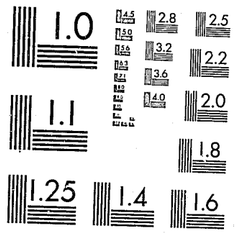

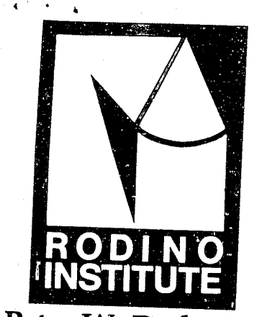

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Peter W. Rodino
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Second Annual Journal

JUVENILE JUSTICE REFORM

ACKNOWLEDGEMENT

The administration of Jersey City State College wishes to express its gratitude to Ms. S. Deon Henson who served as Director of the Peter Rodino Institute from its inception in 1977 through 1979 for her extraordinary efforts and her steadfast dedication to the cause of criminal justice. This journal is a singular testimony to her efforts.

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Conference on Juvenile Justice Reform
Rodino Institute of Criminal Justice
Jersey City State College
October 12, 1979

INTRODUCTORY REMARKS

by Peter W. Rodino Jr.

It is both a pleasure and an honor to open this conference on Juvenile Justice Reform.

The special pleasure comes from seeing so many friends among the distinguished participants and guests.

The special sense of honor comes from the reminder that the Institute of Criminal Justice here has adopted my name to identify itself.

Despite the official holiday this past Monday, today—October 12—is the traditional date to observe the discovery of the Americas by Christopher Columbus.

It is fitting that we gather on this date. We are here to explore the vast subject of juvenile justice reform. I hope that in our intellectual explorations today, we will discover some new insights and perhaps some clear answers to the questions which challenge us.

To launch us into the discussions, I would like to offer some background facts and comments on the theme of our conference. I hope these brief remarks will place our discussion subjects into a clear perspective.

Youth crime has in recent years become a central component of the urban street crime problem in America. Even after the sensationalism of news headlines has been discounted, the trends in number and seriousness of the offenses commited by juveniles are ominous. The problem of "juvenile delinquency" in the inner cities and across the nation is not grounded in the

impact of the traditional transgressions of youth—truancy, underage drinking and use of mild drugs, and pranks—but in the impact of crimes such as burglary, assault and battery, serious property damage, armed robbery and even homicide.

Exact percentages vary according to definitions being used, but it appears that young people under the age of 18 commit roughly half of all serious street crime offenses in the United States.

It makes no more sense to minimize the problem than it does to sensationalize it. The impressive assembly of participants at this conference reflects a recognition that we are faced with a troubling, pernicious problem that goes to the core of the quality of life in our communities.

Rarely has a social problem entailed the entire spectrum of legal, educational, economic, religious and family needs as this one does. I think we can all be heartened by the seriousness of the response of the communities of America to the problem. Americans are a hopeful people, and there is reason for hope.

First, in an effort to recognize what the problem is—and what it is not—a nationwide effort is underway to remove status offenses from the criminal justice machinery and to respond to those situations in a more constructive, thoughtful way than in the past.

As criminal codes are revised across the country, there is a crucial trend, which I support, to recognize the seriousness of particular offenses, and also to recognize that the youth of the offender is relevant during the adjudication process and during the corrections process. It is crucial that we recognize that the actual youth of the offender may be a key to success with him in the corrections process. Energetic correctional programs, which may indeed entail some degree of paternalism, present quite hopeful signs of success.

I am hopeful that newly developed standards and accreditation processes will help assure that the institutions to which we send the youthful offender will not be the destructive, unhealthy and debilitating places they have been in the past. This will be a slow process, but in every jurisdiction in the country there is reason to hope that the future of youth corrections will be much better than its sorry past. In those institutions where even minimal constitutional standards are not met and where there is a pattern of disregard for basic rights, strong remedies may be necessary. Congress this year is likely to approve legislation to empower the Attorney General of the United States to bring suit to protect the rights of institutionalized juveniles. The House has already passed this bill, and the Senate is expected to do so this year.

Other federal involvement has dramatically altered the face of juvenile justice across the nation. The dynamic roles of LEAA, the Department of Labor, the CETA program, the federal assistance to families programs and the increased awareness of the problem through federal studies have all improved our ability to cope with the perplexing and ominous questions posed by the juvenile justice system.

I strongly believe that we must look beyond the juvenile justice system to understand the source of the problems we face and to respond to these basic questions with the same energy and the same hope that the justice system itself needs.

First, the sad spectre of child abuse in the home has created a syndrome of violent behavior that must not be ignored.

Second, the decline of literacy rates and various problems in public education have helped create a class of youngsters much less able to cope in a constructive way with their own futures and the futures of their communities.

Third, adult unemployment creates stressful home settings in which parents are not able to meet their responsibilities. Their children are the primary victims.

Fourth, the problem of chronic youth unemployment may well be the single most important factor leading to youth crime.

Fifth, drug abuse and related property crimes must be pursued with enlightened recognition of what the problem is, and there must be vigorous enforcement of laws dealing with serious drug offenders.

In conclusion, it appears to be an awesome problem. But we are a nation of problem solvers, and we can prevail in the problems of the juvenile justice system. Today's conference can be a step forward.

Thank you,

LIST OF CONTRIBUTORS

The need for reform of the Juvenile Justice System is obvious and compelling. The issues are also complex.

Serious crime has increasingly become the province of the young offender, but the call for 'harsher treatment' is too simplistic to serve as a directive toward an adequate remedy. For the fault is not that the juvenile courts have erred on the side of softness, but, rather, that they have been *indiscriminately* too lenient and too harsh.

Comprehensive change in the operation of the juvenile courts and in the attendant system of services is necessary:

a. To make juvenile offenders accountable for serious misconduct.
b. To afford the citizenry more adequate protection from criminal behavior.
c. To provide clear policies for distinguishing between the need for protective intervention and punitive intervention. Such policies should ensure that:
   (i) The primary function of the juvenile court is that of trier of fact and adjudicator of conflict.
   (ii) Children who have committed criminal acts should receive dispositions based on the seriousness of their offense.
   (iii) Children who have not committed crimes should not be treated in criminal justice ways.

The above issues will be discussed, debated and elaborated upon by the following participants on the program:

PANEL I—RETHINKING PHILOSOPHICAL ASSUMPTIONS

Andrew von Hirsch, Professor (Moderator)
School of Criminal Justice
Rutgers University
Newark, New Jersey

Jerome Miller
National Center on Insitutions
and Alternatives
Washington, D.C.

Alan Dershowitz, Professor
Harvard Law School
Harvard University
Cambridge, Mass.

Allen F. Breed, Director
National Institute of Corrections
Washington, D.C.

PANEL II—DEVELOPMENTS IN JUVENILE JUSTICE REFORM

Stanley Van Ness, Commissioner (Moderator)
Public Advocate Office
Trenton, New Jersey

The Honorable John P. Collins
Superior Court of Pima County
Tuscon, Arizona

The Honorable Bertram Polow
Appellate Division of the Superior Court
Somerville, N.J.

The Honorable Orman W. Ketcham
National Center for State Courts
Williamsburgh, Virginia

The Honorable John J. Degnan
Attorney General
Trenton, New Jersey

HONORED GUESTS:

The Honorable Benjamin Civiletti
Attorney General
Washington, D.C.

The Honorable Peter W. Rodino, Jr.
Chairman, House Judiciary Committee
Washington, D.C.

We must be aware of the dangers which lie in our most generous wishes. Some paradox of our nature leads us, when once we have made our fellow men the objects of our enlightened interest, to go on to make them the objects of our pity, then of our wisdom, ultimately of our coercion.

Lionel Trilling as
quoted by Joan Didion in
Slouching Towards Bethlehem

The most melancholy of human reflections perhaps, is that on the whole, it is a question whether the benevolence of mankind does most good or harm.

Walter Bagehot
Physics and Politics

BACKGROUND PAPER

by S. Deon Henson

PART I

"CONFRONTING YOUTH CRIME"[1]

Contemporary society confers full adult status, with all its attendant privileges, obligations, responsibilities and expectations of self-control, long after young people are physically strong and sexually developed. They therefore have the capacity to do harm, even violence, before they are considered fully accountable. And in fact, members from this neither-adult-nor-child population (broadly from age 10 to 18) yeild a quota of offenders disproportionate to their numbers. Nor are their offenses (only) minor ones. Nationwide, over 41 percent of all arrests for index* offenses are of those under legal age. Sixteen percent are of people under age 15.[2] Children rob, murder, rape and maim.[3] Twenty two percent of those arrested for violent

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I am indebted to Richard Henson for editing this background paper: for releasing here and there a tortured phrase, cutting Gordian knots, and just generally illuminating the subject for me . . .

1. Borrowed from title of Twentieth Century Fund Task Force Report: *Confronting Youth Crime: Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders.* New York: Holmes and Meier Publishers, Inc., 1978.
2. Department of Justice, Federal Bureau of Investigation, *Uniform Crime Reports*, 1976.
3. See: Morgan, Ted, "They Think, 'I Can Kill Because I'm 14'." *New York Times Magazine*, 1975.

*Term referring to FBI category of seven serious crimes indicative of general crime trends.

crimes (murder, forcible rape, robbery and aggravated assault) under 18, and six percent are under 15 years of age. Juveniles are charged with 46 percent of the nation's property crime (burgarly, larceny, theft and motor vehicle theft).[4] Arrest statistics may be somewhat misleading since juveniles tend to be apprehended more readily than adults and it is not unusual for them to be arrested in groups for a single crime. Still, it is apparent that "in large measure, America's crime problem is its youth problem and vice versa."[5]

It has long been obvious that the response of the juvenile courts is inadequate—though it is not immediately clear what would consitute success. In 1967 the President's Crime Commission pronounced:

> the great hopes originally held for the juvenile court have not been fulfilled. It has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of delinquency, or in bringing justice and compassion to the child offender. To say that juvenile courts have failed to achieve their goals is to say no more than what is true of criminal courts in the United States. But failure is most striking when hopes are highest.[6]

But the report goes on to warn against the dangers of unrealistic expectations which may "justify extensive official action and . . . mask the fact that much of it may produce more harm than good."[7]

"High hopes", "unrealistic expectations" and ambivalence are blamed for having brought the beleaguered juvenile justice system to its present state of functional neurosis. Contradictory criticism and conflicting demands tug the system in opposite directions, so that it tries, like a figure in the anxiety dream, to ride off in all directions. The most astute critics seem to assume that the central ambivalence—between punishment and protection of the "offender"—is inherent,[8] somehow imbedded, prior to policy, in the very concept of juvenile justice so that it cannot be got at for repair.

As a recurrent term in the literature of reform, 'ambivalence' sometimes signals a snarl of emotional confusion and at other times is used to indicate a legitimate conflict of disiderata. We shall concentrate here on articulating this ambivalence (between punishing and protecting the youthful offender) and tracing its roots. It is the source of much of the fuzziness in our thought and practice concerning when and to what extent the state may interfere in the lives of juveniles. We may assume that ambivalence leads, in public life as in private, to a peculiar kind of harm: punitiveness packaged as benevolence is a paradigm of insulting injury. And to accept the ambivalence as inevitable is to condone the continuation of frustrations, crossed purposes, and downright injustices which we certainly should not tolerate without a struggle.

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4. *Uniform Crime Report*, 1976.

5. Zemring, Franklin E., Background Paper to Twentieth Century Fund Task Force Report, op cit. p 36.

6. President's Commission on Law Enforcement and The Administration of Justice. *Challenge of Crime in a Free Society*. Washington, D.C., U.S. Government Printing Office. Also Avon Books, 1968. p. 216.

7. Ibid. p. 218.

8. Silberman, Charles B., *Criminal Violence, Criminal Justice*. New York: Random House, 1978. p. 131. Twentieth Century Task Force Report, op cit., p. 31. President's Commission, op cit. p. 219.

KNOWLEDGE IS POWER

We are still burdened with a set of attitudes toward crime and punishment which found full expression in the late nineteenth century. By then, the religious fervor characteristic of American Puritanism had infused the reigning secular scientific positivism. The world was, to the disciples of this creed, a rational place, governed by laws which were, at least in principle knowable. No events dropped in uncaused. *Scientia potestas est* was the accepted dogma: with a little study, industry and application this unruly world could be made a better place. Man, as subject to natural laws, could likewise be improved. There flourished an enlightened and confident humanism, bearing the imprimatur of science.[10]

This sanguine, even buoyant mood shaped events of late nineteenth century America and nowhere was it more felt than in the turn of the century penal reform.[11]

It was in this context that the medical model of penal sanctions gained prominence. Penal institutions were called 'reformatories' and 'corrections facilities' to convey the faith that antisocial behavior could be reversed, corrected, *reformed*. Since treatment was to be tailored to individualized needs, broad unstructured discretion in determining *length* of incarceration was thought to be necessary. The challenge to the early assumptions of the adult system, the proposed remedies and fitful, slow progress toward change have been abundantly detailed elsewhere and need not be rehearsed here.[12] While it is helpful to recognize that adult and juvenile philosophies grew from the same soil, our interest is primarily in the peculiarities of the juvenile system, and its unique problems.

HOUNDS OF HEAVEN

It is an ancient idea that legal punishment is a form of vengeance, and that vengeance is uncivilized or appropriate only to the deity or both. This idea was dear to the "child savers",[13] who were leaders in the late nineteenth century 'progressive' reform movement which succeeded in separating juve-

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9. Lancaster, Lane W., *Masters of Political Thought* Vol III. Boston: Houghton Mifflin Company, N.D. p. 75.

10. *The Positive Philosophy of Auguste Compte*, Translated by Harriet Martineau, Vol I, London: Oxford Press, 1975. Chapter Three.

11. Stapleton, W.V. and Teitelbaum, L.E., *In Defense of Youth*. New York: Russel Sage Foundation, 1972. p. 130.
See also:
Platt, Anthony M., *The Child Savers—The Invention of* of Delinquency. Chicago University, Chicago Press, 1969.

12. For Example:
Harris, M. Kay, "Disquisition on the Need for a New Model for Criminal Sanctioning Systems", *W. Vir. Law* Review, Vol. 77, 1975.
Frankel, Marvin, *Criminal Sentencing: Law Without Order*. New York: Hill and Wang, 1972.
von Hirsch, Andrew, *Doing Justice: The Choice of Punishments*. New York: Hill and Wang, 1976.
Dershowitz, Alan, *Fair and Certain Punishment*. New York: McGraw-Hill Book Company, 1975.
Singer, Richard, *Just Deserts Sentencing*, Cambridge Mass.: Ballinger Press, 1979.

13. "The term 'child savers' is used to characterize a group of 'disinterested' reformers who regarded their cause as a matter of conscience and morality, serving no particular class or political interests. The child savers viewed themselves as altruists and humanitarians dedicated to rescuing those who were less fortunately placed in the social order. Their concern for 'purity', 'salvation,'

nile and adult court procedures and laid the groundwork for the establishment of a separate *system* of juvenile justice. They believed that society's prime obligation in regard to juvenile crime was not to punish the offender but to redeem him. They found punitive sanctions morally repugnant and perceived traditional precepts of justice as too narrow for childhood conflicts: they nevertheless placed virtually all of society's duty to children under the aegis of the justice system.

The guiding light for the early reformers was the old English common-law Parens Patriae doctrine. The Latin term, borrowed from chancery law, refers to the power of the state to proceed in the place of parent to shield interests of minor's person or property.[14]

Expressing a general faith in the feasibility of introducing scientific principles into law, the reformers thought the business of the court should be to probe the why of misbehavior in order to facilitate change.

> The problem for determination by the judge is not, has this boy or girl committed a specific wrong, but what is he, how has he become what he is and what had best be done in his interest . . . to save him from a downward career.[15]

The intent of juvenile intervention was thus not limited to or even mainly directed to, correcting a transgressor of the law. The original system rested logically on the premise that the state has the right to intervene when it deems necessary to make *better people.*

> Many of the child savers reforms were aimed at imposing sanctions on conduct unbecoming youth and disqualifying youth from the benefit of adult privileges. The child savers were more concerned with restriction than liberation, with the protection of youth from moral weaknesses . . . The austerity of the criminal law and criminal institutions were not their major target of concern, nor were they especially interested in problems relating to "classical" crimes against person and property. Their central interest was in the normative behavior of youth—their recreation, leisure, education, outlook on life, attitudes to authority, family relationships, and personal morality.[16]

One of the leaders wrote:

> Never before have such numbers of young boys earned money . . . and felt themselves free to spend it as they choose in the midst of vice deliberately disguised as pleasure.[17]

Since the court was only acting in the best interest of the child and since

'innocence,' 'corruption,' and 'protection' reflected a resolute belief in the righteousness of their mission."
Plat, Anthony M., *The Child Savers: The Invention of Delinquency.* Chicago: The University of Chicago Press, 1969. p. 3.

