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A DOUBLE STANDARD OF JUSTICE

JUVENILE COURTS TREAT YOUNG WOMEN DIFFERENTLY

By Paz Cohen

Many people assume that as women increasingly abandon their traditional ~~roles~~, previously male domains such as burglary, larceny, and auto theft are among those infiltrated by women. Thus they connect women's rights with a rise in the number of female criminals.

In fact, the relationship of sex roles to crime is much more complicated. For example, drug offenses account for the most precipitous rise in arrests of young women, having increased 5,375 percent between 1960 and 1975. A study of police handling of suspected drug users showed that women who cried, blamed their boyfriends, and otherwise acted in stereotypic ways during raids frequently convinced the police not to arrest them. Those young women who displayed "male" traits of hostility and aggression, however, were often arrested and processed.

Thus, the increase in women charged with crimes may reflect increased criminal activity, or it may result from more aggressive behavior on the part of women apprehended—or both.

These ambiguities, however, do not plague the juvenile justice system. There, young women and girls

come in contact with police and the courts for a variety of reasons, and, sooner or later, their sex counts against them.

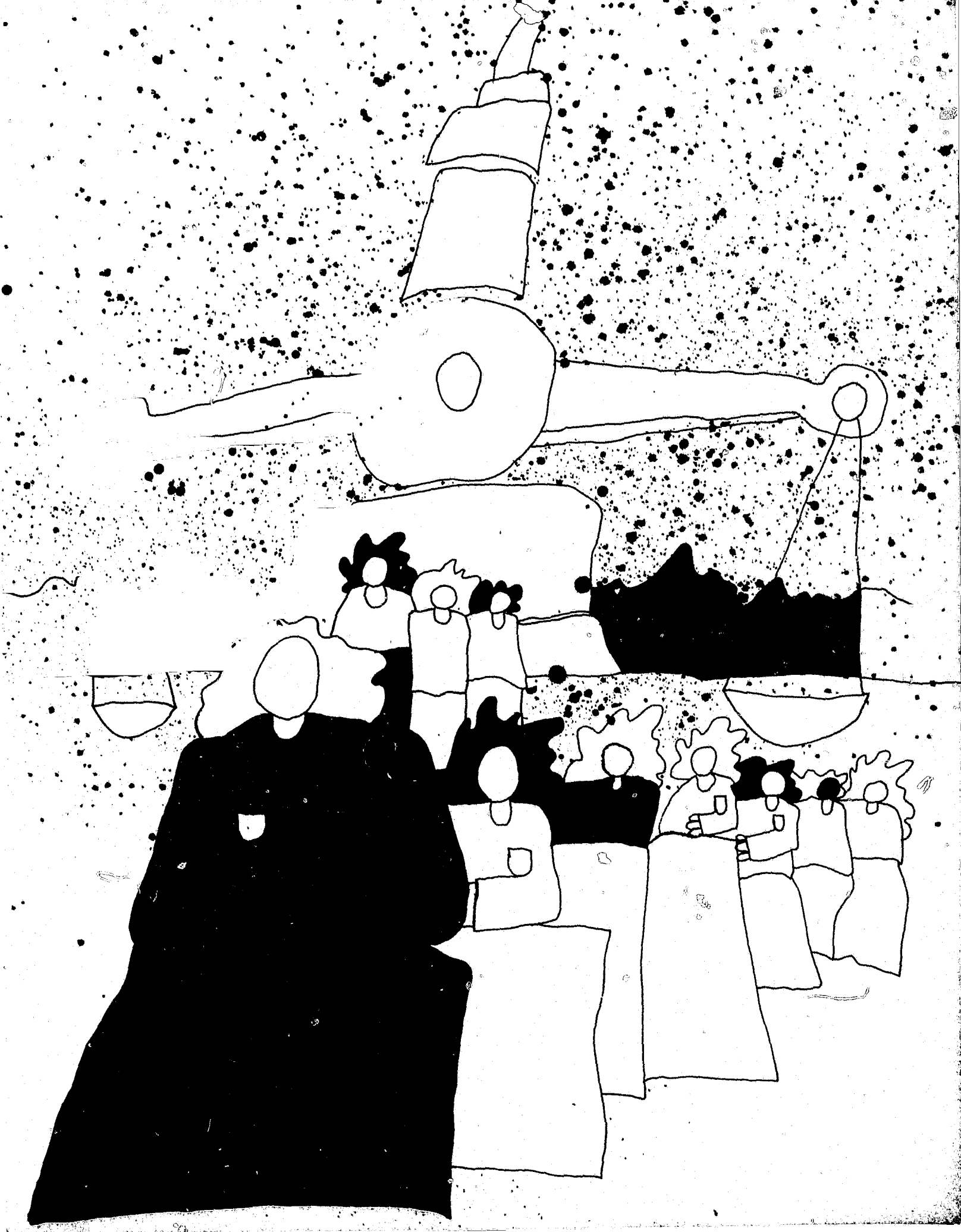
Three broad categories of youths find themselves involved in the juvenile justice system. Some are judged delinquent; some are deemed to be improperly cared for at home, or have no homes; and some are charged with "status offenses"—acts that, if performed by adults, would not be considered crimes. The word substituted for "conviction" in juvenile cases is "adjudication."

