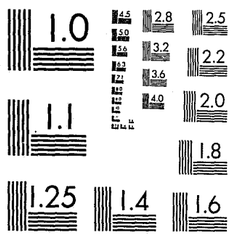

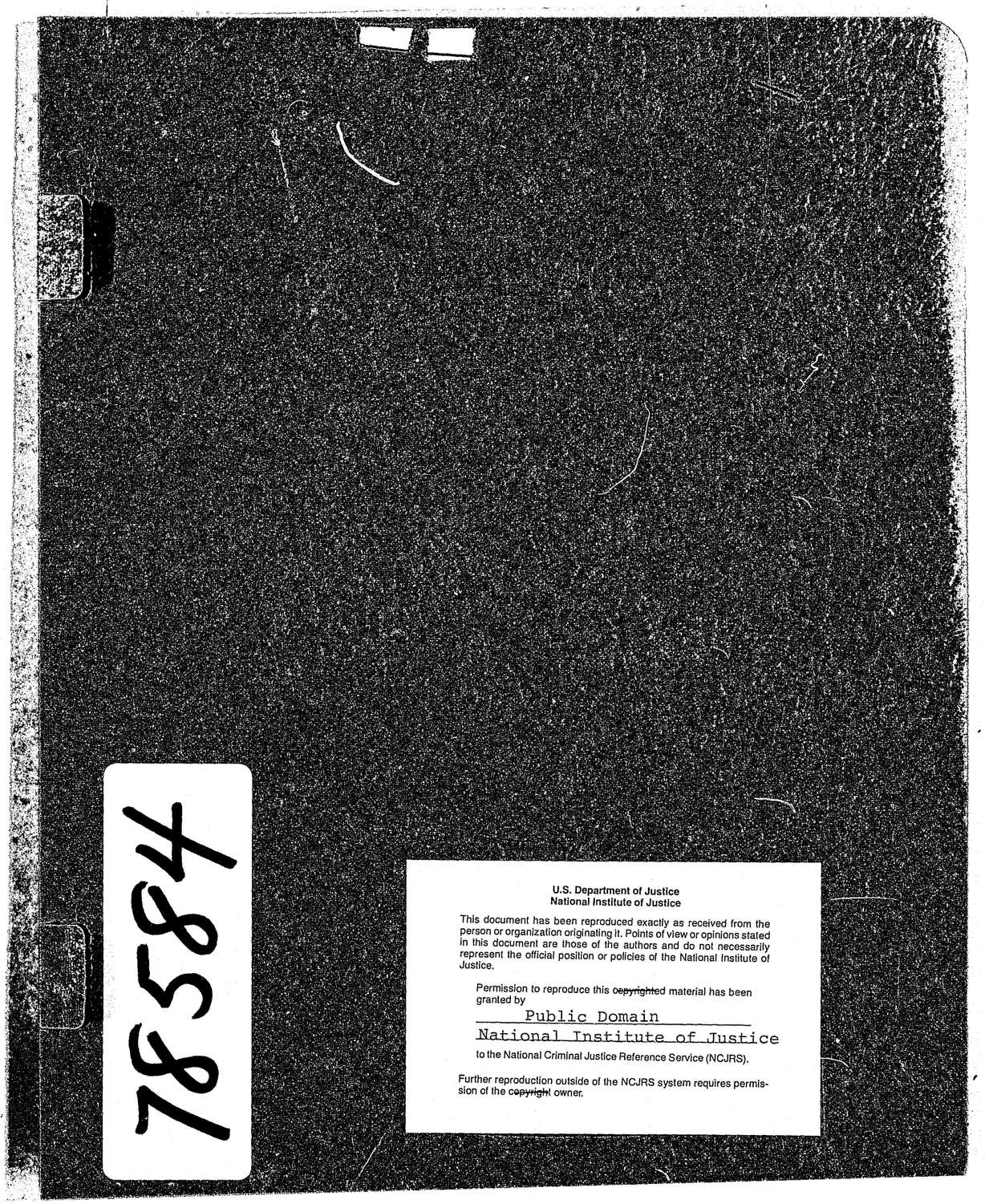

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Simplified Juvenile Court Procedure: Goals, Law, Reality

A variety of informal court procedures for juvenile offenders have been attempted. One model, combining formal and informal procedures, has been successful in West Germany. The author discusses the goals of simplified procedures and assesses their applicability to young offenders.