14. *In Re Turner* defined Parens Patriae as "the soveriegn power of guardianship over persons under disability such as minors, insane or incompetent persons". 94 Kans. 115, 145 P. 871, 872. See also: *McIntosh v. Dill,* i, 205 P. 917, 925. But ". . . . its meaning is murky and its historic credentials are of dubious relevance . . . taken from chancery . . . but there is no trace of the doctrine in the history of criminal jurisprudence." *In Re Gault,* 387, U.S. 1966. p. 16.

15. Mack, Julian, "The Juvenile Court," *Harvard Law Review,* XXIII (1909), p. 107.

16. Platt, Anthony M., *The Child Savers.* Chicago: The University of Chicago Press, 1969. p. 99.

17. Addams, Jane, *The Spirit of Youth and City Streets.* New York: Macmillan Publishing Company, 1930. p. 14.

justice for children was not to be a penological or criminal matter, the rules of criminal procedure were considered inapplicable.

> It is, of course, because children are, generally speaking, exempt from criminal penalties that safeguards of the criminal law, such as Rule 5 and the exclusionary Mallory rule, have no general application in juvenile proceedings.[18]

And:

> . . .Special practices . . . follow the apprehension of a juvenile. He may be held in custody by the juvenile authorities—and is available to investigating officers—for five days before any formal action need be taken. There is no duty to take him before a magistrate, and no responsibility to inform him of his rights. He is not booked. The . . . intent is to establish a non-punitive, non-criminal atmosphere.[19]

The rationale went something like this: When an adult is accused of a crime the state may interrupt and ultimately deprive the adult of his "inalienable" right to liberty only under scrupulously defined conditions. (That because the writers of the constitution had the foresight to protect the individual citizen from the heavy hand of the state.) However, in the case of children it is assumed that when they are "involved" in delinquent acts or otherwise in bad straits, it signals parental failure in providing custodial care. And it is *custody* not liberty that children are entitled to. Thus (so the rationale goes) the state has not merely a right, but a *duty* to provide custodial care when parents default in their responsibilities.

In fact, rules of procedure, especially adversary procedure, were considered antithetical to the therapeutic goals of the juvenile proceedings. The child was to be made "to feel that he is the object of [the state's] care and solicitude" . . . not that he was on trial.[20] The benefits of loose, informal proceedings were expected to more than offset any disadvantages:

> . . . the juvenile is not being tried as a criminal, the court is not going to punish him, and criminal court tactics of resistance are not appropriate in juvenile court . . . Where punishment has been truly eliminated, real "victory" is realized when a delinquent has been rehabilitated. The real "defeat" lies in obstructing the legitimate operation of the rehabilitative mechanism.[21]

"CHILDREN AFRAID OF THE NIGHT WHO HAVE NEVER BEEN HAPPY OR GOOD . . ."*

The imagery of medical and therapeutic experts nurturing troubled children back to moral vigor is persistent and . . . tempting. Quoting a colleague with approval, Justice William O. Douglas conveys its sentimental appeal:

> . . . the judge . . . and the bailiff and the other court attendants

*Auden, W. H., *September 1, 1939.*

18. Harling v. United States, 11 U.S. App. D.C. 174, 295 F. 2d 163 (1961).

19. Edwards v. United States, 117 U.S. App. D.C. 383, 384, 330 F. 2d 849, 850 (1964).

20. Mack, Julian, The Juvenile Court 23 *Harvard Law Review* 104, (1909) p. 119-120.

21. Welch, Thomas A., "Delinquency Proceedings-Fundamental Fairness for the Accused in a Quasi-Criminal Forum" *Minnesota Law Review* 50 (1966) 681-82.

> are like those on a hospital staff dressed in white. We are doctors, nurses, orderlies. We are not there to administer a law in the normal meaning or criminal law. We are there to diagnose, investigate, counsel and advise. We are specialists in search of ways and means to correct conduct and help reorient wayward youngsters to a life cognizant of responsibilities to the community.[22]

Everyone is entitled to occasional flights of fancy. But this one is borne on an analogy that truly menaces the collective intelligence.

For one thing, preventative medicine is prudent. Preventive penology is unfair . . . and dangerous.[23] The history of juvenile justice shows a constant tendency to blur the distinction between punishment and prevention. The child savers indicated that ill fortune was a sign of incipient anti-social conduct[24] and made no distinctions between needy, neglected and delinquent children. Mary Carpenter "spoke for all the reformers of the 1800's" when she declared:

> [Children under 14] may be classed together . . . for there is no distinction between pauper, vagrant and criminal children which would require a different treatment.[25]

When the Juvenile Court Act of 1899 designated the court surrogate parent, the court undertook to attend to *all* children in trouble. In assuming the right of the court to intervene in the best interest of the child, the behavior or situation (e.g., whether the child offended or was offended against) was of interest only in prescribing the manner of treatment.

It is important to emphasize that treating children rather than punishing them is more than a specific application of the rehabilitative ideal. It is an instance rather of the legislation of morality, a case in which the state claims license to govern the morals of its youth Adult rehabilitation as a post-conviction goal of punishment has been chaotic enough. In the juvenile system where distinctions between preventive, protective, predictive and punitive measures have been glossed over, mayhem occurs long before the dispositional stage.

Court Cases

Several rulings present a struggle to bring some semblance of standardization and order to the *adjudication* phase of the juvenile court process:

Kent v. United States. 383 U.S. 541 (1966) The juvenile court first came under Supreme Court scrutiny in the case of sixteen year old Morris Kent. Kent was tried in an adult court and convicted of rape and robbery after the juvenile court judge waived jurisdiction. His sentence was thirty to ninety years. The Juvenile Court Act of the District of Columbia in which the issue was raised, provided for a waiver to adult court after a "full investigation".

22. William O. Douglas, Forword, in Edward Wakin *Children without Justice: A Report By The National Council of Jewish Women.* New York: National Council of Jewish Women, Inc., 1975. p. 5.

23. See for example:
von Hirsch, Andrew, "Prediction of Criminal Conduct and Preventive Confinement of Convicted Persons," *Buffalo Law Review*, Vol. 21, No. 3, 1972.

24. Actually, to be quite precise, each was the cause of vers a tergo. The poor were poor because they were anti-social (not industrious) and they were not social because they were poor.

25. Fox, Sanford "Juvenile Justice Reform: An Historical Perspective," *Stanford Law Review*, Vol. 22 (1970) p. 19.

The Supreme Court was to rule only on:

> . . . the petitioner's arguments as to the infirmity of the proceedings by which the court waived its otherwise exclusive jurisdiction.[26]

The Supreme Court interpreted the "full investigation" broadly to incorporate constitutional principles relating to due process and the assistance of counsel. Thus, though it raised narrow issues, Kent became the first case in which the Supreme Court suggested that constitutional principles were applicable to juvenile proceedings. In the much quoted Justice Fortas statement the court invited a broader challenge:

> There is evidence for . . . concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[27]

Here as in the next landmark case, the court did not question the philosophy of the juvenile court system but rather lamented the gap between performance and its "original laudable purpose".[28] The assumption behind the challenge to the waiver was that waiver to adult court represents a defeat in that the juvenile is denied the "benevolent protection" of the juvenile court. In Kent's case that was obviously true; but as the next case will show, it tends to be truer for serious crimes than for less serious crimes. The ruling on Kent was that prior to a waiver which would transfer the matter to an adult court, a youth must be afforded a waiver hearing consistent with the requirements of due process and fairness, including the right to counsel at the hearing and access by council to the juvenile's social and other records and a statement of reasons for the Juvenile Court's decision.

In Re Gault, 387 U.S. I (1966) The bizarre case of Gerald Gault elicited further amplification of procedural rights due juveniles. Gerald Gault, age 15, in contrast to Morris Kent, did have the benevolent protection of the juvenile court. Under such protection, he was picked up at his home and told only that he had "done something wrong". The formal petition filed by the Deputy Probation Officer gave no specific account of the charges except: "said minor is under the age of eighteen and is in need of the protection of this Honorable Court and that said minor is a delinquent . . . "[29] He was adjudicated delinquent and sentenced to six years for allegedly making an obscene phone call. The precise content of the call is not at all certain since the judge did not require the complainant to confront the accused "that done the talking, the dirty talking over the phone" and no record was made of her testimony. Gault admitted to some paraphrasing of pubescent sexual "dirty talk" which he later recanted. Nevertheless the admission qualified as a confession to the charge of having made "lewd phone calls".

In an informal procedure that did not require confrontation and cross examination of the accuser or instruction about self incrimination or the right to counsel, Gault was committed to treatment to the State Industrial School until he was "cured" or until his twenty-first birthday, whichever came first.

26. Kent v. United States, 552.
27. *Kent v. United States*, 556.
28. *Ibid.* 555
29. *Gault*, 63

The case went to Arizona's Supreme Court and was upheld. The Arizona Supreme Court defended each charge against the juvenile court proceeding by saying that it had comported well with Juvenile court philosophy. For example: Prior notice of the exact charge is not expected because "the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past." Since the "parent and the probation officer may be relied upon to protect the infant's interest" counsel is not crucial to fairplay. Failure to inform the youth about the privilege against self incrimination was held proper because "the necessary flexibility for individualized treatment" would be enhanced by it.[30] The Supreme Court, however, rejected those answers and reversed the earlier decision ruling that juveniles must be accorded "the essentials of due process and fair treatment". Specifically a child facing possible institutionalization is due the following procedures:

1. The child and his parents are entitled to a written notice of the charges which must "set forth alleged misconduct with particularity," and which allows sufficient time for the preparation of a defense.
2. The due process clause of the Fourteenth Amendment to the United States Consitution requires that in cases in which commitment of a juvenile to an institution is possible "the child and his parents must be notified of the child's right to be represented by counsel retained by them or if unable to afford counsel, that counsel will be appointed to represent the child."[32]
3. The Fifth Amendment right to remain silent is as applicable in the case of juveniles as it is with respect to adults.[33]
4. Absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with law and constitutional requirements.[34]

The last three significant cases involving the rights of juveniles

In Re Winship, 397 U.S. 1068 (1970) in which the United States Supreme Court decided that when charged with a violation of criminal law, the delinquency charge must meet the standard of proof "beyond a reasonable doubt" whenever there is a possiblity of institutionalization.

Traditionally, the standard in juvenile court was *a preponderance of the evidence* to support the charge of delinquency. The insistence on

> . . . the duty of the Government to establish . . . guilt beyond a reasonable doubt . . .[35]

had never been viewed as applicable in juvenile court because of its inconsistency with the Parens Patriae doctrine. A troubled child, it was argued, should not be denied the benevolent help of the juvenile court merely

30. Application of Gault, 99 Arizona 181, 407 p. 2d 760 (1960)
31. *Ibid.*, 33
32. *Ibid.*, 41
33. *Ibid.*, 55
34. *Ibid.*, 57
35. *In Re Winship*, 397 U.S. 358 (1970).

because there was some doubt as to whether or not he/she committed a delinquent act.[36]

After Winship, Kent and Gault it began to look as though delinquency hearings would be patterned after criminal trials involving adults. However, in *McKeiver v. Pennsylvania, 403 U.S. 528 (1971)* the United States Supreme Court refused to extend the right to trial by jury to juveniles. The Court took the position that even after Kent, Gault, and Winship, some procedural informality should remain in order to facilitate the goal of providing helpful, regenerative care and treatment. Finally, *Breed v. Jones, 421, U.S. 519 (1975)* extended the protection against double jeopardy to the juvenile court.

The rulings and details of these cases are, no doubt, familiar to most of the reading audience. However, it is here claimed that while they represent progress, they solved less than is generally assumed. It is for that reason and because the logic of the decisions is particularly germane to this background paper that they were briefly included.

Heralded for requiring procedural safeguards for children, Gault instigated significant changes in the adjudication stage of the juvenile court process. In compliance with the adversary format befitting the court, more lawyers now participate, and their roles, once mired in confusion are more clearly defined. Perhaps most importantly, the entire court process, once deliberately held from public view is now under considerable public scrutiny.

However, these cases have not (1) affected the preliminary stages of a juvenile's involvement with the system, (2) disputed or challenged the rehabilitative ideal *as a goal* of the juvenile process, or (3) affected the disposition of juveniles who have been adjudicated delinquent. The enormous unstructured discretion and consequent erratic treatment of juveniles stands between the present system and some approximation of a just and fair one. The remainder of this discussion will address the need for reform in these respects.

36. From the decision of the Court of Appeals of New York State in In Re Winship 24 N.Y. 2d at 199, 299 N.Y.S. 2d. at 417, 247, N.E. 2d at 255.

If you run after two hares you will catch neither.

Russian Proverb

The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appears.

Antonio Gramsci, Prison
Notebooks from the
Frontispiece to *Daniel Martin*
by John Fowles

PART II

WE, THE JURY . . .

(1) Since the beginning, the juvenile system has been dedicated to rescuing children from anything that might impair their character. Therefore a sweeping array of juvenile problems came to be lumped together under juvenile court jurisdiction. The focus on prevention meant:

> . . . linking up the criminal justice system with the schools, the family and other institutions that affected the lives of people considered *likely* to become criminal.
>
> In practice . . . the . . . emphasis on the environmental causes of crime became the political reality of increased control over aspects of the lives of many people—especially poor people—that previously had been neglected.[37]

In the adult system, broad discretion lead to disparity of treatment on the level of "a national scandal".[38] A juvenile case, however, has the same sources of discretion, but *in addition*, action may be launched on complaints from

37. Cooper, Lynn, et al., *The Iron Fist and The Velvet Glove: An Analysis of the U.S. Police.* Berkeley: Center for Research on Criminal Justice. 1975. pp 21-23 (Emphasis added).

38. Senator Edward M. Kennedy, *Congressional Record,* Senate, January 11, 1977.

39. Flicker, Barbara, "Discretionary Law For Juveniles" in *Social Psychology and Discretionary Law.* New York: Van Nostrand Reinhold Company, 1979. p 291.

parents, schools, neighbors, police, intake staff and judge, social worker, juvenile conference committee, or the juvenile prosecutor[39] with only the vaguest showing of any criminal conduct. And these opportunities for discretionary decision making coupled with the almost endless range of juvenile misconduct—not to mention the ambiguity of most descriptions of misbehavior—compounds the uncertainty of outcome exponentially for juveniles. Though the criteria varies with the jurisdiction, defining criteria for a finding of "delinquency" may include a) violation of any law or ordinance, b) habitual truancy from school, c) association with vicious or immoral persons, d) incorrigibility, e) behavior that is beyond parental control, f) absence from home without consent of parents, g) growing up in idleness or crime, f) deportment that injures or endangers the health, morals, or safety of self or others, g) use of vile, obscene or vulgar language in public, h) entering or visiting a house of ill repute, i) patronizing a gaming place, j) patronizing a place where liquor is sold, k) wandering in the streets at night, not on lawful business, l) engaging in an illegal occupation, n) involvement in an occupation or situation dangerous or injurious to self or others, o) smoking cigarettes or using tobacco in any form, p) loitering, q) sleeping in alleys, r) use of intoxicating liquor, s) begging, t) running away from a state or charitable institution, u) attempting to marry without consent, in violation of law, v) indulgence in sexual irregularities . . .[40]

While most of these items are descriptions of behavior which is entirely permissible for adults, the conduct would be sufficient to sustain a finding of delinquency for children. Incorrigibility, truancy, smoking, running away from home . . . are violations which apply only to children and since it is by virtue of their status as minors that children may be adjudged wards of the juvenile courts for violating them, these are called "status offenses."

Of course the list varies from state to state, but in general the Parens Patriae doctrine still permeates practice to the extent that it is assumed that protection is to be extended to children, and its corollary is a special set of obligations automatically incurred by youngsters. Failure to live up to those obligations may evoke anything from a scolding lecture to incarceration.