Between 70 and 85 percent of adjudicated girls in detention are status offenders, compared to a detention rate for boys charged with "children's crimes" of less than 20 percent.

Status offenses range from school truancy and running away to refusal to do household chores, use of "vile language," and promiscuity. An informal survey of child advocates throughout the country yielded only one instance of a boy institutionalized for sexual promiscuity, while sexuality appeared to be the underlying cause of most female referrals, even where not directly cited.

Undesirable boyfriends, staying out after curfew, wanting to get married, and "incurability" are among the complaints parents take to the courts along with their daughters. Pregnancy, fornication, or an

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abortion without parental consent falls more obviously under the category of promiscuity, but "truancy and incorrigibility," according to Mary Kaaren Jelly, staff director of the Senate Subcommittee on the Constitution, "are often nothing but buffer charges for promiscuity in girls—or the court's fear of future promiscuity." At home, in school, and throughout the many stages of the juvenile justice system, female sexuality evokes patronizing and/or biased treatment.

The double standard revisited

Carol, 13, is now enrolled in a feminist counseling program. She was institutionalized due to her parent's double standard for male and female sexuality. "Boys do have it better," she says, "comparing my life to my brother's. I got sent up to an institution because I was messing around. He went out and got some girl pregnant. He was only 17 and he never got into any kind of trouble for it. She did, but he didn't."

When she has children of her own, Carol hopes they are boys:

It's just a hassle to raise girls because you've got to worry if they get caught having sex, then of course it's the girl that gets arrested on an unlawful morals charge. What do they do to the guy? Nothing.

It's just like in the family. If a man's daughter comes home and her hair's all messed up and her shirt's unbuttoned, he calls her a little slut. But if a boy comes home and tells his dad he made it with someone tonight, he says, "Oh, that's good. That's my son." That's just how it is.

Treatment of the crime of incest provides another example of the double standard. Most often, it is the girl—the victim—who is sent to a foster home while the father stays behind. And children's rights advocate Kenneth Wooden estimates that 40 percent of the girls and young women in city and county jails who were picked up as runaways left home after being sexually molested.

Seventeen-year-old Dominica was sexually assaulted by one of her mother's four husbands. She ran away from home. Picked up by the police, she was placed on probation and returned home. Dominica left again, and was charged with violating probation. Thus she became a full-fledged delinquent.

For the young woman who engages in sexual intercourse of her own volition, school hardly offers a more understanding environment than home, should she become pregnant. Many schools suspend pregnant

students, or encourage them to "voluntarily" withdraw.

The Children's Defense Fund found five standard reasons offered by school officials for excluding pregnant girls from school:

1) the need to protect her physical condition (she cannot endure the "rough and tumble" of school; she will "tire easily," "there are too many stairs to climb," "her condition will result in her being sick in school");

2) the need to protect her mental condition ("she will be ridiculed, scorned, and embarrassed by her classmates," "she will be a target for gossip," "she will be happier in some alternative program");

3) the need to protect other students from the "bad influence" of a pregnant girl and unwillingness to appear to condone premarital intercourse ("I have to think of the other children," "we have an obligation to other children—they are here for reading and writing, not sex education," "we'd get calls from the other parents and we reflect the feelings of our parents in the community," "I wonder what my child would see . . . she might wonder if it is the accepted way of life");

4) The need to maintain an orderly environment ("the class can't function normally," "when girls are 13 they won't do any work if someone is showing wedding pictures"); and

5) the school's lack of facilities for day care and flexible scheduling.

