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# JUVENILE COURT - A LABYRINTH OF CONFUSION FOR THE LAWYER

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Judge Paul W. Alexander of the Toledo Juvenile Court is credited with saying, "We seldom see a lawyer in juvenile court — and when we do, we have to tell him what to do and how to do it."[1]

This characterizes, in large part, my experiences with members of the practicing bar during the three and one-third years I served as judge of the juvenile court at Tucson, Arizona. I might add one more thought. It is my opinion, that, on the whole, practicing lawyers did their clients as much harm as good when appearing for them in the juvenile court.

I realize in saying this that I am speaking from the standpoint of an ex-juvenile court judge, and not from the standpoint of a lawyer, though by far the greater part of my training and professional experience has been as a lawyer. I also appreciate that there has been a great deal of criticism of the Juvenile Court and its methods in this country, particularly by lawyers.[2] There is in effect a wide diversity of opinion between the organized bar, as a whole, and juvenile court judges who are one segment of that bar, as to the fairness of the treatment being accorded to the juvenile offender in America today.

It may very well be that the opinion that I happen to hold in this matter is a very erroneous one. I find myself in the position of being unable to defend it within the confines of any strictly legalistic discussion. Rather I find it necessary to approach an explanation of my views by first portraying the extent of family disunity and juvenile delinquency as it exists in my community and in America today.

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* See Contributors' Section, p. 65, for biographical data.

[1] PAULSEN, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1956).

[2] DUNHAM, *Juvenile Court: Contradictory Orientation in Processing Offenders*, 23 LAW & CONTEMP. PROB. 508 (1958); ELLROD & MELANEY, *Juvenile Justice: Treatment or Travesty*, 11 U. PITT. L. REV. 277 (1950); KETCHAM, *The Unfulfilled Promise of the Juvenile Court*, 7 CRIME & DELIN. 97 (1961); OLNEY, *The Juvenile Courts — Abolish Them*, 13 CALIF. STATE B.J. 1, April-May (1938); YOUNG, *Constitution and the Juvenile Court — Letter or Spirit*, 44 J. AM. JUD. SOC. 93 (1960); *Benevolence in the Star Chamber*, 50 J. CRIM. L. 464 (1960).

From there I would like to give a brief explanation of what a juvenile court hearing typically consists, at least the type of juvenile court hearing that I was in the habit of conducting.

It is only in this way that I see any hope of convincing my readers, whom I realize will largely be lawyers, that there is any merit to the opinions expressed above.

It is the belief of the writer of this article that no court, be it one of law, equity, juvenile, or adult criminal, can justify itself in the abstract without reference to the problems with which it is attempting to cope. In my view, any court must justify its existence and its procedure by the results it achieves and the service it renders to the culture of which it is a part. Abstract rules and principles which may very well be very salutary in one setting may not be practicable or salutary in another setting.

The juvenile court of this state, as in most of the fifty states of our Union, is delegated the exclusive jurisdiction over "all proceedings and matters affecting dependent, neglected, incorrigible, or delinquent children, or children accused of crime, under the age of eighteen years."[3] What, then, are the basic problems with which the court is faced when dealing with these "children"?

Members of the bar are generally aware that the family, the basic building block upon which our social structure is constructed, has been going through a period of great stress for many years and that the integrity of the family has been seriously weakened by various disintegrating forces that have been imposed upon it by social and economic developments. Among these forces, which have been identified and commented upon by various sociologists,[4] are (1) the lesser degree of economic dependence by the family upon the head of the family and upon each other, by reason of the affluency of our society, (2) the change from a patriarchal family organization to a partnership concept, (3) the change in the basic function of the family, from one which worked and produced together in order to survive, to one in which the basic ties are social, (4) the impact of formal education upon the home, which has taken the education of children out of the home, where it took place for most of the thousands of years of the development of our culture, thus eliminating to some extent one close parent-child tie, and, (5) the many diverging recreation opportunities which cause a family to indulge in recreation separately rather than as a family.

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[3] ARIZ. CONST. art. 6, § 15.

[4] See, *e.g.*, J. PETERSON, *Education for Marriage* (1956); GINZBERG, *The Nation's Children* (1960), (publication prepared for the 1960 White House Conference on Children and Youth).

My lawyer readers should be particularly able to appreciate the greater possibility of dissension from item (2) (the trend towards the partnership organization of the family). We lawyers know that because there is no built-in mechanism within a partnership to settle disagreements, the average partnership has a much shorter life than the average corporation, which has a president to make decisions.[5] This occurs despite the most carefully worded partnership agreements. We also know that there are many kinds of partnership contracts, and that for every contract there should be a meeting of minds. What is the meeting of minds between the bride and groom when they say "I do" today? Have they contracted a patriarchy? a partnership? or a matriarchy (which my male intuition tells me may be ahead)?

And lawyers should be keenly aware of the continuous climb in the divorce rates, which demonstrate so vividly the effects upon the family of these disintegrating forces. Divorces in this country are now approximately five times as prevalent as they were in 1885.[6] It is generally accepted that divorce statistics do not give us the whole picture on the amount of family unrest, but are probably only the exposed portions of the iceberg. Census reports indicate that more than twice as many adults are maintaining separate residences as the number of divorced people reported.[7] And dissension in the home, most authorities in this field believe, is just as traumatic as divorce.[8]

Less cohesion in the family has been singled out as the basic cause for juvenile delinquency.[9] Juvenile delinquency has been increasing in the past ten years at a rate two and one-half times as fast as the increase in the population of the 10-17 group.[10] The Federal Bureau of Investigation reports that in these times approximately fifty per cent of all major ("class 1") crime is committed by young people *under* the age of eighteen.[11] The rate of solution of crime is slightly worse than it was ten years ago.[12] Only twenty-five per cent of all crime is solved.[13] The increasing crime is being accompanied by a growth in illegitimacy (five per cent of all babies born in Amer-

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[5] HURLEY, *Business Administration* 9 (2d ed. 1960).
[6] 66 Stat. 59 (1952).
[7] Survey Papers prepared for the 1960 White House Conference on Children and Youth, at 224.
[8] DESPERT, *Children of Divorce* (1953).
[9] GLUECK, *Unraveling Juvenile Delinquency* (1950); GLUECK, *Juvenile Delinquents Grown Up* (1940).
[10] FBI, Unif. Crime Reports U.S. 3, 4, & 16 (1959).
[11] *Ibid.*
[12] *Id.* at 10.
[13] 75 Stat. 143 (Table 187) (1961).

ica are *registered* as out-of-wedlock babies),[14] and, in recent years, by a spectacular increase in venereal disease amongst teenagers.[15]

