member of the New Jersey Supreme Court's Committee on Juvenile and Domestic Relations.

Thomas Young, Research Associate and Assistant Professor with the University of Chicago's School of Social Service Administration, is currently Associate Director of a national survey of children's residential facilities and alternative programs. He is a social worker who has designed and administered programs for child protection and adolescent care. He is the coauthor of *Secure Detention of Juveniles and Alternatives to Its Use.*

1. Introduction

Juvenile courts, as an American institution, were established so that children would not be treated as criminals or as adults. Instead, this unique form of social intervention regarded children gone astray as a failure of society. The remedy prescribed for this social illness was individualized treatment under the aegis of juvenile courts.

Over the years, juvenile courts have become heavily involved in counseling, social casework, emergency shelter, medical services, intake, detention, probation, and many other types of activities. Historically, these activities were not a part of either the justice or chancery court models in which juvenile courts had their roots. They were ordinarily performed by administrative agencies within the executive branch of government.

As a consequence, there is controversy over whether these functions should more appropriately be performed by the executive or judicial branch. When operated under the authority of juvenile courts, are the performance of these functions a violation of constitutional doctrines? Are constitutional safeguards and essential fairness being observed in spirit and in letter? Are judges able to respond with complete impartiality to actions brought by and against their own employees when the policies of operation may be set by the judges themselves? Are judges being too timid in requesting funds from their colleagues in county commissions? Are judges being arbitrary in the use of their powers of mandamus?

On the other side of the coin, executive management of court services systems, like its judicial counterpart, is also the product of well-intentioned reform. As conceptualized by Max Weber, the system we call bureaucracy was designed to eliminate personal arbitrariness and unfairness in governmental service to citizens. It can be said that the basic concept was to remove, as much as possible, the opportunities for using personalized discretion, replacing it with rational rules governing every possible situation, rules directly reflecting the interests of the citizenry (a concept not far, in its kernel, from the colonial desire to keep local judges responsive to citizen interests). A systematic administrative apparatus, which we call bureaucracy, was to be created to establish these fair rules and to administer them fairly.

This, of course, is the concept of the administrative state, a prominent part of modern American government. Under such a system, social services can be standardized and operated by responsible officials. They can be distributed equitably throughout a state or country without regard to local resistance. A broader, more stable tax base can be used to finance services for smaller or poorer areas. The best of accepted technology can be centrally administered for the benefit and upgrading of the entire system. Personnel can

be protected from conflicts of interest and from arbitrary actions by employers. The perceived weakness of the traditional system of direct judicial operation of services can be eliminated.

Whichever structure the interested reader may consider for delivering delinquency-related services, certain factors reported in this research have a critical impact. These include the amount of money available for these services, the quality of personnel with which the system is staffed, and the personal leadership of the judiciary in stimulating community interest and support. Each of these attributes is a sine qua non of good services, regardless of the formal administrative structure. The seven major issues, as we understand them, appear below.

THE ISSUES

The Separation of Powers

This perspective on the services operations of the juvenile courts deserves closer examination from the point of view of public policy, for public policy should, after all, be a reflection of constitutional principles. Is the doctrine of separation of powers explicit in the federal and state constitutions to the point that it can limit court operations, or does it remain with little force beyond its application to the conceptual organization of the three branches of American government? Would this question receive the same answer in the 52 state and federal jurisdictions studied? Did the juvenile courts' founding principle of parens patriae implicitly beg the question by conceptualizing juvenile courts as symbolic parents with state authority, unitary entities in which judges and various court officers were all extensions, whose powers could not be separated from those of the institution? Looking at more recent developments, does the U. S. Supreme Court's apparent diminution of the parens patriae doctrine in *Gault* and in other cases necessitate a new appraisal of the separation of powers?[1]

In addition to the separation of powers issue, numerous policy questions, all bearing on the organization and structure of court-operated services, were identified from a search of legal, professional, and general literature on courts and services to children under the jurisdiction of juvenile courts.

Due Process, Parens Patriae, Conflicts of Interest, and Conflicts of Role

A juvenile defendant's case may sometimes be prosecuted, defended, and judged by judges and court workers whose employer-employee relationships may tend to make them function more as a single entity than as separate and impartial individuals. Such a situation suggests important questions concerning the theoretical probability of a child (defendant) receiving a full and impartial juvenile court hearing. Does the presence of court-employed probation officers (or the presence of their written reports) tend to discourage impartial hearings and other due process safeguards in cases where these employer-employee relationships may assume substantial significance?

Are there other inherent conflicts in the various roles played by probation officers as prosecutors, advocates, impartial investigators, counselors, and authority figures, some or all of which roles may be utilized in dealing with the same child? What are the policy advantages and disadvantages of having each of these roles delegated to personnel in separate agencies? Are there inherent conflicts of interest in the roles of the judge as adjudicator, employer of services personnel, and administrator of services programs?

All these questions may have seemed irrelevant 20 or 30 years ago. Historically, juvenile court cases have been seen as civil proceedings, initiated by the state, in the role of parent, and purely on behalf of the child. However, they have increased in formality with modern redefinitions of juvenile procedures. Since *Gault*, juvenile courts, as institutions, have become regarded as adversary in nature, necessitating many of the elements of fundamental fairness and due process one would expect to find in adult cases tried in criminal courts.

Still, even Supreme Court decisions most critical of the juvenile courts have not advocated a complete withdrawal from the traditional juvenile court informality and interest in the welfare of the child. These elements still have recognized value, both in law and in the day-to-day practices of juvenile courts. We are therefore led to ask: Can a legitimate balance be struck between the concept of individual treatment under parens patriae and the concept of due process? Can such a balance provide the basic public policy requirements of both adequate treatment and adequate procedural safeguards?

Intake: Problems of Function and Location

Juvenile courts have traditionally tried to restrict their legal work loads, to eliminate the handicap of formal records for youthful offenders, and to provide individualized justice through an administrative process known as "intake." These tasks are traditionally carried out by an intake officer or intake department, the "first line of defense" for both courts and children, in an effort to avoid formal court appearances. Many cases brought to a typical intake department by police, parents, or other complainants are adjusted without formal charges being filed. Beyond this, the intake department may order social investigations, medical or psychological diagnoses, or other studies which might be used to determine the propriety of juvenile court involvement. Even probation supervision is sometimes ordered on an informal level through intake. The intake department can, therefore, be seen as a separate operation, performing on an unofficial level all of the functions of the court itself. The intake officer can make prosecutorial decisions to refer the case to a more serious level of involvement within the justice system. Informal hearings, adjudications, and probation supervision are frequently administered at this level, without referral to a judge or referee.

Therefore, intake should be carefully analyzed from the point of view of public policy. Is there one single, unitary function which is properly the basis of intake offices? Are the frequently encountered combinations of clerical,

investigative, social services, and administrative functions of intake internally incompatible from the point of view of federal or state constitutions? What are the policy implications of having these various functions performed by a court or by a separate executive agency? Who should do intake—court workers, social services agencies, or prosecuting attorneys?

Court Operation vs. Judicial Regulation

Is judicial regulation of services provided by other public or private agencies a viable alternative to the internal operation of services by the courts themselves? As a matter of public policy, would court monitoring of outside services successfully avoid the separation of powers issue raised in connection with judicial management of court services, allowing judges relief from managerial responsibilities while retaining significant judicial control? What procedures should be involved in judicial monitoring of services provided in individual cases? To what extent should court monitoring of such services go beyond individual cases to the oversight of entire programs or agencies?

Responsibility Issues: Diversion and Prevention

In addition to diverting children from formal involvement with the justice system, juvenile courts often operate prevention programs which seek to avert delinquent behavior. Before they reach intake, certain children are often counseled by such agencies as neighborhood youth centers, crisis intervention units, or substance abuse clinics. An even further extension of the prevention concept can be found in court participation in such programs as youth camps, planned parenthood programs, and television dramatizations of juvenile court proceedings.

If delinquency is generated by social conditions, how far should juvenile courts go in changing those conditions? Have juvenile courts the authority or the responsibility to prevent the delinquency they are responsible for adjudicating?

Sources of Funding and the Power to Mandamus

States commonly confer statutory authority upon juvenile courts to compel, by writ of mandamus, the appropriation of funds necessary for operation of the courts. This power is often said to be an inherent power of the courts and is frequently held to permit court-ordered appropriations for such services as probation, intake, detention, foster care, and counseling. When budget requests are denied, judges have often referred to this power and have sometimes used it, occasionally jailing offending public officials for contempt.

What is the basis and background of both the power and its attendant controversy? What is the current state of acceptance of the historically evolved pattern of local funding of juvenile courts? Is the mandamus power possessed by juvenile courts a legal recognition of the inappropriateness of local or executive control of the judicial process? As a matter of public policy, is this mandamus power necessary or unnecessary, wise or unwise? Is there a link

between the mandamus power and the growth of court services, or between the growth of court services and the level of government which finances the services?

Management Considerations in Services Delivery

What are the perspectives of management theory on the issue of juvenile court administration of court services? What are the predictable advantages and disadvantages of various models of delivering services to children under juvenile court jurisdiction?

On the one hand, it may be theorized that judicial administration of court services makes it possible for judges to enforce their own philosophies and policies throughout all levels of services staff. It can be maintained that they have been specifically mandated to do so by their election or appointment. Many judges believe that judicial participation in hiring and firing court services personnel allows them to maintain a staff in whom they have personal confidence and trust. A court's management of its own services can, therefore, be viewed as preserving local initiative and a superior model for responsiveness to the community.

On the other hand, operation of services within the courts can be seen as putting management into the hands of judges who may lack the necessary background as public administrators. The result, in any case, might be a lack of standardization needed to enforce a uniform quality and quantity of services attainable through other administrative structures. Court-operated services are often seen as relying upon a parochial staff, and critics of court management also argue that freeing the services operation from "arbitrary" judicial intervention and from dependence on local funding may be seen as a benefit in favor of executive branch operation.

Which, if either, of these positions is most accurate and to what degree does either apply? In what type of agency are such services most constructively and properly operated?

METHODOLOGY

The program description of the juvenile court services study includes four basic avenues of research inquiry into the appropriateness of juvenile court operation of court services—legal research, literature review, public policy analysis, and case studies in the field.

Law

The goal of the legal research was defined as establishing the constitutional and statutory bases of juvenile court operation of court services. Case law and rules of court were included, wherever relevant. A set of standard forms for recording simplified, comparable legal citations was developed and tested, together with procedural instructions. Attorneys researched each state's codes, constitution, and court rules, including those for the District of Columbia and the federal courts.

Literature

Professional and popular literature in the field of law, social services, juvenile justice, and juvenile corrections were searched for items relevant to the legal, public policy, and case study areas. Abstracts of relevant articles were recorded on special forms. Numerous professional bibliographies were consulted, plus computerized printouts received from the National Criminal Justice Reference Service and Ohio State University's Mechanized Information Center. Reports of recent national standard-setting commissions and associations were also prime sources, as well as treatises by nationally recognized experts in the field.

Policy Analysis

Numerous literary sources were examined for relevant policy issues, including the reports of the President's Commission on Law Enforcement and Administration of Justice; the reports of the National Advisory Committee on Juvenile Justice Standards and Goals; the IJA-ABA Juvenile Justice Standards Project report; and the writings of recognized authorities such as H. Ted Rubin, Ellen Ryerson, Fred Faust, and many others.[2] In addition, the personal experience of the staff was used to suggest other issues.

The various policy questions collected, each relevant to the delivery of services to children in juvenile courts, were grouped into 13 major issues underlying the questions; these, in turn, were placed in the seven major issues discussed in the previous section.

Case Studies

There is considerable debate regarding the legitimacy of investigative research as opposed to "hard" statistical research in evaluating the outcomes of public policy decisions. It is frequently assumed that effectiveness measures are the only legitimate standards for creating and evaluating new legislative and executive policies. Perhaps there is no endeavor in which policy research is as important as it is in examining services where the objective is social control. Inquiries into this type of public policy must be concerned with normative standards in addition to program effectiveness. In the case of juvenile court services, these standards include, among others, the constitutionality of basic fairness and managerial effectiveness of the administrative structures and procedures under which services are delivered.

Based upon the preparation of case studies, the current research has focused upon supplementing the legal research and literature review through normative research. Basic areas of inquiry were established, predicated upon existing locations of service agencies in six states. The inquiry was structured to determine the availability and satisfaction with those services, the extent to which the existing services achieved the objectives for which they were designed, and such factors as media attitudes, the philosophical compatibility of due process and parens patriae, and interactive patterns between the judiciary and county commissioners. A wide spectrum of governmental

service providers was located for each service category, with enough states chosen to permit consideration of options.

After considerable analysis, the final list of states was reduced to Florida, Hawaii, New York, Nevada, North Carolina, and Pennsylvania. The states selected represent many diverse geographic, demographic, and federal administrative regions. Of special interest were states employing particularly innovative alternatives to traditional operation of programs by juvenile courts. For working purposes, "traditional operation" was defined as services provided by local courts, with a minimum of administrative regulation from outside the court. "Innovative alternatives" were defined as either state or local provision of standards or oversight of the management of court services or, alternatively, the operation of those services by state or local agencies other than the courts themselves.

In order to compare services in some standardized way, only the most frequently encountered juvenile court services—intake, probation, and detention—were used as bases for analysis. Issues involving the legality, propriety, and desirability of intake, probation, and detention services being operated by juvenile courts rather than by agencies at the state level or by the executive branch of government were then considered from two views of policy: policy defined as process and policy defined as structure.

If public policy is seen as a process, how and why delinquency-related services are provided by juvenile courts and the reasons for their divergent placements in the structure of government can be addressed by examining informal, authoritative opinions. The inquiry should then determine whether these placements are successful in achieving their original purposes, and whether these structural arrangements create or solve problems in such important areas as separation of powers, legal due process and fairness, generation of resources, and administrative best practice.

Such questions can be answered most realistically and insightfully by the actual participants in the policy process, the "users" of public policy. These are the people who make the rules governing public policy and who decide how to apply them. These people, of course, include juvenile court judges; prosecuting and defense attorneys; providers of probation, intake, and detention services; legislators; researchers; and child advocates. In an operational sense, these people define the policy system which surrounds administration of services to children in juvenile courts.

On the other hand, public policy can be seen as static rather than dynamic, as structure rather than process. From this perspective, a response to the questions of which branch of government might best operate juvenile court services requires legal research into the constitutional and statutory provisions and court decisions which might relate the placement of juvenile court services to the larger issues of separation of powers, due process, and statutory authority.

The results of both of these research approaches, the process approach and the legal approach, are presented in the following chapters of this report.

Footnotes

1. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L. Ed. 2d 527 (1967).

2. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, and *Task Force Report: Juvenile Delinquency and Youth Crime* (Washington, D.C.: U.S. Government Printing Office, 1967); National Advisory Committee on Juvenile Justice Standards and Goals, Task Force on Juvenile Justice and Delinquency Prevention, *Juvenile Justice and Delinquency Prevention* (Washington, D.C.: U.S. Government Printing Office, 1976); Institute of Judicial Administration-American Bar Association, *uvenile Justice Standards* (Cambridge, Mass.: Ballinger Publishing Co., 1977); H. Ted Rubin, *The Courts: Fulcrum of the Justice System* (Santa Monica, Calif.: Goodyear Publishing Co., Inc., 1976); Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experiment* (New York, N.Y.: Hill and Wang, 1978); and Frederick Faust and Paul Brantingham, eds., *Juvenile Justice Philosophy: Readings, Cases, and Comments*, 2nd ed. (St. Paul, Minn.: West Publishing Co., 1979).

2. A Brief History on the Origins of Court-Operated Social Services

The history of juvenile courts began in Illinois in 1899, during a period when dramatically changing social conditions made Chicago ripe for reforming its legal handling of juveniles. Mushrooming industrialization, changing views of childhood, and the presence of interested reformers all contributed to the enactment of the new juvenile court act. As a uniquely American institution, it was dedicated to the treatment of youth crime through protective services and behavioral controls.

From their inception, however, juvenile courts have been the focus of criticism. Contention centered upon whether courts of law were suitable settings in which to provide treatment, whether judges had sufficient training to make therapeutic decisions, and whether due process guarantees were accorded juveniles who were subject to juvenile court jurisdiction. After refusing to review juvenile court decisions for over 50 years, the U.S. Supreme Court decided five major cases, all predicated on due process issues. The concern with due process soon spilled over to affect perceptions about court operation of delinquency-related services, observable in the creation of national standards and in the passage of the Juvenile Justice and Delinquency Prevention Act of 1974.

There is still much criticism, however, centering upon due process issues and on the use of mandamus powers to order legislative appropriations to support court-operated social services. Many critics believe that criminal courts are better situated than juvenile courts to protect the rights of juveniles. Countervailing critics contend that either the abolition of juvenile courts or the shift of all delinquency cases to criminal courts would result in prosecutory excesses and in lost opportunities to socially intervene in less serious cases. A number of writers have recommended ways to maintain juvenile courts while reducing current practices that they criticize.

ORIGINS OF COURT SERVICES

How did American juvenile courts come to be so deeply involved in delivering social services? The answer to this question can be discerned by exploring the establishment of these courts from three vantage points—socioeconomic, ideological, and legal.

Socioeconomic Conditions

The history of juvenile courts began April 21, 1899, when An Act to Regulate Treatment and Control of Dependent, Neglected, and Delinquent Children was passed in Illinois.

The rapidly changing social conditions of the late 1800s made Chicago ripe for a change in its legal handling of juveniles. From colonial times, the forest and rich farmlands of Illinois had drawn many early settlers who built

an agricultural society. However, rapid migration during the post-Civil War period resulted in quite a different population along its Lake Michigan shoreline. In the 1870s, there was a tremendous growth of factories which offered employment not only to those leaving the rural areas, but to a large number of immigrants as well. This was especially true in Chicago where, by 1900, 70 percent of its inhabitants were foreign born (compared to the national average of 14 percent). Most of the remainder had come from the farmlands. Indeed, urbanization progressed so rapidly that from 1890 to 1900 the population of Chicago increased 45.9 percent.[1]

The consequences of this urbanization were not all positive. For instance, the average workday of American factory workers in 1883 was over 10 hours, while the average earnings were just over $1 a day.[2] The law did very little to protect workers from unsafe working conditions and unfair employer practices. When legislation did exist, it was rarely enforced.[3]

These conditions applied to children as well. With the shift from handicraft to machine industry, unskilled laborers were able to do much that had been the sole domain of the skilled craftsman. This made the exploitation of unskilled, cheap child labor progressively more profitable. Employment for these children, even for long hours and under dangerous conditions, was both advocated and defended as an economic boon to the underprivileged children of poverty-stricken families.

Then, in 1893, there was an economic panic. This panic, and the subsequent depression with its increase in unemployment and social misery, catalyzed the struggle to organize unions and to force basic improvement in social conditions. In that year, Illinois elected John P. Altgeld its first Democratic governor in 40 years. His political aim was to reduce special privileges and foster equality of opportunity by expanding state governmental powers and placing higher priority on the development of transportation, education, communication, sewage disposal, regular garbage collection, and similar services that serve all levels of society equally. However, these aims were thwarted by the rapid population growth which placed severe strains on the city's already limited service capacities. The consequence was a limitation of opportunities for the poor and a worsening of their already poor living conditions. Still, Altgeld's leadership did feature a progressive ideology which was to provide a major stimulus to development of the juvenile court.

Social Ideologies

These socioeconomic conditions appeared to be turning the cities into vast slums within which children faced inevitable corruption unless something drastic could be done. As part of a broad range of reform endeavors intended to extend a restrictive social and economic protection to masses of people seen as victims of intolerable social and economic conditions, the "child savers" launched their drive to establish a juvenile court.

Two related ideological disputes were of particular importance to this development. The first was the more general one between the social

Darwinists and the progressive political movement. The social Darwinist position, more dominant at the time, argued that the struggle for survival among people and institutions assured the survival of the fittest and hence created a healthy society. Any governmental interference with this struggle inevitably produced negative consequences and fostered the perpetuation of regressive human traits. The progressive reformers countered this argument from the humanist point of view, contending that the state should use the developing social sciences to ameliorate the dehumanizing consequences of the developing industrial economy.

The second debate centered upon two views of childhood. The first viewed the child as a tabula raza, a blank slate upon which the personal character is written by differential exposure to social environments. The other was the phylogenetic position, which argues that the child retraces in his or her development the moral evolution of the human species from savage to civilized individual. Despite their differences in concepts of personality development, both positions shared a view of childhood behavior as determined by external factors beyond the control of the children themselves. Critically, for the juvenile court movement, both advocates argued that children would grow up to be normal, civilized adults if sufficiently protected during childhood and adolescence.[4]

As a remedy to the existing system which relied on incarcerating children along with adults, social reformers and private entrepreneurs lobbied for the enactment of the 1899 juvenile court.[5] The social reformers or "child savers" were affiliated with the Hull House. Founded by Jane Addams in 1889, this well-known settlement house was the center of social reform activity. Starting with efforts to improve its immediate neighborhood, a crowded and disreputable part of Chicago, the Hull House group became involved in city and statewide campaigns for better housing, improvements in public welfare, stricter child labor laws, and protection of working women.

There is a difference of opinion on whether the "child savers" were basically libertarian or were more interested in controlling children's behavior in conformity with conservative standards. According to Anthony Platt, the middle-class reformers were largely interested in forcing middle-class values and socioeconomic domination upon the poverty-stricken majority. It is his position that the juvenile court was actually a reactionary attempt to suppress social rebellion. He notes that reformers brought attention to juvenile problems, equated poverty with immorality and crime, and created new categories (status offenses) of delinquency.[6] This seems to be disputed by the writings of Peter D. Garlock, who provides a strong argument against the assertion that the juvenile court act totally created new categories of delinquency. Garlock's research suggests that statutes, even prior to 1899, commonly provided for court intervention because of ungovernability and truancy. He also suggests that harsh adult sanctions were generally avoided by criminal courts in the handling of children. However, regardless of the reformers' motives, they did succeed in removing children from the

jurisdiction of adult courts and prisons and placing them under the jurisdiction of the new juvenile court.[7]

Legal Precedents

American juvenile courts trace their roots to the chancery court of England and the parens patriae doctrine deeply rooted in English law. Inherent in the operation of the historic chancery court was the common law principle that the power to protect and act in behalf of helpless people of all types was lodged in the king as parens patriae (the ultimate parent) and, through royal delegation of this power, in the court.[8]

In addition, the "traditional" American system of local judges operating their own court services is, despite recent criticism, an appropriate extension of the ideologies of both the founding fathers and the progressive reformers of the nineteenth century. Local election and financing of judges, originally accepted as a guiding principle of social organization in the colonial states, was a method of protecting parochial life styles from the depredations of centrally administered courts which colonists associated with the courts of the Crown. For different reasons, of course, Victorian "child savers" wanted to protect the nation's children from the chaos of a frantically industrializing society. In both instances, local judges, locally elected and locally financed, became the foci of these concerns because of their unique powers to enforce their decisions, unhampered by outside regulation or control.

Those aspirations to independence led to both the successes and failures attributed to juvenile courts by defenders and detractors alike. Juvenile courts have responded to the pressures of local control, reflected in their budget requests and in their attitudes to the tolerance of the community for various forms of delinquent behavior. At the same time, the political and social processes which define the "community" to juvenile courts are not always contemporaneous with the populist notions of Thomas Jefferson or of Victorian reformers. The self-interests of certain segments of the community and even the juvenile courts themselves may potentially be at odds with the needs of children who come to the attention of the authorities. These circumstances resulted in *Gault* and subsequent decisions of the U.S. Supreme Court, a chain of events which has led to a new "proceduralism" in juvenile courts and to a new emphasis on legal safeguards for juvenile offenders. Due process, as a philosophy of essential fairness, now extends beyond hearings and appeals into the delivery of delinquency-related social services.

THE GREAT CONTROVERSIES: EFFECTIVENESS, PHILOSOPHY, AND CONSTITUTIONALITY

Since the inception of juvenile courts in 1899, there have been constant attacks by its critics. Within the first decade after their introduction, a number of people (including some of the reformers) alleged that juvenile courts were not living up to their expectations. The disillusioned critics included both Judge Ben Lindsay, perhaps the most visible champion of the juvenile court

concept, and Julia Lathrop, another prominent advocate. Both stated that juvenile courts had not become a "cure-all."[9] Various judges, clinicians, social scientists, and social workers increasingly declared the social services function of the courts incompatible with their judicial responsibilities. They saw juvenile courts as courts of law and an inherently unsuitable setting within which to provide "treatment." Some even advocated abolition of juvenile courts. As Ryerson states, "In the 1920s and 1930s it began to seem possible that the juvenile court was fatally flawed as a means to the end of rehabilitiation."[10]

Judge Herbert M. Baker of Colorado extended the controversy even further. In addition to his concern about the combination of legal and social functions of the court, Judge Baker questioned the ability and the discretion of the judiciary in making therapeutic decisions. He expressed concern that "not even under chancery powers have courts heretofore been endowed with administrative authority of this kind."[11]

In addition, the early juvenile courts were charged with acting in an unconstitutional manner because they did not provide due process of law. Until recently, however, the higher courts unanimously held juvenile court procedures to be constitutional, either on the theory that these were civil, not criminal, courts or because they were quasi-judicial by virtue of their social services functions. Since all their legal actions were theoretically in behalf of the child, the higher courts were loathe to restrict the discretionary powers of juvenile court judges.[12]

Starting in the 1960s, criminological theory changed. Rehabilitative and treatment approaches were increasingly criticized by conservatives as biased and unrealistic, and by liberals as tending to stereotype delinquents as being completely bad or at least quite different from nondelinquents. According to David Matza, involvement in delinquent acts was episodic and not a continuous happening.[13] The "hidden delinquency" studies of Martin Gold reinforced this view by revealing that all children were delinquent to a degree, delinquency being only a question of frequency and degree of seriousness.[14] Both of these studies were influential in challenging the view of treatment-oriented positivism as the total cure for delinquency.

Since then, the controversy about juvenile courts has resulted in critical articles and studies, extensive literature and press commentary, seminal Supreme Court decisions, and numerous attempts to establish national standards. Today, a general consensus has emerged that there is at least a need for change in the traditional juvenile court's practices, procedures, and structure. Some legal scholars have again gone so far as to recommend doing away with juvenile courts as a separate tribunal.[15]

The U.S. Supreme Court addressed the issue of due process in juvenile courts for the first time in 1966. This case, *Kent* v. *U.S.*,[16] was the first of five major decisions. Other relevant cases, in chronological order after *Kent*, were *In re Gault, In re Winship, McKeiver et al.* v. *Pennsylvania,* and *Breed* v. *Jones.*[17] All of these decisions, except *McKeiver*, increased the applicability of

due process to juvenile courts.[18] Thus, four of the five major Supreme Court decisions involving children challenged the civil foundation of juvenile courts and, at least partially or by implication, the parens patriae doctrine.

The concern with due process as a supreme requirement soon spilled over from the area of adjudication to that of court services. The 1967 report of the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, is in varying degrees critical of juvenile courts.[19] This crucial document, published almost concurrently with the *Gault* decision, doubted the ability of juvenile courts to provide both justice and rehabilitation in the same case. However, the *Courts* report of the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, published in 1973, saw juvenile courts in a different light. It saw the alleged ineffectiveness of juvenile courts as due to external constraints rather than inherent problems. This report argued that the establishment of family courts, with adequate resources and sophisticated training, would allow the courts to be effective in providing both rehabilitation and due process of law. The NAC standards recommended that juvenile jurisdiction should be placed in family courts with the following omnibus jurisdiction:

> delinquency, neglect, support, adoption, child custody, paternity actions, divorce and annulment, and assault offenses in which both victim and the alleged offender are members of the same family.[20]

Concern over the effectiveness and practices of juvenile courts, in part, resulted in the federal Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA).[21] The purpose of this act was to provide monetary incentives to states for a number of improvements, including the reduction of the number of juveniles in juvenile courts, the deinstitutionalization of status offenders, and the creation of innovative nonpublic alternative services to juvenile court intervention.

In the 1970s, the works of Edwin M. Schur and Robert Martinson seriously questioned the effectiveness of rehabilitation or individual treatment.[22] Martinson studied a number of treatment programs and found none to be totally effective or even remarkably superior in eradicating recidivism of delinquent or criminal acts. Eventually, Martinson's commentators translated this into the slogan "nothing works." Schur, the originator of the doctrine of radical nonintervention, took a normative approach and argued that juvenile courts should be formally run through established legal procedures. Under this sytem, diversion of lesser offenses would be increased, jurisdiction over status offenders would be repealed, judicial discretion would be reduced, and all serious offenders would be dealt with on an equitable basis. In essence, this approach would reduce intervention into children's lives to a minimum and would further subject such intervention to strict regulation more in keeping with criminal law and procedures.

The standards of the Institute of Judicial Administration of the American Bar Association (IJA-ABA) were by far the most critical of juvenile

courts and their operation.[23] The report questioned the very propriety of juvenile court involvement in social services delivery. It recommended that all juvenile court services, such as intake, probation, and detention, should be located in an executive branch agency. The reasons for the recommendation, presented in the volume entitled *Standards Relating to Court Organization and Administration*, were that judges lack knowledge of social sciences; that their dispositional orders can be made and enforced more independently when the services are outside the court; that due process may be jeopardized when judges confer informally with intake or probation staff on how a complaint should be set; that removal of the services would divert public criticism from juvenile courts; that social services staff may be assigned responsibilities that are not related to social services, such as issuing summonses; and that social services which are located in the state executive agency can be more integrated statewide and may be better funded by state legislatures.

The sociological and legal literature since the publication of the IJA-ABA standards have been a point-counterpoint on current juvenile court practices. Paul L. Piersma comments that judicial involvement in social services may increase the potential for prejudicial comment or disclosure outside the record. Now that cases must be handled in an adversarial manner, Piersma sees a serious need to redefine and clarify roles of the juvenile court personnel:

> Role conflicts arise for probation personnel when the person assigned to help the child and the child's family has previously filed the petition against the juvenile and has participated in presenting the case against the juvenile at adjudication.[24]

Rosemary Sarri and Paul Isenstadt placed high priority on the need for due process guarantees and on the question of which services juvenile courts should operate themselves.[25] Under their proposed alternative juvenile justice system, juvenile courts would assume less direct service responsibility (especially for dependency and status offense cases) and exercise more monitoring and mandamus powers over agencies providing the services.

A modification of this alternative system is the periodic review of children in welfare custody which statutorily exists in states such as Ohio and South Carolina. Under this system, juvenile court judges must regularly review the case plans and services provided to children placed in the custody of welfare agencies. Another alternative method is suggested by a New York statute which provides for the judge to order "any agency or institution to reveal information concerning a child who is or shall be under its care."[26] In effect, this could mean the furnishing of regular agency reports on case progress.

One of the critical issues in providing social services through juvenile courts is the exercise of mandamus power to enforce the juvenile court judge's authority to solely determine reasonable appropriation needs for court operation. Where mandamus powers exist, the judicial branch of government notifies the legislative branch of the appropriation needed for the court's budget. The appropriating authority is assumed to be legally bound to

appropriate as instructed by the court, in the absence of a showing of unreasonableness by the court in determining the size of its budget.

This judicial power has caused many bitter disputes and ill feelings between juvenile court judges and county authorities. For example, in 1979 the Missouri Supreme Court ordered St. Louis county officials to provide money to hire a number of juvenile court employees the local court had requested.[27] This decision, in turn, led to an acrimonious confrontation between the county supervisors and judges of the juvenile court.[28] Since the county administration is the main source of funds for operations of any county-run juvenile court, there has been serious questioning of the wisdom, over the long term, of actually using mandamus power in any situation such as this, since its use may result in polarization and alienation between the judges and the funding officials. The possibility of avoiding such unfortunate situations has, of course, been one of the stimuli to the study of which this chapter is a part.

THE CRISIS OF CONFIDENCE

The contemporary perspective of delinquency has moved from a largely positivist view to a multifaceted one. As opposed to views of delinquency determined by personality problems, social disadvantage, lack of opportunity, or other impinging environmental aspects, interest has partially shifted toward taking into consideration the law itself, the manner of administration of the law, and the justice system's impact on delinquency careers. In addition, there is a new preoccupation with the juvenile justice system's fairness.

It is not unfair to characterize the current situation as a crisis, and one need not look far for causes. To begin, juveniles are a powerless political constituency, which has led different adult constituencies to make the court's decisions and policies a battleground for contending viewpoints, sometimes grounded in opposing corrections philosophies, notions of constitutional law, economics, competing urban and rural interests, and beliefs regarding youth rights. Since no court's policies can satisfy the conflicting demands of all these interests, and since current approaches have shown unimpressive results in reducing delinquency, there has arisen a substantial body of opinion demanding abandonment of specialized juvenile courts or, at the very least, reaffirmation of the legitimacy of juvenile courts through procedural and structural reform. This situation is exemplified by some legal scholars again calling for the abolition of juvenile courts or taking the position that the IJA-ABA standards did not go far enough.

Authorities such as Sanford Fox believe criminal courts would do a better job of protecting the rights of juveniles.[29] They support removal of the juvenile court's status offenders and lesser delinquency offenders to voluntary community agencies, while processing serious delinquents in adult courts. Francis McCarthy, in addition to agreeing with Fox that criminal courts would better protect rights, also notes that adult courts have removed another

distinction between the juvenile and criminal courts. Adult courts now practice intake procedures, whereas these procedures had been previously unique to juvenile courts.[30] In this view, as courts become more procedurally alike, there is less rationale for keeping them jurisdictionally separate.

Stephen Wizner and Mary F. Keller contend that the implementation of the IJA-ABA standards would result in prosecutory excesses in filing charges, with more consequent plea bargaining to lesser criminal offenses rather than to dismissal or reduction to a benign status offense. They also note that adult courts do consider leniency. Their recommendation is that juvenile courts should continue to protect abused, neglected, and emotionally disturbed children, without retaining jurisdiction over delinquency.[31]

On the other side, it would be inherently impossible, according to Martin Guggenheim, for juvenile courts to change to courts which provide, in practice, both quality care and rule of law. Under adult courts, status offenders would no longer be subject to court processing. Further, those convicted of misdemeanors would be separated from felons and would only be susceptible to minimal loss of liberty.[32]

H. Ted Rubin, past juvenile court judge of the Denver Juvenile Court, has contributed much to the deliberations. Although Rubin is critical of the juvenile court, his current proposal is to keep the services within the court and to improve the existing juvenile court system.[33] His major recommendations are:

- Lawyer representation at all decision points in juvenile court proceedings.
- Repeal of the status offender jurisdiction.
- New intake procedures with new intake guidelines for screening petitions, and better detention, incarceration, and diversionary programs.
- The requirement that dispositions reflect the least restrictive alternative.
- Limitation of judicial discretion, substituting determinancy and proportionality of penalties.
- Final prosecutorial decision over intake procedures.
- Transfer of juvenile court jurisdiction to a separate division within the general trial court.

Footnotes

1. Ernest L. Bogart and John Mabry Mathews, *The Modern Commonwealth, 1893-1918*, vol. 5 (Springfield, Ill.: Illinois Centennial Commission, 1920). See also, John Clayton, *The Illinois Fact Book and Historical Almanac, 1673-1968* (Carbondale, Ill.: Southern Illinois University Press, 1970); and Helen Rankin Jeter, *Trends of Population in the Region of Chicago* (Chicago, Ill.: University of Chicago Press, 1927).
2. Corinne J. Naden, *The Haymarket Affair, Chicago, 1886* (New York, N.Y.: Franklin Watts, Inc., 1968).
3. Ellen Ryerson, *The Best-Laid Plans: America's Juvenile Court Experiment* (New York, N.Y.: Hill and Wang, 1978).
4. Ibid.
5. Anthony M. Platt, *The Child Savers: The Invention of Delinquency* (Chicago, Ill.:

University of Chicago Press, 1969). See also his article, "The Triumph of Benevolence," in Richard Quinney, ed., *Criminal Justice in America* (Boston, Mass.: Little Brown and Co., 1974).

6. Ibid.

7. Peter D. Garlock, " 'Wayward' Children and the Law, 1820-1900: The Genesis of the Status Offense Jurisdiction of the Juvenile Court," *Georgia Law Review*, vol. 13 (1979).

8. Christine E. Wolf, "A Socio-Economic Study of the Illinois Juvenile Court Act of 1899," masters thesis, 1974. See also, James Weber Linn, *Jane Addams—A Biography* (New York, N.Y.: D. Appleton-Century Co., 1935).

9. Ryerson, *The Best-Laid Plans.*

10. Ibid.

11. Ibid.

12. Ibid.

13. David Matza, *Delinquency and Drift* (New York, N.Y.: John Wiley and Sons, 1964).

14. Martin Gold, "Undetected Deviant Behavior," *Journal of Research in Crime and Delinquency*, vol. 13 (January 1966).

15. H. Ted Rubin, "Retain the Juvenile Court? Legislative Developments, Reform Directions, and the Call for Abolition," *Crime and Delinquency*, vol. 25 (July 1979).

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

17. *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970); *McKeiver* v. *Pennsylvania*, 403 U.S. 528 (1971); and *Breed* v. *Jones*, 421 U.S. 519 (1975).

18. The first case, *Kent* v. *U.S.*, was concerned with the transfer or waiver of children to the adult court for criminal prosecution. Statutory requirements were established to protect the child prior to relinquishment of the juvenile court's jurisdiction over the child. *Gault*, the landmark case, referred to the adjudicative phase of juvenile court hearings. It held that a youth who is in danger of incarceration must have legal counsel, notice of charges, protection against self-incrimination, and the right to cross-examine and to confront witnesses. The *Winship* decision questioned the level of proof for adjudication of a delinquency complaint. This decision changed the requirement of proof from the preponderance of evidence to the same level as adults, i.e., proof beyond a reasonable doubt. Protection against former jeopardy was extended to children through the *Breed* v. *Jones* decision. The *McKeiver* decision was the only case which did not increase children's due process rights. The Supreme Court ruled against expanding children's rights to include jury trial. The Court's rationale was to keep the juvenile court somewhat less adversarial than adult courts.

19. The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (Washington, D.C.: U.S. Government Printing Office, 1967).

20. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington, D.C.: U.S. Government Printing Office, 1973).

21. U.S. Department of Justice, *Legislative History of the Juvenile Justice and Delinquency Prevention Act of 1974* (Washington, D.C.: Office of General Counsel, Law Enforcement Assistance Administration, 1974).

22. Edwin M. Schur, *Radical Nonintervention: Rethinking the Delinquency Problem* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1973); and Robert Martinson, "What Works? Questions and Answers about Prison Reform," *The Public Interest* (Spring 1974).

23. Institute of Judicial Administration-American Bar Association, *Standards Relating to Court Organization and Administration* (Cambridge, Mass.: Tentative draft, 1977).

24. Paul Piersma, et al., *Law and Tactics in Juvenile Cases*, 3rd ed. (Philadelphia, Pa.: American Bar Association, American Law Institute, Committee on Continuing Professional Education, 1977).

25. Paul Isenstadt and Rosemary Sarri, "The Juvenile Court: Legal Context and Policy Issues," in Robert D. Vinter and Rosemary Sarri, eds., *Brought to Justice? Juveniles, the Courts, and the Law* (Ann Arbor, Mich.: University of Michigan, National Assessment of Juvenile Corrections, 1976).

26. H. Ted Rubin, "The Juvenile Court's Search for Identity and Responsibility," *Crime and Delinquency*, vol. 23 (January 1977).

27. *State* v. *St. Louis County*, 603 S.W.2d 545 (Mo. Sup. Ct. en banc 1980).

28. "Angry McNary Wants Circuit Judges Ousted," *St. Louis Globe-Democrat*, August 31, 1979.

29. Sanford J. Fox, "Juvenile Justice in America: Philosophical Reforms," *Human Rights*, vol. 5 (Fall 1975), pp. 63-73.

30. Francis B. McCarthy, "Delinquency Dispositions under the Juvenile Justice Standards: The Consequences of a Change of Rationale," *New York University Law Review*, vol. 52 (November 1977).

31. Stephen Wizner and Mary F. Keller, "The Penal Model of Juvenile Justice: Is Juvenile Court Delinquency Jurisdiction Obsolete?," *New York University Law Review*, vol. 52 (November 1977), pp. 1120-34.

32. Martin Guggenheim, *A Call to Abolish the Juvenile Justice System, Children's Rights Report II* (New York, N.Y.: American Civil Liberties Union Foundation, 1978).

33. Rubin, "The Juvenile Court's Search."

3. Creating Social Services by Statutes, Court Rules, and Constitutions

Legislated authority to operate delinquency-related services is rare. Normally, the authority is inferred from legislation empowering courts to order certain remedies or services. Since specific authority is normally required for an executive agency to deliver any type of service, it is not surprising that courts, within the context of their inherent powers, would undertake to create and operate delinquency-related services. Alabama is the only state which refers to such services in its constitution by providing for construction of a specific county's detention home. When the provision of intake, detention, or probation is by court rule, court operation is normally assumed, although some court rules will also affect prosecutors. In some states, one type of service, such as probation, might be operated by the judicial branch and another service, like detention, would be an executive function. In the latter instance, legislatures may prescribe a significant role for courts to play, up to and including sharing many responsibilities for planning and administration.

As found in state laws, authority for services to children are placed in courts, state agencies, or local agencies. Some state laws indicate that such services can also be provided by private groups or individuals. In most state laws, social services for children are not created as discrete programs related to needs; rather, laws create the services as adjuncts to actual or contemplated court proceedings. The focus of these laws is predominantly on the court and its procedural events.

Typically, services are created in an indirect manner. For example, statutes do not state that a shelter shall be established for children needing temporary care in a nonsecure environment. Rather, most statutes simply authorize a public officer, judicial or otherwise, to place a child in a shelter. The focus of the laws is on the public officer and not on the program.

The major exceptions to this focus on the courts are the laws pertinent to state institutions or to programs such as parole or aftercare services. Yet, even these laws rarely avoid mention of their relationship to court proceedings.

For the most part, social services for children are created by laws which:

- Acknowledge a public office or official.
- Authorize the official to take particular action.
- Provide areas of discretion for the official.
- Relate the official's action or discretion to particular procedural steps in a court proceeding.

Beyond these characteristics, laws rarely describe the content of social services. For the most part, social services for children are described in law as

the exercise of authority or discretion by public officials during, after, or in contemplation of court proceedings.

There are exceptions, however, one of which can be found in the Alaska intake statute. There, a court is authorized to appoint "a competent person or agency: to make a preliminary inquiry and report for the court."[1] While this broad authority limits an appointment only by a determination of competency, it is likely that a court's exercise of the authority in actual practice uses only a very narrow range of the authority's full spectrum, i.e., appointment of the court's probation officers to perform intake.

Alaska provisions regarding detention provide another example, this time of an indirect authority.[2] Alaska courts are authorized to conduct detention hearings and to order detention. Beyond that authority, the Alaska code is silent on the details of detention. An Alaska state department is authorized in other statutes to evaluate, license, and regulate residential facilities for children; however, detention facilities are not specifically mentioned in those other statutes.[3] Consequently, whatever detention programs exist in Alaska have been created, indirectly, by the implication of narrow authority granted to public officials. They exist somewhere between a court's authority to order detention and the state's regulatory authority over residential facilities for children.

A practical difference between direct and indirect authority is in identifying social services as court-operated or otherwise. When the authority is narrow, social services exist in the interstices between the duties of various public officials, as in the Alaska example. Identifying services as being controlled by one officer or another is a task for which legal references provide only minimal direction. When the authority is broad, a legal conclusion is more readily made as to which particular officer controls the program. However, under a broad authority, actual practice in a state may weaken the legal conclusion, e.g., where a court appoints a county executive agency, such as services for children, to perform intake and exercises no supervision over the program.

A relatively rare third pattern is where legal materials are detailed in creating social services programs and their content, and designating or establishing public officers to operate them. For example, Wisconsin law is extremely specific in outlining the services provided for children before a court for children. Specific services and officers are identified in the statutes. The operation of intake, detention, and probation is specified in the statutes, with detail uncommon when compared to other states. Distinctions are made between judicial duties performed by the court and nonjudicial duties performed by executive agencies.[4]

LEGAL SOURCES AND ORGANIZING PRINCIPLES FOR CREATING DELINQUENCY-RELATED SERVICES

Social services for children can be found in three legal sources: state statutes, state court rules, and state constitutions. Conceivably, local

governmental ordinances and local court rules could create them if the traditions and authorities in a particular state permitted it.

By far, the most common legal source specifically authorizing social services is statutory. Less common are services authorized by court rule. Rarest of all are social services authorized by a state constitution.

Beyond these three legal sources, some social services may result from subtextual authorities. Broad general authorities and purpose clauses for codes relating to children or juvenile courts might be viewed as legal sources authorizing services otherwise unmentioned in law. Similarly, a doctrine such as inherent or implied powers, particularly when interpreted by the courts, might provide some subtextual authority for the creation of services. Since specific authority is normally required for an executive agency to deliver any type of service, it is not surprising that courts, within the context of their inherent powers, would undertake to create and operate delinquency-related services. A case law doctrine such as "right to treatment" seems to be a legal source that could grow into a subtextual source authorizing social services. Simple pragmatism or recognition of need might also be the basis for the creation of services.

Despite these subtextual possibilities, the services considered here are those reflected in the specific language of statutes, court rules, and institutions. These different legal sources suggest several legal organizing principles. In some areas of governmental activity, federal or state constitutions are the clear organizing principles. For example, in voting, public education, and capital punishment, constitutional standards have emerged which structure how these governmental activities occur.[5]

Regarding social services for children, no such specific federal, legal principle has developed which commands any particular organization or structure for their delivery. Consequently, the national pattern reflects the constitutional principle of federalism.[6] Each state is permitted to structure its social services to its own particular needs, traditions, and resources.

The variety of structural permutations of social services actually found in state laws probably reflects such nonlegal considerations as the relative political influence of courts and executive branch bureaucracies, as well as the traditions and resources of a particular state. That federalism is the national principle which accounts for current service arrangements is reflected in the use of uniform acts and recommended standards in shaping proposals for the reorganization of social services for children.[7] Such techniques imply that state government is the source for policy regarding social services.

Three other organizing principles are reflected in the state laws creating social services.

When social services are created by statute, the underlying organizing principle is that their form and manner of delivery are properly matters for legislative judgment. When the social services are created by court rule, there is the implication that the social services are either aspects of judicial power or closely related to court procedures. A distinction between these two

organizing principles is where services are created by statute; either judicial or nonjudicial officers may be authorized to deliver them. The courts have held that legislatures may delegate such authority to either branch of government without offending the separation of powers doctrine.[8] When court rules are used to create the services, only judicial officers or prosecutors are the public officials affected.

Social services are specifically created in only one state constitution. In Alabama, a constitutional provision authorizes the construction of a detention hall for a specific county and its juvenile court.[9] This eccentricity results from peculiar financing requirements in that state.

Besides the organizing principles of legislative judgment and judicial rulemaking authority, a third organizing principle has also emerged. A few states, perhaps anticipating the development of a federal standard, have adopted a "due process" model for social services.[10] This pattern precludes court control over the administration of social services. Most states do not apply this novel, due process concept in how social services are organized.

Many statutes reflect mixed notions of the appropriate legal source for the creation of social services. The Arkansas statute establishing intake officers is a good example. The statute establishes the position of intake officer and authorizes the reception and investigation of complaints. The Arkansas intake officer is further authorized to "perform all other functions assigned to him by this Act, by rules promulgated pursuant thereto, or by order of the juvenile court."[11] A service such as detention might be authorized by court rule, by court order, or by no visible legal basis except the inherent power of the court.

SOCIAL SERVICES AS SHARED AUTHORITIES

Only a few states reflect a "purity" of form that could be described as "court services" (Kansas and Ohio) or "executive agency" (Florida and Maine). The patterns reflected in the laws of these states are the exceptions. The simple fact is that, in America, authority and discretion regarding social services for children are shared between courts and other nonjudicial officials. Based on the laws of most states, it would be inaccurate to describe social services as either "court services" or "executive agency services."

If the predominant character of shared authority for social services is analyzed, a pattern of court dominance emerges. The most common patterns of sharing authority are found in statutes regarding intake and probation. For intake, state laws frequently delegate certain aspects, such as initial contact and receipt of complaints or preliminary investigation, to the courts but may authorize prosecutors to control the filing of petitions. With respect to probation, courts are most frequently authorized to hire and direct probation officers. However, in many states, the only probation officers eligible for hiring are those initially selected and approved by a state agency. This often results from the participation by counties in state subsidy programs, which finance local probation and other delinquency-related services.

Perhaps the best example of shared authority is found in the Colorado laws describing detention programs.[12] Successive amendments to the code relating to children indicate a legislative intent to shift operation of those programs away from juvenile courts and, particularly in the case of detention, to place their operation in a state department. Despite the shift, the Colorado legislature nonetheless preserved a large measure of involvement for juvenile courts and other local agencies in shelter and detention programs. Colorado juvenile courts are authorized to designate places of detention and shelter.[13] Courts can even direct representatives of county or district departments of social services to provide temporary shelter care in a child's own home.[14] Yet, despite the authority of juvenile courts to designate places of detention and shelter, a county department of social services is also authorized to designate shelter facilities to be used by juvenile courts.[15]

The laws reflecting the legislative shift of operation of detention to the state do not specifically repeal these basic authorities of juvenile courts and county and district departments of social services. In fact, the laws authorizing the Colorado Department of Institutions to provide detention services increase the duties of juvenile judges regarding detention. This is an interesting consequence of the shift of authority to provide detention services by the state. The Colorado Department of Institutions, in providing detention services, is required to "consult on a regular basis with the court in any district where a detention facility is located concerning the detention program at that facility."[16] Further, the juvenile judge is authorized to request a school district to provide books and equipment for the education of children in state detention facilities. One other provision of the law shifting detention to state control is a requirement that the state department operate "in the same manner within the limits of available funds appropriated for such purposes."[17] The first prepositional phrase, apparently a reference to prior court operation, infers that the courts are to be the critical group to determine satisfaction with the new service arrangement.

Perhaps the broadest mixing of authority over Colorado's detention and shelter programs is found in the law authorizing planning for these programs.[18] The Colorado Department of Institutions is required to seek the advice of both the state Department of Social Services and the state court administrator in developing statewide plans for detention and shelter services. Not content with only judicial and executive involvement in the planning process, this Colorado law concludes by requiring that the plan be submitted to the Colorado legislature.[19] Thus, all three branches of Colorado government share in the planning function of detention.

Beyond intake, detention, and probation, other services are rarely mentioned. Some other programs are suggested in statutory language, with restitution[20] and work programs[21] being the most common. These, however, are typically referred to in the dispositional authority of judges or the discretionary powers of state agencies. As such, they are not found in state laws as well-defined, discrete programs.

An exception to this general pattern is found in Wisconsin where family counseling, crisis counseling, referrals, and similar activities are specifically identified in statutes and assigned to particular officers.[22]

Footnotes

1. Alaska Stats., Sec. 47.10.020.
2. Alaska Stats., Secs. 47.10.140 and 47.10.150.
3. Alaska Stats., Secs. 47.10.010 through 47.35.080.
4. Wisconsin Stats. Anno., Secs. 48.06 through 48.11.
5. E.g., *Brown* v. *Board of Education*, 349 U.S. 294, 75 S.Ct. 753, 99 L. Ed. 1083 (1955).
6. E.g., Bernard Schwartz, *Constitutional Law* (New York, N.Y.: Macmillan Publishing Co., 1972), pp. 37ff.
7. *Uniform Laws Anno.*, Vol. 9A, Uniform Juvenile Court Act.
8. See Chapter 5 for a more thorough discussion of case law relating to the separations of powers doctrine.
9. Alabama Constitution of 1901, Amend. 300.
10. Florida Stats. Anno., Secs. 39.04, 39.05, and 959.24.
11. Arkansas Stats., Sec. 45.11.
12. Colorado Rev. Stats., Sec. 19-8-117.
13. Colorado Rev. Stats., Sec. 19-2-102.
14. Colorado Rev. Stats., Sec. 19-2-103.5.
15. Colorado Rev. Stats., Sec. 19-2-103.
16. Colorado Rev. Stats., Sec. 19-8-117.
17. Ibid.
18. Colorado Rev. Stats., Sec. 19-8-120.
19. Ibid.
20. E.g., Oregon Rev. Stats., Sec. 419.507; Gen. Stats. N.C., Sec. 7A-649.
21. E.g., Tennessee Code Anno., Sec. 41-830.
22. Wisconsin Stats. Anno., Secs. 48.06 through 48.11.

4. The Legal Literature on the Issue of Court-Operated Social Services

Articles on juvenile court services found in the legal literature divide themselves into two periods. During the first 50 years of the American juvenile court movement, these articles treat the operation of social services by juvenile courts as aspects of judicial powers and relate them to the American legal system by either historical parallels or contemporary court analogies.

Following 1950, articles began to discuss services as activities separated from court powers. These more recent articles treat juvenile court services from either administrative or due process perspectives. Typically, the administrative viewpoint encouraged greater involvement between judges and their services staff, while the due process point of view urges a complete separation of services from the court.

Besides these distinctions, there is a decided shift in how the courts themselves are viewed. Articles prior to 1950 view juvenile courts as unique because they provide services. Following 1950, the articles assume that juvenile courts are unique only because they deal with children.

The discussion of juvenile court services in legal literature has progressed along distinct points of view corresponding to two separate historical periods. Spanning the years from 1899 to 1950, an almost uniform perspective pervaded the commentary. That early perspective discussed social services as necessary to the broadened power and authority of the new juvenile courts.[1] What made juvenile courts special and unique was not that they were courts whose jurisdiction was over children but, rather, that they had broadened powers—including probation and other services—to deal with the problems of children. During the first half of this century, juvenile courts were understood to be inextricably linked to the services they provided children.

Although this early perspective still appears with regularity in the legal literature, it now shares the discussion of juvenile courts with a second perspective, which actually can be traced to articles beginning in the 1930s, although it does not appear with any regularity until 1950. Central to the new perspective is the notion that juvenile courts are unique only because they deal with children.[2] It is no longer their broadened powers or services that make them special courts.

This newer perspective is significant for the discussion of juvenile court services. Rather than being the central aspect of a juvenile court's power, services are activities that can now be understood and analyzed independent of their traditional association with juvenile courts. Simply put, this newer perspective treats services as activities which are not essential to the exercise of juvenile court powers.

In tracing the development of both perspectives in the legal literature, it becomes obvious that each is related to different legal and constitutional issues surrounding juvenile courts, and each perspective facilitates different analyses and formulations of questions about the constitutionality of juvenile court services.

THE EARLY LEGAL LITERATURE: 1899 TO 1950

The legal literature of the period 1899 to 1950 treats juvenile courts and their services in the context of other changes which were being wrought in the American legal system. As juvenile courts were introduced in the American legal system, other tribunals such as family courts, domestic relations courts, women's courts, conciliation and small claims courts, morals courts, and industrial accident commissions appeared in America.[3] State legislatures also began other governmental innovations which led to the development of the body of current administrative law and administrative tribunals. All of these innovative courts and tribunals, including the new juvenile courts, represented departures from the traditional system of American courts. Rather than traditional courts of general jurisdiction, tribunals were established to meet specific problems. They were given broadened powers to investigate, to intervene, and to take action. Juvenile courts, with probation officers and detention centers, were just one of the new, specially empowered tribunals established by state legislatures during the first half of this century.

Paralleling this experimentation with courts was the growth of social services. Government and private resources were more heavily committed to social problems than ever before. Probation, homes for children, protective societies for children, orphan asylums, and state schools all appeared during this time.[4] It was within this context of a growing commitment to social services that juvenile courts were inaugurated.

In the legal literature, little coherent, legal, or constitutional theory appeared to mold these developments to the traditional arrangements of governmental powers. Specifically, how these developments related to what courts could constitutionally do does not appear to be a subject of specific discussion in the early legal literature. Rather, the literature is limited to practical discussion of these new courts and their broadened powers.[5]

That constitutional questions about court services were absent in the literature of this period is likely the result of two viewpoints, which will be discussed in this section. First, the broadening of court powers was not seen as a constitutional question but as a jurisprudential issue: Should the law and courts be used to do more than merely decide issues? Should they be used to direct individuals and achieve certain objectives?

Second, legal writers viewed the new courts and new powers as implicit in what American courts always had done. This is the closest the legal literature approaches the discussion of constitutional issues. Two methods of harmonizing juvenile courts into American courts can be found in the legal literature. The first method was the invocation of historical, legal parallels.

The second method was that of making analogies between juvenile courts and other existing governmental institutions.

Sociological Jurisprudence

The actual development of juvenile courts and some of the other specialized tribunals during the first half of the twentieth century did not stir up constitutional discussion in the legal literature. This experimentation with courts and the enacting of social legislation, however, was a subject of debate which focused on jurisprudential questions. For example, was it proper for law and courts to be used to achieve particular social objectives? Because the debate was jurisprudential, the issues it clarified taught only about the ultimate purposes of law as a vehicle for social order. The basic constitutional question of the propriety of courts going beyond their traditional powers was not entertained. What did emerge became known as sociological jurisprudence.

The principal expositor of the jurisprudential underpinnings for these new legal developments was Roscoe Pound, dean of the Harvard Law School. In a series of articles, he outlined the legal developments and legal philosophies that were manifestations of what he labelled "sociological jurisprudence."[6]

Looking to European legal scholars, Pound outlined the developing sociological theory that law should be concerned with effecting certain social outcomes. Pound quoted the German scholar Rudolf Stammler to the effect that "the question for the jurist becomes twofold; on the one hand, the existence of a rule of right and law, and the other, the mode of carrying it out."[7] Later, Pound wrote, sociological jurisprudence "furnishes a philosophical foundation for the conscious endeavor to promote social justice in which the sociologist rightly demands that the science of law as well as the science of legislation cooperate."[8] Further, "the main problem . . . is . . . to take more account, and more intelligent account, of the social facts upon which it must proceed and to which it must be applied."[9]

The sociological jurisprudence that Pound outlined was one of action. It required both the law and courts to be result-oriented or, as Pound apostrophized, "the life of the law is in its enforcement."[10]

For the development of juvenile courts and their services, three themes of Pound's discussion of sociological jurisprudence appear significant: first, its emphasis on outcomes; second, trial judges were important because of their ability to affect outcomes; and, third, the need to integrate the newly developed social sciences into the everyday workings of the law.

