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A Curriculum on Juvenile Justice for Educators

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The Problem

Juvenile justice and education are two major social systems which impact upon children's daily lives, yet these two systems operate essentially separate from each other. A call has been issued (Bazelon, 1970) to mutually interface the educational process with the juvenile justice system. Prior to this interaction it is essential to educate the educator to the history, mechanics, and philosophy of the juvenile justice system in an attempt to provide a firm foundation for the educator to understand just how the juvenile justice system impacts upon the child.

This curriculum is about the juvenile justice system and is directed at educators, and more specifically at public school teachers. This curriculum might best be utilized as an in-service by those who have taught the juvenile delinquent in the classroom, as the importance of this information will be much clearer and more apparent to this group rather than to undergraduates in a college level pretraining course. The curriculum is much more relevant to the individual teacher when he or she is able to envision such a child and can apply this knowledge directly.

The Rationale

Judge D. Bazelon (1970) has called for the public school system to become more involved in the juvenile justice process, and specifically with troubled children. The school system is in contact with children for six to eight hours per day; therefore it is logical this same system should begin to interface and understand the child as s/he is involved with another social system -- juvenile justice, in order to help, give guidance, and facilitate its functioning. Bazelon suggests that the direct involvement of educators, through increased knowledge of the juvenile justice system, is not a quantum leap from the educator's present situation. The school system has already taken on the responsibility of feeding hungry children and, through the neglect jurisdiction,[1] these children may be under the umbrella of the juvenile court.

Bazelon further argues that the school system ought to be a repository for and manager of juvenile justice. According to the doctrines of parens patriae[2] and in loco parentis,[3] the school system has acquired parent-like control over children. One theory of delinquency suggests that a reason for juvenile delinquency is that the parent has failed to educate the child (Block & Flynn, 1956; Monahan, 1957). If a cause of juvenile delinquency is improper education then it is logical to commit the juvenile delinquent to an educational system -- the public schools. In short, the system we have delegated to educate children would then become the juvenile's guardian.

Background of Curriculum Theory

At the outset of the development of a curriculum for educators on juvenile justice, one could argue that it is helpful to define just what a curriculum is and trace the origins of American education as it pertains to curricula in order to place this particular curriculum into a frame of reference. Theoretically, such background information would be helpful in developing a rationale for this particular curriculum and would better help the educator deal with this curriculum as part of a tradition.

Just what is a curriculum? A dictionary definition might define curriculum as the course work involved in an education. As a definition this is somewhat awkward because it assumes one understands the broader questions of what is education. Thus for the purposes of this discussion curriculum will be defined somewhat more narrowly. Curriculum includes the content being taught as well as the experience of the learner and the teacher. Thus, curriculum is a dynamic and evolving experience, operating in a "special environment that has been systematized, edited and simplified" (Ragan & Shepard, 1977).

Curriculum per se, has a long heritage. The curricula of the 1640's and the Colonial Period included reading, writing, spelling, prayers, and hymns. Children were taught primarily through memorization and if a child failed to learn a lesson s/he was severely disciplined. Inherent in early American curriculum was the belief that children were born evil, thus they should be taught the better way (Ragan & Shepard, 1977; Welter, 1962).

The popular government of the revolutionary era (1776) began to reform education. Jeffersonian libertarian ideals began to infiltrate and the

Common School was a drastic change in education, for education was now public and seen as an intrinsic part of the new republic. The school itself was still authoritarian and limited in scope, but was beginning to realize that education should be directed toward the individual rather than the group.

Pedagogical change began to occur in the 1830-1840's. Horace Mann, an early educational reformer, spoke of the child's natural right to education. The teacher's role was changing from an authoritarian to a provider of a learning environment for the child. Lockean influence and the philosophy of tabula rasa (literally, blank slate) also influenced American education in that all children were beginning to be seen as potentially educable.

The political reform of the post-Civil War era permeated education. The Common School, championed by members of the Grange, now included practical and vocational subjects as well as reading, writing, and arithmetic. The labor movement of the 1890's and 1900's viewed education as a vehicle for social amelioration: education was thought to be a means to remedy society's failings. If society could not control the wayward and vagrant children, then it was the educator's job to fulfill this function. Education, coupled with the child labor laws, was seen as the means to achieve America's great melting pot ideal and by implication, educate wayward children to white middle class standards.

The progressive movement of the early twentieth century began again to reform education and curriculum. Curriculum reformers rejected educational content that was purely factual and ignored the child. The primary educational spokesman for the progressive period was John Dewey, who believed education was both a learning and a social process. According to Dewey, teachers

should attempt to instruct an individual child at that child's level, not where the curriculum supposed the child ought to be.

In his treatise on curriculum, Dewey stated that in education there are no hard firm facts and curriculum should deal with more than learning to read and compute. Curriculum must address the very nature of the child and should include a whole child approach to learning. Prior to Dewey, curriculum was thought to involve only the learning of the printed material; Dewey now stated that curriculum must include the psychological principles of learning and that this process occurred in the child's environment (Rippa, 1969).

Dewey also addressed teaching methodologies as they existed in the 1920's. Dewey believed teaching should not be domatic.. A teacher should be concerned with more than the facts and content of the curriculum. Dewey suggested teachers should teach to the individual needs of each child, recognizing that instruction does not equal the curriculum. Instruction is merely a mode of communication and, as such, should facilitate the child's educational growth. This progressive idea of education changed the focus of education from subject matter as the ends of education to a means to facilitate education.

From 1929 to 1945, elementary education curriculum became broader in scope. For example, English curricula were replaced by language arts curricula. Teachers became more adept, through better teacher education programs, at dealing with group processes and lessened their reliance on memorization as an indication of learning. Education was more child-focused and involved the entire child. School was no longer seen as an entity apart from the community; the schooling of the child involved social as well as academic concepts.

Automation again broadened the scope of education. The development of the behavioral sciences following World War II introduced new concepts and techniques into education. New ideas about intelligence and psychology were infiltrating education and leading educators to think about learning in different ways. Questions were being asked generally about learning as a behavioristic response and more specifically learning through discovery methods. These new questions coerced the educator into reexamining the concept of curriculum in general.

The space age and technological innovations introduced into education, such as television, tape recorders, etc., furthered this reform. Old curriculum was revised and this revision included both the content of the curriculum and the method of teaching. Curriculum began to emphasize the structure of the discipline.

Today's curriculum is still evolving and expanding. Socio-political concerns are increasing their influence on the development of new curricula. Today, more than ever before, both educators and pupils are involved in the formulation of the curriculum, as today's curriculum is designed to reach the student and his or her own particular needs within a society. Strategies of humanism, value processing, and the affective domain are becoming more important in curriculum development (Ragan & Shepard, 1977).

Today, curriculum is not conceived of as merely the factual statement of the content of the particular discipline. To reach the learner, curriculum must take into account learning theory, technology and development. How does a person learn? Is it through a stimulus-response paradigm? discovery? self-actualization? Regardless of the paradigm chosen, the

curriculum must account for the principles of learning, continuity, growth and life-like experiences. The curriculum ought to create interest in the learner and a desire to pursue the learning experience (Taba, 1962).

The creation of interest ought not to be a haphazard affair. The actual curriculum requires structure; the "curriculum of a subject should be determined by the most fundamental understanding that can be achieved of the underlying principles that give structure to the subject" (Bruner, 1960). Thus, the designer of the curriculum should have a working knowledge of the field in order to create a systematized learning experience.

In its design the curriculum ought to include information, documents, instructional process and interactions between the learner and the teacher. The information is the content of the curriculum. The documents, as necessary, will provide further substance to the curriculum. Instruction may be of various forms but normally includes a statement of objectives and goals, content, learner experiences, and an evaluation section. The actual method of learner inquiry may also vary; the learner may proceed through the curriculum through directed teaching, a discovery method of learning, programmed instruction, exploration or group process instruction.

Regardless of the method of learner inquiry, the planned curriculum must provide information to the instructor to lay the foundations for a valid and generalized framework of instruction. The curriculum guide therefore must be selective in content but broad enough in scope to be adaptable to the individual instructor (Ragan & Shepard, 1977). Components of the curriculum guide include:

(1) A statement of rationale or philosophic organization of the curriculum;

(2) The scope of the material presented -- what the curriculum includes;

(3) The sequence of presentation -- when the material is introduced;

(4) A statement of the objectives of the curriculum; and

(5) Evaluation procedures, as indicated by the material presented. The guide thus provides a framework for systematic learning. The guide also provides a basis for communication between the learner and the teacher.

The organization of the curriculum guide may tak various forms. The guide may be content or subject oriented, learner directed, or inquiry oriented. Regardless of the primary orientation of the curriculum, it is likely that all methods will interact. Instruction is mediated through the curricular system: decision-making $\longrightarrow$ implementation $\longrightarrow$ feedback $\longrightarrow$ assessment $\longrightarrow$ modification $\longrightarrow$ implementation (Ragan & Shepard, 1977). In all instances the curriculum is dynamic. It provides a basis for problem-solving situations and group process for instruction.

One way to make a curriculum dynamic is to make it relevant to those involved in the learning process. The criterion of relevance implies all content is related to the scope of the curriculum, and the curriculum as a whole is relevant to the learner (Tanner & Tanner, 1975). Any well constructed curriculum may have this potential but, depending upon the audience involved, the curriculum may either succeed or fail in this criterion.

Though this discussion has dealt primarily with the written curriculum, an entire curriculum need not be either written or explicit. A curriculum contains implicit or hidden goals and these may be used to the designer's

advantage. For example, a stated objective of the social studies curriculum may be that the learner become aware of the legal process through the use of a mock trial. Underlying this objective is the implicit objective that the learner will be able to participate in group processes, role play, and develop adversary skills. It would be impossible to state all hidden objectives in every curriculum; however the instructor should be sensitive to these subtleties.

This curriculum focuses on juvenile justice, yet implicit is the changing role of the educator as it relates to the legal rights of children. For example, prior to Goss v. Lopez[4] (419 U.S. 565 (1975)), a principal could expel or suspend a child from school without affording the child due process protections. After this Supreme Court decision, the child had to be granted a hearing prior to expulsion. As the law changes the educator's role in relation to juvenile justice also changes.

The Specific Curriculum: Juvenile Justice

The formulation of a juvenile justice curriculum for educators must account for the basic tenets of curriculum construction. In general this curriculum is a planned and guided learning experience designed to be relevant to the educator involved with children who are now or may in the future be interacting with juvenile court. Therefore, the experiences provided in this curriculum ought to be applicable to the educator's experiences.

A curriculum, especially one dealing with children's problems, must be sensitive to many variables: the child, society, politics, economics, and the law. Sources of influence for the construction of the curriculum include the social world of the child and the educational process as it relates to the child. This particular curriculum must be general in its subject matter rather than specific, as it must be remembered that when dealing in the area of juvenile justice each state is subject to its own laws.

Simultaneously, a curriculum on juvenile justice for educators is also influenced by both political and humanistic philosophies. Inherent in the workings of the juvenile justice system are the politics of the court and the juvenile court's humanistic underlying philosophy of treatment and rehabilitation. Dealing with both of these elements, this curriculum intends to be informative as well as oriented toward social problem solving.

The intent of this curriculum is that it should be responsive to the changing societal pressures placed on children interacting with the court. Educators as well as students are immersed in a time of changing roles of the educator and the student. A number of problems occur at the interface

of these roles; for example, school violence and school vandalism are increasing (Murrillo, 1978). This increase in school crime is draining the resources of the educator. Court action concerning school matters is increasing up to and including the highest court in the land as incidenced by the involvement of the Supreme Court in public school matters from Brown v. Board of Education (347 U.S. 487 (1954)) through Ingraham v. Wright (45 U.S.L.W. 4364 (1977)).

The interest of the author is to sensitize educators to the juvenile justice process and how it affects children. The school is involved in public affairs.

> Public schooling is a public affair, and its nooks and crannies must function according to the basic law of the land. The courts as well as educators realize that the process of schooling, including the least obtrusive aspects of the "hidden curriculum", educate the young and therefore ought to do so in full compliance with the Constitution.
>
> (Fischer, 1977, p. 259)

To be in compliance with the Constitution and the law, one must be aware of it. This is not a legal curriculum but is one designed to acquaint the learner with the law as it affects children and to demystify some of the legal jargon surrounding the law. Legalese is often written to exclude those who may not be familiar with the intended meaning of language as used in legal documents. For example, a person asked to file a writ of habeas corpus may not understand what he or she is being asked to do, but if s/he had been asked instead to seek the release of an unlawfully imprisoned

person, s/he might better understand the statement. Thus, legal language will be used in the curriculum but will be defined to better facilitate an understanding of the juvenile justice system.

Scope and Sequence

A complete understanding of the juvenile justice system as it exists today requires one to be familiar with the historical underpinnings of the juvenile justice system. The roots of the juvenile justice system lie in the English Courts of Chancery and, as will be discussed, much of American juvenile law was incorporated from that court. The traditions of Chancery coupled with the new ideas of the nineteenth century American reformers culminated in the establishment of the juvenile court. Thus what will be shown is the historical development of American juvenile justice from the Constitution of the United States through the Illinois Juvenile Court Act in 1899.