The problems of the community of Tucson, Arizona, are not radically different from those of the nation. Twenty-six per cent of all cases filed in the Superior Court of Pima County in 1960 were divorce cases or annulment cases. The ratio of the number of divorce cases filed to the number of marriage licenses issued in our county has increased gradually from 1912, when it was at a ratio of thirteen per cent, to a 1961 ratio of eighty-four per cent.[16]

During the calendar year 1960, the last full calendar year in which I served as juvenile judge of Pima County, there were 2,910 "referrals" of children to the juvenile court for violation of law. Almost all of these referrals were made by police agencies. These referrals involved behavior, which, if committed by an adult, would have consisted of 32 aggravated assaults, 209 burglaries, 170 car thefts, 38 grand larcenies, 13 robberies, 9 bogus checks, 16 arsons, 18 breaking and enterings, 309 petty larcenies and 188 shopliftings.[17] During the three and one-third years that I served as juvenile judge I had three children referred for homicide. The other referrals were for all kinds of conduct, including violation of liquor laws (337), malicious mischief (242), bicycle theft (53), running away (513), incorrigibility (77), simple assault (59), carrying concealed weapons (18), etc., etc. In addition to these cases involving what are called "behavior" problems, there were an additional 2,509 children referred to the court for traffic violations and 286 neglected children whose cases were heard by the court.

Of all the "behavior" referrals to the court in 1960, forty-four per cent were "adjusted" by the "intake" staff in the probation department. The word "adjustment" is a broad term meaning that there was no formal hearing before either a court or a referee as a result of the referral. In these instances the parent and child were usually called before a professional "intake" worker to discuss the situation with the family. After coming to the conclusion that the family would be able to handle the problem, no further action was taken.

Our court did not, during the calendar year 1960, engage in imposing any terms of "informal" probation (the imposition of sanctions upon the child and/or his family by a court worker without benefit

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[14] Focus on Children and Youth, 42 & 43 (publication prepared for the 1960 White House Conference on Children and Youth).

[15] *Id.* at 46; Summary of Today's V.D. Control Problem by the American Social Health Association (1961).

[16] See *Tucson Daily Citizen*, Oct. 31, 1961, p. 1, col. 1.

[17] Annual Report of the Pima County Juvenile Court for 1960, pp. 23 & 24 (1961).

of a court hearing). This practice has been criticized by Professor Paul Tappan, nationally recognized authority in this field.[18]

This practice of the Pima County Juvenile Court to "adjust" a substantial portion of its referrals is in accord with a custom which has developed throughout this country in juvenile courts.[19] This may or may not answer the critics who contend that the juvenile courts are making a "federal case" out of every referral to the court.

These then are the problems of the juvenile court delegated to it by the Constitution and statutory law. What is it supposed to do with these problems? Some light is thrown upon this question by the preamble to the first juvenile court act which was adopted in this territory by the 24th legislative assembly of the Territory of Arizona in 1907, which reads in part:

> Whereas, experience has shown that children lacking proper parental care or guardianship are led into courses of life which may render them liable to the pains and penalties of the criminal law of the Territory, although in fact the real interests of such child or children, require that they not be incarcerated in the penitentiaries and jails as members of the criminal class but be subjected to a wise care, treatment, and control, that their evil tendencies may be checked and their better instincts may be strengthened.
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> Whereas, to that end it is important that the powers of the courts in respect to the care, treatment, and control over dependent, neglected, delinquent, and incorrigible children shall be clearly distinguished from the powers exercised in the administration of the criminal law; . . . .

That the juvenile court, when hearing delinquency cases, is in no sense a criminal court is made very clear by the provisions of the present existing juvenile court act. Among the provisions so indicating are these:

> An adjudication by the juvenile court upon the status of a child shall not operate to impose any civil disability, nor shall a child be deemed a criminal by reason thereof. An adjudication by the juvenile court shall not be deemed a conviction, nor shall a child be charged or convicted of a crime in any court, except where the juvenile court refuses to suspend criminal prosecution. (ARIZ. REV. STAT. ANN. § 8-228A (1956) ).
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> Disposition of a child or of evidence given in the juvenile court shall not be admissible as evidence against the child in any pro-

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[18] TAPPAN, *Unofficial Delinquency*, 29 NEB. L. REV. 547 (1950).

[19] Juvenile Court Statistics, 1960 — Children's Bureau of the United States, Series 65, p. 1 (1961).

ceeding in another court, nor shall such disposition or evidence disqualify a child in a civil service application, or examination or appointment. (ARIZ. REV. STAT. ANN. § 8-228B (1956) ).

Upon the expiration of the period of probation or following the expiration of two years after the discharge of a child from the institution to which he may have been committed, the judge of the juvenile court shall order the clerk to destroy the records of the proceeding, unless it appears that prior to the expiration of the prescribed period the child has been convicted of an offense under the laws of this or another state. . . . (ARIZ. REV. STAT. ANN. § 8-238 (1956) ).

The manner of conducting hearings is left largely to the discretion of the court:

The hearing of any matter involving a child shall be informal, and the judge shall, in chambers, without the intervention of a jury, inquire into the facts, order a medical or mental examination, if advisable, and make a record of the name, age, and place of birth of the child and the names of his parents. (ARIZ. REV. STAT. ANN. § 8-229 (1956) ).

To cope with the problems with which he is presented, the juvenile judge in Arizona is given broad powers and few express limitations upon the exercise thereof.

Our law provides that any person may file a petition with the court seeking to invoke its jurisdiction but that the court need not accept such jurisdiction unless, after a preliminary investigation required by statute, the court "determines that formal jurisdiction should be acquired," in which event the court is authorized to accept the petition invoking its jurisdiction.[20] Upon the filing of such a petition, and pending final disposition, without any prior hearing required, the law provides that the child shall be "subject to the order of the court and may be permitted to remain in the control of its parents,—or the probation officer, or he (the child) may be detained in a place provided by State or county authorities. . . ."[21]

In making his final order the only admonition given to the court is that his final order should be such "as the child's welfare and the interests of the State require."[22] As part of his final order, he may commit the child to the custody of his parents, to a probation officer, to a suitable institution or a school (including the State Industrial School and the institution provided for juvenile girl offenders).[23]

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[20] ARIZ. REV. STAT. ANN. § 8-222 (1956).
[21] ARIZ. REV. STAT. ANN. § 8-225 (1956).
[22] ARIZ. REV. STAT. ANN. § 8-231 (1956).
[23] *Ibid.*

Once the jurisdiction of a juvenile court has been acquired, the law provides that "the child shall continue under the jurisdiction of the court until he becomes twenty-one years of age, unless sooner discharged. . . ."[24]

The court has the power under the Constitution (Art. VI, Sec. 15) to refuse to suspend criminal prosecution, and enter its order permitting criminal prosecution to proceed.[25] There is no test or guide laid down in either the statutes or the Constitution as to the manner or the standard for the exercising of this broad power.