Pound recognized the growth of knowledge, skills, and techniques that the new social sciences were creating. His argument was simply that courts should adapt this new learning to the ends of justice.

Sociological jurisprudence did not necessarily prescribe the attachment of social services delivery to juvenile courts. Nonetheless, Pound's emphasis on individual outcomes, the importance of trial judges as enforcers, and the

need for teamwork between law and the social sciences created a fertile ground for the birth of juvenile courts with social service staffs. Although not stated, it is perhaps fair to say that no government institution other than courts had the intimate day-to-day contact with the social problems studied by the new social sciences.

Throughout Pound's articles are statements that focus on the need for judges to become more intimately involved with the results of the cases they decide.

> In general, the sociological jurists stand for what has been called equitable application of law; that is, they conceive of a legal rule as a general guide to the judge, leading him toward the just result, but insist that within wide limits he should be free to deal with the individual use, so as to meet the demands of justice between the parties.[11]
>
> The demand of modern society for fuller powers and under discretion in the magistrate, to enable him to do justice in the great variety of controversies which grow out of a complex industrial organization, led the framers of the new legislation to leave wide margins at many points by provision as to "good faith," "equity," the "dictates of good morals," "weighing the circumstances of the case in hand," and the like.[12]

The third characteristic of the sociological jurisprudence outlined by Pound that is suggestive of juvenile courts is the need for social sciences to be integrated into the legal systems. Pound writes:

> It has been felt for some time that the entire separation of jurisprudence from the other social sciences, the leaving of it to itself on the one hand and the conviction of its self-sufficiency on the other hand, was not merely unfortunate for the science of law on general considerations, in that it necessitated a narrow and partial view, but was in large part to be charged with the backwardness of law in meeting social ends, the tardiness of lawyers in admitting or even perceiving such ends, and the gulf between legal thought and popular thought on matters of social reform. Not a little of the world-wide discontent with our present legal order is due to modes of juristic thought and juridical method which result from want of "team-work" between jurisprudence and the other social sciences.[13]

Pound's exposition of social jurisprudence was controversial. The debate it fostered focused principally on the alien and predominantly Germanic roots of the legal philosophy propounded. The issue raised was whether America, in view of its thoroughly unique social evolution, should look to European sources for improvements to its legal system.[14]

While this issue contains a subtle constitutional flavor, it did not specifically address the question of whether American constitutions were flexible enough to permit courts to perform both social services and traditional juridical functions. The debate surrounding sociological jurisprudence was, at base, a constitutional debate because the sources of the American legal system are found in the state and federal constitutions. An argument that sociological jurisprudence came from European sources rather than from the text of American constitutions is, in essence, an argument of unconstitutionality.

What is most interesting about the "foreign source" aspect of this debate is that it foreshadows how the legal literature ultimately harmonized the broadened powers of juvenile courts with America's state constitutions.

Despite the controversies surrounding sociological jurisprudence, extensive portions of the American legal system were "socialized"—new courts and tribunals were established with new powers and new procedures. Service and investigative staffs were attached to courts and to other tribunals.

Implicit Powers of Courts

Historical Parallels

For juvenile courts, the most commonly invoked historical parallel was that of the chancery court.[15] Although the similarities between historical chancery courts and early juvenile courts (even more, modern juvenile courts) are less than obvious, mythical parallels provided means of harmonizing the new juvenile courts with the American legal system.[16] The implicit logic of this approach is that if juvenile courts are mere extensions of chancery courts, and if American state constitutions have always provided for chancery courts, then there is no constitutional bar to juvenile courts and their broadened powers. What is, perhaps, most unusual about this method of harmonizing juvenile courts with the American legal system is that the chancery court parallel became almost an article of faith among proponents of juvenile courts. In the early 1900s, the *Central Law Journal*, a highly regarded publication, consistently editorialized in favor of the spread of juvenile courts throughout America and severely criticized court decisions which upheld juvenile court laws as constitutional when court decisions failed to strike the parallel with historical chancery courts.[17] Although such advocacy probably gave vitality to the chancery parallel, there were likely deeper reasons for its widespread acceptance. Those reasons were related to rejecting the "foreign source" attributed to sociological jurisprudence while, at the same time, encouraging the growth of a more "American" institution.

Although the chancery court comparison predominated, other parallels were suggested in the legal literature, such as those pointing to English kings' proctors[18] and to European civil magistrates.[19] However, these two alternative theories gained no support among juvenile court advocates; nor did they excite further exploration. Since there were American chancery courts but no American kings' proctors, this parallel had little chance for vitality. The kings' proctor concept was simply another "foreign source" which would not align juvenile courts with the American legal system.

The third historical parallel, that of European civil or examining magistrates held slightly more favor. These officials perform investigatory, prosecutorial, and judicial functions. As a parallel to some American juvenile court services, notably intake, the examining magistrate is compelling. However, this parallel was merely broached in the legal literature but otherwise ignored. Like the kings' proctor parallel, it could not supply a basis for juvenile court harmony since it also suggested a foreign source for the broadened powers of juvenile courts.

To properly harmonize the new juvenile courts with the American legal system, a parallel with an existing American legal structure was necessary. This the chancery parallel provided and the others did not.

Analogies with Existing Courts

The second method of harmonizing the new juvenile courts with American constitutions was by analogizing them with then-existing American courts and the ways in which they exercised nonjudicial powers.[20] Unlike the chancery argument, which relied on an uncertain and possibly dubious historical parallel, this second approach pointed to clear and existing examples of courts performing a variety of functions. Some examples that were frequently used included the ability of probate and other such courts to appoint amicus curiae, guardians ad litem, investigators, referees, marshalls, and receivers; to control the compensation and conduct of those appointees; and to examine accounts and inventories. There is no reason why these attempts did not gain ascendancy over the chancery parallel. Since both theories are based in the practices of American courts already in existence at that time, they are equally effective in avoiding a "foreign source" for justifying the broadened powers. For whatever reason, they did not supplant the chancery parallel which, to this day, is cited in the literature as the forebearer of modern juvenile courts.

The texts of those legal articles which related juvenile courts to either historical parallels or contemporary court analogues seldom stated concerns with the constitutionality of the broadened powers of juvenile courts. The writers did not typically frame the issue as one of constitutionality.

Finally, a related search for an acceptable analogue went in the direction of the executive branch of government. Rather than searching for historical judicial precedents, these articles strike similes with existing charitable institutions or activities of the executive branch. They liken juvenile courts to "hospitals" or "schools."[21] The wide-ranging activities of juvenile courts were labeled simply as "administrative," "executive," "ministerial," or "nonjudicial" duties of the courts.[22]

That these articles are oblivious of any constitutional issue is apparent in the manner they discuss the broadened powers of juvenile courts.

THE CURRENT LEGAL LITERATURE: 1950 TO 1980

By 1950, changes had occurred in the treatment of juvenile court services in the legal literature. Rather than discussing juvenile court services as an aspect of a juvenile court's powers, services were first treated as activities capable of analysis without considering the powers of juvenile courts.[23] To be sure, such isolated analysis appears prior to 1950, but it only becomes dominant in the literature following the midcentury mark.

Probably this new point of view developed along with the growing professionalization of social work. As social work developed a greater understanding of its own work, distinctions between the "legal" activities and "social work" activities of juvenile courts could more readily be discerned.

Once the distinction was made and accepted, other constitutional questions could be raised beyond that of simply harmonizing juvenile court services with the American legal system.

The articles representing this point of view are of two kinds: those that analyze court services in terms only of management or administrative problems, and those that broach legal and constitutional questions about attaching court services to juvenile courts.

Those articles which treat juvenile court services as administrative or management problems commonly appear to treat court services in vacuo from court power. By describing and analyzing court services as distinct from the more juridical activities of juvenile court judges, these articles provided the analytical groundwork necessary for later constitutional criticism of attaching social services to juvenile courts. The irony of the criticism is that these earlier administratively oriented articles almost uniformly urged greater involvement of judges in operating social services.[24]

The later articles raised legal and constitutional questions concerning the propriety of juvenile courts operating such services as intake, detention, and probation.[25] Having rejected the older notion that juvenile court services are a necessary aspect of juvenile court power, these articles offer fresh analyses of constitutional and legal issues associated with court operation of services.

An example of this newer point of view is found in an article by Ralph E. Boches on the California juvenile justice system. He writes:

> *Gault* requires the juvenile court judge to be totally divorced from the administrative system of the juvenile probation department. Reduced to its simplest terms, *Gault* holds that "the hearing must measure up to the essentials of due process and fair treatment." The juvenile court judge cannot in a legal sense be impartial if he also acts as chief administrator of the department responsible for presenting and prosecuting the case against the minor. In the juvenile court, as well as in any other court, the judiciary must be independent.[26]

What has set juvenile courts apart from other courts is that they have evolved into a dualistic agency, with both juridical and social services objectives. In adult criminal matters, we normally associate detention and correlative medical and dental services with the responsibilities of sheriffs, and intake with prosecutors, not with judges or court staff. It is true that probation and presentence investigations are increasingly performed within criminal courts and, in domestic relations courts, investigators make inquiries for the court when child custody is an issue. Yet, the extensive social services activities associated with juvenile courts make these courts uncommon tribunals among all American courts. It is not typical for adult courts to have detention, shelter, medical, and social work staffs, or to provide the wide range of services to be found in juvenile courts.

Because service-oriented courts are atypical in America, a basic question seems to be whether the structural association of legal services and social services is compatible with those constitutional doctrines that limit how the activities of government can be arranged. Two doctrines, in particular, seem highly pertinent: separation of powers and due process. Separation of powers

is a constitutional doctrine wholly devoted to the arrangement of governmental structure. One facet of due process, the requirement of a fair and impartial tribunal, also bears upon the structural arrrangements of government. Both doctrines can be used to examine the constitutional appropriateness of the association of social services delivery with juvenile courts.

Both separation of powers and due process principles are designed to ensure fairness, independence, and neutrality in governmental institutions. Yet, they are quite different in what they seek to protect. The separation of powers doctrine is intended to create independence among governmental institutions by providing checks and balances between three branches of government. The independence and neutrality ensured by the due process clause is intended to restrain the power of governmental institutions in their treatment of individual persons. However, one writer has observed that "the objective of fairness implicit in the doctrine of separation of powers adds little to what is already required by the fifth and 14th amendments."[27]

The most interesting aspect of social services delivery in juvenile courts is that they have spawned little discussion in terms of legal or constitutional doctrines. When the legal issues implicit in court services delivery are broached, no coherent or extended analysis has resulted.

In the few articles where the relationship between a judge and court services staff is mentioned, two perspectives are common. The first is that a closer judicial involvement should be encouraged to promote efficiency and effectiveness. The second commonly encountered notion is that social services are inappropriate to the judicial function of juvenile courts.

Typically, the former perspective never raises legal objections to the relationship. The following are two examples of this viewpoint. In an article in the *Juvenile Court Judges Journal*, Barbara Bamford writes:

> The Juvenile Court is hampered not only by a lack of effective alternatives for pre-trial and post-trial commitment but also by administrative problems within its structure. There is a lack of communication between the professional staff of the Social Service Department and the judges, although there are signs of improvement since Judge Miller began holding bimonthly meetings with the Social Workers in September, 1967.[28]

A similar statement is made by Paul W. Keve, a former director of court services, concerning judges and court services staff:

> I am not leading up to a proposal that the court should surrender administrative control of its probation services. In some places this administrative responsibility has already been transferred to other hands, but where the court still has some degree of responsibility. I urge that the responsibility be more clearly defined and more actively exercised.
>
> I think it is appropriate to say this because I see a gradual eroding of judicial involvement in probation administration. In a simpler day the judge perhaps had the full responsibility, including the hiring and firing of all staff, the determination of personnel policies, and the preparation of budgets. But now the civil service systems take over 90 percent of the process of hiring and setting personnel policies; firing can be done only by a defined process subject to control by the civil service board, and in many

places the advent of the county executive position results in the budgeting process being effectively moved from court responsibility to the hands of this specialist.

Consequently, I have frequently asked a chief probation officer exactly who he is responsible to, and I get a hesitant reply that indicates much uncertainty about this important question. The fact is that the responsibility has been fractionated to the point that what remains in the hands of the court is felt rather lightly by the judge and is often underrated by him. The result that I am seeing as I go about from one probation office to another is that probation administrators are left with no clear administrative relationship upward. What is everyone's business is no one's business, and the court, aware that major areas of administrative control have been shifted elsewhere, assumes too casually that the administrator is in little need of regular, specific, administrative attention from the court.

So instead of urging that administration be removed from the court, I am urging that the court recognize more clearly just what that responsibility is and exercise it more fully. It is not easy to do, for there are built-in handicaps for the court-administered services.[29]

A few writers have suggested that greater court involvement in services for children not administered by juvenile courts is also necessary. These writers believe that juvenile court judges have obligations to children in detention and correctional facilities and to those placed with child welfare agencies. The philosophies underlying these writers' arguments derive from either right-to-treatment principles or statutory duties imposed upon juvenile courts.[30]

The second perspective found in the legal literature, that services are inappropriately part of juvenile courts, is usually discussed with nascent legal principles in mind. Usually because there is no case law available on the points raised, legal phrases are used in the discussions without citations to specific authorities. The following is a typical example by William H. Sheridan:

Many juvenile court judges find themselves discharging several roles—judge, state's attorney, counsel for the child, and administrator. Some judges have actively sought these functions, while others have inherited them from their predecessors, through default of other programs.

Early proponents of the juvenile court recognized that the people were "the real party complainant and must prosecute the proceedings." They also recognized that a specific violation "must be proved and substantiated." These facts are no less true today. This is the role of the state's attorney. In many juvenile courts, however, the judge has discharged this function while, at the same time, carrying responsibility for making partial decisions.

The court was also described as the "defender as well as the protector of the child," a function it still retains in many jurisdictions.

Because doing something for a child inevitably means doing something to him, young people and their parents have a right to demand a fair hearing to establish the need for intervention by the state. The joining of patently inconsistent functions does not guarantee this type of hearing. . . .

A question also arises as to the legal propriety of joining the roles of judge and administrator. Should an issue arise involving the nature of the care or service or any abuse in its provision, the parent or guardian should always have recourse to the court. In such situations, when the judge is both, he may be called upon to pass judgment upon what are, in effect, his own actions.[31]

A similar point is made by Mason P. Thomas, Jr., in the *Juvenile Court Journal*:

Thus, the due process model suggests changes in the current organization and methods of many juvenile courts. Intake procedures should be re-evaluated to assure that the rights of the child are being protected. Is the child being pushed to confess or admit the alleged delinquency in order to have the advantage of an informal disposition or to avoid the delay of waiting for a judicial hearing on the facts? The juvenile hearing should be divided into two distinguishable parts—adjudication and disposition. The social investigation of the child by the probation staff should not be done prior to adjudication, unless there is a voluntary admission of the alleged facts by the child, who has appropriate advice from his parents or counsel. The judge should be judge only; he should not have administrative responsibility for child welfare services where he acquires information as administrator which he should not know as a judge. He should never see social reports prior to an adjudication hearing.[32]

Perhaps the closest parallel to an extended legal argument that has been made for divorcing social services from juvenile courts is found in an article concerning *Gault* and the California Juvenile Court Act of 1961. Relying on the general thrust of *Gault*, Canon 24 of the ABA Canons of Professional and Judicial Ethics, and on an apparent statutory hiatus regarding control of court services, Ralph E. Boches, a California attorney, writes:

The writer submits that *Gault* requires the juvenile court judge to be totally divorced from the administrative system of the juvenile probation department. Reduced to its simplest terms, *Gault* holds that "the hearing must measure up to the essentials of due process and fair treatment." The juvenile court judge cannot in a legal sense be impartial if he also acts as chief administrator of the department responsible for presenting and prosecuting the case against the minor. In the juvenile court, as well as in any other court, the judiciary must be independent.

Article 4 of the Juvenile Court Law should be amended to unequivocally state that the chief probation officer is the chief executive and administrator of the juvenile probation department, and that the juvenile court judge shall not involve himself in the administration of the probation department. Furthermore, the law should be amended to provide a scheme of appointment and removal of chief probation officers which relieves the chief probation officer from the predicament of serving at the pleasure of the juvenile court judge.[33]

Another suggestion of nascent legal principles that oppose court operation of social services looks to analogies in the adult system. Arguing for a "due process model" in juvenile courts, B. J. George, Jr., writes:

Impartial tribunal. A person who may be adversely affected by a proceeding has a right to trial by a judge who has no interest in the case, and who has not been prejudiced by earlier events. This applies today to juvenile proceedings in the obvious cases of a court's relationship to the complainant or to the injury resulting from the respondent's acts. However, there is a more refined aspect of this idea that may become visible after *Gault*. The system of adult criminal trials is arranged so that those who pass on preliminary matters rarely make the final adjudication as well. Thus, the magistrate who conducts the preliminary examination in a felony case does not serve as trial judge. Citizens who serve on the grand jury are ineligible to become petit jurors in the same matter. Even certain pre-trial hearings in a court of general jurisdiction may prejudice the judge in a particular case so that he must disquality himself from conducting the main trial, particularly if jury trial has been waived. Serious question may arise in juvenile delinquency proceedings whether a judge who presides, for example, over a contested jurisdictional or waiver hearing can make an impartial ruling on the evidence before him in the adjudication hearing which must by itself, prove the act of delinquency charged; he may have heard too much about the juvenile's

> background and past record of delinquency to be able to weigh the evidence objectively. If this consideration prevails, it may be necessary to rotate juvenile court judges on assignment, so that the judge who makes the jurisdictional or waiver determination does not preside over a contested adjudication hearing.[34]

Each of these quoted articles is an example of the several perspectives that are developing regarding juvenile courts and their operation of social services. As yet, the perspectives have not ripened into a major court challenge.

A SUGGESTIVE PARALLEL BETWEEN JUVENILE COURTS AND MILITARY COURTS

In the legal literature, writers most often discuss juvenile court services through the use of parallels, metaphors, and analogies. In particular, five of these devices were found in the legal literature. The most common parallel was with chancery courts. Other writers found similarities to the nonjudicial powers of existing courts, to English kings' proctors, to European civil or examining magistrates, and to such executive or service agencies as hospitals and schools. These parallels, metaphors, and analogies appear to be useful for identifying historical predecessors to juvenile court services.

Until *Gault*, the chancery parallel was used to explain the diminished constitutional rights of children, the flexibility of procedures used in juvenile court processes, and the broad range of services provided by the courts. The *Gault* case, besides its importance in establishing limited due process rights for children in juvenile courts, also demonstrates the continued importance of parallels, metaphors, and analogies in thinking about juvenile courts. In the *Gault* case, the Supreme Court, to a limited extent, rejected the chancery court parallel and, also to a limited extent, accepted the adult criminal court parallel as an appropriate model for the legal analysis of juvenile courts. *Gault* stands as the ripening of the use of parallels, metaphors, and analogies in thinking about juvenile courts. It was the first modern U.S. Supreme Court case which produced a parallel useful in analyzing juvenile courts.

Although *Gault* and the legal literature suggest that other parallels should be looked at, there is one obvious parallel to juvenile courts that, if ever selected, would lead to some interesting possibilities. Notwithstanding *Gault* and the legal literature, the most obvious parallel to juvenile courts is that of military courts.

Military courts are a highly appropriate parallel because they can ultimately involve clear deprivations of liberty in military stockades and federal pentitentiaries. In the majority of military justice cases, a graduated system of informal and formal penalties is imposed which has similarities to the graduated penalties and processes of juvenile courts. Military commanders are given authority to employ "nonpunitive measures" such as "censure, admonition, reprimand and other criticism of a subordinate's misbehavior or poor performance of duty."[35] These are all applied informally with minimal or no procedural requirements. Certain administrative actions, extramilitary instructions, and denial of privileges are also included in the nonpunitive measures permitted military commanders.[36]

Commanders are also authorized to impose "nonjudicial" punishments for "minor violations."[37] These nonjudicial punishments are slightly more formal than the nonpunitive measures and include "reprimand or admonition, restriction, arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, reduction in rate, forfeiture and detention."[38] In applying these punishments, the military commander must "consider the age, experience, intelligence and prior disciplinary and military record of the offender, as well as all the other facts and circumstances of the case."[39]

If nonpunitive measures and nonjudicial punishments are considered inappropriate, a commander can convene a court-martial. At this point, the commander deciding to convene a court-martial, the tribunal convened, the prosecutor, and the defense counsel are all ultimately related in the administrative structure of the command. Even the accusing witnesses will likely be subordinates of the military commander.

As a parallel, military courts are an exaggeration of the juvenile courts' structure, a structure that is challenged as creating too great a risk of bias and partiality.

It is not surprising, then, that military law has developed a legal doctrine to describe this administrative structure's potential effect on impartiality. That doctrine considers "command influence," and—although independent of due process—military law has developed the boundaries of "lawful" and "unlawful" command influence. Interestingly, the boundaries of permissible command influence and the structural protections against it are viewed as matters which are properly a legislative determination that Congress has made in its various enactments.[40] However, one commentator describes command influence as a persistent problem:

> Moreover, the elaborate procedural benefits that Congress and the USCMA (Court of Military Appeals) have fashioned for the military accused may be nullified by either the exercise of command influence or the threat of its exercise. It is therefore likely that skepticism regarding the impartiality of the military justice system will continue so long as there exists structural susceptibility to pressures from command authorities.[41]

Other aspects of juvenile courts correspond to the original purposes behind the establishment of modern military courts. In 1885, President Grover Cleveland reported to Congress that some alternative to severe courts-martial was necessary in the Army because many minor offenses were receiving the harsh justice of courts-martial.[42] Similar to juvenile court services, with seemingly awkwardly separated judicial and executive powers, the constitutional sources of military justice are muddled. The U.S. Constitution, through the president, delegates to a commanding officer his executive authority (his right to lead). At the same time, the Constitution, through Congress, provides him with quasi-judicial responsibility when he acts in a nonjudicial punishment capacity and judicial responsibility when he

acts as a court-martial convening authority.[43] Like juvenile courts, courts-martial derive from legislative grants of authority. Congress under Article I, Section 8, is authorized "To make Rules for the Government and Regulation of the land and naval Forces."

It may well be that changes in the structure and function of either court would affect the other. The parallels listed below are too striking to overlook, despite the distinct differences in their respective tasks:

- The military justice and juvenile justice systems share graduation of penalties and procedural formality.
- Both systems show an intermingling of prosecutorial, judicial, and other functions.
- Both systems can result in punitive or correctional incarceration.
- Both systems focus justice on individual and societal needs.
- Neither system accords the full measure of due process protection.
- Both systems represent legislative judgments as to what is appropriate in a special justice situation.
- Both systems are criticized because of the structural arrangement of judicial and other functions.

Footnotes·

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4. Ibid.

5. R. W. Baggott, "The Juvenile Court," *Ohio Law Reporter*, vol. 12 (July 27, 1914), p. 158; Richard W. Hale, "Medical Help in Criminal Law: The Boston Juvenile Courts and its New Work," *Massachusetts Law Quarterly*, vol. 2, no. 4 (February 1917), p. 296; and Virginia L. North, "Milwaukee's Approach to Juvenile and Domestic Relations Cases," *Marquette Law Review*, vol. 18, no. 4 (June 1934), p. 241.

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7. Ibid., vol. 25, no. 2, p. 151.
8. Ibid., vol. 25, no. 2, p. 154.
9. Ibid., vol. 25, no. 6, pp. 512 and 513.
10. Ibid., vol. 25, no. 6, p. 514.
11. Ibid., vol. 25, no. 6, p. 515.
12. Ibid., vol. 25, no. 2, p. 149.
13. Ibid., vol. 25, no. 6, p. 510.
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5. Constitutionality of Court-Operated Service Agencies

The operation of intake and probation departments by juvenile courts has raised, from time to time, questions regarding the constitutionality of such practice. The arguments are based upon the body of law that has developed around the separation of powers doctrine and the due process clause of the Fourteenth Amendment to the U.S. Constitution. Relying upon judicial precedents interpreting both doctrines, the conclusion reached is that neither theory will support the contention that court-operated intake or probation is unconstitutional per se. Courts have consistently ruled that states are free to create such authority, whether by constitution or statute, in whichever branch of government they choose. The due process cases, with one exception, hold that juvenile courts do not violate due process principles simply because the functions of investigation, prosecution, and adjudication are located within a single agency. This is not to say that, given a showing of actual bias, the principle of due process will not be invoked. On the contrary, if the purported behavior can be shown to have affected the outcome (adjudication), then the decision will presumably be reversed. Under due process, case-by-case evaluations must be made to discern how a particular structural arrangement impacts upon an adjudication.

Because of the way the American child care apparatus developed, it has no clear historical association with either the judicial or executive branch of government. Services by public charities or those attached to welfare agencies or juvenile courts appear to have developed haphazardly with pragmatism and expediency as the underlying bases for their creation. A legal theory, such as the separation of powers or due process, does not appear to have structured their development.

Because social services delivery is typically associated with both juvenile courts and executive agencies, an obvious question might be whether there is something in the function that ordains them as executive or judicial services. Despite this obvious question, there are two constitutional doctrines that might be invoked to test the relationship between juvenile courts and social services delivery. The separation of powers and due process doctrines appear to be most pertinent because both are legal doctrines affecting the structural arrangement of governmental powers. In essence, the issue of juvenile courts providing services is one of governmental structure.

THE SEPARATION OF POWERS DOCTRINE

As a theory of governmental organization, the origins of the separation of powers doctrine are traditionally traced to the writings of such seventeenth and eighteenth century political theorists as John Locke, Viscount

Bolingbroke, Baron de Montesquieu, and others. Montesquieu's description of the theory is perhaps the most famous.

> There would be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.[1]

Throughout its later development as an American constitutional legal doctrine, Montesquieu's trifurcation of government into making, executing, and judging laws has remained a constant point of reference. As American constitutions were written, the doctrine was added either as an explicit clause or could be implied from the functional arrangement of legislative, executive, and judicial powers. Contrary to popular opinion, there is no single provision in the federal Constitution expressing the separation; rather, it is implied from the discreteness of Articles I, II, and III by which Congress, the federal executive, and the federal judiciary are established. Among the states, 11 constitutions follow the pattern of the federal Constitution and do not have express provisions separating the powers of government.[2] Typically, courts in these states interpret an implied separation of powers in the manner in which the state constitutions have separated the legislative, executive, and judicial powers, or discuss the powers of the branches of state government as if there were a separation.[3]

The constitutions in the remaining 39 states have express constitutional provisions requiring a separation of powers. One state, Virginia, has two explicit separation provisions.[4]

Invariably, the objective or the importance of separation of powers theory is described as the prevention of tyranny and despotic government. Governmental oppression is avoided by dividing official power among different institutions. Again Montesquieu's description of the purpose is the classic statement most often cited.

> When the legislative and executive powers are united in the same person or body, there can be no liberty, because apprehensions might arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. There is no liberty if the judicial power be not separate from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with the violence of an oppressor.[5]

Little has changed in the understanding of the purpose of separation of powers since Montesquieu's time, although concepts of essential fairness, neutrality, and independence have been more recently included as bases for the doctrine. Even so, the doctrine is still consistently described as designed to prevent tyrannical, oppressive, or despotic concentrations of power.

Federal Separation of Powers Not Applicable to the States

The separation of powers implied in the U.S. Constitution is not applicable to state governments. Courts have repeatedly held that the states are free to arrange state governmental powers as they deem appropriate. Only the due process clause of the Fourteenth Amendment places a limit on how

states arrange the powers of government.[6] However, during the late nineteenth century, there was limited speculation that the Fourteenth Amendment might require an express separation of powers statement in state laws.[7] This speculation was never accepted and courts have repeatedly rejected the assertion that the U.S. Constitution requires that the powers of state government be separated.

The only structural requirement imposed on state governments by the U.S. Constitution is that they be republican.[8] Although one framer of the Constitution discussed the meaning of the republican structure in terms usually used to describe the separation of powers, court decisions have repeatedly held that the two are different. In correspondence with John Adams, Roger Sherman wrote that the republican form of government means "a government under the authority of the people, consisting of legislative, executive, and judiciary powers."[9] Courts, however, almost uniformly reject any relationship between the two concepts.

A consequence of the inapplicability of the federal separation of powers doctrine to the states is that there is no uniformly applied doctrine of separation of powers. Each state can be flexible, consistent with due process, in its arrangement of governmental powers and in the meaning and application of separation of powers doctrine. Rather than a unifying doctrine, separation of powers has become a doctrine for diversifying arrangements of power among branches of state governments.

Besides the inapplicability of the federal separation of powers requirement, there are three sources of diversity in the separation doctrine:

- The variety of constitutional language establishing the doctrine,
- The variety of accepted modes of legal analysis applied to separation problems, and
- The individual development of state doctrines through case decisions.

In the constitutional language pertinent to separation of powers, no two states are precisely alike. That some states have express separation clauses and others have none provides an obvious and fundamental distinction. However, the diversity is equally apparent, although more subtle, when comparing the states that possess such provisions. Even in the states that have no separation clauses in their constitutions, vestment clauses (articles which establish the various offices of government or grant basic authority to specific governmental bodies) force state courts to construe dissimilar language.

There are, in addition, several different modes of analysis that are applied by courts to a single separation problem. Case law or constitutional language describing a governmental activity or officer is used to determine the effect of a separation requirement. That is to say, if a state constitution grants the authority to juvenile court to establish a probation department, the courts will assume that the constitution thereby defined a judicial power. For example, governmental activities are analyzed by courts:

- As encroachments on the powers of one branch upon one of the other two,

- As prohibitions found in separation clauses, or
- As intergovernmental distinctions.

Other modes of analysis used by courts are definitional or locational.

Finally, each state's legal history and case law development affects the meaning of separation of powers. Some states appear to apply the doctrine more rigorously than others.[10]

In the following subsections, the three ways of viewing the diversity of state separation doctrines are discussed—explicit separation clauses, vestment clauses, and case law development. The first two sources of diversity are discussed through an examination of specific constitutional language in all states. When discussing case law development, however, individual state legal history and case law development are not emphasized. Rather, eight state court decisions are examined to show how several modes of analysis have been applied to the separation doctrine in the context of juvenile court services.

Separation of Powers Clauses in State Constitutions

The constitutional language establishing separation of powers is found in the specific provisions of 39 state constitutions. In these states, separation clauses typically have one or more of the three following basic elements:

(1) A description of the explicit separation of powers.
(2) A prohibition against exercising certain powers.
(3) Exceptions to either the divisions or prohibitions.

One aspect of the development of the separation doctrine is that the differences in language found in express separation clauses are not always given significance by courts. The description of a division of powers can be construed to be synonymous with an express prohibition, or an express prohibition can be construed to add something not included in a simple division of powers. A tabular summary of certain aspects of separation of powers is contained in Appendix C.

Explicit Separation of Powers

Constitutional descriptions of the separation vary slightly. The language in 28 of the states with express separation provisions describes the powers as separate or distinct. Minnesota's is typical.

> The powers of government shall be divided into three distinct departments: legislative, executive and judicial.[11]

An even briefer mention is made in the constitutions of Michigan and Rhode Island. Similar to Rhode Island, the Michigan constitution states:

> The powers of government are divided into three branches: legislative, executive, and judicial.[12]

Seven states have more complex descriptions of the separation.[13] These constitutions revert to the notion of "magistracy" to describe the separation.[14] The Arkansas provision is typical of this group of constitutions.

> The powers of the government of the state of Arkansas shall be divided into three distinct departments, each of them to be confined to a separate body of magistracy, to wit: Those which are legislative to one, those which are executive to another and those which are judicial to another.[15]

Prohibition of Powers

Besides the formal division of powers just discussed, most separation clauses also contain specific prohibitions on certain exercises of powers. These prohibitions are divided into two categories, depending on whether the prohibition is directed toward institutions or to persons who run them.

Institutional Prohibition Clauses. By their language, this group of state constitutions prohibits branches of government from exercising the powers of the other branches. There are two basic forms to this provision found in state constitutions.

Alabama and Massachusetts have similar forms. The quotation below is from the Massachusetts constitution.

> In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them.[16]

The second form of this institutional prohibition is found in Arizona, Illinois, Oklahoma, and Vermont.[17] The Illinois provision is typical and reads:

> No branch shall exercise powers properly belonging to another.[18]

The New Hampshire provision is unusual, mainly because of the quaintness of its expression. It reads:

> In the government of this state, the three essential powers thereof, to wit, the legislative, executive, and judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free government will admit, or as is consistent with that chain of connection that binds the whole fabric of the constitution in one indissoluble bond of union and amity.[19]

Personal Prohibitions. Most prohibitions found in state constitutional separation of powers provisions are directed at "persons" rather than institutions or departments. Eighteen states have these prohibitions.[20] While the language of these personal prohibitions is similar to that found in the institutional prohibitions, the emphasis appears to be on individuals rather than on the institutions or departments. Michigan's provision is typical.

> No person exercising powers of one branch shall exercise powers properly belonging to another branch.[21]

Five states have a slightly different prohibition, which applies to both individuals and groups of persons. The Texas prohibition is typical.

> No person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others.[22]

That these prohibitions are directed at individuals rather than institutions is obvious in the Mississippi provision which requires that:

> The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.[23]

Three states prohibit both institutional and personal overlaps of power.

The Louisiana provision is typical.

> No one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others.[24]

Exceptions

Twenty-eight of the 39 state constitutions which contain separation of powers provisions permit some form of exception or exclusion. Only 11 of the 39 constitutions do not mention possible exceptions.[25]

Of the 28 constitutions which indicate that exceptions are permitted, 22 of them require the exceptions to appear "expressly" in the constitution.[26]

> No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.[27]

Four constitutions vary slightly in that they do not require the exceptions to appear "expressly."[28] Oklahoma's is typical of the group, with the exceptions appearing in the words "except as provided in this constitution."[29]

Two unusual exceptions appear in the separation of powers provisions of West Virginia and Virginia. West Virginia makes only one specific exception by providing that: "justices of peace shall be eligible to the legislature."[30] Virginia excepts "administrative agencies" from one of its separation of powers provisions.[31]

Some courts have interpreted separation of powers to apply only to the "great functions" of state government. One Florida court enunciated this application as follows:

> The provisions of the Constitution relate to the division and the exercise of the legislative, executive, and judicial powers of government, and not to the definition or declaration of such powers. The mandate is in effect that, . . . the legislative or law-making power, that is vested in the Senate and House of Representatives as the Legislature, shall not be exercised by the governor or by the courts; the executive power conferred upon the governor as Chief Magistrate shall not be exercised by the Legislature or by the courts; and the judicial power that is vested in the courts shall not be exercised by the Legislature or by the Governor.[32]

A consequence, then, is that most activities of government might not be subject to the required separation of powers. The same Florida court explained this consequence.

> All official duties, authority, and functions prescribed or contemplated by law are not necessarily governmental powers within the meaning of the constitutional provisions separating the powers of government into departments.[33]

Stated simply, the Florida approach treats as critical whether or not the activity is one a state constitution places on the governor, the legislature, or the courts. If the constitution does not, then separation of powers does not apply.

Applied to juvenile court services, this mode of analysis has some interesting implications. Obviously, the law has always cast the primary duty for child care on parents and the family. If they failed to adequately provide for their children, charities undertook those responsibilities. Historically, the

protection and care of children were nongovernmental responsibilities. Only during the last century have governments undertaken to protect and care for children; but even these governmental activities do not arise unless there has been a failure or dereliction by nongovernmental persons. All of this is suggestive that providing services to delinquent children might not be considered a governmental power under the philosophies extant at the time state constitutions were adopted.

Vestment Clauses

Having examined the explicit separation clauses and considered the implicit separation of powers, a further step of analysis of state constitutions is necessary. To understand the nature of the separation, it is necessary to also look at how each state constitution embodies the separation in the constitutional articles establishing the officers and institutions which are separated. Typically, these embodiments are found in the executive, legislative, judicial, and related articles of state constitutions.

Within these articles, the central provision is the vestment clause. It is the source of authority establishing the major institutions of government. These clauses are the principal sources of applying the separation of powers doctrine in states which do not have specific provisions. Even in states with specific separation provisions, vestment clauses also appear in constitutions and are utilized by courts in considering separation issues.

Judicial Power

All states except Massachusetts have judicial vestment clauses.[34] Ohio's judicial vestment clause is typical and states:

> The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.[35]

There are two principal elements in the 49 judicial vestment clauses: identification of the courts vested with judicial powers and legislative powers relating to courts.

Identification of Courts. The first principal element of judicial vestment clauses is the identification of the courts in which power is vested by the constitution. These are the constitutional courts, in contrast to statutory courts established by acts of the legislature pursuant to its powers under the constitution. Sometimes other constitutional courts are established in a judicial article but not mentioned in the vestment clause.[36] Whether this is significant is not apparent.

The method of identifying courts in vestment clauses is usually accomplished by naming the court. Because of different court histories and traditions in each state, courts are denominated in more than 30 ways in state judicial vestment clauses. Nonetheless, these clauses can be clustered into three groupings.

The first group of constitutions identifies only one court, typically the

state supreme court, leaving other courts to legislative enactment. Oregon's provision is typical of the five states which have adopted this approach.

> The judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law.[37]

Twenty-three of the remaining constitutions vest judicial power in either two or three named courts.[38] The identification portion of Hawaii's vestment clause is typical.

> The judicial power of the State shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish.[39]

Twenty-one remaining constitutions vest judicial power in a multiplicity of named courts.[40] The Pennsylvania provision is typical of this group. The identification portion of that vestment clause reads:

> The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace.[41]

Occasionally, an exception can be found to the vesting of what might be construed to be a judicial power, namely, the granting of impeachment powers, typically to a legislative body.[42]

Only one constitution among all the 50 states identifies a juvenile court in the vestment clause. In Colorado, the juvenile court for the city and county of Denver is identified by name.[43]

Legislative Powers Relating to Courts. The second typical element of judicial vestment clauses is the grant of authority to legislatures to establish courts in addition to the courts specifically mentioned. Variations also appear in the legislative vestment clauses, which typically include legislative authority to alter district boundaries or to establish officers or administrative agencies vested with judicial power.[44]

There are two patterns to these grants of legislative power in judicial vestment clauses. One pattern, found in the majority of state constitutions, is the authority to establish courts other than those mentioned in the vestment clause. Ten vestment clauses grant a broad legislative authority. Alaska's vestment clause is typical of this group.

> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature.[45]

Similar grants of broad legislative authority appear in judicial vestment clauses of 23 other state constitutions; however, rather than giving a legislature broad general authority to establish courts, these 23 clauses limit legislative authority to establishing additional courts which are subordinate or inferior to the state supreme court or to the enumerated lower courts.[46] The Kansas judicial vestment clause is typical of this group.

> The judicial power of this state shall be vested in a supreme court, district courts, probate courts, justices of the peace, and such other courts, inferior to the supreme court, as may be provided by law.[47]

The second pattern found in judicial vestment clauses expresses legislative authority over named or specified courts. Nine constitutional clauses vest legislatures with authority regarding named or specified courts, such as municipal courts and a few other named miscellaneous courts. An example is North Dakota.

> The judicial power of the state of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.[48]

Only the vestment clauses of the California, Florida, Illinois, Kentucky, Louisiana, Maine, Mississippi, Missouri, North Carolina, and West Virginia constitutions do not grant the legislatures some authority over courts.

While most states grant legislatures some authority over courts in the judicial vestment clauses in the patterns outlined above, Massachusetts has a distinct provision regarding legislative authority regarding courts. In Massachusetts the term "general court" refers to the legislature.

> The general court shall forever have full power and authority to erect and constitute judicatories and courts of records, or other courts, to be held in the name of the commonwealth.[49]

Since this is the only constitutional authority in Massachusetts regarding the judicial power, and no judicial vestment clause appears, Massachusetts presents an atypical situation for analyzing how separation of powers impacts on juvenile court services.

Besides the general patterns found in 49 judicial vestment clauses, there are four other elements that are sometimes found in these clauses. These variations found in vestment clauses establish unified court systems,[50] prohibit certain legislative actions regarding courts,[51] create exceptions,[52] and grant judicial powers to persons rather than courts.[53] A tabular summary of certain aspects of judicial vestment clauses is contained in Appendix C.

Legislative Power

In form, legislative articles in state constitutions parallel judicial articles. There is first a vestment clause followed by sections which detail the institutions in which the legislative power is vested. The Utah constitution is a typical example of 47 of these state constitutional vestment clauses.

> The legislative power of the state shall be vested: In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.[54]

The most common court-related provisions found in legislative articles involve prohibitions on legislative enactments affecting courts. These, however, almost uniformly take the form of prohibitions on local, special, or private legislation affecting a particular court or proceeding.[55] They are basically prohibitions on a legislature substituting its judgement for that of a court in matters before the court. An example of such a prohibition is found in the Alabama constitution which prohibits the legislature from, among other acts, "providing for the adoption or legitimatizing of any child," "providing for a change of venue in any case," and "fixing the punishment of crime."[56]

These prohibitions, quite common in state constitutions, help to explain the distinction between legislative and judicial power by focusing attention on the distinction between general laws which legislatures can enact and the specific cases under which only a court is permitted to apply the general law.

Of all the express prohibitions on legislative powers, only one, appearing in the West Virginia constitution, might be applicable to the question of juvenile court services.

> The legislature shall not confer upon any court, or judge the power of appointment to office, further than the same is herein provided.[57]

Executive Power

Like the judicial and legislative articles, almost all executive articles of state constitutions contain vestment clauses.[58] Typically, the clauses vest executive power in the governor as "the supreme executive power," "executive power," or "chief executive power," or the governor is merely described as the "chief executive officer" or "supreme executive magistrate."[59] Thirty-four states describe the vested executive power as that of state government. Maryland's is an example.

> The executive power of the state shall be vested in a governor.[60]

Twelve states vest only a general executive power in the governor without mentioning state government. The Wyoming executive vestment clause is an example.

> The executive power shall be vested in a governor.[61]

Because of the wording in executive vestment clauses, one is tempted to question their applicability to cities or counties. Such constitutional provisions, in designating the governor as the state's chief executive, never refer to either local officials or to local government. At the same time, local governments are political subdivisions of the state and its officials are governed by state law. As will be seen in the following discussion, the applicability of the separation doctrine to local government is normally assumed by both the courts and the parties.

In some states, the separation of powers doctrine is applicable only to state government. In these states, county or municipal governments, or both, are not affected by a separation clause. In other states, all levels of government are affected by the separation of powers doctrine.

Where local governments are exempt from the separation, the issue of the proper location of delinquency-related services will turn principally on whether juvenile courts or a challenging executive agency are viewed as state or local agencies. If juvenile courts are considered local courts under state law, or if service agencies for children or district attorneys are all considered local governmental units, then there is no separations issue. In the one case where it was raised, in conjunction with juvenile court services, the California Supreme Court held that the doctrine of separation applied only to state offices.[62] Yet, the answer is not at all clear and may require greater judicial scrutiny before it can be laid to rest.

Case Law Development of the Separation of Powers Doctrine

The case law applying the separation of powers doctrine to juvenile court services is largely a development of intragovernmental conflicts, principally between county commissioners and juvenile courts. It is rare for a private party to raise a separation question regarding juvenile court services. This body of case law, then, is principally instructive of how the branches of government must share control over juvenile court services when no direct question concerning individuals is involved. That characteristic of the case law is somewhat surprising because the uncontradicted, underlying purpose of the separation doctrine is to protect individuals from tyrannical concentrations of governmental power.

For juvenile court services, a consequence of this line of case law is that there are highly refined technical holdings regarding the employment of court services personnel, and the conditions of such employment. Fine distinctions and analogies are made, and prior decisions are consulted. Yet, in all of the cases, the distinctions and analogies are never more than dicta, rationales used to fit the decisions into the legal traditions of a state. Even then, the dicta are not necessarily applicable when an individual invokes the protection of the separation doctrine against a forbidding concentration of governmental power. Although the juvenile court cases suggest that the separation of powers doctrine does not create a personal right, none clearly so holds. But, as the *Owens* case which is discussed later indicates, individuals might not achieve favorable results when they test the constitutionality of juvenile court services under the separation doctrine.

Through an ironic trickling-down process, individuals may receive personal benefits from institutional conflict. Separation of powers, perhaps, does not create a right to be protected from a governmental tyrant; it only arranges the powers of government to minimize the opportunities for tyranny.

A second feature of juvenile court services cases is that most of them analyze juvenile court services in terms of probation. The broad spectrum of social services found in modern juvenile courts today developed from the early generalist probation officer, who was assigned broad duties by statute and individual judges. Only a few of the cases touch on the more specialized services, such as intake, found in courts today.

Intake

In *State* v. *Juvenile Division, Tulsa County District Court*, a juvenile court-operated intake procedure was challenged as violative of the separation of powers provision of the Oklahoma constitution.[63] The case arose when a prosecutor filed a delinquency petition. The juvenile court dismissed the petition, apparently because the prosecutor had failed, prior to filing, to seek the juvenile court's approval. The Oklahoma statute required:

> Whenever any person informs the court that a child is within the purview of this act, the court shall make a preliminary inquiry to determine whether the interests of the public or of the child require that further action be taken. Thereupon, the court mr

make such informal adjustments as is practicable without a petition or may authorize a petition to be filed by any person.[64]

Following the juvenile court's dismissal of the complaint, the prosecutor appealed. The principal issue raised on the appeal was whether the statute authorizing juvenile court control of intake was constitutional according to the Oklahoma constitution. The provision, typical of many states, reads:

> The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial department of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.[65]

The prosecutor claimed that the juvenile intake procedure was unconstitutional because the juvenile court, as an arm of the judicial branch, is improperly delegated authority which is exclusively within the province of the executive branch. The state contended the prosecuting attorney was the only arm of the executive branch authorized to prosecute juvenile cases.

The Oklahoma Court of Criminal Appeals rejected the prosecutor's claim of unconstitutionality. It held that:

- The powers of government can be blended,
- The constitution does not expressly grant an intake function to the prosecutor,
- The legislature can assign powers to an appropriate branch of government, and
- Juvenile courts are special courts.

> Certainly the theory of separation of the three powers of government does not mean that the distinction between the three can be carried out with precision and thus there may be a certain degree of blending in the three powers. . . . Where a particular power cannot be conclusively categorized as either Executive or Judicial and when such powers are not expressly granted to either the Judicial or Executive Branch by the Constitution, then the Legislature may properly determine the Branch to whom the power is to be entrusted and the manner in which it will be exercised, for the exercise of the power may be incident and necessary to the agency or department's function. Further, we note the powers and authority of the prosecuting attorney can be enlarged or diminished by the Legislature. See Article XVII, Section 2, of the Oklahoma State Constitution.[66]

As to the special nature of the juvenile court justifying its control of intake, the court wrote:

> The court-related intake function, as delineated in the aforementioned statutes, was legislatively implemented to achieve the important objective of the screening of juvenile cases. The judge, as Pater Patriae, functions neither exclusively as a judicial member nor exclusively as an executive officer. No encroachment upon the Executive Branch occurs in the discharge of this duty. The Juvenile Court is the legally trained and proper discretionary authority who must balance the societal interests in the case against those of the child, in light of the misconduct charged, to determine whether or not informal adjustment or diversion is preferable rather than the institution of formal juvenile proceedings. Such discretion is incident and necessary to facilitate and effectuate the purpose of the Juvenile Code which is that the care and custody and discipline of the child shall approximate, as nearly as may be, that which should be given by its parents, and that as far as practicable, any delinquent child shall not be treated as a criminal.[67]

A challenge somewhat similar to that in the *Tulsa* case appears in *State* v. *Owen*, where a child challenged, on due process and separation of powers principles, a Washington state statute "permitting probation personnel to participate in the investigatory, accusatory and adjudicatory processes of cases."[68] The challenge was rejected in an almost summary decision on the basis that such participation "was not an unlawful delegation of executive authority to the judiciary."

The *Owen* and *Tulsa* cases both rejected attacks based upon the separation argument, despite the fact that Washington has no explicit separation of powers in its constitution. As a result, it is impossible to determine from these cases whether such a clause substantially adds anything to the application of the doctrine.

Probation

The following group of cases are principally interesting for their various characterizations of probation officers. Each one shows a chain of reasoning which courts have used in relating juvenile court services to separation of powers principles.

The first case, *Witter* v. *Cook County Commissioners*, involved the first juvenile court act in the country.[69] The case arose when John H. Witter, the head juvenile court probation officer, was suspended by the Cook County Board of Commissioners after three years of service. The board also filed charges against him with the civil service commission. Subsequently, the civil service commission confirmed the board's suspension of Witter and fired him.

Witter sought judicial review of his discharge and, on separation of powers principles, claimed that only the juvenile court had authority to fire him.

The portion of the Illinois juvenile court law under which Witter had been hired provided that the juvenile court could determine the number of probation officers to be employed during each year. Following this determination, the court was to:

> Notify the president of the board of county commissioners or board of superiors of the number of probation officers so determined, and the said probation officers, including the head probation officer, shall be appointed in the same manner and under the same rules and regulations as other officers and employees in the service of the county under the board of commissioners or supervisors.[70]

The court, after citing the Illinois separation of powers clause and several case definitions of executive, legislative, and judicial powers, stated the issue of the case:

> The question to be determined in this case is, into which class of these different powers and duties does the office of probation officer fall? . . . The question is not to be decided upon the mere fact that the duties of probation officers are performed in or in connection with the court.[71]

In deciding the question, the court reasoned that (1) there is an

overlapping of the powers of government and (2) the probation officer is a necessary assistant to the juvenile court. As to the overlapping of powers, the court wrote:

> The three departments aid in the administration of the government, each one performing its different functions, and article 3 does not mean that the legislative, executive and judicial powers shall be kept so entirely separate and distinct as to have no connection with or dependence upon each other. . . . It is a legislative function to provide places for holding courts and to provide for the expenses of the judicial system and the compensation of judicial officers, and the Legislature may invest the board of county commissioners with the care and custody of property belonging to the county, although the property is used in the exercise of judicial power by the judicial department.[72]

When this statement is compared with the statement in the *Tulsa* decision, a difference in the perspective of the two courts is evident, although the results were the same. The *Tulsa* court said that intake represented a "blended power," because it was unable to distinguish whether intake was executive or judicial in nature. The *Witter* court, on the other hand, began its reasoning with a certainty that a particular power is either judicial, executive, or legislative.

> A sheriff and clerk are essential to a court and to the exercise of judicial power, but the one performs executive, and the other clerical duties merely. The judicial power is exercised by the judge, with such assistants as he may lawfully have to aid him in adjudicating upon and protecting the rights and interests of individuals.[73]

The second basis for the *Witter* court's decision was that the juvenile court has a special purpose. Unlike the *Tulsa* case, where the special purpose is found within the overall language of the Oklahoma juvenile code, the *Witter* court likened the special purpose in the juvenile court's outgrowth to an English court of chancery.

> The juvenile court exercises a jurisdiction of the court of chancery which is of very ancient origin, and which extends to the care of the persons of infants within the jurisdiction and to their protection and education.
>
> This court long ago declared it to be a power, which exists in every well-regulated society, to see that infants within the jurisdiction of the court are not abused, defrauded, or neglected, and that they shall be reared and educated under such influences as will make them good citizens, and that this power is vested in the court of chancery representing the government. . . .
>
> The parental care of the state is administrated by the juvenile court, and that court performs a purely judicial function in the hearing of cases brought before it.[74]

Having described the special nature of the juvenile court, the court then described the significance of the probation officer to the juvenile court.

> The neglected, dependent, or delinquent child ordinarily has no means to employ counsel. It would be impossible for the court to make personal investigation of each case so as to act intelligently, and it is essential that the court act only upon a thorough investigation of the facts and a consideration of every circumstance that will enable the court to enter a just decree. Accordingly it has been deemed wise to provide by statute for one or more assistants to the court under the name of probation officers. . . . It is the duty of the probation officer to make such investigation as may be required by the court, to be present in court in order to represent the interest of the child when the case is heard, to furnish to the court such information and assistance as the judge may require, and to take such charge of any child, before and after trial, as may be directed by the court. The investigation to be made by the probation officer is the investigation of the court through that officer as his assistant, by whom he performs the judicial duties and exercises judicial power. Whenever a minor is a party to a proceeding in any court, it is the duty of that court to see that the minor is properly represented by guardian or next friend. Courts of chancery have always appointed guardians ad litem for minors who are parties to suits and controlled them by compelling performance of their duties. The probation officer is practically a guardian ad litem for each child brought into the court and has enlarged duties under any statute. Like attorneys, masters in chancery, receivers, commissioners, referees, and other similar officers, probation officers are mere assistants of the court in the performance of judicial functions.[75]

Since the issue in the case was whether the juvenile court or the county commissioners could fire the chief probationer, the conclusion was not based upon whether the probation department was properly in the court; rather, the conclusion went to the judicial power of appointment.

> The power to appoint and remove such officers is necessary to the independent exercise of judicial power and the separation of the judicial department from the other departments of the government which are prohibited from exercising its functions. The judicial power includes the authority to select persons whose services may be required as assistants to the judge in the performance of judicial duties and the exercise of judicial power.[76]

The *Witter* court recognized only one permissible legislative encroachment on the juvenile court's ability to hire staff—the legislature's authority to set standards for the personnel hired.

> Undoubtedly the legislative department may, in the legitimate exercise of legislative power, prescribe reasonable qualifications which will exclude improper persons, or may make removal from office a consequence of violation of law; but the judicial department could not be separate from the other departments of the governments and free from interference in the exercise of judicial functions if it must accept its assistants from another department or a commission which makes the selection.[77]

In the 65 years since the *Witter* decision, juvenile court operations have altered. Whether this makes the language of *Witter* inapplicable to a modern-day analysis is not clear.

Another early case discussing separation of powers in the context of juvenile probation is *Nicholl* v. *Koster*, a 1910 California decision.[78] The case arose when the auditor for the city and county of San Francisco refused to pay the salary of an assistant probation officer. The probation officer brought a claim for his salary and the auditor raised two defenses. The auditor claimed that a statute authorizing the juvenile court to appoint probation officers was void because it improperly gave the juvenile court executive powers. Second, he claimed that salary matters were confided to local governments under the California constitution, contrary to legislation which set the salaries of probation officers.

In upholding the statute as constitutional, the *Nicholl* court reasoned that (1) the juvenile court is a special court and that (2) the separation of powers principle applies only to state offices. The court wrote that to

accomplish its purpose it:

> gives additional jurisdiction and power to superior courts of the state and provides the officers necessary for the execution of that jurisdiction and power. It is an exercise of the police powers of the state, through the judicial department. It is a matter which concerns the whole state as much as any other extension of the judicial system.[79]

To the auditor's challenge that the probation officer's duties were properly a role for sheriffs, the *Nicholl* court observed that the duties of a probation officer:

> are of a character not before imposed upon sheriffs. The probation officer is required to inquire into the antecedents, character, family, history, environments, and cause of delinquency of every child brought before the court, to be present in court and represent the interests of such child upon the hearing as to its being a delinquent, to give the court such information and assistance upon that hearing as the court may require, to take charge of the child before and after the hearing if so ordered, and in some circumstances, he is required to act in a capacity similar to that of a guardian of such child. Section 5 of article 11 gives the Legislature power to create such other county offices and provide for the appointment of persons thereto, as public convenience may require, in addition to the officers specifically named therein. For the performance of these new duties, of a character different from those usually imposed on sheriffs, the Legislature undoubtedly had the power, under this constitutional provision, to create a new county office, and provide for the appointment of persons to perform the duties thereof who would be county officers.[80]

The court then went on to treat the purely separation of powers issue. Here, the distinction is made that juvenile court services are local and only state offices need be separated under the constitution.

> The remaining objection is that the appointment of these probation officers is an act of the executive department of the state, and that the judge of the superior court, being an officer of the judicial department of the state, cannot be vested with power to exercise functions belonging to the executive department. Article 3 of the Constitution provides that "no person charged with the exercise of powers properly belonging to one of those departments shall exercise any functions appertaining to either of the others, except as in this Constitution expressly directed or permitted." In *People* v. *Provines*, 34 Cal. 525, this court decided that this provision of the former Constitution, which is in the identical language above given, referred to the respective departments of the state government, and not to the local county and municipal governments which the Legislature might establish. The superior court is one of the courts of the state, and the judge of that court may perhaps be classed as a person charged with the exercise of powers belonging to the judicial department of the state. But the probation officers in question are not officers of the state government. They are minor officers of the local county government. The appointment of such officers is not necessarily a part of the duties or functions of the executive department of the state government, according to the system outlined in the Constitution. Perhaps the Legislature, after creating such county offices, could authorize the state executive to appoint persons to fill them, but it is no part of the constitutional scheme of government that such appointments should be made by state officials. The judge of the superior court, when he appoints these probation officers, does not exercise functions intended to be described in the Constitution as those appertaining to the executive department of the state. It is apparent that the act does not conflict with this provision of the Constitution.[81]

Then, further justifying juvenile court control over probation officers, the court considered the doctrine of inherent powers, similar to the guardian analogy made in *Witter*.

> Furthermore, the appointment of persons to discharge duties of this character, acts necessary to be done to enable a court to transact its judicial work in an orderly and expeditious manner, or necessary or even merely convenient to the exercise of its jurisdiction, has always been recognized as a power incidental to the judicial office. The Legislature may indeed provide for the appointment of such assistants of the court by the executive department, or by election of the people, and thus relieve the court of the burden of choosing such persons. But if the Legislature or the Constitution should fail to provide such persons, a court invested with jurisdiction would have all the powers necessary to its convenient exercise, and could appoint such assistants as might be required. And doubtless the Legislature can authorize the court to appoint such assistants. Instances are not wanting. The Supreme Court is authorized to appoint bailiffs, secretaries, phonographic reporters, a librarian, and janitors. Code Civ. Proc. Section 265; Pol. Code, Sections 769, 2314; Code Civ. Proc. Section 47. The district courts of appeal are authorized to appoint a stenographer and a bailiff. Pol. Code, Section 758. These powers are not given to the courts by the Constitution. They have never been considered a part of the functions of the executive department of the state. The judges of the superior courts appoint receivers, referees, phonographic reporters, and guardians, each of whom may be said to be assistants of the court, necessary to the exercise of its jurisdiction. The functions of these probation officers are in some respects similar to those of guardians, in others like those of a bailiff or sheriff, and in others not unlike those of an attorney. The appointment of persons to discharge such duties is clearly not a necessary part of the functions of the executive department of the state government.[82]

The *Nicholl* Court concluded its reasoning by noting that there was no constitutional provision regarding the appointment of probation officers.