Once established the juvenile court remained relatively static until 1966 when the Supreme Court finally handed down a decision in regard to a juvenile matter (Kent v. United States 303 U.S. 541 (1966)). The past twelve years has witnessed a near "radical reform" of the juvenile justice system to such an extent that some researchers are now calling for a complete revision of the existing juvenile justice system. On the other hand, equally competent scholars are crying for a return to the basic philosophy of the system -- one of treatment and "individualized justice" -- treating the child in the system, not the act (Hopson, 1977; Juvenile Justice Task Force Report, 1976; Ketcham & Paulsen, 1967; National Council of Juvenile Court Judges, 1976).

To understand the legal implications of the juvenile justice system one cannot stop with the mere establishment of the juvenile court act; one must follow the historical and philosophical development of the system to the present. This curriculum will also include some relevant Supreme Court

cases which further define the rights of the child and illustrate how these rights have evolved. Brief discussion of the Supreme Court cases will also implicitly show the limitations of the Court and our legal system.

Objectives

The objectives of this curriculum are:

1. To provide the reader with a conceptual understanding of the juvenile justice system, inclusive of its historical background and philosophical underpinnings.

2. To provide an introduction to important Supreme Court cases affecting children.

3. To delineate some of the implications for the educator involved with the juvenile offender.

4. To suggest a future perspective for the juvenile justice system as it relates to the educator.

It is the intent of this curriculum to demystify the legal jargon employed by the court so that the educator can both understand and use the juvenile justice system to the advantage of the child and the educational process. This curriculum will deal only with rulings that are binding in all states (Supreme Court decisions). Every state may and does have rulings on specific issues, e.g., truancy, disobedience and other status offenses;[5] but in general must adhere to Supreme Court decisions, the law of the land. Therefore, for an individual teacher it may be necessary to supplement this curriculum with specific state requirements or state court cases. It is important to remember that state law does not generalize to other states. Court cases from different states may set precedents which are persuasive in other courts of law but they are not binding. For noteworthy state cases see Fox (1973), Hopson (1977), and Ketcham & Paulsen (1967).

Additionally this curriculum will not deal with the areas of dependency, neglect or child abuse. These are entirely different substantive areas.

However, for a reference to these see Gil (1973), Kempe and Helfer (1972), or Walters (1976). Nor will this curriculum deal with the problem of lowering the age limit of entry into juvenile court as is currently being considered in New York.

The focus of this curriculum will be on children under the age of fourteen and how the juvenile justice system affects them. Fourteen is the traditional age of majority in criminal jurisprudence. This legal demarcation point was established when English Courts of Chancery decided that after the age of fourteen the child could be tried as an adult. This will be discussed in more detail later.

However, the juvenile justice system, in general, includes children through age eighteen. States do differ in their age limitations. In some states, such as Illinois, the juvenile justice system includes juveniles only until they become seventeen years of age. Thus the juvenile justice system has included people beyond the traditional age of majority.

The format of the curriculum will include an introduction to the operations of the juvenile justice system, a presentation of substantive material, suggestions for a discussion of the same material, examples to illustrate particular points when relevant, case histories when applicable, and study questions. Additional readings for the student who wishes to pursue a topic in depth will also be suggested.

A vast amount of literature exists in the area of juvenile justice but little has been written for the educator. It is the intent of this curriculum to interface these two very important areas. A knowledge and understanding of the juvenile justice system is essential for the teacher, for many students interact with this social system.

Overview of the Juvenile Justice System

As has been stated, the intent of this curriculum is to interface two diverse social systems: education and juvenile justice. Certain compelling issues have emerged in the area of juvenile justice and should be addressed as an overview to the actual curriculum. This will better facilitate the reader's understanding of the author's perspective of the material presented. These include the inherent problems of the juvenile justice system, as well as substantive versus procedural law, and the educator's role in the process. An issue to be raised but not dealt with is that of needs versus rights of children.

The juvenile justice system, as a socio-legal system, contains built in problems. For example, judges have little if any background in child development, judges reach different decisions based on the same fact situation, and as the social policy of the times evolve, so too must the juvenile justice system. Also inherent in the system are the problems in the decision making process itself. Court decisions are often unclear and open to various interpretations while other decisions are quite clear and are not subject to more than one interpretation.

Often these delineations coincide with substantive versus procedural dilemmas, two categories into which law is divided. Substantive law defines actual rights and duties of citizens to each other and to society. Procedural law defines and sets out the legal machinery by which substantive rights and duties are enforced. It establishes the rules of law governing methods of pleadings, evidence, practice as well as actual trial proceedings. Procedural law itself can become the subject of much litigation.

The system has not answered all of the questions. Indeed in recent years the system may have raised more questions, both legal and ethical, than it has answered. For instance, when is the court operating under the philosophy of parens patriae as opposed to intervening in the family unjustly? Or, what is meant by the phrase "habitually disobedient"? How many acts are necessary to constitute a "habit"?

This curriculum will therefore discuss the development and evolution of the juvenile justice process to illuminate the origins of some of these issues and to lay a foundation so that the reader may understand the how and why of current juvenile court decisions. Only landmark cases will be discussed and these divide into substantive and procedural issues.

Legally the juvenile justice system has been called a civil system, yet in many ways it functions like a criminal justice system as well as a civil system. Many recent juvenile cases have seriously challenged the assumption that the juvenile justice system is a non-criminal system, raising such procedural questions as whether juvenile offenders should be accorded the same procedural due process protections afforded to adults as the right to be heard, to cross examine a witness, and to fundamental fairness. Juvenile justice cases such as Kent v. United States (303 U.S. 541 (1966)) and In re Gault (387 U.S. 1 (1967)) deal with such issues. Examples of substantive law cases dealing with actual rights and duties of juveniles, are cases such as Tinker v. Des Moines School District (393 U.S. 503 (1969)), Wisconsin v. Yoder (406 U.S. 583 (1972)), and San Antonio Unified School District v. Rodriguez (93 U.S. 1278 (1974)). By dividing these cases into the broad categories of substantive and procedural issues it is hoped that the educator will better understand his or her relationship to the juvenile justice system.

New areas of substantive and procedural law that may affect the juvenile justice system are constantly evolving. Vast amounts of legislation are being directed toward handicapped children. While cases such as Pennsylvania Association for Retarded Children v. the Commonwealth of Pennsylvania (344 F Supp. 1257 (1972)) and Mills v. Board of Education (348 F Supp. 866 (1972))[6] do not directly affect the juvenile justice system, when dealing with an area of law it is important not to exclude other areas that might peripherally affect a case.

Law is based on precedent, and when formulating a legal argument it is often necessary to draw from related areas and argue by analogy. Thus a decision such as PARC, mandating appropriate education for all special education children in the state of Pennsylvania, may one day have consequences for the juvenile delinquent. It is not unreasonable to assume, for example, that one day juvenile delinquents may also be deemed children with special needs and therefore fall under the rubric of the PARC and Mills holdings.

Also presented is an overview of the child's role in the juvenile justice system and in particular the child on probation. Along with this a presentation of possible points of entry into the juvenile justice system and the relationship between the educator and the child. The educator must be cognizant of the student's rights. However, this is not a curriculum on student's rights; it is a curriculum on juvenile justice.

This curriculum cannot deal with all court cases. As will be seen, the majority of cases presented deal with procedural due process since this is the area of the law that is most uniformly interpreted. Nor can this curriculum deal with the very open question of needs versus rights of children. Legal right implies that to which a person has a just claim, an entitlement.

It belongs to a person by law. On the other hand, children's needs might be considered to be those things which include the right to substantively enhance the quality of their lives yet they are not necessarily legally entitled to. These might include care, shelter, and treatment as well as emotional security.

The question of rights versus needs is an interpretive issue and one the reader should be aware of, although the problem of definition and differentiation is beyond the scope of this curriculum. The dichotomy is important when considering what legislative and case decisions purport to do and what they have done in regard to the child in the juvenile justice system. Generated from a curriculum such as this is the further question of possible conflict between states' rights versus parents' rights versus children's rights. How far may the state intervene in family matters? What happens when parents and children's interests do not coincide and may even be adverse.

Origins of the Juvenile Justice System

Objectives

1. To provide the reader with a basic understanding of the juvenile justice system and its operation.
2. To provide the reader with basic definitions and terminology used in the juvenile justice system.
3. To be able to identify the child's legal status.
4. To be able to discuss the origins of juvenile law from the Constitution to 1899.
5. To be able to identify the role of the Reformers during the period directly predating the Juvenile Court Act of 1899.
6. To create an awareness in the reader of Constitutional issues as they affect children.

Key terms. At the conclusion of this section the reader should be able to define or identify the following:

parens patriae	intake
in loco parentis	aftercare
mens rae	waiver
Constitution	probation
Bill of Rights	Ex parte Crouse
Courts of Chancery	Ex parte Becknell
The Reformers	In re Ferrier
adjudication	People v. Turner
disposition	

Background Information: The Juvenile Justice System in Operation

To facilitate an understanding of the juvenile justice system it is helpful to have a global understanding of the juvenile justice process--how it effects children and possible points of interface for the educator. (For a complete functional analysis of the juvenile justice system see Streib (1978).) An understanding of the process, as it exists today, should also facilitate an understanding of possible alternatives to the system.

Insert Figure 1 about here

The flow chart in Figure 1 is a pictoral description of the juvenile justice process. Briefly this diagram can be explained as follows: The juvenile commits an act which falls under the jurisdiction of juvenile court. Jurisdiction implies that the juvenile court has power to hear and/or determine the outcome of a case. If the act was reported to a legal authority in the juvenile justice system, the child may then enter the system. The mere reporting of an act does not mean the child will become involved in the juvenile justice system.

An act that has been reported may then be investigated by the police. If the report did not conclusively state the juvenile was probably involved in the act alleged, the juvenile may exit the system. If the report finds that the child did allegedly commit the reported act, s/he may be apprehended or referred to an alternative mode of treatment such as mental health.

If a child is apprehended, special records are prepared. These include a social history report based partially on school records. At this point the child may be diverted from the system (perhaps to school counseling), leave the system, or continue in the system--either in detention facilities or in a form of informal detention, such as under parental supervision. If detained, the child must have a hearing. With either form of detention, the child proceeds to the intake hearing, which is similar to a booking procedure in criminal court.

Intake requires a preliminary hearing or review of the facts of the offense allegedly committed. At times, this process proceeds similarly to a criminal investigation. The intake personnel gather evidence, question witnesses and make field visits if necessary. If the hearing results in a decision to continue the case, a juvenile petition is filed with the court by the intake officer.

The petition to adjudicate delinquency must state the alleged act as well as all relevant additional facts, such as time and place of the alleged offense. The intake hearing may result in the finding that the child should not proceed in the juvenile court. Again, the child may simply exit from the system or may be diverted from the system and referred to a form of treatment based on the child/parent relationship, school/child relationship, or the seriousness of the crime. If a petition is filed, the child must have a rights hearing. In short, the juvenile and his/her parents must be informed of the child's Fourteenth Amendment due process rights--the right of both the parent and the child to receive notice; such notice must be "timely". Timely notice means that the notice must be far

enough in advance of the date of court appearance to enable the child and his or her parents time to appear. It also means that the place designated for appearance must be reasonable or easily accessible.

In addition the juvenile and his/her parents must also be told that they may have counsel to represent them, and that if they are unable to pay for an attorney the court will provide counsel. (Juvenile due process rights will be discussed in more detail later. See In re Gault, page 56.)

Upon filing the petition jurisdiction must be established. Is the child to be prosecuted in criminal court or does jurisdiction remain in juvenile court? A juvenile alleged to have committed a particularly heinous act, for example first degree murder, is often waived into adult criminal court and tried there. If this is the case a waiver petition must be filed, by the prosecuting attorney whereby the judge is asked to transfer the juvenile to criminal court. (The prosecutor cannot decide where to try the juvenile, the waiver petition must be filed.) Other acts, such as status offenses--acts which if committed by an adult would not be considered criminal, for example truancy and disobedience--are considered to be the exclusive jurisdiction of juvenile court. Status offenses cannot be waived to criminal court.

Once a waiver petition is filed, a hearing on the petition follows. This will determine which court has jurisdiction over the child. If a child is transferred to criminal court, juvenile court involvement in the case ends. If the petition is denied the child remains in juvenile court. If no waiver petition is filed, or if one is defeated after filed, the petition to adjudicate delinquency must be answered by the child or the child's attorney.

After the petition is answered, the adjudicatory or fact finding hearing begins. This is the beginning of the true "formal" part of the juvenile justice system. During this stage the child has many of the due process safeguards afforded to the adult in the criminal system. During this hearing the child has the right to counsel, remain silent and to cross-examine and confront witnesses (Gault, 1967). After this hearing the child will either be adjudicated (determined to be) a delinquent or released from the system. It is not until this time that the child is legally labeled "delinquent."