Pregnant girls are urged to enroll in the YWCA, get home tutoring, or go to a home for unwed mothers. Many instead end up hanging around the streets where they are likelier to develop serious problems—by remaining undereducated or having frequent run-ins with police—than would have been probable had they remained in school.

For the overwhelmingly male-dominated juvenile justice hierarchy, young women's sexuality is "offensive," as spelled out in the following statement made in 1975 by Hunter Hurst, Director of the Juvenile Justice Division of the National Council of Juvenile Court Judges:

The issue is that status offenses are offenses against our values. Girls are seemingly over-represented as status offenders because we have a strong heritage of being protective towards females in this country. It offends our sensibility and our values to have a 14-year-old girl engage in sexually promiscuous activity. It's not the way we like to think about females in this country.

As long as it offends our values, be sure that the police, or the church or vigilante groups, or somebody is going to do something about it. For me, I would rather that something occur in the court where the rights of the parties can be protected.

"We play big daddy," confessed another judge.

Part of the curriculum

Sex-stereotyped course offerings and the attitude that a girl's career is marriage account for a sizeable portion of girls out of school. Many girls who leave school do so because neither their academic nor their emotional needs are being met—or because the standards of excellence seem too farcical to accept:

I think a lot of teachers look at you and if you dress up all the time and look real cute, teachers look up to you. But if you just wear jeans, then they don't.

Most teachers say, "I don't care. It's up to you whether you learn or not. I don't care." I think that instead of trying to be your teacher, they ought to try and be your friend, too. Not always telling you: do it or else. If you don't want to do it, ask you at least why—maybe there's a reason.

Over here the school system gives me a laugh. They don't teach you like they used to explain it. I think it would be better if they take [sic] more time and teach you what you really want to know instead of making you give up and drop the class.

Carol Zimmerman, Executive Director of the Arizona-based New Directions for Young Women, which compiled the foregoing comments, sees girls caught in a double-bind: If they remain in school, they are molded along lines that limit their futures, and if they cut classes or stop going altogether, they can wind up in jail.

A great many young women out of school drop out because school isn't meeting their needs; because they aren't getting any encouragement, because the attitude is "you don't really need to learn a career, you don't really need to go on and work, you're going to be taken care of, you're going to marry."

They find no reason to stay in school, to attend classes. They drop out—and become part of the juvenile justice system. The courts say, "You're a

truant, you're a dropout, I remand you to this-and-this facility."

"Sexism," adds Shirley McKuen of the Research Center on Sex Roles in Education, "is clearly a part of the curriculum in all educational agencies and institutions" (Jolly notes that there are 48 Job Corps Centers for young men and only 10 for young women, despite higher unemployment rates for female youth.)