> Indeed, it may be said that the selection of officers is not, per se, abstractly speaking, an exclusive function of the executive department. It may be done by the people by election. The executive department has power to appoint the executive officers pertaining thereto, if no provision for their election is made, and in that case such appointment will be a part of the duties of that department. But if assistants are required for the judicial or legislative departments, and no provision is made for their election, there is nothing in the Constitution that can properly be construed to require that the appointment of such assistants must be committed to the executive department. There is much force in the concurring opinion of Justice Sawyer in *People* v. *Provines*, supra, page 541 of 34 Cal., that the appointment of an officer is not strictly or essentially either a legislative, executive, or judicial act, within the meaning of article 3 of the Constitution.[83]

State v. *St. Louis County* is the only case which alludes to the function of detention.[84] The case arose out of a conflict between the juvenile court and the county council over who should set the salaries for the juvenile court personnel. In upholding the juvenile court's authority to set the salaries, the court reviewed state constitutional provisions regarding courts and discussed the issue in terms of a juvenile court's inherent powers.

> A conclusion contrary to the views expressed in the foregoing Noble County Council case would vest in the legislative department of government the power to determine the extent to which the judicial department could perform its judicial functions. This could be done by limiting the number of employees, regardless of need, or by providing for no employees at all. This result could be avoided only if the judicial department has the inherent power to provide personnel necessary for the performance of its functions. Of course, such inherent power in the judicial department should be exercised only on occasions where necessary personnel and facilities are not provided

by conventional methods. When, however, conventional sources do not provide necessary funds, the court does have inherent authority to do those things essential to the performance of its inherent and constitutional functions.

We are of the opinion that within the inherent power of the Juvenile Court of St. Louis County, subject to the supervisory control of the Circuit Court of St. Louis County (Art. V. Sections 4, 15 and 28, Const. of Mo., 1945, V.A.M.S.; Section 478.063, RSMo 1959, V.A.M.S.; and State ex rel. MacNish v. Landwehr, 332 Mo. 622, 60 S.W.2d 4), is the authority to select and appoint employees reasonably necessary to carry out its functions of care, discipline, *detention* and protection of children who come within its jurisdiction, and to fix their compensation. In order that the Court may administer justice under the Juvenile Code, it is essential that it control the employees who assist it.[85] (Emphasis added.)

A similar case involving a conflict over authority to fix juvenile probation officers' salaries is found in *State* v. *County Court of Kanawha County*.[86] It is unusual in that it is the only case which limits a juvenile court's control over its probation personnel, albeit the limitation only runs to salaries. The case arose when the county commission (called the county court in West Virginia) refused to pay the salary of the juvenile court's chief probation officer. The juvenile court had ordered the salary paid under a statute which provided that:

> The chief probation officer shall receive as compensation for his or her services an annual salary of not less than four thousand dollars nor more than six thousand dollars to be determined by the judge. Assistant probation officers and medical assistants shall receive as compensation an annual salary of not less than three thousand nor more than forty-eight hundred dollars to be determined by the judge.[87]

The basis for the county commission's refusal to pay was summarized as follows:

> The function of fixing the amounts of salaries for the officers and employees is primarily administrative, for legislative determination; and that any enactment of the Legislature which attempts to vest administrative functions in the judicial department of the government is unconstitutional, and void, as being violative of Article V of the Constitution of West Virginia, which reads: "Section 1. The Legislative, Executive and Judicial Departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature."[88]

After reviewing several West Virginia decisions, the Court of Appeals noted the difficulty of deciding what is properly the part of each branch of government and its reluctance to base its decision on a juvenile court's inherent powers:

> It seems apparent, and is pointed out in numerous decisions of this Court, that there cannot be, in the very nature of things, any exact delineation of judicial, legislative or executive powers. There must be some mingling or overlapping. The overall purpose of the Constitution is to create a workable form of government, and to deny to any one of the three departments any function actually necessary for the operation of that department would effectively render the form of government impotent. The Constitution itself in effect provides exceptions to the separation of departments made by Article V. For example, county courts are vested with certain judicial powers and "such other duties, not of a judicial nature, as may be prescribed by law," and Article V itself provides that justices of the peace may serve in the

> Legislature. . . . This Court, however, is not warranted in making exceptions thereto merely because the Founders thought it wise to do so in certain circumstances.[89]

The Court of Appeals then concluded that the fixing of salaries was properly a legislative power which a juvenile court (in this case the Domestic Relations Court) could not exercise. Then, in dicta, the court commented on the propriety of the probation department being attached to the Domestic Relations Court:

> We make it clear, however, that only that part of the Act under consideration which relates to the fixing of salaries by the Domestic Relations Court of Kanawha County is held unconstitutional. The Legislature intended to create the Domestic Relations Court of Kanawha County and to vest it with jurisdiction over the subject matters indicated, and to make it a workable, effective part of the judicial system. The mere fixing of salaries by that court is not essential to the proper functioning of the court. That court will function as intended by the Legislature whether salaries of the officers involved are fixed by that court or by some other properly constituted authority.[90]

Another West Virginia case, *State ex rel. Hall* v. *Monongahela County*, arose when the county refused to pay its juvenile court's probation officer.[91] Part of the county's refusal was based on inappropriateness under separations doctrine for attaching a probation officer to the court. The court awarded payment to the probation officer. The court distinguished probation officers from sheriffs and then identified probation officers as exercising hybrid powers.

> The final objection goes to the right of the juvenile court to appoint probation officers, and is based upon the theory of inhibition against encroachment by any one of the three departments of the state government, upon the powers of the others. All authority, however, recognizes the impossibility or impracticability of wholly avoiding every form of encroachment by each department upon the province of the others. They have a common purpose, the due and orderly prosecution of the objects for which all government is ordained. No one department can fully and completely fulfill or discharge the duties allotted to it without at least in part exercising some function belonging to one or both of the others. But upon the construction given to the statute the juvenile court may properly be authorized to appoint assistants when necessary to the due and complete accomplishment of the powers conferred upon it.[92]

Finally, the court, using language typical of inherent powers decisions, indicates that probation officers are necessary for the juvenile court to administer justice.

> Commissioners in chancery and for the sale and conveyance of real estate, receivers, and other functionaries, are necessary to enable courts to effectuate the administration of justice. The Governor appoints his private secretary and stenographer to aid in the discharge of his duties, and the state pays for the service; each House of the Legislature elects a clerk, sergeant at arms, and committee clerks and pages to render it like aid and assistance; and so may each of the state officers for the same purposes—the salaries of the several appointees being chargeable to and paid by the state. Some of them have the power to apprehend for cause, when ordered so to do by the body whose officer he is. As an illustration of the essential character of some instrumentality to assist in promoting justice by courts established for that purpose are jury commissioners, whom circuit courts may appoint and whose compensation is fixed by law and paid by the county court. The act granting this power was upheld in *State* v. *Mounts*, 36 W. Va. 179, 183, 184, 14 S.E. 407, 408 (15 L.R.A. 253). They go, the court said, "to make up a

part of the judicial machinery such as commissioners in chancery," etc. The California and Illinois cases cited, though the former are not in accord with the latter on other legal propositions, agree in sustaining the power vested in courts to appoint probation officers, as and when necessary, as assistants in the administration of the law having for its purpose the care and protection of dependent, neglected, and abandoned children.[93]

Miscellaneous Issues

Jones v. *Alexander* was a taxpayer's suit which challenged the constitutionality of a Texas statute which makes juvenile judges members of a Juvenile Board with the following duties: (1) to exercise supervision over minors residing or found in the county who might be dependent, neglected, or delinquent; (2) to obtain information concerning the welfare of such minors; and (3) to direct such action by probation officers to be appointed by the judges and such action by courts and persons having custody of such minors as might be deemed proper.[94]

The taxpayer challenged the juvenile judges' participation on the board as violating Texas' constitutional provisions regarding separation of powers and a prohibition against dual office holding. In upholding the juvenile judges' participation on the board, the Texas court treated the dual office prohibition and the separation of powers clause as related.

The court first noted the relationship of juvenile courts to chancery jurisdiction.

> The welfare of minors has always been a matter of deep concern to the state. In England it was one of the most important branches of equity jurisdiction and frequently exercised by the courts of chancery.[95]

The court then reviewed examples of additional "duties not strictly judicial" which the legislature had imposed upon Texas courts. This is a variation on the overlapping powers analysis found in *Witter*, where the court, without citing a basis, defines duties as either judicial, executive, or legislative. Concluding that the additional duties assigned to juvenile judges were compatible with the court's judicial duties, and that the legislature could assign juvenile judges to the Juvenile Board, the court wrote:

> Unless the duties placed upon the district judges by virtue of this act create more offices than one, or subject them to the rule that they cannot hold two or more offices at the same time, or that the additional duties imposed are incompatible with their other duties conferred upon them by law, then the act cannot be condemned. The duties assigned by this act partake of the same general characteristics of other duties imposed by law. The duties assigned are made coterminous, in that the district judge ceases to sit as a member of the juvenile board when his term of office expires.
>
> Using the plain language of the Constitution, which provides that the district court shall have "original jurisdiction and general control over ***minors under such regulations as may be prescribed by law," as a basis upon which to plant the validity of article 5139 et seq., which imposes additional duties upon district judges in certain counties for which extra compensation will be allowed, and when considered in connection with the many legislative acts imposing many other duties not strictly judicial upon district judges and the decisions of our courts bearing upon this question, we are unable to find any sound reason for holding that this act contravenes section 40 of article 16 of the Constitution or of any other provision of the Constitution.[96]

DUE PROCESS

The due process clause was not part of the initial U.S. Constitution. It became incorporated into the Constitution in 1791 as part of Amendment V which, together with nine other Amendments adopted at the same time, became known as the Bill of Rights. Amendment V reads as follows:

> No person shall be held to answer for a capital, or otherwise infamouse crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.[97] (Emphasis added.)

Another one of the Bill of Rights became important in interpreting the Fifth Amendment a number of years later, when the U.S. Supreme Court was asked to apply the due process clause to state law. The Court held that, because of Amendment X, the Fifth Amendment only applied to the U.S. government and not to the states.[98] Amendment X provided:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[99]

As a consequence, an additional provision, part of three Civil War amendments, was passed in 1868 which extended the protections of due process to circumstances arising under state law. The following provision of Amendment XIV is the due process clause normally at issue in any discussion involving state laws:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shal any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*[100] (Emphasis added.)

Since the *Gault* case in 1967, application of the Fourteenth Amendment to juvenile court cases has become commonplace in America. Yet, there has been only little case law development addressing the issue of juvenile court operation of services. It is not surprising. The due process clause has historically been associated with the legal processes surrounding hearings or trials. It would apply, for example, to questions related to the right to notice or the right to counsel. In the present case, however, the applicability of due process is extremely different. The sole issue of concern here is whether it is constitutionally significant that a juvenile court judge administers or controls the social services provided to youth who appear in court. Is the chance so great that a juvenile court's operation of social services will taint the legal process that social services should be removed entirely from the administrative structure of the court? Alternatively, Is social services delivery to children potentially so intrusive, or are the familial interests affected by social services so fundamental, that the due process clause requires judicial oversight at every step of the service delivery process?

From the decisions that are considered below, it appears likely that the due process clause does not require a complete separation between juvenile courts and social services. States appear to possess great flexibility under the due process clause in how they arrange their governmental powers. Both the authority of courts to determine the facts and to apply the law, and the power of government to deliver services (whether that power is inherently judicial or executive) are aspects of states' rights under the U.S. Constitution. In the cases to be discussed, there appears to be no basis for concluding that a per se rule of invalidity will develop.

Nonetheless, the due process clause does have some impact on the structural arrangement of juvenile courts and social services. The cases outline specific attributes of the arrangement of governmental powers that the due process clause forbids. While they do not add up to a per se rule of unconstitutionality, it is conceivable that some aspect of the relationship could be successfully challenged. It would probably arise from either the particular facts of a case or from the parochial language of a state code.

U.S. Supreme Court Decisions

The U.S. Supreme Court, in its juvenile cases, has historically treated the fact that juvenile courts provide social services. This results, in part, from the fact that no case has squarely attacked the due process implications of court social services. It is likely that the absence of comment by the U.S. Supreme Court also results from the assumed recognition that juvenile courts are necessarily different or special courts. Comment that does appear in the cases is directed at how a court performs its social services functions and not at the fact that the court performs them at all. Language from the *Kent* case is illustrative of the posture of the U.S. Supreme Court.

> There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation.[101]

Another example of this posture is found later in the *Kent* opinion regarding the "full investigation" required by a District of Columbia law, and apparently conducted by the court's probation staff The *Kent* Court wrote:

> Accordingly, we hold that it is incumbent upon the Juvenile Court to accompany its waiver order with a statement of the reasons or considerations therefor. We do not read the statute as requiring that this statement must be formal or that it should necessarily include conventional findings of fact. But the statement should be sufficient to demonstrate that the statutory requirement of "full investigation" has been met; and that the question has received the careful consideration of the Juvenile Court; and it must set forth the basis for the order with sufficient specificity to permit a meaningful review.[102]

Statements such as these are, of course, not holdings that address the application of due process to the delivery of delinquency-related services, but they do illustrate a tacit recognition that juvenile courts ordinarily provide these services.

Kent does, however, have some potentially instructive language for the limited due process question considered here. In discussing its holding that the juvenile's counsel was entitled to the court's case records, the Court observed:

> There is no irrebutable presumption of accuracy attached to staff reports. If a decision on waiver is "critically important" it is equally of "critical importance" that the material submitted to the judge—which is protected by the statute only against "indiscriminate" inspection—be subjected, within reasonable limits having regard to the theory of the Juvenile Court Act, to examination, criticism and refutation. *While the Juvenile Court may, of course, receive ex parte analyses and recommendations from his staff, he may not, for purposes of a decision on waiver, receive and rely upon secret information, whether emanating from his staff or otherwise. The Juvenile Court is governed in this respect by the established principles which control courts and quasi-judicial agencies o, the Government.*[103] (Emphasis added.)

The context of this statement is the Court's consideration of access to records for a waiver hearing. The distinction, however, between permissible "ex parte analyses and recommendations" and the forbidden receipt and reliance on "secret information" is at least suggestive that limits must exist between the court and its relationship to its own services.

More interesting is the invocation of a body of established principles for "courts and quasi-judicial agencies of the Government." Critics of juvenile court services frequently invoke due process principles found in adult criminal cases and ignore the less stringent principles applicable to these quasi-judicial agencies of government.[104] Advocates for the parens patriae model of juvenile courts can be expected to rely upon principles which might more properly be reflective of quasi-judicial, public agencies. The Supreme Court, however, has simply given no concrete direction as to which body of cases is more applicable to juvenile courts.

The only intimation from the U.S. Supreme Court that the issue here considered is significant is found in a memorandum of dissent filed by Mr. Justice Douglas in a case from Pima County, Arizona. His dissent was filed because of the Court's denial of the appeal in a juvenile case which challenged court operation of services on the grounds of due process. He wrote in his dissent to the appeal's dismissal:

> When the appellant here was denied the right to trial by jury, he was not even afforded the alternative available to an adult charged with the same offenses—trial before a judge not involved in the prosecutorial process. Juvenile judges, unlike the judges in the State's adult criminal courts, are responsible for the appointment and supervision of the prosecutorial staff responsible for proceeding against juveniles. The court assigns juvenile officers to receive complaints alleging delinquent conduct, directs what dispositional investigations the officers shall make, appoints the chief officer who then serves at the judge's pleasure, and controls through power of approval the appointment of all other prosecuting personnel.
>
> The appellant was denied the right to jury trial and forced to trial before a judge with the duty of supervising the prosecutorial staff solely because he is a juvenile and subject to the jurisdiction of the juvenile courts. Since I continue to believe that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone," In re Gault, supra, at 13, 18 L Ed 2d 527, I can find no justification for this discrimination in treatment of juveniles charged with criminal conduct.[105]

In a 1979 U.S. Supreme Court case, *Fare* v. *Michael C.*, the Court offers its most detailed discussion of juvenile court services.[106] Even though a specific constitutional examination of juvenile courts and their services is not made, the opinion portrays a probation officer as a person with conflicting duties to the youth and to the juvenile court.

The *Fare* case arose when a youth, being interrogated by police and advised of his rights under *Miranda*, asked for his probation officer to act as "counsel." The police refused the request and continued the interrogation, during which the youth made incriminating statements. After his conviction for murder, the youth appealed to the California Supreme Court which overturned the conviction. Applying the per se rule of *Miranda*, the California Supreme Court held that the youth's request for his probation officer, a "trusted guardian," was the equivalent of a request for counsel. Under *Miranda*, the California court held that the interrogation should have stopped and the youth given an opportunity to seek the counsel of his probation officer.

On certiorari to the U.S. Supreme Court, the California Supreme Court's ruling was itself overturned. The Court held that *Miranda*, as a matter of constitutional law, does not protect requests for probation officers. Then, the Court described the position of the juvenile probation officer.

> A probation officer is not in the same posture with regard to either the accused or the system of justice as a whole. Often he is not trained in the law, and so is not in a position to advise the accused as to his legal rights. Neither is he a trained advocate, skilled in the representation of the interests of his client before both police and courts. He does not assume the power to act on behalf of his client by virtue of his status as adviser, nor are the communications of the accused to the probation officer shielded by the lawyer-client privilege.
>
> Moreover, the probation officer is the employee of the State which seeks to prosecute the alleged offender. He is a peace officer, and as such is allied, to a greater or lesser extent, with his fellow peace officers. He owes an obligation to the State, notwithstanding the obligation he may also owe the juvenile under his supervision. In most cases the probation officer is duty bound to report wrongdoing by the juvenile when it comes to his attention, even if by communication from the juvenile himself. Indeed, when this case arose, the probation officer had the responsibility for filing the petition alleging wrongdoing by the juvenile and seeking to have him taken into the custody of the Juvenile Court. It was respondent's probation officer who filed the petition against him, and it is the acting chief of probation for the State of California, a probation officer, who is petitioner in this Court today.
>
> In these circumstances, it cannot be said that the probation officer is able to offer the type of independent advice that an accused would expect from a lawyer retained or assigned to assist him during questioning. Indeed, the probation officer's duty to his employer in many, if not most, cases, would conflict sharply with the interests of the juvenile. For where an attorney might well advise his client to remain silent in the face of interrogation by the police, and in doing so would be "exercising (his) good professional judgment . . . to protect to the extent of his ability the rights of his client," a probation officer would be bound to advise his charge to cooperate with the police. The justices who concurred in the opinion of the California Supreme Court in this case aptly noted: "Where a conflict between the minor and the law arises, the probation officer can be neither neutral nor in the minor's corner. . . ." It thus is doubtful that a general rule can be established that a juvenile, in every case, looks to his probation officer as a "trusted guardian figure" rather than as an officer of the court system that imposes punishment. . . .
>
> A probation officer simply is not necessary, in the way an attorney is, for the protection of the legal rights of the accused, juvenile or adult. He is significantly handicapped by the position he occupies in the juvenile system from serving as an effective protector of the rights of a juvenile suspected of a crime.[107]

From these opinions, some intimations can be gleaned. *Kent* and *Pima County* show a concern for how service-related activities impact on the strictly judicial decisionmaking process. *Kent* requires that a judicial decision be based on evidence which is fairly accessible to both defendant and the judge. Douglas' dissent in the *Pima County* case shows a parallel concern. By suggesting that juries are necessary where juvenile courts operate intake, Douglas emphasizes the central importance of protecting the adjudicatory phase in juvenile proceedings. Even in *Gault*, there is an overriding concern for the adjudication.

The suggestion found in these cases is that for purposes of due process, state laws will be tested by their impact upon the adjudicatory phase of the proceeding.

Critics of juvenile court services operation cite *In re Murchinson* as a guide to applying due process to juvenile court situations.[108] The case arose under a Michigan statute permitting a judge to sit as a one-man jury. Following one such investigation, the judge cited certain witnesses for contempt of court. At a later trial, before the same judge, the defendants were found guilty of contempt. They appealed and, ultimately, the U.S. Supreme Court overturned their convictions on due process grounds.

The basic due process standard was described by the Court as follows:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. This Court has said, however, that "Every procedure which would offer a possible temptation to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." . . . Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way "justice must satisfy the appearance of justice."[109]

Under this standard, the defect in the Michigan statute was simply that the grand juror judge was too closely associated with that decision to later act as an impartial tribunal in the contempt hearings. The Court wrote:

> It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very persons accused as a result of his investigations. Perhaps no state has ever forced a defendant to accept grand jurors as proper trial jurors to pass on charges growing out of their hearings. A single "judge-grand jury" is even more a part of the accusatory process than an ordinary lay grand juror. Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. While he would not likely have all the zeal of a

> prosecutor, it can certainly not be said that he would have none of that zeal. Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer. It is true that contempt committed in a trial court-room can under some circumstances be punished summarily by the trial judge. . . . But adjudication by a trial judge of a contempt committed in his immediate presence in open court cannot be likened to the proceedings here. For we held in the Oliver Case that a person charged with contempt before a "one-man grand jury" could not be summarily tried.[110]

The *Murchison* Court pointed to five defects in the Michigan one-judge grand jury procedure. The Court did not hold that these five elements are always necessary for determining unconstitutionality, but in this case they were the defects the Court discussed:

- The judge had actual bias.
- The judge alone made the charging determination.
- The judge was the witness against the accused.
- No public witnesses were available to the accused.
- The procedure offered a temptation to weigh a decision in favor of conviction.

In the Michigan situation, the judge himself was the principal witness of the facts which made the basis for the contempt citation.

> As a practical matter it is difficult if not impossible for a judge to free himself from the influence of what took place in his "grand-jury" secret session. His recollection of that is likely to weigh far more heavily with him than any testimony given in the open hearings. That it sometimes does is illustrated by an incident which occurred in White's case. In finding White guilty of contempt, the trial judge said, "there is one thing the record does show and that was Mr. White's attitude, and I must say that his attitude was almost insolent in the manner in which he answered questions and his attitude upon the witness stand. . . . Not only was the personal attitude insolent, but it was defiant, and I want to put that on the record." In answer to defense counsel's motion to strike these statements because they were not part of the original record the judge said, "That is something . . . that wouldn't appear on the record, but it would be very evident to the court." Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impression of what had occurred in the grand jury room and his judgment was based in part on this impression, the accuracy of which could not be tested by adequate cross-examination.
>
> This incident also shows that the judge was doubtless more familiar with the facts and circumstances in which the charges were rooted than was any other witness. There were no public witnesses upon whom petitioners could call to give disinterested testimony concerning what took place in the secret chambers of the judge. If there had been, they might have been able to refute the judge's statements about White's insolence. Moreover, as shown by the judge's statement here, a "judge-grand jury" might himself many times be a very material witness in a later trial for contempt. If the charge should be heard before that judge, the result would be either that the defendant must be deprived of examining or cross-examining him or else there would be the spectacle of the trial judge presenting testimony upon which he must finally pass in determining the guilt or innocence of the defendant. In either event, the State would have the benefit of the judge's personal knowledge while the accused would be denied an effective opportunity to cross-examine. The right of a defendant to examine and cross-examine witnesses is too essential to a fair trial to have that right jeopardized in such way.[111]

The statutory procedure, therefore, was constitutionally invalid because it created a situation where a principal accuser acted as judge and jury.

Personal involvement seems critical to the *Murchison* decision. The due process defect was not that a judge conducted the one-judge grand jury, investigated, or was a witness against the accused. The defect was that the same judge was involved in all of these activities and then adjudicated the charges. The simple expedient of separate judges handling the grand jury and adjudication hearings would have prevented the *Murchison* holding.

As applied to juvenile courts, does the *Murchison* decision require that social services be divided from legal services? Obviously, if juvenile court services have these five consequences, they will come within the *Murchison* holding. Only intake, as a charging function, might possibly involve all five elements. But if a juvenile judge is not personally involved in intake, then there would be reason to believe that *Murchison* could be distinguished.

State Decisions on Due Process

Two state court decisions consider the due process issue as it relates to juvenile court services operation. Perhaps not surprisingly, each one uses a different analysis and reaches a different conclusion.

The first is a Rhode Island Family Court decision, *Matter of Reis*.[112] It has been cited and commented on occasionally but, at the time of this writing, has never been followed. It does not appear to have been officially reported in Rhode Island nor has it been included in the annotations to Rhode Island's juvenile court act.

In holding the intake provisions of Rhode Island law offensive to due process, the court first described the system.

> The question presented involves the procedure by which this court handles applications and complaints relative to juvenile matters. These applications or complaints are filed with the Intake Department of the court. That department must then conduct a thorough investigation of the complaint, or referral. Once this investigation is completed the court then orders a probation officer to investigate further to determine whether additional action should be taken.
>
> If the Court finds that formal jurisdiction should be acquired and there is reasonable cause for a petition, he shall authorize a petition to be filed. If the Court issues a petition, upon filing the same, a summons is issued requiring the juvenile to appear before the Court with at least one parent of said juvenile. The Court is also given the authority to name the serving officer of the summons, among which includes "by any probation counselor" as may be designated by the judge.
>
> The judge may hear, try and determine the facts of the case and if he finds the child to be delinquent or wayward, he may commit him to an institution or to probation or, make other disposition.[113]

The court's analysis of these procedures then includes perhaps the clearest statement of the structural defect which constitutes impermissible bias or partiality. First, a court's participation in intake creates a danger of prejudging facts which are properly determined at an adjudicatory hearing. Second, because facts are developed by the court's probation officer, the adjudicatory hearing may consist of an evaluation of the effectiveness of the

probation officer's investigation rather than the truth or falsity of the testimony. The court writes:

> There has been a disposition of treating the pre-judicial phase with great flexibility when, in fact, it is the most critical stage. The proceedings for one who commits a crime is arrest, detention and interrogation. These proceedings certainly should not be carried out by a court or any one branch of the court or any branch associated with the court.
>
> Under our system of government and due process of law, the juvenile should be given the opportunity to be protected from the intake stage to the accusatory stage. This is to preserve his right at the adjudicatory hearing.
>
> The trier of the fact must be entirely independent of the investigative and accusatory process and recognized in administrative law.
>
> The law in this state is mandatory for a judge to participate personally in the proceedings prior to a hearing upon the facts of the case and adjudication which can "create a substantial danger of prejudging," which would deprive the adjudicative hearings of both the substance and the appearance of fairness which due process demands.
>
> A Court in its finding a child delinquent under these circumstances simply reaffirms the decision he reached in advance of the hearing in order to cause the petition to issue. It must also be pointed out that the relationship between the Court and the staff that is motivated to perform the assignments by the judge, more especially that between the probation officer, is prejudicial to fair and impartial judgement of the Court.
>
> A very anomalous situation arises in these cases. It places the judge in a position of actively participating, through its own official arm, in the investigative and accusatory phase of his proceedings and then sitting in judgment on what its official arm had done, even to the point of passing on the credibility of its probation officer as a witness if he is called upon to testify.
>
> Provision of our law authorizing the judge to approve and order the filing of a petition "is open to serious objection for it puts the judge in the untenable position of hearing a charge which he has approved." (*In re Murchison*, 349 U.S. 133.)
>
> Due process, therefore, demands that the trier of facts should not be acquainted with any of the facts of the case or have knowledge of any of the circumstances, either through officials in his own department or records in his possession.
>
> It is, therefore, this Court's opinion that the trier of the facts should not be acquainted with any of the facts of the case or have knowledge of the circumstances, either through officials in his department or records in his possession. His duty is to adjudicate on the evidence introduced at the hearing.
>
> It is contrary to the fundamental principles of due process for the Court to be compelled, as it is in this state, to act as a one-man grand jury, then, sit in judgment on its own determination arising out of the facts and proceedings which he conducted. This responsibility belongs somewhere else.[114]

The standard created by the *Reis* court is high and requires an isolation of a court from activities unrelated to its function of fact-finding and making legal conclusions. What is central to the *Reis* court's analysis is its description of a structural or institutional bias created by the court's operation of intake services. Only once does the *Reis* court lapse into language suggesting an impermissible personal bias rather than an institutional flaw. In the fifth paragraph of those last quoted, the court states: "A Court in its finding a child delinquent under these circumstances simply reaffirms the decision he reached in advance of the hearing in order to cause the petition to issue." However,

there can be no question, from a reading of the opinion, that the court intended to strike down the general practice and not merely determine the facts in the case. As significant as this case is to the issue at hand, it must be emphasized that, in the 10 years since the decision was rendered by the Family Court, the *Reis* decision has not been followed anywhere in the United States.

The only other case to consider due process implications of court services is the 1973 Arizona case of *In re Pima County*,[115] mentioned earlier in connection with the Douglas dissent. There, a juvenile challenged the structure of court services as offensive to his due process right to "a fair and impartial trial by a fair and impartial judge." The practice challenged was the "supervisory relationship between the juvenile court judge and the court staff." The Arizona Supreme Court concluded that:

> there is nothing in *Gault* to foreclose the possibility that the rehabilitative function and due process could function together. The juvenile code of this state, we believe, has made the two compatible and functional.[116]

The *Pima* court considered the broad categories of fairness cases cited by appellant and rejected them as being inapplicable to the situation of Arizona juvenile courts. The *Pima* court wrote:

> We have read many of the cases cited to us by appellant. Certain categories arise in which the right to an impartial finder of fact has been violated. First, those cases in which the judge has become so personally involved as to be rendered unfit. In *Maybery* v. *Pennsylvania* . . . the defendant repeatedly insulted the trial judge and interrupted the trial. The court held that in a criminal contempt charge a defendant should be given a public trial by a judge not vilified by the contemnor. . . . This category is not applicable for describing the juvenile justice system in this state. Furthermore, when a party feels that the juvenile judge is or may be biased against him, an affidavit of bias and prejudice may be filed pursuant to A.R.S. § 12-409. Such an affidavit can be used to disqualify the juvenile judge.[117]

The *Pima* court then considered cases dealing with the joining of adjudicatory and prosecutorial functions. The court wrote:

> A second line of cases deals with the situation where the prosecutorial and adjudicatory functions become intertwined. In *Figueros Ruiz* v. *Delgado* . . . the Commonwealth of Puerto Rico provided no prosecutors in the District Court, and the judge introduced the government's evidence and conducted cross-examination for the government. . . . Again the Juvenile Code of this state does not allow the duties of the judge to merge with the duties of prosecutor.[118]

The *Pima* court then considered cases dealing with the propriety of a court's involvement in preliminary matters. The court wrote:

> A third category of cases concerns situations in which the trier of fact has particpated in a preliminary finding of fact. In *In re Murchison* . . . the United States Supreme Court found that a single judge grand jury was such a part of the accusatory process that the judge " . . . cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused." . . . This line of cases strikes at prejudgement of the trier of fact prior to a particular case's being adjudicated. *American Cyanamid* v. *F.T.C.* . . . also raised the issue of prejudgment. There, the F.T.C. brought charges against certain drug companies. These charges were based, to some extent, on a report issued by a Senate subcommittee. One of the F.T.C. members had been chief counsel to the subcommittee and had helped in preparing and drafting the report. The plaintiff sought disqualification of that F.T.C. commissioner and the

court agreed. The Court of Appeals for the Third Circuit . . . found nothing inherently improper in having a union officer attend and participate in the informal hearing and then act as a trier of fact ". . . provided there is no element of bias or prejudgment, as we find to be the case here."[119]

Finally, the *Pima* court considered a line of cases involving situations where judges had pecuniary interests in the outcome of the cases decided.[120]

Then, considering all four lines of cases, the *Pima* court concluded:

> None of the categories described above are applicable in describing the relationship between the juvenile judge and the juvenile court of this state. Nor are we persuaded by the recent decision of *In re Reis* . . . which struck down the Rhode Island juvenile justice system because of the juvenile court's participation in the accusatory process. We are persuaded by appellee's contention that the juvenile court merely supervises the operation of court employees. The juvenile court does not pass on investigation reports and therefore does not have any involvement in a case prior to the adjudicatory hearing.
>
> Therefore, we hold that the Juvenile Code of Arizona does not contravene juveniles' rights to the Equal Protection and Due Process of Law as guaranteed by the federal and state constitutions.[121]

As mentioned earlier, the U.S. Supreme Court refused to decide the *Pima* case on its merits. However, since the case was decided by the Arizona Supreme Court and at least reviewed by the U.S. Supreme Court, the holding it represents is a much weightier precedent than *Reis*.

Perhaps the only case where both due process and separation of powers issues were raised in the context of juvenile court services is the 1973 Washington case of *State* v. *Owen*. There, a juvenile challenged her delinquency adjudication, charging that the Washington statutes permitting probation personnel "to participate in investigatory, accusatory and adjudicatory processes of this case" constituted an "unlawful delegation of executive authority to the judiciary" and denied her due process.[122]

The court rejected both challenges. Its very general reasoning on these issues probably resulted from the absence of a clear analytical framework within which to consider the points. Statements concerning the due process issue are particularly noteworthy because they reflect consideration of court services from both a substantive and a procedural standpoint. The court wrote:

> The two remaining grounds for the allegation that the legislation is unconstitutional do not support the charge. The legislation bears a rational relation to its stated purpose. . . .
>
> The challenged statute is class legislation but it applies alike to all persons within the class and a reasonable ground exists for making a distinction between those within and those without the designated class. See *Washington Kelpers Ass'n.* v. *State*, 81 Wash. 2d 410, 502 P.2d 1170 (1972). We readily agree that a better procedure would separate the adjudicatory responsibility and the administrative responsibility of the juvenile corrections program but we can only consider the constitutionality of the statute.[123]

If anything, this holding in its brevity is principally important to illustrate that the legal framework used to analyze court services as yet is murky. The case is also interesting in its recognition that both the due process and separation of powers doctrines address the structural relationship between juvenile courts and social services.

The Administrative Due Process Standard: An Analogue

The *Kent* case, cited earlier, states unequivocally that juvenile courts are "governed in this respect by the established principles which control courts and quasi-judicial agencies of the Government." At the same time, it gives no hint as to which type of entity circumscribes juvenile courts. If juvenile courts are "courts," then the rule of *Murchison* would apply, as would the *Pima* case. On the other hand, what if juvenile courts are "quasi-judicial agencies of the Government"? It would appear that other kinds of precedents would apply. At the very least, it would seem prudent to investigate the comparability of the two lines of decisions.

Administrative agencies typically conduct investigations and apply legal standards to facts developed under their investigations. As in the context of judicial proceedings, due process principles control how administrative investigations and determinations are made.

The 1975 U.S. Supreme Court case of *Withrow* v. *Larkin* is an example of a due process challenge to the structure of a quasi-judicial agency of government.[124] The object of the suit was the Wisconsin medical licensing board.

Under the Wisconsin statute, the board could investigate allegations of a doctor's misconduct. It appears that, under board practice, two major activities were undertaken by the board and its staff. First, the board's staff would make an inquiry regarding allegations of misconduct; second, the board would make a final determination as to whether to apply the sanctions permitted by Wisconsin statute. The sanctions included warnings and reprimands, license suspensions, and the institution of criminal prosecution by forwarding its recommendations to a local prosecutor.

A doctor being investigated by the board brought suit in federal court seeking an injunction to stop the board's investigation of him. The basis for the doctor's request was that the board's combination of investigatory and adjudicatory functions denied him due process by creating a structurally biased tribunal.

The district court agreed with the doctor and held that the state medical examining board did not qualify as an independent tribunal and could not properly rule on the same charges it investigated.[125]

On appeal, the U.S. Supreme Court rejected the district court's holding. The Court's description of the basic due process requirement is as follows:

> Concededly, a "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison* . . . applies to administrative agencies which adjudicate as well as to courts. . . .
>
> Not only is a biased decisionmaker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness." . . . In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge or

decisionmaker is too high to be constitutionally tolerable. Among these cases are those in which the adjudicator has a pecuniary interest in the outcome and in which he has been the target of personal abuse or criticism from the party before him.[126]

While the Court emphasized that an unbiased decisionmaker is necessary for due process, it held that the Wisconsin board was constitutionally structured. The first reason was the presumption of honesty and integrity of the decisionmakers. The second reason was that there is no due process requirement that a decisionmaker have absolutely no contact with a case prior to an adjudication, and that combined functions are not per se impermissible.

To consider the challenge to the board's sequence of functions, the Court first noted that there was a presumption of honesty and integrity to which government officers were entitled.

> The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.
>
> Very similar claims have been squarely rejected in prior decisions of this Court.[127]

Then, looking at its prior decisions regarding the point, the Court seems to make the point that this presumed good faith is necessary for the ordinary operations of government.

> This Court has also ruled that a hearing examiner who has recommended findings of fact after rejecting certain evidence as not being probative was not disqualified to preside at further hearings that were required when reviewing courts held that the evidence had been erroneously excluded. . . .
>
> The Court of Appeals had decided that the examiner should not again sit because it would be unfair to require the parties to try "issues of fact to those who may have prejudged them. . . ." But this Court unanimously reversed, saying:
>
> "Certainly it is not the rule of judicial administration that, statutory requirements apart . . . a judge is disqualified from sitting in a retrial because he was reversed on earlier rulings. We find no warrant for imposing upon administrative agencies a stiffer rule, whereby examiners would be disentitled to sit because they ruled strongly against a party in the first hearing."
>
> More recently we have sustained against due process objection a system in which a Social Security examiner has responsibility for developing the facts and making a decision as to disability claims, and observed that the challenge to this combination of functions "assumes too much and would bring down too many procedures designed, and working well for a governmental structure of great and growing complexity."
>
> That is not to say that there is nothing to the argument that those who have investigated should not then adjudicate. The issue is substantial, it is not new, and legislators and others concerned with the operations of administrative agencies have given much attention to whether and to what extent distinctive administrative functions should be performed by the same persons. No single answer has been reached. Indeed, the growth, variety, and complexity of the administrative processes have made any one solution highly unlikely. Within the Federal Government itself, Congress has addressed the issue in several different ways, providing for varying

> degrees of separation from complete separation of functions to virtually none at all. For the generality of agencies, Congress has been content with Section 5 of the Administrative Procedure Act which provides that no employee engaged in investigating or prosecuting may also participate or advise in the adjudicating function, but which also expressly exempts from this prohibition "the agency or a member or members of the body comprising the agency."
>
> It is not surprising, therefore, to find that "the case law, both federal and state, generally rejects the idea that the combination (of) judging (and) investigating functions is a denial of due process." Similarly, our cases, although they reflect the substance of the problem, offer no support for the bold proposition applied in this case by the District Court that agency members who participate in an investigation are disqualified from adjudicating. The incredible variety of administrative mechanisms in this country will not yield to any single organizing principle.[128]

The suggestion made here is that, if there is a necessary variety in administrative mechanisms, there must be correlatively flexible due process standards. One must apparently evaluate, under due process, administrative decisions based upon what problems are being addressed.

For juvenile court services, perhaps the most important part of the *Withrow* case is the Court's discussion of the sequence of functions and how their arrangements and procedures are important to the due process issue.

> Nor is there anything in this case that comes within the strictures of *Murchison*. When the Board instituted its investigative procedures, it stated only that it would investigate whether proscribed conduct had occurred. Later in noticing the adversary hearing, it asserted only that it would determine if violations had been committed which would warrant suspension of appellee's license. Without doubt, the Board then anticipated that the proceeding would eventuate in an adjudication of the issue; but there was no more evidence of bias or the risk of bias or prejudgment than inhered in the very fact that the Board had investigated and would now adjudicate. Of course, we should be alert to the possibilities of bias that may lurk in the way particular procedures actually work in practice. The processes utilized by the Board, however do not in themselves contain an unacceptable risk of bias. The investigative proceeding had been closed to the public, but appellee and his counsel were permitted to be present throughout; counsel actually attended the hearings and knew the facts presented to the Board. No specific foundation has been presented for suspecting that the Board had been prejudiced by its investigation or would be disabled from hearing and deciding on the basis of the evidence to be presented at the contested hearing. The mere exposure to evidence presented in nonadversary investigative procedures is insufficient in itself to impugn the fairness of the Board members at a later adversary hearing. Without a showing to the contrary, state administrators "are assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances."[129]

In a footnote, the Court expanded the notion of how the sequence of functions affects due process rights.

> While not essential to our decision upholding the constitutionality of the Board's sequence of functions, these facts, if true, show that the Board had organized itself internally to minimize the risks arising from combining investigation and adjudication, including the possibility of Board members relying at later suspension hearings upon evidence not then fully subject to effective confrontation.[130]
>
> Judges repeatedly issue arrest warrants on the basis that there is probable cause to believe that a crime has been committed and that the person named in the warrant has committed it. Judges also preside at preliminary hearings where they must decide

whether the evidence is sufficient to hold a defendant for trial. Neither of these pretrial involvements has been thought to raise any constitutional barrier against the judge's presiding over the criminal trial and, if the trial is without a jury, against making the necessary determination of guilt or innocence. Nor has it been thought that a judge is disqualified from presiding over injunction proceedings because he has initially assessed the facts in issuing or denying a temporary restraining order or a preliminary injunction. It is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law. We should also remember that it is not contrary to due process to allow judges and administrators who have had their initial decisions reversed on appeal to confront and decide the same questions a second time around.[131]

Then, once again reflecting the importance of a presumed good faith, the Court concludes:

The risk of bias or prejudgment in this sequence of functions has not been considered to be intolerably high or to raise a sufficiently great possibility that the adjudicators would be so psychologically wedded to their complaints that they would consciously or unconsciously avoid the appearance of having erred or changed position. Indeed, just as there is no logical inconsistency between a finding of probable cause and an acquittal in a criminal proceeding, there is no incompatibility between the agency filing a complaint based on probable cause and a subsequent decision, when all the evidence is in, that there has been no violation of the statute. Here, if the Board now proceeded after an adversary hearing to determine that appellee's license to practice should not be temporarily suspended, it would not implicitly be admitting error in its prior finding of probable cause. Its position most probably would merely reflect the benefit of a more complete view of the evidence afforded by an adversary hearing.

The initial charge or determination of probable cause and the ultimate adjudication have different bases and purposes. The fact that the same agency makes them in tandem and that they relate to the same issues does not result in a procedural due process violation. Clearly, if the initial view of the facts based on the evidence derived from nonadversarial processes as a practical or legal matter foreclosed fair and effective consideration at a subsequent adversary hearing leading to ultimate decision, a substantial due process question would be raised. But in our view, that is not this case.[132]

Obviously, what the U.S. Supreme Court has created here is a case-by-case rule. In evaluating a sequence of functions under due process, it is necessary to look at each particular case. There is simply no per se rule of unconstitutionality, even when an administrative agency combines a sequence of functions that could lead to the finding that reversable error did, in fact, occur.

In both lines of cases, the same theme is found: flexibility is accorded to state legislatures to adapt the structures of government to fit the perceived needs of the states. Under due process, case-by-case evaluations must be made to determine how a particular structural arrangement impacts upon an adjudication.

Footnotes

1. Charles de Secondat, Baron de Montesquieu, from "Spirit of Laws," Book XI, Chapter 6, in Robert M. Hutchins, ed., *Great Books of the Western World*, vol. 38 (Chicago, Ill.: Encyclopedia Brittanica, Inc., 1952), p. 70.

2. See constitutions of Alaska, Delaware, Georgia, Hawaii, Kansas, New York, North Dakota, Ohio, Pennsylvania, Washington, and Wisconsin.

3. See, e.g., either as holding or dicta, *McPhail* v. *Latouche Packing Co.*, 8 Alaska 297 (1931); *Brennan* v. *Black*, 34 Del. Ch. 380, 104 A.2d 777 (1954); *Fortson* v. *Weeks*, 232 Ga. 472, 208 S.E.2d 68 (1974); *In re Sims*, 54 Kan. 1, 37 P. 135 (1894).

4. See Va. Const., Art. I, Sec. 5, and Art. III, Sec. 1.

5. Charles de Secondat, Baron de Montesquieu, from "Spirit of Laws," quoted in Reginald Parker, "Separation of Powers Revisited," *Michigan Law Review*, vol. 49, no. 7 (May 1951), p. 1015.

6. See, e.g., *People* v. *Davis*, 67 Misc. 2d 14, 322 S. 2d 927 (New York, 1971); Robert Force, "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers," *Tulane Law Review*, vol. 49, no. 1 (November 1974).

7. See, e.g., *Willoughby on the Constitution of the United States*, 2d ed., vol. 3 (New York, N.Y.: Baker, Voorhis and Co., 1929), p. 1617. *In re interrogatories to the Senate*, 198 Colo. 1, 536 P.2d 308 (1975).

8. U.S. Constitution, Art. IV, Sec. 4.

9. Quoted in Samuel E. Baldwin, "The Courts as Conservators of Social Justice," *Columbia Law Review*, vol. 9, no. 7 (November 1909), p. 580.

10. See *Brennan* v. *Black*, 104 A.2d 777, 781 (1954) where the court writes: "We have recently had occasion to examine the extent to which the doctrine of separation of powers prevails in Delaware and have held that it does not obtain in full force as it does in some of the states."

11. Minn., Art. III, Sec. 1. The 27 other states which describe the separation with the words separate or distinct are: Ariz., Art. III; Calif., Art. III, Sec. 1; Colo., Art. III; Fla., Art. II, Sec. 3; Idaho, Art. II, Sec. 1; Ill., Art. II, Sec. 1; Ind., Art. III, Sec. 1; Iowa, Art. III, Sec. 1; La., Art. II, Sec. 1; Maine, Art. III, Sec. 1; Md., Art. VIII; Mont., Art. III, Sec. 1; Neb., Art. II, Sec. 1; Nev., Art. 3, Sec. 1; N.J., Art. III, Sec. 1; N.M., Art. III, Sec. 1; N.C., Art. I, Sec. 6; Okla., Art. IV, Sec. 1; Oreg., Art. III, Sec. 1; S.C., Art. I, Sec. 8; S.D., Art. II; Tenn., Art. II, Sec. 1; Utah, Art. V, Sec. 1; Vt., Ch. II, Sec. 5; Va., Art. III, Sec. 1 and Art. I, Sec. 5; W. Va., Art. V, Sec. 1; and Wyo., Art. 2, Sec. 1.

12. Mich., Art. III, Sec. 2; see also, R.I., Art. III.

13. Ala., Art. III, Sec. 42; Ark., Art. IV, Sec. 1; Conn., Art. II; Ky., Sec. 27; Miss., Art. I, Sec. 1; Mo., Art. II, Sec. 1; and Texas, Art. II, Sec. 1.

14. *Blacks* defines magistracy as: "The term may have a more or less extensive signification according to the use and connection in which it occurs. In its widest sense, it includes the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative. In a more restricted (and more usual) meaning, it denotes the class of officers who are charged with the application and execution of the laws. In a still more confined use, it designates the body of judicial officers of the lowest rank, and more especially those who have jurisdiction for the trial and punishment of petty misdemeanors or the preliminary steps of a criminal prosecution, such as police judges and justices of the peace. The term also denotes the office of a magistrate. *Golden* vs. *Golden* 41 N.M. 356, 68 P.2d 928, 930."

15. Ark., Art. IV, Sec. 1.

16. Mass., Pt. 1, Art. XXX. Similar language appears in the Alabama separation of powers provisions as a prohibition only. What makes the Massachusetts language different from that in the Alabama constitution is that it expresses both the division of powers and the prohibition. In the Alabama constitution, other language is used to express the division of power. See Ala., Art. III, Sec. 43.

17. Ariz., Art. III; Ill., Art. II, Sec. 1; Okla., Art. IV, Sec. 1; and Vt., Ch. II, Sec. 5.

18. Ill., Art. II, Sec. 1.

19. N.H., Pt. 1, Art. 37.

20. Calif., Art. III, Sec. 1; Colo., Art. III; Fla., Art. II, Sec. 3; Idaho, Art. II, Sec. 1; Ind., Art. III, Sec. 1; Iowa, Art. III, Sec. 1; Ky., Sec. 28; Maine, Art. III, Sec. 2; Md., Art. 8; Mich., Art. II, Sec. 2; Miss., Art. 1, Sec. 2; Mo., Art. II, Sec. 1; Mont., Art. III, Sec. 1; Nev., Art. 3, Sec. 1; N.M., Art. III, Sec. 1; Oreg., Art. III, Sec. 1; S.C., Art. I, Sec. 8; and Tenn., Art. II, Sec. 2.

21. Mich., Art. III, Sec. 2.

22. Texas, Art. II, Sec. 1. See also, Ark., Art. IV, Sec. 2; Minn., Art. III, Sec. 1; Neb., Art. II, Sec. 1; and N.J., Art. III, Par. 1.

23. Miss., Art. 1, Sec. 2.

24. La., Art. II, Sec. 2. See also, Va., Art. III, Sec. 1, and W.Va., Art. V, Sec. 1.

25. Connecticut, Illinois, Maryland, Massachusetts, Mississippi, New Hampshire, North Carolina, Rhode Island, South Carolina, South Dakota, and Vermont.

26. Ala., Art. III, Sec. 43; Ark., Art. 4, Sec. 2; Calif., Art. III, Sec. 1; Colo., Art. III; Fla., Art, II, Sec. 3; Idaho, Art. II, Sec. 1; Ind., Art. III, Sec. 1; Iowa, Art. III, Sec. 1; Ky., Sec. 28; Maine, Art. III, Sec. 2; Mich., Art. III, Sec. 2, Minn., Art. III, Sec. 1; Mo., Art. II, Sec. 1; Mont., Art. III, Sec. 1; Neb., Art. II, Sec. 1; Nev., Art. 3, Sec. 1; N.J., Art. III, Sec. 1; N.M., Art. III, Sec. 1; Oreg., Art. III, Sec. 1; Texas, Art. II, Sec. 1; Utah, Art. V, Sec. 1; and Wyo., Art. 2, Sec. 1.

27. Ky., Sec. 28.

28. Ariz., Art. III; La., Art. II, Sec. II; Okla., Art. IV, Sec. 1; and Tenn., Art. II, Sec. 2.

29. Okla., Art. IV, Sec. 1.

30. W.Va., Art. V, Sec. 1.

31. Va., Art. III, Sec. 1.

32. *State ex rel. Young* v. *Duval County*, 76 Fla. 180, 79 So. 692 (1918).

33. Ibid., 79 So. at 697.

34. Massachusetts is an atypical situation and will be discussed later.

35. Ohio, Art. IV, Sec. 1.

36. E.g., Wyo., Art. 5, Secs. 1 and 29.

37. Oreg., Art. VII, Sec. 1. See also, N.C., Art. IV, Sec. 1; R.I., Art. X, Sec. 1; Tenn., Art. VI, Sec. 1; and Va., Art. VI, Sec. 1.

38. Alaska, Art. IV, Sec. 1; Ariz., Art. VI, Sec. 1; Conn., Art. 5, Sec. 1; Hawaii, Art. V, Sec. 1; Idaho, Art. V, Sec. 2; Ill., Art. VI, Sec. 1; Ind., Art. VII, Sec. 1; Iowa, Art. V, Sec. 1; Maine, Art. VI, Sec. 1; Minn., Art. VI, Sec. 1; Miss., Art. VI, Sec. 144; Mo., Art. V, Sec. 1; Mont., Art. VII, Sec. 1; Neb., Art. V, Sec. 1; Nev., Art. 6, Sec. 1; N.H., Pt. 2, Art. 72-a; Ohio, Art. IV, Sec. 1; S.C., Art. V, Sec. 1; S.D., Art. V, Sec. 1; Vt., Ch. II, Sec. 4; Wash., Art. IV, Sec. 1; W.Va., Art. VIII, Sec. 1; and Wyo., Art. V, Sec. 1.

39. Hawaii, Art. V, Sec. 1.

40. Ala., Art. VI, Sec. 6.01; Ark., Art. VII, Sec. 1; Calif., Art. VI, Sec. 1; Colo., Art. VI, Sec. 1; Del., Art. IV, Sec. 1; Fla., Art. V, Sec. 1; Ga., Art. VI, Sec. I, para. 1 (Sec. 2-3001); Kan., Art. III, Sec. 1; Ky., Sec. 109; La., Art. V, Sec. 1; Md., Art. IV, Sec. 1; Mich., Art. VI, Sec. 1; N.J., Art VI, Sec. 1, para. 1; N.M., Art. VI, Sec. 1; N.Y., Art. VI, Sec. 1; N.D., Art. IV, Sec. 85; Okla., Art. VII, Sec. 1; Penn., Art. V, Sec. 1; Texas, Art. V, Sec. 1; Utah, Art. VIII, Sec. 1; and Wisc., Art. VII, Sec. 2.

41. Penn., Art. V, Sec. 1.

42. Idaho, Art. V, Sec. 2; Ky., Sec. 109; N.C., Art. IV, Sec. 1; Okla., Art. VII, Sec. 1; Utah, Art. VIII, Sec. 1; Wisc., Art. VII, Sec. 1; and Wyo., Art. V, Sec. 1.

43. Colo., Art. VI, Sec. 1.

44. Ala., Art. VI, Sec. 6.01; Alaska, Art. IV, Sec. 1; Ark., Art. VII, Sec. 1; Colo., Art. VI, Sec. 1; Conn., Art. V, Sec. 1; Fla., Art. V, Sec. 1; Hawaii, Art. V, Sec. 1; Idaho, Art. V, Sec. 2; Minn., Art. VI, Sec. 1; Mo., Art. V, Sec. 1; Neb., Art. V, Sec. 1; Okla., Art. VII, Sec. 1; Texas, Art. V, Sec. 1; Va., Art. VI, Sec. 1; and Wisc., Art. VII, Sec. 2.

45. Alaska, Art. IV, Sec. 1; Del., Art. IV, Sec. 1; Ga., Art. VI, Sec. I, para. 1, (2-3001); Ind., Art. VII, Sec. 1; Iowa, Art. V, Sec. 1; Maine, Art. VI, Sec. 1; Mont., Art. VII, Sec. 1; Oreg., Art. VII, Sec. 1; Penn., Art. V, Sec. 1; S.C., Art. V, Sec. 1; and Texas, Art. V, Sec. 1.

46. Ala., Art. VI, Sec. 6.01; Ariz., Art. VI, Sec. 1; Colo., Art. VI, Sec. 1; Conn., Art. V, Sec. 1; Hawaii, Art. V, Sec. 1; Idaho, Art. V, Sec. 2; Kan., Art. III, Sec. 1; Mich., Art. VI, Sec. 1; Minn., Art. VI, Sec. 1; Neb., Art. V, Sec. 1; N.H., Pt. 2, Art. 72-a; N.J., Art. VI, Sec. 1, para. 1; N.M., Art. VI, Sec. 1; Ohio, Art. IV, Sec. 1; R.I., Art. X, Sec. 1; S.D., Art. V; Tenn., Art. VI, Sec. 1; Utah, Art. VIII, Sec. 1; Vt., Ch. II, Sec. 4; Va., Art. VI, Sec. 1; Wash., Art. IV, Sec. 1; Wisc., Art. VII, Sec. 2; and Wyo., Art. V, Sec. 1.

47. Kan., Art. III, Sec. 1.

48. N.D., Art. IV, Sec. 85. See also, Ala., Art. VI, Sec. 6.01; Ariz., Art. VI, Sec. 1; Ark., Art. 7, Sec. 1; Md., Art. IV, Sec. 1; Nev., Art. 6, Sec. 1; N.Y., Art. VI, Sec. 1; Okla., Art. VII, Sec. 1; and Tenn., Art. VI, Sec. 1.

49. Mass., Pt. 2, C.1, Sec. 1, Art. I and Art. III.

50. Ala., Art. VI, Sec. 6.01; Alaska, Art. IV, Sec. 1; Ariz., Art. VI, Sec. 1; Idaho, Art. V, Sec. 2; Ky., Sec. 109; Mich., Art. VI, Sec. 1; Neb., Art. V, Sec. 1; Nev., Art. 6, Sec. 1; N.Y., Art. VI, Sec. 1; N.C., Art. IV, Sec. 1; Penn., Art. V, Sec. 1; S.C., Art. V, Sec. 1; S.D., Art. V, Sec. 1; and Vt., Ch. II, Sec. 4.

51. Fla., Art. V, Sec. 1; N.C., Art. IV, Sec. 1; Okla., Art. VII, Sec. 1; Va., Art. VI, Sec. 1; and Wisc., Art. VII, Sec. 2.

52. Colo., Art. VI, Sec. 1; and N.C., Art. IV, Sec. 1.

53. Minn., Art. VI, Sec. 1; Tenn., Art. VI, Sec. 1; and W.Va., Art. VIII, Sec. 1.

54. Utah, Art. VI, Sec. 1.

55. Ala., Art. IV, Sec. 104, 105; Alaska, Art, II, Sec. 19; Ark., Art. V, Sec. 24, 25; Ariz., Art. IV, Pt. 2, Sec. 19; Fla., Art. III, Sec. 11; Idaho, Art. III, Sec. 19; Ill., Art. IV, Sec. 13; Ind., Art. IV, Sec. 22; Iowa, Art. III, Sec. 30; Ky., Sec. 59; La., Art. III, Sec. 12; Md., Art. III, Sec. 33; Mich., Art. IV, Sec. 29; Minn., Art. XII, Sec. 1; Miss., Art. 4, Sec. 90; Mont., Art. V, Sec. 12; Neb., Art. III, Sec. 18; Nev., Art. 4, Sec. 20; N.Y., Art. III, Sec. 17, N.C., Art. II, Sec. 24; N.D., Art. II, Sec. 69; Okla., Art. V, Sec. 46; Oreg., Art. IV, Sec. 23; Penn., Art. III, Sec. 23, 32; S.C., Art. III, Sec. 34; and S.D., Art. III, Sec. 23.

56. Ala., Art. IV, Sec. 104.

57. W.Va., Art. VI, Sec. 40.

58. Only Arizona, Minnesota, Oklahoma, and Utah do not have executive vestment clauses.

59. Ala., Art. V, Sec. 113; Ind., Art. V, Sec. 1; Mass., Pt. 2, C.2, Sec. 1, Art. 1; Miss., Art. V, Sec. 116; and Texas, Art. IV, Sec. 1.