Inherent in the philosophy of juvenile court is the belief that dispositions, or sentences, should serve the child's needs. Thus the disposition rendered in the adjudicatory hearing ought to focus on how best provide services to facilitate rehabilitation and treatment. This therapeutic model assumes that the judge has community and diagnostic services available.

Dispositional alternatives typically available are:

1. Juvenile probation--A. Formal--a conditional release under the supervision of an officer of the court. (Probation will be discussed later.)

--B. Informal--a conditional release under the supervision of a parent or guardian.

2. Commitment to a juvenile institution, either public or private.
3. Dismissal from the court--an unconditional relinquishment of court jurisdiction over the family or juvenile.
4. Suspended judgment--a refusal to enter a finding of delinquency or a formal disposition on the condition that the child modify his/her behavior within a specified time.

5. Placement in a foster home--a disposition used to change the child's environment without institutionalization.

6. In some states, juveniles may be forced to pay a fine or some other form of restitution to the victim. Probation accompanies this dispositional alternative.

Depending on the disposition rendered the child either remains within or exits from the system. If the child is placed on probation s/he is ultimately released from the system (after a defined amount of time set by the court), or if found to be in violation of probation may be sent to a juvenile institution. The child who has been sent to a juvenile institution may eventually be placed on probation or may be released from the institution. Upon release from a correctional facility, a juvenile may be placed in a form of aftercare. Aftercare is similar to parole in the criminal justice system. The amount of time a juvenile spends in aftercare is determined by the court. Once released from aftercare the child has exited from the juvenile justice system.

This has been a very brief discussion of the juvenile justice system in operation. Points of possible contact for the educator exist throughout the entire system (this will be explained in greater detail at a later point, see page 89). A child, in nearly any phase of the juvenile justice process may also be involved in the public school. However, the child's involvement with the juvenile justice system will vary depending upon his/her step within the juvenile justice system.

If the educator has an understanding of the juvenile justice system and how it relates to the child, the educator can help the child cope with this other social system. The educator, working with the child from six to

eight hours a day can help the juvenile cope with the juvenile justice system and help the child better understand requirements of probation or juvenile court.

Historical Origins of American Law

Law is based on precedent. Present and past court decisions form the basis for future decisions. Opinions written by the court help to clarify the language of the law. Basing law on precedents which are capable of being reinterpreted creates a flexible system that is able to change. Consequently what was law yesterday may not be the law today.

To understand the rights of children today it is essential to establish an historical perspective prior to a discussion of rights as they exist today. Current pertinent issues concerning children as well as future implications for children, in relation to the law, are based in historical precedents. What will follow is a brief historical survey of the origins of American law and the development of the juvenile court system (1899).

American law is based in a tradition of English Common law. A cursory examination of early English and American legal history is necessary to explain the origins of some very basic concepts.

Generally American law has inherited the terms parens patriae and in loco parentis from the English Courts of Chancery which were the courts of equity. These two terms are very important in juvenile justice. In the English Courts of Chancery parens patriae referred to the King's guardianship, as father of the country, to protect the property of minors who were wards of the state (Caldwell, 1961). As applied to the juvenile justice system, parens patriae refers to the state's sovereign power, as exercised

by the judge, of guardianship over persons under disability, such as children. Disability, used in this context is a legal term and refers to a person who is not fully competent such as an invalid or child.

The term in loco parentis refers to a person acting in place of a parent. Such a person is charged with a parent's rights, duties, and responsibilities toward the child.

Historically, childhood is a relatively modern idea. Concern for education, care, and rights of the child stemmed partly from political and social origins but most often from economic factors--the need for more adult employment, welfare conditions, etc. (Naherny & Rosario, 1975). To some degree the notion of childhood is a direct result of the advent of the industrial state.

The concept of differentiating the child from the adult began in the seventeenth century. Prior to this time if a person survived infancy s/he was then considered to be an adult. The seventeenth century and the Renaissance began to recognize a child as someone less competent than an adult at least until s/he reached age seven. Due to manpower needs a seven year old was considered to be an adult. "As a consequence, children had the same rights as adults" (Naherny & Rosario, 1975, p. 7).

With urbanization came an altered conception of the child. The child came to be viewed as "innocent" and in need of protection and nurturance. Now children were seen as unable to regulate themselves; they needed systematic discipline to build character, which either restricted or denied their freedoms and privileges. Accordingly, the conept of child was again redefined in law. A child less than seven was conclusively presumed to be incapable of committing a crime, the child could have no mens rea. Legally this term

means the child cannot have a guilty mind or "criminal intent". The child between the ages of seven and fourteen was rebuttably presumed to be incapable of criminal intent. In other words, it could be argued whether or not a child committed an alleged act. After age fourteen a child was considered an adult, capable of criminal intent and punished accordingly. As will be seen the child's initial "presumption of incapability" is a recurring and important theme in the structure of the juvenile court.

The change in the status of the child paralleled the economic needs and labor regulations of the times. Factory and child labor laws prohibited the very young child from working in the mines and regulated the working hours of the child between the ages of seven and fourteen. It is probable that the laws of Chancery were not developed to suit the needs of the child but rather to appease the laborer and create a better job market for adults.

Following in the tradition of their English ancestors, the Puritans, championed by Jonathan Edwards, also believed that being idle (a carry over from the Elizabethan poor laws) was undesirable. Work and discipline were very important. However, as Calvinism declined and the Enlightenment views of Locke and Rousseau became prominent, the child was again thought of as pure and innocent and without a guilty mind. This was especially true within the American family (Aires, 1962).

At the writing of the Consitituion, the laws of Chancery and the view of the child as innocent and pure, but a person in need of supervision and direction, were all prevalent in the minds of the Founding Fathers. Yet as will be shown:

> the concept of childhood and rights are not to be regarded as empirical or moral absolutes, but as phenomenon in context and thus are subject to change in their general and specific meanings. (Sartorius, 1975, p. 65).

The Constitution and the Bill of Rights

The United States Constitution (1787) created a judicial branch of government. The document states a basic philosophy and jurisdiction that are applicable to all citizens of the United States. There is no express delineation stipulating a person must be of a certain age to receive benefits or privileges from the "law of the land." (The Constitutionalists probably envisioned a citizen to be an adult, white male. Yet, this is not explicitly stated. Therefore the actual language used in the Constitution could arguably include all persons.)

The Bill of Rights, effective November 3, 1791, again appeared to apply to all citizens of the United States. Rights delineated included: freedom of religion, press, and speech; the right to be secure against "unreasonable searches and seizures" (Fourth Amendment); and a guarantee that persons shall not be placed in double jeopardy or compelled to testify against themselves (Fifth Amendment). The Fifth Amendment further stated a person shall not "be deprived of life, liberty, or property without due process of law".

If criminal proceedings are instituted against a person, the Bill of Rights guarantees the accused a right to a "speedy and public trial". The trial is to take place in the district and state in which the act was committed. The person has a right to be confronted with witnesses against

him and has the right to ask for the "assistance of Counsel for his defense" (Sixth Amendment). The Seventh Amendment further protects a person's rights in that the State may not set "excessive bail" or "excessive fines". The Eighth Amendment protects a person from "cruel and unusual punishments".

If one were to assume "personhood" on face validity rather than under the strained interpretation of the Constitution rendered by the Supreme Court, one could call a child a person. Nowhere in the Bill of Rights is a person defined by age. Nor did the authors of the Bill of Rights define what constituted such terms as cruel and unusual punishment. Much legal writing exists on the interpretation of the language used in the Constitution and the Bill of Rights. Constitutional scholars are still in the process of legally interpreting the meaning of these documents.

From the outset, the Constitution may not have philosophically excluded juveniles from those rights granted persons. Personhood was not a matter of age; citizenship was a matter of birth or naturalization, and all citizens were persons protected by the laws of the land.

The Juvenile Justice Act -- 1899

Following the writing of the Constitution and the Bill of Rights the American view of the child continued to change. Early nineteenth century theological philosophy emphasized the child's physical health and spiritual well-being. Attention was focused on the physiology of the child.

Developing concurrently with this philosophical belief about the child were the child labor laws and compulsory education laws. The child labor laws of 1833 stated that no child less than nine could be gainfully employed and children between the ages of nine and fourteen might work only forty hours per week. It could be argued that the school provided

an alternative placement for the child. A greater number of children were now unemployed, thus the State may have delegated an alternative mandatory placement: the public school.

The school provided a placement for children and the Reformers of the 1820's fervently argued that every child had a right to an education. While the child did not have the choice not to go to school, s/he did have the choice of whether or not to comply with the schooling system and be educated. Although the reformers were well-intentioned, the quality of the schooling was somewhat questionable. In reality the reformers may only have changed the facade of the prison.

The state, in mandating education and creating child labor laws, was beginning to recognize the concept of the child. The criminal justice system also became involved with children. Special institutions for "delinquent" children were created: the Reform School. The first House of Refuge was established in New York in 1824. Boston followed in 1826 and Pennsylvania in 1828 (Faust & Brantingham, 1974). The inmates of these institutions were those children who had been convicted of crimes. The assumption behind the development of the Houses of Refuge was that to rehabilitate a child one needed to have a juvenile facility apart from the adult prison. In actuality the State may have created a children's prison.

The State was now undeniably involved with the welfare of the child. The first major court decision protecting the child did not occur until 1838. In Ex Parte Crouse (4 Whart. 9. 11 (Penn. 1839)) the court held that the right of the parent was not unalienable and incorporated the doctrine of parens patriae into American law. The State had literally given itself a mandate to provide for the well-being of the child and if necessary act as or provide for a guardian.

Mary Crouse's father had attempted to free her from the Philadelphia House of Refuge on a writ of habeas corpus (a doctrine used to free an individual wrongfully deprived of liberty). The Pennsylvania Supreme Court denied the father's claim on the grounds that the State could provide a better living environment for Mary than could her father. The State, unlike her father, could provide for Mary's religions and educational training.

Ex Parte Crouse affirmed the state's role in the protection of the child and considered the question of the rights of the child versus the rights of the parent. Another possible explanation of this decision is that the court may have been acting to separate children from poor parents. In this way the court and the state could exercise greater control in the development of the new American society (Rendelman, 1974).

The following thirty years, 1838-1868, witnessed the rise of the state institutions for wayward children as well as the creation of the Children's Aide Society in New York (1853) (Faust & Brantingham, 1974). The Society was the children's counterpart of the American Humane Society. Children were now treated at least as well as animals!

In 1866, Massachusetts granted the State power over all children under the age of sixteen whose parents were declared to be "unfit" (Kelley, 1882). Prior to 1866, Massachusetts honored the earlier age limitations defined by the Courts of Chancery. Thus Massachusetts had extended the doctrine of parens patriae to include children of the ages fifteen and sixteen. Massachusetts deemed it necessary to protect a child until he or she reached the age of sixteen. Consequently these years were now also considered to be childhood years.

The Civil War and the Emancipation Proclamation again focused attention toward the rights of the individual. The culmination of this was the Fourteenth Amendment (July 28, 1869). This document further defined citizens to be "All persons born or naturalized in the United States." This amendment also guaranteed all persons due process of law and equal protection under the Constitution.

The Fourteenth Amendment stated that a person was a citizen at birth and by virtue of citizenship was granted federal privileges and rights with which the State could not interfere. From the language of this Amendment one could argue all persons are citizens regardless of race, age or sex. One could also argue children are persons. Yet it must be remembered "persons" is a legal term. As of 1868 the term person did not apply to children.

Though not written to directly affect children, the Fourteenth Amendment may have influenced Justice Thornton in 1870 in People v. Turner (55 Ill. 280 (1870)). The question was whether Dan O'Connell, a juvenile, could be admitted to a reform school in the "absence of gross misconduct or almost total unfitness on the part of the parent" (Rendelman, 1974, p. 96). The Illinois Supreme Court held that children have rights protected by the Constitution, for example, a child cannot be institutionalized for idleness or ignorance.

The decision concerning Dan O'Connell does "face the crucial issue of the role of the state in parent-child relationships" (Rendelman, 1974, p. 93). It directly addressed questions and concerns being posited by the child-savers and reformers of the 1870's and 1880's. Yet the Turner decisions barely caused a ripple in Constitutional law as it applied to children (Schlossman, 1977).

The question of states' rights versus parents' rights versus children's rights surfaced again in 1879 in In re Ferrier (103 Ill. 367 (1882)). In this situation the court intervened acting under the doctrine of parens patriae, and removed the child from the home. The court discussed the child's rights to liberty and decided that "the restraints were moderate rather than excessive" and placed her in an institution (Rendelman, 1974, p. 99). Parens patriae was used as justification for the State intervening on the child's behalf. Neither the parent nor the child had any recourse. The court's decision was final. The court had again intervened in a parent/child relationship. This has possible implications for the relationship of the family to the state.

