Federal Probation

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SEPTEMBER 1987

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME LI SEPTEMBER 1987 NUMBER 3

This Issue in Brief

In this issue, the editors are pleased to feature three articles authored by United States probation officers. In that the manuscripts were sent unsolicited, we believe that they offer good indication of issues that are of real interest and concern to persons working in the Federal Probation System. The articles, the first three presented in this issue, discuss counseling offenders, preventing job burnout, and employing community service as a sentencing alternative—information valuable not only to probation officers but to professionals in all phases of criminal justice and corrections.

Counseling in Federal Probation: The Introduction of a Flowchart into the Counseling Process.—In many probation officer-probationer/parolee relationships, the potential problems facing clients are not addressed, often because the client does not understand or consciously accept the problem or focus area. To assist Federal probation officers and other change agents in using counseling methods and problem-definition skills, author John S. Dierna introduces a systematic framework. The tool is a flowchart—which defines a variety of processes and decisions which may be pertinent in addressing issues such as, "What is the problem?" The flowchart—which the author applies to an actual probation case—offers a flexible yet structured approach to defining problem areas and defusing the resistive barriers which initially inhibit steps toward problem resolution.

Probation Officer Burnout: An Organizational Disease/An Organizational Cure, Part II.—Paul W. Brown authors his second article for *Federal Probation* on the topic of burnout. While the first article (March 1986) discussed the influence of the bureaucracy on probation officer burnout, this second part emphasizes some specific approaches that management can take to reduce organizationally induced burnout. Noting that organizational behavior can influence staff burnout, Brown points out that the role of the supervisor is vital in reducing the stress which can lead to burnout. Much can be done to provide a work environment which is healthier for the employee and more productive for the organization.

Experimenting with Community Service: A Punitive Alternative to Imprisonment.—For the past

CONTENTS

Juvenile Justice: Reform, Retain, and Reaffirm*

BY DIANE C. DWYER AND ROGER B. MCNALLY
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Introduction

THE JUVENILE justice system, and particularly the juvenile court, continues its demise. Parens patriae, its philosophical cornerstone, has slowly been eroded and replaced with the adversarial model of justice. This demise has escalated to the point where many delinquents are now considered adults and held fully culpable for their aberrant behavior. In fact, the Federal posture as promulgated by the Office of Juvenile Justice and Delinquency Prevention (hereafter OJJDP) clearly states that ". . .there is no reason that society should be more lenient with the 16 year old first time offender than a 30 year old first offender." [Regnery, 1985:4] Furthermore, many states have supported this notion by enacting codes (legislatively) to process (certification, waiver, etc.) juvenile offenders in the adult criminal court.

This trend, although not surprising, is reshaping the juvenile justice system to the extent that many believe it to be on the verge of extinction. To some, this is a most desirable outcome; however, to others, it signifies a major failure for social justice, especially for adolescents.

This paper is the fourth in a series of research papers ("The Child Savers—Child Advocates and the Juvenile Justice System," "Juvenile Court: An Endangered Species," and "The Juvenile Justice System: A Legacy of Failure?") which have chronicled the birth and transformation of the juvenile justice system. Consequently, this effort is the result of an evolutionary process detailing the present course of events and the consequences should these trends go unabated. The focus of the article will be to critique the OJJDP position on juvenile reform and recommend a more moderate compromise. The authors will call attention to significant new research and the policy reform recommendations of other influential interest groups, namely the National Council of Juvenile and Family Court Judges and the United Nations General Assembly on Criminal Justice.

The authors espouse the position that it is encumbent upon researchers and reformers to identify those elements of the system that are rational and those which need to be replaced. Close attention must be paid to the direction in which the juvenile justice system is heading in order not "to throw out the baby with the bath water."

Historical Perspective

In order to appreciate the present dilemmas, controversies, and conflicts in juvenile justice, it is important to view it from an historical perspective. The longstanding tradition involving state intrusion into the parent-child relationship is rooted in English common law. Implicit in this is the power of the state to intervene in families and to remove children in order to protect the interests of the larger community. Simply stated, this is the court operating on a parens patriae basis, the philosophical spirit of juvenile justice since its inception. This rationale is clearly expressed by the Illinois Supreme Court in 1882:

> It is the unquestioned right and imperative duty of every enlightened government, in its character of parens patriae, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy, defective understanding, or other misfortune or infirmity, are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions, and all constitutional limitations must be so understood and construed so as not to interfere with its proper and legitimate exercise.