By Friedrich Schaffstein

Introduction

During current efforts to reform criminal law regarding juveniles, the simplified procedure defined in the Code of Juvenile Court Procedure has frequently been cited as a model, a highly acceptable compromise between the formal procedure of the juvenile courts and the informal procedure of the so-called "Guardianship Court." In 1977, the German Association for Juvenile Courts and Juvenile Court Assistance* demanded that the simplified juvenile court procedure be extended to include young adults (18 to 21) since juvenile law had been extended to include them. Presently, the ordinary accelerated procedure (Code of Criminal Procedure) is their only available alternative to conventional trial.

The question arises whether the simplified court procedure can meet expectations. The following analysis attempts to reach a conclusion by examining three aspects of the procedure: goals, concrete legal provisions, and application in court. Considering the fragmentary status of existing research, the conclusions drawn are necessarily preliminary and provisional.

Goals

Clearly stated in the Code of Juvenile Court Procedure are the goals of the simplified procedure: simplification, acceleration, and greater appropriateness for juvenile offenders. Of the three, acceleration and appropriateness appear most important since simplification refers merely to a reduction of personnel and paperwork.

*Editor's Note: This organization represents the legal interests of juveniles in West Germany.

Acceleration. It is widely accepted that the therapeutic intentions of juvenile corrections are most likely to be achieved if trial and punishment immediately follow the offense. This is especially true for measures that are intended for quick, short-term punishment rather than for a long-term treatment program. Experts argue that the rapid physical and psychological development of juveniles makes it especially important to keep the time between the offense and the trial and between the verdict and its execution as short as possible. A delay of 6 to 7 months between sentence and punishment (as is frequent in Germany) tends to obscure the cause-and-effect relationship between offense and retribution.

Although extensive research is still lacking, recent studies in the city of Oldenburg show that, for 65 percent of the probationers examined, the time between offense and execution of sentence was 4 to 10 months. The delay between the onset and the conclusion of the investigation ranged from 2 weeks to 4 months, and another 1 to 5 months elapsed between the end of the investigation and the trial. According to legislators, it is the particular goal of the simplified court procedure to shorten this unfortunate delay by allowing judges to dispense with time requirements and formalities before and during the trial.

Appropriateness. The goal of making the procedure more appropriate to the juvenile mentality is more difficult to define. Opinions on the educational value of a formal trial, with its emphasis on the dignity of the court, have changed in the 35 years since the introduction of the simplified procedure. In the fifties, experts tended to attribute an essential pedagogical effect to the traditional court ritual. Since then, new psychological and sociological insights (and a change in ideology) have brought about a reversal. Less formal and ritualistic trial procedures are considered appropriate today, and judges strive to establish a relaxed court atmosphere in order to minimize the accused's inhibitions and to overcome communication problems. However, the two types of procedure—formal and informal—are not irreconcilable; rather, the personality of the offender and the seriousness of the offense should determine which mode of trial is chosen. Unfortunately, no empirical studies of the impact of various trial procedures on juveniles exist at this time.

Nevertheless, it is safe to say that juveniles who are eligible for the simplified procedure (i.e., minor offenders) will generally profit from a relaxed, less formal court procedure. If the sentence is intended as therapy aimed at overcoming offenders' developmental problems (rather than a mere chastisement), a stress-free trial atmosphere is essential for diagnosing the juveniles' conflict areas and assigning appropriate corrective measures. With relatively severe offenses punishable by prolonged juvenile detention,* the simplified procedure may be insufficient and inappropriate although permissible under the law.

Legal Structure

The expressed goals of simplification, acceleration, and appropriateness exert an immediate legal impact because they determine if and to what extent the usual court procedure may be abandoned. The chief legal restriction limiting the application of the simplified procedure is that it must not interfere with the search for truth. In addition, the rules requiring the presence of the accused and his parents or legal guardians remain unaffected.

The legal restrictions regarding noninterference in the search for truth indicate a conflict of intent between the laws regulating juvenile court procedure (which strive for a maximum of educational effect) and the precepts of constitutional democracy. Both the acceleration of the criminal process and the abandonment of cumbersome formalities serve educational goals. However, minor aspects of an offender's constitutional protection must be sacrificed in the process.

This essential conflict of interest must be kept in mind when we ask exactly which procedures judges may abandon in favor of a simplified trial. The law states that a simplified procedure should be used only in cases involving disciplinary measures (fines, detention); it is not allowed if reformatory or jail confinement is anticipated. This restriction is illogical since the German Guardianship Courts, which use a far more informal procedure with fewer legal guarantees for the accused, may commit an offender to a reformatory.