Many states, New Jersey included,[41] have attempted to distinguish between minors who have committed a criminal offense and those guilty of status offenses. Children deemed "in need of supervision" as contrasted with children adjudicated "delinquent' are variously called CHINS (children in need of supervision), PINS (persons in need of supervision), MINS (minors in need of supervision) or JINS (juveniles . . .). In New Jersey for example, the JINS provision allows for a juvenile to be charged with being a JINS on the basis of (but not limited to) the following criteria:

(a) habitual disobedience
(b) ungovernability or incorrigibility
(c) habitual vagrancy
(d) immorality

40. Katkin, et al., *Juvenile Delinquency and the Juvenile Justice System.* op cit., p 16-17.

41. Under a 1974 statute, N.J.S.A. 2A 4-45, a juvenile may no longer be charged with delinquency based upon the commission of a status offense. However, for being incorrigible, habitually disobedient, immoral, or exhibiting "deportment which endangers the juveniles own morals, health or general welfare" the youth may be "charged" with being a JINS (Juvenile In Need Of Supervision) and brought under the court's power for judicial intervention.

(e) roaming the streets at night
(f) deportment which endangers the juveniles own morals . . .[42]

Pursuant to the above criteria, the court's jurisdiction may be extended to allow for one of many avenues of court intervention.

The President's report recommended that "serious consideration should be given to complete elimination of the courts' power over children for non-criminal conduct.[43] But preventive proclivities are firmly entrenched and in practice the creative nomenclature has not translated to refinements in dispositions. Of the hundreds of thousands of juveniles incarcerated at any given time, status offenders account for somewhere between 25% and 50% of court business.[44]

There are two distinctly different objections to the expansive vigil over the non-criminal conduct of juveniles. The first, most often raised is a pragmatic objection: i.e., in a world of finite resources, this over reach of the system taxes and dissipates the capacity to cope with serious matters of crime and protection of the public. The second is a civil liberties kind of complaint against the prohibitionistic ethics which encroach on the liberty of its citizens. Americans have tended to be short tempered when it come to prohibitionist tactics on adult behavior but our tolerance has been oddly languid in allowing the government to meddle in the activities of its youth.[45]

We began this background survey by alluding to the popular claims that "high hopes", "unrealistic expectations" and ambivalence are to blame for what ails the juvenile justice system. It may be helpful to examine these claims in the light of what has been said.

Interpreted sympathetically, the high hopes for alleviating unnecessary ills, misfortune and mistakes of pre-adult life are innocuous enough. That society had a duty to its young which transcends 'ordinary notions of justice' seems incontrovertible. Who would deny that children should, in so far as is humanly possible, be protected from misery, shielded from abuse and rescued from neglect? These are legitimate social welfare concerns. They require social policy and agencies for the administration of succor and supervision. The nostalgic good will toward all children is a suitable affective climate for such enterprise. But to wear that emotional masque in situations where the appropriate response is anger and punishment is less than moral, and when the actual response *is* punitive, the net consequence is classically *cruel and unusual.*[46]

Moreover, in some respects the Gault decision added to the malaise of the juvenile system. For better or worse, the juvenile court before Gault had sans the adversary element, a pure social welfare function. Whether or not it succeeded is another point, it professed to know what it was about. It had the

42. N.J.S.A. 2A 4-45.

43. President's Commission, op cit. p 228.

44. Twentieth Century Fund Task Force, op cit., p 83.

45. And it is classically discriminatory meddling. Immorality (for the purposes of this discussion of status offenses) is too much in the eye of the beholder to trust government to dictate. Sexual precocity, for example, is often developmentally correlated with intellectual and physical precocity. We deny (or try to) sexual expression to the young because they are thought not to be able to bear the responsibility and emotional consequences. But children of privileged classes usually receive sophisticated instruction and contraceptive protection if they need it. Children of underprivileged classes become wards of the court.

46. Denial is a common psychological defense against anger, epitomized in Greek mythology where the avenging demons, The Furies, were called the Eumenides (the well intended ones).

backing of firm policy that stated it was to "act in the best interest of the child". After Gault the juvenile court had to be all things to all people. It was to protect the public, punish the wrongdoer, look to the needs of the child and deter others from further crime.[47] The Juvenile court now had, in other words, all the bewildering assignments of the adult court in *addition* to it's social welfare function. While the adjudication stage now has some structure imposed on it by the supreme court rulings, there remains enormous discretionary power over juveniles. Because we have not coherently separated out social welfare obligations to children from the requirements of criminal justice, there remains an extraordinary network of state interferences which operate outside the reach of Gault protections. Until the state desists in its role as a moralistic super parent, the looseness and diversity of extra-court trappings will continue to pose as great a threat to justice for juveniles as the in-court procedures did prior to Gault.

It is perhaps, then, more accurate to call the hopes pinned on the juvenile goals misplaced rather than overly "high" or unrealistic. It simply seems unwise to endow an arm of the state with the responsibility for shaping the character of its citizens—even its young citizens.

(2) One reason for the continued overvigilance of the system toward youthful behavior is that the fundamental ideals which the child savers propounded regarding rehabilitation have never been discarded. The Supreme Court on each of the occasions it reviewed the system, praised the "laudable goals" but criticized the system because it was not working as it had promised. Indeed, the landmark Gault decision would never have taken place had the system not been so egregiously malfunctioning. The underlying logic of the Supreme Court decision is of particular significance. What took a decade of unfolding in the adult system to bring about a rethinking of the rationale for punishment was expressed in the Gault case. The recognition that the system had not lived up to its promise of rehabilitation, that in fact it was often brutal, that the wide discretion which had been thought to be necessary had created an atmosphere of capriciousness and abuse. However, though the Gault case took us to the verge of questioning the rehabilitative ideal, it stops short of that and so it continues to divide reform theories. A current N.J. manual states:

> The taking into custody of an alleged juvenile delinquent or juvenile in need of supervision (JINS) is not considered to be an arrest, but rather a measure to *protect the health, morals* and well being of the juvenile.[48]

and:

> However, despite the increased formalization and the more extensive application of consitutional rights in juvenile proceedings, the primary goal of the system, that of rehabilitation, has been by no means abandoned. Rather than forsaking this ideal,

47. Dorsen, N., and Resneck, D., "In Re Gault and the Future of Juvenile Law." *Family Law Quarterly* Volume I (1967).
Bailey, W., and Pyfer, J., Jr., "Deprivation of Liberty and the Right to Treatment" *Clearinghouse Review.* Volume VII (1974).

48. New Jersey Department of Law and Public Safety Manual for Juvenile Officers. Division of Criminal Justice. p 40.
N.J.S.A. 2A: 4-54 (c) R 5:8-2 (a)

> the juvenile justice system has renewed its commitment to this end with renewed vigor . . .[49]

As in the case of the welfare concerns, we might wonder if the hopes for reversing destructive trends in childhood behavior might be more appropriately shifted to post-adjudication concerns for internal programs which (doubtless all will agree) should be designed to make sanctions as humane as possible. The emphasis, then, on the goal of punishment would be to the point of allocating punishments that are fair and just.

(3) The most important decision, once a child has come under the jurisdiction of the court, is the dispositional decision. Given the multiplicity of goals, the array of choices the judge may select from, and the fact that in most states the nature and severity of the offense do not limit the judge's decision, a rational outcome is as uncertain now as it was prior to Gault. Gerald Gault was sentenced to six years for making an obscene phone call. In that case the *sentence* was not disputed but only the process leading up to the disposition. Today, two juveniles who have committed identical offenses may receive disparate sentences ranging from unconditional discharge to detainment within a secure facility.[50] Even when efforts are made to distinguish between status and delinquency, a finding of delinquency is technically a loose concept and does not, as in specific labels after adult conviction (rapist, murderer, extortionist, etcetera) point to even a specific range of sentences.

Sometimes a judge is obliged to state reasons for his dispositional choice, sometimes not. Even when a recorded reason of justification is required, it would, in the present confusion, be difficult to contest it. Presumably, the judgment would be reversible if it were shown to be an abuse of the judges' discretion. But since the "special purpose of the juvenile court"[51] has become a veritable kaleidescope of purposes, the judge's reasoning could most likely be sustained *however* it was justified. Who's to say it is inappropriate? Inappropriate for what purpose? Given the wording in many jurisdictions, the court must find "the juvenile committed the acts alleged in the petition *and* is in need of care, supervision or confincment." Following that logic the court is within its rights to discharge a juvenile found to have committed homicide on the ground that the parents can provide better care than the state. The other side of that coin is that the court may sentence an incorrigible child to an indeterminate term on the ground, not of the child's failure, but of the parents'—on the ground, that is, that they are unable to manage the child.[52]

COMMENSURATE DESERTS FOR JUVENILES

Trailing the adult course of disenchantment with the rehabilitative ideal, some attempt has been made to establish more rational and fair sentencing practices in the juvenile system. A few recent proposals have cautiously

49. *Ibid.* p 4.

50. Many states now have rules against confining status offenders in high security facilities. But as the line between status offense and delinquency is often fuzzy or simply overlaps and because space in an appropriate facility is not always readily available, juvenile officers report that "rules must sometimes bend to accommodate exigencies".

51. McKeiver v. Pennsylvania 403, U.S. 528, 550 (1971).

52. Flicker, Barbara, "Discretionary Law For Juveniles" in *Social Psychology and the Law,* op cit. p 300.

followed the example of adult reform in keying concepts of desert and proportionality to the matter of 'how much to punish .

The just deserts position holds essentially a) that crime is reprehensible behavior and as such is appropriately shamed and stigmatized, b) that the violations of laws properly incurs punitive societal sanctions, and c) that the degree of punitiveness should be in proportion to the seriousness of the crime. In its prominent recent versions, just deserts holds also d) that penalties in general should be radically scaled down from those which prevail in the United States.[53]

Many of the same arguments used in shifting the focus in the adult system (where it has so shifted) from the goal of rehabilitation to that of deserved punishment apply with equal force to juveniles. Some with less force.

The criminal law has always recognized that it is inappropriate to punish people who are not responsible for their behavior and has reserved punishment for those who are culpable and blameworthy. For that reason, children under the age of seven have never been considered prosecutable.[54] However it seems a tame enough assertion to insist that:

> There are certain social norms—for example, the norm against killing—which in our culture are so basic to minimal civilized living that we might reasonably require children to understand and abide by them, at least beyond a certain very young age.[55] It does not seem inappropriate to hold, for example, that a ten year old boy who intentionally kills or mutilates another child has done something so obviously wrong, that it is legitimate to expect him to know that it is wrong; and hence to conclude that he deserves punishment.[55]

One of the reasons for refusing to admit such a basic notion of common sense to the juvenile system was laid to the attempt to spare the youthful offender the stigma of punishment But labeling the punishment 'treatment' scarcely disabused the offender of blame or stigma so long as the occasion for being singled out is the commission of an illicit act which (usually) is in disregard of society's moral norms.[56]

We should perhaps ask the question: whose reputation do we seek to protect by such verbal subterfuge, and why? By any other name we do punish children a great deal:

> The most striking fact is the sheer quantity of punishment meted out by a system that boasts of having replaced punishment with rehabilitation.[57]

Adding the figures from detention centers, juvenile corrections and adult jails (where juveniles are frequently placed when other facilities aren't

53. von Hirsch, Andrew, *Doing Justice: The Choice of Punishments.* New York: Hill and Wang, 1976.

54. Stapleton, W.V., and Teitelbaum, L.E., *In Defense of Youth.* New York: Russell Sage Foundation, 1972. p 1.

55. From and unpublished memo to: The Committee For The Study of Incarceration. Written by Susan Steward and Andrew von Hirsch. May 8, 1973. p 20.

56. von Hirsch, Andrew, *Doing Justice,* op cit. 1. 71 fn.

57. Silberman, Charles, *Criminal Violence, Criminal Justice.* op cit, p 320.

available) one source claims that at least 780,000 and possibly as many as 1,030,000 juveniles were incarcerated in a given year.[58]

There are three important things to say about the sort of denial that characterizes the juvenile justice system: First of all, our unwillingness to acknowledge legitimate connections between wrongdoing and penalties creates a system that operates diabolically. One does not need to be very sophisticated in psychological theory to know that the ability to identify anger and to cope with it is basic to a person's well being. Acknowledging legitimate sources of anger does not entail giving way to wrath. The neurotic paradox is that anger which is *not* acknowledged does the controlling so that its unwitting agent becomes a vehicle for chronic inappropriate over and under reaction to events. This seems an especially apt description of the juvenile justice system. The public panic over juvenile violence is well founded. An appalling number of grievous crimes are responded to by a system turned dumb or verbose but in either case, ineffectual. Less serious matters are far more likely to excite the sting of the system.[59] In mislabeling the actions of the system we get lost from the path of our intended goals. The second pitfall of this word game is that it teaches hypocrisy by example to those whom we would reform by sermon. Except that, thirdly, juveniles understand, quite well, notions of crime and punishment as reflected in the street-wise adage, "If you want to play, you gotta pay."[60]

But the price that must be paid, according to the just deserts theory, must comply with the principle of commensurateness which requires that the severity of punishment be proportionate to the seriousness of the offense.

As has been stated, *punishment*—of adults or children—entails condemnation or censure of the offender. The severity of the punishment conveys the degree of condemnation or blameworthiness. There are aspects of the youthful offender situation which require special considerations both in determining the seriousness of the offense and in computing the proportionate severity of the punishment.

Some examples are:

a) Most of us assume that children are under some broadly defined adult tutelage and that while they are 'learning' to be adults they will be inclined to pit their will against authority and generally test the limits of adult tolerance. At times they will misjudge those limits rather badly. On those occasions they will be punished but less so than an adult whom we expect to have learned the rules.

b) Also, because of inexperience the full consequences of a given action may not be apprehended by a juvenile as it would be expected to be by an adult. Some allowance must be made, for instance, when the ensued consequences, though foreseeable to an adult, were not intended by the juvenile. Part of what it means to be an adult is that it is appropriate to say of some things "you *ought* to have known better" so that an adult may be penalized for negligence even when the consequence was unintended.

58. Sarri, Rosemary C., *Under Lock and Key: Juveniles in Jails and Detention.* Ann Arbor, Michigan: National Assessment on Juvenile Corrections, University of Michigan, 1974.

59. Senator Kennedy's statement that the message to the juvenile is clear, "if juveniles want to get locked up, they should skip school, run away from home or be deemed "a problem". If they want to avoid jail, they are better off committing a robbery or burglary." is certaily supported by the literature and what splotchy statistics are available.

60. Silberman, Charles, op cit., p 355.

c) Children have less control and less resistance to impulse. One of the tests of maturity is the ability to delay gratification. We tend to be more forgiving of foolish impulse in young people for the simple reason that they have had less time to develop control to a reliable degree.
d) The relative independance and self-sufficiency of adulthood makes adults less prone to the pressures of peers. Or perhaps it is more accurate to say that peer pressure tends to comply with societal norms as people grow out of adolescence and childhood. In any case, there may frequently be reason to find juveniles less blameworthy either because of the "pressure to go along" or because the fear of ostracism consitutes a mitigating factor among groups of young people.
e) Related to the above, but distinct from it is the matter of a juvenile's dependency on his home situation. We might want to consider a young person less culpable in some conceivable stressful home environment. Such a consideration smacks of the very 'in the eye of the beholder' discretion this paper has tried to argue against. Nevertheless, it does seem as though we expect an adult to extricate himself from an unhappy home life whereas a young person may be unable to do so. And it is at least conceivable that some part of guidelines would provide for diminished culpability in the face of a demonstrably dire living situation.

When a deserts theory is applied to the proportioning of punishments, the first step is to scale the entire catalogue of sentences downward. One reason for doing so might be called the "doctrine of second chance":

> We expect childhood and adolescence to be a time when mistakes are made and moral growth occurs. Hence even where conduct is seen to be deserving of punishment, we may decide to punish with somewhat less severity than might otherwise be deserved, in recognition of the opportunities that childhood presents for further moral development.[61]

Another reason for dramatically scaling down the punishment for children is that less is more to a growing child. Two years of incarceration to a thirty-five year old man would be much less severe than two years out of the life of a rapidly developing adolescent. Moreover, time spent in an institution for a juvenile may be a much more horrendous punishment simply because he is more vulnerable to the harshness and the brutality of an institution than a full grown adult offender.