The Reformers

The court's decision in In re Ferrier was in accord with the temper of the times. The 1880's witnessed a rise in the child saving movement. This was a predominantly white, middle class, feminist movement. Platt (1970) states that the "main aim of the child-savers was to impose sanctions on conduct unbecoming youth and to disqualify youth from enjoying adult privileges" (p. 16). This movement can be seen in part as an affirmation of parental authority and a definitive step to control wayward juveniles. Platt further states that the child-saving movement was "antilegal" in that it "derogated civil rights and procedural formalities while relying heavily on extra-legal techniques" (Platt, 1970, p. 18).

These extralegal techniques were fully exercised by the child-savers. The child-savers believed poor people should not raise their own children. The poor had minimal legal protections and few legal rights.

> Rights are concrete only when there are procedures to protect them, and when there are no procedural protections, it is not far from wrong to say that there are no rights (Rendelman, 1974, p. 109).

The child-savers believed they were rescuing children from indigent parents and the state, as guardian, should assume custody of these children even if this necessitated unconventional methods.

The women in the child-saving movement were particularly vocal. Having found a role in society, they fervishly advocated child protection and saving the child from a pauperous existence. Kelley (1882) summarizes the philosophy quite well:

> Present legislation proceeds upon the principle that custody rests not on any parental vested right, but on the <u>right of</u> the child to be in the care most fit to secure his welfare, whether that be father, mother, guardian or board of charity, or board of women's visitor's, or some adoptive parent, and nothing is more significant than the growing recognition of the child's need of and <u>right to</u> be in the care and custody of <u>women</u> (Kelley, 1882, p. 89 emphasis added).

Though seemingly well intentioned and proceeding with the best interests of the child foremost in their minds, the women of the 1880's and 1890's were perhaps trying to justify their political existence rather than upgrade, educate and save poor vagrant children.

In spite of the possibly selfish motives of the reformers, the 1880's did witness a change in the legal status of the child as well as a greater concern for the truly neglected child. In 1881, the courts began to permit

children to be witnesses if "proved to have sufficient discretion and understanding of the obligation of an oath" (Circulars of Information, 1911, p. 151). Although this applies to individual cases the obvious loophole in this statement is that it is difficult, if not impossible, to agree at what age a child possesses sufficient understanding and/or discretion.

The philosophy of the Society for Prevention of Cruelty to Children (established in New York, 1874), may have been contrary to many other reform groups. In 1882, as a result of the atrocities committed by parents against their children, the Society wrote that children had rights and even parents were bound to respect those rights (Bremner, 1970). A child had a right to life, shelter and nourishment. And, in the tradition of the reformers, if the parents could not supply these basic needs to the child it was the obligation and duty of the society, or the state, to assure the child a means to obtain these basic and unalienable rights.

The court was also beginning to recognize and deal with the rights and needs of the neglected child. In 1884 (Reynolds v. Howe, 51 Conn. 472, 478) the state was able to remove a child from a home and place the child in an institution. This was another instance of the court, acting in parens patriae, actually removing a child from a home. The precedent established in In re Ferrier (1879) was solidified in this case. Massachusetts followed with a similar case in 1886. As noted earlier, law is based on precedent; similar decisions reinforce the interpretations of the law.

Indiana also realized the need to protect vagrant and neglected children and in 1889 established the Indiana Board of Children's Guardians

with jurisdiction over neglected and dependent children. Pennsylvania's Children's Aid Society (1890) began to seek alternative placements for delinquent children in the form of foster homes. Previously Pennsylvania's wayward children were sent to reform schools. A rising concern for wayward children existed throughout much of the country.

In 1897, California, in Ex Parte Becknell (51 Pac. Rep 692) demonstrated an interest and concern for the protection of a minor. In this case the court ruled to reverse an earlier decision and to revise a sentence mandating a juvenile be committed to a reform school. The Becknell decision stated that the juvenile had not had a jury hearing and therefore could not be sent to a reformatory. In effect, the 1897 decision stated that the child had been denied the due process right of trial by jury.

As should be evident, prior to the 1899 Illinois Juvenile Court Act, both lay and legal observers were concerned with the treatment of minors. This first Juvenile Court Act may have been the culmination of reformers' goals, however, it proved to be neither the panacea for their woes nor the beginning of legal treatment modalities for children. The establishment of juvenile court can be seen as another step in the children's rights movement.

Discussion Questions:

1. How does the juvenile justice system parallel the adult criminal justice system?

Identify the counterpart of these terms:

Criminal justice system	Juvenile justice system
Booking	_____
Parole	_____
Sentence	_____

2. If you were a child, which system would you rather be processed through? Why?

3. Trace the roots of American law. Consider the impact of the English Courts of Chancery.

4. Parens patriae and in loco parentis are terms borrowed from the English Courts of Chancery. How do these two terms apply to the public school?

5. Discuss today's view of the child.

According to a lawyer, an educator, and a parent, discuss today's view of the child. Role play various points of view.

6. According to the Constitution, should children be considered to be citizens? As of 1787? As of 1978?

7. In Ex Parte Crouse, People v. Turner, and In re Ferrier the court intervened in the family. Do you feel this intervention was justified? Would it be justified today?

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The Advent of Juvenile Court -- 1899-1966

Objectives

1. To be able to identify the assumptions underlying the advent of the juvenile court.
2. To be able to identify the basic philosophy of juvenile justice.
3. To be able to discuss the apparent reception of juvenile court in the United States.
4. To be able to discuss higher court involvement in the juvenile justice system during the period 1900-1966.

Key terms. At the conclusion of this section the reader should be able to identify or define the following:

Juvenile Court Act of 1899

Commonwealth v. Fisher

Children's Charter

Brown v. Board of Education

status offense

The Advent of Juvenile Court

The Illinois Juvenile Court Act of 1899 (Ill. Laws 1899, 131-137) established the first juvenile court in the United States and applied to all children in Illinois less than sixteen years of age. The primary intent of the act was to create a state system that no longer punished wayward children, but rather would assist and rehabilitate the children. The state, as parens patriae and thus protector, could legally intervene in the child's life and the family unit for the express benefit of the child. The judge, acting for the state, functioned 'in loco parentis'. The assumption was that the state understood how best to act in the child's interests.

The assumptions behind the formation of the Act vary, but can generally be construed as follows:

1. Children are not responsible for their behavior, are not capable of criminal intent, and therefore need protection.

2. Delinquent children can be changed; therefore the intent of the court is to rehabilitate rather than punish.

3. Children's behaviors can be modified through education and socialization.

4. The court, as an institution, should have jurisdiction over delinquent, dependent, and neglected children. Since these children were neglected, they probably lacked education, thus it is the responsibility of the state to educate them as a preventative measure.

5. The justice delivered in the juvenile court system will be individualized (Mack, 1909). The focus of the court is the individual child, not the crime committed. Consequently there would be a "different justice" for every child (Hopson, 1977).

The Illinois Juvenile Court Act may have inadvertently facilitated a system for further stigmatizing a child. The juvenile justice system was developed with the intention of protecting the child, but in actuality it may have further deprived the child of rights. The child was no longer part of the adversary system of justice, and therefore not subject to a jury trial. In 1899, few juvenile lawyers existed to check the behavior and decision of the judge, or to defend the child's or family's interests. The judge, acting for the state, determined a child's placement with no guarantee that the judge was at all aware of the child's optimal developmental needs, emotional or psychological welfare, as well as the child's possible natural right to remain within the family structure in spite of the judge's view that the environment was fraught with negligence and poverty.

Given the philosophical bent of the juvenile justice system, that of rehabilitation and individualized justice, the system had inherent problems. Some were inherent in the roots of the system, others were foisted upon the newly developed court. Built-in problems included the lack of adequate qualifications for the judge, lack of supplementary resources, and lack of placement facilities for children. The judge usually had no background to equip him or her to be a decider for or about children. Juvenile court justices were often 'inferior' judges as this court is a court of lesser jurisdiction. In the legal hierarchy circuit courts carry more prestige than juvenile courts. Additionally, since juvenile court has less authority than circuit court, the juvenile court judge may often not be as "legally" competent or experienced as a circuit court judge.

The judge was also placed in the dual and often conflicting role of protector of the state and kindly father to the juvenile offender. The

judge had been invested with the coercive power of the state and also entrusted with the rehabilitation of the minor. The Illinois Act of 1899 clearly placed the judge in a situation of potential conflicts of interest. The judge had to be both protector of the state's interest and guardian for the child.

The philosophy of the juvenile justice system required the system to be one of service delivery. Yet due to lack of adequate staffing and personnel trained in rehabilitation of juvenile delinquents it was (and is) unreasonable to assume the juvenile justice system could fulfill this charge.

Ketcham and Paulsen (1967) suggest the current juvenile justice system may never be able to adequately meet this need. Along with the lack of resource personnel, the system also lacks placement facilities for children adjudicated delinquent. Children are no longer to be housed with adult criminals, but alternative placements are not available. Foster placements, institutionalization and treatment facilities did not and do not exist to meet the needs of the convicted minor.

The reformers of the 1890's thought the juvenile justice system could and would be able to rehabilitate juvenile delinquents and transform them into good citizens. By the 1940's the reformers came to realize that this was an impossible objective. The court itself actually had little to do with the amount of juvenile delinquency in the town. Very few delinquents actually enter the justice system. Many offenders are not apprehended, while others are diverted from the formal juvenile justice system to other forms of treatment.

Also imposed on the juvenile justice system was the belief that this court could be used as a vehicle for society to issue universal social

policy controls over children and intervene in family child rearing practices. It was believed that the court, as parens patriae, and kindly father would help solve the internal family problems. As a service delivery system this task proved to be beyond the scope of the court. The court alone could not solve this vast social problem.

The development of the juvenile court may have only been another step in the reform movement of the late 1800's. The new institution may have appeased the white middle class reformers but it did not positively alter or effectively change the status of the child. The juvenile court entitled the child to "care and custody--not freedom" (Orlando & Black, 1975, p. 353).

The Rise of Juvenile Court

In spite of the many problems of the juvenile justice system, the idea of a juvenile court spread very rapidly throughout the country. Other states followed Illinois' lead. For example, Pennsylvania's support for the new legislation was evident as early as 1905. In Commonwealth v. Fisher (27 Pa. Super. Ct. 175) the Supreme Court of Pennsylvania upheld the Constitutionality of the new Pennsylvania juvenile court act. By 1909, over thirty states had adopted juvenile court legislation which was also supported by the courts (Mack, 1909).

> Under most of the juvenile court laws a child under the designated age is to be proceeded against as a criminal only when in the judgement of the judge of the juvenile court, either as to any child, or in some cases as to one over fourteen or sixteen years of age, the interests of the state and the child required that this be done (Mack, 1909, p. 155).

In all other circumstances the court represents the parens patriae power of the state and is charged with looking after the child's needs not rights.

Mack realized the limitations of the judge. It was difficult if not impossible, for the judge to assess accurately the needs and problems of the young child. Consequently Mack (1909) asked for a child study department to be attached to the court and "every child, before hearing, shall be subjected to a thorough psycho-physical examination" (p. 166). Mack further stated the child should "be made to know that he is face-to-face with the power of the State" (p. 166). However, Mack did not assert that the child should be given those rights granted to an adult in similar face-to-face confrontations. The questions of rights was not explicitly addressed.

In 1911, Carrigan in "Rights of Children" listed the following eight rights of childhood that ought to be protected:

1. The right to be well born.
2. The right to the parental name and support.
3. The right to leisure, play and recreation.
4. The right to education.
5. The right not to work until able.
6. The right to protection from inhumane treatment.
7. The right to protection of health.
8. The right to a chance to live in a decent environment.

As can be seen from previous definitions, however, most of these are needs rather than rights.

Advocates of child welfare, as contrasted with children's rights, were becoming more vocal and prominant throughout the years 1900-1920. The White House Conference of 1919 designated standards for child welfare. Their minimum standard for child protection included a normal home life, an opportunity for education, moral education and home care. The humane movement of the 1920's envisioned the role of juvenile court to be similar to a protection agency and function in conjunction with the social service agencies. The trends of the 1920's were:

1. To combine child protection and children's aid functions into one entity.

2. To grant, to the public, power to enforce protective standards.

3. To place the juvenile court in an investigative role.

4. To create new agencies for youth, such as juvenile protection agencies.

5. To encourage other agencies with other purposes to become involved in issues concerning children's aid (Bremner, 1970, p. 604).

The rhetoric was encouraging but unenforceable as law.

1930-1966: A Period of Stagnation

The Children's Charter of 1930 was one of the first documents to recommend and suggest that all children "regardless of race or color or situation" ought to have rights. These rights (in reality needs) included: a home with love and security, health, protection and treatment; a safe dwelling place; education; and the right if in conflict with society, to be dealt with intelligently (Children's Charter, 1930). Also enumerated were the right to minimum protection in health and hospitals, welfare services and guidance if necessitated by behavior difficulties, or the need of protection from "abuse, neglect, exploitation or moral hazard" (Children's Charter).