Part of the system

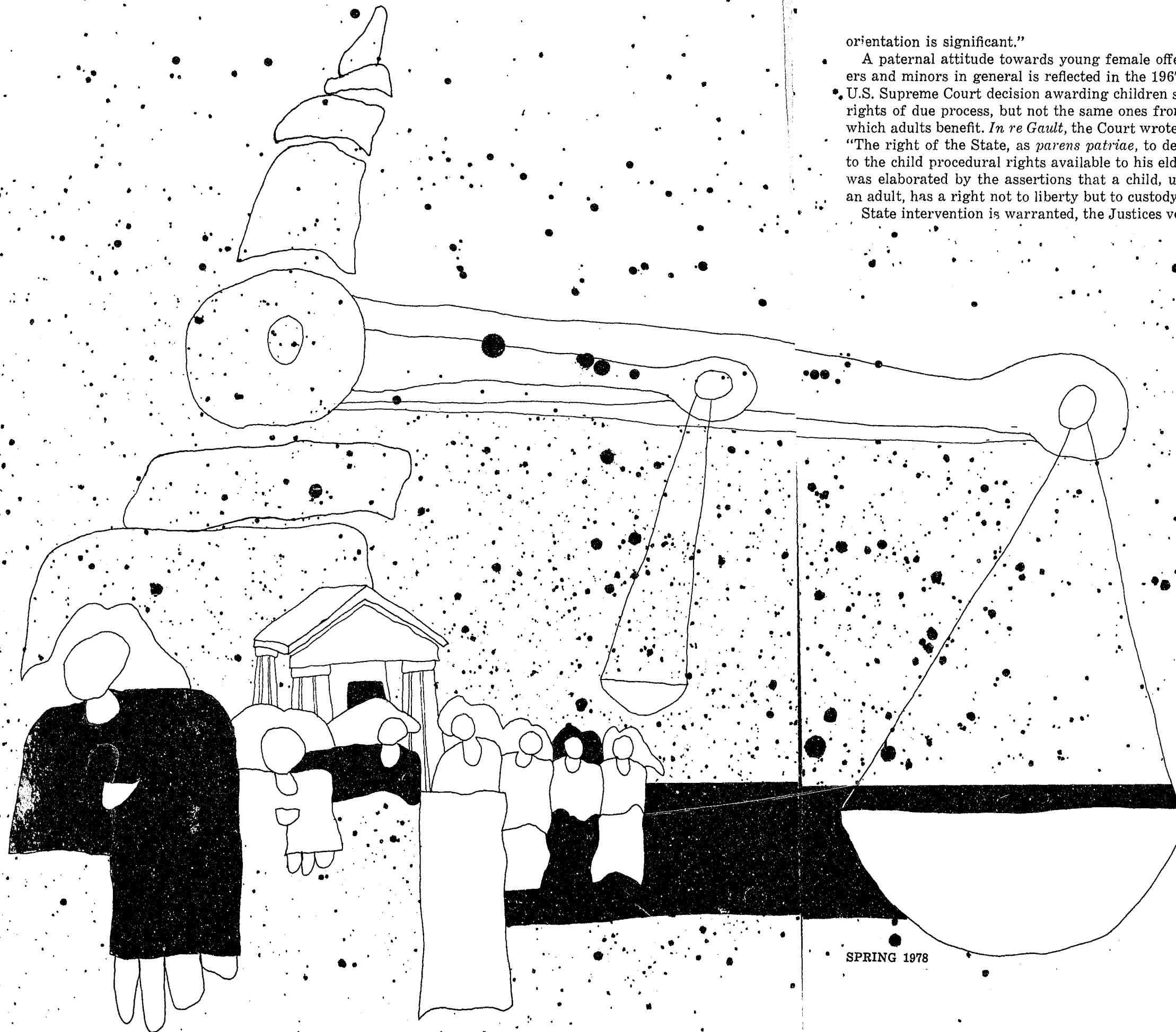
Disparate treatment of young women and men begins with a police decision on whether to arrest a youth or whether to detain the youth pending the initial hearing. More frequently in the case of status offenses, it begins with a court worker's decision to file a petition and, if so, to detain the youth pending final disposition of the case.

A 1972 study conducted in Honolulu by psychologist Meda Chesney-Lind found that 70 percent of the girls and 31 percent of the boys referred to court by police were status offenders. A 1974 study published in the *Yale Law Review* revealed that about half of the youths brought to court intake were girls, while every one of the sex-related status cases (promiscuity, spending the night with a member of the opposite sex, etc.) involved females. The same 1974 study, by Peter Kratcoski, found that detention was more likely to result in cases concerning incorrigible behavior than in cases involving assault and other crimes unrelated to age. Sexual misconduct by young women, Kratcoski found, was the most harshly treated charge of all.

Other studies, with small variations in percentages, reach the same conclusions: referred to court for less serious crimes, girls are more likely to be charged and more likely to be detained.

One important factor in the disproportionate detention rate for girls is that many times their parents refuse to take them home. When it comes time for a court hearing, this parental attitude can prejudice the female youth's chances, as Chesney-Lind points out.

"Children charged with crimes have natural allies in their parents at every step in the judicial process," she writes. But, "Parents of young people charged with status offenses are, themselves, the complainants, and they not only impugn the moral character of their children but frequently refuse to take them home in an attempt to force the court official to retain jurisdiction. Since the determination of good moral character is pivotal in the determination of guilt or innocence in the juvenile justice system, this parental



orientation is significant."

A paternal attitude towards young female offenders and minors in general is reflected in the 1967 U.S. Supreme Court decision awarding children some rights of due process, but not the same ones from which adults benefit. *In re Gault*, the Court wrote that "The right of the State, as *parens patriae*, to deny to the child procedural rights available to his elders was elaborated by the assertions that a child, unlike an adult, has a right not to liberty but to custody."