Three recent major reform proposals have incorporated the essentials of a just deserts scheme for juveniles. The Institute of Judicial Administration along with the American Bar Association conducted a two year study which produced twenty three volumes of data and recommendations. The Commission produced (as might be expected in so ambitious an undertaking) many definitional and procedural conflicts, cross-volume discrepancies and a great deal of overlap. It is, also, understandable that in such uncharted territory, the fine detail and refinements of practice remain to be worked out. Nevertheless, the Commission showed remarkable consistency on the principle of proportionality of sanctions to the seriousness of the offense, determinate dispositions, least restrictive alternative written decisions subject to

61. Steward, Susan, and von Hirsch, Andrew, op cit. p. 22.

review, and rigorously constrained proceedings.[62]

The Twentieth Century Fund Task Force Report, in turn, advocates a graduated sentencing policy, scaled down across the board in accordance with the principle of proportionality.[63] "In fashioning and justifying a discrete policy toward youth crime, the Task Force [was] guided by" basic desert principles:[64]

> *On Punishment:* . . . it is appropriate for the offender and the community to recognize that these measures are imposed, in part, as punishment[65]
> *On Proportionality:* . . . degree of punishment available for youth crime should be proportional to the seriousness of the offense.[66]
> *On Culpability:* . . . at age thirteen or fourteen, an individual may appropriately be considered responsible, at least to a degree, for the criminal harm he or she causes. . . . most young offenders . . . are aware of the severity of the criminal harms they inflict and that, much as they fall short of maturity or self-control, they are morally and should be legally responsible for intentionally destructive behavior. The older the adolescent, the greater the degree of responsiblity the law should presume.[67]
> *On Diminished Responsibility:* . . . a balanced sentencing policy toward young offenders must recognize both culpability and its limits. In keeping with that double edged concern, the Task Force proposed certain buffering conditions to protect young offenders from the full force of the criminal law. Consistent with the Task Force declaration that young people should learn that criminal behavior incurs punitive consequences, the report provides for procedures that minimize stigma, scale down penalties and in general allows for "room to reform" in the juvenile justice system.[68]

The Twentieth Century Report concludes with the admonition to refrain from subterfuge in dealing with young people:

> Young offenders are not easy to trick. Candor and consistency in sentencing policy are a first and fundamental step toward instilling respect for law and legal institutions in young persons whose respect for law is a critical element of their personal futures and the safety of our communities.[69]

62. IJA/ABA Juvenile Justice Standards Project, Standards Relating to Juvenile Delinquency and Sanctions, pp. 43-48.
See also: IJA/ABA Juvenile Justice Standards Project Summary and Analysis, pp. 270-271.
63. Twentieth Century Fund Task Force Report, op cit., p. 7.
64. *Ibid.* p. 6
65. *Ibid.* p. 14
66. *Ibid.* p. 8
67. *Ibid.* p. 6
68. *Ibid.* p. 17
Note that this is consistent with the "second chance" doctrine advocated by Susan Steward and Andrew von Hirsch, op cit., p. 22.
69. *Ibid.* p. 20

These two reports provide strong evidence for the shift in thinking about juvenile crime. The recommendations of each study were arrived at independently of one another and resulted from major investigative studies conducted by broadly based interdisciplinary committees composed of recognized authorities from areas relating to youth and crime. They differ on agency questions and on matters of jurisdiction[70] but concur on the need to implement a desert rationale as a firt reform priority.

Though of major significance, neither of these reports have the force of law. They are recommendations only. In contrast, the State of Washington has legislatively prescribed guidelines for the sentencing of juvenile offenders (HB-371) which provide for mandatory restitution and diversion into community programs for the non-serious (but criminal) offenders and mandatory institutionalization for the serious offenders. The Washington Bill is an attempt to establish more coherent justification for the punishment of juveniles as well as to establish constraints and eliminate some of the ambiguity of juvenile laws. As in the recommendations of the above mentioned reports, the emphasis is on proportionality of punishment based on the seriousness of the crime (along with the age and history of prior offenses of the offender). The Bill retains a great deal of discretion. Both the juvenile prosecutor and the judge have considerable discretionary power. The prosecutor, for instance, decides whether and what charge to pursue and though there are strict guidelines for the minor and the serious offender, the judge must choose between incarceration and release to a community program for that vast mid-range between the clearly minor offense and the very serious one. This step toward the *structuring* of discretion is an important one, however, and it is highly doubtful that we would want to try to eliminate flexibility—especially in the juvenile system.

These first attempts at applying the logic of commensurate deserts to juvenile dispositions are being studied by LEAA evaluating teams this year. No doubt there remains a great deal to be worked out and some refinements which can only be got at through experimentation. Nevertheless, they are beginnings. The proponents of the just deserts theory have warned that a simple move to determinacy without regard to finely tuned constraints could result in a draconian system which would be at least as much a travesty of justice as the system we now seek to reform. The subtleties and nuances unique to the juvenile situation require painstaking refinement and were barely touched upon in this introductory essay. Possibly experience will prove to be the only route to some of the necessary detail work.

But justice requires that the system face squarely the problems of crime and punishment. Until it does, policy can only be ambivalent. Not because we are of two minds about juvenile crime, but because the primary business of the system will be obscured by a hidden agenda. And a . . .

> wide gap between announced and real motives is an evil in its own right and a significant obstacle to the principled formulation or reform of policy toward young offenders.[71]

70. or example, the Twentieth Century Report holds that serious crimes should be tried in adult criminal court on the grounds that the rights of the accused are better protected there. (It is not immediately clear why rights could not be as rigorously held to in a juvenile court but that will not be pursued here.)

71. Twentieth Century Fund Task Force Report, op cit., p. 68

PANEL I: RETHINKING PHILOSOPHICAL ISSUES

Andrew Von Hirsch—Moderator

The discussion here today is centered on what should happen to juveniles brought before a court of some kind and especially what should happen to juveniles that are adjudicated delinquent—namely that are found involved in some activity which would be defined criminal if done by an adult.

There was a traditional model which dominated the juvenile court from about the beginning of this century to the beginning of this decade. It had a distinct pilosophy and a distinct form.

The philosophy was that the juvenile court was supposed to be acting in the best interest of the child and specifically for the purpose of *treating* the child.

It was assumed that to do so, the court had to have a wide degree of discretion to dispose of offenders based on their needs.

These ideas prevailed when similar expectations governed the adult system—i.e., that rehabilitation should be the goal of sentencing and that a wide degree of discretion was necessary to facilitate that goal. But in the juvenile system, the commitment to treatment was more whole-hearted and limits were fewer. There, it was assumed that juvenile courts could do pretty nearly anything to or for an offender until he reached maturity irrespective of the seriousness of his offense.

This philosophy went undisturbed until the beginning of this decade. The 1967 Gault decision did begin to require procedural safeguards in determining *whether* a juvenile committed a crime but that didn't disturb the assumptions as to what should happen after a juvenile was adjudicated delinquent.

Then in the beginning of this decade, a number of developments began to challenge the philosophy. First, a growing body of research on the effectiveness of treatment cast doubt as to the extent to which rehabilitation worked. Sometimes the research was oversold. I'm not sure whether it showed that nothing worked but it certainly showed that hopes for wholesale rehabilitation of offenders was overly optimistic given the means at our disposal. Secondly, there was increasing disclosure of the concern for the evils of institutionalization. People began suddenly to discover that even nice places of confinement for juveniles were very nasty and destructive places. Then there was the growing recognition of the fact that some juveniles commit very serious offenses. As Chairman Rodino said, no longer "hi-jinks" but violent crimes. And finally, and perhaps most significantly, there was in the last decade a shift in the thinking about adult crime and society's response to it. The shift was away from the idea that rehabilitation should determine how much punishment an adult offender should have and a shift toward ideas of proportionality of punishment to the seriousness of criminal conduct.

All this shook up the philosophy of handling juveniles and especially juvenile delinquents. Moreover, it all took place in a political atmosphere where the public was becoming increasingly impatient about serious crimes committed by juveniles.

The problem is that some of the observations, concerns and pressures point in opposite directions for solutions. For instance, concern about the evils of institutions points to reform which would minimize the use of institutions in dealing with juvenile delinquents and especially the reduction or elimination of institutions for status offenders. But concern about violent juveniles points the other way and tends to argue for more incarceration . . . especially for serious and violent offenders.

And so we are at the crossroads . . .

There are a variety of different approaches advocated—two and possibly more are represented on this first panel.

One position which we will hear presented today might be called the position of minimal intervention. That is: When in doubt, you should do less. You don't institutionalize offenders irrespective of the seriousness of their crime. You close institutions to force the system to look elsewhere for responses. If you incarcerate at all, you do so only for offenders who pose an immediate and serious threat of violence.

The attraction of this view is that it is humane and it is parsimonious.

It has, I think, and I expect some other panelists may develop, some problems. One problem is that of justice. It could result in some offenders convicted of certain crimes being sent away and others whose crimes are just as serious being released into the community. It means that the response is somehow not proportionate to the blameworthiness of the person's act.

There is another kind of philosophy and it is a philosophy which I've been interested in and at least one of the other panelists have—and I will introduce the panelists in a minute—which is the notion of desert. This

philosophy grew out of the reassessment of sentencing practices in adult courts. The position is that punishment is a ceremony of condemning and blaming people. That's what punishment involves. And therefore how much you punish should depend on the degree of blameworthiness of the criminal conduct. Then the only *fair* system is one in which the severity of punishment is commensurate with the degree of blameworthiness—i.e., the seriousness of the criminal conduct. That points in a different direction because it makes the seriousness of the crime the primary criterion . . . so it means that offenders who do very serious things will be punished substantially even if they are very good risks. And offenders who are considered bad risks do not get incarcerated on those grounds only—that is, even if you think they will do it again, they will not be incarcerated for that if their conduct was non-serious.

This system applied to juveniles may require some changes. It may be that juveniles are less culpable. They have had less opportunity for developing self control and therefore may be deserving of less blame for a given kind of criminal conduct. On a desert model consideration of the severity of the punishment for someone growing up and still developing will require adjustments: a given amount of punishment would be more severe to a child than to an adult so *commensurate* punishment would have to be more parsimonious for juveniles.

I think those are at least two of the positions you'll hear on this first panel discussion.

One or two more cautionary comments before introducing the panel: First of all, the problem before us today is not one of determining what works. There is a lot of debate over whether treatment works or doesn't work . . . and the answer is some does and some doesn't. If all we cared about is what works, we could devise a system—probably a very harsh one—which would work—. The problem is what's fair and what's appropriate. And especially what's fair considering that we should have some commitment to underwrite the development of adolescents . . . that we have some special obligation towards children.

The other caveat which is important to mention at the onset is a warning not to lump all or some of the views together. The minimal interventionist theory is different from traditional juvenile philosophy. It really is different because it strives to incarcerate less. The just deserts position is different from views such as James Q. Wilson. There is a tendency to lump together positions and it can't be done. Moreover, all the positions are distinct from the issue of who decides or what agency has authority. If you change the philosophy, it doesn't necessarily mean you need to revamp or start fresh with all new agencies. The juvenile court traditionally has been involved with rehabilitation but it is quite possible to give the system a new mission and to give existing agencies within the system new functions.

Now, may I introduce the three panelists:

First, Jerome Miller who is most famous for his controversial act as Commissioner of Youth in Massachusetts, in closing down most of the juvenile institutions. He afterward went on to serve as Commissioner of Youth in Pennsylvania and is now head of the National Center for Institutions and Alternatives in Washington, D.C.

The second speaker is Professor Alan Dershowitz, Professor of Law at Harvard University and one of the most famous legal scholars in the area of

crime in the country. I guess he is best known for his work on the Twentieth Century Task Force Report on Sentencing called Fair and Certain Punishment. He has also written a great deal in predicting dangerousness.

The third speaker will be Allen Breed. Allen was Director of the California Youth Authority when that agency was undergoing very important changes and directions. He has more recently been special Master in a case involving conditions at Rhode Island prisons. He is now Director of one of the major research and funding agencies of the federal government, the National Institute of Corrections.

I turn the time over to them.

"Too Few and Too Many"

by Alan M. Dershowitz

There are too *many* juveniles in custody today; and there are too *few* juveniles in custody today. Put more directly, the *wrong* jueniles are in custody.

A large number of confined juveniles are institutionalized primarily on the basis of their status: they are persons in need of supervision; truants; runaways; beyond the control of their parents; or incorrigibles. These are the "too many."

A large number of juveniles who have committed violent crimes—extremely violent crimes—are not confined. These are the "too few."

The time has come to reassess this nation's confinement policy toward juvenile delinquents.

The confusion and inconsistency inherent in our approach to the confinement of juveniles has been with us for many years—even before the establishment of juvenile courts. When Tocqueville visited these shores a century and a half ago, he noted a related phenomenon in the "houses of refuge." Their juvenile inmates were also divided into status offenders and those who had committed serious crimes:

> The houses of refuge are composed of two distinct elements: there are received into them young people of both sexes under the age of twenty, condemned for crime; and also those who are sent there by way of precaution, not having incurred any condemnation or judgment...The individuals, who are sent to the houses of refuge without having been convicted of some offense, are boys and girls who are in a position dangerous to society and to themselves: orphans, who have been led by misery to vagrancy; children, abandoned by their parents and who lead a disordered life; all those, in one word, who, by their own fault or that of their parents, have fallen into a state so bordering on crime, that they would become infallibly guilty were they to regain their liberty...

In the leading Supreme Court case of *In re Gault*, Justice Harlan pointed to a similar phenomenon a hundred and thirty years later. Highlighting the fact that as many as 48% of the juveniles brought before juvenile courts simply have "the misfortune to be in some manner distressed" or have

engaged in conduct, such as truancy, which "is plainly not criminal," Harlan accused the Supreme Court of having "gone too far in some respects and fallen short in others" in determining the rights of juveniles.

And just last year Senator Kennedy described the current system under which he said the message to the juvenile "is clear—if juveniles want to get locked up they should skip school, run away from home or be deemed 'a problem.' If they want to avoid jail, they are better off committing a robbery or burglary."

Senator Kennedy pointed to statistics demonstrating that in his October 8, 1978 address to the 85th Annual Convention of the International Association of Chiefs of Police. The statistics are forboding. Although juveniles under the age of 18 constitute only about one-fifth of the population, they account for nearly two-fifths of those arrested for serious crimes. And juvenile crime has been increasing at a faster rate than crime generally. From 1966 to 1976, arrests for violent juvenile crimes have more than doubled. The violent crime arrest rate for girls 18 years of age and younger has soared. Practical steps must be taken to check this seemingly uncontrollable growth of violent juvenile crime. As Senator Kennedy put it: "Juvenile crime is more than a fact of life today. It is a fact of death."

One can start to resolve the problem of violent juvenile crime by recognizing the shortcomings of our present juvenile justice system. Although juveniles commit a disproportionate number of violent crimes, their chances of being arrested, convicted, and punished are lower than those for an adult. Recent research confirms that the chances of punishment are especially low for the chronic, repeat juvenile offender who manages to commit many undetected crimes prior to his eventual apprehension. Yet, it is this repeat offender who is responsible for the bulk of serious juvenile criminal behavior.

Again, one need look no farther than the facts to which Senator Kennedy pointed. In California, a juvenile is twice as likely to get away with a robbery than an adult, and two-and-one-half times as likely to avoid punishment for burglary. Two recent studies of three New York counties offer devastating evidence of the breakdown of the juvenile justice system. One recent study, the Strasburg Study, concluded that only nine percent of those juveniles convicted of violent offenses were placed in any kind of facility. Even among the chronic juvenile offenders—those having committed five or more offenses —only 20% were placed in custody. The other New York study, conducted by the New York State Office for Children's Services, found that only 118 of the near 4,000 juveniles arrested for robbery during a one year period received some form of custody.

While the violent juvenile is often treated with lenity, the juvenile courts are not so lenient with the bulk of offenders who appear before them more regularly. These are the so-called status offenders—the truant, the runaway, the curfew violator, the incorrigible. According to the Law Enforcement Assistance Administration (LEAA), of the approximately 750,000 juveniles who were jailed in 1974, less than 12% of these were arrested for violent crimes. The great majority of the punishment was directed against juvenile delinquents who had committed petty offenses, status offenses, or no offense at all.