There is no express provision in the statutes for an appeal from an order of the juvenile court, nor for any record of the evidence taken before the court. Whether or not an appeal lies from a final order of the juvenile court is not without doubt.[26] Many juvenile courts are accepting, in certain phases of their proceedings, hearsay evidence. There is no provision for bail in the event the court determines to detain a child. It is little wonder then that the juvenile court has incurred the wrath of at least one civil liberties union,[27] and that lawyers are uncomfortable when attempting to represent clients before the court.

But great as those powers are, and as unlimited as the court's discretion is, the writer, for one, believes there is little, if any, more power or discretion vested than required by the exigencies of the problems presented. After three and one-third years of attempting to cope with these problems, using to the fullest the powers and devices

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[24] ARIZ. REV. STAT. ANN. § 8-236 (1956).

[25] State v. Henderson, 34 Ariz. 430, 272 Pac. 97 (1928).

[26] There is no provision in our juvenile code for an appeal. The majority view, from other jurisdictions, is that if no appeal is granted by statute, none lies. Several courts have reasoned that the juvenile court act is intended to be a complete statutory pronouncement upon the subject, and that general appeal statutes therefore are not applicable. The general law to this effect is given in 43 C.J.S. *Infants* § 99j (1955), and 31 AM. JUR. *Juvenile Courts and Delinquent, Dependent and Neglected Children* § 90 (1938). As close to being in point as any cases the author has found are the Washington cases of In re Welfare of a Minor, 45 Wash. 2d 20, 273 P.2d 243 (1954), and Wade v. State, 39 Wash. 2d 744, 238 P.2d 914 (1951). The Constitutional provision as to the appellate jurisdiction of the Supreme Court of Washington (WASH. CONST. art. 4, § 4) is very similar to our own (ARIZ. CONST. art. 6, § 5), and the general appeal statutes are similar. Compare WASH. REV. CODE RULES ON APPEAL § 14 (1956) to ARIZ. REV. STAT. ANN. § 12-2101 (1956). In Re Johnson, 86 Ariz. 297, 345 P.2d 423 (1960) is a case where the Arizona Supreme Court neatly sidestepped the question. There were two motions to dismiss an appeal from an order of the juvenile court in Maricopa County, one on the basis that the order was not appealable, and the other on the basis that the appellants, in whom only temporary custody of two neglected children had been placed, were not proper parties to bring an appeal from an order that in effect returned the children to their natural mother. The court granted the motion to dismiss the appeal on the latter ground, without mentioning the first ground.

[27] Civil Liberties Record of the Great Philadelphia Branch ACLU, February, 1956.

at hand, the writer asked to be relieved from this juvenile court assignment so that he could devote his time to less troublesome work in the "adult" court.

In order to attempt to explain these opinions to the select group of readers to whom these words are addressed, readers who are steeped in a tradition of due process, procedure and rules of evidence, the writer will describe how he exercised those broad powers in the "run-of-the-mill" delinquency case.

As we have previously indicated, approximately fifty per cent of all referrals of juveniles for violation of law are adjusted in "intake," by an informal conference with the parents and the child. Those cases which are heard by the court or by referees appointed by the court (the writer used both lawyers and laymen as referees) were of a more serious nature. Under the broad provisions of the statute, which do not lay down any particular procedure for a hearing, each judge and each referee conducts hearings in a somewhat different way depending upon the manner in which he or she feels the most effective.

The author (and all referees hearing cases for him) would commence a hearing, after formal introductions and a prefatory statement by the court as to the nature of the proceeding, by going directly to the question of whether or not there was grounds for the court taking jurisdiction in the case. Previously there would have been explained to the family by "intake" workers their right to subpoena witnesses to the hearing. Written notice of the hearing would have been given to the family. It was the court's policy not to proceed with a delinquency hearing in the absence of both parents, and if at least one parent did not appear, the hearing would be continued and process issued for the attendance of one or both parents.

The question as to the nature and extent of the acts of delinquency would usually be handled by a discussion between the court and the boy (or girl). Very often, the police report would be read to the child, and the child asked to correct any facts which he considered erroneous. With rare exceptions, when it might become necessary to subpoena investigating officers, the child would agree with the substance of the investigative report.

The facts of the violation have always been verified by the juvenile "intake" officer prior to the time of the hearing, by interviewing available witnesses. Many times at the initiation of an investigation of an alleged violation in which there were several juveniles involved, there will be discrepancies between the various stories told. In these cases, trained professional staff are usually able to reconcile the stories, sometimes by bringing the various juveniles together to confront one

another, or by pointing out to the child his own discrepancies. Long grilling of a child is not permitted. There is no special attempt made during the process of this search for the truth to advise the juveniles involved that they have the right to secure legal counsel nor is there any advice given to the juveniles that they may remain silent by invoking the Fifth Amendment. Because the juvenile court is not a criminal court it is not believed this provision is applicable.[28]

The pre-hearing report, which the court would have furnished to it some time before the hearing, would give to the court a summary of the present situation, a past history of the boy and his family, an evaluation of the family problem, and a recommendation for disposition by the court. This report often contains semi-confidential information, such as a frank evaluation by the boy's school counselor, or opinions by next-door neighbors (as, for instance, that father and mother quarrel incessantly over the proper handling of their son).

In the usual juvenile hearing, the phase devoted to determining whether an act of delinquency has occurred (any violation of criminal law or ordinance)[29] takes the minor portion of the hearing. By reason of the pre-hearing investigation, and the frank, or semi-frank attitude of the boy and his parents, the essence of the law violation involved is usually quickly grasped by all present. The next, and more difficult phase of the hearing is then approached. What to do about it?

This will often include a discussion with the parents, in the absence of their child, as to family problems. Many parents are perplexed and baffled by the tremendous responsibilities of parenthood. They welcome a down-to-earth discussion of their problems with persons such as the court and professional juvenile staff workers. There is a good deal of family counselling involved. These parents are given to understand by the court that it is their basic responsibility to discipline their own children — that only when they fail in this regard should the State step in to fulfill this function.

They are advised that failure to provide proper supervision and discipline is a form of neglect which can have far-reaching, damaging effects upon their child.

In the presence of the boy, it is explained that juvenile delinquency is regarded by the court as a family problem and must be solved within the family. Any number of approaches to the boy's better nature may be tried, to attempt to waken in the boy some appreciation of his indebtedness to his family and to the American culture of which he is a part.