Although the fundamental rights of the child were thus enumerated by the President's Commission, the Charter had little effect on the population at large or the proceedings within the juvenile court system. Children still had few legal rights. The Charter too was encouraging rhetoric, but an unenforceable document.

The 1899 philosophy and design of the Illinois Juvenile Court Act continued to dominate throughout the first half of the Twentieth century. The juvenile was relegated to a special class of citizenry with a different type of justice. S/he could be charged with a status offense (an act which would not be a crime if committed by an adult, such as truancy or disobedience) tried within his/her special court and adjudicated delinquent under a system of individualized justice that might or might not consider the seriousness of the offense as heavily as the background of the person. The child, without an effective legal process, was then at the mercy of the fatherly judge and subject to his or her learned opinion as to an appropriate and just means of rehabilitation.

During the 1940's and 1950's a few spokesmen suggested the need for a reexamination of the juvenile justice process, stating that the juvenile court movement had "developed a series of peculiarities in processing" (Tappan, 1946, p. 221) and had deprived the child of procedural rights. Though the intent of the juvenile court had been clinical and rehabilitative, differentiating the process of the juvenile court from the criminal court had failed to give the defendant "some of the most basic protections of due process which inhere in our modern legal system" (Tappan, 1946, p. 225).

Tappan further stated that the defendant is due, at the very least, the following rights:

1. A definite charge;
2. the right to be confronted by a witness;
3. the right to counsel and appeal; and
4. conviction only when evidence is convincing beyond a reasonable doubt (pp. 225-226).

In spite of these 1946 recommendations, it was not until twenty-one years later in In re Gault (387 U. S. 1 (1967)), that the Supreme Court acted upon and attempted to rectify these procedural due process concerns.

This is not to suggest that the Supreme Court was totally disinterested in the issue of children's rights and juvenile justice. The Court was forced to indirectly confront the issue and deal with children in Brown v. Board of Education (347 U. S. 483 (1954)). As a result of the Brown decision children could not be denied equal access to equal education. Separate but equal schooling, on a racial basis was declared to be unconstitutional. The Brown decision, though peripherally affecting juvenile law, was not designed to deal specifically with issues concerning juvenile rights however.

Legislation and state courts (see In re Carlo (48 N.J. 224, 226 (1966))) were beginning to become involved with juvenile justice and juvenile rights. However the Supreme Court had yet to rule on a juvenile matter. It was not until 1966, in Kent v. the United States (383 U. S. 541) that the Supreme Court heard and wrote an opinion on a juvenile case. It has taken 67 years for a juvenile case to reach the Supreme Court.

Discussion Questions:

1. What were the assumptions surrounding the advent of juvenile court?

2. What were some of the inherent problems of the juvenile justice system? Do they still exist today?

3. Mack, in 1909, called for a child study team to facilitate placement and adjudication of deviant children. How would you develop such a team? Who would be included?

4. The White House Conference of 1919 designated minimal standards of child protection. Ask a social worker what today's standards are.

5. The 1920's encouraged a liaison between the public and the juvenile court. Interview a judge and try to find out if s/he is in favor of this liaison. How could the public become involved in the juvenile court process?

6. What change, if any, has occurred in the philosophy of juvenile court from 1899-1966?

7. Brown was not a juvenile case. Find the opinion of the Brown decision (cited in the text) and attempt to ferret out those recommendations that would apply to the juvenile.

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Landmark Cases

It must be remembered that this curriculum does not address all juvenile cases. Such a curriculum would create a body of literature composed of very conflicting opinions and rulings, as each judge may decide each case on its particular merits, or facts. Consequently, this section will address landmark cases only. These cases have had a significant impact on the juvenile justice system. For the most part they are Supreme Court decisions, however a few lower court cases have been included.

The cases have been divided into two categories; those dealing primarily with procedural matters and those dealing primarily with substantive matters. Again, procedural matters are those that deal, by and large, with due process concerns; substantive matters deal with the issue or the substance of the case and are more open to individual interpretation, i.e., one judge could interpret a substantive matter one way, while another judge might interpret the case very differently.

However the reader should be cautioned about this method of delineation. Cases are not either/or dilemmas. The dichotomy between procedural and substantive matters is not black and white but exists on a continuum. All cases normally address both concerns, however they may differ in their degree of emphasis. Therefore, the following cases have been classified on the emphsis of each case.

Landmark Cases: Procedural Issues

Objectives

1. To be able to determine the issue in Kent.

2. To be able to discuss the changes in juvenile court proceedings as a result of the Kent decision.

3. To be able to discuss and identify the holdings (decisions) of Gault.

4. To be able to discuss the changes in the juvenile court proceedings as a result of Gault.

5. To be able to discuss the changes in juvenile court as a result of McKeiver and In re Winship.

6. To be able to determine the changing status of the juvenile as a result of the major Supreme Court decisions from 1966-1977.

Key terms. At the conclusion of the section the reader should be able to define or identify the following:

Kent v. The United States

In re Gault

McKeiver v. Pennsylvania

In re Winship

Goss v. Lopez

procedural due process

Right to notice

Right to counsel

Right to confront and cross examine a witness

Right to remain silent

waiver

beyond a reasonable doubt

jury trial

Kent v. The United States (383 U. S. 541 (1966))

Kent v. United States was the first juvenile case heard before the Supreme Court. However one could argue whether or not Kent should be considered a High Court decision. This is an important point, for the Supreme Court decisions carry more weight than any other court decision. A Supreme Court decision is law for the entire country while a lesser court decision is law only for that jurisdiction. The reason for the confusion is that Kent was originally litigated in Washington D. C. trial court. The appellate court for the Washington D. C. court is the Supreme Court of the United States. Therefore, the appeal case by necessity was heard by the Supreme Court. Regardless of whether or not Kent is considered to be a Supreme Court decision, it did affect juvenile law.

The issue in Kent was whether a juvenile has a right to counsel at a waiver hearing, or put another way, does a juvenile have procedural protections in the waiver hearing. The waiver hearing is the transference of jurisdiction of the matter from juvenile to criminal court or vice versa.

Briefly, Morris Kent had claimed that his waiver from juvenile court to criminal court had violated his right to due process of law (the Fourteenth Amendment). He had first come under the authority of juvenile court at age fourteen (1959) as a result of several housebreakings. While still on probation, in 1961 (age 16) he entered a woman's apartment, took her wallet and raped her.

Kent was apprehended. Following this he was interrogated by the police officers and apparently voluntarily admitted his offense. A petition was filed to transfer Kent to criminal court.

The trial court judge never heard the petition, counsel was not afforded Kent or his family, nor were reasons cited for the waiver. Kent was then transferred to criminal court from juvenile court, tried, found guilty and sentenced to imprisonment. Kent argued he had been denied due process as he had been transferred to criminal court without due process protection.

The Supreme Court decided that Kent had been deprived of liberty, interrogated in the absence of family or counsel, and had not been informed of his rights. In short, he had been denied due process.

Mr. Justice Fortas, delivering the opinion of the Court, stated that a juvenile must have "an opportunity for a hearing which may be informal" and it must be given to the child prior to entry of a waiver order. The Kent child had been waived to criminal court and subsequently convicted of a crime, all without a hearing or effective means of challenging the waiver. In addition to a right to a hearing, the Court held the child's right to an attorney during the waiver process is not a mere formality but is the "essence of Justice" (Kent at 561). A child cannot be expected to prepare an adequate defense by him/herself.

Fortas went on to set limitations on the hearing--it need not conform "with all requirements of a criminal trial or even of the usual administrative hearing," but it "must measure up to the essentials of due process--fair treatment" (Kent at 562).

The Washington D. C. trial court decision to sentence Kent to 30-90 years of imprisonment was reversed and remanded on procedural due process issues. For the first time a juvenile was granted rights comparable to those afforded, by the Constitution, to adults. A juvenile now had the

right to a hearing, although it need not conform with all the requirements of adult criminal trials. The Kent decision dealt only with waiver proceedings and not the entire juvenile justice system. Mr Justice Fortas concluded, "the child still receives the worst of both worlds," for s/he has "neither the protection accorded adults nor the solicitous care and regenerative treatment postulated for children" (Kent at 556). It was not until the following year that some of the protection issues were to be addressed by the Court.

In re Gault (383 U. S. 1 (1967))

In re Gault is the most important Supreme Court case in the history of juvenile justice. It is questionable whether the Gault decision actually altered the juvenile's status in daily juvenile matters, because it is a due process decision. As a result of the Gault decision juveniles were granted substantial procedural Constitutional rights previously reserved for adults.

The Gault case originated in Arizona in 1964. Gerald Gault was sentenced to five years in a reform school after being adjudicated delinquent based on allegations of making a lewd telephone call. The "trial", conducted within the requirements of the Arizona juvenile code, was held by the United States Supreme Court to have violated due process rights to counsel, confrontation of the witnesses, the right to remain silent and the right to receive notice--both to Gerald and his parents.

Gault's lawyer could not appeal the case since the Arizona statutes did not provide for an appeal of a juvenile court case. His lawyer petitioned for a writ of habeus corpus (a procedure used to bring the petitioner before the court to inquire into the legality of confinement) on the above issues.

The lawyer argued that the Arizona statutory structure for committing a youth to a boy's school was unconstitutional. The argument was made on the basis of improper procedure, and did not inquire into the substantive question of whether or not Gerry Gault had actually made the phone calls.

The Arizona Supreme Court believed due process was required in juvenile court but said the Gault case had complied with due process regulations. The process and resulting decision had been constitutional because the trial was within the limits and discretion of a civil, not criminal, matter. In a civil suit requirements delineated in the Fourteenth Amendment are less than those required in a criminal case. Due process is more loosely defined in civil procedures, than in criminal procedures.

The United States Supreme Court rejected the Arizona Supreme Court's decision. However, the United States Supreme Court restricted its decision to affect only those juvenile cases that: (1) involve the adjudicatory hearing (final judgment) not the pre/post hearing; and (2) involve a hearing that might result in the loss of one's liberty--e.g. sentencing to an institution. Given these limitations the Supreme Court held that a juvenile is entitled to the following rights, as guaranteed by the Fourteenth Amendment Due Process clause of the Constitution:

1. Right to Notice. A juvenile must be informed of those allegations against him/her and given notice that is timely. Timely notice implies one has sufficient time to prepare a defense. Notice must be sent to both the juvenile and his/her parents, independently.

2. Right to Counsel. Gault required that counsel be given to the juvenile and that both the parents and the juvenile must be notified of the

child's right to be represented by counsel. The counsel may be retained by the parent or if they are unable to retain counsel, will be appointed by the court.

The role of counsel seems to be in an evolutionary state. The meaning of effective counsel was not defined by the court. Still open to question also is whether a lawyer should be an advocate for the child, should consider the "best interests of the child" or should combine both roles.

3. Right to confront and cross examine witnesses. A juvenile has a Constitutional right to personally confront opposing witnesses and to cross examine them after they testify.

4. Right to remain silent. A juvenile, like an adult, has those rights provided in the Fifth Amendment against self-incrimination.

In cases involving children the reliability of a confession obtained under pressure is questionable. Children, even more than adults, should be protected under the Fifth Amendment. The juvenile court is no longer permitted to require a child to make a statement.

The impact and implications of the Gault decision have yet to be fully realized or extended. However the decision of the Supreme Court to hear and rule upon a juvenile case opened the way for future appellate proceedings focusing on rights of juveniles. The Supreme Court had made a statement: Children, as people, are protected by the Constitution. In matters of legal dispute concerning the rights of two parties, be it parent/child, school/child, or other institution/child, the Supreme Court may ultimately be called upon to resolve the dilemma.

Implied, but not stated in Gault, was the issue of right to care and treatment. The design of the juvenile justice system has as an inherent com-

ponent the rehabilitative nature of the court. It is the responsibility of the court to meet each child's needs. Fortas did not dwell on this issue; he merely alluded to it in a footnote. Right to treatment was an issue to be persued at a later data.

In summary, In re Gault prescribed procedural changes reulting partly from recognition by the court of a disparity between rhetoric and reality with respect to rehabilitation and treatment.

In the years 1967-77 the Supreme Court has been called upon to resolve a relatively large number of juvenile issues. This increased number is especially striking when viewed in comparison with the void of decisions from 1899-1966. Each decision has further clarified children's rights and the juvenile justice procedure. Not all Supreme Court decisions have sided with the child. However, the Supreme Court, and the Federal government in general, have showed an increase interest in the legal protection of the child.

In re Winship (397 U. S. 358 (1970)) was the next Supreme Court case to discuss procedural due process. The issue in Winship was whether or not the essentials of due process protection for juveniles require proof beyond a reasonable doubt or if a juvenile could be adjudicated delinquent by a "preponderance of the evidence." The beyond a reasonable doubt adult crinimal standard is a much more stringent criteria for the court to prove than is preponderance of the evidence. Preponderance of the evidence only need convince a judge of the probability of guilt; proof beyond a reasonable doubt requires a finding of clear proof--a conclusive finding of guilt.