The disastrously disparate results produced by the present system stem largely from the inefficiency and inefficacy of the juvenile courts. Court

delays of a year or more contribute to a high dismissal rate, and serve to undercut any efforts to make certainty of punishment a reality. Further, juvenile courts often lack the evidence needed to sustain charges brought. As Senator Kennedy noted in his October, 1978 address, legal constraints often make arrests and convictions impossible in that police are prevented from fingerprinting, photographing or lining up a juvenile. Even when a conviction is obtained, the judge may well be hampered in making a correctional decision by incomplete information about a juvenile's prior record. For instance, the lack of fingerprints and mug shots make it difficult to link an arrested juvenile to other previously unsolved crimes. Privacy concerns may prevent the court from examining the sealed record of the youth offender. Where the offender's prior record is unknown or unavailable, the chances of an arbitrary disposition become much more likely.

The inefficiency and inefficacy of the juvenile courts are perpetuated by a major and more fundamental problem confronting the system—the acceptance of the myth that juvenile courts are equipped to rehabilitate and treat all different kinds of juvenile offenders. The special juvenile court was created in the name of benevolence. Its original purpose was to promote rehabilitation through special procedures designed to prevent juveniles from drifting into a life of crime. Juvenile offenders receive a "special pass," one that entitles them to bypass the regular, adult criminal justice system and be treated by a court bent on helping them. The nature of the crime and the prior record of the offender are essentially ignored by the juvenile court in its rehabilitative mission. The result has been a lack of rehabilitation and an increase in arbitrariness and injustice.

Obviously, these problems in the juvenile justice system are not subject to any easy cure. A significant step toward a solution, however, is to eliminate the present practice of utilizing age as an absolute and only factor for separating the adult and juvenile courts. Instead, a scheme of presumptions, employing a variety of factors, should be developed to help determine whether a particular juvenile offender will be dealt with by the adult or juvenile track of the criminal justice system.

Under this type of reform, the overriding presumption for youthful defendants would be one of remediability and disposition within the juvenile system. This presumption could be overcome, however. Factors such as age, past record, and seriousness of the crime would all be relevant in deciding whether a youth be treated as an adult or juvenile before the law. For instance, an older, repeat juvenile offender who committed a serious crime would be likely to overcome the presumption, and properly be brought to trial in the adult system. In fact, for repeat offenders of serious crimes, a presumption of disposition in the adult courts would appear to make sense. One can imagine a number of other mitigating or aggravating factors which could be specified for use in this type of presumptive scheme.

A presumptive approach to the "tracking" of juvenile offenders is bolstered by the recognition that no one benefits from the present use of absolutes. As shown by the atrocities noted above, society clearly is not benefited by the existing approach. Nor does the present system really bestow any benefit on those violent youthful offenders who would likely be subject to the adult system under the presumptive approach outlined above. To dispose of these offenders' cases in the juvenile courts is to deny them certain

basic due process rights which are not part of the juvenile system. These basic rights should be afforded to all whom society desires to prosecute to the fullest extent possible, adults and youths alike. Finally, insofar as status offenders and the like are concerned, the present absolute approach does little to benefit them. To the contrary, they seem to "bear the brunt" of the existing system.

To place certain youths in the adult system when their situations overcome the presumption of juvenile treatment would not mean that prison terms would necessarily be served in adult correctional facilities. Rather, special juvenile facilities could be available for these offenders. In addition, the fear that capital punishment might be imposed on juvenile offenders in the adult system is not a proper consideration when formulating meaningful reform in this area. Quite simply, the issue of capital punishment in any context is a problem to be dealt with independently in its own forum. It should be abolished in toto and should certainly not be available for juveniles.

Finally, a presumptive scheme for "tracking" youthful offenders cannot be altogether productive without reform in the juvenile court itself. Efforts should be aimed at discouraging harsh punishments against juveniles who commit petty crimes or status offenses. A strong presumption should operate against imprisonment and penalties should be vastly scaled down for these offenders. In Massachusetts, for example, all status offenders are referred to the Office of Social Services rather than the state juvenile correctional department. No status offender is locked up. Instead, social workers work with youths in an attempt to solve the problems which brought them to the attention of the courts. Other promising alternatives for less violent, one-time offenders include victim restitution, community service, periodic detention, and intensive supervision.

In sum, the aim of reform should be to alleviate the problem of "too few and too many." Reform of the juvenile justice system should be satisfied with nothing less and nothing more than just the right amount. The goal of any juvenile system must be the confinement of those whose conduct deserves confinement and the nonconfinement of those whose conduct does not deserve that kind of punishment. We should not be afraid to use the language of morality on our young people: concepts such as just deserts, fault, blame, punishment, responsibility are appropriate—indeed in my view essential—in confronting young people with the consequences of their actions. Children should know when they are being punished, and when they are being treated. Reform in the law of sentencing for juveniles should be part of the general agenda of reform in sentencing. The most promising approaches to the general problem of sentencing—presumptive sentencing, channeled discretion, just deserts, certainty—should be applied to the sentencing of juveniles.

Rethinking Philosophical Assumptions
by Allen Breed

Rethinking philosophical assumptions regarding juvenile justice is difficult when one is faced with the realities of rising crime in general—continued disproportional increases in juvenile crime—children detained in jails—recognition that we lock up more young people than any nation in the world—length of institution stay decreasing—violent crime increasing—researchers first claiming that nothing works—now some claiming that some things work—the concept of rehabilitation under attack—use of waivers increasing—and age of jurisdiction narrowing. Based on the current attacks on the juvenile court one could easily question the validity of the original assumption to establish a separate court for the legal review of problems impinging on children. I must assume that your presence here today represents a support of the family or juvenile court approach and that arguments in favor of its continuance are not necessary.

Actually the reasons for a separate court for children are greater today than in 1899 when the first one was created. The philosophical concept of the juvenile court is still valid and the noble experiment has not failed, but like Chesterton once said about religion—it hasn't failed, its never been tried. The juvenile court has never been provided the resources and often the authority necessary to carry out its mandate but that's a problem in practice, not of theory.

As an aside I must comment, that there are those who would like to abolish the Juvenile Court and have all children processed through the regular civil and criminal courts. Instead of attacking the basic principles upon which the juvenile court was established they have strategically chopped away at its jurisdictional base. I would suggest that their campaign has been highly successful and that the juvenile court cannot long survive if there is further reduction in the clients who can be serviced by it—be that reduction by the greater use of waiver to the criminal courts, narrowing of the age group eligible, or elimination of certain classes of cases from the courts jurisdiction. For purposes of brevity, I would like to take the removal of a class of juveniles from the court's jurisdiction as an example of this erosion,—which if continued will destroy the juvenile courts role as mediator, arbitrator and conduit to provide services for some of America's most troubled and troublesome children.

Family or Juvenile court jurisdiction over children who are brought before the court because of status offenses (behavior not illegal for adults but unlawful for minors, e.g. truancy, running away, incorrigibility, etc.) is an immensely complex and sensitive area in the field of juvenile justice. Our history is steeped with references to misbehaving children being treated as criminals. Puritans at Plymouth Bay defined rude, stubborn, unruly, disobedient or disorderly children as criminal. Mass colonial law invested courts with criminal jurisdiction over stubborn servants and children. The juvenile court itself was originally founded to deal with children's misbehavior not with juveniles who had committed criminal offenses. The intent was to provide a court of jurisdiction that was non criminal in nature and not contaminated with adult labels, procedures or penalities. The legal justification for this approach was parens patriae—the state acting as parent. That

this procedure lacked due process protections until Gault, and overreached in it's authority until the court, became literally the super parent of American society, is unarguable. That soon after the birth of the juvenile court and until this day, status offenders were not only processed but confined with juvenile criminal offenders with all of the resulting stigma and contamination, is an unquestioned part of our history. Horror stories abound, and NCCD's statement best sums up the positions of those oppossed to continued jurisdiction of status offenders by the juvenile court—"no intervention into a child's adolescent problems, would be better than the abuse, mistreatment and tragic mishandling of children placed in correctional settings who have never committed a crime." The National Council of Family and Juvenile Court Judges presents the other view in their statement "that there is no logic to libertarian theories that removing status offenses from the court's jurisdiction would create voluntary alternatives." They maintain that the state has a legitimate interest in a juvenile's education, health and welfare, and it's only instrument of intervening in the juvenile's behavior, is the juvenile court.

I have over the years argued both sides of this issue, and after long and careful consideration of the various approaches taken by others, have found myself unhappy with the currently popular either/or approach—either retain court jurisdiction over status offenses in its traditional form or eliminate it entirely. When I ask myself whether there is conduct that is not criminal for an adult, but that under some circumstances should be under some form of legal restriction for children—the answer is an emphatic, "*YES.*" Some retention of the court's power to intervene is appropriate and necessary—meets a vital state purpose—not only to protect children from themselves but to serve as a forum where they can seek relief from intolerable circumstances. From a philosophical stance then, there is a need for some kind of well planned court jurisdictional scheme for certain well-defined status behaviors. The scheme must correct, however, current evils without abandoning due process or fair proceedings.

In a most simplistic fashion let me outline the ingredients of such a scheme:

This approach recognizes the potentially devasting effect on a child of a status offense label. One must then discard the vague labels and focus on particular kinds of conduct and identify the kinds of surrounding circumstances that warrant court intervention. The criterion should be simple—the only conduct that should warrant Juvenile Court intervention is conduct that is clearly self-destructive or otherwise harmful to the child. The following behaviors appear to fit such a definition:

1. Pattern of repeated or habitual unauthorized absence from school.
2. Repeated disregard for or misuse of lawful parental authority.
3. Repeated running away from home.
4. Repeated use of intoxicating beverage.
5. Delinquent acts committed by a juvenile younger than 10 years of age.

You will note that all behavior listed must be of a repetitive nature—not a single act.

In bringing this type of behavior under the jurisdiction of the juvenile court, I do not intend to perpetrate the traditional singular emphasis on the child. The first step in this direction is to call this area of Juvenile Court jurisdiction—"*Families with Service Needs.*" The change is more in substance

than in semantics. What I am advocating, would bring the whole problem and all family and community participants under the jurisdiction and authority of the court, regardless of who files the request for services.

When dealing with any proceedings involving Families with Service Needs, the crucial issue to be decided would be whether or not the child or family relationship actually needed court intervention. In doing so the Juvenile Court should be required to make two determinations. First, the court should establish the truth of the allegations of the behavior. Second, the court should determine that all available voluntary alternatives to assist the child and the family have been exhausted. This finding should be jurisdictional in nature—should be recited, and the facts upon which it is based should be contained in the findings of the court. Further, the truth of the facts set out in the request for services should be established without making any designation of fault. This requirement would be a further rejection of the traditional approach to status offenses that emphasize the anti-social nature of the child's behavior. It is essential that the court make a case by case determination that, from the perspective of the child, the proposed intervention poses a less detrimental alternative than abstaining from intervention. The courts jurisdiction should extend not only to the child but also the parents or guardians, and any public institution or agency with the legal responsibility or discretionary ability to supply services to help. In this way, the juvenile court would have a direct jurisdictional tie to any person, school system, treatment facility or service associated with the child's behavioral problem.

In supporting this continued, but modified intervention of the Juvenile Court in the lives of seriously misbehaving children, there must also be some other limitations on jurisdiction—in order that in our efforts to help—we not go beyond our ability to provide helpful services.

1. Under no circumstances should the Juvenile Court confine a child under the Families with Service Needs in an institution to which delinquents are committed;
2. Or confine in any institution with a security system involving locked doors or fences.

Additionally, an order to a juvenile to cease a certain behavior could not, by violation of that order, escalate to a commitment to an institution to which delinquents are committed, or one with the kind of security system just mentioned.

Finally, jurisdiction when established should continue only as long as it is necessary to utilize the authority of the court to obtain necessary services. Court review of the case should occur at least every three months and jurisdiction should not be maintained beyond one year unless the case is brought back under a new petition supported with findings of fact.

Philosophically, the answer to current disillusionment with the juvenile justice system as a method of providing services to status offenders is not abandonment of the juvenile court or reducing its scope of jurisdiction. I strongly support the premise that every effort must be made to maintain a child in his or her own home and to prevent or solve problems there. When problems explode in intensity and/or duration beyond the ability of parents to cope with them, then it becomes the role of the larger society to be of assistance. When voluntary resources have been exhausted or don't exist, I have greater confidence in the juvenile court being the body to best analyze

the veracity of data, determine whether intervention is necessary—and when such a decision has been made, to assure that services are actually provided.

These are very difficult decisions which must be made about society's most difficult children. Because they are difficult, I want them made in a forum where equity and justice are paramount principles.

PANEL II: RECENT DEVELOPMENTS IN JUVENILE JUSTICE REFORM

Stanley Van Ness—Moderator

Thank you. Attorney General Civiletti, Congressman Rodino, distinguished panelists and ladies and gentlemen:

I am, as Joe Drew said, the moderator. It's my experience, with the notable exception of my counterpart on the first panel, Professor Andrew von Hirsch, that a moderator is a person who usually holds an offical position with the sponsoring agency who insists upon being on the program but doesn't know enough about the subject to be a panelist himself. I am as was mentioned on the Board of the Peter W. Rodino Institute of Criminal Justice and proud and privileged to so serve. I think the Institute is small enough honor to such a great American. But as to my insisting to be on the panel, anyone familiar with the inimitable style of the Institute's Executive Director, Deon Henson, knows that while one thinks he is a volunteer, he has really been drafted. The insistence was hers rather than mine.

As to my credentials and qualifications to speak to the subject: I'm not going to say enough for you to make an informed judgement on reform. I ought to mention that in addition to my position as Public Advocate, I am also the Public Defender for the State of New Jersey. (One salary, two positions) And my experience as Public Defender is probably most pertinent to the discussion here today. We see the failures . . . perhaps we even participate in

creating problems . . . but whatever the origin of the failures, we see what goes wrong with families, society, the judicial system, and the corrections system. Do our institutions work? Obviously the answer is no. Does our court system do what it is supposed to do? The answer is just as obviously no. Last year we represented some 36,000 souls in the state of New Jersey—27,000 adults and about 9,000 juveniles in really serious trouble. These were not status offenders but people on the formal ccalendar, in danger of being committed to an institution. Just four years ago, that number was about 50% of that. The incidence of juvenile delinquency is obviously going up. Both the frequency in which juvenile delinquents arrive at our courts and the seriousness of the crimes for which they are charged are on the increase.

I don't know what to suggest by way of reform but I know reform is necessary.

As an illustrative example, may I tell the sort of war story that no doubt (with some variation) every criminal lawyer will find familiar.

Above five years ago I represented a young man, 23 years old, charged with two murders, an attempted murder and three kidnappings. The details of the crimes were horrendous and after seven weeks, he was found guilty on all counts. I was not surprised with the verdict. It was difficult to find any redeeming feature about that young man. But in looking up his background, I discovered that he was sentenced to Jamesburg at age 13 for fighting in school and truancy, 18 months later to Annandale and from Annandale to Bordentown, and from Bordentown to Trenton State Prison and from Trenton State Prison to Rahway Prison. Three months after his release from Rahway he committed the heinous crimes mentioned.

Now somewhere, someplace along the way, someone should have fixed the responsibility for halting the evolution from a simple charge of truancy to that of double murder. Something is wrong in a system that does nothing to stop the fall from mischief to atrocious criminal behavior.

Our first speaker is the retired Judge Orman Ketcham from the National Center of State Courts. He has and deserves a national reputation as an authority on Juvenile Courts. He is currently working on a project called *In Re Gault Revisited* and will share his research findings with us today.

Following him is Judge John Collins, a notable jurist from our sister state, Arizona. One who deserves his reputation there for his courageous handling of juvenile matters.

Thirdly, our own judge Bertram Polow the foremost juvenile judge in the state of New Jersey. He is now on the appellate division.

Finally, my colleague in the Governors Cabinet and good friend, Attorney General John Degnan. John is, of course, known to everyone here but I would like to add this personal note. John is the chief law enforcement officer in the state and I'm supposedly the chief public defender in the state, but we find we agree on more matters than we disagree on. John is a thoroughly decent man with a great deal of regard for what is progressive and a feel for what is needed in the way of reform.

So without any more delay, I'll turn the time over to the experts.

Thank you.