Hence, with the guiding philosophy of parens patriae, juvenile justice was formally born in 1899. For the next 60 years, this system of justice went relatively unchallenged and unchanged until a flurry of litigation *(Kent, Gault, Winship)* attacked the very

*This article is based on a paper prepared for the 1986 Annual Meeting of the American Society of Criminology, Atlanta, Georgia, October 1986. Part of this article previously appeared in the November 17, 1986 issue of *Juvenile Justice Digest* (vol. 14, no. 22), under the title, "A Compromise Is Needed in Juvenile Justice Reform."

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spirit of juvenile justice.

From this new perspective the failure of parens patriae to serve the best interest of youth while foregoing the protection of society has evolved to the inevitable; that is neither the restoration of youth nor the protection of the community from his criminal behavior transition.

Transition

With the foundation of the system in serious jeopardy, a series of trends continued to emasculate its integrity. These include the cynicism about rehabilitation; the perceived escalation of violent juvenile behavior; the application of proceduralism to court proceedings; the creation of chronic (violent) offender codes; the general belief in the courts' inability to effectively punish or to treat youth; and a changing public and political atmosphere concerned with a punitive approach to crime and criminals.

Research findings and public policy have supported the notion that the juvenile justice system is too tolerant of juvenile offenders. Two of the most incriminating reports resulting in the reshaping of policy, have been Wolfgang, et al. *Delinquency In a Birth Cohort,* and Martinson's "Nothing Works" studies. The data and implications of these studies have resulted in policy formulation indicting that the juvenile justice system is antiquated, serving *neither* the youth, the victim, nor society.

The response has been a reduction in treatment/therapeutic efforts and a shift to control and incarceration of juveniles. Inplicit here is punishment at the exclusion of any other effort since the underlying tone has been that "nothing works" in an appreciable manner to affect recidivism rates.

Juvenile Justice: The Federal Perspective

The Federal government's direction toward juvenile justice for the past 10 years, vis-a-vis OJJDP, has been classically "reactionary." Consistent with public and political trends toward conservatism—and the portrayal, by the media, of juvenile crime escalating out of control and becoming increasingly violent—the response has been that the traditional system of juvenile justice at best is outdated and at worst is a total failure.

With this perception and the public's general attitude toward crime and criminals, the Federal posture has been to alter the juvenile system with "get tough" reform measures. These measures were expressed in policy, the policy of grants, and legislative mandates (i.e., selective incapacitation, preventive detention, certification, etc.) aimed at controlling and punishing those who profile this perception. Assumed here is that the perception is accurate. Some, including the authors, challenge the assumption that juvenile crime has ben spiraling out of control. Rather, it is our belief that it is largely media-hyped and grossly overstated [Gilber, 1981].

Nonetheless, a policy review statement (Fall 1985) by Alfred Regnery, chief administrator of OJJDP ("Getting Away With Murder: Why the Juvenile Justice System Needs an "Overhaul"), clearly reflects the classical school response to criminal behavior and the corresponding Federal initiatives; namely, punishment is a first priority.

Enlightenment or Futility

Consequently, in an effort to deal with juveniles, pragmatism has slowly been shaping policy predicated on the notion that criminal behavior is largely a matter of choice [Regnery, 85:3]. This rationale has resulted in certifying more delinquents to adult courts; tracking chronic offenders in an effort to get them off the streets quicker; maximizing their incarceration; and fostering the position that deterrence and punishment should be the model of justice for juveniles who commit crimes.

Ironically, this response assumes that the traditional efforts to deal with juvenile crime have in fact been a failure and that the "new" findings are clearly valid and therefore rational for the development of contemporary policy. These authors suggest a note of caution.

Wolfgang's Philadelphia studies indicate, among other things, that a small number of chronic delinquents are responsible for a disproportionate amount of serious crime, i.e., "seven percent (7%) of the youths studied were chronically delinquent but accounted for 75% of all serious crimes" [*Juvenile Justice Digest,* 85:1]. One can readily see why, proportionally, selective incapacitation and preventive detention have become the logical conclusion.

This type of reaction reinforces conclusions that criminal behavior is largely an outcome of rationality. This classical school reasoning totally negates factors that should be considered. The concept of maturation is ignored when OJJDP suggests that there is no reason that society should be more lenient with a 16-year-old first-time offender than a 30-year-old and that to maintain a distinction between youth and adults is counterproductive.

Moreover, policies that foster predictive efforts to forecast criminal behavior are not only questionable in terms of validity, but they continue to reinforce

stereotyping. Selective incapacitation efforts tend to fall disproportionately on minorities and are entirely retrospective. The implications of this cannot be taken lightly. Targeted individuals are known high-rate offenders based on past criminal behavior. Consequently, tracking efforts result in the identification of the offender only *after* he has committed a crime rather than being prospective.