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[28] See In re Holmes, 379 Pa. 599, 109 A.2d 523 (1954); see also Annot., 43 A.L.R. 2d 1128, 1133-38 (1955).

[29] ARIZ. REV. STAT. ANN. § 8-201(6) (1956).

Occasionally the court is faced with the problem, so real to the boy, of "squealing" on his friends. A boy will refuse to talk about what happened because he does not want to involve his "buddies." On these occasions, the attitude of the court on this conflict of loyalties is explained to the boy. He can stick with his friends, or with his culture — the way of life of which he is a part. This court always took the view that every citizen of this country, when called before a court of law, has a moral duty to tell the truth, no matter whom it hurts. The court would often try to cause the boy to appreciate that he is tremendously indebted to his family, and that now, for the first time in his life he is capable of giving to his parents some measure of return. The court would try to "sell" the boy on the idea that what this country desperately needs is capable young men like himself, who are honest, and law abiding, who can become part of the sinews of this nation in an hour of peril.

Surprisingly, perhaps, to some readers, many a boy will leave a hearing with some new glimmer of appreciation of his role in life and some new sense of loyalty to his family and his country.

At the conclusion of the hearing, the child is usually placed on probation, in the custody of parents. Approximately ten per cent of all children adjudicated delinquent (about one-half of "behavior" referrals) are finally placed, either temporarily or permanently, out of the home. In these cases, parents lose custody of their child by demonstrated inability to provide proper discipline and supervision. About one-half of such orders are to an Industrial School or similar institution for delinquents, and the other half are placements of children outside the home with welfare agencies, etc.[30]

The probationary order of the court will always require the boy to obey his parents, and to attend school or a full-time job, to the best of his ability. Additional special restrictions may be placed in the order of probation, such as requiring the boy to use his best efforts to pay restitution for damages done, or setting special curfew hours for the boy, which hours are always subject to being further limited by parental authority. It is explained to the family that a probation officer will be assigned to the case, whose function it will be to give counselling to the family with their problems which revolve around the probationer, and with the additional function of ascertaining that the child is using his best efforts to conform to the probation order.

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[30] These are approximations that apply both locally and nationally. See BLOCH & FLYNN, *Delinquency, The Juvenile Offender in America Today* 356 (1956).

The attitude of the boy involved is always a factor in determining the order of the court. If the boy leaves the court, scornful of its processes, openly defiant of authority, and without having made a clean breast of his involvements, the court knows the boy will soon be back. The court also knows that delinquency rubs off on others of the same age, and a boy of this type is very apt to cause some of his acquaintances to be delinquent, who in turn will infect others.[31] Because of this, the attitude of the boy might be the final factor influencing the court to institutionalize the child, or to remand the child for criminal prosecution for the offense charged.

It should be emphasized that the personnel working with the court on the problems of these troubled youth and their equally troubled families are the key to the effectiveness of any juvenile court program. Unless the court has gathered around it dedicated persons who want, and are able by reason of training, to understand and help with family problems, particularly those of youth, the program of the court will not succeed.

Of invaluable assistance to the court is a detention facility where children can be detained without degradation. Pima County has one of the finest detention homes in this country. In one wing there are accommodations for twenty-six boys and in the other wing accommodations for twelve girls. The facility is kept immaculately clean. Meals are served, cafeteria style, and are of fine quality. There are play yards on each side of the facility for both boys and girls. There is a central large room which can be used for recreation, such as ping pong and pool. There is a library which contains a number of books which are interesting to adolescents.

There is a male and female supervisor on duty at all times; each works an eight-hour shift, and a 40-hour week. Nervous tensions which tend to build up in personnel who must work with these troubled youth is thus kept to a minimum.

Children who have developed a pattern of falsifying to their parents and who, if left with their parents pending a hearing, would only repeat fabrications until recanting would become psychologically impossible, often relievedly tell their true story to detention personnel. Many a tangled tale is unravelled in detention.

A lad who demonstrated such disrespect for authority as spitting in policemen's faces, and cursing parents and teachers, often subdues in the quiet and restrained atmosphere of this detention home. It is

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[31] A statistical analysis of 1959 Pima County referrals revealed that 34% of new referrals to the court were, according to case histories, in the company of known delinquents. 1959 Annual Report of Pima County Juvenile Probation Dept., p. 8.

felt by the writer that these periods of detention have saved many rebellious youth from going on to more serious law violations and penitentiary sentences. If children have been embittered by this experience, as one would gather from reading certain widely circulated magazine articles,[32] the court has not observed it. The court has observed on innumerable occasions a calming effect, which has made the boy a better member of his family and a better member of society.

The holding of children in a detention facility can, of course, be overdone. It has been the continuous policy of the Pima County Court to keep these periods to what is considered a minimum. Only in the more serious offenses is detention used as a means of clearing up conflicting stories of juveniles. The average stay in the Pima County Detention Facility during 1960 was 2.69 days each. The large majority of children were released as soon as parents came to "claim" their own.

The writer took over the juvenile court of Pima County just one year after this facility had been opened. Previously, when children were not immediately returned to their homes after arrest, they had been temporarily boarded out with a private party (Mrs. Clara Higgins — hence the name of Pima County's Detention Facility — "Mother Higgins"), or placed in jail. By reason of the awkwardness and inappropriateness of this procedure,[33] comparatively few children were ever detained.

During this period of time there was a dramatic growth of serious law violations in the community, culminating in several sordid homicides.

This growth in serious crime peaked in 1957, the first year of operation of the detention home. Thereafter, the amount of these major law violations was relatively constant (though minor infractions, such as curfew violations, etc., have increased substantially).

This levelling off in major crime, as to which the detention facility plays a more important part than in minor violations, could have been influenced by other factors, of course, but there is no other change in the community that comes to mind that could have had the broad impact in this particular phase of our local social illnesses. Fig-

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[32] See MAAS, *Children Behind Bars,* Look Magazine, Jan. 3, 1961.

[33] It is illegal to hold any child under 18 years in any jail or prison where adult prisoners are confined. ARIZ. CONST art. 22, § 16. In Vigileos v. State, 84 Ariz. 404, 330 P.2d 116 (1958), our Supreme Court held that this applied even to a juvenile remanded by a juvenile court for prosecution for burglary. This requirement is actually observed only to a limited degree. The *Vigileos* case held that habeas corpus would not lie to correct his illegal detention in the State Prison, and only three of the fourteen counties in Arizona (Maricopa, Pima and Yuma) as of this writing are known by the author to have a detention facility. Even in the outlying mining communities of Ajo, in Pima County, the jail, with a special room for juveniles, is used occasionally for the detention of juveniles.

ures for these violations are given below.[34] It should be remembered that the levelling off effect occurred at a time when Pima County population was exploding (eight per cent increase per year), when juvenile crime in the country as a whole was increasing two and one-half times as fast as the youth population, and when Tucson was changing into a metropolitan area, in which delinquency problems are usually drastically accentuated.