60. Md., Art. II, Sec. 1. See also, Ala., Art. V, Sec. 113; Alaska, Art. III, Sec. 1; Ark., Art. 6, Sec. 2; Calif., Art. V, Sec. 1; Colo., Art. IV, Sec. 2; Conn., Art. 4, Sec. 5; Del., Art. III, Sec. 1; Hawaii, Art. V, Sec. 1; Idaho, Art. IV, Sec. 5; Ind., Art. V, Sec. 1; Iowa, Art. IV, Sec. 1; Kan., Art. I, Sec. 3; Ky., Sec. 69; La., Art. IV, Sec. 5; Maine, Art. V, Pt. 1, Sec. 1; Miss., Art. 5, Sec. 116; Mo., Art. IV, Sec. 1; Nev., Art. 5, Sec. 1; N.H., Pt. 2, Art. 41; N.M., Art. V, Sec. 4; N.Y., Art. IV, Sec. 1; N.C., Art. III, Sec. 1; N.D., Art, III, Sec. 1; Ohio, Art. III, Sec. 5; Oreg., Art. V, Sec. 1; R.I., Art. 7, Sec. 1; S.C., Art. IV, Sec. 1; S.D., Art. IV, Sec. 1; Tenn., Art. III, Sec. 1; Texas, Art. IV, Sec. 1; Vt., Ch. II, Sec. 20; Va., Art. V, Sec. 1; and Wash., Art. III, Sec. 2.

61. Wyo., Art. IV, Sec. 1. See also, Fla., Art. IV, Sec. 1; Ga., Art. V, Sec. 1, para. 1 (2-2701); Ill., Art. V, Sec. 8; Mass., Pt. 2, C.2, Sec. 1, Art. 1; Mich., Art. V, Sec. 1; Mont., Art. VI, Sec. 4; Neb., Art. IV, Sec. 6; N.J., Art. V, Sec. 1, para. 1; Penn., Art. IV, Sec. 2; W. Va., Art. VII, Sec. 5; and Wisc., Art. V, Sec. 1.

62. *Nicholl* v. *Koster*, 157 Cal. 416, 108 P. 302 (1910).

63. *State* v. *Juvenile Division, Tulsa County District Court*, 560 P.2d 974 (Okla. Ct. Crim. App. 1977).

64. 10 Okla. Stats., 1976 Supp., Sec. 1103a.

65. Okla. Const., Art. IV, Sec. 1.

66. *State* v. *Juvenile Division, Tulsa County District Court*, 560 P.2d at 975.

67. Ibid., 560 P.2d at 975-76.

68. *State* v. *Owen*, 8 Wash. App. 395, 506 P.2d 900 (1973).

69. *Witter* v. *Cook County Commrs.*, 256 Ill. 616, 100 N.E. 148 (1912).

70. Ibid., 100 N.E. at 149, citing 1907 Laws of Ill., p. 69.

71. Ibid. at 149.

72. Ibid.

73. Ibid. at 149, 150.

74. Ibid. at 150.

75. Ibid.

76. Ibid.

77. Ibid.
78. *Nicholl* v. *Koster*, 157 Cal. 416, 108 P. 302 (1910).
79. Ibid., 108 P. at 303.
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87. Ibid. at 571, citing W. Va. Acts., 1953, Ch. 180.
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91. *State ex rel. Hall* v. *Monongahela County*, 96 S.E. 966 (W. Va. Sup. Ct. App. 1918).
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94. *Jones* v. *Alexander*, 59 S.W.2d 1080 (Texas Ct. App. 1933).
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98. *Barron* v. *Baltimore*, 32 U.S. 243, 7 Pet. 243, 8 L. Ed. 672 (1833).
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101. *Kent* v. *U.S.*, 383 U.S. 541, 555, 556, 16 L. Ed. 2d 84, 94, 86 S. Ct. 1045, 1054 (1966).
102. Ibid., 383 U.S. at 561, 16 L. Ed. at 97, 86 S. Ct. at 1057.
103. Ibid., 383 U.S. at 563, 16 L. Ed. at 98, 86 S. Ct. at 1058.
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107. Ibid., 442 U.S. at 719-22, 61 L. Ed. at 209-11, 99 S. Ct. at 2569, 2570.
108. *In re Murchison*, 349 U.S. 133, 99 L. Ed. 942, 75 S. Ct. 623 (1955).
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111. Ibid., 349 U.S. at 138, 139, 99 L. Ed. at 947, 948, 75 S. Ct. at 626, 627.
112. *Matter of Reis*, 7 Crim. L. Rep. 2151 (R.I. Fam. Ct. 4/14/70).
113. Ibid., 7 Crim. L. Rep. at 2152. Note: Because of the nature of the *Criminal Law Reporter*, some of the quoted material may be editorial paraphrase.
114. Ibid.
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122. *State* v. *Owen*, 8 Wash. App. 395, 506 P.2d 900 at 901 (Wash. Ct. App. 1973).
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124. *Withrow* v. *Larkin*, 421 U.S. 35, 43 L. Ed. 2d 712, 95 S. Ct. 1456 (1975).
125. *Withrow* v. *Larkin*, 368 F. Supp. 796 at 797 (E. Dist. Wis. 1973).
126. *Withrow* v. *Larkin*, 421 U.S. at 46, 47, 43 L. Ed. 2d at 723, 95 S. Ct. at 1464.

127. Ibid., 421 U.S. at 47, 43 L. Ed. 2d at 723-24, 95 S. Ct. at 1464.
128. Ibid., 421 U.S. at 48-52, 43 L. Ed. 2d at 724-27, 95 S. Ct. at 1465-67.
129. Ibid., 421 U.S. at 54, 55, 43 L. Ed. 2d at 727, 728, 95 S. Ct. at 1468.
130. Ibid., 421 U.S. at 53, 54, 43 L. Ed. 2d Note 20, at 727, 95 S. Ct. at 1467.
131. Ibid., 421 U.S. at 56, 57, 43 L. Ed. 2d at 728, 729, 95 S. Ct. at 1469.
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1 OF 3

6. Overview of Service Delivery to Children in Juvenile Courts

Public officials, researchers, youth advocates, and members of the press were interviewed in 20 cities in six states. The purpose was to determine their opinions regarding both the propriety and the effectiveness of their states' delivery of delinquency-related services. Four states constitute examples of judicial management, two by local juvenile courts, and two by administrative offices attached to the state supreme courts. The remaining two represent examples of executive management at both the local and state levels of government.

No matter how services were structured, most respondents approved their location and the general status quo. The question of preferred or ideal location often boiled down to a search for adequate funding. Each state's particular organization appears to have been shaped by where that could be best accomplished. Most respondents felt that the precepts of parens patriae and requirements imposed by due process considerations were compatible. Many respondents expressed the concern that any increases in formally protecting juveniles' rights in juvenile courts would be bought at a price of serious delays in service provision and greater juvenile cynicism. Respondents split rather evenly over the question of whether juvenile courts should monitor outside agencies which provide services to wards of the court. In every state, respondents felt that the objectives which motivated the development of their particular pattern of service delivery had been met, subject to important caveats about intended consequences.

Should juvenile courts operate their own social control services? If public policy is seen as a process, this question is usefully addressed by examining a collection of informal but authoritative opinions on how and why juvenile courts and service providers are placed within the structure of state and local governments. The purpose of this exercise would be to determine whether the location of the services within different branches or levels of government affects current controversies concerning the delivery of delinquency-related services.

This question can be answered by the actual participants in the policy process—the people who determine public policy, who contribute to or carry out those determinations, and who analyze and comment upon their effects. These people include police officers, juvenile court judges, prosecuting and defense attorneys, service providers, legislators, youth advocates, researchers, and even media reporters. In an operational sense, they define the policy system that surrounds juvenile court services.

The technique employed here for assessing these public policy issues is the case study approach. It includes selecting states from diverse geographic areas and demographic patterns, and applying a set of criteria to select states

that maintain both traditional operations and innovative alternatives. As working definitions, "traditional operations" were identified as states in which local juvenile courts administered their own intake, detention, and probation services, with a minimum of administrative regulation from outside the court. "Innovative alternatives" were defined as all other administrative forms of service delivery, including the imposition of oversight of court management of such services, as well as administration of intake, detention, or probation by state executive or judicial agencies or by the executive branch of local government.

For the sake of standardizing comparisons, only intake, detention, and probation were examined for variations in methods of service delivery. The decision to proceed in this manner should not suggest that other services are not routinely provided to children in juvenile courts. Obviously, children who come to the attention of courts have many needs which are routinely met in one fashion or another. Because such services as crisis intervention, many forms of foster care, psychological and medical therapy, and similar services are so diverse, their interstate comparison could prove to be extremely misleading. At the same time, detention and probation are highly comparable services.

The intake process pinpoints the concerns of many critics of court operation of delinquency-related services, primarily because many persons who decide preliminary questions may be the same persons who must later participate in the adjudicatory stages. While not done the same way in all jurisdictions, the function of intake had to be included because of its relationship to the underlying question. As a consequence, intake, detention, and probation were deemed to be the most important, the most frequently encountered and, hence, the most comparable services to investigate and analyze.

SELECTION OF CASE STUDY STATES

States selected for case studies (Florida, Hawaii, Nevada, New York, North Carolina, and Pennsylvania) reflect a broad spectrum of court systems, service delivery systems, and alternative governmental locations for service delivery. A brief description of each selection and the reason for its inclusion follows.

Florida

Florida is the eighth most populated state in the country and is rapidly growing. In the 1960-75 period, almost 90 percent of that growth resulted from inmigration, which has many serious implications for all kinds of public services. It is a state that must constantly adjust to waves of immigrants, most notably the elderly, Cubans, Haitians, and groups from South and Central America, as well as millions of tourists and other transients every year.

The system of juvenile justice found in Florida represents an example of an innovative alternative, since it probably goes further than any other state in

separating the legal procedures in juvenile courts from the delivery of social control services. The changeover from a traditional delivery system took place during the mid-1970s, so that the problems of transition are still evident. Finally, Florida offers an interesting contrast to a totally different type of reorganization which took place in the state of New York during the same period.

Hawaii

The entry of our fiftieth state in 1959 resulted in a rather unique opportunity to establish a court system which was based upon the then-contemporary ideas of best practice in juvenile justice. Its delivery system for services to children before the courts is not controlled by sitting judges, even though both the services and judges are parts of a unitary state judicial system. Probation department directors report to the administrative director of the courts, who is directly responsible to the chief justice of the Hawaii Supreme Court. As a consequence, Hawaii represents an example of court services operation wherein the traditional employer-employee relationship (for example, between judges and probation officers) is not present. At the same time, the method of allocating staff to decentralized judicial branches offers contrast to the manner in which services are structured in North Carolina, another state in which the state judiciary assumes such responsibilities.

Nevada

Nevada represents an extremely clean example of the traditional juvenile court in which local judges are relatively autonomous, personally administering services related to children appearing before them. However, the structural location of these services appears to be of less importance to their quality and quantity than other factors, such as demographic factors and their relative effects on county revenues. The disparities between the three urban centers and other counties in the state are pronounced in every respect, which suggests an excellent opportunity for evaluating how services are affected by these other factors.

New York

This eastern state has a strong tradition of public concern for all types of services for children. It also enjoys a reputation for undergoing frequent and massive reorganizations over the past 50 years. Juvenile justice has been affected deeply by both of these phenomena.

In New York today, what emerges is a melange of delinquency-related services dominated by several fairly consistent characteristics, namely, a unitary state judiciary, only recently consolidated; local intake, probation, and detention services; and an institutional network dominated by private facilities. In contrast, notable variations can be found in several counties which receive state probation services on an experimental basis; instances of shared costs for local services between state and local governments; and the

lopsided allocation of resources to the five boroughs of New York City, where over 85 percent of juvenile crimes occur.

Another major aspect of juvenile justice in the state of New York results from legislation which severely restricts the original delinquency jurisdiction of family courts to less serious crimes committed by juveniles under the age of 16. Sixteen is the age of majority in New York for criminal prosecution. However, a number of 13-, 14-, and 15-year-olds must be charged in criminal courts if accused of certain serious felonies. The result of these forms of legislated waiver is that, despite the enormous volume, New York's family courts are responsible for a substantially smaller ratio of cases and consequent demands for services than would be found in other states.

North Carolina

In some ways similar to Hawaii, North Carolina represents a system which separates the operation of juvenile court services from the legal procedures of the district courts. However, there are important differences that suggest a model worth examining in its own right. While intake, probation, and aftercare are managed through the state's Juvenile Services Division, within the Administrative Office of the Courts, detention is provided by a state executive agency, the Department of Human Resources. All services, both judicial and executive, are provided through district regional offices. Both the separation of delinquency-related services from the district courts and the bifurcation of service responsibilities between the executive and judicial branches suggest yet another innovative alternative to judicial administration.

As in New York, the age of majority for criminal prosecution is 16, which clearly alters the volume and character of juveniles who require intake, detention, and probation within the juvenile justice system.

Pennsylvania

Pennsylvania is not only a large industrial state with diverse characteristics of being at once eastern and midwestern, industrial and Appalachian, but it also represents a blend of both traditional and innovative arrangements for delivering services to children in juvenile courts. Its traditional service structures are most evident in intake and probation, while detention can be found in three different structures, depending upon the part of the state that is under examination. Another important feature of the Pennsylvania system is the self-regulating state Juvenile Court Judges' Commission. Finally, judges in Pennsylvania are initially elected on partisan ballots, but are only subject to unopposed retention ballots every 10 years. This resulting stability of jurists with long records of service was felt to be worth investigating to determine if any attitudinal differences could be discerned about the location of services or if the services themselves were affected thereby.

MAJOR FINDINGS

As might be expected, the distillation of commentaries by almost 150 respondents in over 20 cities and six states presents a formidible challenge. At the same time, complete case study reports, because of their length, are just as challenging to readers. Some accommodation to the conflicting demands of precision and brevity had to be found.

In an effort to make this report as useful as possible, the major findings from each of the six states appear below, while the full texts of the case studies appear in Appendix A. When any of the findings appear questionable or sufficiently important to warrant further investigation, we urge readers to consult the appropriate case study.

Some readers may wish to know the exact nature of the questions which were asked in order to better understand the answers. Appendix B contains the actual wording of sample survey instruments. (In fact, instruments were modified to conform to each state's laws and organizational structure.)

What appear below are observations, based upon the most frequent responses received in the surveys. Naturally, there were countervailing opinions expressed on many questions. In instances where distinct preferences for one response or another could not be discerned, the report either will reflect the minority opinion as well, or will indicate that no clear preference existed.

Florida

Organization of Services

In 1971, as a result of a major reorganization of the executive branch approved by the legislature, the new Department of Health and Rehabilitative Services began to take over and manage social services which had been operated by juvenile courts. Over the past 10 years, the takeover was completed, resulting in the present alignment of service responsibilities that completely separates legal processes from social services.

Juvenile courts in Florida operate as divisions of the county circuit courts, the highest local courts having general trial jurisdiction. With certain exceptions, their jurisdiction encompasses juveniles under the age of 18.

The Florida Department of Health and Rehabilitative Services (HRS), Division of Youth Services, provides intake services for the courts, in cooperation with the offices of state attorneys. In addition, detention, probation, and correctional services are provided by HRS, along with the relatively novel executive responsibility of furnishing courts with predisposition reports. All services are provided through HRS district offices, which may serve single or multiple counties. However, it must be noted that all HRS services are delivered in this manner. Each HRS district administrator has responsibility for public welfare, child welfare, mental health, developmental disabilities, and other state programs, in addition to providing

the services mentioned above. Given the relative sizes of these other programs, both in terms of dollars and staff, it is easy to see that delinquency-related youth services are a relatively small part of the complex structure for comprehensive service delivery in Florida.

Satisfaction with Present Location of Services

The services provided in the 1960s by courts to children before them were relatively limited and, in some cases, nonexistent. At that time, 18 of Florida's 67 counties had no probation services. Dade County (Miami) had 10 probation officers for a case load of 1,800. Many courts were long distances away from the closest detention homes in neighboring counties.

Possibly because of the comparatively recent change from a judicial model, most respondents favored the present location of intake, detention, and probation. However, some respondents qualified their answers by suggesting that courts should have more involvement in establishing HRS policies with regard to the delivery of delinquency-related services. The juvenile court judges interviewed were not unanimous in their reactions to the current location of services in HRS and each recommended a different approach. One judge approved of the new state-operated delinquency services, primarily because of the disparate availability of resources under the old system. Another judge preferred the return of such responsibilities to the counties, which would bring the services "closer" to the local courts without returning them to court control. A third judge preferred their return to the local courts because he believed that the services provided would be more accessible to clients, less bureaucratic, less duplicative, and less likely to result in removal of children from the community. One public defender argued against all public service provisions for children, and championed the concept of private, nonprofit operations.

Compatibility of Due Process and Parens Patriae

There was general agreement that the system's response to due process issues was adequate. About one-half the respondents believed that as juvenile courts were becoming more formal, judgments were becoming more punitive, although there is some reason to believe that the perceived harshness may be attributible to two 1978 changes in the law with respect to easing restrictions upon waiving juveniles to stand trial as adults in criminal courts.

Most people interviewed, particularly those who favored the current location of services in HRS, believed that the doctrines of due process and parens patriae were congruent in Florida, principally because of the separation between court handling and service delivery. A minority of respondents believed the philosophies were inherently incompatible. Concern was expressed by a number of interviewees that the increased formality brought on in recent years had decreased opportunities for timely intervention into the lives of troubled youth.

Satisfaction with Quality and Quantity of Services

Satisfaction with the three standard services was generally strong. Respondents felt that better funding and the consequent increase in overall services in the state was noticeable. However, because services were now more uniformly delivered throughout the state, former disparities cut two ways into current attitudes. In poorer, more rural counties, the services are now seen as better and more plentiful. In well-to-do urban counties, services were seen as better and more plentiful under the old court system.

The one court-related social service that received the most negative comments was intake. Criticism centered on several aspects of that service: mainly, a need for clarification or modification of roles for HRS intake workers and for state attorneys; a need for greater staff training in order to improve the services offered at intake; and a separation, within HRS, between the staff responsible for intake or other preadjudicatory services and the staff responsible for probation and other dispositions.

The second major set of criticisms concerned the perceived bureaucratic problems inherent in HRS. While most respondents were satisfied with the quality of HRS staff, they felt that state civil service procedures worked against employing or promoting the most competent people available. In addition, a uniform salary system across the entire state encourages staff to fill vacancies in rural areas, leaving vacancies in urban areas where the cost of living is much higher. This condition apparently remains true despite efforts by HRS to pay slightly higher salaries in the most seriously affected counties. One strong and general concern expressed related to perceptions of excessive red tape within HRS. Administrative decisions were frequently seen as slow, inappropriate, or nonexistent. A great deal of the perceived difficulty resulted from a decentralization effort several years ago, in which district offices were converted to multipurpose service centers to act in fairly autonomous ways within their given geographical areas.

Perceived Roles for Courts

Respondents overwhelmingly believed that the courts should remain as juridical agencies and leave the delivery of social control services to other agencies. However, many expressed the opinion that judges could play several legitimate roles with respect to social reform, including participation in the establishment of social policies through public speaking and committee work.

Judges were also viewed as appropriately carrying out their proper functions when they monitored agencies which delivered services to wards of the court. In addition, an opinion was expressed that HRS would be well served by establishing an advisory committee of judges and legislators to help set policies for those services delivered to children in the juvenile courts. Apparently, respondents either did not know that such a committee had been established by HRS or else considered it inadequate. Suggestions were made that would have the effect of increasing judicial contributions to the formation

of departmental policy. It appears that the isolation of the judiciary from the administration of services has resulted in communication gaps between the two entities and has caused judicial alienation from HRS.

Accomplishment of Objectives

Respondents generally felt that HRS had succeeded in its effort, begun in 1971, to take over and manage social services for local juvenile courts. Further, beliefs were expressed that state executive administration of social services is preferable to local judicial administration because the funding became larger and more uniform across the state. The current system is also deemed quite workable in light of due process issues that do not arise in Florida since the separation.

However, at the time of this study, two major problems consistently emerged which could contribute, during the 1980s, to increasing demands for further modification. Respondents fairly consistently referred to feelings of alienation between HRS and district court judges. The second problem frequently mentioned related to perceived bureaucratic problems with HRS due to the enormous size and complexity of the department.

In some ways, neither problem is soluble without profound changes in the Florida system, changes which appear to be both unlikely and undesirable according to most respondents. It may be possible, though, to ameliorate current causes of unhappiness through the establishment of procedures for admitting all three branches of government into certain areas of policy development, a process already begun through establishment of the Youth Services Advisory Council.

Hawaii

Organization of Services

The organization of the judiciary in Hawaii is reflective of the overall evolution of state and county governments in that state. Hawaii is the only state with just two levels of government. State and county units exist without the presence of other political subdivisions with taxing powers. The entire island of Oahu is known as the City and County of Honolulu. The counties have an organizational structure which appears to be municipal in concept, each having a mayor and a county council.

Family courts are branches of the circuit court bench. A senior judge of the family court is appointed in each of the four circuits, primarily for case-load management. Juvenile cases are variously assigned to district court judges in three of the districts and to district family court judges in Honolulu. The most serious juvenile delinquency cases are scheduled for hearings before circuit court judges.

The entire family court bench is under the supervisory authority of the supreme court's chief justice. The supreme court has appellate jurisdiction and rulemaking powers for all courts in the state. The chief justice has

administrative responsibility for the judiciary, appoints the administrative director of the courts, appoints all district court judges, and designates administrative judges for both circuit and district courts in each judicial circuit. The chief justice's power to establish rules of court for the inferior courts is, of course, a central feature of the unified court system; but the prerogative of the family court judges, sitting en banc, to propose such rules to the chief justice provides an interesting mechanism for judicial self-government.

Administrative functions are centralized under the statewide administrator of the courts responsible to the chief justice, rather than to the bench as a whole. The office of the administrator contains a central personnel office that operates under executive branch merit system rules, which have been extended, by law, to the judiciary in the form of a separate but similar personnel system.

All civil service positions, state and county, in Hawaii are governed by the principle of equal pay for equal work. Classifications and pay ranges must be the same for comparable positions throughout the state in all branches of government. Changes to, and original approval of, specifications and pay rates are required from a majority of the heads of civil service units throughout the state, even for positions not under their own administration. Pay scales are negotiated with public employees' unions and an agency of the executive branch (the only instance where there is executive branch responsibility for judicial branch personnel). Grievances follow a regular system of merit system steps, and judges cannot personally discipline or discharge employees; they must proceed through the merit system.

Budget requests for each county court are submitted to the administrator by each court director. The administrator then submits a budget for all the courts to the state legislature as part of the governor's executive budget.

Under this system, all three delinquency-related services, which comprise the bases of this study, are operated under the oversight of the administrator of the courts and through the local probation offices. The major secure detention facility in the state is operated by the Honolulu family court services office, which accepts, at no charge, detainees from the other three circuits. Nonsecure detention and similar foster care placements occur closer to home, so that instances of neighboring island detainments at the Honolulu home are relatively infrequent. Intake and probation services are both operated by the circuit family court services offices.

In order to complete the picture, it should be pointed out that the state's treatment facilities and aftercare programs are operated by the Hawaii Department of Social Services and Housing.

Satisfaction with Present Location of Services

The weight of opinion strongly favors the view that intake, probation, and detention are best located within the judicial branch. This appears to be due to three factors; namely, the inclusion of all court services personnel within the state merit system, the way in which this system tends to insulate court services staff from the judges they serve, and the superior ability of the judiciary to receive the appropriations requested of the legislature. There was no significant opinion in favor of executive management of delinquency-related services.

Compatibility of Due Process and Parens Patriae

The responses of the family courts to emerging concepts of due process are generally regarded as adequate and successful. Public defenders felt that more safeguards should be provided and prosecutors argued for more control over intake decisions as a means of increasing protection of juveniles' rights. There are generally very strong values, held by both judges and probation department staff members, that the standard for their conduct should be "the best interests of the child," i.e., parens patriae. The result has been a judicial environment in which jurisdiction and adjudication are controlled by due process considerations, and dispositions revert to parens patriae ethical values regarding intervention and treatment.

This has led to a certain amount of criticism by police, prosecutors, the press, and the general public. Several highly publicized cases focused public concern with what were perceived to be unduly lenient decisions regarding both detaining and confining serious offenders. While these criticisms appeared to be aimed at particular judges rather than either the assigned function or organizational structure of family courts, the results profoundly affected the courts in several ways. Two district family court judges were not recommended for reappointment. The state legislature began to look more closely at the operation of family courts, particularly in Honolulu. The press wrote a number of articles exploring how decisions were made in family courts. Finally, key judges and probation staff members began a difficult but useful period of self-examination, culminating in the establishment of new standards for detention and intake services.

One way of viewing the source of the conflict can be seen in the markedly different premises underpinning the two philosophies mentioned above. There appears to be a public perception that punishment through confinement should be the other side of the due process coin. Among key respondents in the system, however, due process protection, as an end in itself, was not generally regarded as having overriding importance. The generally expressed viewpoint focused, instead, upon principles of parens patriae, upon strengthening families, and upon the best interests of the child.

Satisfaction with Quality and Quantity of Services

The four counties—Kauai, Maui, and Hawaii, plus the City and County of Honolulu—have only limited taxing powers. The main source of revenue for local government comes from taxation of real estate, while state government has much larger sources of income from sales taxes, manufacturing taxes, and personal and corporate income taxes. This

disparity in taxing potential between the state and the counties had much to do with total judicial funding from the state budget.

The majority opinion is that the present manner of funding detention, intake, and probation services results in the largest potential appropriation from the state legislature. Being within the judiciary budget, the court services funding request carries the prestige and influence of the judicial branch.

A number of persons interviewed believed that connecting court services funding to the judicial budget avoids problems of ranking priorities which might occur if funding for court services were included in the larger budget of the state's executive branch. The general feeling was that, when confronted with the demands of a pluralistic society, state lawmakers tend to cut executive services before they will touch the judiciary budget. The reasons appear to stem not only from the unique role courts play in society, but from the relatively negligible size of the judicial budget. The entire 1978 judicial budget in Hawaii amounted to $14.5 million (1.64 percent of the general appropriation fund of $883.8 million).

Internally, the judges, administrator of the court, and court services staff reflect some ambivalence over the expansion of services in the absence of enforceable guidelines for intake screening, case management, work standards, and standardized procedures. The determination to improve services while responding to public concerns is quite evident among the judiciary. The desire to be responsive to the needs of the family courts appears to be equally present among the court directors interviewed. At the same time, the need for more secure confinement, proper measures for staff productivity, and the appropriate use of nonjudicial services have long seemed to defy easy resolution.

From the standpoint of quality, the probation departments are viewed as staffed with qualified people, equal or superior to executive agency staff. As noted earlier, the major criticisms leveled at the family courts in Hawaii tend to relate to philosophy rather than to the quantity or quality of present services.

Perceived Roles for Courts

There did not appear to be much sentiment for judicial monitoring of executive agencies that provide services to court wards. This may have been the result of current public pressures to address internal issues but, whatever the reason, the view of the court as a watchdog was not strongly present in Hawaii.

There was no significant sentiment for extending the scope of current court services into programs of delinquency prevention, while the court was reluctant to suggest expanding into any new areas unless clearly necessary, on a pilot basis, or where existing services were inadequate. Informal intake screening was generally defined as the court's most legitimate area of preventive activity. Further, the role of judges as active leaders for social reform received no support.

Accomplishment of Objectives

The juvenile and domestic relations courts have been reorganized and integrated, as planned, into a unitary judicial agency with jurisdictional and service focus upon the family.

So far as the structural arrangement of legal and social services is concerned, the Hawaii model enjoys much popularity. The prevailing view expressed is that intake, probation, and detention are best located within the judicial branch.

There was a general opinion expressed that the philosophy of the family courts had become decidedly more permissive of antisocial behavior over the past 10 years. Specifically, a stronger dedication to the precepts of parens patriae was noted, despite the courts' generally acknowledged adoption of standards consistent with *Gault* and other U.S. Supreme Court requirements. Yet, opinions were sharply divided regarding the desirability of such perceived leniency.

Because of the atypical structure used for delivering delinquency-related services in Hawaii, the current crisis presents a unique opportunity for exercising judicial self-government. While the tools appear to be present, however, there is no reason to believe that the self-regulating feature of the family court's organization has had a significant administrative impact upon court services. The prerogative of family court judges, sitting en banc, to propose rules of procedure to the chief justice has reportedly not been significantly utilized to establish standards and guidelines for probation, intake, or detention services. But the opportunity is there, an opportunity which would not be nearly so easily grasped if these same services were delivered through the executive branch of government. It is also a power which could be preempted by the legislature if not used by the judiciary. However, recent activities in Honolulu indicate how the judiciary can effectively work with members of the legislature and other agencies in establishing standards, which may suggest an alternative to judicial self-government. Specifically, the first circuit's judicial leadership has formed interagency committees to review problems and to suggest standards, with committee reports receiving active support in later legislative action.

Nevada

Organization of Services

Eight district courts possess juvenile jurisdiction for Nevada's 17 counties, including Carson City which is technically not a county. Three counties—Clark (Las Vegas), Washoe (Reno), and Carson City—have single county courts which administer delinquency-related services as part of court operations. While the remaining five courts serve multicounty districts in the remaining 14 counties, each county is responsible for furnishing its own court services.

Since 1909, when juvenile courts were established by the legislature,

juvenile courts have remained historically consistent in philosophy, options, and procedures. Despite several major legislative amendments, the only significant shift in services to children in juvenile courts occurred in 1978, when responsibility for protective services shifted from the state Division of Welfare to the juvenile courts.

Intake and probation services are provided by probation officers appointed by either the presiding judges or their directors of juvenile services. Detention homes exist in only the three largest counties serving Carson City, Las Vegas, and Reno. The other 14 counties either use local jails, or transport juveniles requiring secure detention to one of the counties listed above, or to state facilities. Two regional detention facilities are maintained by the Department of Human Resources (DHR) in northern and southern Nevada. While counties may also operate other residential programs, these types of services are generally provided through DHR. Both institutional and aftercare services are handled by DHR.

The quantity and scope of court services varies in direct proportion to the population and correlative tax bases of the counties. Clark County (Las Vegas) and, to a lesser extent, Carson City and Washoe County (Reno) maintain full-service courts. Hearings are held before both judges and commissioners (referees). Each has its own detention home which serves, to some extent, the purpose of regional detention. In fact, Washoe County occasionally receives juveniles from two California counties which have no detention homes of their own. Proceedings are fairly formal and the operations are typical of traditional, full-service courts around the country.

Beyond those three counties, however, the picture changes considerably. Most of Nevada's remaining 14 counties average less than 10,000 people and almost all of the lands are held as national parks and reserves. The result is that county probation departments tend to be no more than one part-time or full-time person, serving in a variety of roles, such as intake officer, probation officer, and informal arbiter of disputes. In these counties, the services of DHR are, by contrast, more evident than in Las Vegas. Protective services from both DHR and its Division of Welfare are also more evident here as functions of state government. The state probation subsidy helps to support all existing probation services in the smaller counties, but is less significant in the larger ones.

Satisfaction with Present Location of Services

There is strong support for current court administration of juvenile justice services, with some important exceptions. Some county commissioners take exception to funding services over which they have no control. However, relative wealth plays a part in the shaping of local attitudes. In urban counties, both judges and commissioners agree that county government should be the situs of delinquency-related services even though they reflect differences of opinion as to the exact lines of authority. These feelings have been nurtured by their negative impressions of the services being provided by state agencies. In

the rural counties, however, the paucity of the local tax base leads officials there to favor state takeover of local responsibilities in this area. However, any disagreements have not yet produced a strong call for removal of such services from judicial administration. Points frequently emphasized in favor of the current system generally related to perceptions of greater efficiency and less politics when services are administered by the judiciary.

Compatibility of Due Process and Parens Patriae

It was generally felt that the Nevada system protects the due process rights of youth, particularly since district attorneys have begun playing much more important roles in determining whether petitions should be filed. The presence of defense counsel has also become more commonplace in juvenile cases. Judges are statutorily restricted from seeing social history information until after adjudication. Despite the fact that counties may grant arrest powers to probation officers, respondents believed there were no inherent problems to court operation of probation. What did concern some interviewees, however, was the effect of due process concerns, and its attendant formality, upon the parens patriae philosophy that has guided court behavior for many years. The effects of adversary proceedings, for example, was cited as delaying and, in many cases, precluding service delivery to troubled youth. Because the new burden of proof cannot be as frequently sustained, some respondents felt that juveniles are learning at an earlier age to "beat the system." While the abandonment of due process protections in juvenile courts was not advocated, the point seemed to be that gains from any further formalization of juvenile courts would be more than offset by losses to current practices of serving the needs of children. Judges and police officers tended to see the two philosophies as consistent and argued that current procedures should be left alone. District attorneys believed that they were not consistent. While most court personnel agreed, they concluded that additional rights should be secured for juveniles in court hearings and services.

Satisfaction with Quality and Quantity of Services

While the controversy over funding has not fully ripened, it is clear that it will become a major issue in Nevada. Much dissatisfaction exists over the nature and extent of state activity, including its fiscal support of locally delivered services. The most recent evidence was the transfer, in 1978, of certain protective service responsibilities to certain juvenile courts, with Title XX funds to support them. This was viewed locally as an admission that DHR could not do the job, particularly by the judges.

Currently, Clark County spends about 12 percent of its general revenue funds for juvenile services, something which must be viewed as an impressive statistic. On the other hand, most poor, rural counties spend 1 to 2 percent on the same services. The result is one or two counties that provide considerably more and better services with greater efficiency than the state itself can provide. The rest of the state, however, is unable to approach the quantity or quality of state services presently being provided.

Perceived Roles for Courts

There was overwhelming support for judicial monitoring of agencies that provide services to court wards. This is not surprising in a state where the parens patriae philosophy is so strong. However, the respondents split as to whether such monitoring should extend to the operation of entire agencies or only to specific services ordered for court wards.

Opinions in Nevada strongly supported the notion that courts had a leadership role to play in reforming social conditions because of both their exposure and their credibility within their communities. The feeling seemed to be that, through public education and personal leadership, judges should visibly work toward improving social conditions that would ameliorate the extent of delinquency. At the same time, there was marked opposition to the idea of an "activist" court, in which preventive intervention in the lives of troubled families would be undertaken. Prevention services were not viewed as appropriate activities for juvenile courts.

Accomplishment of Objectives

The Nevada system of delivering delinquency-related services was created so that emphases would be placed on local control over rehabilitative care. The objective of services under local control has certainly been met. However, that the emphasis on rehabilitative care has been accomplished is uncertain. The existence of a rehabilitative philosophy must be coupled with adequate resources. Nevada demonstrates that it is possible to operate quality services in the judicial branch. At the same time, the absence of adequate funding in rural counties renders consideration of such questions as local control or alternative systems largely inconsequential. What difference does it make who runs the services if the resources are virtually nonexistent? In Nevada, the key factors appear to be the size of local tax bases and the presence of advocates for juvenile courts.

New York

Organization of Services

The structure for delivering services to children in juvenile courts is perhaps more complicated in New York than in any other state. The two most salient causes appear to result from the singular position accorded in Albany to the five boroughs known as New York City, and from decades of political contention and experimentation with intergovernmental relations.

Since 1962, New York has operated its juvenile court system through 62 family courts (57 county courts and five in the boroughs of New York City). Over the mid-1970s, the state gradually absorbed all courts into a unitary state court system, leaving delinquency- and PINS (Persons in Need of Supervision)-related service delivery to county government. As a result, intake, probation, and detention are local responsibilities. At the same time, there are some important exceptions.

In 54 counties, intake and probation are county services, provided through county probation departments consisting of one or more officers. In three counties (Fulton, Montgomery, and Warren), such services are provided on an "experimental" basis by the state Division for Youth (DFY). Although designated as an experiment in the local delivery of state services, the practice has existed for many years and appears to be a stable part of the overall pattern of services delivery. In the five boroughs of New York City, intake and probation services are supplied to each of the five family courts by the Juvenile Justice Agency, a department of city government located in the Office of the Mayor.

New York law requires every county to provide detention services, although the statute does not mandate that the detention provided be secure. However, in order to maintain a secure detention facility, the county must also operate nonsecure facilities as well. As a result, 52 counties provide only nonsecure detention services, such as shelter care and group homes. Five counties outside of New York City (Erie, Monroe, Nassau, Onandaga, and Westchester) provide both secure and nonsecure detention services. In New York City, secure and nonsecure services are provided for the five boroughs through the Juvenile Justice Agency.

The absence of secure detention services in those counties that do not provide them has created a number of problems. While local jails and lockups are used for 16- and 17-year-olds, because they are legally adults for purposes of prosecution, 13-, 14-, and 15-year-olds tried as adults under New York's juvenile offender law must be detained in juvenile facilities. In order to alleviate the problems caused by the limited possibilities for secure detention, a plan has been devised whereby most of the five county facilities serve as regional secure detention facilities. In addition, DFY operates a regional detention facility near Poughkeepsie.

Satisfaction with Present Location of Services

The majority of respondents favored the management of delinquency-related services by the executive branch of government. The source of satisfaction appears to stem from beliefs about the importance of maintaining the independence of intake, detention, and probation services from judicial control. Where state services were most prominently used, respondents approved their location on the basis of both less cost to the county and higher qualities of service than the counties could provide. At the same time, in counties with complete county services, no sentiment appeared for further assumption of services by DFY. While one judge argued for return of detention and diagnostic services to the judicial branch, most other respondents expressed satisfaction with the present location of these services.

Compatibility of Due Process and Parens Patriae

It was generally felt that parens patriae concepts are or could be consistent with due process requirements. Further, a majority of opinion

supported the adequacy of due process protections now embodied in both family court procedure and in the separation of legal procedures from social services delivery. County attorneys (prosecutors) reported that court cases are taking longer to complete, thus creating backlogs, excessive days of detention, and delays in other forms of services delivery. In addition, county attorneys also felt that, because of increased emphasis placed upon due process requirements, more juveniles are learning to "beat the system" through technicalities and plea bargaining. The county attorneys did not attack the value of due process protections; rather, they argued that a point had been reached where increases in due process safeguards would result in net losses for the long-term best interests of children. With these exceptions, however, most respondents did not feel that current safeguards created significant problems, and they supported full protection of youth rights, in keeping with adult standards.

Satisfaction with Quality and Quantity of Services

Most respondents felt that adequate services existed in the areas of intake and probation, particularly where provided by the state agency. The evaluation of detention was more divided and more negative. One major complaint heard related to the absence of appropriate places for detaining status offenders, or PINS as they are known in New York. Another complaint resulted from the geographical location of secure detention facilities. A child might actually be sent a distance of over 200 miles to be housed in secure confinement if the local facility is full or if there is no local, secure, juvenile facility. This has occurred on occasion and is due, according to some respondents, to increased delays in trying and disposing of serious felony cases in family courts. These delays are felt to result, in part, from increased formality in the adjudicatory process which, in turn, causes overcrowding of the detention homes. Some dissatisfaction was expressed about the fragmentation of detention responsibilities between state and county governments. It will be interesting to see whether the consolidation of courts into a state judiciary will produce, over the next 10 years, a corollary move toward state detention services as well.

Perceived Roles for Courts

Opinions divided evenly as to the desirability of judicial monitoring of services delivered by outside agencies to court wards. Some respondents saw this as a normal judicial responsibility, while others either believed it to be a practice that would threaten court-agency relationships or that it would make no difference in the services provided.

There was strong opposition to the involvement of courts in delinquency prevention programs. Yet, respondents supported the notion that judges should try, through leadership and education, to improve social conditions within their communities.

Accomplishment of Objectives

The transfer of delinquency-related services to the executive branch of government and correlative development of a unitary court system are not viewed as steps which have vastly changed the quality of services; the general feeling seems to be that current services are about as good as, or perhaps only a bit better than, they were under the judges. However, respondents believe that separation of powers concerns are substantially alleviated by the recent reorganization and removal of services staff from judicial control. In New York City, the transfer was generally regarded as unsuccessful because the actual services did not appear to improve after the separation took place, while in Warren County respondents were especially happy with the economic and programmatic benefits associated with the transfer of services delivery to DFY.

A number of persons commented upon the changing philosophies of family court judges. Some likened the new family court philosophy to criminal courts. Others emphasized tougher penalties being ordered in delinquency cases. However, many respondents, commenting on this phenomenon, disagreed as to whether the shift was or was not desirable. Whether the perceived change actually results from greater due process or from a more general response to demands for greater public protection is not clear. What is clear is that crime control is the major issue in New York today, particularly in New York City, not the structural arrangement of delinquency-related services. However, it is equally clear that, in a state that uses governmental reorganizations as a technique for addressing social problems, there will undoubtedly be new realignments of service responsibilities in the future.

North Carolina

Organization of Services

The juvenile court system in North Carolina is a unique organizational response to potential problems inherent in judicial administration of social services. Since 1973, juvenile intake, probation, and aftercare have been organized under the Juvenile Services Division of the North Carolina Administrative Office of the Courts. This division operates with almost complete, formal independence from the district court judges who hear juvenile cases. Instead, its director reports to the director of the Administrative Office of the Courts and, in turn, to the chief justice of the supreme court. In effect, the state hires the personnel, establishes pay scales and program guidelines, and sets policies.

One pertinent requirement mandates that each juvenile court district have separate intake services and probation services. In practice, this means that large counties operate completely separate units; in small rural counties, two people may carry separate titles but their actual daily activities may not be distinguishable.

Detention services are provided through the Division of Youth Services in the North Carolina Department of Human Resources.

Satisfaction with Present Location of Services

The current organizational location of juvenile intake, probation, and aftercare was generally supported by the respondents. Less clear was current opinion about the location of detention. Although many respondents criticized current detention practices, about one-half supported its location in the Department of Human Resources. Most of the support for change coincided with recommendations in a 1979 report, issued by the legislative Juvenile Code Revision Committee, which recommended the establishment of a separate agency which would deliver all juvenile services in the state.

Compatibility of Due Process and Parens Patriae

A major motivation for creating the current system developed from the legislative intent to clearly integrate the principles of parens patriae with the newer tenets of due process thinking. At present, the separation within the judicial branch of the district judges from the management of delinquency-related services is felt to sufficiently meet criticisms concerning due process protections. A widely expressed belief indicated that due process procedures should predominate through adjudication, but parens patriae considerations should predominate thereafter. Respondents generally felt that this approach represented the best possible reconciliation of these two sets of goals.

Satisfaction with Quality and Quantity of Services

General satisfaction was expressed concerning the quality of services supplied through the Juvenile Services Division of the Administrative Office of the Courts. The shift to this structure reportedly resulted in better services, more efficient operations, and more qualified personnel, despite relatively low salaries. Even where services are minimal in rural counties, the perception is that the current condition is an improvement.

The singular type of complaint reported concerned role conflicts that may emerge between law enforcement officers and intake officers. An apparently unintended overlap in functions has developed, particularly in the larger cities where police juvenile units exist. Some respondents expressed the feeling that because law enforcement officers must follow departmental regulations with respect to arrest and diversion, they are bound to consistently deal with juveniles in specific ways. However, because the intake officers are not technically answerable to district judges, they end up operating in fairly autonomous ways. The end result, according to some respondents, is that intake officers either duplicate the work of the arresting officer or they reject the diversion recommendation, leaving the police officer with little effective recourse. (Appeals of diversion decisions are seldom filed, which leaves the decisions by intake officers virtually unchallenged.) In rural counties, the situation appears to be quite different. Although there is little criticism of

intake, the observer will find situations in which the sheriff's deputy with juvenile responsibilites, the intake officer, and the probation officer all share a common office area. Cases are openly discussed and jointly determined in regard to diversion or proceeding to hearing. While no objections were voiced concerning this practice, it does appear that opportunities exist for unfair or unequal treatment of juveniles under these circumstances.

There is also substantial criticism of detention, particularly in the rural areas of the state. Attempts at establishing regional detention facilities have repeatedly failed in the legislature, mainly due to a strong ethic for handling juveniles in their own communities. The result is that a number of juveniles (under the age of 16) are held in county jails when secure detention is deemed necessary. This condition will be rectified after July 1, 1983, since the current code forbids, after that date, confinement of any juvenile in jails or other places intended for adult confinement. It may be that state-provided regional detention may be a more attractive alternative at that time.

Criticism also extended to ancillary social services available in the local communities, at least outside Mecklenburg County (Charlotte). The nature and quality of existing services were not called into question; rather, the limited variety, the quantity, and the range of those services generated much comment. Services to emotionally disturbed adolescent youth were considered to be extremely limited. Community-based alternative programs seem to be falling short of demand, despite the presence of a state subsidy focused specifically on such projects. Since there appears to be no sentiment for expanding the types of services currently provided by the Administrative Office of the Courts, it appears that these needs may be met from within the executive branch, specifically the Department of Human Resources.

Perceived Roles for Courts

It is unlikely that the roles currently played by district court judges will change much in the next few years. Yet the future in North Carolina is far from clear. Should the legislature establish a state youth services department, it could mean that the services presently administered by both the Administrative Office of the Courts and the Department of Human Resources could be drastically affected.

Despite the criticism of community-based services, there was little support for a more significant role for the courts in monitoring services to its wards delivered by public and private agencies. There was no support for judges becoming active leaders for social reform in their communities, except for encouraging and supporting public awareness programs. No support was expressed for the courts' involvement in delinquency prevention programs.

All indications point to one overriding juvenile justice issue, the question of a single state agency. It may also be fair to speculate that, when the mandate for removing juveniles from jails becomes effective in 1983, an extensive public controversy will surface about its timeliness and about alternative arrangements.

Accomplishment of Objectives

One thing seems certain, there is no current public interest in ending judicial administration of intake, probation, and aftercare. On the other hand, there is no interest in expanding that authority to include delinquency prevention.

Those observations, coupled with respondents' reactions to questions concerning due process, would suggest that North Carolina's 1973 code revision did achieve, to a great extent, its stated objectives.

Pennsylvania

Organization of Services

Pennsylvania is made up of 66 counties and the City of Philadelphia, all of which will be referred to as counties. Each of these jurisdictions maintains a court of common pleas, which is its highest local trial court. Courts of common pleas exercise juvenile jurisdiction in Pennsylvania; in larger counties through family court divisions. In such a capacity, they are called juvenile courts. The juvenile courts are responsible for providing their own intake and probation services. In addition, they provide aftercare services to juveniles who are released from state delinquency institutions.

There are 24 detention facilities, all operated by local governments. In Allegheny County (Pittsburgh) and the City of Philadelphia, detention services are administered by judicially appointed boards of managers. The other detention homes are operated by the county commissioners, either as single-county or multicounty facilities. While most multicounty homes are normally supervised by the county executive in the county of situs, with the other counties contributing to upkeep and policy, one facility serving several counties operates under a board appointed jointly by the participating county commissioners.

The state Juvenile Court Judges' Commission is a nine-judge panel nominated by the chief justice of the Pennsylvania Supreme Court and appointed by the governor. The commission functions as a self-regulating agency, prescribing rules for the local juvenile courts, establishing standards, and administering a subsidy program designed to subsidize salaries of juvenile probation officers.

Satisfaction with Present Location of Services

A majority of respondents preferred the status quo, the operation of services by the courts. The most common reasons for selecting court operation had to do with perceptions of relatively more efficiency and less bureaucracy than what was offered through the Department of Public Welfare (DPW). Another reason given was the importance of local control of services, with services closer to clients and families. Some respondents believed a state-operated system would offer the advantages of better funding and more uniform services delivery, even though it would be less personal and less

adapted to community needs. No comments received during the survey referred to state operation of detention services. Some preferences were expressed for county executive services, primarily for reasons pertaining to potential due process and conflict of interest problems.

Compatibility of Due Process and Parens Patriae

The Juvenile Court Judges' Commission has adopted procedural standards intended to bring juvenile court practices in line with the U.S. Supreme Court pronouncements in *Gault* and subsequent decisions. These standards have been implemented partially or in toto by many counties in the state. Training is also currently being offered to sensitize court staff to due process requirements in both legal procedures and social services delivery.

Respondents felt that present juvenile court proceedings in Pennsylvania were consistent with *Gault*. Noncourt interviewees agreed that constitutional safeguards were protected by current procedures. However, only one-half of the respondents felt that due process and parens patriae could be applied congruently in juvenile courts. Those persons who supported the belief that the two philosophies were compatible usually did so based upon an assumption that adjudicatory and dispositional hearings would remain bifurcated. In this way, they felt due process protections could apply to the former type of hearing, while "the best interests of children" could control dispositional determinations.

Persons who believed that the two approaches were incompatible generally felt that due process guarantees severely limit the ability of courts to provide care and rehabilitation. Some criticism was received of a practice in Allegheny County in which district attorneys are not consulted and do not conduct delinquency prosecutions in juvenile court, except for bindover hearings in which juvenile court judges must decide whether or not to transfer juveniles charged with serious crimes to criminal court. This limited involvement of district attorneys was pointed to as evidence that the due process model, at least in Allegheny County, has not been completely adopted, since it leaves the court in the position of playing both the role of impartial arbitrator and the protector of the state's interests.

Most respondents saw the basic philosophies of juvenile courts becoming more oriented toward more formalized hearings and, according to some respondents, more punitive attitudes. However, examples offered tended to suggest that recent legislative efforts to expand the jurisdiction of criminal courts over juvenile offenders may have been the bases of their concerns.

Satisfaction with Quality and Quantity of Services

The quality of social services was perceived by all respondents to be quite high under the courts. Personnel qualifications are generally regarded to be better than those found in executive agencies in Pennsylvania.

The most prevalent comments heard during the survey relate to the inadequacy of funding for juvenile court services. It was reported in Allegheny

County that probation officers have not received a pay increase in two years; in Philadelphia, social services staffs are working with a 25 percent vacancy rate; and in rural Greene County, one probation officer performs all necessary functions of a probation department. These conditions exist despite several factors which, on the surface, would suggest otherwise. For example, legislation in the past few years created the largest state subsidy for youth services in the United States. In addition, another statute deleted status offenders as a category of children and redefined them as dependents, thus placing them under the care of DPW. However, transitional problems continue to emerge, resulting in serious differences between juvenile courts and DPW officials.

Perceived Roles for Courts

A majority of respondents felt it was appropriate for juvenile courts to monitor ordered services. This applied to both their own programs as well as services administered by other agencies. Most respondents also preferred that courts limit their activities aimed toward improving social conditions to oversight and encouragement of delinquency prevention programs and public education efforts. Their reasoning appeared to stem from desires to conserve court resources and had little to do with whether such roles are appropriate for judicial agencies.

Accomplishment of Objectives

The accomplishments respondents mentioned most frequently were related to improvements caused by activities of the Juvenile Court Judges' Commission. These included a greater emphasis on due process safeguards in juvenile courts, more training of court staff, standards for social services delivery, and high personnel standards which were made possible by the state probation subsidy program. The commission emerges as a significant focal point for current judicial efforts in Pennsylvania to improve juvenile justice.

CASE STUDY CONCLUSIONS

The six states chosen for investigation present quite different patterns for delivering delinquency-related services. Pennsylvania and Nevada present rather traditional patterns of judicial operation of local court services. Hawaii and North Carolina, while also maintaining judicial administration, manage statewide programs through administrative offices attached to the state supreme courts. Florida represents a clear example of executive management by a state agency. New York offers a diverse combination of state and mostly county executive services.

The case studies, when viewed together and along a spectrum, hopefully provide the reader with an understanding of how these services are provided in most states. In noting responses of interviewees within the case study states, some very general impressions can be gleaned that could reasonably apply, by

inference, to other states with similar systems but which were not investigated. In this way, the case study approach, while not scientifically precise, offers a qualitative view of the universe studied.

The states differed in ways other than in organizational structures. They were as divergent geographically, demographically, economically, politically, and culturally as could be found in these United States. No two states were noticeably similar in any of these aspects.

At the same time, the existence in the six states of juvenile courts, detention homes, intake and probation departments, as well as other related services meant that they were, indeed, comparable. Judges, probation officers, legislators, prosecutors, and defenders who were interviewed seemed more similar to their counterparts in other states than to other system members in their own states. The result is the emergence of judicial viewpoints or legal defender perspectives or prosecutorial attitudes that consistently express, across state lines, positive or negative reactions to the status quo. The only conclusion that can reasonably be drawn from such a phenomenon is that, for most of our respondents and particularly in the area of due process, reactions were conditioned more by their roles than by the systems themselves. Briefly, a six-state summary of major findings appears below.

- No matter how services were organized, whether judicial or executive, state or local, a majority of respondents approved of their location. In most instances, judges were most critical of the structural location of services when they were outside the judicial branch of government. Some respondents questioned the appropriateness of current management of detention in New York and North Carolina. Many interviewees favored more control over intake in the hands of prosecutors or, at least, approved recent steps taken to shift that authority in their states from the probation staff to prosecutors. Even so, very few respondents advocated radical changes in the location of services in their states.
- The question of a preferred or ideal location often boiled down to the search for adequate funding. Apparently, all existing systems evolved, to some extent, according to the relative ability of agencies to require public funding of delinquency-related services.
- Most people interviewed believed that due process and parens patriae, as guiding principles for juvenile courts and related services delivery, were compatible and did not cause any undue difficulty in the administration of juvenile justice. Judges agreed most frequently. Policymakers usually saw the world differently than did staff members who worked directly with children. In judicially administered systems, judges and other interviewees who agreed with the notion of compatibility pointed to the lack of judicial involvement in intake and other phases prior to adjudicatory hearings. Prosecutors, defenders, and police officers were usually the groups most likely to disagree, pointing to judicial involvement in detention hearings and their access to investigatory material. Where services were offered through executive agencies, such as those found in Florida and New York, the separation of

powers was uniformly approved as the mechanism through which the rights and "best interests" of children could both be protected.

- Many opinions were expressed concerning the current trends toward greater formality and greater standards of proof in juvenile court proceedings. Many people, from all categories, expressed the belief that current due process protections in juvenile courts interfered with the ability of courts to get services to children who needed them. Others argued that any benefits from extending adult protections to juveniles would be outweighed by trade-offs in lost opportunities for helping children or in teaching them to "beat the system" at earlier ages. Still others argued that the system will never be fair until all criminal court safeguards are extended to juveniles.
- The one point in the study which appeared to hold the most promise for reconciling opposing viewpoints proved to be most inconclusive. Interviewees split rather evenly over the question of whether juvenile courts should monitor services delivered to court wards by outside agencies. It was obvious from the responses that very little systematic thought had previously been given to the question. No conclusive answer, therefore, resulted from inquiring into the relative benefits of monitoring services delivery as opposed to delivering those same services through subunits within the courts.
- In Florida, some opinions suggested the need for both legislative and judicial involvement in the formulation of HRS policy. In Hawaii and North Carolina, both states which presently administer services through state judicial agencies, no affirmative opinions were expressed for the courts to monitor state executive agency services. In Nevada and Pennsylvania, there was overwhelming support for judicial oversight. In New York, opinions were split, primarily because of political considerations.
- In every state, respondents generally believed that the objectives which motivated the development of their particular patterns of services delivery had been met. Yet, no state lacked for caveats.
- Complaints over the cumbersome bureaucracy of HRS and the judicial alienation from that department are prices paid in Florida for its massive reorganization over the past 10 years.

In Hawaii, the lack of effectiveness of family court judges, sitting en banc, to become a self-regulating mechanism appears to be an unrealized goal at this point, despite an otherwise successful reorganization of courts and their juvenile services.

Nevada's highly stable, slowly evolving system has retained strong local control, coupled with a decided philosophy toward rehabilitative care. The prices have been paid, for the most part, by the smaller and poorer counties where services range from sparse to nonexistent.

Any comments about successes or failures in the New York system appear to be true somewhere in that state. The relatively recent shift to a state judiciary, leaving most delinquency-related services to the county executive branch generally received high marks but, like everything else in New York, generalizations are difficult because of disparities between geography and

population, and between the general rule of service and notable exceptions.

In North Carolina, satisfaction was high with judicial management of not only intake and probation, but of aftercare as well. At the same time, there was no sentiment for expanding the range of services offered, despite some dissatisfaction with the current location of detention services in a state executive agency.

Pennsylvania, like Nevada, has not experienced any major reorganizational changes for many years. Most recent modifications have related to stronger due process emphases by both the legislature and the Juvenile Court Judges' Commission, and to a massive subsidy that emphasizes nonjudicial services.

7. Research Conclusions and Implications

As a result of the research contained in the previous chapters, a number of legal conclusions and administrative implications have emerged which are succinctly discussed below.

CONSTITUTIONALITY OF JUVENILE COURT OPERATION OF SOCIAL SERVICES

Questions have arisen within two basically different contexts. The first area of concern relates to consistency of such operation to the *structure* of government, particularly to the tripartite arrangement specified in Articles I, II, and III of the U.S. Constitution (the so-called separation of powers doctrine). The second set of constitutional questions arises in connection with the *essential fairness* of the juvenile court when it exercises simultaneous authority over the legal processes and the social control services traditionally associated with juvenile court operations. While many of these latter questions have never been judicially determined, they all would be raised under the due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. For reasons which will be discussed later, similar provisions in state constitutions and codes are also relevant to this examination.

In summary, our research reveals that:

- The federal separation of powers doctrine does not apply to the states.
- The entire weight of reported state cases supports the lawful exercise of intake, probation, and detention functions within the judicial branch of government.
- The argument raised, that the operation of such activities by the judiciary is unconstitutional under separation of powers, is not supported by existing case law.

Our research into due process issues related to the structural placement of juvenile court services indicate a somewhat erratic picture. On balance, however, the following points might be made.

- The cases fail to reveal any per se unconstitutionality resulting from the existence of intake or probation as integral parts of juvenile courts. The major exception, *Matter of Reis*, is instructive but it has never been followed in reported decisions, even in its home state of Rhode Island.
- On the other hand, due process does not require the courts to either offer or operate such services. The services can legally exist, whether

referenced by constitution or statute, wherever they are delegated to either the executive or judicial branch.

- A presumption of constitutionality will be extended to statutes challenged on due process grounds.
- Neither the employer-employee relationship (between judges and their intake/probation staff) nor the probation officer-probationer relationship of confidentiality appear to be conclusive to a finding that due process per se has been violated. Actual abridgement of due process would have to be demonstrated.
- The body of existing case law is sparse. Future cases might argue the issues more effectively but, in light of recent U.S. Supreme Court holdings, there is no reason to expect dramatic changes in the current state of the law.

LEGAL BASES FOR DELIVERING SOCIAL SERVICES TO CHILDREN IN JUVENILE COURTS

By far, the most common legal sources specifically authorizing social services for children in juvenile courts are state statutes. Less common are services authorized by court rules. Rarest of all is a single authorization found in a state constitution.