State intervention is warranted, the Justices voted,

when "parents default in effectively performing their custodial functions." When the State does inject itself in a child's life, they continued, "it does not deprive the child of any rights, because he has none."

Two years ago, adults receiving a jury trial stood a 48 percent chance of conviction; adults facing only a judge were convicted 65 percent of the time. In juvenile court, the "conviction" rate is a staggering 89 percent, according to Wally Mlyniec, Director of the Juvenile Justice Clinic of the Georgetown University Law Center in Washington, D.C.

Where young women are concerned, this conviction rate, combined with the "protective" or paternal attitude, portends a high probability for confinement. The Female Offender Resource Center of the American Bar Association, after studying arrest, court referral, and confinement data, found that, "A female status offender more likely to be confined than a male status offender," and that, "Although only 21 percent of all juveniles arrested are females, 30 percent of the total population confined in local detention facilities and 22.2 percent of all those incarcerated in training schools are females under 18.

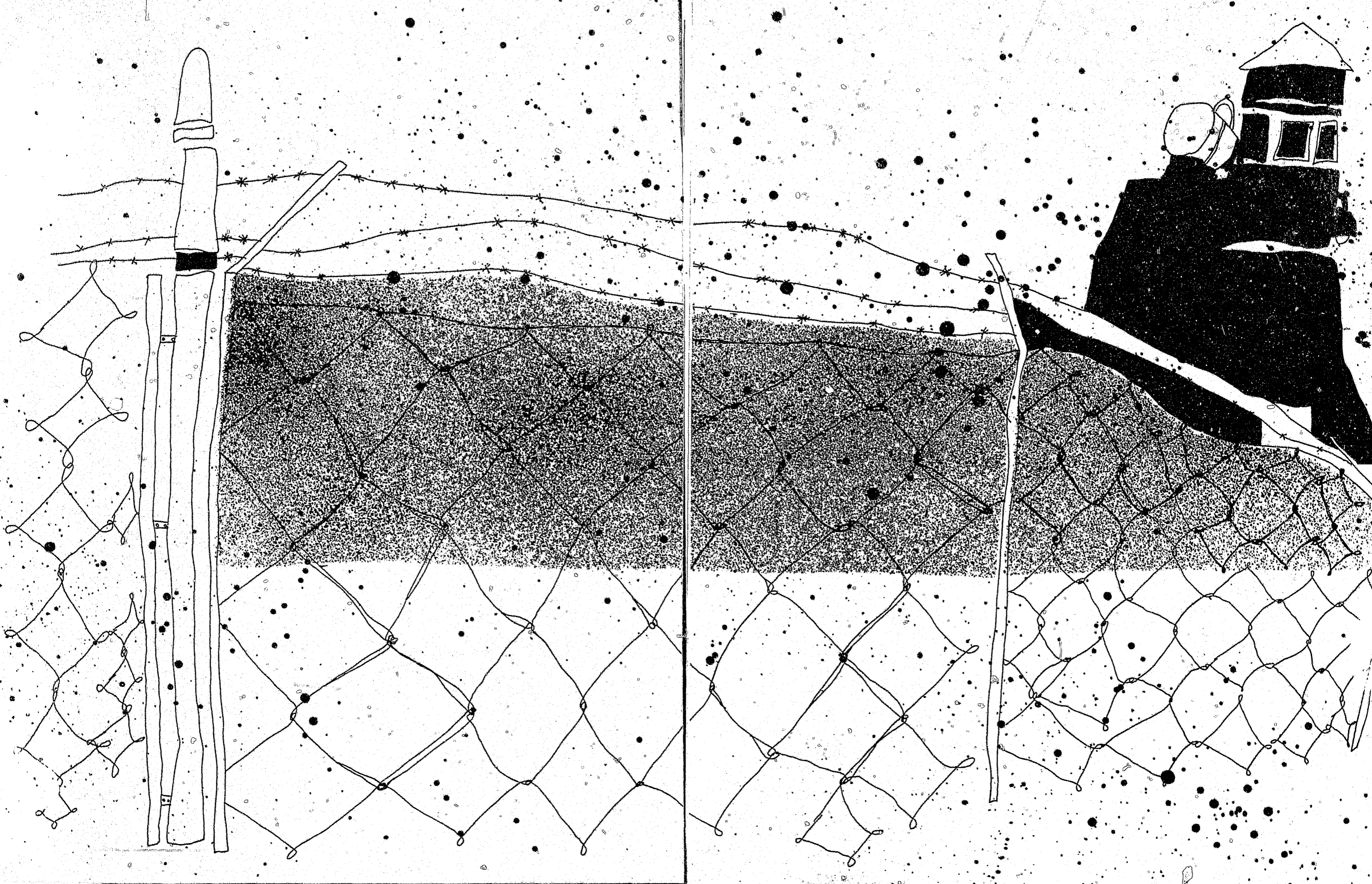
"In comparison, females represent only 6.8 percent of all juveniles sentenced to ranches, camps, and farms, 22.8 percent to halfway houses, and 28.6 percent to group homes."