In cases when serious psychiatric or psychological problems appear to be present, the court will cause the child to be examined by the Tucson Child Guidance Clinic, which uses the "team approach" to these problems, with a psychiatrist, a psychologist, and a psychiatric social worker, all attempting to shed some light upon the problems presented. If this broad an approach is not deemed necessary, a special psychological evaluation is secured by the court.

It was mentioned that the court accepts hearsay testimony in some phases of its work. The pre-hearing report that we have mentioned is nothing more nor less than hearsay. The statements therein contained do influence the court in arriving at a proper disposition, and in many cases the entire effectiveness of the procedure would be destroyed if this report were made directly available to the parties concerned. For instance, if the report does contain statements of neighbors of continuous quarreling in the home, and if this were made known to the parties so "accused," whatever neighborly atmosphere there might be would probably be destroyed. Further, sources for this confidential information would soon be dried up.

When counsel appeared in the case, the court would always permit examination by counsel of these reports, upon a verbal commitment not to reveal to his clients the sources of such confidential information. The lawyer was always given to understand, however, that

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[34] From statistics of Pima County Juvenile Probation Department:
FREQUENCY OF MORE SERIOUS DELINQUENT ACTS — 1952 Through 1961

| Offense | 1952 | 1953 | 1954 | 1955 | 1956 | 1957 | 1958 | 1959 | 1960 | 1961 |
|---|---|---|---|---|---|---|---|---|---|---|
| Homicide | 0 | 0 | 0 | 2 | 4 | 2 | 1 | 0 | 0 | 0 |
| Narcotic Violation | 4 | 3 | 3 | 4 | 7 | 5 | 7 | 5 | 0 | 0 |
| Aggravated Assault | 9 | 6 | 20 | 24 | 31 | 29 | 30 | 26 | 32 | 19 |
| Burglary | 108 | 105 | 126 | 180 | 175 | 232 | 194 | 187 | 209 | 201 |
| Car Theft | 66 | 54 | 43 | 108 | 143 | 232 | 184 | 187 | 170 | 161 |
| Grand Larceny | 35 | 23 | 36 | 73 | 41 | 85 | 71 | 38 | 38 | 39 |
| Robbery | 28 | 33 | 33 | 14 | 12 | 13 | 14 | 9 | 13 | 10 |
| Fraud (Bogus Checks) | 6 | 2 | 7 | 10 | 9 | 13 | 15 | 4 | 9 | 13 |
| Totals | 256 | 226 | 268 | 415 | 422 | 611 | 516 | 456 | 471 | 443 |

he had the right to subpoena any of these persons, and get their story firsthand before the court. Further, he could bring in to the hearing any witnesses who could refute any facts or opinions stated in the report.

If counsel were not in the case, the court would always make known to the family, without revealing the sources of information, what facts seemed to be indicated by the pre-hearing report, so that the family could bring in or give contrary testimony.

Another use of hearsay would be when a placement out of the community is being considered. If there is an uncle and aunt living in Los Angeles, California, with whom the court might consider placing the child, the court might rely upon a written investigative report from the Los Angeles Welfare Department in helping it to make a decision whether the boy might be placed in this other home. The costs of taking depositions in the many cases in which this information is necessary would be staggering. In instances such as this, the court would supply the report for examination of all interested persons, and would provide opportunity for refutation.

Continuances to secure evidence were freely given. The author feels this to be necessary in view of the broad terms of the delinquency petition and notices of hearings, which, under applicable statute need only allege that a child is "delinquent,"[35] without specifying any facts.

The court should not, in the author's opinion, accept hearsay in reaching a conclusion that a boy is subject to the jurisdiction of the court for having violated a criminal statute. This is a most pervading determination as far as the child is concerned. This court always took the view that it should take as much evidence to adjudicate a child a delinquent as it would to convict a child in a criminal court. The court was of the opinion that police agencies should present just as much evidence in a juvenile court as they do in the adult court, if it becomes necessary to do so. But this writer saw no point in spending valuable public funds in long and tedious hearings if the child admitted that verified police reports were correct. If the child is not encouraged to be an adversary to society by being impressed that he is being "prosecuted" for some offense, told that he has the right to remain silent and that his "adversary" in this battle of wits must prove beyond a reasonable doubt all of the elements of a "crime," the child usually, relievedly, tells the truth. The only "who-done-it" of which I can remember in three and one-third years of work in the court, was a case that was conducted in the outlying community of Ajo (135

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[35] ARIZ. REV. STAT. ANN. § 8-222(B) (1956).

miles to the west of Tucson) where the court does not have a detention home. The children in this case were released to their parents promptly after they were arrested for a series of burglaries. At the hearing, though the evidence presented by the law enforcement agencies was overwhelming, and there had been prior admissions, each of the three children involved told a story, which, though not consistent with the stories told by the other two children, nevertheless completely exculpated the testifier. Though the court found these children to have committed delinquent acts, and placed them on probation, the probationary period was not successful. Rapport between the court and the probationers never came into existence.

It might be of some interest also to note that in the Denver, Colorado, juvenile court which is presided over by Judge Philip B. Gilliam, in which state a juvenile can demand a jury trial in a delinquency case, Judge Gilliam reports that there have only been two requests for a jury trial in the more than twenty years that he has sat in this court. These requests were made primarily until the attorneys could study the case further and both attorneys later changed their minds and submitted the case to the judge for hearing.

The essence of the effectiveness of the court's program is to establish the proper rapport between the child, the family, and the court. Unless there is some measure of trust and confidence between these three, the court can achieve little. The concept of the State "versus" the child is the epitome of what the court is seeking to avoid.

It takes no stretch of the imagination to conceive of the frustration of both court and counsel if counsel appears in juvenile court, believing his function to be the "beating of the rap" for his client. To try to give the reader some concept of this, we will recount a supposititious case of a young man of sixteen, who has been arrested for aggravated assault, with the possibility of a homicide charge pending. (The victim of the assault was in the hospital in serious condition at the time of initial referral).

The person assaulted was a man who was walking down a sidewalk in suburban Tucson, when he was assaulted by several young men who emerged from a car driven by the subject. The car was the family car of the subject's father and mother.