- When social services are created by statute, the underlying organizing principle is that their form, substance, and delivery are properly matters for legislative judgment. When social services are created by court rule, there is the implication that the social services are either aspects of judicial power or closely related to court procedures. A distinction between these two organizing principles is that where services are created by statute, either judicial or nonjudicial officers will be established or authorized to deliver them. When court rules are used to create the services, judicial officers or prosecutors are the only public officers affected.
- Social services are specifically created in only one state constitution. In Alabama, a constitutional provision authorizes the construction of a detention hall for a county juvenile court. This is an eccentricity to the national pattern that results from peculiar financing requirements in that state.
- Laws only rarely describe the content of social services. For the most part, social services, particularly for delinquent children, are described in law as the exercise of authority or discretion by public officers during, after, or in contemplation of court proceedings.
- No specific federal legal principle has developed which commands any particular organization or structure for the delivery of delinquency-related services. Consequently, the national pattern reflects the constitutional principle of federalism. Each state is permitted to structure its social services to its own particular needs, traditions, and resources. A few states, perhaps anticipating the development of a federal organizing principle, have adopted a bifurcated model for social services. This pattern cuts off court control over the administration of social services and places responsibility in the executive

branch. These states are exceptions, however, since most states provide for judicial administration of delinquency-related services.

AN ASSESSMENT OF SELECTED STATE CASE STUDIES

The structural models of social services delivery, which we encountered in the field research, were all designed to meet past problems encountered in direct judicial administration of court services on the one hand, or executive branch administration on the other. Some success in dealing with these problems was certainly achieved when each model was implemented. However, like any administrative system, actual experience inevitably discloses the existence of some negative trade-offs for achievement of design goals. Unintended consequences become apparent as the implementation of the new system proceeds. It is, after all, a fundamental principle of administration (as well as economics, design engineering and, perhaps, all human experience) that benefits are always accompanied by costs, advantages, and disadvantages.

Given this perspective, advocacy of any "reform" model which purports to end in the resolution of all problems experienced is, of course, never more than an exercise in romanticism. It ignores the basic reality expressed in the traditional colloquialism that there is, after all, no such thing as a free lunch. However, idealistic searches for the free lunch in the form of the perfect model of administrative structure are one of the historic preoccupations of mankind, and the juvenile justice field is no exception to this experience. In fact, present controversies between advocates of a self-sufficient juvenile judiciary, which personally administers court social services, and advocates of other administrative structures do not disclose lack of good faith on the part of the designers of either type of system. Rather, they simply illustrate the persistent reality that every benefit has its costs; that the illusory free lunch must be paid for, one way or another.

PRINCIPLES FOR THE ORGANIZATION OF SERVICES TO CHILDREN IN JUVENILE COURTS

From the opinions, facts, and experiences reported by the respondents in the six case study states, a number of useful principles can be extracted. They are presented as working hypotheses which can be considered by anyone interested in reorganizing or evaluating systems for delivery of services to children in juvenile courts.

Structure and Function

- Any rationally designed system for delivering social services will probably meet most of its initial objectives. However, benefits always imply costs, and advantages create attendant disadvantages. Thus, granting unfettered discretion to a public official increases the likelihood for appropriate social intervention, but does so at the risk of possible abuse.

Statewide organization of services increases the funding base and standardizes both the quality and quantity of services, but may destroy local initiatives and the responsiveness of the system to local needs.

In general, system "failures" are inevitable side effects of organizing for particular purposes. Such a conclusion is neither simplistic nor an avoidance of responsbility for following social research to its logical conclusions. All too often, people who are rightfully disillusioned and impatient for change believe that the old system is bad and the new one will be good. Our review of state and local systems, of divergent sizes and structures, as well as our interviews of some 150 people in six states, leads us to conclude that new approaches, whatever they may be, will not necessarily result in ideal service delivery systems. While better services are possible, this possibility must always be viewed in a context of relativity. Advocates cannot realistically assume that if they move in a certain direction or rearrange services this way or that, children will invariably be well served or that new problems will not arise precisely because of the modifications. New systems, like old ones, offer both advantages and drawbacks, not all of which can be reasonably foreseen.

- The judicial-executive controversy regarding operational management of delinquency-related services has no clear or simple answer. As a compromise, judicial management of social services may be usefully carried out by quasi-independent agencies within the judicial branch, in which case issues of due process, fairness, and conflict of interests, arguably inherent in the employee-employer relationship between judges and service staff, can be successfully avoided.
- Qualifications, experience, dedication, and leadership of judicial or executive staff may be of surpassing importance to the quality of services available. Clearly, methods of selecting or assigning judges or of electing or appointing executive administrators also bear upon the quality of services provided as well as upon the satisfaction of the community receiving them.
- Since the quantity of services is so directly linked to available funding, the best structural location for juvenile service organizations may be in the judicial branch in some communities and in the executive branch in others. Stated directly, the ability to command funding may be the most critical factor to consider when discussing the proper location of delinquency-related services, whether this results from dissimilar methods for fiscal appropriation or simply because of long-standing traditions resulting from state or local power structures. While money does not guarantee good services, the effects of underfunding are known to practically everyone in the field. Without sufficient funding, the question of the proper location of services and programs is moot.
- Rationales for reconciling apparently conflicting philosophies are generally available, especially at the conceptual level. However, operational conflicts will still occur. For example, intake guidelines may preclude the detention of juveniles who may be viewed by intake workers as needing protective custody. Another example, frequently encountered, is where

juvenile court judges take pains to avoid any preadjudicatory contacts with their cases, yet observers can never be certain that such clean limits of contact actually exist. Finally, jurisdictional preconditions may force the court to deny emergency services or to release known offenders where cases cannot be proved. In most cases, supporters of a parens patriae philosophy are unwilling to pay such prices, while due process advocates accept them as investments in a more just society.

- To remove potential abuses of judicial discretion for the proper conduct of judicially managed social services, standards are clearly required. Although effective in creating greater accountability, standards may also predictably reduce the creative individualization of services to children who need them. In addition, potential violations of such standards will always exist. So long as juvenile courts operate their own intake departments, detention homes, and probation units, challenges to the wisdom of such an alignment will persist.

At the same time, advocates of executive branch management of delinquency-related services must accept the fact that no legal basis exists for requiring county commissioners to operate those services simply because they are required to fund them.

- There are undoubtedly many promising structural arrangements which have never been widely tested and which may deserve experimentation and trial. Examples would include purchase of private services for probation supervision, social casework, or prehearing investigation; the administration of probation, detention, and intake services through a "services office of the courts," operated by the state supreme court independently of an "administrative office of the courts"; or the use of judicial social services staff for monitoring and evaluating the delivery of other agencies' services, rather than providing direct, judicially managed services.
- In general, *state* agencies can provide services with higher budgets, more stable funding, and more equitable distribution to poorer jurisdictions and service areas. However, these advantages can be overcome by comparatively affluent local jurisdictions whose per capita tax base exceeds that of the state as a whole. In many states, a situation exists similar to the one found in Nevada, where the large counties are completely self-sufficient but the remaining counties would welcome a state-operated system.
- In general, the narrower and more specialized the focus of a services delivery organization, the less will its delivery of services be impeded by organizational complexities, diseconomies of scale, or conflicting priorities. Extremely large agencies, whether judicial or executive, may prove slow to react, preoccupied with attempts to manage their administrative machinery or otherwise unable to place strong priority on any particular service. Smaller, specialized organizations can deliver services more quickly and with greater accountability, although those agencies may suffer from lack of standards and fragmented programming, and lack coordination with related services.

Implications for the Use of Prosecuting Attorneys

- Respondents generally agreed that in order to create a sounder legal basis for screening and prosecution, juvenile petitions should either be prepared by prosecuting attorneys or at least reviewed by prosecuting attorneys, if the intake and prosecution decisions are to be made by other officials.
- In order to remove possible conflicts of interest, all probation violations should be processed in the same manner as a new charge. This procedure, according to many respondents, would remove some of the ambiguity inherent in the roles that probation officers play in the correctional process.
- However, the greater involvement of prosecutors in juvenile courts may also mean greater delays in filing petitions; more or fewer petitions filed, depending upon prosecutors' perspectives of juvenile crimes; or more intensive pursuit of incarceration as the disposition of choice, again depending upon prosecutorial attitudes.

Implications for Other Aspects of Juvenile Court Operation

- Respondents were nearly unanimous that judges should monitor the performance of agencies which provide the services ordered by the courts, whether or not such agencies are managed by the courts themselves. More effective judicial monitoring of the carrying out of court orders and other court-related delinquency services may depend upon going beyond the concept of "monitoring from the bench" to the concept of a specialized monitoring unit, such as "Inspector General" units of military organizations or "compliance" units of administrative organizations. Once established, these units could develop service standards, make on-site inspections, and present regular reports to the judiciary.
- There was no disagreement with the idea that cooperative working relationships between sitting judges and either executive or state judicial agencies providing services to children in juvenile courts can be fostered by locating service personnel in the courts. Conversely, cooperative working relationships can be minimized by locating service personnel and facilities away from the courts and not under judicial supervision. To whatever extent close working relationships between judges and social services staff should be encouraged may depend, of course, on whether this close cooperation is perceived as a service delivery advantage or as a due process problem.
- Juvenile judges and court respondents, for the most part, want to exercise leadership in developing community concerns for delinquency and resource development but do not want to broaden the court's role to primary delinquency prevention or to basic social change.

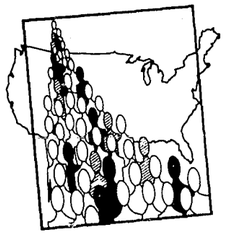
The implications appearing above derive their presence in this report from the research itself. They result from staff interpretations of findings emerging from reviews of the literature and case law, and from on-site

interviews. While findings are well documented in the body of the report, it is important for the reader to bear in mind that they do not necessarily represent the Academy's recommendations for changing any particular state or local system. If the described situations sound familiar and the conclusions also appear to fit, then implications for change will, in all probability, appear equally applicable. Once the constitutionality and statutory compliance of current operations has been confirmed, the remaining questions are best answered within the political and economic context of the community, guided only by the vision of how the most children can be best served.

Making that vision come closer to reality has guided the many efforts to improve the juvenile justice system throughout America. Inspired proposals for constructive alternatives, both modest and radical, seem to have become a permanent part of the continuing dialogue. This being the case, it may be well to emphasize that a major conclusion of this study is that no new menu of legal or administrative arrangements can actually provide the proverbial free lunch. Proponents for reform must acknowledge that there will be inevitable trade-offs and unforeseen dysfunctions, consequences that will dilute the desired effects, sometimes to the extent that the value of the changes becomes difficult to recognize.

The existence of children in trouble and of perpetual searches for better solutions are assured beyond question. Less certain are the extent to which due process considerations of essential fairness will be extended in new directions and whether juvenile courts will continue to exist in their present form. However, so long as the current conditions exist, these findings and recommendations should offer considerable direction to people seeking to strengthen the delivery of services to children in juvenile courts.

APPENDIX A CASE STUDY REPORTS



FLORIDA CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited Florida for an on-site case study from December 10-14, 1979. Interviews were conducted in four areas of the state selected for their different significance in the policy process and services delivery system: the state capital (Tallahassee), the largest city (Miami), a representative small community (Perry), and a representative medium-sized industrial city (Tampa).

ACKNOWLEDGMENTS

We gratefully acknowledge the help of our respondents, all of whom contributed generously of their time, wisdom, insights, and cooperation.

Mr. James Bean, Assistant State Attorney
3rd Judicial Circuit
Perry

Mr. George Brown, Program Supervisor
Dept. of Health and Rehabilitative Services
District IIA
Tallahassee

Hon. Victor Cawthon, Circuit Judge
2nd Judicial Circuit
Tallahassee

Mr. James T. Clark, Director
Division of Youth Services
Dept. of Health and Rehabilitative Services
Tallahassee

Ms. Susan Evans, Intake Specialist
Dept. of Health and Rehabilitative Services
District IIA
Tallahassee

Mr. Mark Ezell, Associate Director
Florida Center for Children and Youth
Tallahassee

Hon. Seymour Gelber, Circuit Judge
11th Judicial Circuit
Family Division
Miami

Ms. Idanna Griffith, Intake Counselor
Dept. of Health and Rehabilitative Services
District IIB
Perry

Mr. Hillis R. Holman, Program Supervisor
Dept. of Health and Rehabilitative Services
District XI
Miami

Mr. Allen C. Hubanks, Administrator
State Juvenile Agency
Dept. of Health and Rehabilitative Services
Tallahassee

Mr. John W. Jennings, Chief
Juvenile Division
State Attorney's Office
13th Judicial Circuit
Tampa

Ms. Judy Justice, Legislative Staff
Florida House of Representatives
Tallahassee

Hon. Phillip Knolls, Circuit Judge
13th Judicial Circuit
Tampa

Ms. Judy Lyons,
Management Review Director
Dept. of Health and Rehabilitative Services
Tallahassee

Mr. Rick Margolius, Chief
Juvenile Division
Public Defender's Office
4th Judicial District
Miami

Mr. Phil McGuire, Intake Specialist
Dept. of Health and Rehabilitative Services
District XI
Miami

Mr. Ben Poitevent, Assistant State Attorney
2nd Judicial Circuit
Tallahassee

Mr. Joseph Ryan, Assistant State Attorney
11th Judicial Circuit
Miami

Mr. Alvin Taylor, Secretary
Dept. of Health and Rehabilitative Services
Tallahassee

Mr. Jack Wood, Program Supervisor
Dept. of Health and Rehabilitative Services
District VI
Tampa

INTRODUCTION TO THE COMMUNITY

Florida, with its present boundaries, was organized as a territory in 1822. Settlers poured in from neighboring states, settling especially in the Tallahassee area. A plantation economy flourished, with cotton and tobacco being the chief crops. Expanding southern settlement resulted in wars with the Seminole Indians and their ultimate displacement. Florida seceded from the Union in 1861, rejoining in 1868 after defeat of the Confederacy.

Florida is still in transition. Increasing industrialization and the vast influx of people (new residents and tourists) have caused admitted conflicts which were not fully foreseen when the state moved aggressively to attract both sources of wealth. The relatively high crime rates may be seen as a product of this transition.

Florida's population tends to be heavily white. Only a net total of 17,000 blacks migrated to Florida during the period April 1960 through July 1975; while Cubans, Haitians, and others from South and Central America make up an increasingly substantial part of the white population, as do retired white Americans. Other races found in the state (but representing a smaller percentage) are American Indian, Japanese, Chinese, and Filipino.

Florida's climate is tropical and subtropical; its land is basically coastal and flat, with an economy based on specialized agriculture, industry, and tourism. Principal crops are oranges, tomatoes, sugar cane, and grapefruit. Florida's mineral products include phosphate rock, stone, cement, and sand and gravel. Beef production is also important, as is commercial fishing. The tourist industry, which attracts approximately 35 million visitors each year, accounts for approximately 20 percent of the state's total income. Leading manufacturers produce processed foods, transportation parts and equipment, and electrical equipment. Florida's industrial future looks bright, especially since the energy shortage appears to presage a trend toward relocation of industrial plants in the warmer states.

The personal income of the average Floridian is low, with an average hourly earning wage of $4.63 per hour, which is $1 under the national average. This situation may be related to the state's large number of retired citizens who are able to work for comparatively modest wages, and to the fact that the economy is still primarily an agricultural one.

Florida's 1978 violent crime rate (violent crimes per 100,000 population) of 756.6 is considerably higher than the national rate of 486.9, and higher than other tropical areas such as Puerto Rico (451.2) or Hawaii (270).

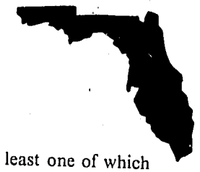
INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

Circuit courts, consisting of 20 circuits and 392 judges, have original jurisdiction over all civil and criminal cases not covered by county courts. County courts, consisting of 67 courts (one in each county) and 190 judges, have original jurisdiction in all criminal misdemeanors that do not arise from the same circumstances as a felony. They also handle violations of municipal and county ordinances, as well as civil matters that do not exceed $2,500.

The Florida court system contains two levels of appellate courts: the supreme court and the intermediate appellate courts. Appellate judges are selected on a merit basis through the use of a nonpartisan commission of attorneys and nonattorneys. This method is also used for interim selection of trial judges to fill vacancies, but trial judges are normally selected through nonpartisan elections.

In Florida, juvenile courts are divisions of the circuit court bench, the court of general trial jurisdiction. Juvenile courts have jurisdiction over juveniles under the age of 18 years, with certain exceptions. If a youth is 14 or older and charged with a violation of Florida law, the state attorney can initiate a juvenile court hearing to determine whether the youth should be transferred to adult court. If a youth requests transfer to the adult division of circuit court, the court must automatically honor this request by trying the youth as an adult, regardless of age. A recent amendment provides state attorneys with discretion to file proceedings directly in the adult



division on children 16 or 17 years of age with two prior adjudications, at least one of which resulted from a felony. Cases against older juveniles may also be taken to grand juries by state attorneys, when alleged crimes are punishable by death or life imprisonment. In Florida, once a juvenile is waived to adult court, jurisdiction by the juvenile court is waived forever.

Organization of Services to Children in Juvenile Courts

Prior to 1971, delinquency-related services (intake, detention, and probation) were operated on a county basis by the courts. Starting in 1971, probation (which included intake at that time) was transferred to an agency of the state executive branch, the Department of Health and Rehabilitative Services (HRS), Division of Youth Services. Detention services were incorporated into this agency during the following year. By 1974, all probation, intake, and detention services had been absorbed.

Detention

A child detained at intake must receive a court hearing within 48 hours to determine the need for continued detention. The use of a jail or other adult facility may be ordered by the court, if a felony is charged and if the state attorney files an information or refers the case to the grand jury, or when the court determines a child is beyond the control of the detention home staff. Detention in a jail is required if a juvenile has been transferred for trial as an adult and, for whatever reason, is not released pending trial.

When the child first appears at intake and the intake officer believes the child cannot safely be released, the intake officer may authorize immediate temporary detention. However, at least one of the following criteria must be met:

- There is an allegation of certain serious offenses.
- Detention is necessary to protect persons or property.
- Detention is necessary to secure the child's presence at hearing.
- The child requires protection.
- The child charged has a past record of violent conduct, serious property offenses, or failure to appear.

Intake officers may release children to emergency shelters called crisis homes if parents or persons in loco parentis are unavailable.

Intake

After the apprehension and referral of alleged delinquents to intake, HRS intake officers screen, divert to informal programs, determine jurisdiction, and make detention recommendations. These recommendations are made to the juvenile court judge and state attorney after considering HRS policy.

Intake screening and services for dependency actions are also provided by HRS. Intake officers either file petitions for dependency or else refer for care or treatment, if this action is voluntarily accepted by the children and their parents. Petitions for dependency may also be filed by state attorneys or any other person who has knowledge of the facts alleged.

In delinquency cases, state attorneys determine whether formal or informal complaints will be filed. If a formal complaint is filed, it is set for adjudication by the judge. All acts of delinquency must be reported to state attorneys by HRS, with recommendations for further action.

Probation

In Florida, probation supervision is known as community control. This service, like all other delinquency-related services, is provided by HRS. A plan of community control is first presented at the dispositional hearing, which is to include "rules, requirements, conditions, and programs which will promote rehabilitation of the child and protection of the community."

Other Dispositional Services

Judges may order examinations by physicians, psychiatrists, psychologists, or an HRS diagnostic team prior to disposition. These, too, are mostly services of the state umbrella agency, HRS.

Courts also have discretion to order medical, psychiatric, or psychological examination after adjudications of delinquency, or prior thereto, with parental consent.

When commitment to correctional facilities is being considered by the court, HRS is required to make ordered studies and prepare social histories. It may also provide consultation and technical assistance to the courts. Courts may also require evaluations from schools or other agencies outside HRS.

The dispositions available to judges tend to be limited, reflecting the fact that juvenile courts, for the most part, do not have funds to purchase services and are, despite attempts to encourage local programs, dependent upon HRS for services. In cases of commitments for institutional care, HRS makes the final determination as to whether one of its three secure institutions or a community-based facility or program will be utilized. However, within 60 days after commitment to HRS, the court may suspend this order and place the child in a community control program.

Commitment to HRS is for an indeterminate period, but cannot exceed the maximum term an adult could serve for the same offense. HRS has the power to release to its aftercare program and to issue final discharges.

Procedures for Referring and Handling Children in Juvenile Courts

A child may be taken into custody in one of three ways:

- Pursuant to a court order based upon sworn testimony.
- Pursuant to arrest laws, for a delinquent act or violation of law.
- By HRS when there are reasonable grounds to believe a child has materially violated the terms of his or her community control program.

In dependency cases, physical custody may occur:

- Pursuant to court orders.
- By law enforcement officers or HRS for abandonment, abuse, neglect, illness or injury, or danger from surroundings.
- By law enforcement officers for running away or truancy.
- By HRS for violations of placement while under supervision. If the person taking custody is not an HRS intake officer, that person must release or deliver the child to an intake officer.

In many counties, there are community arbitration programs designed to increase diversion from official channels. Cases are limited to misdemeanors and violations of local ordinances. An arbitrator or a panel is selected by the chief judge of the circuit and the state attorney.

The hearing must be held as soon as practicable after a petition of delinquency is filed and no later than 21 days, if the juvenile is judicially detained, or 90 days otherwise (dating from time of custody or filing of petition, whichever is earlier).

No adjudicatory hearings may be held in capital or life felony cases unless the state attorney does not intend to present the case to a grand jury.

If the court makes a finding of delinquency, it may withhold adjudication and place the child in a community control program under the supervision of HRS or it may adjudicate the child a delinquent.

At the adjudication hearing in delinquency cases, the court is bound by the criminal rules of evidence, the standard of reasonable doubt, and the child's privilege against self-incrimination. The child is entitled to introduce evidence and cross-examine witnesses.

In dependency actions, a hearing must be held as soon as practicable after filing of the petition. A preponderance of evidence is sufficient to find dependency.

When a finding of delinquency is made, the court follows these procedures:

- Considers predisposition report from HRS regarding the suitability for a disposition

other than commitment (mandatory).

- Requires additional evaluation and studies by HRS, school, or other agencies (optional).
- States the purposes of the hearing and the rights of those present to comment; discusses with the child the nature of the charge and likely outcomes (mandatory).
- Determines suitability for possible commitment to HRS, using criteria relating to the type of offense and prior record (mandatory).

Possible dispositional orders include:

- Placement in a community control program under the supervision of HRS.
- Placement in a licensed child care institution (but not in a jail or facility used primarily as a detention home or shelter).
- Commitment to HRS for custody, care, treatment, and furlough into the community, the term to end at age 19 or when discharged by HRS.
- Revocation or suspension of the driver's license of the child.
- Order for the parents or guardian to pay reasonable sums for the care of the child.
- Requirement for the child to render public service in a public service program.
- Order for restitution.
- Order for participation in a community work project as an alternative to restitution, or as part of the rehabilitative or community control program.

Any of these orders may later be modified or set aside by the court.

Special Features of Delinquency-Related Services Delivery

The uniqueness of the Florida service delivery system is found in its statewide human services agency, HRS. HRS includes much more than just intake, detention, and community control. It is a total social services agency for clients of all ages. Thus, state services in welfare, vocational rehabilitation, developmental disabilities, aging, health, mental health, and youth services are all under a single agency.

All studies of the services existing before the transfer came to the same conclusion—services were functionally inadequate and disproportionately dispersed across the state. At that time, 18 of the 67 counties did not have probation, and most did not even have intake services. This situation was especially true of the rural counties. However, even urbanized Dade County (Miami) only had 10 probation officers with a 1970 total case load of 1,800 cases. State takeover of services was suggested as an appropriate remedy, and this approach was supported by the governor.

One extremely important consideration was the potential benefit to be derived from shifting the funding of such services from the counties to the much larger state budget. Many county officials supported the change because they expected a substantial savings to result from the shift, which they recognized as consuming a large part of county budgets.

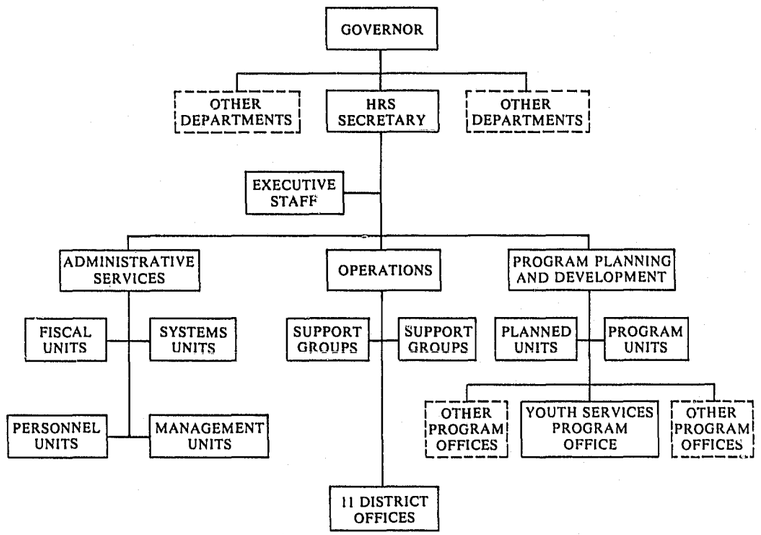
Legislative leadership for statewide juvenile justice services in the legislature was assumed by Senator Louis de la Parte (Tampa), a person often described as a charismatic advocate who took a personal interest in the quantity and quality of juvenile court services. He held meetings throughout the state in order to solicit information from individuals working in the field, to locate service voids, and to gather support for change. An additional incentive for the legislature was the strong possibility of obtaining $5 million in federal funds ($2 million from LEAA, and $3 million from Title IVA) in order to implement the transfers.

In summary, it appears that services gaps (especially in the rural counties), budgetary needs of local officials, strong leadership in the legislature, the attraction of federal dollars, and administrative leadership all contributed to the establishment of the current Florida services delivery system.

Organization

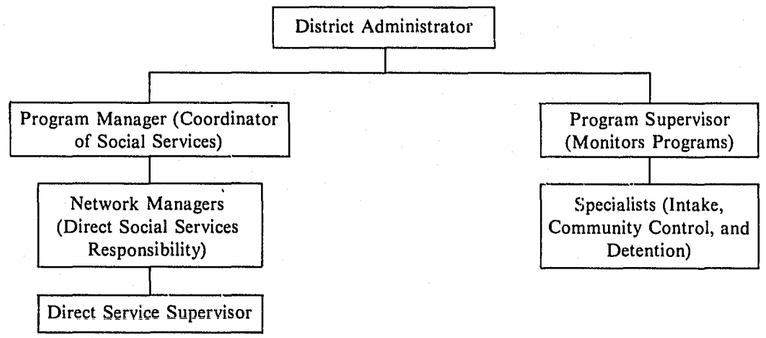
At the state level of government, HRS is organized as indicated on the following page. Line authority for the management of institutions, residential treatment programs, departmental employees engaged in providing direct services for clients, and transfer of purchase of service and

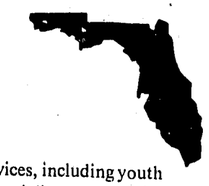
special program funds is given, according to the Florida Reorganization Act, to the assistant secretary for operations and in turn is delegated to the respective district administrators.



There are 11 HRS districts, each managed by a district administrator and each, like the state-level organization, having eight program offices charged with planning for its respective functional and geographic areas. The mechanism for integrating the diverse range of human services at the district level is a single client intake and referral system, also created in the reorganization of 1975. Intake is staffed by workers from Youth Services, which handles delinquency referrals, and Social and Economic Services, which is responsible for dependent cases.

Services are dispersed across the state through 11 district offices. A typical district office organization may be diagrammed as follows:





Network managers have direct responsibility for all eight types of services, including youth services, within the district, while direct service supervisors may either specialize or supervise several kinds of services. The program supervisors assume the role of "watchdog" to ensure that services are meeting state and district standards and policies.

Community control and detention are defined in all districts as youth services. Intake is also categorized in the same manner in most of the districts and will be so considered statewide in a few years.

With regard to facilities, HRS is authorized to develop and implement a regionally administered system of detention homes and is required to follow a comprehensive plan for regional administration of all the state's detention services. The basic plan includes 18 catchment areas, each having a secure facility and a nonsecure detention program. Local powers to operate detention facilities ceased in 1974, upon assumption of operation by the state. In a few instances, counties remodeled or built detention facilities prior to their physical transfer to HRS.

Planning and Coordination

HRS is also responsible for planning, development, and coordination of a statewide comprehensive youth services program for the prevention, control, and treatment of juvenile delinquency. It is required to develop and implement programs for the treatment of persons referred or committed to it and has exclusive supervisory care, custody, and active control of such persons.

Direct Community-Based Services

With regard to persons committed or referred to it, HRS may provide supervision or voluntary counseling services in the absence of judicial proceedings with consent of parents and child, counseling and such other services as may be necessary for families of persons before the court, and supervision of any person furloughed into the community from an HRS facility.

EVALUATION OF THE FLORIDA JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

This study evaluates the Florida juvenile justice system in terms of the perceptions of key informants: judges, prosecuting and defense attorneys, court services administrators, social services administrators and providers from both public and private sectors, police officials, legislative leaders, and the press. These key informants were asked about problems in the areas of services adequacy, fairness, and due process. Opinions were also gathered concerning funding and administrative considerations, preferences for judicial operation or judicial monitoring of services, and the desirability of judicial participation in intake, probation, detention, delinquency prevention programs, and social reform.

Opinions of policymakers surveyed on these issues may be characterized as follows.

(1) ***The weight of respondents' opinion favors the view that intake, probation, and detention are most appropriately located within the state executive branch.***

- In response to the question, "Who should operate juvenile court services?" there was a definitive preference for the status quo (state operation), with more than two-thirds of the respondents in favor of the present arrangement.
- A few respondents qualified their responses (independently and prior to the question on judicial monitoring of services) by adding that courts should have some input into HRS policy and procedure, hinting that the judiciary may have become somewhat alienated by HRS control of services.
- The three judges interviewed did not agree on the location of services; each chose a different service location and supplied particular reasons. A judge satisfied with HRS services felt the county system could be a problem due to varying availability of resources from county to county. Another judge saw the county as the appropriate location for services, his rationale being

that the service would be closer to the operation of the court and that "Courts should not exercise those types of controls." When asked whether his response would depend on the wealth of a district, he gave the opinion that urban areas would be better off under county funding. One judge preferred the return of services to the judiciary on the grounds that court-operated services were more accessible to clients, less bureaucratic, more efficient, less duplicative, and that children would be more likely kept in their own communities.

- All HRS officials and staff agreed that services are correctly located within their agency. The most prevalent rationales for selecting state operation of services were uniformity, standardization, separation of powers concerns, and a more integrative system with linkage and knowledge about available resources. The one vote for private operation of services was made by a public defender who believed that government services did not work regardless of service location. He championed the concept of private nonprofit operation of services.
- The judges all saw a need for more information on HRS activities and desired more input into policy. The judge most supportive of HRS services recommended the appointment of a committee of judges and legislators to review all programs and facilities of HRS. Apparently, the judge was either unaware that such a committee had been formed or else considered it inadequate. Another judge also recommended that a committee be established to oversee HRS services. However, his proposed committee would only assist the court and would be composed of volunteers. The third judge interviewed saw the need for more neutral research on HRS program effectiveness. He said HRS evaluations "don't really say anything—only what the administration wants them to reflect." It appears that the isolation of the judiciary from the administration of services has resulted in communication gaps between the two entities and has caused judicial alienation from HRS. This external communications problem is particularly noteworthy since HRS seems to have one of the more sophisticated internal data systems in the country.

(2) ***There was general agreement that the system's response to due process issues was adequate.***

- Location of intake decisions in HRS, and prosecutorial decisions in the offices of the state attorneys, have apparently removed potential problems in the court system. Judicial cognizance of unofficial intake information and court influence over filing decisions are not seen as significant. Problems of employee-employer relationships between judges and services staff no longer exist.
- All respondents except one felt the basic philosophy of the court was changing. About one-half felt that the most important change was the court becoming more punitive; the other half placed more emphasis on increasing formalization of the court through additional due process requirements. Some of the former group may have been reacting to two recent changes in Florida's laws regarding waivers of juveniles to adult courts. The courts, in implementing the new law, might be viewed as increasingly punitive. From the responses, the bases for their beliefs were not completely clear in all cases.
- Regarding the issue of whether parens patriae is consistent with due process of law, a majority opinion emerged in support of the theoretical consistency of these two legal doctrines. Those supporting the perception of consistency tended to see the congruence of the doctrines from the perspective that there was no problem in Florida given its executive-judicial split of services; the court handling legal process and guaranteeing due process, while HRS took care of the responsibility of providing social services to ensure the "best interest of the child" implicit in parens patriae. However, a majority felt the doctrines were inherently at odds with each other; that staff would need to have a "schizophrenic" personality to be both impartial trier of the facts and social caseworker. Concern was also expressed that due process may delay needed services and may not be sensitive to the child's needs. Those opposed to the consistency of the two doctrines tended to take a less theoretical, more operational view than those in favor.

(3) ***Satisfaction with the three standard juvenile court services—intake, probation, and detention—was generally strong across all counties and occupations of the respondents.***

- However, intake did receive some criticism. There seems to be a perceived need to clarify

intake's role and for more training of intake personnel. Other comments suggested HRS structure should be changed so that predispositional services were in one unit while postdispositional services were in another. This structure was suggested as potentially providing more specialized training and services within each unit.

- On the issue of adequate funding, respondents felt that the state system had increased the quantity of services available; however, they reported that there was always a need for more funding of all delinquency-related services. One concern of some of the respondents in urban areas was that they had more funding and services under the old court system than they now receive. For example, the large court center in Miami was built under the county system. However, not all urban respondents felt that way. Some held the view that services were adequate under the current methods for distributing resources when compared to what these large counties had previously provided for themselves.
- Although a majority of the Florida respondents were satisfied with staff qualifications and believed that the state takeover had improved staff quality, concern was expressed that civil service procedures worked against employing or promoting more appropriate persons for given jobs. They felt that HRS should be able to hire the person that HRS interviewers thought was the best candidate, regardless of scores on civil service tests.
- An additional concern was the way HRS salary levels are applied across the state. Under the present system, salaries for many classifications are paid on an equal basis in all 67 counties, regardless of cost-of-living differences. Although urban differentials for some classes are paid in some counties, the overall evenhandedness is seen by urban district offices as hampering their ability to solicit and keep quality staff, given the higher cost of living in urban areas.
- One strong and general concern centers on perceptions of excessive procedural red tape in HRS district offices. The district office, a "service center" facility of HRS, administers all programs within a geographic area. There is a hierarchy of decisionmakers within each district office. Each district office interprets policy and makes decisions for its district under guidelines set by the HRS Program Office, a situation often reported to cause multiple problems. In addition, the 1975 consolidation of services allegedly resulted in personnel with different backgrounds being slotted into roles in functional areas for which they did not possess expertise or experience. One example alleged was a food stamp technician setting juvenile justice policy. Administrative decisions of HRS were frequently seen by respondents as slow, inappropriate, or nonexistent, with consequent problems and conflicts at the direct service level also being perceived.

(4) ***There was unanimous agreement that judges should have the responsibility for ensuring proper delivery of services which are ordered by the courts but which the courts do not administer.***

- However, what judicial oversight should cover varied by respondent. As mentioned above, all respondents saw a need for judges to review cases and to receive timely reports; however, the judges saw a need for more information on HRS agency operations and policy, as well as on cases. One judge recommended the appointment of a committee of judges and legislators to review all programs and facilities of HRS. Another judge recommended that a committee be established to oversee HRS services.
- In response to the question whether juvenile courts should extend themselves into reforming social conditions or delinquency prevention, respondents overwhelmingly wanted the management role of the courts restricted to one of setting policy, not administration of services.
- Additionally, respondents limited the judges' proper role in social reform to speeches and committee work.

(5) ***In terms of the intended reorganization of services and in meeting stated formal objectives of this organizational change, HRS has made considerable progress.***

- Today, all services are executively administered by the state through a network of 11 district offices, often bringing services geographically closer to the clientele.
- The location of all human services under HRS has resulted in developing a shared identity among service employees. This process has been aided by physically uniting agencies in district offices, reflecting a "service center" concept.

• Finally, and perhaps most important, services have been developed across the state in a more uniform and standardized manner.

Contemporary Problems and the Question of Structure

Criticism of the juvenile justice system in Florida was widespread, despite the general agreement that HRS had accomplished certain organizational and procedural successes. Three major issues characterized this criticism: the feelings of alienation between the judges and the public, and HRS; perceived bureaucratic problems within HRS itself; and perceived HRS leniency in release decisions (this last perception, of course, being outside the focus of this study).

At the time of this study, these two problems were of sufficient concern to respondents that, over time, they appear to be the problems most likely to contribute to change in the future operations and structure of the juvenile justice system in the state.

Feelings of alienation between the judges and HRS appeared related to the separation of the court from the operation of social services, as well as to the perceptions of leniency which have also disturbed segments of the public. Judges appeared to distrust HRS program effectiveness and efficiency as reflected in their unanimous suggestions for the need for external review of HRS operations.

Pertinent to these suggestions, however, are the following remarks by the secretary of the Department of Health and Rehabilitative Services.

> The importance of close communication between HRS and juvenile judges, through informational vehicles other than reports, is (already) recognized. A Youth Services Advisory Council, made up of judges, legislators, state attorneys, public defenders, and law enforcement officials meets regularly to consider policies and legislation that affects delinquency programming statewide. When major policy changes are being proposed, the Youth Services Program Office meets with the Advisory Council and solicits their recommendations for modifying or changing policy. When the Legislature changed the law in 1978, the Department encouraged the State Supreme Court Administrator's Office to convene a meeting of judges, clerks of court, state attorneys, and public defenders to ensure that the legislation would be interpreted and implemented in a consistent manner. In addition, the Program Office met with the chief judges of each circuit and offered to assist them in implementing the new law.
>
> Recent legislation creating a Children, Youth and Families Program within HRS will do much to alleviate some of the administrative and supervisory problems at the direct service level noted in your report. Senate Bill 1277 (which was passed into law by the 1980 Florida Legislature) created the new program to include, in addition to delinquency programs, protective services, adoption, child care, foster care, specialized services to families, dependency programs for children, related mental health programs, and single intake. The new structure was established to ensure statewide service integration to meet the comprehensive needs of children and youth served by the Department.

This appears to be a significant effort to increase communication and input into policy by all elements of the juvenile justice system. However, an evaluation of the success of the new legislation must, at this point, be left to history.

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HAWAII CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited Hawaii for an on-site case study from December 3-11, 1979. Interviews were conducted in the state capital and the state's largest county (Honolulu in both cases), a medium-sized county (Hawaii), and a smaller county (Maui). In these jurisdictions, intensive interviews were conducted with key people who are leaders in providing, using, interpreting, and commenting upon court services and court services policy. These included judges, prosecuting and defense attorneys, court services administrators, social services providers from both public and private sectors, legislators, and the press.

In addition, a current research study, recently published in the *Honolulu Star-Bulletin* and *Advertiser*, was thoroughly reviewed. Documents relating to the law and to the studies by the State Law Enforcement Planning Agency were also consulted. Standard research sources, such as governmental statistics, encyclopedias, and privately published analytical material on the state's history, economy, politics, etc., were also utilized in compiling background information.

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Mr. Les Aoki, Psychiatric Social Worker
Children's Mental Health Services Team
(Maui County)
Division of Mental Health
Department of Mental Health
Wailuku

Ms. Tamara Blackwell,
Juvenile Planning Coordinator
Maui County Dept. of Human Concerns
Wailuku

Dr. John Blaylock, Chief
Courts and Corrections Branch
Department of Mental Health
Honolulu

Mr. Andrew Chang, Director
Department of Social Services and Housing
Honolulu

Mr. Myron Chevlin, Executive Director
Child and Family Service
Honolulu

Mr. Lester Cingcade,
Administrator of the Courts
State of Hawaii Judiciary
Honolulu

Mr. Marcello Dadez, Lieutenant
Maui Police Department
Wailuku

Hon. Paul de Silva, District Judge
Family Court of the Third Judicial Circuit
Hilo

Hon. Kase Higa, Administrative Judge
Second Judicial Circuit
Wailuku

Ms. Marjorie Hirokawa, Supervisor
Probation and Family Services
Third Judicial Circuit
Hilo

Ms. Diane Ho, Deputy Prosecuting Attorney
Maui County Public Defender's Office
Wailuku

Ms. Miriam Kahalekai,
Service Unit Supervisor
Public Welfare Division
Department of Social Services and Housing
Honolulu

Mr. Michael Kekesako, Administrator
Corrections Division
Department of Social Services and Housing
Honolulu

Mr. Francis Keala, Chief
Honolulu Police Department

Hon. Shumichi Kimura, Circuit Judge
Family Court of the Third Judicial Circuit
Hilo

Ms. Margaret Kindberg, Psychologist
Children's Mental Health Services Team
(Maui County)
Division of Mental Health
Department of Mental Health
Wailuku

Ms. Emiko Kudo, Deputy Superintendent
Department of Education
Honolulu

Mr. Herbert Lee, Administrator
Child and Youth Services
Family Court of the First Judicial Circuit
Honolulu

Mr. Donald Moore, Executive Director
Hawaii National Council on Crime
and Delinquency
Honolulu

Dr. Dennis Mee-Lee, M.D., Chief
Mental Health Division
Department of Mental Health
Honolulu

Mr. Togo Nakagawa, Prosecuting Attorney
City and County of Honolulu

Hon. Yoshiro Nakamura, Chairman
Corrections and Rehabilitation Committee
Hawaii House of Representatives
Honolulu

Hon. Dennis O'Connor, Chairman
Judiciary Committee
Hawaii State Senate
Honolulu

Mr. John Ono, Prosecuting Attorney
City and County of Hawaii
Honolulu

Mr. James Oyama, Legal Specialist
State Law Enforcement and Juvenile
Delinquency Planning Agency
Honolulu

Ms. Cheryl Reis, Lieutenant
Hawaii County Police Department
Honolulu

Ms. Winona E. Rubin, Executive Director
Aiu Like, Inc.
Honolulu

Mr. Thomas Shintani, Administrator
Detention Services
Family Court of the First Judicial Circuit
Honolulu

Mr. Stanley Shikuma, Director
Family and Probation Services
Third Judicial Circuit
Hilo

Mr. Michael Suzuki,
District Educational Specialist (Maui)
Department of Education
Wailuku

Mr. John Tam, Prosecuting Attorney
Maui County
Wailuku

Mr. Donald Tsukiyama, Public Defender
City and County of Honolulu (now Circuit
Judge, Family Court of the First Judicial
Circuit)

Mr. George Walker,
Deputy District Superintendent
Department of Education
Honolulu

Ms. Janice Wolf, Investigative Reporter
Honolulu *Advertiser*

Hon. Dennis Yamada, Chairman
Judiciary Committee
Hawaii House of Representatives
Honolulu

Major John Yee, District Judge
Honolulu Police Department

Hon. Patrick K.S.L. Yim, District Judge
Family Court of the First Judicial Circuit
Honolulu

INTRODUCTION TO THE COMMUNITY

Hawaii, the last of the states to join the Union, passed from territorial status to statehood in 1959. Being a group of island communities separated from the mainland by more than 2,000 miles of Pacific Ocean, it is unique among the 50 states. Its seven major islands contain a land area of less than 6,500 square miles, much of this mountainous and uninhabited. However, the interior valleys and plains of the larger islands support excellent farmland while the coastal edges of the islands, particularly on the leeward sides, enjoy many areas of lush topical growth with even temperatures and a benevolent, sunny climate. These island conditions are excellent for two of the state's dominant economic activities, tourism and agriculture.

The state's largest single source of income results from federal expenditures, primarily for defense. Major army, air, and naval installations maintain the Islands as the United States' "window to the Pacific." Total 1978 federal spending in Hawaii was $2.5 billion. Not far behind as a source of income is tourism, with three to four million visitors a year contributing $2.2 billion to the state's economy in 1978. Agriculture is also important: sugar and pineapple together generated $442 million in 1978.

The state has a minimum of heavy industry and thus avoids serious pollution problems. Strong unionization of agricultural and other service workers keeps wages fairly high. Only about 9 percent of Hawaii's business firms have 20 or more employees, the "mom and pop"business tradition being predominant and well suited to tourist trade and small manufacturing or agricultural endeavors. This tradition, as well as those of many of Hawaii's diverse racial and cultural groups, contributes to Hawaii's ethos of economic individualism and strong family relationships. However, there now are increasing indications of economic and cultural transition. The effects of inflation, together with the large number of service jobs becoming available in the tourist industry, have placed a higher percentage of wives and other women in the workforce than in previous years, a continuing concern to many persons in Hawaii interested in the genesis of juvenile delinquency. However, those working women contribute to Hawaii's high per capita income, ninth highest among the states.

The population of Hawaii is racially and culturally diverse with no group constituting a numerical majority. Population figures for 1978 show the largest single racial group as Caucasian, with 26.7 percent. (Caucasians are traditionally the dominant racial group from an economic standpoint and about 40 individuals of the Caucasian group still own approximately 97 percent of the recorded land.) The majority of Caucasians are of American heritage and northern European descent, although a substantial number of Portuguese and others immigrated to Hawaii during the 19th century. Persons of Japanese ancestry nearly equaled the total for Caucasians in 1978, with 25.4 percent of the population. Increasing political and economic power have accrued to Japanese-Americans since the early 1950s. Only 1 percent were pure Hawaiian. Over 17 percent of the population is listed as "part Hawaiian" and 10 percent as "non-Hawaiian mixed," implying a total "mixed" population of over 27 percent, a figure larger than for any single racial group. Hawaii is now a living example of an integrated, interracial society in the tradition of American democratic ideology.

This physical melding of races and cultures is generally predicted to continue and accelerate, even though immigration now consists largely of U.S. citizens, generally Caucasian, which may tend to tip the population scales more in favor of the Caucasian group. This melting pot of races and cultures apparently contributes to cultural secularizations and confrontations causing an increasing susceptibility of individuals to involvement in crime and delinquency. A recent computer-based analysis of the backgrounds of a one-year sample of Oahu convicted felons (recently undertaken in a cooperative study by the *Honolulu Advertiser* and the University of Hawaii) showed that the relatively well-established, cohesive, and dominant Caucasian and Oriental cultures produced less than their share of felony convictions. On the other hand, the Hawaiian/part-Hawaiian group, a group whose culture seems in the process of destruction, showed one-third of the total convictions being generated within this groups's 18.5 percent of the total population. The most recent immigrant group (American Samoans) also seems to share in problems of cultural erosion and crime.

The classic explanations of criminality were also evident in the extremely comprehensive study of chronic adult offenders. This study revealed disproportionately intensive histories of juvenile offenses, broken homes, family problems, crime and violence among family members, school drop-out syndromes, unemployment, and drug abuse. All institutions of society were awarded a share of responsibility for this condition—schools, family, courts, social agencies, and government. No solutions were recommended beyond suggestions for better research information, more intensive predelinquency casework with children of school age, and tougher, more effective dispositions and programs for repeat offenders.

Public concern over crime and delinquency, as well as interest in public affairs in general, is high in Hawaii. This is evidenced not only by this extremely thorough research project, but also by recent episodes of strong public reaction to judicial decisions in certain violent offense cases in family court. However, the basis of this public concern seems to be as much related to deterioration in an idyllic life style as to the actual current rate of crime. Urbanization, secularization, and population increase are matters of general concern in Hawaii.

The FBI crime satistics for Hawaii appear moderate. Compared to the other three Pacific states, Hawaii's violent crime index is low: the 270 Hawaiian composite statistic for 1978 violent crimes (per 100,000 population) is considerably under California's 742.9, Oregon's 502.4, or Washington's 405.3. It is also low in comparison to that of America's other major island, Puerto Rico, whose index is 451.2. It is low, again, when compared with the 756.6 rate of America's other largely tropical state, Florida. It appears, then, that the concern with crime rates shown by the press and public in Hawaii is in part realistic but is also a response to particular crimes of unusual notoriety in a culture that is unaccustomed to them. In addition, this reaction is a reflection of the state's admirable tradition of personal and public concern with government, public affairs, and social problems.

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

The family court of Hawaii is a unified state court established by the Family Court Act of 1965 (effective July 1, 1966) and the consequent 1967 reorganization. At that time, the state's courts of juvenile and domestic relations, together with their service arms, were reorganized into a single court to deal with family matters. Certain other legal matters were also brought in from the district court: assault inflicted upon spouses and certain criminal actions, such as child abuse, including incest and, in circumstances of custodial relationship, rape. Juvenile cases, by legal definition, involve jurisdiction over children under the age of 18.[1]

The organization of the judiciary in Hawaii is reflective of the overall evolution of state and county governments in that state. Hawaii is the only state with just two levels of government. State and county units exist without the presence of other political subdivisions with taxing powers. The entire island of Oahu is known as the City and County of Honolulu. The counties have an organizational structure which appears to be municipal in concept, each having a mayor and a county council.

The four counties—Kauai, Maui, and Hawaii, plus the City and County of Honolulu—have only limited taxing powers. The main source of revenue for local government comes from taxation of real estate, while state government has much larger sources of income from sales taxes, manufacturing taxes, and personal and corporate income taxes. This disparity in taxing potential between the state and the counties is consistent with state family courts being completely funded from the state budget.

The unified court concept is one which is most easily applied in small states and under circumstances where it is the original form of organization. Since statehood in 1959, the Hawaii judiciary has operated under Article V of the document adopted by the 1950 constitutional convention, as amended by the 1968 constitutional convention. A second constitutional convention in 1978 also altered the judicial branch. Article VI of the present constitution provides for a new intermediate appellate court between the supreme court and circuit courts. The new Article VI makes district courts creatures of the constitution, and it also provides for judicial discipline of all judges by the supreme court. It establishes a Judicial Selection Commission which recommends six nominees to the governor for appointment or reappointment of each circuit judgeship and to the chief justice for each district judgeship. The commission's mandate to evaluate the performance of all judges at the end of their terms and to decide whether they shall be retained on the bench is perhaps the most important change made by the 1978 convention.[2]

Family courts are branches of the state circuit court. The four circuit family courts convene

in four cities, each one a county seat. A senior judge in charge of the family court in each of the four circuits is designated by the chief justice of the supreme court, with district family judges also assigned full-time in Honolulu County as needed. In the other counties, district court judges (comparable in some ways to municipal courts in large cities of the mainland) hear most juvenile cases. This is done by assignment from the circuit court presiding judge.

The entire family court bench is under the supervisory authority of the supreme court's chief justice. The supreme court has appellate jurisdiction and rulemaking powers for all courts in the state. The chief justice and four associate judges are appointed by the governor, with the advice and consent of the senate, to 10-year terms. The chief justice has administrative responsibility for the judiciary, appoints the administrative director of the courts, appoints all district court judges, and designates administrative judges for both circuit and district courts in each judicial circuit.

The chief justice's power to make rules of court for the inferior courts is, of course, a central feature of the unified court system; but the prerogative of the family court judges, sitting en banc, to propose such rules to the chief justice provides an interesting potential for judicial self-government. In addition, court rules could conceivably include operating guidelines and decisionmaking guidelines for the dispositional orders of the family courts as well as recommendations and administrative/casework procedures of the social services arms of the family courts.

Administrative housekeeping functions are centralized under a statewide administrator of the courts responsible to the chief justice rather than to the bench as a whole. This preserves the independence of the administrator in matters having to do with court services personnel in the various circuits, and tends to prevent due process problems which might otherwise be predicted to arise from an employer-employee relationship between judges and staff.

The office of the administrator contains a central personnel office. This operates under executive branch merit system rules which have been extended, by law, to the judiciary in the form of a separate but similar personnel system. A list of five eligibles for each vacancy is published by the administrator's office, and local supervisors or directors hire directly from this list. Written approval for hiring is given by the administrator, although under the statutes the judiciary would seem to be technically the appointing authority. Applicants generally are ranked by education and experience, although clerical applicants are accepted on the basis of diploma, grades, or certification by another department.

All civil service positions, state and county, in Hawaii are governed by the principle of equal pay for equal work. Classifications and pay ranges must be the same for comparable positions throughtout the state. Changes to, and original approval of, specifications and pay rates are required from a majority of the heads of civil service units throughout the state, even for positions not under their own administration. Positions are reviewed routinely every two years or more often when needed. Pay raises are negotiated (on an across-the-board basis for all merit system employees, not by separate classes) by the public employees' unions and an agency of the executive branch (the only instance where there is executive branch responsibility for judicial branch personnel). Grievances follow a regular system of procedural steps and judges cannot personally discipline or discharge employees; they must proceed through the merit system.

Budget requests for each county court are submitted to the administrator by each court director. The administrator then submits a budget for all the courts to the state legislature as part of the governor's executive budget. The administrator is presently encouraging the judiciary and directors to develop a set of production standards, which can be used to analyze and justify personnel needs. The desired flexibility and realism will not only permit their application to different combinations of duties in different counties, but will supply the accountability needed for sound budget review. Such standards, it is believed, will attract more support from the administrator's office as well as from other key participants in the budgetary process.

Personnel, intake, probation, and detention services are all under the operating supervision of a county director selected by the senior judge in each circuit.

The purposes for the establishment of the family court appear to have been social as well as

legal. The motive for combining the juvenile and domestic relations jurisdictions was apparently to deal with all such matters conjointly rather than separately. With the assistance of integrated records systems on all family members and an integrated staff dealing with the various behavioral manifestations of family problems, the objective was to treat the problems of individuals within the context of their respective family units.

Even though family courts themselves operate all the standard services dealt with by this study—probation, intake, and secure detention—the judiciary disclaims attempts to manage the court services operations, preferring to leave this to the directors.

Organization of Services to Children in Family Courts

The Family Court Act of 1965 was designed to provide procedural limits (consistent with U.S. Supreme Court decisions since *In re Gault*) upon decisions and actions based previously upon a completely parens patriae philosophy.[3] These procedures include, among others, a right to counsel, adversary presentation of evidence by opposing counsel under rules of evidence required in adult criminal trials, and the right of appeal. Additionally, the court's official intervention was to be limited to matters formally filed upon.

Despite these procedural safeguards, the protective spirit of parens patriae and the interventionist ethic of a social court acting in the best interests of the child and the family have been maintained in the Family Court Act itself, a substantial revision of which was passed by the Hawaii legislature and took effect on June 18, 1980. The act begins:

> Sec. 571-1. Construction and purpose of chapter. This chapter shall be liberally construed to the end that children and families whose rights and well-being are jeopardized shall be assisted and protected, and secured in those rights through action by the courts; that the court may formulate a plan adapted to the requirements of the child and his family and the necessary protection of the community, and may utilize all state and community resources to the extent possible in its implementation.
>
> This chapter creates within this State a system of family courts and it shall be a policy and purpose of said courts to *promote the reconciliation of distressed juveniles with their families, foster the rehabilitation of juveniles in difficulty, render appropriate punishment of offenders, and reduce juvenile delinquency. The court shall* conduct all proceedings to the end that no adjudication by the court of the status of any child under this chapter shall be deemed a conviction; no such adjudication shall impose any civil disability ordinarily resulting from conviction; no child shall be found guilty or be deemed a criminal by reason of such adjudication; [and] no child shall be charged with crime or be convicted in any court except as otherwise provided in [Section 571-22] *this chapter; and all children found responsible for offenses shall receive dispositions that provide incentive for reform or deterrence from further misconduct, or both.* The disposition made of a child or any evidence given in the court, shall not operate to disqualify the child in any civil service or military application or appointment.[4] [Emphasis added.]

Detention

Under the law, detention homes may be operated as agencies of the court or the court may arrange for temporary care with foster parents or with any institution or agency. Where detention is operated as a court agency, the judge is authorized to appoint a director and other detention employees.

The major secure detention facility (Hale Ho'Omalu) is located in downtown Honolulu. This is operated by the first circuit, but is also available to other circuits that have no secure facilities on their own islands. A smaller facility, the Maui Live-In Center, is also used for secure detention within the second circuit. Children brought for detention by police are screened before admittance by a probation officer. Formal judicial review takes place within 48 hours and every seven days thereafter for so long as a juvenile is detained.[5] Nonsecure detention facilities are used whenever possible. Referrals for other services are made from detention (by intake, probation, or detention people) to various diagnostic, counseling, educational, shelter care, and other programs

operated by the state Departments of Education, Mental Health, Social Services and Housing, and various private social agencies.

Intake and Diversion

In order to remove intake activities, including counseling, diversion, and informal adjustment, from police stations wherever possible, the new code provisions require the court to establish intake agencies. Provisions specify that when a child is taken into custody, he or she must—if not released to parents or other responsible adults—be taken immediately to an intake agency, the court itself, detention, or shelter. The court is then required to make a preliminary inquiry as to the necessity of filing a petition. The decision to file or not file (strictly speaking, the decision to approve or accept requests to file) is made by the court itself, not by the police or prosecuting attorney, and the court may decide to approve an informal adjustment in lieu of a petition. If necessary for the child's protection or that of the community, or because the child is awaiting transfer to another jurisdiction, or because of violation of an order of probation or protective supervision, a child may be detained in a secure detention facility. If the child does not require detention but cannot return home, the child may be sheltered in a foster home or other facility. Prior to acceptance in detention, an inquiry must be made by a staff member of the facility or a court officer. The judge, court officer, or staff member may then order release or detention subject to further order. The judge is authorized to order confinement in jail, or in an adult detention facility in counties where there is no detention facility for children, if the child's conduct endangers his or her own safety or that of others. (This last provision is important to note, given the current national controversy over confining juveniles in adult facilities.)

In delinquency cases, the issuance of a citation or summons is sufficient to invoke jurisdiction and the court may dispose of cases without preliminary investigation or filing of petition.

Probation

Judges are authorized by law to appoint necessary probation officers. Except when waived by a judge, the code requires that a social study and written report be made when a petition is filed concerning any alleged offense by a child. Where allegations are denied, such studies do not generally proceed until after adjudication. The studies are to be considered by the judge subsequent to adjudication but prior to disposition. These studies are, as a matter of practice, provided by the court probation officers, sometimes with the assistance of volunteer case aides. Probation supervision services are also provided by court probation officers, though volunteer case aides may also assist in supervision. Under the law, courts may appoint volunteer probation officers to serve without pay, but seldom if ever do so, preferring to maintain a paid professional staff supplemented by volunteers.