Developments in Juvenile Justice Reform (Gault Revisited) by Honorable Orman W. Ketcham

(The following is a summary of a project proposed by Mr. Ketcham on juvenile courts.)

I. *The Need for Reliable Baseline Data on Juvenile Courts*

1967 A. "The Challenge of Crime in a Free Society" President's Committee on Law Enforcement and Administrative Justice

1967 B. *In re Gerald Gault*, Supreme Court of U.S.

1974 C. Juvenile Justice & Delinquency Prevention Act

1977 D. LJA/ABA Standards of Juvenile Justice

"The hub of the juvenile justice system today is the juvenile court; yet our understanding of that important social institution is inadequate because of so little systematically collected research data."

Sarri & Hasenfeld "Brought to Justice? Juveniles, the Courts and the Law" 1976

II. *Tentative Typology of Metropolitan Juvenile Courts*

A. *Introduction*

This tentative typology is the product of a year's planning and effort by the staff of the Gault project. In late September, 1978, the OJJDP National Institute of Juvenile Justice and Delinquency Prevention awarded a discretionary grant to the National Center for State Courts to conduct a two year study of structural, organizational, and procedural characteristics of metropolitan juvenile courts. The initial plan described in the grant application submitted July 21, 1978 was revised substantially during the first three months of the project while staff was recruited to carry out the research study.

B. *History*

On January 15, 1979, a revised Program Narrative was submitted to the grantor and subsequently approved. Since January 1, 1979, the project staff has consisted of five professionals and two administrative staff persons. Major events that have led to the present tentative typology include:

- defining the total census of metropolitan jurisdictions to be included within the survey;
- identifying the juvenile court serving each of the 160 jurisdictions included in the defined survey census;
- a decision to collect data by a mail/telephone procedure conducted by project staff professionals;
- refinement and revision of the survey instrument questionnaire with the aid of constructive criticisms by a Focus Group;
- conducting a pretest in ten Virginia juvenile courts, resulting in modification of the questionnaire;
- collection and analysis of current, relevant state statutes and rules of juvenile courts;
- obtaining the approval of state chief justices and state court administrators for the survey;

- selecting a random sample of 70 of the total of 160 jurisdictions within the defined survey census;
- preparation of a theoretical frame for the collection of data;
- a decision to obtain answers to the questionnaire from two responders in each juvenile court surveyed in order to enhance the reliability of data;
- correspondence with the presiding judge of each of the courts to obtain cooperation and to schedule telephone interviews with two responders;
- revision of the codebook in order to obtain composite data relatively free from incongruencies;
- an initial preliminary computer-assisted analysis by the project staff of recorded answers to the questionnaire; and
- preparation of a directory of statutory summaries, individual court profiles, appendices and charts specifically identifying the 70 jurisdictions surveyed.

C. *Goals*

As indicated in the revised Program Narrative, there is a critical need for reliable data about the actual operations of modern, metropolitan juvenile courts (where the majority of Juvenile offenders are processed). It is urgent that juvenile justice experts know where they are, before planning where they should go. The sometimes bitter debates about the feasibility and potential effects of many of the recently promulgated juvenile justice standards are evidence of the dearth of accepted information about what procedures urban juvenile courts follow today. Evaluation of the efficiency, quality, or fairness of juvenile justice in the United States is not possible without a baseline measurement.

The judicial and executive initiatives commenced in 1967 by the Supreme Court's opinion of *In re Gault* and by the Presidents Commission on Law Enforcement and Administration of Justice (*The Challenge of Crime in a Free Society*) set in motion numerous changes in the juvenile justice system designed in insure due process of law for youthful offenders. The establishment of the Office of Juvenile Justice and Delinquency Prevention within LEAA in 1974 added federal pressures for standardization, diversion and deinstitutionalization.

D. *Project Objectives*

Three specific objectives were established to meet the project's goal:

1. To conduct a survey of the 160 metropolitan court jurisdictions included in the census population;
2. to develop a typology of metropolitan juvenile courts for critical examination by a panel of experts; and
3. to observe and analyze the operational characteristics, policies and procedures of six typical juvenile courts through on-site observations.

At this point in the project, staff has collected data from one or two responders in 68 of the 160 jurisdictions. The jurisdictions surveyed in this first phase were selected by a random sample process. We have

had extraordinary and gratifying cooperation from the metropolitan juvenile courts. Of the 70 courts in the random sample, we have received complete answers from two responders in 50 courts and full answers from one responder in 18 more courts—68 out of 70. Only two courts did not respond. The tentative typology of the 70 courts in the first phase is now complete and has been submitted to an Expert Advisory Panel for comment and constructive criticisms. Neither mail/telephone interviews in the remaining 90 jurisdictions nor intensive on-site observations have yet been conducted.

E. *Typology Construction and Analysis Plans*

The essence of typology formation is the reduction of data to a set of indicators, or concepts, that may be used to paint the broadest possible picture with the greater power to explain an information set. In this we are guided by the concept that "the goal of typologies is an increased understanding of complex organizations. Acts of classification are intended to further scientific simplicity. The variables or elements included must be relevant; they must have a basis in theory and be meaningful to the student of organizations. Meeting these criteria, a typology can be applied as an instrument to stimulate thinking and organizational analysis."[1]

Typology formation for this project depends on the selection of indicators which are reliable, which discriminate between courts, and which tend to point to a theoretically meaningful construct that will aid in organizing data.

F. *Typology—The Building Blocks*

The initial theoretical frame guiding the construction of the questionnaire suggested seven dimensions as being characteristics which would distinguish among courts:

1. type of jurisdiction (General/Limited, Juvenile/Family)
2. court administrative control over probation and/or social services and/or detention,
3. the role of the prosecutor,
4. the presence or absence of defense counsel,
5. type of judicial officer,
6. intake discretion,
7. the implementation of due process rights as established by the *Gault* decision.

Three of the foregoing seven indicators met the necessary criteria of reliability, ability to discriminate, and theoretical relevance. Initial inspection of the frequencies of answers to questions relating to the other dimensions indicated they were less than satisfactory for typology construction.

Questions concerning attorney representation for indigent juveniles, for instance, are completely reliable, but they fail to discriminate between courts. Answers to the question "does your court provide counsel to juveniles who are indigent?" yield a 100.0% positive response. Although the answer is interesting in its own right, and has been reported as such, failure to discriminate adequately among

1. L. G. Hrebiniak, *Complex Organization*, (St. Paul: West Publishing Co., 1978), p. 464.

courts does not make this characteristic useful as a building block for typology.

Similarly, our initial examination of due process rights suggests that all courts make provisions for guaranteeing these rights. This series of questions fails to distinguish between courts in a consistent pattern, although some useful insights have been gained by treating *Gault* rights as a dependent variable.

A somewhat different problem was encountered in types of judicial officers. Here we show variation in the answers, but close analysis of these data suggests there are naunces in interpretation which have led to some initial inaccuracies at the conceptual level. More information about the powers of judges and referees, the kinds of cases that each type of officer hears, and the procedures used in these cases is required before this characteristic of courts can be used in constructing the typology.

Of the seven dimensions, the questions involving intake discretion were perhaps of greatest interest to staff and have thus far yielded the greatest disappointment. The literature suggest that courts can be differentiated on the manner and degree to which they exercise, in practice and by law, discretion in handling and disposing of cases at intake.

Certain questions were designed to provide insight to the powers of intake in handling juvenile cases, both for law violations and status offenses. We can predict that a court in which the intake unit has authority to place a child on informal probation will also have the authority to handle cases informally and to divert a child. Once again, the analytic problem is that the intake discretion dimension fails to discriminate among courts.

Our initial analysis of these data indicates that all court intake units exercise a great deal of discretion (53 courts of the 59 can be classified as having a high level of discretion). The question for us to consider in future work is not the level of discretion, but when, at what stage, and by whom it is applied.

The three remaining features (dimensions of jurisdiction court administrative control over probation, and role of prosecutor) have been chosen for typology construction because of their relative stability.

III. *Future Gault Project Events*

A. Tentative typology drafts mailed to Expert Advisory Panel on October 15—together with Directory Statutory Summaries & Profiles)

B. Composition of Panel:

Honorable William Fort
Dr. Paul Lerman
Dean Louis McHardy
Judge Theodore McMillian
Honorable Justine Poher
Daniel Skoles
Professor Charles Z. Smith (Chairman)
Dr. Ann Schneider
Professor Lee Teitelbaum

C. Meetings of Panel in Williamsburg, October 25, 26 and 27, 1979
D. Completion of survey by collecting data from remaining 90 courts for
E. Completion of Directory for all 50 states and 160 individual court profiles
F. Authentication & Publication of Typology
   1. Verification by Site Visits
   2. Further Computer-Assisted Analysis
G. Publication of Final Reports—October 1, 1980. Responses to other speakers on the platform:
   I'm greatly encouraged by Attorney General Civiletti's speech which indicates his confidence in the OJJDP, and Juvenile Justice Acts of 1974 and 1977.

   Speaking to Congressman Rodino about the much maligned LEAA:
   It has been wastefully administered.
   It has not yet found solutions. But it provides funds and hope to those of us who are trying to find solutions by determining how the system operates in order to find how to bring about ordered change.

Bertram Polow

We have now had about eight decades of experience with that noble experiment—the Juvenile Court. To say that it is still the subject of controversy is to understate the obvious. Its original concept, as still perceived by its supporters based upon the philosophy of humanitarianism and rehabilitation, is seen by its detractors as a cover-up for inhumane treatment of children, abuse of process and, to paraphrase Justice Fortas, the failure to provide either the solicitous care posited for juveniles or the constitutional protections accorded adults.

A most striking feature of the present controversy is the predominance of philosophy. The themes are repeated in so many ways; in debates, commentaries and in judicial decisions, we hear that children are special and entitled to particular attention, together with care, nurture, and compassion but all with due regard for due process and the protections afforded by the constitution to all persons, adults and children alike.

Well, there is a paradox—while many of the judges vigorously proclaim that this philosophy *is* the guiding concept of the present day juvenile court, many prominent judges and practitioners believe that the proclaimed philosophy is either non-existent in practice or no more than the pretense of ineffectual do-gooders in pursuit of an unachievable goal.

All must agree that some of the more controversial philosophical disputes of the mid-60's have been resolved. Many of the constitutional protections previously absent are not routinely expected and provided as part of juvenile court procedures—such as the right to have counsel, to be confronted by witnesses, to cross-examine, to have a record of proceedings, the right to appeal, etc.

In New Jersey, we have recently enacted a new criminal code which effects radical changes in our criminal justice system. One of the new directions discernible in the code is toward more determinate sentences and presumptive sentences for adult offenders. Presumably, the supporting

philosophy is that without expectation of leniency fewer potential violators would, in fact, break the law. I hope that presumptive philosophy is borne out in reality. I would not be particularly surprised if the same philosophy were to be adopted in dealing with juvenile delinquency. I admit to skepticism—I do not really believe that approach will effect the crime or delinquency rate to any appreciable degree. It may, however, help reduce disparity in punishment. The increase in delinquency rates is obviously not the primary responsibility of juvenile courts. Rather, it is a reflection of flaws in our social structure. Courts, after all, deal with problems already manifested. Society, the family, the educational system, the whole environment, mould personalities and set the stage for the conditions which generate the problems.

One of our most frequent frustrations is reflected by the currently fashionable proposal to remove status offenses from juvenile court jurisdiction. I think that area of concern deserves our attention. I am particularly interested in the problem from the perspective of recent developments in this state.

Should we permit any judicial involvement at all in juvenile "misbehavior" that is conduct not illegal for adults but unacceptable for children? —We hear controversy expressed among judges themselves, some who repeat the charges leveled by the commentary in the juvenile justice standards project volume on non-criminal misbehavior, declaring baldly that intervention by the courts is not only ineffective but causes positive harm. They add that it is a waste of taxpayer's money and, some insist, it is absolutely unconstitutional.

In this particular controversy there are three shades of opinion. Probably the most vocal group argues that court jurisdiction should be completely eliminated over status offenses. Not only is this the conclusion of the juvenile Justice Standards Project Proposal—but also the N.J. Governor's Committee on Adult and Juvenile Justice. Then there is the middle ground.

The middle ground, which, incidentally, we enacted in New Jersey about six years ago, supports deinstitutionalization of status offenders. Our present Juvenile Code prohibits status offender detention or any kind of secure custody for noncriminal offenses. Not even for contempt of the court's order —nor to compel compliance with an order—nor for escape from a placement ordered by the court may such a juvenile be confined. But we still retain jurisdiction and responsibility in our juvenile court for dealing with status offenders when other agencies have failed to effectuate voluntary solutions.

And, there is the third view—that of the traditionalists who believe that if the social order is to survive, courts must retain not only jurisdiction but also the power to enforce orders, by detention if necessary. We abandoned that traditional approach in this state six years ago.

I think it interesting that even the critics of the juvenile court continue to define status offenses as "misbehavior" Such misbehavior may be such for children only, but involves what society considers unacceptable behavior. All sides still consider such conduct as misconduct, misbehavior, as an "offense".

This is where we must begin in the effort to rethink our goals and to reformulate procedures to attain them. This "noncriminal" misbehavior category includes three general types of youthful offenses: running away, truancy and ungovernability. I suggest that the first question we must address is whether society is ready to allow that kind of behavior to be placed outside

of the realm of law enforcement and the courts—that is to allow such misbehavior in the future to be dealt with only by social service agencies on a voluntary basis; where the parties, that is the parents and the child, or school administration and child, as the case may be, are willing to voluntarily submit to investigation and such recommendations as may flow therefrom, including therapy, social service, private or public placement or any of the other so often recommended by such agencies. If we are satisfied that the public will accept a change in perspective and policy and that, in fact, public and private agencies can and will more effectively cope with such offenses without intermeddling by the court, then, of course, that is how it should be.

However, before we can hope to arrive at an informed and intelligent conclusion, we must determine whether there is anything which we, as a society, want to be done.

Let us consider for example, the problem of truancy. Frankly, I think it is fairly obvious that our universal compulsory education system is not adequately equipped to deal with today's reality. Must the law require that all children regardless of interest or ability remain in a conventional school environment until 16 years of age? Are there not realistic and preferable alternatives for many 14 year olds or perhaps even 13 year olds which could relieve the system of the frustation of unachievable legally imposed goals with inflexible requirements which accomplish little more than provocation of mutal hostility? However, if we were simply to remove truancy from the jurisdiction of the juvenile or family court, would a compulsory education law still be compulsory? How would it be enforced? Can we permit laws to remain on our statute books if we are unable or unwilling to enforce them?

I think we in New Jersey are headed in a reasonable and well considered direction, at least until the public and its elected representatives decide that the time has come to declare that such acts by children are no longer to be considered "misbehavior" and are no longer "offenses."

It is evident that the legislature and courts in this state have realistically attempted to provide for our children both the solicitous care and the opportunity for regenerative treatment we proclaim is due our children without sacrificing constitutional protections or the compassionate concept proclaimed by our juvenile code.

We have done it by altering traditional approaches.

Through the juvenile and domestic relations courts we have now created and mandated throughout the state a comprehensive intake service.

The goal and effect of this project is not to increase the caseload, staff or jurisdiction of the court, as some critics outside of our state protest, but on the contrary to defer, refer, settle, resolve, mediate and alleviate as much as possible, a large number of the complaints pre-judicially—before they come to court—and this has been accomplished, successfully, thereby relieving our courts of substantial volume of cases including most of the "status offenders" who previously had been handled by the judges: We also have redirected, resolved or pre-judicially dismissed a large volume of minor delinquency offenses, particularly those involving first offenders using our particularly innovative juvenile conference committee system with which we have now had twenty-five years of experience.

I believe our intake service has the greatest capability of any agency, public or private, to coordinate the activities of all available community

services, to keep abreast of developments in all related fields, to act as the liaison among services and to be the central referral service in each county. And I believe it acts as a shield protecting the public against the danger of bureaucratic overreaching by those agencies not otherwise subject to judicial oversight. And, I do not believe there is a juvenile court judge who would not be overjoyed if an effective alternative were to relieve the court of all status offender problems. They are, after all, the most difficult and frustrating.

The legislature has done its part to change the juvenile justice system by enacting the new juvenile code six years ago. As interpreted by the Supreme Court our law provides that no child may ever be confined for any act for which an adult may not be confined. But, even more—children are protected against punishment for certain things for which adults may well face serious sanctions—particularly for refusing to obey a court order.