The facts behind Winship were these: A twelve year old boy allegedly

broke into a locker and stole $112.00 from a woman's pocketbook. The petition charged the juvenile with an act of delinquency, which if committed by an adult would have constituted larceny. (Larceny is the taking of another's property unlawfully.) The judge, in accord with a New York Family Court Act which provides for a juvenile to be adjudicated delinquent on preponderance of the evidence, adjudged the child to be delinquent. The child was committed to a training school for an initial period of eighteen months subject to extensions until the child reached his 18th birthday.

In In re Winship the Supreme Court formally affirmed for the first time (in either an adult or juvenile matter) that the State must prove "beyond a reasonable doubt" that a person has committed the act alleged. In this case, like Kent and Gault, the Supreme Court again placed limitations upon the decision's applicability. This provision would only apply "if such protection might cause substantial harm to the juvenile court process" (Flannery, 1973, p. 150), and only applied if the child was facing a loss of liberty.

As a consequence of Winship a child was now able to appeal a case on sufficiency of the evidence, that is the state had to prove conclusively that the child had committed the act alleged. After Winship, the states have been required to apply the reasonable doubt standard with delinquency procedures when the juvenile is charged with an act that would be considered a crime if committed by an adult.

McKeiver v. Pennsylvania (403 U. S. 538 (1971)) followed after Winship. The McKeiver issue was whether trial by jury was required in the adjudicatory (fact finding) phase of the juvenile process.

The Supreme Court decision in McKeiver was actually a consolidation of two lower court cases, that of Joseph McKeiver and Edward Terry. Joseph McKeiver, age 16, had been charged with larceny, robbery, and reception of stolen goods. At the time of his adjudicatory hearing he was represented by counsel. A request for a jury trial was denied. Upon a finding of fact, he was adjudged to be a delinquent.

Edward Terry, age 15, was charged with assault and battery. His counsel also requested a jury trial and was denied. He too was adjudged delinquent. In each instance, the juvenile had committed an act which, under Pennsylvania statutes, was punishable by law.

The Supreme Court held, as had the Pennsylvania Court, that due process, as it related to juveniles, does not require a jury trial as a requirement of fundamental fairness. It was felt a jury trial would be unnecessary because it is not necessarily a better fact finder than an adjudicatory hearing (the hearing in the judge's chambers). However, an individual state may, if it so chooses, provide for juvenile jury trials in certain kinds of cases and some states do so provide in their statutes (McKeiver at 549). The McKeiver decision causes some confusion viewed in comparison to Gault and Winship in that here a Constitutional safeguard for adults was being denied to juveniles.

The McKeiver decision points out the potential harm that could arise in changing the entire structure of the juvenile court. The role of the jury, and the delay due to the increased formality of the process, might jeopardize the rehabilitative function and informality of the court. The formalization of the juvenile court was deemed by the high court to be potentially hazardous to the process and therefore denied.

These four cases are the landmark procedural due process cases in juvenile law. Goss v. Lopez (419 U. S. 565 (1975)), although not a landmark juvenile justice decision, is another important procedural case. The primary importance of this case is that a student must be afforded due process procedure prior to suspension from schoo. S/he must be granted a hearing.

The issue in Goss was student's rights. Goss involved the suspension of nine high school students because of an alleged involvement in school demonstrations. The Supreme Court decided that a student facing suspension from public school is entitled to due process and in particular prior notice and an open hearing. Minors' rights must be enforced within a school system. This decision is within the scope of Gault, as these students, like Gault, would be deprived of liberty (or incarcerated) if they could not freely attend public school as a result of a suspension. Denial of an education is tantamount to a denial of liberty and therefore necessitates a due process hearing.

Landmark Cases: Substantive Issues

Objectives

1. To be able to discuss the extension of substantive rights for juveniles.
2. To be able to differentiate substantive v. procedural due process concerns.
3. To be able to discuss the changes in student rights as a function of Supreme Court decisions.
4. To be able to discuss the change in status of the teacher in relation to Supreme Court decisions.

Key terms. At the conclusion of the section the reader should be able to identify or define the following:

Tinker v. Des Moines

Wisconsin v. Yoder

San Antonio Unified School District v. Rodriguez

In re Snyder

State v. Koome

Ingraham v. Wright

corporal punishment

Eighth Amendment

Fourteenth Amendment

due process

Substantive cases deal with such global matters as a right to an education, freedom of religion, a right to medical treatment, and other civil matters. These decisions have broad social policy implications and directly effect the child in the public school situation. The following is a brief description of major substantive juvenile cases. The cases will be presented in chronological order.

These substantive cases are important for the educator, however they are not primary cases in relation to the juvenile justice system. Therefore, these cases will not be dealt with in as much detail as the procedural cases.

The following substantive cases are just some of those that are relevant to the educator. Many of these cases impinge on the educational process. The primary import of these cases is in the area of students rights. It must be remembered that this is a curriculum on juvenile justice, not student rights. However, as mentioned these cases do have ramifications in both the juvenile justice and educational processes.

Tinker v. Des Moines (393 U.S. 503 (1969)) was a landmark case on substantive student rights. Justice Fortas' rendering of the Supreme Court decision established student's rights to freedom of expression. The Tinker case reflected the political climate of the United States in the late 1960's. At issue was the student's right to wear a black armband in protest of the Vietnam War.

The opinion of the Court was a clearcut statement applying to all United States schools. Students had a right to Constitutional guarantees while in school. Students do not lose their right to free expression as provided for in the First Amendment during the course of a school day.

Student's may exercise free expression provided they do not "materially and substantially" disrupt the work and discipline of the school. The educational system can no longer curtail a student's right to free speech, as long as the students are orderly.

Wisconsin v. Yoder (406 U. S. 205 (1972)) also applies to schools, but is more interesting in that this case affirmed the parents' right to choose their child's religion. At issue was whether or not parents could require a child to retain the familial religion. The parents of the children in this case were Amish.

The majority of the Court felt that in matters so important and serious as religion, a child must reach the age of maturity to intelligently decide upon a religion. Until that point in their lives, the parent could legally impose the family religion on the child.

Mr. Douglas' dissent spoke to the issue of the child's right to freedom of religion, as provided in the Bill of Rights. This case also raises the question of when does a child reach the age of maturity? When is s/he able to decide intelligently?

San Antonio Unified School District v. Rodriguez (411 U. S. 1278 (1973)), like Brown, spoke to establish the child's right to an education. The issue in this case was school financing, not racial segregation. However, in a close decision the Supreme Court "concluded that wealth-based disparities in the financing of public education did not offend the equal protection clause of the Constitution" (Kirp, 1974, p. 229). In other words, unequal financing of education does not effect a child's right to an education. The Rodriguez decision may have been a departure from equal rights and equal protection as defined in the Fourteenth Amendment.

The United States Supreme Court once again stated that rights of children are definitely affected by education in that education classifies and labels children. It is necessary to treat children equally under educational norms. Educational issues must be treated with rationality and with the realization that inequalities perpetrated by the educational process may ultimately affect the child's rights.

Lau v. Nichols (419 U. S. 563 (1974)) also stemmed from educational concerns and a child's right to an appropriate education. At issue was the child's right to be taught in school in his/her native language. The particular children in this case were Chinese living in San Francisco.

The Supreme Court held, that "right to an education means the right to a good education". Furthermore the right to attend the building means little if you cannot read upon graduation. Therefore children ought to be taught in their native language. The Supreme Court reaffirmed that education must be free, appropriate and designed to meet the needs of the individual. The Lau decision implies that educators may be forced to become fluent in languages other than English.

In 1977, the Supreme Court was again forced to deal with the issue of students' rights and juvenile justice. The question in Ingraham v. Wright (45 U. S. L. W. 4374) concerned a student's right under the Eighth and Fourteenth Amendments. Is corporal punishment (paddling), in the public school a proper procedure or does it violate the Eighth Amendment prohibition against cruel and unusual punishment? If a teacher is to paddle a child, need there exist due process prior to the paddling, especially in the right to notice and the student's opportunity to be heard?

The issue in Ingraham is both procedural and substantive. This case clearly illustrates the inability to classify cases on only procedural v. substantive issues. Both are involved.

The facts of Ingraham are: Ingraham, a student in a public school in Florida, was paddled because of misconduct in a school assembly. As a result of the use of corporal punishment he received injuries which required medical attention and hospitalization. The question before the court was whether the use of corporal punishment violated Ingraham's Eighth and Fourteenth Amendment due process rights.

Somewhat in contrast to earlier due process questions, the Court decided in favor of the Florida School system, and upheld the teacher's right to paddle a child. In regard to the Eighth Amendment the Court stated:

> We adhere to this long standing limitation and hold that the Eighth Amendment does not apply to the paddling of children as a means of maintaining discipline in the public school (Ingraham, at 4367).

The Eighth Amendment is only applicable when a person is convicted of a crime. In theory the child is not a prisoner within the public school. Therefore, the school child has little need for the Eighth Amendment since the public school is an "open institution".

Deciding the Eighth Amendment did not apply to this circumstance, the Court then stated the pertinent question really is whether or not the imposition is consonant with the requirements of due process. Again the Court found corporal punishment to be reasonable and justified.

In effect the court may have inadvertently allowed abuse, as a form of physical punishment of the child, and as a form of discipline within the confines of an educational institution. Perhaps the Ingraham decision reflects the Court's opinion that students' and juveniles' rights are progressing too rapidly for this decision reaffirmed the traditional common law practice of corporal punishment. Future Supreme Court decisions may help to clarify the temper of the Court.

Lower courts have also issued decisions for their limited jurisdiction which are worth noting. In particular, lower courts have made decisions regarding the minor's right to declare self-emancipation and the right to medical treatment. These are the issues the United States Supreme Court may have to deal with in the near future.

The two cases that follow are included with the express intention of reminding the reader that law is always evolving. These cases may be harbingers of very important future high court decisions which will affect the whole country.

The Lower Courts

In re Snyder (85 Wash. 2d 182, 532 P. 2d 278 (1975)) raises interesting procedural and substantive questions in juvenile law. Is a minor able to initiate court proceedings and in particular, proceedings agains a parent? Is a minor capable of deciding what is in her or his best interests?

Cynthia Snyder, age sixteen, initiated a court proceeding against her parents. She filed to terminate parental control although her parents were suitable parents, according to the law. (Had her parents been unfit or incompetent, the procedure would not have been as irregular.) The court

considered the problem of the minor's right to avoid the "custody of legally fit parents" (Hafen, 1976a, p. 674). This was a question very foreign to juvenile law. The court also considered the general "incapacity" of a minor as delineated in the 1899 juvenile statutes. If we assume "mutuality of capacity", that both the minor and the parent are competent, a minor ought to be able to initiate a suit. The court also considered the parent/child relationship, the ability of the child, the incorrigibility of the child and the proper age of a child's emancipation.

Cynthia Snyder was granted the right to live wherever she wanted. The Court stated children are people; they have the right to choose their home. Snyder's role as a legal precedent is uncertain (especially in light of In re R (73 Miss. 2d 390 (1973)), a case which raised similar questions that decided against the child). Is self-proclaimed incorrigibility an option for children and may that self-characterization be used to reject parental discipline? The case does illuminate the need for the court's use of sensitivity when dealing with a family. The case may have significantly altered the "legal relation between parent and child" (Hafen, 1976, p. 635) and the assumption of the incapability of the child.

Furthermore, the legal relationship between parent and child has assumed that the fit parent may determine the child's living arrangements and schooling. Snyder challenges this and many other traditional parent child relations.

The Supreme Court has considered the right to education but has never specifically addressed the issue of a minor's right to medical treatment.

> The failure of some key Supreme Court majority opinions to respond to invitations for clarification made by concurring

and dissenting opinions may have left the impression that perhaps the Court has intended to make the constitutional rights of minors coextensive with those of adults (Hafen, 1976, p. 637).

State v. Koome (84 Wash. 29, 901, 530 P 2d 260 (1975)) clearly illustrates the treatment issue. The case focused on a minor's right to medical treatment and specifically to an abortion. The majority opinion in a five to four decision recognized the evolving legal status of a minor--that she had rights protected by the Constitution--and more specifically her right to privacy. The court concluded that a minor did not need parental consent for an abortion as this was inconsistent with common law for it violated unalienable rights provided in the Constitution (the right to privacy). This case not only points to the issue of a minor's incapacity, but also questions presumptions of parental rights and roles.

In some ways State v. Koome opens a pandora's box for minors to decide in their own best interest. The question arises as to when is a minor competent to make these very important decisions. Again it must be remembered that State v. Koome was a state decision, however it has implications for other state and Supreme Court decisions. The Supreme Court may yet deal with the issue of a minor's right to treatment in the absence of or in spite of parental consent.

State v. Koome may also have implications for the educator. If a child can proclaim self-emancipation from a parent, is the school then, by default the child's guardian, or does self-proclaimed emancipation alleviate the school's role of in loco parentis? These concerns may arise in the future.