On Oahu, the family court probation staff provides services exclusively on juvenile cases while, on the other islands, probation staff also handles adult cases.

Other Dispositional Services

Courts may order examination of children after a petition has been filed and may order treatment after adjudication. Courts have authority to compensate for examination and treatment when no provision for payment is otherwise made by law. The presiding judges are required to appoint necessary social workers and may appoint or make arrangements for the services of physicians, psychologists, psychiatrists, and other professionals; volunteers, both professional and nonprofessional, provide a wide variety of ancillary services.

Neglected, abused, or truant children may be placed under protective supervision in their own homes or in other community settings. They may also be committed to state-approved local agencies or institutions, or to private institutions authorized by the courts. Courts are authorized to compensate for the support of such children where support is not otherwise provided by law. Delinquent children may alternatively be placed on probation, or be committed to the Hawaii

Youth Correctional Facility at Koolau or to local public or private institutions, or be placed in foster homes. Institutionalization and aftercare are provided for by a separate statute which authorizes the Hawaii Department of Social Services and Housing to establish the Hawaii Youth Correctional Facility (Koolau) for children committed thereto by the courts. The director of the department has the power to discharge, parole, or temporarily release committed children. He may also parole children into home placement or work apprenticeships.

A separate chapter of the Hawaii code provides for a state-level Office of Children and Youth, whose functions appear to be largely coordinative and evaluative in nature rather than operational. In fact, there is statutory language to the effect that each county will maintain maximum control over the development and administration of children and youth programs tailored to meet county needs, while cooperating with and assisting the Office of Children and Youth in performing its functions.

Procedures for Referring and Handling Children in Family Courts

Police officers are authorized to take and detain children "at the bureau or other suitable places for questioning and investigation." They also have authority to release investigated children and to refer children, who come within the provisions of the code, to either family court or to an appropriate social agency. The judges of the family courts are required to establish rules and standards to guide and control the police in the handling of such children, although the new code revisions specifically grant authority to police departments for providing outreach, counseling, release, and follow-up services.

As a matter of practice rather than law, prosecuting attorneys are involved in legal screening of petitions to a different extent in the various circuits. Depending on circumstances and local practice in each county, the prosecuting attorney may be asked to help evaluate or prepare petitions by the police, the court intake officer, or even the judge in cases which are serious, legally problematical, or simply destined for trial. In some circuits, defense counsel is not provided routinely except in contested cases or those considered extremely serious, although in the largest jurisdiction, the first circuit, either private counsel or a public defender are appointed upon request, and also appointed in situations where counsel is waived but the court believes counsel is nonetheless needed. This unstandardized approach to provision of counsel may be considered to present some problems from a due process perspective. However, in terms of local attitudes, the differing procedure for involving attorneys in not considered to be a problem.

Special Features of Delinquency-Related Services Delivery

Experimental Programs

Through probation departments, family courts of the various circuits have sponsored, on an experimental basis, a number of service programs in areas where serious service vacuums were seen to exist. When possible, these programs are to be eventually relinquished to other control, when and if private or other public agencies with appropriate responsibilities are able to take them, a policy which is intended to avoid the stigma of "empire building."

Early programs included an LEAA-funded family crisis counseling center, as well as one of the nation's largest court-oriented volunteer programs. A large number of citizen volunteers (approximately 400 in 1977-78) provided about 33,000 hours of services as case aides, clerical assistants, and other specialists. The program is now managed by the Administrative Office of the Courts, with family courts receiving an estimated 70 percent of the services in 1978, and adult criminal courts and the administrative office receiving the remainder.

More recent innovations include Corbett House, a temporary, nonsecure, live-in facility in the first circuit (Honolulu); the Community Service Alternative for Minors, a community-based, work-service program in the fifth circuit (Kauai); and a Professional Foster Parents program in the third circuit (Island of Hawaii). These programs are still considered experimental.

Community-Based Services Planning

The judicial leadership of the Family Court of the First Judicial Circuit (Honolulu) has initiated a policy of developing services standards in cooperation with the community of social service agencies and, apparently, the state legislature.

A Secure Custody Committee was organized by the family courts in August 1979; it submitted its report on March 5, 1980. Members of the committee included a family court judge; representatives of the family court probation and detention staffs; representatives of such official agencies as mental health, police, and social services; other agencies such as citizen advocate groups; various university schools and departments; and others. The committee held meetings, exchanged information and views, and heard statements of opinion and recommendation by representatives of various private agencies and government departments. After considerable debate, the committee issued a number of recommendations on jurisdiction of status offenders and proposed changes in family court services, facilities, and procedures; recommendations which were taken into consideration by the family courts and the legislature in proposals for new court policies and legislation.[6] (It is understood that committees may be formed to deal with other areas in the future.)

Legislative Liaison and Leadership

The family courts of Hawaii seem to be unusually active in liaison with the state legislature, which is, in turn, unusually interested in the philosophy as well as the specifics of juvenile justice. The recommendations of the family courts' Secure Custody Committee were promptly considered by the legislature, and major recommendations were heavily influential in 1980 legislative action. Senate Bill No. 1851-80, passed as Act 303 of the Tenth Legislative Session, 1980. The purpose of the act is to "create and implement a master plan for the juvenile justice system for the State of Hawaii. . . . This plan . . . addresses . . . the establishment, management, and operations of specific departments and agencies involved in the juvenile justice system." The act revision establishes a Juvenile Justice Interagency Board for purposes of planning and coordination.

Ethic of Social Intervention

The family courts have been outstandingly dedicated to principles of social intervention and best interests of the child and family, taking the Family Court Act's statements of intent quite seriously. Despite new and harder language referring to deterrence, punishment, and reform in the 1980 amendments to the act's statement of purpose, the new amendments seem, if anything, to strengthen the courts' hold upon the reigns of delinquency-related services.

The legislature seems to share with the family courts a continuing resolve to pursue parens patriae principles of intervention in behalf of children and families, despite the recent interest in public protection and due process. A Senate Judiciary Committee report on S. 1851-80 considered the matters of jurisdiction over status offenders and a new juvenile justice master plan for the state. In doing so, it directly confronts the public policy question of the basic purposes and nature of juvenile courts. The report of this committee, Standing Committee Report No. 440-80, deals with fundamental philosophical questions in a manner perhaps remarkable for its incisive directness, its willingness to research the question, and its subsequent willingness to take the bull by the horns.

> It has been nearly a decade and a half since the conscience of America was shaken from its stupor by the United States Supreme Court's decisions in *Kent* v. *United States*, 384 U.S. 541 (1965) and *In re Gault*, 387 U.S. 1 (1967). By those cases each state in the union has been compelled to examine not only the subject of constitutional safeguards extended to minors, but also whether the very structure of the juvenile court system that originated in this country at the turn of the century in the noble purpose of protecting minors from the harsh realities of adult criminal reality, requires examination as to its essential bases.
>
> The last few years have been, for the subject of juvenile justice, a time of tumult

and confusion. It has engendered genuine and contending forces that chorus opposing and varied positions, each supported by thoughtful and comprehensive scholarship. This turmoil exists nationwide, and upon your Committee's review, Hawaii has not escaped the net of confusion that has so far obstructed unified and cohesive effort toward obtaining solutions to most evident problems.

In designing the statutory reformation of the juvenile justice system, it has become apparent to your Committee that focus must be given to a subject matter that appears to have been studiously avoided in Hawaii. . . . What is lacking is the establishment of basic policy upon which the necessary solutions may be formulated. Policy, however, is the responsibility of the legislature, and we seek, by S.B. No. 1851-80, to meet their responsibility.

The specific subject matter that must be resolved involves the family court's jurisdiction over status offenders—minors who have committed offenses which would not be violations of law if committed by adults, such as truancy and curfew violations. As questions of constitutional rights of minors in criminal violation were reviewed in cases like *In re Gault, supra,* further scrutiny of the juvenile court system has raised an overriding question. That question is whether minors should be affected in their freedom in the least, if as status offenders, their conduct is not considered socially offensive but for the fact that it is attended by their status as minors. The view that prevailed over the years allows detention—physical restriction in secure facility—of status offenders, on the theory of parens patriae whereby the juvenile court exercises its rights as ultimate "parent" over the wayward child, ostensibly in the child's best interest.

This is the point of most serious contention in recent debate over the juvenile justice system. Your Committee finds it necessary to address this subject matter because it is simply impossible to lay out the statutory structure for a comprehensive juvenile justice system without coming to grips with it. . . .

Most recently, the Secure Custody Committee organized by the family court has issued a report indicating that it "believes there is a need for detention as a sanction short of incarceration at Hawaii Youth Correctional Facility" but also noting that various committee members hold different views as to whether detention is an appropriate sanction for status offenders.

It is your Committee's conclusion that abolition of family court jurisdiction over status offenders would be at least premature, if not totally unwise. Even if there were but one status offender every year for whom the prospect of detention provides the essential base for beneficial therapy, that would be sufficient reason for retaining family court jurisdiction.

Juvenile Justice Interagency Board

The Senate Judiciary Committee endorsed an interagency board to promote, and perhaps even coerce, cooperation among agencies in the interest of children and family, and to stimulate new legislation and new programs. The committee's report (No. 440-80) sets this forth in language which could be an inspiration to service-oriented juvenile justice people everywhere.

Juvenile Justice Interagency Board

Senate Bill No. 1851-80, S.D. 1, establishes a Juvenile Justice Interagency Board to promote the implementation of the juvenile justice master plan. It is the nature of government that in its organization, effort is made to compartmentalize functions into theoretical and neatly confined areas of operation. However, it is the nature of the human animal that his life is lived in its totality, defying schematic differentiation. The creation of the interagency body recognizes this fundamental dichotomy. It recognizes the need for supreme efforts by every member to subvert his self-interest in order to coordinate their separate and essential functions for the general good. Effective coordination is the key to success for the juvenile justice system.

Your Committee is aware of the different philosophical stances that vigorously contend, not only with reference to the issue of status offenders, but in almost every problem that constitutes the broad subject of juvenile justice. However, much of the cause for confusion is obviated by comprehensive policy directions provided by S.B.

1851-80, S.D. 1. With that accomplishment, it is your Committee's expectation that there will be a minimum of interagency conflict, and that the members of the interagency board will be able to progress in efficient fashion to plan and integrate varied and creative programs for meeting the needs of juveniles and combatting juvenile crime.

We would remind each member of the interagency board that the commitment to the juvenile justice master plan must be total. There can be no jurisdictional jealousness, nor passing of the buck in internecine back biting. Each agency must expect to exert efforts beyond its traditional jurisdictional boundaries.

With the expected coordination of efforts, your Committee hopes that the separate agencies will also achieve beneficial transformation of their traditional attitudes. With regard to the police, we hope that it will involve them in closer affinity with the local communities in which they serve. The fact that the police is necessarily identified as society's source of coercive protection against wrongdoers does not exclude its role as friend to those in need of guidance. We envision that expanded effort by the police in follow-up of minors they have released to their families, will help them realize the potential of beneficial services they may avail the families of the local communities. . . .

Your Committee is deeply concerned that lack of parental skills appear to attend so much of the interpersonal conflicts that breed juvenile problems. We direct the superintendent of education, with the aid of the rest of the members of the interagency board, to devise programs which will reach out to, and be conducted in, the local communities after working hours, which will avail appropriate guidance and help to families to obtain needed parental skills and expand their ability to help their children realize their potential.

It is your Committee's view that our schools should not be merely places where parents send their children. They should, rather, be facilities upon which familial aid and communal pride coincide their respective focus. We think that the department of education has a far greater responsibility for society's juvenile problems than it has been willing to assume to date. . . .

In structuring this master plan, your Committee gave serious consideration to what appears to be an obvious and logical reorganization of present functions in juvenile justice—that is, to place social welfare functions in the department of social services and housing and to confine the family court's function to adjudication. We have decided to stay with the present system of intensive family court involvement to continue the work it has already undertaken, and because present turmoil is focused in great part on legal interpretations and implementation of judicially initiated concerns for the rights of minors. It is our thought that at the present time, the disruption that would attend the transfer of functions would not be conducive to orderly facilitation of the concepts sought to be implemented by S.B. 1851-80, S.D. 1. However, we do not intend to preempt a thoughtfully conceived plan for such transfer of functions, provided that the same will be preceded by exhaustive investigation and debate over its merit and the formulation of a gradual and orderly plan of implementation. . . .

The juvenile justice interagency board's function in the juvenile justice master plan as conceptualized in S.B. 1851-80, S.D. 1, is to provide coordination that will pierce traditional notions of governmental boundaries. It is expected to provide the leadership and planning for the creation of imaginative programs for Hawaii's troubled youngsters and their families, so that the youngsters may find their appropriate emergence as confident and productive citizens. Finally, it is your Committee's expectation that if the juvenile justice interagency board is effective, it will provide the necessary impetus to further improve Hawaii's laws. We would consider it a failure if the juvenile justice interagency board failed to produce annually throughout the 1980's substantial legislative proposals.

EVALUATION OF THE HAWAII JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

This study evaluates the Hawaii family court system in terms of the perceptions of key

informants: judges, prosecuting and defense attorneys, court services administrators, social services administrators and providers from both public and private sectors, police officials, legislative leaders, and the press. These key informants were asked about problems in the areas of services adequacy, fairness, and due process. Opinions were also gathered concerning funding and administrative considerations, preferences for judicial operation or judicial monitoring of services, and the desirability of judicial participation in intake, delinquency prevention programs, and social reform.

Opinions of policymakers surveyed on these issues may be characterized as follows.

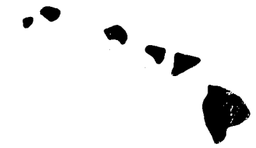
(1) ***The weight of opinion favors the view that intake, probation, and detention are best located within the judicial branch.***

- The majority opinion is that the present funding base of detention, intake, and probation services results in the largest potential appropriation from the state legislature. Being within the judiciary budget, the court services funding request carries the prestige and influence of the judicial branch. A number of persons interviewed believed that it also avoids problems of organizational priority which might occur if funding for court services were included in the larger budget of the state's executive branch or in the budgets of umbrella bureaucracies within the executive branch. The general feeling was that when confronted with the demands of a pluralistic society, state lawmakers tend to cut social services in the executive budget, but they are less likely to do so if such services are a part of the judiciary budget. (What would be a substantial burden on county finances is a very manageable part of the state budget: the entire 1978 judicial budget in Hawaii amounted to $14.5 million (1.64 percent of the state's general fund of $883.8 million.)
- Various specific criticisms have been leveled at existing court system operations. However, there is little opinion favoring the idea that executive branch management of services would result in a social services staff which would be better qualified, less political, or more responsive to the community. With only a few reservations, the judiciary is seen as the most appropriate location for qualified and responsive staff.

This appears partly due to the Hawaii judiciary's use of state merit system standards and procedures for judicial employees. In Hawaii, the legislature appropriates the personnel funds and authorizes the number of staff positions allowed for the judicial branch. With the agreement of key judicial and executive agency heads in both state and county governments, the director of the Administrative Office of the Courts establishes the appropriate pay range, classification, and job specification. Salary raises are collectively negotiated between an agency of the executive branch and the public employees' unions. A judicial "hands off" posture in personnel matters has also contributed to a view that the current staff is professionally qualified for their positions; the judiciary being unable to discipline or discharge staff except through merit system procedures to which all staff have recourse. Professional independence of the staff, at all levels, is facilitated by these merit system protections, administered through the office of the administrative director of the courts. Additional insulation from the pressures of an employer-employee relationship between staff and judiciary is provided by the fact that the administrative director is responsible only to the chief justice, not to the local judiciary; and by the fact that the county directors must work directly with the administrator in such matters as budgets and personnel actions.

(2) ***The responses of family courts to emerging concepts of due process are generally regarded as adequate and successful.***

- Except for public defenders, persons interviewed reported in most cases that due process standards of evidence, proof, and judicial cognizance consistent with *Gault* and subsequent U.S. Supreme Court decisions have been duly instituted. Although the parens patriae concepts of child protection and social intervention inherent in the Family Court Act have been successfully preserved, their application has, under the new rules of procedure, evidence, and proof, been limited by the court (and its service arm) to formally handled matters. However, prosecutors wanted more intake control to protect youth rights.
- A largely successful attempt has been made to avoid conflict of interest and due process problems associated with judicial employment of services staff by maintaining the staff's



professional and administrative independence. (This has been done despite its attachment to the judicial branch of government.) The state merit system has been adopted and there has been a tradition established of maintaining an independent and stable services staff, uninfluenced professional discretion, and nonpolitical administration, all under the strong leadership of an administrative director of the courts who is responsible only to the chief justice of the supreme court.

- There is a general opinion that the philosophy of family courts has, in the last decade or so, changed to become more permissive of antisocial behavior and more dedicated to parens patriae concepts of judicial leniency and action in behalf of the child. This is true despite the courts' generally acknowledged implementation of due process procedures consistent with *Gault*. At the same time, opinions regarding the desirability of perceived leniency were sharply divided.
- There is some concern that due process sometimes results in the denial of help to children who are in need of it when jurisdiction is procedurally denied or when intervention is delayed until after adjudication. Equally salient is the view that dangerous juveniles may avoid punishment because of the legal restrictions upon evidence and pretrial procedures. However, interviewees who could be regarded as both liberals and conservatives generally regard the traditional lack of due process under parens patriae philosophy as a justifiable quid pro quo for advancing the interests of the child, the family, or the public. Hawaii is, at heart, a parens patriae state with strong traditional values concerning authority, the family, and individual responsibility of both parents and children.

(3) ***Opinion regarding the adequacy of probation, intake, and detention services, and budgets was mixed.*** Despite problems which may exist, there was, among respondents, no severe or general criticism of service quality and no widely expressed concern about service quantity in terms of availability, staffing, or work loads.

Courts have exercised a conscious restraint in budget requests, and respondents generally had an appreciation for its desirability. The newness of the family court system, the desire to restrict new treatment activities to experimental "seed" programs, present controversies surrounding the courts' disposition in sensitive cases, and recent problems involving individual personalities have all been cited as reasons for not seeking substantial budgetary increases. In addition, the Office of the Administrative Director of the Courts is not prepared to approve substantial increments in budget requests for services until services staff develop a consensus on objectives and work standards which can command general support and survive the tests of the budget process.

(4) ***Role of the courts.*** Judicial monitoring of programs not administered by family courts was not seen as an administrative issue. Most respondents were preoccupied with problems involving individual attitudes and personalities among the judiciary, and they saw this as the basic issue rather than monitoring procedure.

(5) ***In terms of the structure and purposes envisioned by the Family Court Act, the family court system of Hawaii has achieved considerable success.***

- The juvenile and domestic relations courts have been reorganized and integrated, as planned, into a unitary judicial agency with jurisdictional and service foci upon the family.
- Over the past 15 years, there has been frequent (if not universal or continuous) judicial interest in the latest concepts in social services programming, in the continuation of an interventionist philosophy, and in attempting to provide services consistent with these concepts. Court directors have also assumed a leading role in this initiative, as have other members of the community of private and public agencies providing social services to persons involved with family courts. The ethic of social intervention in behalf of the child and family has been reflected in the establishment of experimental beginnings of service programs (when not available elsewhere) under the umbrella of court services.
- There is no opinion supporting the idea that the "judicial democracy" feature of the family courts' organization has had any administrative impact upon court services. The prerogative of the judiciary, sitting en banc, to propose rules of procedure has reportedly not been

significantly utilized to establish standards and guidelines for probation, intake, or detention services. However, recent activity in the first circuit to establish policy and legislative guidelines by cooperation and liaison among family courts, other public and private delinquency-related agencies, and the state legislature may fill this gap.

• There was no significant sentiment for extending the present social programs of the courts into social reform or into additional programs of delinquency prevention. Informal intake screening was generally defined as the courts' most legitimate area of preventive activity. The concept of the court as an activist leader of social reform received no support.

Contemporary Problems and the Question of Structure

At the time of the survey, the family courts of Hawaii found themselves confronted with a crisis in community confidence, a crisis of a magnitude sufficient to present some potential danger to the future independence, funding level, and administrative integration of the courts and their service arms. Judicial dispositions in serious cases, such as several notorious gang-rapes, were perceived as unduly lenient and, in the context of Hawaii's multiracial populations, had occasionally been interpreted as racist. In 1979, a large and vocal segment of the community marched upon judicial and gubernatorial offices in protest, deluged the three branches of government with personal complaints, and agitated for action by the legislature. This agitation has resulted in legislative consideration of the structure, function, and philosophy of family courts at hearings held early in 1980. The press responded with a remarkably thorough and balanced investigative series which was based, in part, upon computer analysis of a large sample of cases. At the same time, there was substantial press criticism of alleged program ineffectiveness, inappropriate agency referrals, and failure to cope with "hard-core" repeat offenders.

The State Law Enforcement Planning Agency (SLEPA) also targeted criticisms at failure to cope with repeat offenders and at other, more minor procedural matters such as the circumstances under which probation cases are closed. SLEPA was also concerned about alleged keeping of children for unduly long periods of time (pending placement and for other reasons) in the detention home. Finally, there was resentment among "outside" agency staff, frequently on a personal level, of what was generally perceived as an excessive use of judicial authority on the part of some individual judges. This resentment, plus general public concern over dispositions in serious cases, created what appeared to be a widespread climate of public criticism specific to Hawaii family courts.

A consequence of this was significant legislative sentiment for reviewing and, perhaps, amending the organization of family court services. Family courts were seen as having "too much power" and a possible step in the direction of remedying this perceived problem would be breaking up the courts' social services structure and concomitantly reducing their budget. However, the legislature did not undertake to do this; on the contrary, it passed legislation solidifying the jurisdiction of family courts, a significant step in view of the current climate.

The results of this study's survey of key informants suggest that the problems alleged by the press, the public, and SLEPA are not attributable to faults in the structure of the family court system as an organizational entity. Rather, they appear to be due to at least the following factors.

• ***The newness of the family court as an organization.*** The 12-year life of the family court in Hawaii is not long in the history of an organization, particularly in the judiciary. Organizations develop procedural structures in response to needs, and family courts have not, until recently, been confronted with the need to take advantage of the policymaking opportunities afforded by its organizational structures. There is a widely perceived need for replacing current judicial, administrative, and staff discretion with decisionmaking guidelines consistent with accepted public policy. Guidelines for judicial dispositions, probation case load management, intake screening, detention decisions, treatment recommendations, and other similar procedures could be promulgated by the chief justice as rules of court, upon recommendation of the board of judges, as authorized by the Family Court Act.

This is a unique opportunity for judicial self-government. It is an opportunity which would

not be present if the family courts' social services were located in the executive branch of government. It is also a power which may conceivably be preempted by the legislature if not used by the judiciary.

• ***Past limitations on judicial accountability.*** Judicial accountability was formerly present in statutory authority for judges to be removed by the supreme court, a remedy never used and a remedy inherently dangerous to the maintenance of a properly independent judiciary. However, in 1979, the Judicial Selection Commission failed to include the names of two sitting district judges in its recommendations for judicial reappointment. This procedure may increase future judicial accountability and prevent a substantial part of the family courts' public relations problems from recurring. (In the short term, however, such action is unsettling.)

• ***Limitations on employee accountability.*** While merit system protections do tend to minimize due process and conflict of interest problems arising out of staff-judiciary relationships, there may be some concommitant costs in terms of employee "entrenchment." Public reactions to certain decisions and alleged actions by probation and detention workers may be expected to be unfavorable when things do not change.

• ***The multiple mandate of family courts.*** The courts are required to act as social agencies in behalf of the interests of the child and as judicial agencies acting in behalf of the law and the public. The interests of the child, of the family, and of the public are not always viewed as consistent in any one case by an one observer. Cases in which the inconsistency is perceived to be extreme may inevitably result in charges of abuse of discretion, particularly in cases where the family courts' earnest attempts to implement professional concepts of "best practice" clash with the community's concepts of its own needs for "public protection." It may well be that the unfettered professional discretion of the 1960s and 1970s may require reconsideration in the light of the changing social realities of the 1980s.

• ***The traditional, undifferentiated functions of probation staff.*** Probation staff often performs as both social service workers and agents of social control. Differentiating staff and programs aimed at helping the unsophisticated, more amenable offender from those aimed at controlling the sophisticated, hardened, and often older repeat offender could disentangle these functions and provide a potential for program evaluation and budgetary review in a more objective and purposeful manner.

• ***Need for further research.*** If the social function of a justice system goes beyond individual justice to the maintenance of public faith in the inherent justice of society itself toward all its citizens, then the recent condition of public confidence in Hawaii family courts would seem to present the courts with their greatest weakness and, at the same time, with an outstanding opportunity for progress. Judges were, at the time of this writing, making a serious effort to stimulate review of the system and to establish needed procedural and decisional guidelines. This was being done through interagency committees and through the Senate Judiciary Committee. The already substantial accomplishments of these committees might usefully be facilitated by outside technical assitance. Additionally, a public opinion survey might more accurately pinpoint areas of public concern which family courts could systematically address in order to restore public confidence in the courts and its effect upon Hawaiian society.

As noted above, these perceived problems and suggested solutions are not intrinsic to the basic structure, internal or external, of the Hawaii family court. From the point of view of structural design, Hawaii's court of juvenile jurisdiction enjoys an admirable situation which, because of the numerous positives summarized in the preceding subsection, might merit serious consideration as a model for the nation in respect to several major elements of the system.

Footnotes

1. The 1980 amendment of the Family Court Act provides for judicial waiver of juveniles, age 16 or over, to criminal court on felony charges. Factors to be considered in the decision to waive include seriousness of the alleged offense; w ether it was aggressive, violent, premeditated, or willful; whether there was personal injury; whether codefendants are also to be waived; the

sophistication and maturity of the juvenile, his previous record, and history; and prospects for adequate public protection as well as rehabilitation.

2. This has already been utilized. In 1979, two sitting judges in Honolulu were not included in the list of recommended candidates.

3. Because statehood and its attendant constitutional conventions have occurred so recently, Hawaii has operated under legal procedures that are consistent with current trends in the field.

4. Section 571-1, Hawaii Revised Statutes.

5. If detained in an adult facility, as authorized by the code in counties where there is no secure detention facility for children, a child cannot be held more than 12 hours without judicial order.

6. In essence, these recommendations were: (1) all members of the committee agreed that court jurisdiction over status offenders could not be ended at this time; (2) the Family Court Act should be amended to clarify the standards for detention; (3) detention at Hale Ho'Omalu should be available as a postadjudication sanction for some of the children within the court's jurisdiction; (4) there is a need for more services to families to aid in maintaining children in their own homes; (5) there is a desperate need for increased placement resources for minors in need of temporary and permanent shelter; (6) the present secure facility, Hale Ho'Omalu, should be renovated to change its emphasis and to provide needed additional services; (7) there is a need for segregation of minors detained by degree of sophistication to avoid providing an education in delinquency; (8) the emphasis should be on working with the family as a unit; (9) family courts should require the participation of families in court hearings and treatment of the child; (10) parenting is a learned skill and family courts should conduct counseling sessions and classes for parents; (11) efforts of family courts to involve families in treatment should utilize coercion only when informal persuasion fails; (12) immediate measures in calendaring by family courts could reduce the number of children detained; (13) family courts should designate certain skilled probation officers as crisis intervention counselors; (14) family courts should develop a roster of professional community resources available to assist court personnel in family treatment; and (15) the use of volunteers should be expanded and emphasized to assist the courts in performing their functions.

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NEVADA CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited Nevada for an on-site case study from November 26-30, 1979. Interviews were conducted in the state's largest city (Las Vegas), a medium-sized county (Washoe County, major city Reno), a smaller county representative of the rest of the state (Pershing), as well as meetings with important respondents from the state capital (Carson City). In addition, we attended a session of Nevada's Legislative Commission Subcommittee for the Study of Alternatives for Organization and Financing of Judicial Services Involving Juveniles.

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Dr. Dale Adams, Department Head
Adolescent Out-Patient Counseling
Nevada Comprehensive Mental Health Center
Las Vegas

Ms. Debbie Agosti,
Assistant District Attorney
Juvenile Division
Reno

Mr. David Bash, Director
Nevada Youth Parole Division
Carson City

Sgt. Lee Bergevine
Washoe County Sheriff's Office
Juvenile Bureau
Reno

Mr. James Burk, Chairman
Pershing County Commissioners
Lovelock

Mr. Frank Carmen, Director
Clark County Juvenile Court Services
Las Vegas

Mr. Joe Denny,
Assistant County Commissioner
Clark County Commissioner's Office
Las Vegas

Ms. Sandy Durgen, Intake Officer
Las Vegas Police Department

Mr. William Farr, Chairman
Washoe County Commissioners
Reno

Hon. Jean Ford
Nevada State Senate
Las Vegas

Mr. Stephan D. Gregory,
Assistant District Attorney
Clark County Juvenile Court
Las Vegas

Ms. Ardel Kingham, Budget Officer
Clark County Commissioners
Las Vegas

Ms. Katherine Lore, Assistant Director
Wittenburg Juvenile Hall
Reno

Mr. Buddy Marshall,
Substance Abuse Counselor
Clark County Probation Department
Las Vegas

Judge John Mendoza
Las Vegas

Mr. Bernard E. Schneider, Chief of Police
Lovelock

Ms. Pat Speckman,
Director of Management Services
Clark County Commissioners
Las Vegas

Mr. Richard Staub,
Criminal Justice Specialist
Department of Law Enforcement Assistance
Carson City

Judge Ray Torvinen
Reno

Mr. Richard Wagner,
Pershing County District Attorney
Lovelock

Professor Myrna Williams
Department of Social Work
University of Nevada
Las Vegas

Judge Llewellyn Young
Lovelock

INTRODUCTION TO THE COMMUNITY

Since 1960 Nevada has had the most rapid rate of increase in population of all states. Yet, its 1977 population of 633,000 made it only the 46th most populous state, and its 5.8 people per square mile is the fourth lowest in the nation. Roughly, 80 percent of this population is concentrated in the six cities in the state with over 10,000 population, with much of its 110,540 square miles (seventh largest state in geographical area) left to the wide-open spaces. The steep slopes and dryness of this land has severely limited population of both modern and aboriginal peoples. Much of it consists of alkali sinks or arid stretches of sagebrush and creosote bush. Many of the high plateau areas are excellent for grazing, and the state is rich in minerals, including gold, silver, lead, iron ore, zinc, and mercury.

The ruggedness of the land, along with its appropriateness for cattle ranching and mining, has helped to perpetuate the frontier ethos of the inhabitants. Except for several Spanish explorers in the 1770s, the first Europeans were fur traders who entered the area in the 1820s searching for beaver pelts. Beginning in the 1840s, many wagon trains crossed Nevada on their way to California, especially during and after the gold rush of 1849. The United States finally took control of the area from Mexico in the Mexican-American War. Almost all of what is now Nevada was a part of the Mormon-dominated Utah Territory established by the federal government in 1850. The discovery of gold in 1859 brought many non-Mormons into the area and introduced the period of rough and raucous boom towns described by Mark Twain in *Roughing It*. President Lincoln rushed the territory into statehood as the 36th state in the Union in 1864 in order to obtain more votes for the Thirteenth Amendment.

A close identification with this past remains today despite the many changes the state has since gone through. Mining and the cattle and sheep industries serve as links to that past. The state's economy is still vulnerable to mining depressions and fluctuations in the market prices of minerals. Despite the state's mineral wealth, however, the manufacturing sector provides only a small percentage of statewide employment. What does exist is principally the manufacture of stone, clay, and glass products; chemicals; food products; lumber; electrical machinery; and fabricated metals. Cattle and sheep raising has emerged as an important industry in the state, amounting to a $101 million business in 1977. The remainder of the agricultural sector is weak (47th ranked state in 1977 total farm output), consisting largely of hay and alfalfa grown for the cattle. A considerable proportion of the state's foodstuffs are imported.

A third economic area with links to the wild west past is legalized gambling. This sector of the economy has grown rapidly since 1931, and along with this growth has developed a booming tourist industry. Tourism and gambling largely account for the markedly atypical 41.4 percent the services sector comprises of all the state's nonagricultural employment (the national average is 18.7 percent).

This economic configuration has benefited the residents of the state quite well. Their 1977 per capita income of $7,988 was the fourth highest in the country (the national average was $7,019). Further, in 1975, the 7 percent of families below the poverty level was lower than the national percentage of 9; only 15 states had a lower percentage of poverty-level families.

Nevada's population is largely Caucasian. Its 6 percent black population (1975) is concentrated in the Las Vegas area. Yet, even there, the black percentage of the population declined from 15 to 11.5 percent between 1960 and 1970. The other significant minority groups are Spanish-surnamed Americans and American Indians, although both groups together comprise only about 1 percent of the population. Educationally, the residents of Nevada are a bit above the national average in percentage of high school graduates (75.7 vs. 66.6).

However, despite the high levels of income and education, the state also suffers from high crime rates. Nevada's 1978 index of composite violent crime was 780.8, exceeded only by New York's index of 841. Nevada's 1978 incidence of child abuse per million (67) is also one of the highest rates in the country.

Nevada is divided into 16 counties, plus its capital in Carson City (population 24,928, fifth

largest in the state). Las Vegas (population 154,000) is the largest city and the only one in the state with a 1978 population of over 100,000. The state's legislature is divided into a 20-member senate (four-year terms) and a 40-member assembly (two-year terms). The governor is elected to a four-year term.

In an important sense there are really four "Nevadas." Las Vegas has experienced a very rapid increase in population since 1960, particularly in the metropolitan area around the city proper. Its famous "Strip" of hotels and gambling casinos attracts tourists from all over the world. It is a city of bright lights, fast life, high property values, and a kind of westernized cosmopolitanism. The types and scale of its problems, as well as its responses to them, is becoming increasingly more like what is found in other large cities in the country. Reno, too, is experiencing population growth and is also well known for glitter and glamour. However, the community seems to be struggling to maintain the scale of operations and identity of a small town. Carson City, although relatively small (about 25,000 people), has its own distinctive character due to the fact that it is the state capital. Finally, there is the rest of the state. Despite the ever-present slot machines, life here is oriented to cattle ranching and mining. This is the Nevada of small towns, slower life style, and a romantic identification with cowboys and the west. It is here that the frontier ethos lives the strongest.

This is not to say that the rest of the state (Reno, Carson City, and Las Vegas) does not identify with the old west as well. This is a land of strongly independent people to whom local control over governmental affairs is an article of faith. Currently this view is gaining its most focused expression in the so-called "sagebrush rebellion." Though it stands for a broad range of interests falling under the general heading of opposition to "big government," it is especially aimed in Nevada at opening up the approximately 85 percent of the state's land now under federal jurisdiction. This is, to many residents of the state, the immediate and real manifestation of a distant Washington, D.C., bureaucracy which is out of touch with the local citizens, a bureaucracy which is evermore throwing "senseless" impediments in the way of those individual citizens. Even state officials seem to be seen in only a slightly better light.

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

In Nevada, district courts are courts of general jurisdiction. They have original jurisdiction in all civil cases of equity and law, probate, juveniles, adults in relation to juveniles, mentally ill persons, and all criminal cases not otherwise provided for by law. Juvenile courts operate as divisions of district courts. There are eight district courts for Nevada's 17 counties, including Carson City which is technically not a county. Three counties—Clark (Las Vegas), Washoe (Reno), and Carson City—have single county courts which administer delinquency-related services as part of court operations. While the remaining five courts serve multicounty districts, each county is responsible for furnishing its own court services.

Although there is more than one judge assigned to each district court, one judge is assigned to hear all juvenile cases within the district. In Washoe county this assignment has been formalized as a two-year term which the seven judges serve on a rotation basis. Washoe and Clark counties also utilize juvenile referees who hear cases and hold detention hearings. In these two districts, the juvenile judge generally reviews the referees' decrees and hears appeals. The state supreme court is the court of last resort in Nevada.

Juvenile divisions of district courts were established by the Juvenile Court Act of 1909. This legislation was a direct response to the wave of social reform that established the first juvenile court in 1899. This was at the time a new approach to juvenile crime, one founded on the intention of treating children differently and separately from adults, and encompassing the parens patriae philosophy. Until the latter part of the 1800s, the children in Nevada had few recognized legal rights. However, they could be tried and sentenced as adults. The 1909 law changed this, although it did cast a rather inclusive net in its definition of delinquency, e.g., even the smoking of cigarettes

in any public place by someone under 18 years of age constituted a delinquent act. The same was true for any child who frequented pool halls, any place where any gaming device was operated, or any saloon where intoxicating liquors were sold. The law also had a catchall provision defining a delinquent as any child who "is incorrigible, or knowingly associates with thieves, vicious or immoral persons" or "is growing up in idleness or crime."

These provisions of the 1909 law are not at all unusual compared to the laws founding juvenile courts in other states. Indeed, the Nevada law was an amalgamation of many of those earlier laws. However, the Nevada law anticipated many modern issues and procedures being currently debated in the field of juvenile justice. It provided for bail for children taken into custody, permitted trial by a jury of six to 12 persons, and permitted representation by an attorney. Further, it required what was in essence the "least restrictive" placement in an environment suitable for the child.

The 1909 Juvenile Court Law was revamped in 1949 and has been amended several times since then. Bail and trial by jury are no longer existent, but the doctrines of "least restrictive" placement (state reformatories being only a last resort) and dispositions being in the "best interests of the child" are still enunciated. Similarly, the same basic options and procedures are being used today.

Organization of Services to Children in Juvenile Courts

Nevada is an exceptionally clean example of the traditional model of judicial administration of juvenile justice services. The guiding principle has been the parens patriae philosophy, e.g., the court as final or ultimate parent, with traditional emphasis on the judge as an understanding parent. Until recently, it also included an assumption that status offenses, such as truancy, are precursors of involvement in more serious crimes. Judges administered juvenile service programs to ensure that various types of intervention were pursued as effectively as possible, traditionally, through the courts' probation departments.

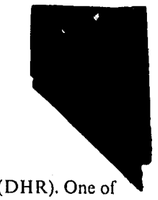
It is also traditional in that the funding for juvenile court services comes almost entirely from county general funds. Funding of local courts by local county government was instituted as a means of maintaining local control over the district court system. One exception is the state Juvenile Probation Subsidy. Funded for $629,000 in 1978, the objective of the subsidy is to improve community-based treatment programs and probation services for juvenile offenders. This subsidy constitutes a larger proportion of the probation funding in smaller counties than it does in the larger ones.

Just as juvenile courts have remained historically consistent in their philosophy, options, and procedures, so they have with the organization and location of services. There have not been any significant service transfers since the courts' inception. The most notable has been the 1978 transfer of the protective service program from the state Division of Welfare to the juvenile courts with the county governments contracting to pass through Title XX money for the program.

The present system is the product of a gradual evolution of the traditional judicial administration of services affected by statutorial changes and the quantitative growth in the sizes of staffs and in the number of service alternatives offered. In part, the growth has been a response to the increased case load that has accompanied recent dramatic increases in population and in juvenile crime. However, the amount and type of growth has been particularly affected by the ability of the local county's commissioners to fund the services.

The differential ability to fund services is nowhere more pronounced than in the area of juvenile detention. Carson City, Clark, and Washoe Counties operate their own detention centers. In Clark County it is the Department of Detention, a division of the Office of Juvenile Court Services, which manages the facility. In Carson City and Washoe Counties, this is the responsibility of the detention division of the probation department. The Washoe County facility occasionally receives juveniles from two California counties which have no detention homes of their own.

The only other secure juvenile detention facilities in the state are the two facilities operated



by the Youth Services Division of the Nevada Department of Human Resources (DHR). One of these facilities is for males, the other for females. The 14 rural counties must either use local jails or transport juveniles requiring secure detention to one of the facilities listed above.

Probation officers in Nevada perform both the intake and probation functions, although in the larger counties there may be some specialization of the respective roles. The intake function consists primarily of making a preliminary inquiry in order to reach a recommendation as to whether or not a delinquency petition should be filed. The probation function involves the providing of a predisposition report to the court. However, probation departments may also operate a range of ancillary delinquency-related services. This includes family counseling, drug and alcohol treatment programs, and psychological and psychiatric diagnostic services. The range of services provided varies with the county's ability and willingness to fund them.

The most elaborate and the most expensive example of what can be done under this system is in Clark County. Twelve percent of the county's general funds are spent on juvenile services, the highest in the state. Further, unlike the pervasive antipathy to accepting outside aid found in the remainder of the state, the tendency in Clark County has been to aggressively pursue sources of financial assistance which might improve juvenile services. All of the juvenile court services as well as related nonjudicial ones (e.g., foster care) are centralized in its Juvenile Court Services Center, where a director of court services coordinates the delivery of the largest array of juvenile services in the state.

In Washoe County (Reno) the intake, probation, and detention services are organized under the Probation Department. It does not, however, administer the full range of other social services as is done in Clark County. A similar, though smaller-scale, organizational pattern exists in Carson City.

Beyond these three counties, however, the picture changes considerably. Typically, 1 to 2 percent of the respective county's general funds are spent on juvenile services, though the probation subsidy provides additional help as described above. Nevertheless, funding is not available for ancillary services, resulting in a dependence largely on the services provided by DHR.

Most commonly in these counties, one- or two-person probation departments, some working part-time, handle all aspects of the intake and probation services, even including (in some counties) the power to actually make arrests of juveniles. The arrest powers are determined by the counties and may vary from county to county within a single district court's jurisdiction. These districts are composed of two or three counties, each county having its own administrative structure for these services and funded largely by the respective county's general funds. The result is that the judges in these rural districts have responsibility for administering two or three separate and distinct organizational structures of juvenile services.

Nevada's juvenile court judges are in all cases ultimately responsible for the administration of the juvenile court services. However, the involvement by the judges in their operation varies around the state. The judge is most removed from the operations in Clark County. Here, the judge's influence is through the organizational levels of the director of juvenile court services and on to the departmental director of intake/probation and of detention. In Washoe County, organizational directives go through the director of probation who oversees all juvenile court services.

These two counties have two other structures which separate the judges from the services. The first is the use of juvenile referees already referred to. The second was legislation, repealed this year, aimed specifically for these two counties which enabled them to establish county citizen advisory boards. Commonly referred to as "Probation Committees," their role was to be involved in screening and recommending applicants for hire and in the development of personnel policies. An employee, if fired, could appeal to this committee.

The judges in the rural counties are much more intimately involved in the administration of juvenile court services. This includes the hiring and firing of probation officers as well as negotiating with the county commissioners over the salaries for the probation officers. This more

intimate administrative involvement adds significance to their having responsibility for two or three separate service structures in their district.

Procedures for Referring and Handling Children in Juvenile Courts

In Nevada, a youth's first contact with the juvenile justice system usually is being picked up by the police or, in some counties (e.g., Pershing) by probation officers. The police or probation officers, sometimes in consultation, then do the initial intake screening.

A preliminary inquiry is made with the goal of achieving a decision that is in "the best interest of the child and/or the public." The less serious misdemeanor cases (e.g., first offense curfews) may be diverted at this point. In other cases, the probation officer conducting the inquiry recommends whether a delinquency petition should be filed or not. It is important to note, however, that only district attorneys can file a petition. If a child is in detention and the district attorney does not approve the filing of a petition, the child must be released immediately. All felony cases must go to district attorneys, even if the probation department recommends diversion. Any felony can be accompanied by a district attorney's motion for certification to adult court and the decision of the district attorney on filing this motion is not appealable. The remaining cases (misdemeanors not diverted at intake and felonies not sent to adult court) are sent to a district attorney's office to determine whether formal charges are to be filed or the case diverted at that stage. This decision is usually made after consultation with the probation officers and, sometimes, the police.

All decisions to detain a child must be reviewed by a judge or a juvenile referee within 72 hours, although any requests by the child for a review within the first 24 hours or the first court day must be honored. All detentions must thereafter be reviewed each week by a judge or referee. Children have a right to appeal the detention under habeas corpus, but this rarely, if ever, happens. Least restrictive placements are considered in cases of lesser offenses, when the child is not a runaway risk and when the child is not a threat to himself or the community. Generally, multiple repeaters and juveniles involved in felony-type cases are held in secure detention.

All youths charged with delinquent acts are encouraged to have attorneys present at intake, detention, and adjudicatory hearings, although the attorney's presence is not statutorily mandated at the first two. However, the statutes do decree that the judges/referees are not to see any presentence reports (social histories, etc.) prior to adjudication. In postadjudicatory discussions regarding proper referrals, the district attorneys and probation officers tend to rely quite heavily on the judges' familiarity with the services network. This is particularly true in the rural counties.

There are two basic adjustment procedures. In the "consent" procedure, if the child commits no other offenses for a six-month period, the original charge is dismissed. The child's family, as well as the probation department and district attorney's office, must agree on this procedure. The "deferred status" procedure is very similar except that it also needs the approval of the juvenile court judge or juvenile master. In either case, if a child is unsuccessful in passing the six-month period and the district attorney decides to proceed with the case, the child's original admission in order to gain diversion is not admissible in court. All probation violations proceedings are initially filed by probation officers. If the child denies these charges, there must be a hearing before a neutral party—usually a referee or chief probation officer. Two things can then happen. If the violation is considered to be a new offense, the case must go to the district attorney for filing. If it is considered to be a technical violation, the neutral party hearing the matter makes the decision on whether it is to be referred to the district attorney.

Special Features of Delinquency-Related Services Delivery

Although the focus of the study is on the traditional court services of intake, probation, and detention, brief mention must be made of nonjudicial services because questions concerning them have arisen in connection with current inquiries about juvenile court services within the state. This connection is brought about by Chapter 62 of the Nevada Revised Statutes which gives juvenile

courts a broad range of jurisdiction, including:

(1) Neglected or abandoned children.
(2) Children in need of supervision.
(3) Minors who have committed delinquent acts.
(4) Responsibility for the mentally retarded.
(5) Responsibility for traffic offenders.

Most services for these categories of children are associated with the Department of Human Resources. Its Youth Services Division has responsibility for the operation of both of the state's training centers and both of its children's homes, for juvenile parole within the state, and for child care services. Its primary function is to place children received from the courts into the state facilities.

The statutes allow for the observation, treatment, or diagnosis of children committed to Nevada training centers. Juvenile courts shall order each child who is to be committed to take a medical examination before entering a training center, and committed youth may also be provided with medical, surgical, or dental service. These services are paid for by the Department of Human Resources.

Quarterly reports are to be written and compiled by the superintendent of the Juvenile Correctional Institutions. Program and assignment monitoring is to be done on each child committed by a court every three months. The parole of juveniles committed to a state institution is at the pleasure of the superintendent and his or her staff.

The Youth Services Division also administers the state's youth subsidy programs, the probation subsidy being the primary one. The department's Division of Mental Hygiene and Mental Retardation is responsible for group homes and the in-patient and out-patient care at the state's mental health clinics and at the state facilities which handle juveniles. The department's Rehabilitation Division administers no programs but does have a rather ambiguous role of supporting many of the services provided by the state and the counties.

The state Welfare Department is also involved in the administration of the various funds, including Title XX monies, and the licensing of facilities for neglected children. Furthermore, in 11 of the state's 17 counties, they handle all but the state's foster home placements for juvenile parole.

The connection with juvenile court services is twofold. First, at least three different agencies (county welfare, state welfare, and the court's probation department) may operate foster care services within any one county, and the agencies involved vary from county to county. This has led to charges that the present overall organization of services is fragmented and overlapping, and needs to be reanalyzed. The second area involves mental health. The Division of Mental Hygiene and Mental Retardation has not been adequately funded to provide an adequate number and types of mental health services for juveniles. One reported result has been parents conspiring with attorneys and probation officers to file complaints against emotionally disturbed youths so that they might get the court to order mental health services which the child might not be able to otherwise receive.[1] This type of situation has served as the basis of reported demands by the judges that they must be involved in services because the state agencies are doing an inadequate job; and reported charges from the county commissioners that the state is not carrying its fair share of the financial burden for juvenile services.

EVALUATION OF THE NEVADA JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

Opinions of policymakers surveyed on these issues may be characterized as follows.

(1) ***There is strong and generally widespread support for the current court administration of juvenile justice services.***

• There is little criticism of the location of the juvenile court services, except for county commissioners in the larger counties which constituted the most unified and outspoken group

opposing that location. Although concerns were expressed over the separation of powers issue and the courts use of their mandamus powers to "bully" more funding, it was generally acknowledged to be the classic controversy between the judges and county commissioners. At the same time, it was an attack on the state's propensity for austerity. The judges felt they must provide services in areas where the state is seen as doing a demonstrably inadequate job, while county commissioners felt that the state was not carrying a fair share of the financial burden.

• In the rural counties, perceptions of court-operated services proceeded from a different set of assumptions. They result primarily from the difficulty rural county officials face in funding what few services they have, although the criticism is less focused and unified than the criticisms from the county commissioners in the large counties. It is the judicial officials, one district court judge in particular, who favor a state-administered and state-funded juvenile services system. This would relieve them both of the responsibility to administer multiple systems and of continually struggling with the county commissioners over funding allocations.

The county commissioners in the rural counties generally supported the current judicial administration of juvenile services. However, should a change of location occur, they too would prefer a state-funded system. They clearly had no desire to be more involved in the administration of these services, as their more urban counterparts propose.

• However, this controversy over funding has not yet produced strong general sentiment for the removal of the services from judicial administration. The majority of respondents expressed support for the current judicial administration of intake, probation, and detention. In many cases this was because of a rather frank admission that this is what they are familiar with. Other points frequently emphasized included: (a) judicial administration limits bureaucracy more than the executive branch would, (b) judicial administration makes for more efficient administration of these services, and (c) executive branch services would become too politicized.

• The effect of court administration on the quantity of services, the quality of the staffs, responsiveness to the local community, and operational budgets drew a mixed response. Very few saw their desired location being superior across all four categories, most feeling their desired location would be superior on only one or two of these dimensions. Views generally split over whether each of these dimensions are better under court administration or there would be no difference if they were under executive branch administration, although a minority thought they would be better off under executive branch administration.

(2) ***The Nevada system was viewed as adequately protecting due process rights. It was generally felt that the increased involvement of the district attorneys in the decision on whether to file a petition had much improved the safeguarding of these rights.***

• This procedure was seen as limiting the possibility of abuse by probation personnel while at the same time avoiding the possibility of judges pressuring those officers to file or not to file. Other points raised included: (a) the judges being statutorily restricted from seeing social history reports, etc., until after adjudication, and (b) the greater involvement of defense attorneys in juvenile cases. The general tone of the comments in Nevada was that there is no inherent reason why a court-administered system cannot provide adequate due process safeguards.

• The granting of arrest powers to probation officers by some counties was not believed to be an inherent abridgement of these rights. However, concern was expressed that the basic philosophy of the juvenile court is becoming more concerned with due process proceduralism, a development opposed by a majority of respondents. The majority thought that it is becoming too legally formalized in the efforts to protect due process and defendants' rights. These efforts, such as adversary proceedings, were seen as: (a) slowing down the process of juvenile justice and, thus, hurting children by delaying their getting needed services; (b) teaching children to "beat the system" through technicalities and plea bargaining; and (c) enabling many children who need help in remaining outside the best system of child care in the state. The general feeling is that a point has been reached where whatever gains are made in the interests of children by a further formalization of juvenile proceedings, for whatever reason, will be more than offset by losses to current practices of serving the needs of children.

• There were other interesting responses regarding the parens patriae philosophy. To the question of whether the traditional philosophy of parens patriae is consistent with the due process requirements of the law, the responses were grouped, more than on any other questions, according to the respondent's occupational position. All of the judges and all of the law enforcement personnel saw them as being consistent, while all of the district attorneys and all but one of the court services personnel thought them not to be consistent. From their responses, it was apparent that the more this was viewed as an abstract issue in the theory of law and the less it was viewed as a problem of practical procedural mechanics, the more likely they were to be viewed as being consistent.

(3) ***Generally high levels of satisfaction were expressed with the intake, probation, and detention services as they exist in the different counties.***

• The most criticism of these services came from the small counties, although general satisfaction was expressed even there. The criticism from the rural areas concerned the already-mentioned lack of alternative programs associated with these services; at intake there are simply not enough alternative diversion programs available to be appropriately matched with the needs of individual children. Needed probation programs specifically mentioned included psychological counseling services, alcohol and drug abuse programs, and professional family counseling programs. At detention, the problem of limited separate facilities has forced an almost either/or situation of foster or group homes versus state training facilities (reformatories).

A similar desire for more alternative service programs was expressed in the two larger counties, though the satisfaction levels there were generally higher. For these, the greatest expression of need was for a facility for abandoned and neglected youths in Washoe County. There was also a minority in this county that objected to the placing of children in need of supervision (CHINS) in the same facility with delinquents.

• A final area of dissatisfaction with the present system, and one we have found in other states, came from the law enforcement officers. They are the first point of contact for the youth with the juvenile justice system and, hence, are inextricably a part of the intake network. Current Nevada law allows some overlap in the diversion role of officers and court staff. Law enforcement officers in some parts of the state would like there to be greater definition and formalization of their role within the intake process.

(4) ***Opinion in Nevada strongly supported the court playing a role in reforming social conditions but split on whether it should be involved in delinquency prevention.***

• On the one hand, the majority saw juvenile courts as an institution with great exposure and credibility within the local community and with the best experience with, and information on, local delinquency. Therefore, the courts were felt to be, at least potentially, the most effective agency for reforming social conditions associated with delinquency. This reforming role was generally interpreted as informing the general community about what is needed in that community, and educating the children about the courts, the services available, and their legal responsibilities. The courts were felt to have the responsibility to be engaged in those educational and leadership activities by virtue of their special position in the community as the leading agency dealing with juvenile delinquency.

• On the other hand, there was opposition to "activist" courts involved in delinquency prevention programs. This opposition split into two groups. First were those who felt that there is not enough knowledge about the causes of delinquency or that it is impossible to prevent or reform it in any case. The second group argued that it is not the responsibility of juvenile courts to engage in these matters and that such activity—despite present statutory authorization—would be an unwarranted intervention into the life of the community. It should be pointed out that this is not a separation of powers argument but rather one coming from the spirit of the previously mentioned "sagebrush rebellion," a distrust of the involvement of any governmental agency in the daily affairs of individual citizens.

From the responses, it appears that the respondents took the question on reforming social condition in a much more vague sense—as if to say "if the court already exists and it is so visible, it

should play a contributory role." The question on prevention seems to have conjured up images of new agencies and programs and shades of government bureaucracy, which made some respondents uneasy about this role for the courts. This sentiment may explain the stronger support for the court in reforming social conditions than for its preventing delinquency.

- There was overwhelming support for judicial monitoring of juvenile services ordered by, but not administered by, the courts. This was seen primarily as an extension of the traditional judicial role and is not surprising, given the strong support for judicial administration of services and a parens patriae orientation. More specifically, it was generally felt that the judiciary has the responsibility to assure that court-ordered services are delivered. However, the respondents split over whether this should involve receiving reports on individual cases or the monitoring of the entire agency. One respondent did support the judges setting policy guidelines for the programs involved, and another proposed the creation of coordinating joint conferences or the establishment of a designated agency to carry out the monitoring function.

(5) ***The Nevada juvenile justice system has successfully maintained its dual emphases on rehabilitative care and local control.***

- The Nevada juvenile court services system was created so that emphasis could be placed on rehabilitative care, funded by the local county budget in order to maintain local control. The system has certainly succeeded in the latter goal. The services continue to be controlled locally due to the district court structure and county government funding. As portrayed in the previous section, the services found in the various counties do reflect the resource base and general character of those counties.
- The former orientation of juvenile rehabilitation towards the juvenile has continued to be strongly supported. Indeed, the more general parens patriae philosophy was consistently the dominant position taken in responses to our questions.
- One may argue that the great disparity in services programs available in the various counties is an inherent contradiction with a concern for rehabilitative care. Obviously, the limited options available in the smaller counties makes finding appropriate care difficult. For example, the absence of nearby psychological counseling services in Pershing County greatly limits the referrals that the district court judge can make. However, some argue, especially those in the larger counties, that if they are dissatisfied, they themselves need to increase what seems to be generally a small percentage of county general funds being spent on juvenile court services.
- The implication is that the court administration of services per se is not always as important to the quantity and quality of services available locally as are the factors of judicial leadership and local proclivity to fund services. Within the traditional structure, as found in Nevada, it is possible both to have a wealth of high-quality services, as in Clark County, and to have a seeming dearth of services, as in some of the smaller counties.

Contemporary Problems and the Question of Structure

The public in Nevada does want to lower the crime rate, and it does not want too large a tax burden. How the public feels about parens patriae philosophy is not really clear.

The desire for lower taxes may hold much consequence for future organization of these services. In the fall of 1980, Nevada voters will vote on State Question 6, Nevada's version of Proposition 13. If passed, it would make the funding factor more important than it already is in shaping the organization of services. It would probably hit hardest the already limited resources in the small counties, although county commissioners statewide are concerned about its impact. Also, passage would probably increase the demands for reorganization of services. Indications are that the small counties might ask for state-funded and state-delivered services, and one district judge (from a rural district) already feels that this is desirable. There was some testimony at the 1979 hearings of the Subcommittee for the Organization of Juvenile Services favoring regionalized detention services in the rural areas. From the testimony it appears that even the county commissioners from Clark County might support this proposal.

It is also apparent from testimony at those hearings that defenders of court-administered

services will offer economic rationales in support of maintaining the current system. One argument is that this system is simply more economically efficient than executive branch administration. A second is that due to the geography, regionalized services would necessarily be far away from many of the clients.[2]

If Question 6 fails, there does not seem to be any other factor within the state that will result in a reorganization of these services. It is clear that in Nevada it is believed that the courts should operate these juvenile services. A possible compromise, however, might be to shift all or a greater part of the funding responsibility to state-level agencies while retaining judicial administrative responsibility. Such an arrangement might rectify the services imbalance in the rural counties and would be better received within the state than a move toward executive branch services aimed at the same result. Of course, this might create the potential for judicial-state conflicts similar to those presently encountered with the county commissioners.[3]

There were calls in the testimony before the Subcommittee for the Organization of Juvenile Services for research concerning the relative economic benefits of judicial branch administration of these services. Such pragmatic research would probably be of use for other states as well.

From a public policy standpoint, interesting questions about the relationship between limited resources in the smaller counties and the legal process could be raised. For example, Do limited treatment facilities affect the dispositions or sentences ordered? Are due process safeguards applied differently in the various parts of the state? Similar questions could be asked at the national level and would have considerable value in evaluating the processes of juvenile justice.