Soon after his son's arrest, the father contacted the family lawyer, who immediately went to the juvenile detention home where he was permitted to talk with the boy. At the time of this first interview between the boy and the lawyer, the boy had been in detention for approximately fourteen hours, during which time he had been interviewed by police agencies, and by the "intake" officer of the probation staff. At the time of these interviews, the boy presented no

unusual attitude. He told a fairly clear story of his share in the attack, which was primarily that of driving the car. His two older companions (eighteen and seventeen years), whom he had only known for a short time, had concocted the scheme of the beating, on the spur of the moment, for "kicks." The subject had been appalled and disgusted with the brutality of the attack made, which had included kicking the man when down, and fracturing a vertebra.

After this initial interview with the boy, the lawyer immediately began contacting juvenile authorities and the juvenile judge, demanding the boy be immediately released to his parents. The lawyer expressed surprise and dismay to the court when he was informed that there was no bail, as a matter of right, in the juvenile court. It was the lawyer's firm opinion that this was a violation of due process, so he informed the court. This is probably not the law.[36]

The boy having apparently made a full disclosure, and the family being a reputable one in the community, the boy was released to his parents pending a hearing, which was scheduled approximately seven days after the incident.

Immediately upon being released, the boy took the family car and departed out of the state. Both the mother and father professed they did not know where the boy had gone, but neither did they appear to have any great desire to have officials hunt for their boy. It was a matter of six weeks later before the boy was arrested in Denver on a traffic violation, and upon discovering that the boy was a runaway, the boy was returned to this jurisdiction.

When re-admitted to detention, the boy's story had changed drastically. He now professed no knowledge whatsoever of the incident in question and presented a very sullen and defiant attitude to all law enforcement and juvenile authorities. The matter was scheduled for a hearing. At the hearing the boy's parents, their family lawyer, and the boy were present, together with the chief probation officer. Awaiting outside were all of the police officers who had had any part in investigating the violation. Also, there were subpoenaed to the hearing the two older boys involved, who were both awaiting prosecution in the adult court. The court, in the interim, had held a hearing upon the seventeen year old, had refused to suspend criminal prosecution and had remanded the boy to the adult court for trial.

At the hearing, it soon developed that the boy was going to maintain his sullen and defiant attitude throughout. He refused to give any information whatsoever to the court as to whether he had been

[36] See, *e.g.*, In re Magnuson, 110 Cal. App. 2d 73, 242 P.2d 382 (1952); State v. Fullmer, 76 Ohio App. 335, 62 N.E.2d 268 (1945); Ex parte Espinosa v. Price, 144 Tex. 121, 188 S.W. 576 (1945). *Contra*, Trimble v. Stone, 187 F. Supp. 483 (1960).

present or what part, if any, he had taken in the sordid beating. The two older boys were called before the court and took a similar attitude, both claiming immunity under the Fifth Amendment. This immunity, as to both of these children, was immediately recognized by the court and they were excused from the hearing. Police officers who had a part in investigating the case were then called in to testify and they detailed the involvement of the subject by identifying the car involved in the incident, and by giving testimony as to the admissions made by the subject at the time of his arrest. The man who had been attacked, who was, fortunately, recovered sufficiently to appear at the hearing, testified. He positively identified the subject as the driver of the car from which the two older boys had emerged who had assaulted him.

The hearing by this time had consumed the better part of one day. The lawyer had been permitted to cross examine at length all of the witnesses called. The court felt morally satisfied from the evidence heard that the boy was guilty of being at least an accessory to a rather serious crime. On the basis of the boy's attitude, and the attitude of his parents, who had throughout the hearing been most uncooperative, the court felt that there would be little chance of success for probation. There was simply no trust or confidence between this family and the court. The court was satisfied from the case studies that had been made that the boy had been for many years over-indulged by his parents, who had little or no control over him. He was remaining out late at night, consorting with known delinquents, and contributing nothing to the welfare of his family or himself. He had been expelled from school the prior year and had no job. He spent all of his time driving around in a car which his family provided him, in dating girls, and in engaging in non-productive activities.

At the conclusion of the hearing, the court announced that it felt it had no choice other than to remand the boy for criminal prosecution along with the other two boys. This decision of the court seemed to fill the lawyer and his clients with consternation. For once, the lawyer seemed to be subdued and the parents themselves took up the conversation for the first time. They pled with the court not to so dispose of the case and begged that their child not be given a criminal record.

On the basis of these pleas, in which the lawyer seemed to silently join, the court recessed the hearing for one week, informing the parents if they had any further information or plan that they wished to present to the court they might do so at the time of the recessed hearing. The boy was to remain in detention pending same. By the

time of the continued hearing, the court had been informed by personnel of the detention home that the boy's attitude had again changed. He was penitent for his involvement and communication between him and members of the staff had been re-established. During this one week the boy had not seen the family lawyer and it developed at the time of the hearing that the family had decided to dispense with his services in connection with the case. The mother and father at the continued hearing for the first time demonstrated an appreciation of the seriousness of the problem of their son and confessed their inability to control his actions. In the absence of the boy, they openly asked for aid and assistance from the court in coping with their disciplinary problems. They admitted they had lost control of their son some years back. The boy made a full disclosure of his entire involvement in the case and volunteered that he would be willing to testify at the trials of the other two boys. It subsequently developed that both of these boys pled guilty to the charges of aggravated assault and there was no necessity for his testimony.

The boy was placed on probation for an indefinite period. Within six months after his being placed on probation, the probation officer reported back to the court that there had been a dramatic improvement in the boy's performance. He was back in school and doing well. He had a part time job on Saturdays and was turning over to his parents one-half of the amount he earned to be applied toward the family income. The relationship within the family was greatly improved. Mother and father were no longer at odds as to the proper treatment of their son. The son was accepting the discipline of his father. Family quarrels were at a minimum. The probation officer recommended the termination of probation and the court so ordered.

The particular lawyer who was involved in this incident probably has a very low opinion of the processes of the court and its methods. All of his training teaches him to resent the "high-handed" manner in which the court handled the case and the apparently unlimited power of the court to hold this boy in detention. He probably could, as a result of his experiences, write a treatise, much longer than the one now undertaken, describing the violations of due process which occurred.

There is no one phase of the juvenile court process that causes more criticism than the power of the court to hold a child in detention. Any time great power is vested in any human, there is chance for abuse. There is no question in the mind of the writer but what juvenile judges, from time to time, have abused this power. If the power is used to punish a boy or a girl for an anti-social act, such use would be an abuse of power. Under the juvenile code, without benefit of jury

trial and without the many other protections accorded the most common criminal, the court should never use its power to punish. But to say that it is not occasionally done would be to deny the blunt facts of life.

Another type of abuse of power arises in large cities where the number of juvenile cases are staggering. Shortage of public funds to employ sufficient staff and sufficient judges results in a large backlog of cases. Many times a child is put in detention and practically forgotten about. This should never be.