Discussion Questions

1. What were the findings of Kent? Why was this a significant case in juvenile law?

2. What were the holdings of Gault? How have they affected juvenile law?

3. Gault addressed procedural matters. What would similar substantive changes look like?

4. Talk to the juvenile court judge in your district. Ask him how Gault affected his court.

5. What are the implications of Tinker for the educator?

6. Do you feel a juvenile should have a right to a jury trial? A juvenile is also denied bail, should this be a Constitutional right? What effect would this have on the child?

7. Winship states a child can be adjudicated delinquent only if the act alleged can be proven "beyond a reasonable doubt." In a school system, can an administrator prove a child has committed an act of vandalism beyond a reasonable doubt? What types of evidence might one try to gather?

8. How far reaching do you feel Rodriguez is in regard to school financing?

9. What implications might Snyder and Koome have for the educator? What if one of your student's becomes pregnant, are you obligated to contact her parents?

10. If a child proclaims his/her independence, is the school responsible under "in loco parentis"?

Additional Readings

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Legislative Decisions

All changes in the juvenile justice system are not the result of Supreme Court decisions. Changes also occur through the legislative or Congressional process. As new legislation, or laws, are passed the rights of children may be affected. Thus it is necessary to include in this curriculum recent legislation that has altered the juvenile's role in society. New legislation that affects children often also affects the educational process.

Objectives

1. To be able to discuss the recommendations of the President's Commission on Juvenile Delinquency and Youth Crime.
2. To be able to discuss the legislative involvement of Congress during the period 1967-1977.
3. To be able to infer and discuss the reasons behind the public's involvement in the issue of juvenile rights.

Key terms. At the conclusion of this section the reader should be able to define or identify the following:

President's Task Force Commission

Twenty-sixth Amendment

Buckley Amendment

PL 94-142

Following shortly after Kent but not connected to it, the President's Commission of Law Enforcement and Administration of Justice issued the Task Force Report: Juvenile Delinquency and Youth Crime (1967). Thirty-seven years after the Children's Charter, the executive branch of government again exhibited an interest in the rights of juveniles. Basically the task force concluded that juvenile court was and is different from criminal court in four ways: (1) philosophy, children should be rehabilitated and protected;. (2) punishment, children should not be punished but rehabilitated; (3) procedural informality, no adversary system; and (4) a heavy reliance on the social sciences for "both diagnosis and prescription." The task force concluded that although the juvenile justice system may have had well intentioned goals, the system per se had failed. Failure had been due to the community's unwillingness to provide necessary resources, the quality of juvenile court judges, the lack of input from the social and behavioral sciences, the lack of alternative placement for offenders, and failure of the court to fulfill its rehabilitative and preventative roles. In summary, the Commission recommended:

1. legislative standards for juvenile court intervention;
2. narrowing of juvenile court jurisdiction;
3. procedural justice for the child;
    a. accurate determination of facts;
    b. rehabilitative goals;
    c. reexamination of the informal court process;
4. independent counsel for the child;
5. adjudicatory and dispositional hearings;
6. notice be given in advance of court schedules;

7. separate detention facilities for juveniles; and

8. confidentiality of records (pp. 31-40).

In conclusion, the Task Force stated "that the rights of a citizen must be exercisable without regard to race or creed." Throughout this document children were clearly construed to be citizens. The historical evolution of the concept of childhood, which had begun early in the history of the United States, was apparently firmly entrenched in the minds of the authors.

The rhetoric on juvenile justice and children's rights surfaced again in 1970. The Reports of the White House Conferences on Children and Youth were major documents for the children's rights movement. Children were recognized as people. Not surprisingly the 1970 Charters do not look terribly different from the 1930 Children's Charter. However, for the first time the child was viewed as a separate entity from the parent. This was also the first time children's needs were viewed in relation to the law.

The Legislature, 1967-1977

The actions of the Supreme Court must not be viewed in a vacuum but rather in the temper of the times and in conjunction with the legislation being written concerning children. Events of 1967 clearly predicted and necessitated much rethinking and writing on children's issues. The child as citizen could no longer be relegated to the baby carriage nor confined safely and quietly within the school. The students of the late 1960's were vocal and demanding; parents were increasingly more concerned about their children and their child's education. Legislators had to respond.

Legislation concerning children's rights came in various forms. Although it is not within the scope of this curriculum to deal with legislative issues, it is helpful briefly to mention a few landmark actions as illustrations of the changing mood of Congress.

Rights of children were legislatively expanded in 1971 with the Twenty-Sixth Amendment to the United States Constitution. By federal law, the voting age was lowered from twenty-one to eighteen years old. States still varied on granting specific rights to the eighteen to twenty-one year old group. For example, in some states an eighteen year old can purchase liquor and enter a bar while in other states a person must be twenty-one to engage in these same activities, obviously this leads to certain ambiguities and uncertainties when considering children as a group.

The Ninety-Second Congress produced a wealth of material focusing on children: the 1974 Child Abuse and Prevention Law, the Juvenile Justice and Delinquency Prevention Act (PL 93-415), and the Buckley Amendment to the Education Act of 1974, which protected the over eighteen year old child's and parent's rights to see a child's educational record. Congress was becoming aware of the needs of children as people, at least in respect to parents and to the school. Rights of the child were being protected and updated. One could no longer turn to common law or 1899 statutes and assume they would still be relevant or appropriate. The children's liberation movement devotees, child advocates, juvenile justice agents, and the children themselves were beginning to be heard.

The Ninety-Fifth Congress again addressed children. Matters dealt with during this session included the Juvenile Justice Report, a Report of the Committee of the Judiciary concerning the eighteen year old vote, the

rights of the unborn child, and the Education for All Handicapped Act (PL 94-142) which granted every handicapped child a legal right to an education in the least restrictive environment. This was made applicable in 1978 to all handicapped persons between the ages of three and twenty-one. Under this provision handicapped children now have more rights than "normal" children. Each handicapped child, by law, is to have a Least Restrictive Alternative and an Individual Education Plan. This is more individual education than is offered to the normal child.

The Ninety-Fifth Congress also addressed the issue of juvenile justice and rights of children in the Juvenile Delinquency Annual Report (1976), issued in February 1977. This document recognizes the need to develop a "model bill of rights for children" and the establishment of a Justice Department Office of Children's Rights (p. 6).

The decade following Gault expanded the rights of children and increased social policy for children. Gault had impacted the country at large and caused much rethinking and a reevaluation of legal and human rights of an for children. Legislation is still changing today. It is affecting the rights of the child and has subsequent impact on the educator.

Discussion Questions

1. What legislation occurred after Gault that affected children?
2. What legislation existed in your state during this time period?
3. How has the Buckley Amendment been implemented in your school system?

Additional Readings

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The Child and the Juvenile Justice System

The entire juvenile justice system has been addressed with the exception of the child. What is the child's role in the system? Here the objectives are:

1. To develop an understanding of the child in the juvenile justice system;
2. To develop an understanding of labelling theory as it affects children;
3. To be able to understand the role of probation in the juvenile justice system.

At the conclusion of this section the reader should be able to identify and understand labelling theory and probation.

The previous sections have presented the juvenile justice system, its historical underpinnings, legal functions, and relevant Supreme Court decisions. The question now is the juvenile justice system's relation to the child and in particular to the school child. What does being on probation mean to a child? What does the label "delinquency" mean to the child and to the educator? What offense has the child committed to be labelled delinquent as opposed to a behavior problem?

The child spends approximately six of his or her waking hours within the confines of the public school. This fact alone should be enough to convince the educator to be sensitive to the child's needs in various situations. The child's relationship to the juvenile court is just one of the many relationships a child may encounter within his or her school years.

It must be remembered that it is not the intent of this curriculum to deal with the causes of delinquency. This curriculum deals with the fact

that delinquency exists. For additional information on the possible causes of delinquency refer to:

Cloward, R., & Ohlin, L. Delinquency and opportunity. New York: Free Press, 1960.

Cressey, D., & Ward, D. Delinquency, crime and social problems. New York: Harper & Row, 1967.

Glueck, S., & Glueck, E. Family environment and delinquency. New York: Houghton Mifflin, 1962.

A child may be arrested for a crime or a status offense. Thus children may be apprehended for a unique set of behaviors. If these same behaviors were exhibited after the person reached the age of eighteen, no arrest would be made. Included in the set of behaviors designated as status offenses are truancy, disobedience to a parent, incorrigibility, and running away. The court needs prove this behavior exists in the child, the child does not have to prove his/her innocence.

The problem then arises as to defining exactly what is disobedience, incorrigibility, or excessive runaway behavior. Does the age of the child make a difference in the disposition? If the child has an abusive parent, is incorrigibility or running away acceptable? Each child's relation to the juvenile justice system is unique. However the same label--delinquent--is applied to all children adjudicated in the juvenile justice system. It is therefore helpful for the educator to delve beneath the simple label and discover for what reason the child was adjudged to be delinquent.

A great deal of literature exists in regard to labelling theory and the delinquent child. As one should not assume that all mentally retarded,

learning disabled or emotionally disturbed children manifest the same behavior, the same is true of the delinquent label and the delinquent child.

The educator also ought to be aware of his or her own biases in regard to the label delinquent. If the educator assumes a child will exhibit certain types of behavior, the likelihood of the child meeting these expectations or appearing to meet these expectations may be increased. In short, this is another example of the self-fulfilling prophecy. Children do that which is expected of them. If the expectation is delinquency, some children might manifest behavior that would cause them to be so labelled. (For additional information on the labelling theory as it applies to delinquency, see Schur, E. M. Radical non-intervention. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1969.)

Two Case Studies

Read the following case studies. Based on your knowledge of the juvenile justice system, decide the questions raised.

John

John is repeatedly truant. He often stays away from home at night without telling his parents where he is staying. If John is a third grader, would you call him a delinquent? If John is fifteen years old, would he be a delinquent? What types of dispositions might you render for these two boys? Are they the same? Different? Why?

Mary

Mary is thirteen years old. She and her family live in a college community and she frequently attends freshman dances at the college. Lately she has not been coming home in the evening and has been late to school,

although she has a perfect attendance record. Is this child incorrigible? Disobedient? Should the juvenile court become involved?

For further consideration: Mary's parents feel that Mary is a well adjusted teenager. They are neither worried nor concerned about her behavior. Does this parental input influence your decisions? Would you view Mary's behavior differently if she were not living in a college town?

Comments on John

As a third grader truancy and running away from home is inappropriate behavior. Serious attention should be focused on the child, however the label delinquent might be premature. Perhaps John is a neglected child and is actually seeking love and attention in a way he feels will direct his parents to beome more concerned about his life. Rather than place this child under the auspices of juvenile court, perhaps a social worker or school counselor should talk to John's parents.

If John is fifteen years old, this behavior might need to be drawn to the attention of the juvenile court. A fifteen year old is required by law to attend school. One would want to explore John's relationship with his parents to determine if this is a neglect case or if John is a disobedient child.

In both instances, it is helpful to look at more than the surface behavior. The designation of delinquent could be unwarranted.

Comments on Mary

Mary's situation is somewhat different from John's. Prior to adjudication the court often considers the child's social-community environment. Consequently, as a member of a college community, Mary may be very mature for

her age. Her social behavior does not appear to be interfering with her schooling. The juvenile court probably should not become involved, especially since Mary's parents feel she is a well adjusted child.

On the other hand, if Mary's parents were concerned with her whereabouts and filed a complaint to the court, the court would be obligated to become involved. In this instance Mary might be considered to be a status offender.

If Mary were not a resident of a college town, but of a large city, her behavior might take on a different perspective. A thirteen year old who repeatedly does not return home at night may become involved in street crime or prostitution. If her parents are concerned about her behavior they might involve the juvenile court to help determine her whereabouts.

If Mary were a resident of a rural town, her behavior might be very inappropriate. One must consider the environment of the child. Each child, under the philosophy of the juvenile justice system, deserves individualized treatment. All aspects of the case must be considered prior to adjudicating the child or bringing the child before the court. Simple answers are difficult to find. In many instances the argument could be made both for and against delinquency.

It is important to consider the whole child, not just the act alleged. The label "delinquent" can be devastating to the child. However, if a child in the classroom has been adjudicated delinquent, it is important to find out the reason for the label. Dependent and neglected children fall within the scope of juvenile court jurisdiction, but as stated in the introduction and in the definition of juvenile justice they will not be discussed in this curriculum. This is simply a reminder for the learner

that the label delinquency may be another term for dependency or neglect. One must look further than the label to determine why a child was adjudicated delinquent.

The literature on dependent and neglected children is massive. By definition abused children also fall within this classification. It would be impossible to discuss this literature within the confines of this curriculum, therefore the following will provide a beginning:

Fontana, V. The maltreated child (2nd ed,). Springfield: Charles C. Thomas, 1971.

Gil, D. Violence against children. Cambridge: Harvard University Press, 1973.

Kempe, C., & Helfer, R. E. Helping the battered child and his family. Philadelphia: Lippincott, 1972.