My fervent hope is that we create as is proposed a unified Family Court for which the intake project may provide its central service—to the civil side of that court and treat with all family problems requiring judicial assistance, and to do so to the greatest extent possible without direct court involvement.

The proposal for absolute elimination of status offenses from court jurisdiction is based upon philosophical idealism, but it is inconsistent with other proposals contained in this most important and worthy project in that other proposals firmly support the concept of a unified Family Court. There is a firm recommendation that jurisdiction over all family related problems be consolidated within a unified Family Court, established as a division of the highest court of original jurisdiction in each state. But how is the proposed Family Court to deal with *all* family problems if it may not concern itself with the problems reflected by ungovernability or incorrigibility as manifested, perhaps, by running away or truancy?

To be effective, such a tribunal must be permitted to deal with all manifestations of family disharmony, now generally cognizable in several different courts. I interpret the project proposal to entail a structure which would do more than just eliminate existing fragmentation of jurisdiction over related family problems; it must also contemplate the incentive for and consolidation of efforts to provide professional assistance for all members of families who want it and will accept it and are within the court's jurisdiction for any reason seeking or needing its help.

A Family Court requires and could be provided with the status and prestige to attract and keep the very best judicial talent. Too often the fact that so many family oriented problems are relegated to so called "inferior" courts creates the impression that those problems and the court dealing with them are of less significance. Hence, knowledgeable and experienced judges leave these courts for the prestige of elevation to so-called higher courts.

I suggest that the family court system would provide a giant step for society in dealing with concerns involving the whole family. The standards and goals for New Jersey submitted to the governor in August 1977, urge that the whole family be considered in formulating appropriate dispositions and that family court judges encourage parental participation in the rehabilitative process involving misbehavior of children. Surely, children are involved in the resolution of marital disputes between parents.

It is obvious that a great proportion of so called "status offenders" are the products of broken homes, misdirected and self destructive life styles,

parental abuse or neglect and other such family oriented problems. A family Court, as part of a fully unified court system provided with a fully developed intake system, could be capable of fully and fairly dealing with status offenders, in purely civil proceedings without the risk of unbridled bureaucratic abuse by way of uncontrolled coercion by private agencies to induce children to adhere to potentially arbitrary rules or requirements were we to prohibit recourse to judicial review.

Private resources must be developed and must be used to the greatest extent possible by parents, school districts, law enforcement and all who come in contact with children who need help. However, at least as a last resort, the children themselves, the status offenders themselves, must have the right to call upon a tribunal with the power to protect their right to due process of law as it effects their everyday lives.

The intellectual opposition to court jurisdiction over non-criminal misbehavior seems reminiscent of the activities of the turn of the century reformers who saw the juvenile court ideal as protecting youthful wrongdoers from exposure to the rigidity of the criminal justice system. But, as only painful experience demonstrates, philosophical idealism does not easily translate into reality.

Unfortunately, the judicial process is neither perfect nor ideal. And of all of its branches, the one in which imperfection generates the most vehement criticism is the one given the greatest challenge. The juvenile court. Still we have shown our capacity to learn from mistakes, to modify and improve as time and experience dictate and to continue the process of growth and change. Perfect justice is not within our reach. However, it is essential that we continue to strive for it by accepting critical comments and new ideas and be flexible enough to permit growth and change even in our own attitudes.

John Collins

What I am about to say may not apply specifically to anyone in this room. It is a general statement about juvenile justice or the lack of juvenile justice. It is about the criminal justice system as an expression of a routinized subculture in the American society. Sociologists and anthropologists have long spoken of the criminal or delinquent subculture in our society. There may have been something like that at one time in our history.

I do not know when the change took place—to create this "official system subculture"—it was probably a gradual thing, each part spontaneously generating from the previous relationships. But I am sure that the new "system" subculture exists—I have experienced it—I currently occupy a place in it. It is an extremely hierarchial system—with judges at the top—and the populations of our penal institutions at the bottom—with ultimate power over life and death residing in the elites—and with absolute powerlessness in the lowest realms. In between, various groups fill certain roles. Police and social workers mine the ore from the lowest socioeconomic groups—systematically selecting youth from a well defined population—who have little power to defend themselves—and who have almost no access to an adequate defense.

The raw materials—the materials which support the entire structure of that subculture—are delinquent youth—usually not just any young person who violates the law—but those who come from that social population who were raised in environments where antisocial behavior is the norm—where

powerlessness and/or dependence on the powerful for survival become the key to living each day. Without this population of young people, the entire criminal justice system would soon collapse.

I would posit that it is not in the interest of the controlling hierarchy of the criminal justice system to prevent crime—that industry could not survive a good crime prevention program—anyone who asks the hard questions—or offers answers to those hard questions—is continually sabotaged—and, where possible, driven from the ranks of the criminal justice community.

Probation—parole—therapy milieus of every kind and description—including the operation of governmental, mental and penal institutions—have been so routinized and professionalized—that the ability for one to step outside and analyze the system has been all but destroyed. The subculture itself defines the rules for rehabilitation—speaks for the industry rather than for the client—and rejects those innovations which threaten the status quo. The subculture is entropic and anti-evolutionary. It is so strong—in that it is based on law—law enforcement—and judicial decree—that it affects the larger culture by dragging that larger culture down into a self perpetuating maelstrom.

Since the main thrust of the criminal justice system is primarily felt by those who are relatively powerless—their plight is generally ignored by the larger culture. As a system—criminal justice is almost never seriously challenged. Only those pieces which affect and relate to the lower end of the hierarchy are questioned by legislative bodies—such as "mandatory sentencings" and increased penalties for those who repeat certain conduct. Lobbyists representing the controllers of the system—not its clients—not the children and families who feed it—are ever present—shaping any changes that do occur. Seldom is a voice raised above the din—speaking for the rights and best interests of children—or even of the existing adult client population of the system.

The overview I have just presented is indeed depressing. It is an overview of an entire subculture—which directly relates to the larger system by feeding on the fear and paranoia of society. The repression which occurs at the lower end of the criminal justice hierarchy is intense—yet it is not felt by our society as a whole. Only every now and then a "sonic boom of riot and violence" breaks the windows of those close to the scene and rattles the composure of middle class America. Attica was no different than Watts or Detroit. The enforced ghettoization of our prison populations—the lowest rung on the ladder of the criminal justice system—is akin to the enforced ghettoization of the Jews in Warsaw—or the Jim Crow policies once so prevalent in this country.

In his "Memoirs of My Life and Writings" which appears as a preface to Volume 1 of his famous work on Roman history, Edward Gibbon wrote of his youth some 230 years ago—"I studied . . . the duties of a man, the rights of a citizen, the theory of justice (it is, alas! a theory) . . ."

Since Attica—many "reforms" have taken place in the prisons of this country—most have been but facelifts—and few—if any—have done anything of significance to change the underlying structure.

This conference—which each of you—and I—have been invited to attend—is about juvenile justice—and some of you may be wondering to what destination this esoterica is leading.

I served as a Superior Court trial judge in a busy court in Tucson, Arizona for eight years prior to my being assigned by my colleagues to the post of Juvenile Judge. In those eight years I almost never sentenced anyone for a criminal offense who had not had extensive prior involvement in the official juvenile justice system. After that experience followed six years as Presiding Juvenile Judge ending December 31, 1978. This time and experience reenforced my original view that the juvenile justice system itself is the major recruiting station for entry into the criminal justice system—or at the least into a lifetime in the official areas of mental institutions and welfare systems. And historically speaking—most of those recruits should never have been allowed into the system.

I have developed little patience with what is called "crime prevention" in this country. What we all commonly refer to as "prevention" in actuality consists of little more than putting tighter locks on citizens' homes and businesses and sending out more police patrols through the neighborhoods. Such practices are but modern day versions of the Maginot Line or the sailing of gunboats up the Yangtze to show the flag of the imperial culture. Such practices do not penetrate the problem. They only delude the populace—and only for a time.

The juvenile justice system is too often presented to the rest of American society as either benign and nurturing—or as a stern and reforming force. The sad truth is—that it is neither! It is recognized far too often as being merely a mulching system which allows the young of our society to ripen and rot into fertilizer for our adult penal—mental—and welfare systems. Far too often it appears that the manner in which society treats—or allows others to treat—our children—renders otherwise normal young human beings into a dysfunctional —non responsible population which for ever after must be cared for at the expense of the public.

The more benign and nurturing the juvenile justice system is presented —the more "answers" which are promulgated by the maintainers of the system—the more adult dysfunctionals we end up with. I am not suggesting that the justice system is causal in the development of criminals. I do maintain, however, it nurtures those propensities learned elsewhere and prepares the young offender for a career in the lowest levels of the criminal justice system or as a dysfunctional in our adult mental and welfare systems.

Earlier I spoke of routinization and professionalization of the criminal justice system. Just a few score miles from here—a few score years ago—the first probation officer was a private business person in Philadelphia. The young man who was assigned to him as a probationer had a real life model to look to—to learn from. Now—there is an entire career field and ladder in probation work. The ordinary citizen whose life experiences may be the least known quality to youngsters in trouble is separated from those youngsters by red tape and years of so called training—combined with mystification and institutionally generated fear.

The career ladders in social work and probation, like the career ladders in education—lead eventually to administration and the routinization and cementing of the status quo. The ability to relate to people in formative years as a prime consideration in selection of probation supervisors, has given way to specialized roles and enforcement of rules, sometimes combined with further specialized training in therapy or rehabilitation. What this has accomplished

in the main is the removal of the possibility of creating the variety of role models necessary for a youngster in transition.

As to those young people already a part of the system—my own involvement in the utilization of community programs for my recent six years as juvenile judge causes me to strongly believe that we must return most of them either to their parents or to real community based action treatment programs supervised by professionals who are skilled in "people management" but where we recruit—and utilize—especially for the younger clients —effective role models—individuals who spend most of their lives outside the criminal justice system.

It is reported that Albert Szent-Gyorgyi, the two time Nobel prize winning chemist, once said that he had made two significant discoveries in his life. That in both cases, his area of proposed exploration was termed invalid by all of the popes of the field and thus grant applications for the projects were not applicable. This great scientist went on to state that discovery is related to distant goals and undefined objectives—and that it is related more to serendipity than to exactitude. Szent-Gyorgyi finally opined that he could have written two grants a day relating to areas of his expertise that were understood and acceptable to his colleagues and the "bureaucratic experts"—and under the process available—but that all of same would have been without value in terms of moving knowledge forward.

In my considered opinion no one has answers to solve the present problems of crime and delinquency until "cause removal"is employed. Nor will all the grants and all of the exemplary projects that can be generated by private and public institutions solve them for so long as the process stays as it now is. To re-cast an old saw—"the ball game we want to win ain't even being played in this park!"

Robert Frost, in his little four-line poem—"The Secret"—recognized our ever present dilemma when he wrote:

"We dance 'round the ring—
And suppose—
While the secret sits in the center—
And knows."

Today is the anniversary of the great Italian navigator's discovery of the New World. Cristoforo Colombo actually failed in what he set out to do. He discovered no new way to the Indies. He did find something—however—which eventually dwarfed his own and his funding agency's fondest expectations—and all of the experts said it couldn't be done—that it was too expensive —that he was heading off in a direction which went against all then existing knowledge as well as "thought to be"—rational hypotheses.

After Colombo completed his voyages, all perceptions of the shape of the world had changed—and he multiplied the age of discovery by at least the factor of one hundred.

We know that what we have been doing—and even what we are doing now—in the area of juvenile justice—does not work. Our jails do not work—our rehabilitation programs are found lacking—at least those programs which have the support of the "professional community" do not work. For us to continue to do what we are now doing—that is—allowing young people unswerving entry into the system—is wasteful—is unproductive—is actually damaging to the social order our democracy was set up to nurture and to protect.

Our Pledge of Allegiance—the Preamble to our Constitution—our Declaration of Independence—all refer to justice as a prime ingredient of our social system. What is probably necessary at this time is a social revolution—not more attempts at social reform. The words and actions of the founders of this nation were revolutionary—the establishment of our country was on revolutionary principles. Our leadership in those times risked their lives—their honor—and their property—for ideals and principles.

In this the internationally proclaimed Year of the Child—I will leave you with these questions—what are you—what are we—willing to risk to achieve actual justice—a more perfect union? We all know that the system is cruel—inept—farcical. What will we be willing to risk to change it—how will we replace it for one that will give actual—not merely theoretical justice to all? Perhaps this conference will be a seed that will sprout into effective change—be it by reform—or by revolution.

Attorney General John J. Degnan

Juvenile crime is one of the most serious issues facing our society today. It is a problem which pervades every aspect of our daily lives. The cost of youthful criminality to society in both material and human terms is staggering. It was estimated in 1977 by Senator Bayh that almost 15 billion dollars were lost annually to crimes committed by persons under the age of 25.

Other statistics present an equally grim picture. For instance, 16 percent of this country's population is comprised of young people between the ages of 10 and 17; yet 26 percent of the arrests made in 1975 were of persons under 18 years of age. These youths commit 43 percent of all serious crimes. During the period between 1960-1975, property crimes such as burglary, larceny and auto thefts by youths under 18 increased 132 percent. The incidence of violence, vandalism and drug abuse in our schools has similarly reached epidemic proportions. Recent studies indicate that the use of marijuana has been rising steadily in the past decade, while the age of first use has dropped. It is estimated that at least 11 percent of 1978 high school seniors use marijuana on a daily basis and even children as young as 12 and 13 have experimented with this drug. Alcohol abuse is also rampant in our schools as statistics show at least 6.1 percent of high school seniors consume intoxicants on a daily basis.

Of equal concern is the ever increasing destruction of our school facilities by young vandals. In New Jersey alone, 1975 figures indicate that the annual expenditures of public schools to repair vandalized property exceeded 17 million dollars. Needless to say, this figure is probably higher today.

We can no longer afford to ignore juvenile offenders or their victims. Clearly something must be done. Juvenile criminals, and I do not use the term "criminal" lightly, must be recognized as criminals and dealt with accordingly.

Some would advocate the complete abolition of our present juvenile court system and the treatment of all juvenile offenders exactly as their adult counterparts. Such an approach would "give up on" those youthful offenders who can still benefit from the juvenile court process. It would, in effect, needlessly propel all juvenile offenders into the adult criminal process. This is not to say, however, that hardcore individuals who are young in years but not

in criminal sophistication should be allowed to manipulate the juvenile system to escape responsibility for their criminal acts. Rather than abolishing our present system as a whole, it must be preserved for those who can still benefit from it and be spared from those who are beyond its reach.

The juvenile court is not the arena to punish, nor should it be. Juvenile court resources must be allocated only to those who can benefit from its rehabilitative measures. Otherwise, the intransigent anti-social youth, if treated as a juvenile, may well infect others who might have been dissuaded from future criminality. The rehabilitative goals of the juvenile system are sound if applied to the appropriate candidate. There is no need to abandon them in order to reach and punish those serious miscreants who currently make a mockery of the juvenile system.

Indeed, rather than abolishing our current system, violent and recidivistic youths should be removed from its jurisdiction and subjected to the full rigors of the adult criminal process. This serves not only to protect society from the serious criminal transgressors and deal more effectively with such individuals, but also serves to preserve the integrity of the juvenile court. Only by removing violent repeat offenders from a court which is not equipped nor designed to deal with them will the public be adequately protected from their depredations.

We do not need a new system of justice for juvenile offenders to accomplish these goals. We merely need to utilize existing procedures more fully and effectively. Specifically, New Jersey's juvenile waiver statute must be aggressively pursued in appropriate prosecutions.

Our present juvenile system provides for the transfer of jurisdiction to the adult criminal process under the following circumstances, even over the juvenile's objection:

—If the alleged delinquent is fourteen years of age or older at the time he commits the offense;

—If there is probable cause to believe that:

A. The juvenile committed a homicide or treason; or

B. The juvenile committed an offense against the person in an aggressive, violent and willful manner; or

C. The juvenile dispensed or distributed a Schedule I or II narcotic drug, and is not an addict.

—If the adequate protection of the public requires waiver; and

—If there are no reasonable prospects for rehabilitating the juvenile through the juvenile court process prior to his reaching the age of majority.