Author Kenneth Wooden asserts that female juveniles receive longer sentences than male juveniles, although the girls' crimes are usually less serious. The average term of incarceration for a young man is 9 months, Wooden says, on charges ranging from truancy to rape, while the average period of confinement for young women offenders is one year—33 percent longer.

"The alleged justifications [for incarceration in secure facilities] may be diverse and not always apparent," Jolly offers, "but the subcommittee has discovered that the application and results are clearly discriminatory."

"The fact that . . . sexist community norms exist," adds Chesney-Lind, "is no justification for involving agencies of the law in their enforcement, any more than community prejudices would justify judicial racism."

For Judge Lisa Richette of the Court of Common Pleas in Philadelphia, ". . . the offense of most of the young women going before the courts was nonconformity to a social model of what is accepted behavior for young girls. . . . The juvenile courts should no longer act as a legal chastity belt placed around the waists of young women."



Richette surmises that "this protection has served to weaken, debilitate, and cripple young women rather than help them." A look inside some of the facilities to which female offenders are sentenced illuminates Judge Richette's concern.

Detention facilities and treatment

Kenneth Wooden has written an impassioned and compelling denunciation of our juvenile justice system called *Weeping in the Playtime of Others*. He writes: "When I began my study of the juvenile penal system, I was unaware of the particularly degrading treatment of young girls within youth jails. However, after visiting dozens of female facilities and witnessing incredible disparities and gross injustices, the special problems of incarcerated girls became apparent."

Among the disparities, Wooden found that in New York State male status offenders are released from training schools at 18, girls at 20. Security in the girls' facilities nationwide was more intense—"Rules were more rigid, fences were higher, confinement cells smaller. . . . There is disparity concerning even food and education for the females. In general, boys are apportioned more food per serving than girls and are allowed to have seconds. Girls are limited to one serving. . . ."

Educational facilities for girls, if any, are limited and usually operate along stereotyped lines, preparing girls to be clerks, secretaries, or to fill other traditionally "women's jobs." Athletic opportunities are also more lacking for females than for males.

Wooden notes, "In matters of personal hygiene and cleanliness, once again, incarcerated girls suffer greater indignities than their male counterparts. Most female facilities have no individual toilets. An assortment of old pee pots, coffee cans, and other crude containers are issued for disposal of body wastes."

The most degrading and abhorrent aspect of the unequal treatment, however, must be the violation of the young women's bodies and sexuality. And the victims are not only those girls incarcerated for commission of crimes or status offenses, but also those institutionalized following removal from physically abusive homes (those who are beaten or can prove sexual abuse) and those who are wards of the State.

Deborah was placed in a county youth home in the Northeast at age 16 because her parents were suspected of beating her. While there she was required to show the supervisor a soiled sanitary napkin before being allowed to go to the infirmary for menstrual cramp medicine.

In many facilities, charts listing the girls' menstrual periods are posted on the walls. Girls are forced to undergo periodic pelvic examinations to determine whether or not they are virgins, and the findings are sometimes forwarded to their schools, where they can be incorporated into permanent school records. In one institution, one color uniform is issued to virgins, another to nonvirgins.

A 14-year-old ward of the State of Illinois was sterilized while anaesthetized for unrelated surgery. The attorney for the Illinois Department of Children and Family Services told a reporter, "Frankly, these children whose medical care is paid for by public assistance are lucky to get any medical service at all."

Other tales of pregnant girls being coerced or forced into having abortions or giving up their children for adoption (under threat of isolation for refusal) are legion, as are accounts of incarcerated young women raped or otherwise used for the sexual enjoyment of the staffs and inmates of the institutions to which they are committed, allegedly for their own protection.