Perhaps the solution is as adopted in the State of California, which recently modified its juvenile code, as of September 1961, so as to spell out in great detail what the powers of the court are and are not. Upon the arrest of a juvenile, he is to be taken immediately before a probation officer, who is commanded by the statute to immediately investigate the circumstances and facts surrounding his being taken into custody. The statute requires the child be immediately released to the parents unless it appears that further detention of such minor is a matter of "immediate and urgent necessity for the protection of such minor or the person or property of another, or unless it appears that such minor is likely to flee the jurisdiction of the court, or unless it appears that such minor has violated an order of the juvenile court."[37] If the probation officer determines that the child should be held pending a hearing, there must be a "detention hearing" to determine whether the minor shall be further detained, which hearing must be held not later than the next judicial day after jurisdiction of the court attaches. At such hearing, and at all hearings, the child is entitled to be represented by counsel and, if indigent, the court may appoint counsel for the family; if the misconduct charge is such that it would constitute a felony if committed by an adult, the court *must* appoint counsel for the minor. If there appears to be a conflict of interests between the parents and the child, the court may appoint counsel for both.[38] At all hearings before the court there must be a reporter to take down all testimony.[39]

Altogether there are seventeen sections in the California Code, of substantial length, dealing only with the problem of temporary custody and detention of juveniles. All of this is in contrast to the Arizona statutes, which provide, in the form quoted hereinabove, that "the child shall be subject to the order of the court" pending the hearing, and "A peace officer, other than a probation officer, who arrests a child under the age of eighteen years, shall forthwith

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[37] CAL. WELFARE & INST'NS CODE § 628.
[38] CAL. WELFARE & INST'NS CODE §§ 634, 700.
[39] CAL. WELFARE & INST'NS CODE § 677.

notify the probation officer, and shall make such disposition of the child as the probation officer directs."[40] (ARIZ. REV. STAT. ANN. § 221A).

In the abstract, and to a lawyer, the new California provisions will probably seem much preferable to our simple provisions which it can be well argued leave so much room for "tyranny."

It may be that the more detailed procedure adopted in California will result in much more salutary results than have ever been achieved in a juvenile court in this state. But having dealt with this problem so closely and feeling so strongly that we are dealing with a problem that is close to the heartbeat of America, the writer urges that the final tests must be the results and not theory. The good citizenship of our youth is so intimately linked with the future of our country that we cannot afford to adopt a system which satisfies the due process concept of lawyers, without regard to the results being achieved in the youth which must be subjected to that due process.

Anyone who has viewed the workings of the adult criminal court at close hand will realize that there are some unwholesome qualities to that system too. That the adversary system encourages prevarication and perjury is demonstrated by the record. Case after case go to trial in Superior Court with the defendant taking the stand and relating exculpatory statements, which juries, under a charge of having to be convinced beyond a reasonable doubt, unanimously, reject. The juvenile court, without the adversary system which the California system seem to be tending towards, is relatively free from these distortions of truth.

The "copping" of pleas is something that is completely foreign to the juvenile court. This occurs on a day to day basis in the adult court. It is a common practice, particularly in the larger cities where court calendars are crowded, to charge a defendant with the maximum crime that can be possibly construed from the facts. Then, in order to avoid a trial, in which the outcome is always doubtful, the prosecution will accept a lesser plea. While this type of a compromise may save the taxpayers many thousands and millions of dollars in trial time, it is a poor way to decide what offense has been committed. And it is conceivable that innocent persons may "cop" a plea in order to avoid the possibility of being convicted of the greater offense. And major violations of law are many times treated as minor, and the wrongdoer turned back to do further harm to society, in order that a county attorney's office may avoid the risk of a "defeat" being chalked up against it, which will impair the "record" at the time of the next election.

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[40] ARIZ. REV. STAT. ANN. § 8-221(A) (1956).

And then there is the basically immoral practice of "turning State's evidence" — testifying against one's accomplices and thus avoiding prosecution. This again is a common practice in the adult court and again results in a tragic detriment to society. The normal operation of the juvenile court, as permitted under statutes such as those of Arizona, will not create this type of bargaining.

The use of lay referees by the court would be entirely impracticable under the complicated procedure such as adopted in California. The writer of this opinion has found many beneficial effects from using lay referees in the Tucson community. One of the greatest advantages is that if the parents are dissatisfied with the decision of the referee, which in effect is only a recommendation to the court, becoming an order only when approved by the court, they have the opportunity of appealing the decision to the court.[41] Thus, at a local level, there is an appeal available to all persons whose cases are heard by a referee.

The decisions that are being made are critically important to those concerned. It seems very wise to have an appeal at a local level, where the average person appearing before a juvenile court, who is usually without funds to employ counsel, can have another day in court. These appeals are tried de novo by the court. The local court is not in the custom of having a reporter to take down the testimony at either type of hearing. If the parties involved request it, however, a reporter was always furnished.

There is no question but what the California system is much closer to what lawyers have been given to understand is "due process." There is also no question but what the system is considerably more expensive, more time consuming, and the writer is given to wonder whether some of the basic informality and non-adversary nature of the proceedings has not been damaged. The writer would be of the opinion that the presence of a court reporter in a juvenile court hearing would not add to the rapport between the court and the family nor would it aid the court in communicating to the boy nor the boy to the court. If counsel is to be appointed in "felony" cases, it would seem that every such hearing would partake of an adversary proceeding. And, if the defendant is entitled to counsel, who is going to represent the state's interest? The court? Or must the county attorney's office double its staff? If our main concern is to avoid ever holding a boy in detention who is not "guilty" of some heinous crime, then the California law is undoubtedly best. But if the basic purpose of the law is to create good citizens, and to avoid anti-social conduct,

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[41] ARIZ. REV. STAT. ANN. § 8-230 (1956).

then the writer believes the Arizona law may be the better.

In so expressing himself, the writer realizes that he is speaking from a limited experience and that his view may be distorted and prejudiced. If the results in California are the better, then the writer will cheerfully accept this as the test.

There is undoubtedly some weakness in the present juvenile code in Arizona, as there is in every legislation. If this law results in actual, not theoretical, abuses of power, something should certainly be done about it.

And, there should always be an appeal. There is no person who is not subject, at times, to obstinacy and error. Perhaps in our juvenile law there should be a provision for a mandatory re-hearing, at which a court reporter would be present for the taking of testimony, so that the case could be taken on appeal to the Supreme Court or some other Appellate Court.