A wise use of the waiver provisions will insure that all aggressive and violent offenders will be properly handled within the adult criminal sphere. But, this is not enough. As presently constituted, the involuntary waiver criteria may not be sufficiently expansive to remove all those from the juvenile court's jurisdiction who do not properly belong there. I would advocate legislation broadening the existing waiver criteria to include not only juveniles 14 or older who commit offenses directly involving violence, but those who threaten violence, or who attempt or conspire to commit such offenses. Additionally, repeat offenders upon whom the juvenile court process obviously had no deterrent effect should be relegated to the adult court. Finally, a juvenile who has been convicted and has served a sentence in

an adult penal institution is an appropriate candidate for waiver for subsequent criminal acts.

The waiver scheme represents an effective method of dealing harshly with juveniles who require such treatment; yet, it preserves the rehabilitative services of the juvenile court where efficacious.

Waiver is not the only mechanism within the existing framework which can be more effectively utilized. Critics of the juvenile system frequently complain of its "revolving door" tendencies and its failure to mete out appropriate and meaningful sanctions for antisocial behavior. Again, rather than adopt an entirely new dispositional scheme, we can do more within New Jersey's present structure.

Currently, the juvenile court may utilize any of the following nine dispositional alternatives for delinquents:

1. Adjourn formal disposition of the case for up to a year in order to determine whether the juvenile makes a satisfactory adjustment. If during that period the youth makes a satisfactory adjustment, the complaint is dismissed;
2. Release the juvenile to the supervision of his parent or guardian;
3. Place the juvenile on probation for a period not longer than three years upon such written conditions as the Juvenile Court deems will aid in his rehabilitation;
4. Transfer custody of the juvenile to any relative or other person determined by the probation department to be qualified to care for the youth;
5. Place the juvenile under the care of the Division of Youth and Family Services;
6. Place an eligible juvenile under the care and custody of the Commissioner of the Department of Human Services to receive the services of the Division of Mental Retardation;
7. Commit the juvenile to a suitable institution for the treatment of mental illness if, after hearing, it is determined from psychiatric evidence that the youth constitutes a danger to himself or others if not committed;
8. Commit the juvenile to a suitable institution maintained for the rehabilitation of delinquents; or
9. The Court may fashion any other disposition not inconsistent with the juvenile statute.

This last provision is especially important as it authorizes and encourages innovative dispositions.

A new dispositional alternative for juvenile offenders involving restitution and community service has been implemented in New Jersey by the Division of Criminal Justice and the Administrative Office of the Courts.

Critics of the juvenile system have felt that in our efforts to rehabilitate the youthful offender we have often times overlooked the plight of the victim. This new restitutionary program seeks to aid the victim, as well as make the juvenile accountable for his misdeeds.

This program was initially developed under a federal grant to provide alternatives to incarceration in several counties. I hope that this worthwhile dispositional approach will be extended throughout the state to reach as many juveniles as possible.

Another area of great importance I would like to address just briefly is the juvenile crime problem in our schools. As I mentioned earlier, violence, vandalism, drug and alcohol abuse, have been increasing at alarming rates among our students. My office is deeply committed to the investigation and resolution of these pressing concerns.

When the Department of Education established a task force to examine the juvenile crime crisis in the schools this past year, my office took an active role in assisting the Department. To promote communication and cooperation between the educational and law enforcement communities, many county prosecutors over the past several months have initiated formal liaison groups with educational personnel in their communities. These efforts are to be congratulated and encouraged as effective methods of combating the problems of juvenile crime in our schools. I urge that such efforts be actively pursued on a state-wide basis.

A serious problem related to violence and vandalism which is also recognized by the Department of Education task force is drug and alcohol abuse among school aged youth. While total elimination of the drug and alcohol problem among juveniles is unrealistic, law enforcement still must attempt to discourage such abuse and reduce it to a minimum. To that end, I have recently formed a special task force within the Division of Criminal Justice to thoroughly examine this problem.

The major objectives of this task force will be to (1) identify the extent of alcohol and drug abuse among juveniles in this state; (2) identify the spectrum of causes, concentrating on areas in which law enforcement may be instrumental in effecting change, and (3) recommend feasible solutions to minimize drug and alcohol abuse among our youth.

On another front, the Division of Criminal Justice and the County Prosecutors Association combined last year to develop a manual of practices and procedures for police officers involved with juvenile offenders. This document has proven to be of enormous value to police officers in dealing with juvenile problems in acquainting them with the operation of the state's juvenile system. I would be happy to make this manual available to the participants in this Conference. A comparable manual for school administrators is currently being prepared.

I would like to share just a few concluding thoughts. I readily acknowledge that there are deep, abiding social and economic roots to juvenile crime, and crime generally. Yet, I recognize, as did the late Chief Justice Weintraub, that the right of the individual to live free from criminal attack in his home, his work, and the streets is pre-eminent among constitutional values. In the 1967 New Jersey Supreme Court opinion, *State v. Davis*, Weintraub explained that government's primary mission is to assure "that the individual shall be secure from attack upon his person and his things." Weintraub pointed out that "we want the citizen to forgo arms on the strength of that assurance." He also went on to remind us that the victims of crime are not some abstraction called "society" but rather they are "more likely than not . . . the poor, the most exposed and the least protected among us."

A vigorous utilization of the existing procedures in New Jersey's juvenile justice system will go a long way towards protecting these constitutional rights and alleviating the suffering of the unfortunate victims of juvenile crime.

Thank you.

SPECIAL ADDRESS

by the Honorable Benjamin R. Civiletti
Attorney General of the United States

I am pleased to have the opportunity to address this conference, because the very distinguished people here today are considering a grave subject. It is a self-evident truth that a nation which fails its children cannot long survive. My own association with the Department of Justice in the last several years, commencing with my position as head of the Criminal Division, has convinced me of how critical it is that conferences such as this one be held, that they involve those people who are responsible for the making of the laws and their execution on both a national and local level.

In surveying the current state of affairs, several facts present themselves which, in this International Year of the Child, are sobering indeed.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act, to which I shall return later in my remarks. Section 101(a) of that legislation summarizes the initial findings which motivated the enactment of the Bill and which are as valid, if not more so, today. It reads, in part, as follows:

1. Juveniles account for almost half the arrests for serious crimes throughout the United States today;
2. Understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help;

3. Present juvenile courts, foster and protective care programs, and shelter facilities are inadequate to meet the needs of the countless, abandoned and dependent children, who, because of this failure to provide effective services, may become delinquents.

The three points covered here, namely the high incidence of juvenile crime, the problems surrounding detention, and the failure of the juvenile justice system itself, are still the major moral and legal issues facing us today. Let me elaborate.

First, we have not only the figure of 50 percent given in the 1974 Act, but a whole host of alarming statistics to support the impression which most of us get that our young people are responsible for a disproportionately high percentage of the crimes which are committed in the United States. To be sure, I think that the picture may be exaggerated to some extent. For example, the 98 percent rise in arrests of juveniles for violent crimes exhibited in the decade from 1967 to 1976 has been slowed considerably, and in the case of some crimes, may actually have been reversed since then. Recent figures show that violent crime arrests account for roughly only 10 percent of all juvenile arrests. Nevertheless, it would be both wrong and foolhardy to take much comfort from these slowing trends.

I would therefore strenuously maintain that, irrespective of what figures you choose to cite, there is a serious and continuing problem to be confronted by prosecutors, judges, and correctional officers with respect to the high incidence of crime committed by adolescents.

The second observation in the 1974 Act concerned the abysmal conditions under which juvenile offenders are incarcerated. Behind this general observation lurk a number of specific ills which cry out for attention.

I need not rehearse here the many difficulties besetting correctional institutions through the United States. With respect to juveniles, the difficulties are the most troublesome.

Status offenders are a major part of these difficulties. It should be pointed out that, according to the Children's Defense Fund, 18 percent of the juveniles currently being held in jails in this country have not been accused or convicted of a crime for which an adult would be held criminally accountable. Four percent have not even committed any offense whatsoever.

Although a study done by LEAA has shown that the population of public juvenile facilities has declined somewhat in recent years, it is also estimated that as many as 500,000 juveniles may be admitted to *adult* facilities each year. There they may be molested, assaulted, or tragically led to take their own lives. Principally it is highly probable that any criminal inclinations they have may be heightened and solidified. Add to this the fact that blacks and Hispanics are represented among juvenile criminals far in excess of general population percentages, and it is evident that the systems for detaining problem youths, far from serving the interests of the nation, are likely to undercut them.

The third observation in the 1974 Act was directed at the juvenile justice system itself, at the procedures followed in family courts and other judicial bodies which hear cases involving minors. In the past, it was widely assumed that juvenile delinquency was a social disorder which required appropriate treatment rather than punishment. The practice of keeping juvenile cases away from regular prosecutorial channels, and entrusting them instead to

social workers in a nonadversarial process was largely based on this assessment and outlook. As we now know, however, this system, despite its good intentions, did not work very well. Curiously, it came under attack increasingly from all sides and persuasions. The system was considered overly paternalistic at the expense of some of the basic rights accorded those accused under our legal system. The juvenile justice system seemed to have become another instance of an institution designed to protect a certain class of people which unexpectedly worked against their interest.

As a result, changes began to appear. In the last few years several states have "recriminalized" juvenile delinquency, redefining it as a crime rather than a social disorder. Prosecutors have been given more authority to deal with juvenile cases, and the adult courts are playing a larger role as well. The problem is that the system still lacks uniformity of purpose and outlook and is therefore as unpredictable, if not more so, than it was several years ago. Different states may have procedures which bear no resemblance to each other. Needless to say, it is far from clear that this situation will provide a greater deterrent effect. At any rate, the present lack of predictability and uniformity undermines our ability to inculcate in our youth a respect for justice and the legal system.

These are formidable problems, and perhaps the point which emerges most clearly is that they are not susceptible to facile solutions. We will have to look afresh at our outlook on the legal system and our expectations from our system of criminal justice. We will need to balance the very real needs and rights of society to security, against the interests of the juvenile offenders, which are, in the final analysis, the interest of us all. We will need to come up with programs which can be applied uniformly and consistently, without arbitrariness or caprice. None of this will be easy to accomplish, but it is clear that all attempts at piecemeal or reflex solutions have failed.

Good starts have already been made on many levels. Many local task forces have been formed around the country to consider courses of action in the communities. I am also pleased that private foundations have taken an interest in this field and have provided sorely needed supplements to public funding of projects in delinquency prevention. Most to the point is the 1974 Juvenile Justice and Delinquency Prevention Act, to which I have been referring. That Act created within the LEAA the Office of Juvenile Justice and Delinquency Prevention (OJJDP) which has for five years assisted state and local governments in this area, and done the kind of first class research which is essential for an understanding of the hurdles confronting us. The three year authorization of OJJDP was renewed by amendment of the Act in 1977, and the further renewal will be required next year. In fact, the Department of Justice is proposing a set of amendements to the Act for passage in 1980, which will not only extend the authorization for OJJDP until 1984, but will also facilitate the tackling of the three knotty problems which I have noted.

I would like to share with you my reflections on what should and will be done to improve the current state of affairs, and I will address the problems in reverse order. First, the difficulties resident in the juvenile justice system itself: The OJJDP is committed to develop training programs for judicial and juvenile facilities personnel in order to ensure that the judicial process from start to finish considers carefully the interests of all segments of society and does not lead to the unintended consequences which have plagued the system

up until now. Recognizing the validity of many of the criticisms of the juvenile courts, the Justice Department will be doing its part to facilitate dialogue on what our objectives should be, and the development of a system which will accomplish those objectives. Let me state unequivocally that this is not and should not be a partisan or ideological issue. As a nation, we must come to grips with a process which has not only failed to protect us from disruptive youths, but has hampered us from developing the energies and talents of even the noncriminal juveniles. OJJDP is committed to cooperating with people like you across the country to correct this malady. Better state representation on the National Advisory Committee for Juvenile Justice and Delinquency Prevention, provided by the proposed amendments for 1980, will further this cooperative spirit and will hopefully lead to greater uniformity of philosophy and practice in different regions of the country.

With respect to correctional facilities, there is much to be addressed. OJJDP will do a considerable amount of research to determine whether, and to what extent, racial discrimination operates indirectly in the criminal justice system, so as to account in part for the disproportionate appearance of minority youths in houses of detention. Most important, the Department of Justice will reaffirm its goal of deinstitutionalizing juvenile offenders, particularly status offenders, to the fullest possible degree. Despite some unfortunate local moves to allow the detention of some juveniles in adult prisons, a major objective will be the removal of all juveniles from those institutions, and the diversion of criminal minors, whenever possible, to community-based residences near their homes. An LEAA study has already shown an increase in the number of group homes, shelters, and other noninstitutional settings. These "open" facilities now represent some 40 percent of all juvenile facilities, and that is a very encouraging sign.

A very important provision of the 1980 amendments would clarify Section 223 (a) (12) (A), so as to clearly prohibit the placement of juveniles who have not been charged with or adjudicated for offenses that would be criminal if committed by an adult in facilities that are secure or that are used for the lawful custody of adult offenders. This change in the Act should permit states to continue their progress toward full deinstitutionalization of noncriminal juveniles. In those cases where the practices of states and localities are in violation of the law, the Department will take action to enforce its provisions.

Finally, the Department has been actively supporting the passage of S. 10 and H.R. 10 in the United States Congress, which would give standing to the Attorney General to sue state institutions which are not providing inmates with treatment rehabilitation, and sanitary conditions which are their constitutional rights. If enacted, this Bill would do a great deal for the improvement of the lot of juveniles confined to state facilities.

I have deliberately saved for last the most difficult problem of all, which is the unacceptably high incidents of criminal acts by juveniles in the first place. In a sense, all the other problems I have discussed are derivative of this one; yet it is so vast and elusive as to seem nearly insoluble. Nevertheless, there is much that we can do and much that the Department of Justice can provide leadership for.

The reauthorization of OJJDP proposed in the 1980 amendments will allow the Agency to continue and to expand its research into types of juvenile

crimes, including violent assaults, sexual crimes, and drug abuse. Such studies have proved valuable in determining causal links between behavior and other factors, but important as they are, they are unlikely to lead to any solutions by themselves. Nor are attempts to attack isolated parts of the problem likely to be fruitful. We will need a concerted and holistic approach which respects the extremely complex nature of the present crisis.

It will be necessary to reshape even the community-based facilities being advocated for juvenile offenders so as to provide effective education and treatment and thereby lessen the likelihood that correctional facilities will breed repeat offenders. OJJDP stands ready to work with all parties involved to accomplish this goal. Obviously, the control of narcotic trafficking is another crucial element in the attempt to address juvenile crime, and both the Drug Enforcement Administration and the Criminal Division will be actively pursuing that goal.

Above all, however, the assertion of the inviolability of every child's right to quality education will do more than anything else to guarantee that youths will perceive their own stake in society, in its discipline, in its orderliness. Children who need an equal start in life, and who are at the age when perceptions of society and government are formed for a lifetime must be given that fair opportunity.

These are just some of the ways in which we can intelligently and creatively come to grips with the problems of juvenile crime. I am proud that the Justice Department has been taking a leadership role in this field. Twenty-five hundred years ago, in another democracy, Socrates paid his accuser this great compliment: "Of all our political men, he is the only one who seems to me to begin in the right way, with the cultivation of virtue in youth; he is a good husbandsman, and takes care of the shoots first...that is the first step; he will afterwards attend to the elder branches; and if he goes on as he has begun, he will be a very great public benefactor."

I am pleased to affirm the commitment of the Justice Department to that concept, to ask you to join in that commitment, and to invite you to call upon our assistance in your efforts.

Thank you.

The Institute and The College

As a public institution of higher learning, in the most densely populated section of the country, Jersey City State College is engaged in the struggle to ameliorate urban problems and to enrich the community which it serves.

Crime is the major single problem plaguing the contemporary urban environment. Functioning as a research, information, and educational center for professionals and the public in the areas of law enforcement, correctional services, courts, probation and parole, the Rodino Institute works to integrate the College commitment and mission with the practical problems and goals of the criminal justice system.

The Institute also enhances the College commitment to the special needs of urban students by expanding the opportunities for career experience and placement. The Institute activities: a) expose and acquaint students with multifarious needs in the system which call for able people (through conferences, symposia, and Institute-generated literature), and b) makes use of interested and competent students in Rodino Institute projects, thus affording them work experience and placement opportunities.

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