Some girls are sent to adult prisons because facilities for the female juvenile offender are so limited; in the adult jails, the potential for abuse exceeds even that found in juvenile facilities, as the young woman is likelier to be among the weaker members of the population.

In recent years, the use of prisoners in drug experimentation has caused an uproar. Most of the cases brought to light have concerned adult male prisoners; Wooden tells of the forced administration of an unsafe birth control drug to girls at facilities in Texas and Missouri.

The drug, Depro-Provera, caused breast cancer in laboratory dogs, and the U.S. Food and Drug Administration had prohibited its use or sale as a contraceptive. (The children to whom these drugs were administered were, like the sterilized 14-year-old, wards of the State of Illinois. Like her, they had been transferred to out-of-State facilities, a widespread practice that uproots children from any sort of community ties.)

Commenting on the drug's use, Dr. J. Keller Mack, medical consultant to the Children's Department in Illinois, observed: "If you didn't test the drug on somebody, you would never be able to put it on the market. I thought they might just as well test it on our Illinois girls as girls from anywhere else."

Unlike many of the adult male inmates who were the subjects of drug experiments, these girls were not promised any sort of quid pro quo such as favorable

recommendations to a parole board or time off for cooperating. Their options, as in most aspects of life in juvenile prisons, were to accept the treatment handed them or suffer isolations in rooms known as "hell."

Institutionalization and alternatives

The harm inflicted on young women by their experiences in institutions can be gleaned from one brief statistic: A study by the National Association of Counties Research Foundation found that 34 percent of the adult women in county jails had previously been arrested as juveniles.

Carol Zimmerman is not surprised. Upon graduating from juvenile detention facilities at the age of 18, 20, or 21, Zimmerman says, many women "find themselves in more trouble because they're living on their own, they haven't got a support system, they haven't got an educational background.

"Often they find themselves on welfare with a baby. That (all) makes it a lot harder for them to pick up the pieces at age 18 and establish a productive life."

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act, which called for deinstitutionalization of status offenders. LEAA later said that all States would have to implement deinstitutionalization in order to qualify for LEAA funds. Several States refused, but even in those that agreed, the results to date have been meager and, once again, where resources are allocated, they are allocated in favor of the male offender.

The comparative populations of young men and young women in State training schools and other institutions still show a disproportionate percentage of female status offenders locked away. LEAA's Task Force on Women reported in 1975 that only 5 percent of all federally-funded juvenile delinquency projects were aimed specifically at young women, and that only 6 percent of all local monies for juvenile justice were spent on programs for women.

Jerry Hissong oversees model delinquency-prevention programs in four States with LEAA funding (the programs are relying more and more on local monies). From his office at the American Public Welfare Association in the District of Columbia, Hissong admits that none of the programs takes the special needs of girls into account.

"We're not sophisticated enough to say, blacks versus whites, boys versus girls," he laments. "It's been hard enough to get people to talk about kids at all."

"The treatment of females in the juvenile justice

system is just a reflection of institutional sexism, and institutional sexism exists in every institution, by and large." Peg Jones is the Executive Director of the Coalition for Children and Youth, a grouping of over 200 State and national children's and youth organizations.

"Even those who are advocates for youth under normal circumstances," she charges, "think in terms of male youth—and those very advocates," she adds, "may be sexist because of cultural indoctrination."

The same sex-role stereotyping that occurs in institutional settings takes place in many alternative centers as well. Shirley McKuen points to Comprehensive Education and Training Act (CETA) programs in halfway houses as evidence. There, as in training schools, women are channeled into low-paying "women's jobs."