Otherwise, there are few precise regulations. Perhaps this lack of legal guidelines and the restrictive interpretation of the provisions in legal commentaries make judges hesitant to apply the simplified procedure to its fullest extent.

Initiation of the procedure. The first step of the decision-making process lies with the prosecutor, who may (but is not required to) submit an oral or written request for simplifications. Next, the juvenile court judge determines whether the procedure is suited to the offense; the judge rejects the request if he expects to sentence the offender to a reformatory or prison or if he requires a more thorough examination of the evidence. If the judge realizes in the course of the trial that more evidence is necessary, he may, at any time before the verdict is rendered, abandon the simplified procedure and return the case to the prosecuting attorney for further investigation.

Simplification and acceleration of the hearing. While there is little disagreement concerning the initiation of the procedure, uncertainty exists with regard to the hearing itself, which is not called a trial in order to distinguish it from the ordinary procedure. With the exception of the "search for truth" clause, there are no legal provisions regulating the extent of permissible simplifications. Legal commentaries on the law indicate that the prosecuting attorney is released from the obligation to be present at the trial and that a special court clerk may be dispensed with; otherwise, the simplifications are minimal. This narrow interpretation of the law is understandable if we consider that most of the ordinary rules of court procedure are directly related to the search for truth. Other juvenile court regulations (the exclusion of the public, the presence or temporary exclusion of the accused, the thorough analysis of the accused's personality) are especially designed to protect the juvenile delinquent and are therefore indispensable in a hearing.

Foremost among ordinary procedure that experts consider essential to the search for truth are due process of law and examination of the evidence. Undoubtedly, due process of law cannot be sacrificed to achieve acceleration. Regarding the examination of evidence, it is obviously impossible to dispense with key witnesses or expert opinions. However, it is questionable whether the reading of the investigation report by a representative of Juvenile Court Assistance is absolutely necessary. Some experts even argue that, in the interest of expedience, the presence of Juvenile Court Assistance could be dispensed with altogether. This may not always be advisable, and, in any case, the law requires that Juvenile Court Assistance be notified of the trial date. Frequently, however, the organization is not even represented by the social worker who conducted the investigation, but by a so-called "court representative," who

*Editor's Note: Contrary to the conventional prison sentence, juvenile detention is not noted on the offender's criminal record.

"Das Vereinfachte Jugendverfahren: Ziele, Gesetz und Wirklichkeit" (NCJ 60812) originally appeared in Monatsschrift fuer Kriminologie und Strafrechtsreform, v. 5:313-322, 1978. (Carl Heymanns Verlag KG, Gereonstrasse 18-32, 5 Cologne 1, Germany) Translated from the German by Sybille Jobin.

merely reads the report aloud. It is not understandable why, in the absence of the investigating social worker, the judge should not be permitted to read the investigation report. If the accused contests the report, the court still has the opportunity (and the obligation) to summon the investigating official).

On the other hand, instructing the accused about the right to appeal or to refuse to testify is indispensable in protecting the rights of the accused. Also, it is commonly agreed that the accused's right to choose a defense counsel for the hearing should not be denied for the sake of simplification.

A far more dubious question is how much the hearing of the evidence may be simplified. All legal commentators rightly stress that the court's duty to conduct a thorough investigation of the offense and the offender's personality must not be restricted in any way. Yet, in the simplified court procedure, the judge can proceed more freely and is not obliged to admit all evidence presented. However, the discretion of the judge is limited since the refusal to admit evidence in most cases constitutes a violation of the "search for truth" clause.

Clearly, if acceleration and simplification are to be at all effective, we cannot be over punctilious in following regulations. Moreover, the accused still has the right to have a rejected item of evidence readmitted at a different court by appealing the case. Finally, the hearing of evidence presents few problems in practice since, as a rule, only offenders who plead guilty are selected for the simplified procedure in the first place; if the offender denies the charges, the simplified procedure is not advisable although it is theoretically possible from a legal point of view.

Appropriateness of the hearing procedure. While the goals of simplification and acceleration are severely limited by the court's need to examine the offense and the offender's personality, the goal of adapting the trial procedure to the juvenile mentality meets with fewer obstacles. For example, the strict regulations concerning the sequence of the procedure do not apply. It is therefore possible, and desirable, to interrogate the accused about his offense first, and to question him about his identity and personality at a later time. There is no need for traditional formalities such as having the judge wear a robe, the accused stand during the interrogation, and a definite seating order. These rituals are required by custom and administrative regulations, not by law. Commentaries also note that the hearing may be either an awe-inspiring ceremony or a highly informal "conversation" between juvenile court judge and offender. It is up to the judge to adjust the level of formality to the personality of the offender, the type of offense, and the verdict expected.