Footnotes

1. *Nevada State Journal*, September 9-13, 1979. A series of five articles.
2. The testimony at the hearings closely paralleled the findings of our study, the major antagonists being the county commissioners and the defenders of judicial branch services. At the time of the writing of this report, the subcommittee was still collecting information and viewpoints and had not yet advanced any legislative proposals.
3. In November 1980, Question 6 was defeated.

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NEW YORK CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited New York for an on-site case study from November 12-16, 1979. Interviews were conducted in the state's largest city (New York City), a smaller industrial city (Buffalo), the state capital (Albany), a small county of particular interest (Rensselaer), and one of three counties experimenting with state-supplied services (Warren).

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Mr. Patrick Bailey, Regional Officer
New York Division of Probation
Albany

Mr. Richard Boccio, Chief Law Guardian
Erie County Legal Aid Society
Buffalo

Mr. Nick Capra, Juvenile Planner
New York Office of Court Administration
Albany

Mr. James Davidson,
Deputy County Attorney
Glens Falls

Mr. Guy Di Cosola, Assistant Commissioner
New York City Department of Probation

Ms. Jan Eggar, Erie County Attorney
Buffalo

Ms. Anne Fanning, Associate Counsel
Temporary Commission on Child Welfare
New York City

Ms. Janet Fink, Director
Juvenile Rights Division
Legal Aid Society
Brooklyn

Mr. Don Gilbert, Probation Supervisor
Troy

Mr. Frank Hall
Division for Youth
Albany

Mr. Marvin I. Honig, County Attorney
Rensselaer County
Troy

Judge Harold Katz
Glens Falls

Mr. John O'Donnal, Chief Juvenile Officer
District Attorney's Office of New York County
New York City

Mr. John Pacquin, Probation Consultant
New York Division of Probation
Albany

Mr. Mo Silver, Former Deputy Administrator
for Juvenile Programs
Division of Criminal Justice Services
New York City

Judge Robert I. Sise
New York Office of Court Administration
Albany

Judge Douglas Trost
Buffalo

Mr. Ray Welsh, Regional Officer
New York Division of Probation
Albany

Ms. Janelle Wilson, Director
Erie County Juvenile Detention
Buffalo

Ms. Laurel Winogar, Program Analyst
State Assembly
Albany

INTRODUCTION TO THE COMMUNITY

New York is the second most populated (17,748,000) and certainly one of the more diversified states in the Union. Its 49,576 square miles range from the Atlantic coast and Hudson River valley in the east, to the heavily wooded Adirondack Mountains in the west, to the Catskill

Mountains in the south. The wooded and fertile interior has supported significant populations since first being entered by the Algonquins and the tribes of the Iroquois confederation. During the seventeenth century, French settlers from Canada migrated south into the interior area while the Dutch were settling in the Hudson River Valley. The Dutch settlement of New Amsterdam in the extreme southeastern tip of the state has since grown into New York City, the country's largest city, the financial capital of the world, and the traditional port of entry for millions of immigrants. Its economic and social position has resulted in an exceptional ethnic diversity within the state, particularly in the New York City area. The percentage of black population, the largest single minority, is roughly the same as the national average.

Though particularly notable for its financial sector, the following table indicates how diversified the state's economy is.

Percentage of Nonagricultural Employment

Percent employed in	*Manufacturing*	*Wholesale*	*Government*	*Services*	*Transportation*	*Finance*	*Construction*
New York.....	21.4	20.9	18.5	21.7	6.2	8.5	2.8
U.S.....	23.8	22.3	18.3	18.7	5.6	5.3	4.7

It is one of the chief manufacturing states, producing a broad range of products which include wearing apparel, food products, machinery, chemicals, paper, electrical equipment, and transportation equipment. New York City is particularly noted for its printing and publishing, mass communications, advertising, and entertainment industries. These industries, together with its positions as largest city and financial center, have made the city a major force in shaping the culture and lifestyles of the entire country. In particular, the urban problems of New York City have placed the state in the forefront of developments in many areas of public policy. Efforts to deal with these problems through social service programs and public employment programs contribute to the somewhat large percentage of employment in the services industries.

The agricultural sector is also strong. Along with Washington, New York leads the nation in apple production. It ranks third in milk production and it has become notable for its production of wine and champagne. The farmers are also an important political sector, forming the backbone of the conservative "upstate" region which often clashes with the politically liberal "downstate" New York City metropolitan area.

This deep-seated dichotomy is the major feature of the state's political landscape. The political strains which characterize this situation are in part the result of a sharp divergence of needs and funding base between the small rural communities and a city which is generally viewed as being the extreme example of the modern urban area (in both its positive and negative aspects). But these political strains also reflect a conflict between traditional Yankee norms, values, and lifestyles, and the fast-paced cosmopolitan ambience of the city, a city which seems to accept almost any life style.

Although great wealth is being generated within this state, there are wide economical disparities and there is great contrast between affluence and poverty. On the one hand, the state's 1977 per capita income of $7,537 was the twelfth highest in the country. On the other hand, its unemployment rate is generally higher than the national average, and the average hourly wage for "blue collar" workers, although above the national average, lags behind that found in the north central states. The generally high cost of living is creating financial strain for many who are employed. The great divergence of income levels and productive modes have combined with the already-mentioned urban-rural and ethnic contrasts to result in a state with an incredible collage of political interest groups.

Social and economic factors have also resulted in a state with a high crime index. Its composite violent crime index (per 100,000 population) for 1978 was 841, highest in the United

States. This is nearly double the 423.5 index for the neighboring and somewhat similar state, New Jersey, and also far above the 486.9 rate for the entire United States.

There are 57 counties and one city-county consolidation (New York City), the latter of which is composed of the counties (boroughs) of Bronx, Kings, New York, Queens, and Richmond. New York State's bicameral legislature is composed of a 60-member senate and a 150-member assembly, all of whom serve two-year terms. Its governor serves a four-year term. From a public policy standpoint, the state's tremendous diversity of needs, resources, and idealogies create great problems in the development and implementation of service programs.

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

Primary jurisdiction over juvenile matters resides in family courts. However, this basic principle is complicated by the organization of the state's court system and its statutes regarding jurisdiction. The age of majority for criminal prosecution in New York is 16. This means that 16- and 17-year-olds are adults and cannot be charged in family court as delinquents. In addition, 13-, 14-, and 15-year-olds who are charged with any one of a list of serious felonies must be tried in criminal court although, under certain conditions, the youth can be "returned" to family court. This latter practice is generally referred to as the "reverse waiver" or "waiver-back" provision.

A family court is established in each of the state's 57 counties and the five borough courts in New York City. Established in 1962, this was the first family court structure in the nation. In 1977 it became a unified state court system in order to achieve a more efficient court system, particularly through what was hoped would be a more equitable allotment of judges and resources throughout the state. Besides primary jurisdiction over juvenile matters, the Family Court Act grants family courts exclusive jurisdiction over cases of abuse and neglect, and the Social Services Law (Section 384-6) grants it jurisdiction over termination of parental rights. Family courts and criminal courts have concurrent jurisdiction over "family offenses," i.e., disorderly conduct among family members.

In counties with smaller populations, the county court judge also acts as the family court judge. The supreme court is the highest county court of original jurisdiction, serving as both a trial court and an intermediate appellate court.[1] Although the statutes grant family courts "exclusive original jurisdiction" over juvenile matters, the state supreme court has a constitutionally guaranteed concurrent jurisdiction over any matter within a family court's jurisdiction.

The major limitation on the "exclusive original jurisdiction" by family courts is the already-mentioned excluded offense provisions. With some exceptions, juvenile jurisdiction includes all cases involving children who were under the age of 16 years at the time of the commission of the alleged offense.[2] This bill lowered the age of criminal responsibility to 14 for first or second degree kidnapping, first or second degree arson, manslaughter, rape, sodomy, and robbery, and to age 13 for second degree murder. Those juveniles charged with these offenses are placed directly into the criminal court system.

These provisions were intended to result in a significantly lesser case load in family courts than there would be otherwise. Its enactment was a response of the New York legislature to the perceived increasing seriousness of juvenile crime and to the inability of the family courts, particularly in New York City, to deal with it.[3] It is possible for such cases to be referred back to family court—the "reverse waiver"—although 1979 amendments limited the circumstances under which criminal courts can remove these cases to family courts.

Those youth remaining in the jurisdiction of family court are basically divided between those alleged to be delinquent and those labeled "persons in need of supervision" (PINS). Again, the jurisdiction includes those between 7 and 16 years of age. The PINS category refers to those charged with such status offenses as truancy and other noncriminal acts. They are to be detained separately from delinquents and must be released after the hearing for determination of jurisdiction (whereas alleged delinquents may in some cases be detained).

Organization of Services to Children in Family Courts

The juvenile services network in New York is perhaps the most complicated in the country. In part, this is a result of the size and diversity within the state. Two more direct causes are, however, the singular position of the five-borough New York City in the state's policy formation and the state's decades of experimentation with intergovernmental relations.

New York is an example of "alternative" organization of juvenile justice services (intake, probation, and detention). Generally, these services are the responsibility of local county government. There are exceptions, however, which contribute to the complexity of the services network noted above.

The greatest complexity is in detention services. New York law requires every county to provide or assure the availability of detention services, although the statute does not mandate that the detention provided be secure. However, in order to maintain a secure facility, the county must also operate nonsecure facilities as well. Five counties outside of New York City (Erie, Monroe, Nassau, Onandaga, and Westchester) provide both secure and nonsecure detention services. In New York City, secure and nonsecure services are provided for the five boroughs through the Juvenile Justice Agency, a department of city government, located in the Office of the Mayor. However, the remaining 52 counties provide only nonsecure detention services, such as shelter care and group homes.

In most counties, the agency selected by county government to provide the detention services offered is the local department of social services. One county (Westchester) is in the process of contracting with a private agency for detention services. Further, in New York City the Juvenile Justice Agency can provide placements directly or may contract with other public or private agencies for detention services.

The absence of secure detention services in the majority of the counties has resulted in a number of problems. Local jails and lock-ups may be used for 16- and 17-year-olds due to their being adults under New York's age of jurisdiction statutes. However, 13-, 14-, and 15-year-olds tried as adults under New York's juvenile offender law must be detained in juvenile facilities. To alleviate the problems caused by the limited possibilities for secure detention, a plan has been devised whereby most of the five county facilities serve as regional secure detention facilities. In addition, the state Division for Youth (DFY) operates a regional detention facility near Poughkeepsie. Nevertheless, there are counties where the nearest secure juvenile detention center is 200 miles away, resulting in nonsecure detention being ordered for cases that would otherwise probably receive secure detention.

State law authorizes DFY to be responsible for supervising and inspecting juvenile detention facilities (secure and nonsecure) and for reimbursing the counties for 50 percent of the detention costs. DFY also operates two training schools and the Bronx state program for disturbed/aggressive juvenile delinquents.

Juvenile intake and probation services throughout the state are operated by executive agencies. Although the Family Court Act provides that the courts "shall have a probation service," it is executive law which requires each county and New York City to provide a probation agency. This agency is to provide pre-petition intake and adjustment, predisposition investigation and report, and postdispositional supervision pending final disposition in a child protection proceeding. Executive law also establishes a state probation commission with a director of probation who exercises general supervision over the administration of probation in the state. He is also responsible for adopting regulations for probation officers and may make investigations of local probation departments. In 54 counties intake and probation are county services. Both services are provided through county probation departments, consisting of one or more officers. It is not clear that there is much functional differentiation between these two service roles in the smaller counties. In New York City, intake and probation services are supplied to each of the five family courts by the Juvenile Justice Agency. Here the functional differentiation between intake and probation is clearly made.

In Montgomery, Fulton, and Warren Counties, intake and probation are provided on an experimental basis by DFY. Along with the shift of administrative responsibility has gone a shift of funding responsibility to DFY in these counties, a particularly significant feature given the difficulty of funding these services in rural counties nationwide. Although designated as an experiment in the local delivery of state services, the practice has existed for many years and appears to be a stable part of the overall pattern of services delivery.

Other dispositional services sometimes operated by probation departments, especially in district court-administered services delivery systems, are provided by a variety of other public and private agencies.

One of the primary ways the New York system creates greater independence for services personnel from the judges is by ending the employer-employee relationship between them. In most of the state, the ability to hire and fire and to set pay scales resides in the county legislature (county government). For intake and probation, this is exercised through the chief probation officer; for detention, it is through the director of the department of social services. In New York City, the Juvenile Justice Agency handles employment. Finally, in the three "experimental" counties, DFY has the responsibility for hiring and paying probation officers.

The involvement of the state's director of probation, mentioned above, in setting probation policy guidelines further removes influence from the judges over the services personnel. Indeed, in New York the judges' responsibilities are limited to "judicial" functions and do not include the administration of any services programs.

Procedures for Referring and Handling Children in Family Courts

Upon taking custody, a peace officer must release a PINS or a child alleged to be delinquent to the parents, or else take the child to the court or to a designated juvenile detention facility. Any facility receiving such a child must notify the parents and the court. The facility's administrator or the court probation services are authorized to release the child pending the filing of a petition. If not so released, the court must hold a hearing and make a preliminary determination of jurisdiction. After hearing, the court must order release of alleged PINS but may detain alleged delinquents in certain circumstances for up to three days for adjudication and 10 days for disposition (Section 728 of the Family Court Act). The use of secure detention rather than nonsecure is to be based on a determination that the youth probably will not appear by the date of adjournment or will commit further crime prior to the adjournment date.

Approval of a petition in delinquency by the corporation counsel or county attorney is required for filing. If not approved within 30 days of submission to the corporation counsel or county attorney, it is deemed approved. County attorneys (corporation counsel in New York City) represent the interests of the state in civil matters, including family court hearings. Their involvement in family courts is very different from the function of the district attorney in adult courts. Although proceedings in family courts are adversary in nature, the courts and county attorneys are generally more interested in achieving an equitable solution in each case. Thus, county attorneys sometimes seem to view themselves as "friends of the court" or as impartially assisting in the delivery of necessary services, rather than strictly prosecuting cases. In keeping with the philosophy of family courts, county attorneys act in a more informal manner with less demarcation of roles among prosecutor, law guardian, and probation staff.

While the county attorney's office is usually separate from the office of the state district attorney, the Juvenile Justice Reform Act of 1976 permitted a contract between the two offices that would allow the temporary assignment of district attorneys to county attorneys. This is for the purpose of presenting the petition in juvenile delinquency proceedings when a designated felony act has been alleged. District attorneys also represent the state in juvenile offender cases in adult courts and generally continue to represent the state in family courts if the case is removed to family courts.

Section 241 of the Family Court Act provides that "minors who are the subject of family court proceedings must be represented by counsel of their own choosing or by law guardian" to

protect their interests and to help them express their wishes to the court. The act requires appointments of a law guardian where independent legal representation is not available.

In New York, legal aid societies frequently act as law guardians in their counties. In smaller counties, appointed counsels may serve as law guardians. In either case, most juveniles are represented in family court hearing by law guardians. They represent juvenile delinquents in county, criminal, and supreme court.

Upon or after a fact-finding hearing, the court is authorized to order an "adjournment in contemplation of dismissal" for a stated period with a view to ultimate dismissal "in furtherance of justice," and upon such terms and conditions as the rules of court define. The rules require the judge to impose at least one of 15 terms listed in the rules.

After a petition of delinquency or PINS is filed, the court has the discretion to detain to ensure court appearance or for "preventive detention." At this point, the court is also authorized to order medical, psychiatric, or psychological examinations of any person within its jurisdiction. Treatment may be provided if needed. Following adjudication of a "designated felony act," the court may order a restrictive placement with the Divison for Youth, which carries a mandatory period of confinement in a secure facility and a mandatory period of custody with the division.

Disposition alternatives available to courts for delinquents and PINS include: suspend judgment and order restitution or public services at court discretion; place on probation; release under supervision; and place with the commissioner of social services or the Division for Youth. In placing a child with a state agency, the court may direct the agency to place the child with another authorized agency. In the absence of this direction, the court must authorize the state agency to place the child in other facilities. If a court places a delinquent who has committed a felony with the Division for Youth, the court may order that the child be confined in a residential facility for a minimum period up to six months. Otherwise, release is set by the director of the facility.

Special Features of Delinquency-Related Services Delivery

The Division for Youth has emerged as an agency of particular importance. From its inception as the State Youth Commission in 1945, this agency has experienced a continuous growth and an expansion of responsibility. Re-created as the Division for Youth in 1960, the state training schools were transferred to it in 1971.

Presently, it encompasses three basic service responsibilities: (1) stimulating recreation, youth development, and delinquency prevention efforts at the local level; (2) providing state reimbursement for expenses incurred by counties for detention and for residential care in voluntary agencies for family court wards; and (3) directly operating or contracting for rehabilitative services programs for a variety of youth.

Yet, these do not fully indicate the role of the division throughout the state. A presentation of its goals and objectives contains the following statement: "the Division [has] evolved a conception of its mission as the lead state agency responsible for development of a single statewide system of services for court-involved youth that contributes to the prevention of delinquency, the protection of the community, and the rehabilitation of youth."[4]

One reason the state legislature established the division was to correct what was perceived to be a fragmentation of services within the state. However, the role of "lead agency" has partially changed from stimulating and coordinating county-run services to a role in setting policy. For example, in a 1972 and 1980 audit of DFY, the Legislative Commission on Expenditure Review observed that DFY had not taken a leadership role but had merely responded to local definitions and objectives with regard to delinquency prevention. Further, the commission felt that DFY had not accomplished revising and employing a system of evaluation that would offer direction to the legislature in continuing or changing the programs. Thus, in order to fulfill demands being placed on it to meet the needs of the legislature, the division's responsibilities have steadily grown and have modified themselves to meet the emergent requirements of a state-level coordinative function and other administrative responsibilities.

EVALUATION OF THE NEW YORK JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

(1) ***The majority of respondents favored executive branch administration of the intake, probation, and detention services.***

• They generally argued that (a) under the separation of powers doctrine, the courts should not operate these services; or (b) with the independence from the judges, the services personnel can be more objective in their work. Support for executive branch administration was fairly consistent across occupational categories. Support was strongest in the experimental counties, where state services are most prominently used. Relief from the financial burden and higher quality of service being provided were the primary reasons. However, in counties with complete county services, there was no sentiment for further assumption of services by DFY.

• There were a number of respondents who thought that it makes no difference who operates the services because other factors—funding in particular—are more important in determining the quality and quantity of services. Also, one judge did argue strongly for a return of detention and diagnostic services to the judicial branch.

(2) ***Parens patriae concern for specialized rehabilitative care for juveniles is still generally supported, although the traditional statement of this philosophy was seen as having been subordinated to a concern for due process rights.***

• It was generally felt that parens patriae concepts are or could be consistent with due process requirements. In particular, the majority did not feel that informal adjustment procedures interfere with due process rights. Indeed, at least one-half of those favoring executive branch administration did not think that the original philosophical conception behind court-run services is inherently in conflict with due process concerns. Further, a majority felt that separation of legal procedures from social services delivery enhanced the safeguarding of those rights.

• The respondents were also asked whether procedural due process safeguards presented any practical problems for court operation, and whether adversarial proceedings are incongruent with the court's traditional task of providing care and treatment for juveniles. The minority who saw practical problems being created (mostly county attorneys) argued along the lines (a) that court processes are getting slowed down, thus preventing swift referral to needed services; and (b) that children are being taught to "beat the system" through technicalities and plea bargaining with the result that many children who need help are managing to avoid the system. The general tone of the comments was not an attack on the legitimacy of juveniles' due process rights but an argument that a point has been reached where increased due process safeguards would result in a net loss for the child's long-term interests. Most respondents, however, did not think that these safeguards were creating significant problems and supported full protection of the young peoples' rights.

• A majority of the respondents did feel that the basic philosophy of family courts regarding juveniles is changing. However, they split on how they saw it changing. Some see family courts becoming more concerned with due process rights and becoming more like criminal courts. Others emphasized their becoming "tougher" in their penalties in an effort to better protect the community. Those mentioning the former, split on whether they approved of it; those mentioning the latter, gave it near unanimous support.

The support for more punitive sanctions is a reflection of the great public concern in New York State over the perceived increase in the rate and seriousness of juvenile crime. Further, those who supported the move towards more adversarial and criminal-like proceedings seemed to assume that this would be "tougher" on young persons and provide better protection for society.

It may bear mentioning, however, that just the opposite might possibly occur—some may avoid being placed within the justice system because of the more rigorous defense and the possibility of "beating the rap" by exploiting the so-called "technicalities." Indeed, such was the rationale of those opposed to family courts becoming more like criminal courts in their proceedings.

(3) ***Satisfaction with the adequacy of probation and intake services was generally high, but evaluations of detention services were mixed.***

• The one common criticism of intake and probation (in counties where the state provides no services of these kinds) was of insufficient staff sizes. It was felt that work loads are so great that supervision of probation officers is minimal and ineffective.

• The evaluation of detention services was, however, divided. There are two basic criticisms. The first is an apparently critical shortage of facilities for placing PINS. According to respondents, there is a large number of children who need to be removed from their homes, but who have no place to go.

• The second area of dissatisfaction is the perceived framentation of responsibility for detention within the state. Detention was seen as a major interagency "battleground." On the local level, the conflict is primarily between the Department of Social Services and probation departments. At the regional level, it is a conflict between these agencies and the Division for Youth. This appears to be primarily a struggle for control due to the overlapping responsibility of DFY and county governments to provide detention facilities. However, in our interviews these conflicts were often portrayed as conflicts of philosophy which have taken on the tone of personality conflicts.

• There was also a criticism of detention specific to Warren County, although it might well apply to other counties. Due to regionalized secure detention, the nearest such facility is 200 miles away. Transportation of juveniles to and from secure detention is therefore difficult and expensive. This causes a minimal use of secure detention, even for juveniles who may be much more likely to run away from the local nonsecure facilities.

• Finally, there was criticism of overcrowding in detention homes. This was felt to result from delays in the trying and disposing of felony cases caused, in part, by the increased formality of the adjudicatory process.

(4) ***There is strong opposition to courts being involved in delinquency prevention programs although there is support for their playing a role in advocacy on community matters related to juvenile problems.***

• Juvenile courts were originally established as a unique means of dealing with conditions which may give rise to delinquency through the application of a benevolent parens patriae philosophy. We approached the issue of the proper limits to parens patriae interventionism through two questions: first, in theory, since juvenile courts are responsible for adjudicating delinquency, should they also be responsible for preventing delinquency? Second, should the courts play a role in reforming social conditions responsible for delinquency? Somewhat surprisingly, there was divergency in the responses to these two closely related questions. The respondents overwhelmingly opposed the courts' responsibility for preventing delinquency, yet tended to support a role of some sort in changing social conditions, at least through leadership in community advocacy and education. However, even the supporters of court-run services were opposed to the courts having responsibility for preventing delinquency.

• There were two major arguments voiced against the courts having responsibility for prevention: (a) it is not an appropriate role for the judiciary under the separation of powers doctrine, and (b) involvement in such programs would inevitably produce conflicts of interest and abridgements of due process rights. Yet, neither of these arguments received much application to the question of a court role in changing social conditions. Instead, the need for courts to speak out on issues affecting juveniles, especially to educate the public on needed social changes, was expressed fairly often.

• Further, opinion was evenly divided over whether there should be judicial monitoring of juvenile justice services. Those favoring judicial monitoring of these services generally felt that this would result in better services for the juveniles, with some respondents going on to add that this is or ought to be a part of a judge's job. Opinion was divided over whether this monitoring should consist of receiving reports on individual cases referred to the agencies or extend to

monitoring the entire agency. Although it is not clear why, there was exceptionally strong support for judicial monitoring in Erie County (Buffalo).

Those opposed to judicial monitoring were also divided as to their reasons. Some simply felt that it would make no difference in the quality of services provided and thus constitutes a waste of time. Others saw it as a threat to the independence of the services personnel from the judges—one of the motivations for the transfer of these services to the executive branch.

(5) ***Transfer of services to the executive branch is perceived as being successful in the areas of intake and probation, but less successful for detention.***

- The strongest approval of the transfer of intake and probation services came from the experimental county, Warren. The state administration of these services has resulted in a shift of funding responsibility from the county to the state. This has resulted in an increase in the number and quality of program alternatives associated with these services. Satisfaction with executive branch intake and probation was also strong in other counties, where it is the executive branch of county government that provides services. In New York City, satisfaction with the transfer was lower though not disapproving. In general, it was felt that the current services are as good or better than they were under the judges.
- The transfers were also viewed as having been successful in better protecting the juveniles' right to due process. This was generally attributed to the independence of the services personnel from the judges. This independence was also credited with improving the quality of the services available.

Contemporary Problems and the Question of Structure

The organization of services has not been linked with the concern over juvenile crime in the minds of the public. The largest structural issue currently is centered on the experiment with state-operated services. This raises an interesting theoretical question (although not a policy issue as we have identified them) of whether a move to county-run services will inevitably generate pressures towards state-run services, particularly in view of the funding problems in the small rural counties. However, it is not likely that the state will pick up funding responsibility in any jurisdiction without taking control of policy formation and operations of these services. Thus, concentration of power in a single agency—as the Division for Youth—in turn produces an effective tool for concentration of power in the legislature through legislative control of a single state agency.

The major research question emerging out of New York's experience is the relative benefits and costs of a single and separate executive state agency administering juvenile justice services. One major contribution is, of course, the results of the three-county experiment with this type of organization. Another contribution is the review of other states—e.g., Florida—which have moved to such a system. One peculiar aspect about New York which must be considered, however, is the number of affluent counties of small population within the state. Their funding situation is not to be compared with the more typical rural counties.

It would appear that such a development might solve the problem of fragmentation of services while improving the services available (as has apparently occurred in Warren County). The major attack on this position is that it is primarily in the area already administered at the state level, detention, where the greatest criticism of fragmentation exists.

It might be suggested that New York could move to a state-level judicial branch system somewhat akin to North Carolina. However, it appears from our interviews that support for the executive branch and distrust of judicial administration is so strong within the state that such a proposal would be unacceptable and opposed by a majority within New York's juvenile justice system; but they might support, indeed current trends might likely result in, state-level executive branch services.

Footnotes

1. The highest court in the state is the Court of Appeals, with an intervening level of appellate divisions.

2. Although the statutes extend PINS jurisdiction until the 18th birthday for females, an appellate court has ruled that 16- and 17-year-olds may no longer be subject to court sanctions since males are not similarly subject to PINS jurisdiction after their 16th birthday.

3. For a concise yet highly informative presentation of the public pressure associated with the legislation, and the relationship between this sentiment and the actual trends in reported juvenile crime, see Martin Roysher and Peter Edelman, "Treating Juveniles As Adults in New York: What Does It Mean and How Is It Working," in John C. Hall, Donna M. Hamparian, John M. Pettibone, and Joseph L. White, eds., *Major Issues in Juvenile Justice Information and Training: Readings in Public Policy* (Columbus, Ohio: Academy for Contemporary Problems, 1981).

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NORTH CAROLINA CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited North Carolina for an on-site case study from March 10-14, 1980. Interviews were conducted with key participants in the juvenile justice policy system in the state capital (Raleigh), the state's largest city (Charlotte), the seat of a typical rural county (Wilkesboro), and the staff also visited Greensboro in order to interview a few selected respondents. Copies of the Juvenile Code of 1980, the Final Report of the Juvenile Code Revision Committee, the Juvenile Services Division's intake guidelines, and other relevant documents were also collected during the field trip. In addition, materials were gathered from standard sources of official statistics, encyclopedias, and current general literature.

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Hon. George F. Bason,
Chief District Court Judge
10th District Court
Raleigh

Dr. Thomas Danek, Administrator
Juvenile Services Division
Administrative Office of the Courts
Raleigh

Hon. Ralph Davis, Chief District Court Judge
23rd District Court
North Wilkesboro

Ms. Isabel S. Day, Assistant Public Defender
Mecklenburg County Public Defender's Office
Charlotte

Mr. Eugene Deal, Chief Court Counselor
26th District Court
Charlotte

Mr. Charles Dunn, Citizen Member
Juvenile Code Revision Committee
Raleigh

Mr. William Hart, Assistant District Attorney
District Attorney's Office
Raleigh

Lt. Horace Moore, Chief
Juvenile Unit
Raleigh Police Department

Mr. Fred Morelock, Private Attorney
Raleigh

Mr. John Niblock, Executive Director
Governor's Advocacy Council for Children and Youth
Raleigh

Ms. Sarah Patterson, Research Analyst
North Carolina Crime Commission
Raleigh

Ms. Cherie Pether, Patrolman
Charlotte Police Department

Mr. Gary Philips, Juvenile Officer
Wilkes County Sheriff's Department
Wilkesboro

Ms. Mickie Robbins, Patrolman
Charlotte Police Department

Mr. John Sands, Legal Intern
District Attorney's Office
Raleigh

Ms. Barbara Sarudy, Director
Youth Care
Greensboro

Mr. Ed Taylor, Assistant Administrator
Juvenile Services Division
Administrative Office of the Courts
Raleigh

Mr. Wiley Teal, Administrator
Division of Detention Services
Department of Human Resources
Raleigh

Mr. Mason Thomas, Director
Juvenile Justice Section
Institute of Government
University of North Carolina at Chapel Hill

Mr. Steve Williams, Chief Court Counselor
10th District Court
Raleigh

Mr. William Windley, Director
Division of Detention Services
Department of Human Resources
Raleigh

Mr. Rex B. Yates, Chief Court Counselor
23rd District Court
Wilkesboro

INTRODUCTION TO THE COMMUNITY

One of the South Atlantic states, North Carolina stretches from constantly shifting sands along the Atlantic Ocean in the east to the Great Smokey Mountains National Park in the west. There are three major geographic divisions in the state. The Tidewater and Coastal Plain area forms the eastern third of the state. The Piedmont area cuts a crescent-like shape through the center of the state and contains most of the state's population. The western third of the state rises to the Blue Ridge Mountains, dips into several basins, and rises again to the Appalachians and the Great Smokey Mountains National Park.

North Carolina is a state where the society of "rocking chairs on front porches" and "Rock of Ages" fundamentalism is meeting an aggressive drive for industrial growth and cultural development. Here, traditional values are not as much rejected as reapplied to the contemporary setting. An apparently unique North Carolinian combination of sophistication and "down home" simplicity is often found here. This is also true for issues of state organization. The organization of juvenile justice services is a combination of traditional court operations restructured to meet current demands.

The state has always been extremely independent politically. One of the original 13 colonies, it was the first to instruct its delegates to the Continental Congress to support complete independence from Britain. Yet, because of its opposition to a strong central government and concern over guarantees of civil liberties, it was one of the last to ratify the U.S. Constitution (November 1789, several months after the new U.S. government had begun to function).

The general independence may in part be a consequence of the state's historical prevalence of small farms. Though dominated by a tidewater planter aristocracy during the 1700s, by the early 1800s the political power had swung to the small independent farmers in the western half of the state (evidenced by the rewritten state constitution of 1835). Even today, it is the small farms, usually about 100 acres, which dominate the agricultural sector.

On these farms, tobacco is king. Tobacco farming is mostly concentrated along the western half of the coastal plain and across the northern half of the Piedmont. About 40 percent of all U.S. tobacco is grown in North Carolina. Fifty-one percent of its farms are tobacco farms (national average is 5 percent), although there has been some movement towards diversification of farm products recently.

The growth in industrialization began shortly after World War II, and by the 1950s the value of manufactured goods in the state surpassed that of agricultural products. During the 1960s and 1970s the rate of industrialization increased so rapidly that North Carolina has become the leading industrial state in the south. Hardwood forests, a plentitude of skilled craftsmen, and nearby textile mills have combined to make it the nation's leading producer of wooden furniture. Somewhat analogous to the agricultural sector, this industry is composed of hundreds of small factories located along "furniture highway" in west-central Piedmont and the foothills of the Blue Ridge Mountains.

The state also produces nearly one fourth of the nation's textiles and is easily the largest textile manufacturer among the 50 states. Centered in the Piedmont, the textile industry employs nearly one-half (270,000) of all industrial workers in the state. It is now the largest sector of the state's economy with a $3-billion-a-year business (versus a little over $1 billion for tobacco).

Major factors in the attraction of North Carolina to industry are low wages and the virtual absence of labor unionization. Since at least 1965, production workers in the state have consistently had the lowest average weekly earnings in the nation. This has contributed to the state's fluctuating between 38th and 44th in personal income since 1960. To some extent, the impact of low wages is mitigated by a relatively low cost of living in the state. Nevertheless, a somewhat greater proportion of its citizens are below the poverty level than the national average (14.7 percent versus 11.4 percent). Of all outlays for the five largest welfare programs, 81.3 percent comes from the federal government, the 12th highest percentage in the country.

A special segment of the North Carolina economy is the unique Research Triangle, the

largest planned research park in the country. In this park complex, located between Duke, Chapel Hill, and Raleigh, university researchers share equipment and research efforts with about 30 private firms and government agencies. It is managed by a nonprofit foundation and one-half of its employees are native North Carolinians.

North Carolina's population is largely Caucasian. The first permanent European settlements were English colonists drifting south from Virginia. The mid-1700s saw a large influx of German and Scotch-Irish from Pennsylvania looking to settle on the cheaper farmland inland. An absence of other foreign immigration since that time has resulted in these groups still being the basic ethnic group in the state.

Blacks were first brought here as slaves for the plantations that existed in the eastern part of the state during the 1700s. Their percentage of the population remained high despite the gradual dominance of small farming over the plantation mode. There was a sizeable out-migration by blacks during the 1960s, but that trend has levelled off if not actually reversed during the 1970s. North Carolina's 21.9 percent black population (1975) is the fifth highest percentage of the 50 states.

Native Americans were also used as slaves. Many of those who did not go into slavery were killed or forcibly driven from the state during the early 1800s. Some Cherokees escaped removal and 5,000 of their ancestors now live on the Cherokee Indian Reservation adjacent to the Smokey Mountains National Park. However, Native Americans now comprise only about 1 percent of the state's population.

Despite the increasing industrialization and the 11th largest population of the 50 states (5,084,000), North Carolina has escaped developing areas of great population density. It has only four cities with over 100,000 population, Charlotte being the largest at 340,000. Further, the rural nonfarm population outnumbers the rural farming population. This is because many people who work in the cities prefer to live in the less dense, more traditional rural areas.

Most of this population and all four of the largest cities are located in the Piedmont. The mountainous western one-third of the state and the Coastal Plain in the east are less populated and generally less wealthy. The counties in the Tidewater are reported to be the poorest in the state. The school dropout rates in both the mountains and the Tidewater are high, a fact partly reflected in the state's average for high school graduates (55.3 percent versus 66.6 percent nationally).

One of the great mainstays of cultural and social life, particularly in the rural counties, is evangelical fundamentalism. The home state of Billy Graham, North Carolina is now the home of the nationally syndicated Christian television talk show, the PTL Club ("People That Love," formerly "Praise the Lord"). The powerful force of the fundamentalist groups is reflected in the deregulation (except for health and safety rules) of Christian schools by the state. Together with the rurally focused life style, religion has served as a powerful voice for traditionalism, even in the face of economic and cultural change.

Despite the relatively low personal income, the cultural stability may in part explain the generally low crime rate in North Carolina, as seen in the 1978 composite violent crime index of 413.4 (per 100,000 population). This compares favorably with the national rate of 486.9. Crime does not appear to be a major public issue in North Carolina, especially as compared to other states we have visited.

North Carolina has a bicameral legislature comprised of a 50-member senate and a 120-member house, all elected for two-year terms.

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

Superior courts in North Carolina are the general trial courts and have exclusive jurisdiction over all felony cases. Superior courts hear cases in each of the state's 100 counties.

Superior court judges are assigned to one of four regions in the state and hear cases in any of the counties within the region.

Exclusive, original jurisdiction over juveniles less than 16 years of age alleged to be delinquent, undisciplined, abused, neglected, or dependent is vested by the juvenile code in the district courts of justice. These courts also handle misdemeanor cases, preliminary examinations in felony cases, domestic relations, and divorce. There are six single-county and 27 multicounty district courts. A court has the authority to transfer the case of a juvenile who is over 14 and charged with a felony to superior court to be tried as an adult. Once tried and sentenced as an adult, the juvenile must be tried as an adult for subsequent criminal offenses.

All routine traffic cases are heard by magistrates attached to district courts. The supreme court is the court of last resort in North Carolina.

Separate treatment for juveniles in the correctional system preceded the separate juvenile jurisdictions of North Carolina courts. Until 1869, youths were confined in the state penitentiary. However, from 1869 to 1909 various governors pardoned more than 150 youths in order to remove them from adult prisons.[1] The movement to remove youths from adult facilities culminated in the opening of the Stonewall Jackson Manual Training and Industrial School in 1909 as a separate juvenile facility.

Separate jurisdiction in the courts followed in 1915 with the Probation Courts Act (Public Laws 1915, Chapter 222). It applied to youths 18 years old and younger and introduced into North Carolina law the concepts of juvenile delinquency, use of probation, closed hearings for juveniles, and separate juvenile records.[2] These concepts were then included in the juvenile court legislation of 1919, except that the age of jurisdiction was lowered to 16.

Between that time and 1973, the clerk of the superior court, acting as juvenile judge, was given jurisdiction over youths in the following categories (none defined by statute): delinquent, truant, unruly, wayward, misdirected, disobedient to parents (beyond their control or in danger of becoming so), neglected, dependent upon public support, destitute, homeless, abandoned, or those whose custody is subject to controversy. Once jurisdiction was attached, it continued until the youth was 21 years of age.[3] The county welfare departments were charged with providing juvenile and ancillary probation services. Youth were held separate from adult offenders in local jails, when detention was required. Appeals went to the superior court.

As part of the reorganization of juvenile jurisdiction in 1973, district court judges began hearing juvenile cases, as is the current structure. This is generally done on a rotation basis, although in some districts the practice has evolved that a district judge with a particular interest in juvenile matters hears most or all of the juvenile cases.

Organization of Services to Children in Juvenile Courts

Detention

Custodial care of adjudicated delinquents is provided by the Division of Youth Services of the state Department of Human Resources, which is also required to fund local or district detention services. Statutory authority for these services is found outside the juvenile code.

The code does mandate that after July 1, 1983, no juvenile is to be detained in any facility which is not separate from any jail, lockup, prison, or other adult penal institution. Several of the larger districts already have separate juvenile detention facilities. However, there is still common usage of jails in smaller counties. Typically one or two cells, separate from the other cells where possible, are set aside for juveniles.

The code also specifies that all juvenile detention facilities must meet the standards promulgated by the Department of Human Resources. Nonsecure detention facilities are operated by the Department of Social Services, which also licenses foster and group homes.

Intake, Probation, and Aftercare

Juvenile intake, probation, and aftercare services are organized at the state level under the

judicial branch. Ultimate responsibility resides in the chief justice of the state's supreme court. The juvenile code mandates that the Administrative Office of the Courts (AOC) operate these services. The director of this office is directly responsible to the chief justice of the supreme court. The director of the Juvenile Services Division of the Administrative Office of the Courts, which operates intake, probation, and aftercare, is in turn responsible to the AOC director. Guidelines and services policies (e.g., intake diversion guidelines) are made by and disseminated throughout the state by the Juvenile Services Division.

The Juvenile Services Division was established in 1973 and began its present role of administering intake, probation, and aftercare throughout the state. Its purpose was to enhance standardization and uniformity of services around the state. The lack of uniformity was reputedly not so much the result of the common pattern of urban areas being better able than rural areas to provide services, as it was differing emphases on juvenile services by the chief district judges. The current structure was built on the service base already established by the superior court clerks and county social services; the overwhelming bulk of the division's personnel remain the local intake, probation, and aftercare officers. Furthermore, funding responsibility shifted from the counties to the state (Administrative Office of the Courts). For the purposes of this study, the most interesting thing about the establishment of this division is that it rests on the same rationale as is found in such states as Florida, which moved to a state-level system, but is unusual in keeping these services within the judicial branch.

As might be expected, there is a blending of legality and pragmatism. While authority over personnel decisions is technically vested in the Administrative Office of the Courts, the political and operational reality is that the local judges exercise veto powers over the selection or dismissal of chief court counselors and, by extension, over other intake and probation officers.

At the local level, administrative responsibility for intake, probation, and aftercare services rests with chief court counselors, mandated by the juvenile code. Though connected with the district courts, and having responsibility for the same geographical area as the judicial district, chief court counselors report to the director of the Juvenile Services Division. The chief district court judges are not involved in decisions to hire or fire other personnel or in the setting of pay scales. The judges do file an annual statement with the Juvenile Services Division concerning satisfaction with the services connected to their courts, although it remains for the division to act on those recommendations. The courts' primary form of control is the necessity that the chief district court judge approve the chief court counselor hired for that district (along with approval from the Administrative Division and the director of the Administrative Office of the Courts).

At the district court level, the intake personnel often form a unit separate and distinct from the probation personnel although, in some instances, notably in rural areas, probation counselors may also do this work. The juvenile code mandates that each district court provide an intake service. Intake is further mandated to perform four basic functions:

(1) To determine from available evidence whether there are reasonable grounds to believe the facts alleged are true.

(2) To determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court.

(3) To determine whether the facts alleged are sufficiently serious to warrant court action.

(4) To obtain assistance from community resources where court referral is not necessary. (North Carolina Juvenile Code, Sec. 7A-510.)

There does not appear to be anything distinctive concerning the role of probation. Neither intake nor probation units in the state administer the variety of programs sometimes found within judicial branch structures; all programs to which they refer youths are public or private community-based programs. Intake handles diversion and predispositional reports (social histories, etc.). Probation departments are largely limited to a supervisory role over those receiving probation. This is especially true in the larger districts where the functional division between intake and probation is more formalized along organizational lines than it is in the smaller districts.

Procedures for Referring and Handling Children in Juvenile Courts

The most recent change to the juvenile justice services system in North Carolina has been the ratification of a new juvenile code by the legislature in 1979 (which took effect in 1980).[4] The new juvenile code is guided by three stated purposes:

(1) To divert juvenile offenders from the juvenile system through intake services so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety.

(2) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents.

(3) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety. (North Carolina Juvenile Code, Sec. 7A-506.)

In their comments on the purposes, the committee notes that whereas the previous code put primacy on a parens patriae orientation through a rather vague reference to "acting in the best interests of the child or the State," the new code "retains some of the parens patriae aspects, while at the same time recognizing the child's individual rights as a citizen, the growing impact of juvenile crime, and the need for the protection of the public."[5] The committee also comments that the motive behind the increased concern with the youths' rights has resulted from recent Supreme Court decisions, *In re Gault* in particular, and from a variety of studies and standards, most conspicuously the IJA-ABA standards.[6]

Procedural concern with the rights of youth can be found throughout the statutes, beginning with the initial contact with law enforcement personnel. The North Carolina Juvenile Code (Sec. 7A-549) contains four subsections relating to law enforcement personnel and their roles which were not in the previous code:

(1) Youth must be advised of (Miranda) rights.

(2) When under 14, the youth must be accompanied by a parent, guardian, custodian, or attorney for any in-custody admission of confession resulting from interrogation to be admitted into evidence.

(3) If the youth indicates in any matter and at any stage a wish not to be questioned further, the officer must cease questioning.

(4) Before admitting any statement resulting from custodial interrogation into evidence, the judge must find that the juvenile knowingly, willingly, and understandingly waived his or her rights.

The code also emphasizes the philosophy of informal diversion to community resources as the basic orientation for law enforcement personnel as well as for intake officers. Indeed, up to 70 percent of all juvenile contacts with law enforcement officers result in release, counsel and release, release to parents, or referral to community resources. If the officer decides to file a petition, it will next go to the intake unit.

It is at intake that the greatest emphasis has been placed on changing the previous codes in order to protect the rights of youth. The new code mandates the establishment of intake services in each judicial district and explicitly states that intake is not an investigatory service. If the intake counselor finds the case is not within the jurisdiction of the court, that legal sufficiency has not been established, or that the alleged matters are frivolous, he may refuse to file the complaint.

Cases which are sufficient to be filed fall into two categories. As part of the effort to limit the previously unlimited discretion of the intake counselors in the decision to release or divert, the current code creates a new category of "nondivertible" offenses (the more serious felonies, such as murder, rape, first degree burglary, or any felony which involves the willful infliction of serious bodily injury or was committed by use of a deadly weapon). In these cases, a petition must be filed without further inquiry once there is a finding of reasonable grounds. The other major category consists of all other offenses. For these the intake counselor can file the complaint as a petition, divert the youth to a community resource, or resolve without further action. Here, too, the

discretion of the intake officer has been circumscribed. The code mandates that the counselor consider criteria established by the administrator of the Juvenile Services Division in making the decision on whether to divert, and that the intake process must include:

(1) Interviews with the complainant and the victims if someone other than the complainant.

(2) Interviews with the juvenile and his parent, guardian, or custodian.

(3) Interviews with persons known to have information about the juvenile or family which is pertinent to the case. (North Carolina Juvenile Code, Sec. 7A-512.)

The evaluation of a particular complaint must be completed within 15 days, except when the chief court counselor grants an extension (15 days maximum). Any petition not approved for filing is to be destroyed after holding for a temporary period to allow follow-up and review. Where the decision to divert has been made, the youth may be referred to any appropriate public or private resource. The current code mandates what had already been the prevailing practice, that intake counselors follow up each referral to see that contact with the resource has been made. Where contact has been made, the intake counselor is to close the file on that case. Where contact has not been made, the counselor may reconsider the decision to divert and may file a petition within 60 days from the date of the referral.

The intake counselor is also mandated to immediately notify the complainant, in writing, of the reasons for a decision not to file a petition. Under the current code, the complainant then has five calendar days to request a review by the prosecutor's office.[7] The prosecutor now has the final decision on whether or not to file a petition where a diversion or release is appealed.

When a petition is filed, the youth will be alleged to be either delinquent or undisciplined. In either case, the youth has the right to be represented by counsel in all proceedings, and where delinquency is alleged, the judge must appoint counsel unless counsel is retained for the juvenile.[8] In all cases, the juvenile is presumed to be indigent. Throughout the state, the typical procedure for the appointment of counsel is for the appointment to be made from a list of attorneys in the community who have agreed to represent indigent juveniles. The court reimburses the attorneys for time spent on the cases. In nearly all cases, the appointment rotates among those on the list. The appointment is for one day at a time, the appointed attorney handling all indigent juvenile cases being heard on that day.

The current code goes far in establishing the juvenile's procedural safeguards, the same as those for an adult. It also declares, in its statement on the conduct of hearings, that the juvenile hearing is to be a finding on the facts of the case.

> Sec. 7A-570. *Conduct of hearing.* (1) The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or non-existence of any of the conditions alleged in a petition. In the adjudicatory hearing, the judge shall protect the following rights of the juvenile and his parent to assure due process of law: the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right of discovery and all rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

The code also mandates that no predisposition report (including social, medical, psychiatric, psychological, and educational) shall be submitted to or considered by the judge prior to completion of the adjudicatory hearing. Finally, the code requires the judge to take several steps to assure that a youth understands and makes free of pressure any admission in court.

As it did for the intake counselors, the current code also limits the judges' discretionary powers. This procedural concern is found in the detailed criteria which the judge must consider regarding requests for either secure or nonsecure custody.

Special Features of Delinquency-Related Services Delivery

North Carolina's Community Based Alternatives Subsidy Program has one of the most clear-cut and focused deinstitutionalization objectives in the country. A product of efforts in 1975 to deinstitutionalize juveniles, this program targets status offenders as the population of primary concern. The goal of the subsidy is to reduce commitments to state institutions by encouraging the

development of community-based alternatives. Funding currently goes towards a range of programs, including school-related programs (alternative classrooms, extended day, tutorial, in-school suspension, and alternative school), counseling, recreation, temporary runaway shelters, foster care, and group homes.

The program was initially funded in 1976 for $250,000. It has since grown to a 1980 allocation of $4 million. The director of the subsidy program, having been made directly responsible to the state's assistant secretary for children, has now been placed within the Department of Human Resources' Division of Youth Services.

There has been a drastic reduction in commitments of juveniles to state institutions since its passage in 1975. Indeed, the state has been able to close two of its seven juvenile correctional institutions during that time. Not all of this can be attributed to the subsidy program; statutory changes account for some of that decline. However, the program is generally viewed within the state as having been successful in both keeping youths from being institutionalized and in stimulating community-based alternative programs.

The other major delinquency-related services delivery is from the law enforcement departments in the state. In large cities, police departments have a specialized juvenile unit. These officers have the initial responsibility for releasing youth or taking them to intake. Charlotte is the exception to this form, although its police department did have a juvenile unit until it was disbanded two years ago. This was against the trend in the state as more medium-sized cities are currently establishing juvenile units.

In the smallest counties it is common to have the sheriff's department designate a juvenile specialist. Though specializing in juveniles, this officer often functions in a variety of roles. He may even share office space with the probation officer and intake officer. Frequently, these three will jointly decide on how to proceed with cases of arrest.

EVALUATION OF THE NORTH CAROLINA JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

(1) ***The current judicial branch location of juvenile intake and probation, and the executive branch location of detention are generally supported by the respondents.***

- Organizationally, very few of the respondents wanted to remove juvenile intake, probation, and aftercare from the judicial branch. Only a couple of respondents argued that the judges exert enough informal control over service personnel to even raise questions about due process safeguards, and many respondents felt that most judges were not interested enough in juvenile cases that they would even be inclined to exert informal control. The more common reasons for those desiring to place these services in the executive branch was a desire for greater public accountability than is felt to currently exist.
- The support for judicial branch intake was particularly strong; a few respondents said they supported judicial branch intake services but would not object to executive branch probation and aftercare. It was generally felt that the North Carolina system of judicial branch administration of intake and other services protects the child's rights while maintaining an emphasis on care and treatment; all without the politicizing, instability, and bureaucratization that allegedly would be found in the executive branch.
- The respondents' position regarding the proper location of detention is less clear. Although there was some criticism of detention, about one-half of the respondents still supported its current location in the Department of Human Resources. Most of those wishing to change the location of detention did so in connection with the reorganization proposed by the Juvenile Code Revision Committee.
- Although juvenile services are seen as having successfully achieved the goals of retaining parens patriae while protecting due process rights, these services have been caught up in widespread criticisms of the more general juvenile services system in the state. This system is viewed by many people as being poorly coordinated, fragmented to such a degree that many children are "slipping through the cracks," operating inefficiently, and not speaking with enough

of a unified voice to effectively pursue improvements. The result has been inadequate services for juveniles (for emotionally disturbed youths in particular), while juvenile services as a whole remains an apparently low priority within the state governmental structure.

• These concerns were addressed by the Juvenile Code Revision Committee and reflected in their organizational changes proposed in the final report. Their basic recommendation was for the establishment of a single and separate agency encompassing all juvenile services in the state.

> The Juvenile Code Revision Committee recommends that the functions in intake, probation and aftercare, currently under the Juvenile Services Division of the Administrative Office of the Courts; administration of the Interstate Compact, currently in the Division of Social Services, Department of Human Resources; and training schools, detention services, and community-based services, currently under the Division of Youth Services, Department of Human Resources, be unified in a single administrative entity called the Office of Juvenile Justice. (Juvenile Code Revision Committee, *Final Report*, p. 37.)

Feeling that such an office would not require funding or personnel beyond what these agencies presently have, the committee went on to say that:

> the principle objective of this reorganization is to integrate juvenile services in North Carolina into an accountable, consistent, child-oriented system while increasing current effectiveness of its component agencies. (Ibid., p. 37.)

Two primary advantages of such a structure are indicated in the *Final Report*: through the setting of unified policies and procedures, it could better control or influence the flow of work load from one component to another; and information concerning the youth could be more smoothly transferred and systematically developed as it moves from one component to the next. However, from our interview conversations, there is a third reason which seems of equal importance as a perceived advantage. Proponents feel that a single and separate agency would, due to greater "visability" and ability to speak with a unified voice, be better able to act as a youth advocate and to make juvenile services a more important priority within the state.

Of particular interest from the perspective of this study is that the proponents' original choice of location for this office was within the judicial branch, with autonomous but equal status with the Administrative Office of the Courts and, like that office, directly responsible to the chief justice of the supreme court. It was felt that this location had several advantages, including the prestige of the courts, greater stability (justices generally serve in the office longer than governors), the facilitative potential of juvenile court services—intake in particular—in linking together the broader range of juvenile services, and services being potentially less "politicized" in the judiciary than in the executive branch. Objections to putting the proposed new agency directly under the Administrative Office of the Courts were two—the need for the agency to be separate to increase "visability," and the feeling that the primary interest and supportive emphasis of the Administrative Office of the Courts would be on administration of judicial functions rather than on juvenile services.

Thus, although there was the desire to transfer services from the current administrative unit, this did not constitute an attack on judicial branch administration of these services, only a desire to transfer it to a unit of the judicial branch emphasizing services delivery rather than administration.

• Questions from the chief justice to the committee regarding judicial administration of nonjustice services (especially the institutional and community-based services traditionally not under judicial control) under the separation of powers doctrine, as well as the play of intrastate politics, combined to defeat this proposed reorganization of services. But the proposal does raise a couple of very interesting questions.

The first, from an organizational perspective, is the possible coordination advantage of the concentration of services under the judicial umbrella. Closely related to this is a question of public policy—What is to be the "proper" relationship between juvenile justice services and other juvenile services? This topic was a point of struggle in the Juvenile Code Revision Committee hearings; even those members and hearing witnesses committed to a single and separate agency

disagreed over the outlines of what the proposed Office of Juvenile Justice should contain. Further, the unresolved questions come more sharply into focus when the proposed organizational location is in the judicial branch. For instance, What is the "proper" organization and program balance between delinquency prevention, abuse and neglect, correctional institutions, and other juvenile delinquency programs? How would this balance be affected by placing all these services in the judicial branch?

As a second option, the committee considered placing the single and separate Office of Juvenile Justice in the executive branch. However, consensus could not be reached on where that location should be and, in the *Final Report*, the reorganization proposal remained a proposal, while the code revision was more actively pursued. There was widespread resistance to placing the proposed new organization in the Department of Human Resources, which was seen as already too large and too bureaucratized, and where juvenile services would inevitably be only a small part of that department's interest and attention. There was some support for placing it in the Division of Administrative Services, but a majority felt that the need for "single and separate" was a high priority. A third possibility was as a separate office directly responsible to the governor. The problem here was the regular electionary changes in the governor's office—future governors might well be less committed to juvenile justice than the incumbent.

Most of the interviewed members of the Juvenile Code Revision Committee reasserted that their preferred location would be the judicial branch. Most of those who later argued for or seriously considered an executive branch location explained their position as not being a statement of dissatisfaction with judicial branch services as much as a statement of a great need of and priority for a single and separate agency with more visibility.

(2) ***It is generally felt that the North Carolina system adequately protects due process rights.***

• It is commonly reported that the system has now gone about as far as it should in protecting those rights. Any further "legalism" might not be in the child's best interest [see (1) above]. This is not to say that respondents saw due process considerations being necessarily consistent with or easily reconciled with the dominant parens patriae philosophy. The respondents split over whether the two concerns are potentially, if not factually, consistent. Many who viewed them as being inconsistent felt that the trade-off in emphasizing due process was a necessary one. A widespread accommodation of the two was found in the position that strict due process procedures should be followed up until the point of disposition, but a parens patriae philosophy should dominate thereafter.

• There is a common belief around the state that the basic philosophy of the juvenile court is changing to one of greater concern with due process rights. This is not surprising, given the recent revision of the juvenile code and the concern with due process rights expressed in those changes. These changes are generally supported, although it appears that there would be widespread resistance to pushing statutes and procedures any closer towards the criminal model. Interestingly, those respondents who did not think that the basic philosophy of juvenile court is changing took the position that it remains a solidly parens patriae orientation despite or regardless of the recent changes.

(3) ***There is general satisfaction with intake and probation. However, there is widespread criticism about the quality and quantity of ancillary services available.***

• We found generally widespread satisfaction with intake and probation. There was a widespread belief that the move to the Juvenile Services Division had resulted in better, more efficient operations which are attracting more highly qualified personnel despite what seems to be very low pay scales. There is criticism of intake coming from the law enforcement officers in the state, particularly those in major cities. Once a child is taken into custody, their role is very similar to the intake counselor—they determine whether a child should be released or the case pursued in the courts—the primary difference being that the counselor has the third option of diverting the child to an appropriate service.

• This overlap in function has led to conflicts between law enforcement officers and intake

counselors, especially where divergence of departmental policies or philosophies exist. Some law enforcement personnel see the intake counselor role as being a duplication of effort. But another more seriously negative view is that because of the intake counselor's independence from the judges, the intake counselors are unaccountable to anyone, especially since so very few claimants appeal decisions to divert and the law enforcement officers have little effective recourse when they disagree with counselors' decisions. Hence, we did find some support among law enforcement personnel for a transfer of juvenile justice services to the executive branch, with the primary goal of achieving greater accountability for the decision to divert.

• It is the even less formalized functional lines between probation, intake, and sheriff's department officers in the smaller districts which enable them to aovid this conflict. On the other hand, while no objections were voiced within the state, it does appear that this practice—particularly the joint discussion on whether to divert cases or to proceed to hearing—creates the opportunity for unequal treatment of juveniles.

• There is also substantial criticism of detention, the one basic service not administered within the judicial branch. This is mostly a problem in funding separate juvenile detention facilities in rural counties, though there have been some problems in the state's training schools as well.

Interest was expressed at the state level for regionalized detention facilities for rural areas (including hearings of the Code Revision Committee). However. this has been met by resistance from those who think that the priority should be to keep youths in their local community.[9]

• There is much criticism regarding the quantity of ancillary social services available in local communities. Though they are generally satisfied with the quality of what services they do have, there was almost unanimous agreement that there is a problem in the limited variety and range of public and private services available. Again, the problem of services for emotionally disturbed youths was consistently seen as being especially acute. As expected, this is primarily a problem of funding. The Community Based Alternatives Subsidy Program mentioned above is a major effort in meeting this need, but it appears from the perspectives of our respondents to be falling quite short of the overall juvenile services need that exists in the state, however well it may be accomplishing the goals it was designed to achieve (to keep status offenders out of the training schools). It is also clear that the greatest need exists in the rural counties. It was only in the largest county, Mecklenberg (Charlotte), that we found some—though not total—satisfaction with the range of services available.