Folly of Rehabilitation

The hallmark of the juvenile justice system has been the restoration of youth through interventions whose premise are oriented toward rehabilitation. Since Martinson's work of the late sixties suggesting that "with few and isolated exceptions, the rehabilitative efforts that have been reported had no appreciable effect on recidivism," (Martinson, 1974:36) subsequent policies embrace deterrence through punishment, e.g., certifying more delinquents to adult court. Aside from exacerbating an already overloaded court docket and overcrowded prison population, this implies the futility of rehabilitation and the desirability of punishment.

Furthermore, the distinct absence of Federal initiatives (grants) to fund programs that are aimed at the restoration of youth through proactive models is a further sign that the Federal government's (OJJDP) priorities are primarily focused on the narrow group of chronic offenders. The freezing of OJJDP's funds for fiscal 1986 and the proposed dismantling of this agency is another clear sign as to the future of juvenile justice in America!

Implications and Current Research

Present attitudes, policy, legislation, etc. toward crime and criminals strongly suggest that crime, regardless of who commits it, is the product of choice and rational decisionmaking. Correspondingly, the response to this line of reasoning is a just deserts model; let the punishment be commensurate with the crime. This classical school thinking, although over two centuries old, has come full cycle, thereby religating the spirit and intent of juvenile justice to the annals of history.

The tide has turned, and one can see the expression of this earlier thinking when scrutinizing the Federal posture. What concerns these authors is the belief that crime is a matter of choice, irrespective of maturational levels or other factors (i.e., psychological problems, etc.) and that the *best* response is the certainty of punishment. This trend totally neglects any of the controversy surrounding deterrence theory.

Research to Consider

The image of rampant, spiraling youth crime has resulted in an intolerance toward selected adolescents. To those few that become labeled the "serious habitual offender," "chronic violent offender," "multiple delinquent offender," etc., the system has widened the net to ensure that deterrence will be a product of swift and certain justice. By waiving those violent delinquents to the adult system, implicit is the belief that this is the most rational response. Moreover, the serious habitual offender label begins to take on multiple meanings. Some states (Minnesota) are waiving to adult court youth who commit two felonies that may be property crimes. Consequently, as more delinquents become labeled serious offenders, the traditional delinquency category diminishes.

Recent research on very violent youth, those who commit murder, produce some intriguing findings that should caution us to this deterrence response and suggest other alternatives to be examined for the violent few.

Dorothy Otnow Lewis (M.D.) et al. have been conducting research on children who commit murder ("Biopsychosocial Characteristics of Children Who Later Murder: A Prospective Study") and on youth who are considered very violent ("Violent Juvenile Delinquents"). Their findings are rather timely and suggest an alternative response as compared to conclusions drawn from the Wolfgang studies.

In their study on children who later murder, the researchers document the childhood neuropsychiatric and family characteristics *prior* to the commission of the act. The profile of these children included psychotic symptoms, major neurological impairment, a psychotic first-degree relative, violent acts during childhood, and severe physical abuse (Lewis, et al. 1985: 1161). Significant findings included documentation of a history of extreme violence *before* committing murder, the spontaneity, impulsiveness, and the unpredictability of the behavior. When they compared the data of the murderers with that of ordinary delinquents, it was the presence of all five variables (psychotic symptoms, neurological impairment, etc.) that distinguished the murderers from the control group.

Many conclusions were drawn that ". . .suggest violence alone is not as good a predictor of future aggression. . ." (Lewis, et al., 1985:1166). Hence, studies that are focused on tracking chronic antisocial behavior (*after* the commission of criminal acts), such as the Wolfgang studies, may be neglecting some very useful data that may not only assist in explain-

ing violent behavior but point us in an alternative direction to incarceration. More specifically, the researchers suggest that ". . .violent juveniles are likely to be dismissed merely as incorrigible sociopaths and simply incarcerated. . .and that enlightened psychological, educational and medical programs can and should be derived to meet the needs of these multiply damaged children." (Lewis, et al., 1981:318)

Summary and Implications

What does the data suggest? Should we continue on the present course or do these findings necessitate a re-examination of the present trends? Have we been simply overreacting to juvenile crime, or is it time to get tough and accept the erosion of the juvenile justice system as inevitable? Perhaps there is room for change based on sound analysis of past and present trends to embrace a spirit of progressive reform.