The right of a person to be represented by counsel at these hearings is, of course, a fundamental right and one that should be jealously protected. Our Supreme Court has so held in the case of *Arizona State Department of Public Welfare v. Barlow.*[42] As pointed out in the article of Monrad G. Paulsen in the *Minnesota Law Review,*[43] the fact that counsel can come and observe these proceedings, at the request of the principals, is a minor safeguard in and of itself. Mere observance of juvenile proceedings by a member of the bar is some inhibition against an abuse of discretion.

Perhaps also there should be a provision that the interested parties may bring into the hearing any person they desire, such as a minister, friends, neighbors, etc., and that they should not be limited by the court unless for good cause. This was always permitted by the writer. This would give to the persons concerned, as near as can be in keeping with the purposes of the hearing, a "public trial."

The *Barlow* case, *supra,* indicates a very practical remedy for the reviewing of a juvenile court decision. This was by a writ of habeas corpus, issued by the Supreme Court, who directed that a Superior Court judge hear the oral testimony on its return. This decision correlated lack of jurisdiction with violence to due process, which seems to be sound, basic law of this country. The decision upset an order of a juvenile court made after a hearing at which interested persons had not been permitted to be represented by counsel. This remedy seems advisable from at least two standpoints. One, it is remedy by special writ, thus avoiding the long delay presently encountered in

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[42] 80 Ariz. 249, 296 P.2d 298 (1956).
[43] PAULSEN, *supra* note 1, at 547.

civil appeals. Orders affecting children require immediacy. Most orders of custody become moot within the time required for appeal. The Industrial School of this State seldom holds a boy for longer than six months on a first referral. Children placed for adoption need homes immediately, not months or years later. And, secondly, the hearing upon the return of special writ provides the opportunity to take testimony and make a proper record on appeal.

The writer would thus recommend that such writs be granted somewhat freely, in juvenile court cases, and that a broad view be taken of what is "lack of jurisdiction" in such cases. The writer has no basic aversion to the approach of the New Mexico and Ohio courts, which have found a right of appeal from the general appellate statutes.[44] The problem then arises, however, as to what is the record on appeal? *In re Johnson*[45] used the pre-hearing report in dismissing the appeal. This report would normally not have been available to the interested parties, and there was no indication that in the court below it had been made so available. If it was not, this was certainly what most would consider a mis-use of hearsay evidence.

As one can easily gather, the writer does not believe that there is much to be gained by any insistence upon legal counsel in juvenile court. Lawyers are so indoctrinated in the adversary procedure and philosophy that the writer believes that for the most part it will be impossible for them to take an active part in a juvenile court hearing without destroying to some extent the non-adversary nature thereof. Their *right* to be there, to represent clients, should interested persons choose, should never be impaired.

The writer does believe that all lawyers should understand thoroughly the constitutional aspects of the juvenile court, and should be aware of what steps may be taken if there appears to be an abuse of discretion or due process by the juvenile judge.

The author has written to thirty of the major law schools in the country as to what, if any, education is being offered in this field. Thirty answers have been received. All replies indicate that there is some incidental coverage of the subject in Constitutional, Criminal Law and Domestic Relations classes.

Of all the replies received, the author believes that the New York University School of Law offers the best coverage in this field. Prof. Gerhard O. W. Mueller indicates in his reply that, while the coverage in the Criminal Law class is limited, there are two seminars offered, one on the undergraduate level, "Crime and Society," in which

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[44] Blanchard v. State, 29 N.M. 584, 224 Pac. 1047 (1924); In re Masters, 165 Ohio St. 503, 137 N.E.2d 752 (1956).

[45] 86 Ariz. 297, 345 P.2d 423 (1960).

Gluecks' "Problems in Delinquency" is used, and one on the graduate level, in alternate years, on the topic of "Juvenile Delinquency," which seminar is taught by Prof. Paul W. Tappan, an internationally recognized authority in the field of crime and delinquency. The titles of these seminars indicate to the writer that the approach to the problem is along the lines suggested in this article — that is, both a social and a legal one.

It is only by means of this approach that the author sees any hope for the basic philosophy and approach of the juvenile court to survive, and still for the court not to be a labyrinth of confusion for the lawyer.

And if the average lawyer can be sufficiently enlightened in this field, perhaps there will be more pressure behind efforts to give to the court more adequate placement facilities for its charges. No attempt has herein been made to detail the inadequacies of the existing correctional institutions in this state or nation. Generally, it may be said they are over-crowded and that they still partake to some extent of the punitive. The degree to which these programs may appear punitive varies to a great extent depending upon the economic level of the family. The board and room feature seems a luxury to some, and there are several families in this community who look upon our State Industrial School as something of a finishing school for their adolescent boys. They rely upon this training to settle down their children when they reach the age when parental control becomes difficult. But to those better economically and morally situated, there is undoubtedly a punitive aspect, that serves society only in its deterrent effect, but which is a clear violation of the juvenile court philosophy and Constitutional guarantees.

It is the writer's suggestion that the cure to this lies, not in abandoning the juvenile court, but in correcting the deficiencies, by giving it institutions that will give the treatment that parents should, under our best traditions, give to their own children.

It is not felt that the placing of detailed procedural limitations upon the court will accomplish many salutary results. The basic inhibition and exhortation to the court is very clear. He should be governed principally by what is in the interest of the child before him. He should be fair to all, and give all an opportunity to be heard. If he is not inclined to follow these basic principles, he will be equally inclined not to follow the many detailed provisions of a lengthy code. In this state, we have not as yet even achieved compliance with the clear mandate that all juveniles be detained separately from adults.[46]

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[46] See table, *supra* note 34.

As the populace within a juvenile court's jurisdiction expands beyond the level which permits children to be treated on an individual basis, that jurisdictional area should be broken down into smaller units. In this way informality of procedure, the author believes, can be preserved without unnecessarily sacrificing individual freedom. A child should never become a mere "case" in a large mass of cases, with some cases being "lost" occasionally for periods of time. The juvenile court should always be an integral, functioning part of a "community"; a child should always be handled by a juvenile court of his own "community." The author would leave to social scientists the function of determining what limits, in so many thousands or hundreds of thousands, this would be.

And whatever approach is made to this delicate problem of the state interfering in family life, we must be careful that the path we take does not teach children that their state is an adversary to them, that hearings are a battle of wits between them and their state, and that prevarication has its own immediate rewards.

In this channelling of youth, we lawyers, along with all other citizens of this country, have a vast stake. To us has been entrusted by our culture, distinguished by its fundamental respect for law, a tremendous responsibility. Nowhere is our responsibility any greater than in devising and maintaining courts which will achieve the best possible results with our youth. It is with this in mind that I believe all lawyers should try to approach the problems of their labyrinth of confusion, the juvenile court.