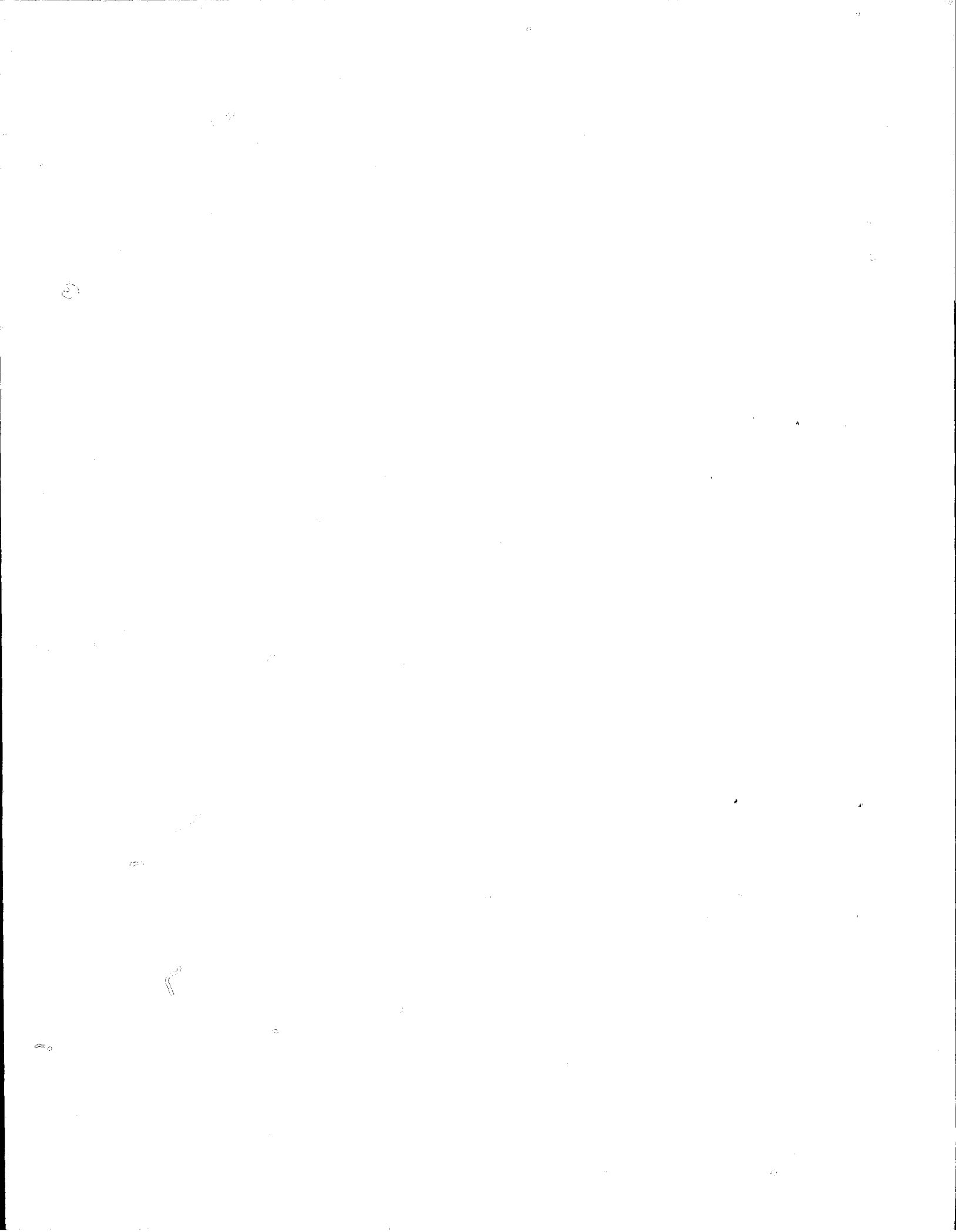
McKuen feels this is symptomatic of another problem, that of bureaucratic goals. The staffs at the halfway houses, she says, are "being pressured to place people as soon as possible, so they don't want to train them and then not be able to get them hired." The easiest choice is to channel women into sex-stereotyped jobs such as cosmetology and clerical work.

Other alternative programs include group homes, foster care, community-based programs offering residential care, and detention-care programs, the latter placing youth in individual homes pending their court appearances. Each is plagued by problems, the most prevalent being insufficient and disparate funding.

Teenage girls are particularly hard to place in foster homes. In city or county group homes, girls are often subjected to closer scrutiny than boys. A lack of funds plagues innovative one-to-one programs such as Special Approaches to Juvenile Assistance (SAJA), located in Washington, D.C.

Oddly, nontraditional family settings are unpopular with the courts, although the recidivism rate is "fantastically low," according to John McManus, director of a program in New Bedford, Mass. Of some 180 youths enrolled to date, about 30 have been females. McManus says the program receives far fewer referrals than its capacity.

Great changes have occurred in the general assumptions made about women's role in society. Pursuing these changes on behalf of young women is a task that has barely begun. The victims of sex-stereotyping and sexism in the juvenile justice system are not a well-organized voting constituency. That fact makes it all the more incumbent on the rest of us to become involved in their fate.



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