These authors believe that the roots, i.e., parens patriae, of juvenile justice were in response to good and needed reforms. The rationale for a separate system of justice is no different today than in the late 1800's; if anything, advocacy is imperative in view of concepts and programs predicated on forecasting future behavior. Furthermore, to ignore the need for a benevolent institutional structure for treating juveniles does and will continue to ignore the fact that adolescents are *not* simply short adults. The punitive response appears to symbolize frustrations with crime and criminals and the need to provide a "quick fix" to a most complex problem.

Transferring youth to criminal court does not appear to be solving any problems other than implying a lack of confidence in the concept of juvenile justice. The consequence has been to broaden the definition of behaviors that qualify one for certification. Additionally, the desired outcome of more arrests, convictions, and lengthier sentences has not been fruitful. A study funded by OJJDP in the early '80s concluded that the apparent reason for transferring/waiving juveniles to adult courts, that they will receive stiffer sentences, does *not* appear to be substantial. (Hamporian, et al., 1982). Nonetheless, states continue to redefine traditional delinquent behavior for the expressed purpose of "getting tough" even when it has been demonstrated that the disposition will be no, or minor, imprisonment.

In view of recent research studies, Federal efforts have been aimed at early identification, tracking, and, ultimately, incarcerating the chronic violet offender. In order to identify and react to the few who commit a very large, disproportionate amount of crime, these Federal initiatives end up reinforcing the perception that minorities (blacks and Hispanics) are largely responsible for all the violent crimes. This retrospective approach also neglects ethical considerations, as well as ignores empirical problems in prediction efforts. (Cohen, 1983) Again, it is difficult not to conclude that many programs, policy decisions, legislative mandates, etc. are born out of frustration rather than logic.

Recommendations

This article is predicated upon the belief of these authors, supported by current research, that juvenile crime is neither rampant nor becoming increasingly violent. Furthermore, the authors believe that the policy trends of the past 10 years have been primarily reactionary and frequently promulgated from frustration, an intolerance to the violent few, the need to develop "quick fix" responses, i.e., swift and certain punishment, and the belief that youth have been coddled too long in the name of parens patriae.

What follows are recommendations that these authors believe are essential to reforming and restoring the juvenile justice system to a viable, credible social institution, one predicated on *presumptive innocence of those it serves. The authors strongly argue for the retention* of a separate system of justice with its primary goal to safeguard the well-being of the young to assure that they have the right to mature and become responsible adults.

Consequently, the authors *endorse* both the United Nations model code on juvenile justice promulgated August 1985 and the 38 recommendations approved by the National Council of Juvenile and Family Court Judges (NCJFCJ) in July 1984. Embodied in these organizations' policy statements are critical recommendations for the retention of and process for juvenile justice. In general, both organizations struggled with controversial issues relating to philosophy, confidentiality, transfer, research, treatment, disposition, accountability, discretion, etc.

Although these authors support the general policy statements of these organizations, we will highlight some of their recommendations given the data presented in this article. Therefore, the authors recommend:

1. the continued *individualized treatment* approach as the primary goal of juvenile justice. To include the development of medical, psychiatric, and educational programs that range from least to most restrictive, according to individual need.
2. that the *chronic, serious juvenile offender,*

while being held accountable, be retained within the jurisdiction of the juvenile court. As a resource, specialized programs and facilities to be developed focused on restorations rather than punishment.

3. that the *disposition* of juvenile court have a flexible range for restricting freedom with the primary goal focused on the restoration to full liberty rather than let the punishment fit the crime.

a) that in no case dispositions be of a mandatory nature but left to the "discretion of the judge" based on dispositional guidelines.

b) that in no case should a juvenile (under 18 years) be subject to capital punishment.

4. that in situations where the juvenile court judge believes that the juvenile under consideration is non-amenable to the services of the court *and* based on the youth's present charges, past record in court, his or her age and mental status, may *waive jurisdiction.*

a) that in *all* juvenile cases the court of original jurisdiction be that of the juvenile court, and

b) the discretion to waive or not be left to the juvenile court judge

c) hence, proportionality would be appropriate with these cases. However, these high risk offenders should be treated in small but secure facilities.

5. that policy-makers, reformers, and researchers continue to strive for a greater understanding as to the causes and most desired response to juvenile crime. *Research* should be broad-based rather than limited to management, control, and punishment strategies.

Lastly, these authors call for the appropriation of public money for the support of programs with the expressed *purpose* of serving as a clearinghouse, funding mechanism for traditional and experimental programs, training juvenile justice personnel, and serving the interest of juvenile justice as a significant priority by continuing and stimulating debate.

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