Application of the Procedure

Because of the indefinite legal status, which leaves much of the initiation and organization at the prosecutor's and judge's discretion, it is not surprising that there is no single established legal practice for the simplified procedure.

Statistics from recent dissertations and this writer's communication with the judges suggest regional differences in handling the simplified procedure. In Oldenburg, over 80 percent of all juvenile probationers sentenced to juvenile detention were tried using a simplified procedure while, in the State of Hessen, only 42 (14 percent) of a group of 300 juvenile inmates (recidivist probationers) were tried under the procedure. The three juvenile judges of the city of Braunschweig claim that only 10 to 15 percent of their cases are suited to a simplified procedure. They argue that it is advisable only in cases of very light disciplinary measures excluding detention verdicts. The city of Hannover seems to steer a middle course in that one-fourth to one-third of all cases are tried under the simplified procedure.

Many juvenile judges express their reluctance to use the procedure because they doubt that it is better suited to juveniles or that it significantly accelerates legal proceedings. At best, a small saving is realized because there is no official notification of accusation and no legally required delay between notification and court appearance. A Hannover juvenile judge estimates that this amounts to a saving of approximately 1 to 2 weeks, since ordinary cases take 3 to 4 weeks and simplified trials take 2 weeks after the judges have received the records. The duration of the actual trial proceedings is no shorter than the regular procedure, as can be observed in Oldenburg. Although most juvenile cases are tried under the simplified procedure, the elapsed time between the accusation, end of the investigation, and the hearing is particularly long.

Most of the judges interviewed also doubted that the simplified process is better suited to the juvenile personality. Again, the degree of formality varies greatly throughout Germany. In Hannover, for example, a representative of the prosecution is always present at the trial, while in Braunschweig this is never the case (a fact deplored by the Braunschweig judges because of the loss of educational impact). Most judges considered the frequent absence of a report by Juvenile Court Assistance a definite disadvantage of the accelerated procedure: usually the data about the offender's personality are insufficient unless records from earlier trials are available.

Conclusion

The judges' comments are representative of the differences in practical application, which at times seems to violate both letter and spirit of the simplified procedure. This multiplicity is not surprising since the law leaves the detailed application of the provisions to the discretion of judge and prosecutor.

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How should the current application of the simplified procedure be evaluated? The skepticism voiced by juvenile judges about the practicability of acceleration is entirely justified. The true reason why juvenile cases, especially those involving minor offenses, still are delayed far too long is the lack of personnel: all agencies involved in the judicial process, including police, prosecutors, judges, and Juvenile Court Assistance, are extremely overworked. The clumsiness of the German legal bureaucracy—especially blatant when compared to Anglo-Saxon countries—has been blamed for the long delay between accusation and sentence. The simplification of the hearing itself is of little use here—although even the reported savings of 1 to 2 weeks should not be underestimated.

The possibility of adjusting the court procedure to the juvenile personality seems more important. In this respect, many juvenile judges fail to understand and use the opportunities inherent in the legal provisions. Admittedly, the significance of these possibilities dwindles if the simplified hearing is squeezed between two ordinary trials in the same room on the same morning, the only noticeable difference being (at best) the absence of the prosecuting attorney. To show greater consideration toward the juvenile offender, the hearing should be scheduled on special dates and take place in the judge's private office rather than in the conventional courtroom. The procedure should deliberately stress informality and create a relaxed atmosphere, somewhat like a confidential conversation between judge and offender. The number of participants should be limited by dispensing with the court clerk and the prosecutor.

A final word of warning comes from a prominent German juvenile judge. Twenty years ago, he discovered that the concepts of simplification and acceleration may at times be at variance with the goal of making the trial more acceptable to juveniles. In the case of such a conflict he advises that consideration for the juvenile should always take precedence over speed. In fact, he always takes a particularly long time hearing simplified trials as part of an effort to heighten the educational impact.

In conclusion, while the effect of acceleration is negligible, the simplified procedure can make the trial more suitable for juvenile offenders. This alone justifies the extension of the simplified procedure to young adults. Judges must learn that the advantage of the simplified procedure lies in its immediacy and intimacy rather than in the dropping of a few regulations.

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