• It is difficult to infer from the respondents' discussions which branch is better able to serve as an effective advocate for a broad range of juvenile services, a matter receiving a great deal of attention in North Carolina. It may be argued, as some respondents did, that the judicial branch in general and the Administrative Office of the Courts in particular is not effective. On the other hand, it is clearly the intent in North Carolina that services such as psychological screening and counseling, foster and group home programs, etc., are not to be administered by the intake and probation departments but are to exist "out there" in the community. Hence, the rejoinder is that it is not a failure on the part of the judicial branch. Indeed, it is argued by a greater percentage of our respondents that it is the Department of Human Resources—which has present responsibility for many of these programs, including the community-based alternatives—which is failing as an effective champion of juvenile services.

Despite the criticism of community-based programs, there was little support for judicial monitoring of ordered services. The problems with the various service gaps were viewed as being problems on which judicial monitoring would have little effect. It was not felt that judicial monitoring was necessary to ensure that services ordered were in fact delivered or that the services provided would be better in quality because they were being monitored.

(4) ***There was little or no support for extending juvenile court efforts into social reform or into delinquency prevention programs.*** The concept of the court as an activist leader of social reform was one of the basic notions behind the parens patriae philosophy which emerged with the development of American juvenile courts. However, despite the contemporary interest in

retaining a generally parens patriae orientation, there is now little support in North Carolina for an activist court or judiciary. The role in social reform which did receive some support was one of education: (a) educating the general public about what is needed to prevent delinquency and to provide better care for youths; and (b) educating youths in the community about the juvenile justice system and what the different steps in the process are. There was virtually no support for the court playing any role in social reform or delinquency prevention.

(5) ***The North Carolina juvenile court services system has been successful in its goal to better protect due process rights while retaining as much of a parens patriae orientation as possible.***

• The juvenile justice policymakers in North Carolina have recently placed a great deal of emphasis on protecting due process rights. Statutorily, the many recent revisions found in the 1979 North Carolina Juvenile Code have been intended to accomplish this end. Organizationally, the independence of intake and probation from the judges' direct control is felt, within the system, to be a sufficient answer to due process and conflict of interest criticisms of judicial administration of juvenile justice services.

• Have the new revisions operated to achieve that goal? Although there is some criticism of the new code, especially regarding the provision that runaways can be detained only 24 hours, there was near unanimity among our respondents that the new code does provide better protection for juveniles' rights.

The Supreme Court decisions such as *In re Gault* could be seen as "forcing" due process concerns upon a parens patriae system. However, there was general support among the respondents for the due process safeguards; some respondents even included statements about abuses of the juveniles' rights under the former statutes among their comments about present safeguards.

However, as one respondent phrased it: with juveniles, finding a punishment to fit the crime should be replaced by treatment to fit the child's need at disposition. This has been the effect of the juvenile code revisions from the initial filing decision to the final disposition, although it is not clear whether the expression of this view has been the result of the enactment of this code or whether the Juvenile Code Revision Committee was expressing an already common perspective.

Contemporary Problems and the Question of Structure

Current controversy centers around the Juvenile Code Revision Committee's recommendation for a single and separate juvenile agency. North Carolina is a state in which parens patriae is still supported, at least so far as there being resistance to making procedures adversarial at intake. There is a basic belief that care and treatment of the child should be a major factor in the decisions to divert and at the point of disposition. But, North Carolina is also a state in which the concern for protecting due process rights has been taken very seriously and has resulted in statutorial and organizational change. For the most part, policymakers feel these potentially conflicting demands have been met as well as possible, and attention has now shifted to making juvenile services in general better and more systematized. All indications received from interviews and documents obtained in the state suggest that the biggest conflicts over juvenile services in the future will relate to moves towards a single and separate agency. This will occur during the 1981 session of the legislature when a similar proposal will be reintroduced. Our respondents were evenly split over the proposed reorganization.[10]

The general public seems only minimally interested in any of this. In most states there have been public expressions of concern over the perceived rise of juvenile crime. We did not find much of this in North Carolina, and even some of our respondents commented on this. One thing seems clear; there is at present no substantial public interest in ending judicial branch administration of intake, probation, and aftercare, or in expanding it.

North Carolina presented quite a study in contrasts. Controversy regarding probation, detention, and intake is minimal, perhaps because court procedures have been organized to prevent many of the possible problems connected with due process and fairness which may

possibly be found in courts where judges personally administrate services programs and personnel. On the other hand, criticism of the lack of other badly needed social services was as pronounced and widespread as has been seen in any state, at least during this study.

On the matter of policy issues such as due process, fairness, and conflict of interest, the North Carolina system suggests itself as a very creative way of obviating the potential abuses of due process conflicts of interest involved in the employer-employee relationship of judges and staff. (As one of our respondents pointed out, with the exception of the separation of powers issue, the criticisms of judicial administration of juvenile justice services are really criticisms of judges running these services rather than of judicial branch administration per se.) By building so much independence from personal judicial oversight into the statutes and organizational frameworks governing court services, North Carolina has made an impressive organizational response to such possibilities. Success along these lines is attested to by the general satisfaction with the court services administered by the Administrative Office of the Courts.

Yet, the criticisms of youths "slipping through the cracks" of the total social services system are of crucial importance and are intense at the time of this writing. Even though they are focused on issues outside the realm of this study—that is, concerns about juvenile services as a whole rather than the more limited juvenile court services—these criticisms may well result in changes which may remove even the juvenile justice services from the judicial branch.

The issues of the proper relationships between juvenile court services and other juvenile services, and the implications of placing all or a sizeable segment of them within the judicial branch, have already been discussed. There are other issues, many of which have already been raised in North Carolina, which must be considered here.

First, one basic assumption of the "single and separate" agency proponents is that the new agency would need no more personnel or funding than already exists for the separate agencies. Given what this research has encountered in other states, there may be skepticism about this. The concentration of fragmented services in one larger agency tends to result in a growing bureaucracy, increasingly (with added size) top-heavy with administrative personnel and rigidified with regulations.

Another potential bureaucratic problem may be one of time delays. One goal of the proposed agency is to standardize information about the individual youth so that it can build cumulatively and can be shared more quickly and effectively. There is no doubt that this is needed in North Carolina; the lack of coordination was well documented in the Juvenile Code Revision Committee hearings. However, in states where one statewide agency administers such programs, there are often allegations of problems of time delays in the processing of information.

The final point concerns the separation of powers issue. The question of whether the judicial branch should operate the justice services of intake, probation, and detention is a heated theoretical question. While there might be no actual constitutional problem, including such things as correctional institutions and community-based alternative programs would be stretching conventional notions of judicial responsibility quite far, perhaps needlessly so. The most fundamental issue may be the proper distinction between juvenile court services and other juvenile services, not judicial branch administration per se.

In addition to the proposed single and separate agency, another proposal expressed in North Carolina might well be given serious consideration. Rather than having district judges rotate in the handling of juveniles, judges might be appointed specifically for juvenile proceedings. To some extent, this has been a de facto accomplishment since, in some jurisdictions, district judges most interested in juveniles do handle the majority of those cases now. The formalization of an already-existing tendency might well result in a group of judges which will speak with a more unified and forceful voice for youth services.

The complex problem of where to locate the single agency, if it were to be established and placed in the executive branch, is substantial. Findings of this research indicate the executive branch placement would be less well received within the state than a judicial branch location, even though support for keeping it within the Administrative Office of the Courts (rather than directly

responsible to the chief justice of the supreme court) is divided.

It would be highly beneficial for North Carolina to address future research toward two primary areas. First, to what extent would the consolidation of resources create problems normally associated with increased size and complexity? How could such a tendency be mitigated? Are these problems inevitable in such a structure? Second, what would be the predictable costs and benefits of various possible models of organization? Would executive services be administered on a more inherently cost-effective basis than judicial administration? These are the types of questions which must be answered when the "single and separate" proposal is reintroduced next year.

Footnotes

1. Mason P. Thomas, *Juvenile Corrections: A Brief History, and Jurisdiction; North Carolina's Laws and Related Cases* (Chapel Hill, N.C.: University of North Carolina, Institute of Government, 1972).

2. Juvenile Code Revision Committee, *Final Report* (Raleigh, N.C.: North Carolina Legislature, 1979), p. 7.

3. Ibid., p. 8.

4. In its major aspects, the new code was passed as proposed by the Juvenile Code Revision Committee. This committee was established by the legislature in 1977 to review laws and services in the state with the aim of better serving the needs of young people while protecting the interests of the state. Its final report was issued in 1979 and contained both the proposed new juvenile code and recommended organizational changes.

5. Juvenile Code Revision Committee, *Final Report*, p. 104.

6. Ibid., pp. 1 ff.

7. Formerly, the review was done by the district judge, but this was seen as being possibly prejudicial in that the judge would then hear the case should a petition be filed upon review.

8. Despite the right to be represented by counsel, juveniles are not encouraged to have attorneys present at intake. The desire is to keep intake as informal as possible.

9. Certain problems with the training schools were addressed by an Assembly Committee on Corrections study which lasted three years and resulted in the removal of status offenders from these institutions and the development of the Community Based Alternatives Subsidy Program.

10. It should be noted that some of those opposed were former supporters of the single agency concept. Those opposing it generally supported the need for better coordination and funding of juvenile services; they just questioned whether such an agency would not become just another state bureaucracy.

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CONTINUED

2 OF 3

PENNSYLVANIA CASE STUDY

Members of the Academy for Contemporary Problems' MIJJIT staff visited Pennsylvania for an on-site case study in February 1980. Field studies were done in the following jurisdictions: the state capital (Harrisburg), the state's largest county (Philadelphia), the second largest city (Pittsburgh), and a typical rural county (Greene). Intensive interviews were conducted with key leaders in providing, using, interpreting, and commenting upon court services and court services policy. These included judges, prosecuting and defense attorneys, court services administrators, social services providers from both public and private secotrs, legislators, and citizen advocates. In addition, documents published by the Pennsylvania Juvenile Court Judges' Commission, the Pennsylvania Department of Welfare, and various individual courts were utilized, as well as newspaper accounts, governmental statistics, standard encyclopedic and factual sources, and materials provided by citizen advocates such as the Juvenile Justice Center Citizens' Coalition.

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Mr. Ken Adami,
Staff to the Judiciary Committee
Pennsylvania House of Representatives
Harrisburg

Mr. Jim Anderson, Legislative Consultant
State Juvenile Court Judges' Commission
Harrisburg

Mr. Sam Caltagirone,
Community Relations Officer
Pittsburgh Police Department

Ms. Claire Capristo,
Deputy Attorney for Operations
Allegheny County District Attorney's Office
Pittsburgh

Mr. Joseph Casey, Chief
Family Court Division
Public Defenders Association
City of Philadelphia

Mr. Lawrence Claus,
Chief Trial Deputy District Attorney
Allegheny County District Attorney's Office
Pittsburgh

Dr. Richard Cowan, County Commissioner
Greene County
Waynesburg

Mr. Joseph Daugerdas, Director
Juvenile Court Services
Allegheny County
Pittsburgh

Mr. Rocco J. Donatelli,
Deputy Administrator
Juvenile Branch Family Court Division
Court of Common Pleas
City of Philadelphia

Ms. Adine Duron,
Assistant to Executive Director
Juvenile Justice Center
Philadelphia

Ms. Pat Evey, Director
Juvenile Justice Center of West Pennsylvania
Pittsburgh

Ms. Chrysandra J. Gantt, Acting Director
Bureau of Family and Community Services
Department of Public Welfare
Harrisburg

Mr. John C. Graham, Chief Probation Officer
Greene County
Waynesburg

Mr. John Hagerty, Assistant District Attorney
District Attorney's Office
City of Philadelphia

Mr. John Hutzler, Legal Staff
National Center for Juvenile Justice
Pittsburgh

Mr. Edward Jordon, Deputy District Attorney
Dauphin County
Harrisburg

Mr. Kevin Longenback
Minority Council to the Judiciary Committee
Pennsylvania Senate
Harrisburg

Mr. Paul Lutty, Juvenile Public Defender
Allegheny County
Pittsburgh

Mr. Dave McCorkle,
Juvenile Justice Specialist
Department of Public Welfare
Harrisburg

Hon. Herman Montemuro, Jr., Judge
Family Court Division
Court of Common Pleas
City of Philadelphia

Mr. Charles Morris, District Attorney
Greene County
Waynesburg

Mr. Lester Nauhaus, Director
Public Defender's Office
Allegheny County
Pittsburgh

Dr. Leonard Rosengarton, Administrator
Family Court Division
Court of Common Pleas
City of Philadelphia

Mr. Charles H. Starrett, Jr.,
Court Administrator
Court of Common Pleas
Allegheny County
Pittsburgh

Hon. Patrick Tamilia, Judge
Family Court Division
Court of Common Pleas
Allegheny County
Pittsburgh

INTRODUCTION TO THE COMMUNITY

With 11 million inhabitants, Pennsylvania represents the fourth most populous state in the country. Pennsylvania's population growth has been gradual, rising from about 8.7 million in 1920 to approximately 12 million in 1980. This increase, at least since 1960, is a result of births exceeding deaths rather than from inmigration.

Pennsylvania's population is approximately 8.6 percent black, slightly lower than the national average. Other minorities found in the state are American Indians, Japanese, Chinese, and Filipinos, most of whom, including blacks, are concentrated in Philadelphia, Pittsburgh, and a few other population centers.

With the exception of the coastal plains, Pennsylvania's land area of 45,333 square miles is a succession of mountains and rolling hills and valleys. Vast agricultural resources abound in Pennsylvania. One of the prized farmlands of the nation is the Great Valley, a wide trough rich with limestone soils. There the Pennsylvania Dutch farmers built a culture that is identified with the bountiful agrarian life.

The state is also heavily industrialized. It is the nation's leading steel producer, accounting for one-fourth of total U.S. output. It ranks sixth in the exploitation of nickel, coal, sand, gravel, stone, and lime. In addition, the state manufactures metal products, foodstuffs, machinery, chemicals, electrical equipment, and wearing apparel.

Transportation facilities have kept pace with the state's rapid development. Being a natural bridge for traffic between the Atlantic coastal states and the midwest, its interstate highways, particularly the Pennsylvania Turnpike, handle millions of out-of-state travelers every year. Its highways and a complex network of railroads also carry the products of farms, factories, and mines to port cities to be sent out to the rest of the world.

The personal income of the Pennsylvanian is higher than the national average. This situation may be related to the expansiveness of the state's economy and the fact that 37.5 percent of nonagriculture workers (third in the nation) are unionized.

The building of this rich and complex state has resulted from the work of many ethnic groups. In the early 1600s, the English, Dutch, and Swedish disputed their rights to the region. In 1694, William Penn was granted proprietary rights to the state. A devout Quaker, Penn reportedly viewed his colony as an experiment of equality and freedom, divinely inspired as an asylum for the persecuted. Therefore, he carefully constructed a constitution that gave Pennsylvania the most liberal government in the British eighteenth century colonies. Religious freedom was guaranteed, a humane penal code was adopted, and the emancipation of slaves was encouraged. After Penn's death in 1718, Pennsylvania continued to develop into a dynamic and growing colony, enriched by continuous immigration. The Quakers, English, and Welsh were concentrated in Philadelphia and the eastern counties. The Germans (Pennsylvania Dutch) and the largely persecuted religious sects of Mennonites, Moravians, Lutherans, and Reformers settled in the farming areas of southeast Pennsylvania. After 1718, the Scotch-Irish began

colonizing the Cumberland Valley and gradually pushed the frontiers westward. The late nineteenth and early twentieth century saw large waves of eastern Europeans and Italians settle in the state's two industrial capitals.

This mixture of people has contributed to contrasts still existing within the state—between the midwestern city of Pittsburgh and the eastern city of Philadelphia, between mill and mining towns and the quiet charm of the Laurel Highlands, and between the prominent wealth and poverty in Philadelphia.

The relatively low crime rates may be seen as a product of the overall stability rising from the state's ethnic traditions and gradual population increases. Considering its size, population, and degree of industrialization, Pennsylvania ranks low in its index of crime for violent offenses. Pennsylvania's 1978 violent crime index of 301.1 violent crimes (per 100,000 population) is considerably under that of its neighbor New York (at 841.0) or even New Jersey (at 423.5), both of which are similarly industrialized. Pennsylvania's 301.1 is also lower than the national rate of 486.9. More surprising, perhaps, is the fact that the 1978 violent crime index for the Philadelphia Standard Metropolitan Statistical Area (453.2) was also below the national average.

INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM

Court Organization

The court of common pleas is Pennsylvania's court of general jurisdiction in each of the state's 67 counties. These courts have general and original jurisdiction over all criminal cases. They also exercise exclusive jurisdiction over juvenile delinquency cases, usually heard in family court divisions or in juvenile branches.

Except in Philadelphia, minor criminal cases are heard in the state's 584 justice (of the peace) courts, presided over by district justices. These courts have original criminal jurisdiction over offenses which are punishable by fines of not more than $500 or jail sentences not exceeding 90 days. Felony and misdemeanor preliminary hearings are also held in these courts.

Philadelphia's Municipal Court has civil and limited criminal jurisdiction, while Pittsburgh's Magistrate Court hears cases involving misdemeanors and violations of city ordinances but hears no civil cases. Neither court hears juvenile cases.

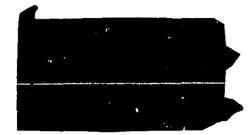
Minor offenses such as traffic violations are heard in justice courts (except in Pittsburgh where such violations are heard in the Magistrate Court).

Pennsylvania's family courts are divisions of courts of common pleas. A special family court division of this court has been statutorily provided for in Allegheny County (Pittsburgh) and the City of Philadelphia. Judges are initially elected on a partisan basis, but may be retained through an unopposed retention ballot every 10 years.

Juvenile intake, probation, and parole services are judicially operated. In many counties, services overlap and are performed by the same individuals in county probation departments. Secure detention facilities are operated either by juvenile courts, by the Department of Public Welfare (DPW), or by judicially appointed boards of managers in Allegheny County and in the City of Philadelphia. In general, these services are funded by the county general fund but state subsidies help to defray costs under certain circumstances.

Change in the original system of Pennsylvania's traditional juvenile courts has been minimal. There have been no sweeping reorganizations, such as seen in the Florida services delivery system. The Pennsylvania juvenile court structure and services seem to have been molded by such slow, evolutionary pressures as the incorporation of due process rights consistent with *Gault* and other U.S. Supreme Court decisions, and a gradually increasing youth population. These forces have resulted in larger court services staff rather than substantial organizational changes.

Cases involving individuals under the age of 18 are normally heard in juvenile court, with two exceptions. First, murder charges will automatically be heard in adult court but can be transferred back to the juvenile court. Second, felonies which would carry sentences of more than



three years if committed by adults may be transferred to adult courts when committed by a youth 14 or older.

According to Pennsylvania law, a youth may request his own transfer to adult court, or the request may be made by any person in a family court division of the courts of common pleas. A juvenile who is 14 or more years of age may be transferred to criminal court if a family court finds that there is a prima facie case that the child committed the delinquent act which is alleged; that the delinquent act would be considered a felony if committed by an adult; and if it can be proven that the child is not amenable to treatment, supervision, or rehabilitation as a juvenile through available services in the juvenile system.[1]

Organization of Services to Children in Family Courts

Detention

Probation officers may order the detention of children who are under their supervision for protection of the child or community, or if they believe the child may abscond. Other children taken into custody may not be detained prior to a hearing on the petition, unless detention is necessary for the child's safety or care, or an order has been made by the court. Places of detention for delinquents are limited to licensed foster homes or homes approved by the courts; facilities operated by licensed child welfare agencies or approved by the county; detention homes, camps, centers, or other facilities under the direction of the courts; or other public or private agencies approved by the Department or Public Welfare (DPW).[2] In each county office, DPW is required to develop or assist in developing approved shelter care programs for children. Each county is required to develop programs for truant and ungovernable children and to provide houses of detention for children under court jurisdiction; these detention homes being variously operated by juvenile courts, DPW, or judicially appointed boards.

Intake

Probation officers, employed by the courts, are authorized to receive and examine charges of delinquency and other juvenile matters. They are encouraged to make informal adjustments, prior to the filing of a petition, by referring the child and parents to a social service agency for assistance.

Prior to adjudication, courts may enter consent decrees, unless the parties object. Under consent decrees, proceedings are suspended and the affected juveniles are placed under home supervision. Such decrees may remain in force for six months or until discharge, whichever is less. If the terms of consent decrees are met, the petitions are nullified.

Probation

Probation is a county-funded and county-based service performed by officers of the courts. In addition to supervision and assistance to children placed on probation or on protective supervision, probation officers are authorized to conduct predispositional investigations and to make referrals to public or private agencies if such assistance appears needed. They also provide supervision for paroled juvenile offenders.

Other Dispositional Services

During the pendency of any proceeding, courts may order medical or psychological examination. Treatment may be ordered promptly if, in the opinion of a physician, it is needed.

Prior to disposition, courts may order a social study and report by an officer of the court or someone designated by the court. Courts are authorized to select a disposition "best suited to the protection and physical, mental and moral welfare of the child." In addition to probation, this may include release under supervision or transfer of custody to qualified individuals or licensed agencies. Also possible is commitment of delinquent children to an institution or other facilities operated by the court or other public agency, and approved by DPW. Restitution and public

service work are also included in the spectrum of authorized dispositions.

Counties are authorized to establish schools for the care and education of children under court jurisdiction and to receive such children upon commitment by the court. Aftercare supervision is a function of county probation departments. DPW is charged with assuring adequate public child welfare services for children and providing partial reimbursement to counties for such care as foster homes, group homes, community residential facilities, etc. At the state level, DPW is required to provide youth development centers and forestry camps for delinquent children committed to DPW by the courts. DPW is also authorized to provide counseling to children upon their release from DPW facilities.

Procedures for Referring and Handling Children in Family Courts

After assessing the situation and taking into consideration the Juvenile Court Judges' Commission's standards for intake, a probation officer screens, diverts to informal programs, or refers to court, and makes detention recommendations to a judge or referee. If a probation officer detains a youth, the judge/master reviews detention within 72 hours. In making the detention decision, the judge/master takes into consideration the probation officer's recommendation as to the need for release and for secure or nonsecure detention. The probation officer performing intake determines whether a formal complaint will be filed. If a formal complaint is filed, it is set for adjudication by a judge or master without formal review by a district attorney. If the complaint is found to be true, a dispositional order is entered. All standard dispositions are available to the courts, such as probation, shelter care, counseling, commitment to a secure state institution, etc. However, there is a monetary incentive to provide young persons with nonsecure community-based placements and services, an incentive which emerged in January 1978 when Act 148 of 1976 went into effect.

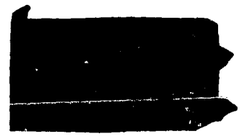
In general, district attorneys are not involved in the legal screening of complaints at the intake stage of juvenile courts. In most cases, intake staff members (technically, probation officers) determine, without consulting district attorneys, whether complaints should be filed. However, the degree of district attorney involvement at adjudication tends to vary with the court. An extreme example of this situation was found in Allegheny County where four public defenders had been assigned to represent individuals in the juvenile court, but the district attorney's only involvement was to represent the state on bindover proceedings.

The involvement of defense counsel during the preadjudication stage seems to be more consistent in the various courts than does the involvement of prosecutors. During both informal and formal intake proceedings, juveniles are advised of their rights to counsel, a practice congruent with standards adopted by the Pennsylvania Juvenile Court Judges' Commission. On a regular basis, children are advised (and in some courts required) to retain legal counsel at adjudicatory hearings.

Special Features of Delinquency-Related Services Delivery

The system of juvenile jurisdiction and services found in Pennsylvania seems to have gone further than any other state in maintaining a locally controlled system. In Pennsylvania, there is no state agency to operate juvenile parole services. The juvenile courts' probation officers provide these services. Intake, probation, parole, and detention are subsumed under the probation arm of the courts. The secure state institutions are operated by DPW; however, length of original commitment is judicially determined, as are actual release decisions leading, in turn, to parole supervision by an arm of the courts. This is the nation's closest approach to a full-spectrum juvenile justice operation under the control of local courts, a unique situation deserving further research.

The power of the local judiciary is enhanced by Pennsylvania's method for selection and retention of its judges of the courts of common pleas, a somewhat political process. In Pennsylvania, judges are initially elected on a partisan basis; however, once elected they are only subject to a retention ballot every 10 years. This places them, for all practical purposes, outside the



political arena, thereby enhancing their security and prestige. This has been mentioned by respondents as tending to cement the already substantial judicial control over delinquency-related services.

Another unique aspect of the Pennsylvania juvenile justice system is found in the Juvenile Court Judges' Commission established by the Pennsylvania legislature in 1959. The commission of nine judges, nominated by the chief justice and appointed by the governor for a three-year term, attempts to provide internal self-regulation of juvenile courts through standards and policies covering all aspects of operating juvenile courts and probation departments. These include training of probation officers in human services skills, management, methods for evaluating services effectiveness, and juvenile law.

In addition, the commission administers a grant-in-aid program to improve juvenile probation services. Ninety-five percent of all juvenile courts in the state participate in this $1.5 million subsidy. Funding eligibility is determined by the willingness of local courts to adopt commission standards. This subsidy has had some impact on delivery of services, but perhaps not as much as would be possible with an increased level of funding, something most judges desire. Respondents frequently mentioned two pieces of legislation, Act 148 of 1976 and Act 41 of 1977, as having an impact on the juvenile justice system.

Both of these acts were written and pushed by the Juvenile Justice Center of Pennsylvania, a citizen advocacy group concerned with increasing community responsiveness to the needs of the juveniles in the juvenile justice system. Special issues of importance to the center include the removal of status offenders from juvenile courts and improving community-based resources. Further, their legislative efforts clearly indicate that they see juvenile courts as referral agencies rather than as service providers.

Act 41 of 1977 deleted status offenders as a category and reclassified them as dependent children, thus placing them under DPW's social services responsibility.

Act 148 of 1976 is probably the largest children's state subsidy in existence. Under the administration of DPW, the act has been recently (1979-80) funded for $75 million annually. These funds are allocated to county welfare departments, through their county commissioners, in a manner which encourages community-based nonsecure services. Furthermore, these funding patterns foster the development of private sector social services and public services outside the purview of family courts. For example, emergency shelter care for those status offenders reclassified as dependent children is reimbursed at a 90 percent rate. Community-based services planning, counseling/intervention, protective services, homemaker services, life skills education, day care, foster care placements, group home placements, and residential/rehabilitative care in a nonsecure facility for more than eight children are all reimbursed at a 75 percent rate. Secure detention and noncommunity-based, nonsecure, facility-based services for more than eight children are all reimbursed at only a 50 percent rate. These rate differentials, 75 percent reimbursement for community (nonfacility)-based services versus 50 percent for facility-based services, appear designed to encourage placement in the community at the least restrictive level.

According to the Bureau of Family and Community Services, the language of Act 148 has been subject to differential interpretation regarding the applicability of its subsidies to activities carried out through juvenile court intake, activities such as counseling by intake probation officers, court-run group homes or foster home placements, etc. Interpretation of this language has been requested of the attorney general, and the Juvenile Court Judges' Commission has sponsored S.B. 1293, legislation designed to clarify Act 148, through amendment, in such a way as to ensure eligibility of intake-related social services for subsidy funding. However, at this writing, all legislative proposals tending to increase the need for appropriations to implement Act 148 have been tabled. This has been done, according to the Bureau of Family and Community Services, as a response to present shortfalls in funds for already-existing activities.

Act 148 of 1976 and Act 41 of 1977 were perceived by respondents as giving DPW a great deal of financial control over the entire delivery of social services in Pennsylvania. Consequently, this legislation has been an understandable source of conflict between juvenile courts and DPW.

In addition, according to some respondents, community resistance to some portions of Act 148 has been particularly acute and visible. Some communities distrust community services for delinquents, and this opposition has partially hindered operationalization of the act. In Pittsburgh, for example, respondents indicated that large numbers of children are being unnecessarily detained because needed group homes have not been established, due in large measure to community objections.

However, the primary source of conflict between DPW and juvenile court judges centers around the fact that DPW regulations do not provide reimbursement for court administration or court social services (except for preexisting detention), although they do fund 60 percent of the administrative costs of local child welfare and certain private sector services. The courts' probation departments do receive some financial assistance from the Juvenile Court Judges' Commission's grant, but this only covers 12 percent of probation officers' salaries. This percentage disparity of state aid has resulted in dissatisfaction in juvenile courts. In this study, court respondents felt the development of probation services had been severely inhibited by Act 148 and by DPW regulations. (For example, the state's largest juvenile court, the Family Court in Philadelphia, has had a 25 percent social services staff shortage due to natural attrition and the county's inability to meet payrolls.) From this perspective, the Juvenile Court Judges' Commission has introduced a number of bills to rectify the situation. Currently, the commission has introduced S.B. 1293, a bill which would provide a 75 percent reimbursement rate for intake, intake adjustments, aftercare, and alternatives to detention; however, this bill has been tabled because of shortages of funds.

EVALUATION OF THE PENNSYLVANIA JUVENILE JUSTICE SYSTEM

Results and Conclusions of Opinion Survey

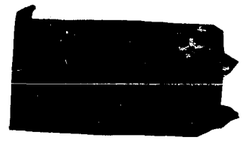
(1) ***A preference emerged in support of the present location of services in Pennsylvania.***

• In response to the question, "Who should operate juvenile court services?", there was a definitive preference for court operation of intake and probation. Of interest, one of the three juvenile court judges interviewed selected state operation of services over the existing organizational structure. He felt a state-operated juvenile justice system would be better funded and more uniform in terms of services available to the community. However, he believed a state system would be somewhat impersonal and less adaptive to community needs. The other judges were satisfied with the current organization and stated that detention should be separately administered as long as the decision to detain, as well as release, was determined by the court. Apparently, the inconsistency between their viewpoints on detention and on probation was not believed to be significant.

All court administrative staff agreed that intake, probation, and parole services are correctly located within the court. Their most common reasons for selecting court operation of services related to beliefs that the courts are more efficient and less bureaucratic and that the services should be available in the community, close to clients.

Those individuals who selected other forms of services operation, i.e., county executive or state operation, or even privately operated services, made their selections for different reasons. Those choosing county executive operation generally saw a need for a separation between the judges and social services operators. As one respondent put it, "There is a need to free up the court to oversee, in a nondefensive way, these services." This respondent also felt there would be more effective use of probation because the probation officers would not be subservient to the courts. Respondents who picked state operation did so for two reasons: increased funding plus standardization of services. The one individual who indicated private, nonprofit operated services would be worth trying also felt, at the same time, that the current court system was adequate.

• The quality of court social services staff was perceived by all respondents as quite high. This may be related to personnel policies, such as those which exist in the Allegheny County juvenile court. In Allegheny County, applicant requirements include a minimum of a



baccalaureate degree in a behavioral science plus two years social services experience, favorable scores on a written and oral interviews and a staff evaluation. Ultimately, the judge makes the final hiring decision, which is usually consistent with staff recommendations. To a certain extent, these personnel standards reflect the reimbursement requirements of the Probation Officer Subsidy Program, administered by the Juvenile Court Judges' Commission.

• Responses varied as to whether state, county, or court operation of services increased responsiveness to community needs. In general, the perception was that state operation would be the least responsive structure of the three. Some respondents felt county operation would be more responsive because county commissioners are up for reelection every four years. Other respondents felt that courts were the most responsive; they believed the means by which judges are selected (initial partisan election and subsequent 10-year retention) was immaterial, so long as the services were locally operated.

• Some respondents felt the key issue was not who operated the services, but whether the courts could have greater access to Act 148 monies.

(2) ***With some reservations, respondents tended to see current due process safeguards as adequate and successful.***

• Regarding the issue of whether parens patriae is consistent with due process of law, approximately one-half the respondents felt these two legal doctrines were consistent, while the other half saw them as inconsistent.

Those persons supporting the perception of consistency tended to see the two as congruent, as long as hearings were bifurcated between adjudication and disposition.[3] They expressed the belief that due process would be emphasized during the fact-finding phase, and parens patriae at disposition. Those who generally felt that the two doctrines were at odds with each other, stated that due process demands severely limited the courts' ability to provide care and rehabilitation.

Generally, respondents felt that then-current juvenile court proceedings in Pennsylvania were congruent with *Gault* and other U.S. Supreme Court decisions. This consistency is in part a result of the due process standards of the Juvenile Court Judges' Commission. More important, noncourt personnel also reported that constitutional safeguards were being protected by the courts.

• Most respondents saw the basic philosophy of the courts becoming more oriented toward due process. Some respondents also believed the courts were becoming more punitive. This latter shift in philosophy is related, according to respondents, to recent legislative efforts to expand the number of juvenile offenses automatically heard in adult courts. In this sense, what is being seen as a more punitive judicial process may not be reflective of the attitudes of judges and referees.

(3) ***Although most respondents were satisfied with the current quality of court services, the most consistently mentioned problem centered on perceptions of inadequate funding. This response was independent of the geographic location of the respondents.***

• Concrete examples of this concern included: in Allegheny County, probation officers have not received a raise in two years; the Philadelphia court is operating with a social services staff that is below the required level of strength; and, in Greene County, a sole probation officer performs all court services functions.

• Since court social services and legal procedures are largely funded by each county's general fund, staffing and specialization disparities exist, disparities apparently related to the relative wealth of each county and to the political relationships existing between individual judges and their county commissioners.

(4) ***The majority of respondents felt it was an appropriate role of judges to oversee services which are ordered by courts but which courts do not administer.***

• However, no consistent comment was obtained regarding how this should be done, beyond conventional "from the bench" monitoring on a case-by-case basis.

• Most respondents preferred the courts' role limited to the oversight or encouragement of prevention and public education efforts. The primary reason for this limited role stemmed from concern over the courts' limited time and resources, rather than from concern over whether these

involvements would be appropriate to a judicial agency.

(5) ***In terms of the goals of the juvenile act and the standards of the Juvenile Court Judges' Commission, the juvenile courts in Pennsylvania have achieved significant progress.***[4]

• From the juvenile act of Pennsylvania, the courts' goals may be summarized as follows:

(a) To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children.

(b) Consistent with the protection of the public interest, to substitute a program of supervision, care, and rehabilitation for the consequences of delinquent behavior.

(c) To achieve these purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare or in the interests of public safety.

(d) To provide means through which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

The stated purposes of the juvenile courts appear to be both social and legal, in that they assure constitutional and legal rights and also provide for "care and rehabilitation." In addition, the stated purposes focus heavily on the need for preservation of the family unit and on maintaining the child with parents whenever possible. Simultaneous goals of protecting the public interest while providing for the child's welfare are also stressed.

• The Juvenile Court Judges' Commission has adopted due process standards which are consistent with *Gault* and other U.S. Supreme Court decisions. These standards have been implemented either partially or in toto by many counties in the state.

• Human services standards, set within due process parameters, have been promulgated by the Juvenile Court Judges' Commission and have been incorporated into practice in a number of counties.

• Training requirements of the Juvenile Court Judges' Commission reflect the philosophy of the juvenile act. Training covers both legal and human service information.

• Personnel requirements, human service standards, and training mandates of the Juvenile Court Judges' Commission's grant-in-aid program have increased the quantity and quality of juvenile court services in the state. This impact is particularly significant because these monies only cover 12 percent of probation salaries across the state.

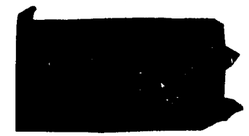
Contemporary Problems and the Question of Structure

At the time of this study, the leading problem for the Pennsylvania juvenile justice system was budgetary in nature. The problem centered around a highly visible conflict between the judges and the Department of Public Welfare, centering around Act 148 of 1976 and its implementation.

This act, probably the largest children's state subsidy in the United States, is under the administration of DPW. Funds are allocated to each county in a manner which encourages community-based, nonsecure services. In addition, funding encourages the development of local child welfare and private agencies rather than juvenile court social services. This situation has resulted in organized resistance from the Juvenile Court Judges' Commission, which has introduced bills to the legislature to alter the situation. For example, the commission drafted S.B. 1293 in the 1980 legislative session which would provide a 75 percent reimbursement rate for intake, intake adjustments, aftercare, and alternatives to secure detention.

However, some respondents indicated that community resistance to portions of Act 148 has also been particularly acute and visible. Some communities mistrust community services for delinquents, as reflected by refusals to allow group homes in their neighborhoods. This opposition has significantly hindered the full utilization of the act in such communities as Pittsburgh, where substantial numbers of children are reportedly detained because needed group homes have not been established.

• There is a need to more fully assess the current funding alignments of social services for children in the state. It appears that Act 148 was enacted for the express purpose of diverting as many children as possible away from juvenile court intervention. In so doing, that segment of the juvenile population referred to court may be receiving less services than would be possible with



different funding arrangements.

• Since alternative placements in neighborhoods are an integral part of this legislation, methods need to be instituted to reduce community resistance to the presence of group homes.

• In Pennsylvania, juvenile court judges operate as decisionmakers for a broader spectrum of the juvenile justice system than in any other state. They operate local courts and delinquency-related probation, intake, and detention services. They also establish standards for these services through a judicial commission and reward compliance through subsidy, make parole release decisions, and supervise parole supervision by local probation departments. Their powers to do these things are augmented by their relatively removed position from the political process, once elected. To what extent this wide authority may contribute to or detract from the efficiency, effectiveness, coordination, and public or legislative acceptability of these services is a potential research question with exceedingly important implications for American juvenile justice.

Footnotes

1. In determining whether or not the child is amenable to treatment within the juvenile system, courts are required to consider the following factors: age; mental capacity; maturity; the degree of criminal sophistication exhibited by the child; previous records, if any; the nature and extent of any prior delinquent history, including the success or failure of any previous attempts by a juvenile court to rehabilitate the child; whether the child can be rehabilitated prior to the expiration of a juvenile court's jurisdiction; probation or institutional reports, if any; the nature and circumstances of the acts for which the transfer is sought; and any other relevant factors.

2. Technically, court-operated facilities come within the purview of DPW's inspection and approval responsibilities. Some of these facilities have been given provisional approval pending remedy of problems, but none have been closed.

3. A concrete situation, true only of the Allegheny County juvenile court, indicates that the state has not gone completely to a due process model. According to a number of respondents, the district attorney's only role in the proceedings of the court is restricted to prosecution of bindover cases. The district attorney is not consulted on intake of filing decisions and does not represent the state in contested cases. As a consequence, the court attempts to perform the conflicting roles of impartial arbitrator and protector of the state's interests. Other possible conflicts of role and interest exist because intake, parole, and some detention services are supervised by probation departments. In many courts, regardless of their size, the same individuals perform more than one of these functions. Ultimately, this condition could be tested within the framework of due process.

4. 42 Pa. C.S.A., Sec. 6301.

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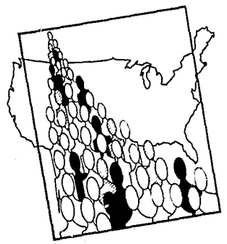
APPENDIX B
SAMPLE QUESTIONNAIRES



PART I
PHILOSOPHY

1. Do you think the basic philosophy of the court is changing? In what way?

   How do you feel about this change?

2. Is the concept of *parens patriae* consistent with the concept of due process of law?

3. Does the recent emphasis on adversary court procedures interfere with the court's traditional responsibilities to provide care and treatment?

4. Are there any practical problems caused in court operations in attempting to meet both the needs of the individual child and the standard requirements of due process?
   _____Yes _____No _____Undecided _____No Opinion
   Comments: _____

5. In theory, since the juvenile court is responsible for adjudicating delinquency, should it also be responsible for preventing delinquency?

6. Should the court play a role in reforming social conditions responsible for delinquency?

7. Intake, probation, and detention services can be operated within the county themselves, and can also be operated by executive branch agencies. Where they *should* be located, as a matter of public policy, has become a controversial matter.
   What is *your* opinion about where these services should be located?

8. a. What advantages do you see in locating the services where you have suggested in question 7?

   b. What effect do you think this location of intake, detention, and probation has (will have) on the quantity of available services?

   c. What effect do you think it has (would have) on the quality of staff that would be hired? Do you think courts or executive branch services are better able to attract qualified people?

   d. What effect do you think it has (would have) on the responsiveness of these services to the community? Do you think that staff working for an elected judge are more sensitive to community concerns than are staff who work for an appointed official?

   e. What effect do you think it has (would have) on the budgets for intake, detention, and probation services in this state/county?

9. At this time, is there adequate funding of probation, detention, and intake services?
_____Yes _____No _____Undecided _____No Opinion
Comments: _____

Would there be greater funding of these services if they were not court-operated?
_____Yes _____No _____No Difference _____Undecided _____No Opinion
Comments: _____

10. Should juvenile courts have a responsibility for ensuring proper delivery of children's services which are ordered by the courts but which the courts do not administer?
_____Yes _____No _____Undecided _____No Information
Comments: _____

If yes, what procedures or actions should the court take to ensure the proper delivery of these services?

Do you think the court should apply these same procedures or actions to services that are operated by the court?

11. If you could change the way intake, detention, and probation services are run, what would you change or what would you change to?

12. General Comments:

PART II
COURT SERVICES ORGANIZATION: CHANGES AND EVALUATION

1. Have there been any reorganizations or transfers of service programs or personnel between the court and other agencies in the last 10 years?
_____Yes _____No _____Don't Know
Comments: _____

a. If yes, have these changes improved the adequacy of services received by the court? (If no, or don't know, go to Intake.)
_____Yes _____No _____Undecided _____No Information
Why? _____

b. What were these changes intended to accomplish?

c. Have these changes been successful in accomplishing these goals?
_____Yes _____No _____Undecided _____No Information
Comments: _____

Intake

1. In your jurisdiction, who determines whether a formal complaint should be filed?

a. Was this procedure initiated in order to better protect the due process rights of the child?
_____Yes _____No _____No Information

Has this practice effectively operated to protect these rights?
_____Yes _____No _____Undecided _____No Information
Comments: _____

b. If no, what advantages or disadvantages are there/would there be in having the prosecutor determine whether to file?

2. Is the child informed of his/her due process rights during informal intake procedures?
_____Yes _____No _____No Information

3. In this jurisdiction, is the child encouraged to have legal counsel present at formal intake hearings or informal interviews?
_____Yes _____No _____No Information

a. If yes, has this practice effectively operated to protect these rights?
____Yes ____No ____Undecided ____No Difference ____No Information

4. In your jurisdiction is the judge consulted on whether a child is diverted from the court or the complaint set for adjudication?
_____Yes _____No _____No Information

a. What are the advantages or disadvantages of having the judge consulted?

5. In order to receive a referral to a diversion program, is a child more likely to admit charges if this will get him/her a referral to an informal diversion program and get out of a court hearing?

Do you believe that informal procedures (such as diversion or intake-level screening of complaints) infringe upon the child's right to due process?

6. Are there written guidelines for determining whether a child is diverted from the court at intake?
_____Yes _____No _____No Information
a. If yes, are these written guidelines taken from the law, court rules, administrative guidelines, prosecuting attorney's policy, etc.?

b. What are the advantages and disadvantages of having written guidelines?

7. In this jurisdiction, does a judge receive information about the offense or about the child before the formal hearing on the facts is held?
_____Yes _____No _____Undecided _____No Information
a. What are the advantages or disadvantages of a judge doing so?

8. If you could change the current intake system and/or practices, what changes would you make?

Probation

1. Do probation officers file probation violation complaints on children they supervise?
_____Yes _____No _____Undecided _____No Information
Comments: _____

If yes, does this procedure create situations of conflict of interest between the probation officer's roles as complainant and caseworker?
_____Yes _____No _____Undecided _____No Information
If no, why not? _____

2. In your court, is there more likely to be formal judicial review of probation supervision because the probation department is operated by the court rather than by the state or the county?
_____More Likely _____Less Likely _____No Difference _____No Opinion
Comments: _____

3. What are the strengths and weaknesses of present probation services?
Comments: _____

4. If you could change the current probation practices and/or services, what changes would you make?

5. Is there currently a state subsidy for probation services?
_____Yes _____No _____No Information
If so, what is it intended to accomplish? _____

What are the details of the subsidy? _____

Has it been successful? _____

Detention

1. What agency in your jurisdiction is designated to operate the secure detention facility?

2. Once a child is detained, what court officer reviews the detainment?

3. How soon after detention does this review take place?

4. Does the child have a right to appeal the findings of the detention review?
_____Yes _____No _____No Information

5. Are less restrictive placements considered in lieu of secure detention?
_____Yes _____No _____Undecided _____No Information
If yes, what are the alternative placements?

Under what conditions are less restrictive placements used?

6. What are the strengths and weaknesses of the present detention system and practices?

7. If you could change the current detention system and/or practices, what changes would you make?

8. General Comments:

PART III
ENVIRONMENTAL FACTORS

1. Is there any currently pending legislation, resolutions, etc., which will affect the juvenile justice services?
   _____Yes _____No
   If so, please describe: _____

   a. Who is sponsoring it? _____
   b. What groups are supporting it? _____
   c. What groups are opposing it? _____
   d. At what stage are the hearings (sub-committee, committee, floor, etc.?)
   e. How will it affect your court if passed in its present form?
   f. What prompted the initiation of the act? _____
   g. Do you support it?
      _____Yes _____No Comments: _____
   h. Will it effectively achieve its objectives?
      _____Yes _____No Comments: _____
   i. Will it affect your court in ways different from its affect on other courts?
      _____Yes _____No Comments: _____

2. Are there any organized interest groups in your community which are concerned with the operation of the justice services?
   _____Yes _____No Comments: _____

   If so:
   a. Who are they? _____
   b. Does their membership include any current/former court personnel?
      _____Yes _____No Comments: _____
   c. What type of issues are they concerned with? _____
   d. What impact have they had on the operation of the court in the past? _____
   e. What impact do you expect them to have in the future? _____
   f. Do you support the aims of this group(s)?
      _____Yes _____No Comments: _____

3. What is the attitude of the general community towards juvenile services?

   a. Is it generally supportive? _____
      If not, is there pressure to emphasize punishment?
      _____Yes _____No Comments: _____
   b. Has there been a "public uproar" over any of the services in the past?
      _____Yes _____No Comments: _____
   c. Do the attitudes distinguish between services provided and general feelings about the court (or all courts)?
      _____Yes _____No Comments: _____
   d. Are there any individuals who are opinion leaders among the lay public concerning juvenile services?
      _____Yes _____No If yes, who? _____
      What issues have they been involved in? _____
      What positions have they taken? _____

4. What are the attitudes of the media towards juvenile services?

   a. Have there been any media reports on court service programs in the last few years?
      _____Yes _____No
   b. If so, what was the general tone of the report(s)? _____
   c. Are there any reporters who seem to have a special interest in the juvenile court?
      _____Yes _____No
   d. What has been the impact of media coverage on the court?

5. What is the relationship between the judge and the county commissioners?
   Generally friendly? ( ) Generally cooperative? ( )
   Comments: _____

   a. Have there been any publicized conflicts between them in the past?
      _____Yes _____No
      If so, how were these conflicts resolved? _____
      Have the commissioners shown much interest in juvenile court services in the past?
   b. Is there much likelihood this relationship will change in the near future?
      _____Yes _____No
      If so, why? _____

6. What is the over-all relationship between the court and welfare/social services/educational/other treatment agencies/police department/sheriff?
   Generally friendly? ( ) Generally cooperative? ( )
   Comments (can be different on each kind of agency): _____

7. What is the over-all relationship between the court and other juvenile service-relevant agencies/individuals in the community (e.g., schools, private service agencies, private psychologists/psychiatrists)?
   Generally friendly? ( ) Generally cooperative? ( )
   Comments (can be different on each kind of agency): _____

   a. Has there been any serious conflict in the past?
      _____Yes _____No If so, what about?_____

   b. How was it resolved?_____

   c. Has conflict with these agencies affected the operation and/or organization of the court?
      _____Yes _____No Comments:_____

8. Any serious conflict between the court and any federal, state, or local planning bodies?
   _____Yes _____No
   If so, what was the conflict about?_____
   How was the conflict resolved?_____

9. Does the judge play a visible role in community affairs outside of the court?
   _____Yes _____No Comments: _____

   a. If so, have the positions taken by the judge had an impact on the services offered by the court or in the way they are operated?

   b. If so, has this been done by his advocacy with the county commissioners, the public, the state legislature, the party organizations, social welfare community, united fund, media, other agencies, corporate leadership, or with whom?
      Comment:_____

10. Is the judge a member of the Board of Directors or active in the leadership of any community organizations or groups?

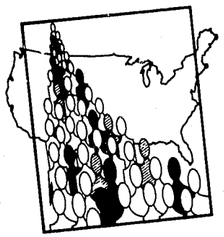
11. What agency supplies the salaries for services personnel in probation, detention, and intake?

    a. What influence does the court have on the amount of salary money these other agencies supply?
       _____Significant _____Not significant _____Undecided

12. Can you recommend other people who are particularly knowledgeable and influential in the area of juvenile court services in this state that we should interview?
    _____Yes _____No
    If yes, please indicate below:
    Name Agency Title Address/Phone

13. Do you have additional comments about the subject matter of this study, the questions, the interview, the questionnaire, etc.? If you do, please given them to us here:

APPENDIX C
SELECTED TABLES



SEPARATION OF POWERS

State	Explicit separation of powers		Separation described as			Prohibition of powers directed toward			Exceptions to separation		
			Separate or distinct	Divided	Magistracy	Institutions	Persons	Both	Except as provided		Singular exception
	Yes	No							Express		
Alabama	★	...	...	...	★	★	...	...	★	...	...
Alaska	...	★	...	...	...	...	...	...	...	...	...
Arizona	★	...	★	...	...	...	...	...	...	...	...
Arkansas	★	...	...	...	★	★	...	...	...	★	...
California	★	...	★	...	...	...	★(b)	...	★	...	...
Colorado	★	...	★	...	...	...	★	...	★	...	...
Connecticut	★	...	...	...	...	...	★	...	★	...	...
Delaware	...	★	...	...	★	...	...	...	...	...	...
Florida	★	...	★	...	...	...	...	...	...	...	...
Georgia	...	★	...	...	...	...	★	...	★	...	...
Hawaii	...	★	...	...	...	...	...	...	...	...	...
Idaho	★	...	★	...	...	...	...	...	...	...	...
Illinois	★	...	★	...	...	...	★	...	★	...	...
Indiana	★	...	★	...	...	★	...	...	...	...	...
Iowa	★	...	★	...	...	...	★	...	★	...	...
Kansas	...	★	...	...	...	...	★	...	★	...	...
Kentucky	★	...	...	...	...	...	...	...	...	...	...
Louisiana	★	...	...	...	★	...	★	...	★	...	...
Maine	★	...	★	...	...	...	...	★	...	★	...
Maryland	★	...	★	...	...	...	★	...	★	...	...
Massachusetts	★	...	...	...	★(a)	★	...	...	...	...	...
Michigan	★	...	...	★	...	...	★	...	★	...	...
Minnesota	★	...	★	...	...	...	★(b)	...	★	...	...
Mississippi	★	...	...	...	★	...	★	...	...	...	...
Missouri	★	...	...	...	★	...	★	...	★	...	...
Montana	★	...	★	...	...	...	★	...	★	...	...
Nebraska	★	...	★	...	...	...	★(b)	...	★	...	...
Nevada	★	...	★	...	...	...	★	...	★	...	...
New Hampshire	★	...	...	...	★(a)	★	...	...	...	...	...
New Jersey	★	...	★	...	...	...	★(b)	...	★	...	...
New Mexico	★	...	★	...	...	...	★	...	★	...	...
New York	...	★	...	...	...	...	...	...	...	...	...
North Carolina	★	...	★	...	...	...	...	...	...	...	...
North Dakota	...	★	...	...	...	...	...	...	...	...	...
Ohio	...	★	...	...	...	...	...	...	...	...	...
Oklahoma	★	...	★	...	...	★	...	...	...	★	...
Oregon	★	...	★	...	...	...	★	...	★	...	...
Pennsylvania	...	★	...	...	...	...	...	...	...	...	...
Rhode Island	★	...	...	★	...	...	...	...	...	...	...
South Carolina	★	...	★	...	...	...	...	...	...	...	...
South Dakota	★	...	★	...	...	...	★	...	...	...	...
Tennessee	★	...	★	...	...	...	...	...	...	...	...
Texas	★	...	...	...	...	...	★	...	...	★	...
Utah	★	...	★	...	★	...	★(b)	...	★	...	...
Vermont	★	...	★	...	...	...	...	...	★	...	...
Virginia	★	...	★	...	...	★	...	...	...	...	...
Washington	...	★	...	...	...	...	...	★	...	...	★
West Virginia	★	...	★	...	...	...	...	...	...	...	...
Wisconsin	...	★	...	...	...	...	...	★	...	...	★
Wyoming	★	...	★	...	...	...	...	...	...	...	...
Total	39	11	28	2	9	7	23	3	22	4	2

(a) Massachusetts and New Hampshire more properly describe the separation in terms of institutional prohibitions.
(b) Both individual and groups of persons.

JUDICIAL VESTMENT CLAUSES

State	*Only one court identified*	*Two or three courts identified*	*Numerous courts identified*	*Legislative power to establish any other courts*	*Legislative power to establish lower courts*	*Legislative authority over specified courts*
Alabama	...	...	★	...	★	★
Alaska	...	★	...	★	...	...
Arizona	...	★	...	...	★	★
Arkansas	...	...	★	...	...	★
California	...	...	★	...	...	...
Colorado	...	...	★	...	★	...
Connecticut	...	★	...	...	★	...
Delaware	...	...	★	★	...	...
Florida	...	...	★	...	...	...
Georgia	...	...	★	★	...	...
Hawaii	...	★	...	...	★	...
Idaho	...	★	...	...	★	...
Illinois	...	★	...	...	...	...
Indiana	...	★	...	★	...	...
Iowa	...	...	...	★	...	...
Kansas	...	...	★	...	★	...
Kentucky	...	...	★	...	...	...
Louisiana	...	...	★	...	...	...
Maine	...	...	...	...	...	...
Maryland	...	...	★	...	...	★
Massachusetts	...	...	...	...	...	...
Michigan	...	...	★	...	★	...
Minnesota	...	★	...	...	★	...
Mississippi	...	★	...	...	...	...
Missouri	...	★	...	...	...	...
Montana	...	★	...	★	...	...
Nebraska	...	★	...	...	★	...
Nevada	...	★	...	...	...	★
New Hampshire	...	★	...	...	★	...
New Jersey	...	...	★	...	★	...
New Mexico	...	...	★	...	★	...
New York	...	...	★	...	...	★
North Carolina	...	...	...	...	...	...
North Dakota	...	...	★	...	...	★
Ohio	...	★	...	...	★	...
Oklahoma	...	...	★	...	...	★
Oregon	★	...	...	★	...	...
Pennsylvania	...	...	★	★	...	...
Rhode Island	★	...	...	...	★	...
South Carolina	...	★	...	★	...	...
South Dakota	...	★	...	...	★	...
Tennessee	★	...	...	...	★	★
Texas	...	...	★	★	...	...
Utah	...	...	★	...	★	...
Vermont	...	★	...	...	★	...
Virginia	★	...	...	...	★	...
Washington	...	★	...	...	★	...
West Virginia	...	★	...	...	...	...
Wisconsin	...	...	★	...	★	...
Wyoming	...	★	...	...	★	...
Total	4	21	21	10	23	9

ABOUT THE AUTHORS

John M. Pettibone is a Fellow in Social Policy at the Academy. His 25 years of experience in court services, both juvenile and adult, has included service as Director of the Division of Parole and Probation in the state of Maryland, Superintendent of Probation Development of the Ohio Adult Parole Authority, and Director of Court Services of the Franklin County, Ohio, Juvenile and Domestic Relations Court. He has also served as a presentence and social investigator in juvenile and adult courts, and as a supervising probation and parole officer. His publications in the field have been substantial, and he has taught community-based corrections at the graduate level at Xavier University of Ohio. His academic background includes master's degrees in sociology/social research and in public administration. His previous research activity has centered upon the impact of administrative review in decisionmaking, and the impact of volunteer, in-school supervision of juvenile offenders.

Robert G. Swisher is a Research Associate at the Academy and has served on the staff of both the Juvenile Court Services and Youth in Adult Courts studies of the Major Issues in Juvenile Justice Information and Training Project. For four years prior to joining the project, he was employed as a graduate research associate at the Disaster Research Center while pursuing graduate studies in sociology at the Ohio State University. While at the Disaster Research Center, he worked on a variety of projects, including emergency medical services, the delivery of mental health services in rural areas following disasters, and the planning for and response to chemical disasters. Prior to entering graduate school, he was the program coordinator for the Head Start Migrant Program in northwest Ohio.

Kurt H. Weiland practices family and administrative law in Columbus, Ohio. His interest in juvenile law has led him to participate in research projects at the Academy and also at Ohio State University's Program for the Study of Crime and Delinquency. He has served as clerk and referee in the Licking County Probate and Juvenile Court in Ohio and has prepared numerous research reports for the Ohio General Assembly. He holds a master's degree in political science and a doctorate of law from Ohio State University.

Christine E. Wolf was a Research Associate of the Academy and was on the staff of the Juvenile Court Services study of the Major Issues in Juvenile Justice Information and Training Project. Previously, she had been involved in the design, development, and administration of the Intake Department of Lake County (Ohio) Juvenile Court. Subsequently, she directed Lake County Juvenile Court's planning, program development, staff training, and grant writing functions. In addition, she coordinated the court's four

departments and served as a liaison with local, regional, and state agencies. She was also a researcher on the Institute of Judicial Administration, American Bar Association Juvenile Justice Standards Project.

Joseph L. White is Director of the Major Issues in Juvenile Justice Information and Training Project and Senior Fellow of the Social Policy Center at the Academy. Previous employment included such posts as Director of the Ohio Youth Commission, Director of the Ohio State Criminal Justice Planning Agency, and Assistant Attorney General for the State of Ohio.

He holds a bachelor's degree in political science, a master's in social work, and juris doctorate. At present he is an adjunct assistant professor of social work at Ohio State University. Dr. White serves as permanent consultant to the Council of State Governments, and as consultant to numerous state and federal agencies. He was a member of the National Advisory Commission on Standards and Goals Police Task Force. Although he has authored numerous articles and monographs, he is probably best known for two works published by the Council of State Governments, *Status Offenders: A Working Definition* and *The Future of Criminal Justice Planning.*

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