Walters, D. Physical and sexual abuse of children. Bloomington, Ind: Indiana University Press, 1976.

Young, L. Wednesday's children. New York: McGraw Hill, 1964.

The Child on Probation

What does it mean for a child to be on probation? How should an educator deal with this status? Juvenile probation allows an adjudicated child to remain within the community. Probation is a status, like after-care or parole, that has been created by the court. Involved in this status is usually a judicial finding that the child's behavior warrants attention of the court, an imposition on the child's continued freedom, and a provision for allowing the child to meet these conditions. Probation is more than a second chance for the child; it involves a somewhat structured program for helping the child adjust to the community (Winslow, 1976).

Specifically, juvenile probation is designed to prevent the repetition of past inappropriate behaviors, divert or eliminate future criminal behaviors, and assist the child to achieve his or her potential. Thus the thrust of probation is directed toward the child in an individual treatment mode. The child's diagnosis is based on past social history with information supplied from the home as well as school, if possible.

Theoretically, the probation officer acts like a parent. The probation officer sets appropriate limits for the child's behavior. These limits must be clearly defined, fair, and consistently interpreted (Johnson, 1975). The authority and limits of the behavior should be used constructively to benefit the child and help the child begin to learn to exhibit appropriate behavior that is based on internal controls. Often decisions concerning the child's behavior are joint decisions between the probation officer and the juvenile. If this is the situation, it is implied that the child will live up to these decisions. Thus the child determines (with guidance) his or her limits and it is the worker's role to assist the child in meeting

these goals. If the child deviates seriously from designated conditions, the juvenile court may once again become involved.

Basically, probation may be seen as involving three major elements: surveillance, service and counselling. If the probation officer is operating under the element of surveillance, his or her role is to keep generally informed of the child's behavior and adjustment in all phases of life--home, school, church, etc.. This is more than a simple awareness procedure. The officer also makes certain that the child is receiving appropriate supervision and is learning to adjust to the community. Surveillance is also a community statement that the court is interested and concerned with the child.

Service includes a finding of appropriate mental health services needed by the child. Perhaps the child needs a foster placement or psychiatric treatment. It is the probation officer's responsibility to find and coordinate these services, if they are available. The element of counselling makes it possible for the first two elements to hopefully work together to benefit the child. Often the child and the family do not understand the full extent of the child's problem or their role in solving the problem. The role of the probation officer is then to help all involved gain an understanding of the problem and delineate minimal expectations for rehabilitation.

For the counselling to be beneficial to the client the probation counselor must treat the child as an individual, be genuine, recognize the child as a person, be nonjudgmental in certain instances, and maintain an open, honest relationship with the child.

Consideration of these three elements reveals that the goals and responsibilities of the juvenile probation officer are very high and as, one might expect, often unobtainable. The additional burden of large caseloads often makes it impossible for an officer to adequately fulfill his or her duties. Many caseloads are estimated to be as high as fifty children to one probation officer (Katkin, et al., 1976).

The child initially placed on probation may have to report to the probation officer on a weekly basis. After a period of time this is relaxed to a biweekly meeting and, if all goes well, to monthly meetings. Eventually the child no longer has to meet with his or her probation officer. Yet, how effective is probation?

The claim has been made that probation is at least as effective in preventing recidivism (the return to the juvenile justice system) as some institutional care (Katkin, et al., 1976). However, the clientele of the probation officer may be composed of those for whom societal sanctions have little or no meaning. Therefore, although modern probation is dedicated to behavioral change and employs much educational theory, its effectiveness is unproven. Much further research is needed in the area of probationary services. Recidivism rates must begin to decrease. The educator may have a role to play in this research as s/he confronts the child many hours a day. Perhaps a more consolidated coalition between the educator and the probation department may help to decrease recidivism rates and help the individual child.

Discussion Questions

1. What is juvenile probation?
2. What is the function and role of the probation officer?
3. How do you, as an educator, function in the probationary service?
4. If you have had any children on probation in your classroom, what has been your role as a teacher? Did the probation officer ever contact you?
5. How can you as an educator help the child cope with the problem of being on probation?

Additional Readings

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Johnson, T. Introduction to the juvenile justice system. Minneapolis: West, 1975.

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The Educator in the Juvenile Justice Process

The preceeding sections have been a theoretical discussion of the juvenile justice system, its hisorical background, evolution, and operations. Procedural and substantive law concerning the juvenile justice system is still evolving. The question yet to be dealt with is the educator's role in this system. How can the teacher facilitate the juvenile justice process and help the child to adjust to probation and other forms of community-based corrections which are evolving?

Objectives

1. To be aware of possible points of contact with the juvenile justice system.
2. To become familiar with types of information the juvenile justice process may request of the educator.
3. To become aware of a possible active role for the educator in the juvenile justice process.

Key terms. At the conclusion of this section the reader should be able to define or identify the following key terms or concepts:

probation

aftercare

social history inventory

five possible points of contact with the juvenile justice system

As was discussed in the beginning of this curriculum the teacher has five possible or probable points of contact with the juvenile justice system. These are: the police investigation, the detention hearing, the waiver hearing, the social history investigation, and juvenile probation and aftercare. What is the educator's role in each of these situations?

Insert Figure 1 about here

Returning to Figure 1, the first possible point of contact is during the police investigation. This contact point does not occur often, but the educator might be questioned as to whether or not s/he has any knowledge concerning the juvenile act allegedly committed. For some acts of delinquency, such as truancy or acts of violence in the classroom, the teacher may be the primary witness to the act(s).

The second possible point of contact is at the pre-trial detention hearing. In determining if detention is necessary the court might ask the educator for the following kinds of information:

1. Is the child dangerous?
2. Is the child attending school and doing well?
3. Does the child need special tutoring?
4. Is there an in-school suspension program?

These questions and others are asked with the intent of finding an appropriate temporary placement for the child while s/he is awaiting further juvenile court proceedings. Thus, the focus is upon prediction of the child's behavior and the child's needs during the hopefully short period awaiting further proceedings.

The next possible or probable point of contact occurs at the waiver hearing if one is held. The important considerations and questions for waiver, as suggested by Kent (see p. 54), can often be answered or clarified by the educator. Thus the educator may be asked to comment on the seriousness of the child's behavior pattern in relation to the child's peers. The educator may also be asked if the child exhibits adult-like behavior, suggesting exceptional maturity. In short, should the court transfer this person from the children's justice system to the adult's justice system.

In developing the social history report, the court's probation officer may again go to the educator as a prime source of information. At this juncture, the court is trying to determine the most appropriate disposition for this particular child. As was mentioned earlier, typically six dispositional alternatives exist ranging from institutionalization to juvenile probation.

If the disposition is institutionalization, the court may ask the educator for academic information concerning the child. In placing the child in an institution, the court may need to know the child's reading level, mathematical ability, language competency, and other similar information relating to the child. If the decision is to place the child in a foster home, the court might want further information on the child's peer group and adult interactions. The following questions might be put to the educator.

1. How does the child interact in new situations?
2. What are the child's likes and dislikes?
3. How emotionally stable is the child?

4. Who are the child's friends?

5. Should the child remain within this same school district?

Any of the dispositional alternatives might cause the court to seek additional information from the educator prior to placing the child.

The last point of possible interaction between the juvenile system and the educator is probation or aftercare. These legal statuses will be discussed in greater detail later. The child on probation is on a similar status as the child on aftercare, the latter being commonly called juvenile parole. Probation is a community-based alternative to institutionalization; aftercare is a community-based status subsequent to institutionalization. Since both are community-based correctional or dispositional situations, the educator's relation to them is pretty much the same.

The educator may be asked to aid the court while the child is on probation. For example, the school system may be asked to monitor the child's attendance, such attendance being a common condition of probation. The court may ask the educator to report any severe behavior problem the student is having while in school. Probation may require the child to spend more time in extra-curricular activities. The educator may be asked to monitor the child's attendance and performance at these functions.

The school system is just a part of the child's probation or aftercare program. It should be noted that the probation or parole/aftercare officer, not the teacher is the primary person in charge of the child on probation or aftercare. If the educator is cognizant of the child's probation goals or contract, the educator can help the child to obtain these goals.

The role of the educator as just presented describes a reactive role for the educator. However, it is possible to envision the educator in an

active role in regard to the child and the juvenile justice system.

An active alternative suggested, is a bifurcated one, both of which relate to moral training. Moral training could be used as a preventative or a remedial measure. As a preventative measure, all children in the public school system would be taught the basics of law as a regular part of the social studies curriculum. Hypothetically this might include definitions of crimes, a familiarization with the juvenile justice and criminal justice systems, and a familiarization with legal personnel and their respective roles (policemen, lawyers, judges, etc.).

A preventative course might even include both reasons for a child to be in a situation in which s/he would interact with the juvenile justice system and procedures a child might follow if caught in an act which necessitated interaction with the juvenile justice system. The method used in teaching these concepts might follow a problem solving format.

As a remedial measure, moral training might involve an evaluation of the reason(s) the child is now involved with the juvenile justice process. This moral training approach might also help the child to develop more socially acceptable internal controls. Again, these sessions might take the form of problem solving sessions based either on real life or hypothetical situations.

It should be remembered that these are merely additional suggestions for the educator. However if the educator were to become involved in preventative or remedial moral training as related to the juvenile justice system, perhaps the incidence of children involved with the juvenile justice system as well as recidivism rates would decline.

CONTINUED

1 OF 2

Discussion Questions

1. Remembering the historical evolution of the juvenile justice system, what might your role have been prior to 1966?

2. Do you feel the educator should have a greater or lesser role in the juvenile justice system? Why?

3. Do you, as an individual educator, want to be involved in the juvenile justice process? Why? or Why not?

Future Directions: Applied Questions and Basic Research

A curriculum on juvenile justice for educators opens a Pandora's Box for additional curricula to be developed in the area of juvenile justice but aimed at different audiences. For example, a curriculum on juvenile justice could be developed for school psychologists, mental health professionals, and social workers. All of these adults may be involved with the juvenile justice system.

Juveniles could also benefit from such a curriculum. Perhaps if the child knew what to expect from the juvenile justice system prior to entry into the system, the process of going through the system would be that much easier. On the other hand, knowledge of the juvenile justice system might inadvertently cause the potential "delinquent" to not commit an act that would have caused him or her to become involved in the juvenile justice system.

While curriculum construction aimed at the educator, social worker or child is very helpful, this only represents one side of the system. To ultimately meet the child's needs and rights, another curriculum construction should be directed toward the lawyer and judge. The substantive area of this curriculum would be child development and the educational needs of the child.

The simultaneous development of these curricula have the potential of decreasing recidivism in the juvenile justice system. Upon development and implementation of these curricula, a research study could be conducted to measure the impact of the curricula upon professionals.

It would be possible to look further than the recidivism data. The attitudes of the professionals that used the curricula could also be researched. Questions such as the following might be addressed:

1. Did the teacher's attitude toward delinquency change?

2. Is there a difference in dispositional alternatives prescribed before and after curriculum usage?

3. Are more or less children referred to the juvenile justice system as a result of the educator's introduction to the juvenile justice system?

It may not be enough to pursue research and curriculum development solely in the area of juvenile justice. Curricula should be developed and implemented in other areas of social concern such as child custody, abuse, and neglect. Again these curricula should be developed both from an educational and legal perspective.

Developing the research even further, one might pose the question as to the applicability of the present juvenile justice system to the child. Are the acts adults perceive as crimes also crimes in the child's mind? Are the dispositional alternatives rendered understandable or meaningful to the child? Perhaps one of the reasons for such a large recidivism rate is the mismatch between the child's and adult's perceptions of crime and punishment.

Research directed toward ascertaining the child's perception of crime taps directly into the moral development literature (Kohlberg, 1958, 1963; Piaget, 1932). Questions for the researcher to ask might include the following:

1. When, in the continuum of moral development, does a child develop a sense of crime?

2. Do the laboratory studies of Piaget (1932) and Kohlberg (1958) transfer to real life situations? Or, posed another way are the answers to they hypothetical dilemmas concerning crime situations actualized through a person's actions?

3. Do the suggested levels of moral development relate to the juvenile justice system?

Research might also be directed toward looking into the question of possible differences in the attitudes of parents whose children are involved in the juvenile justice system as opposed to parents whose children are not involved in the juvenile justice system. Is there a significant difference in their attitude toward the law, in their knowledge of the law or in their own interaction with the legal system?

Furthermore, parents as well as children, could be involved in problem solving situations concerning crime and the justice systems. It might be interesting to speculate whether or not involving the parent in the problem solving as it affects their child would decrease recidivism rates.

The research questions that could be posed in regard to the child and the juvenile justice system are vast and varied, these are only a few suggestions. To date, many of the questions herein posited have not been explored. Further research might improve both the educational system and the juvenile justice system.

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Footnotes

1. Neglect statutes have existed since 1899. The original juvenile court act placed neglected children under the jurisdiction of juvenile court.

2. Parens patriae: father or parent of his country; the state's power of guardianship over persons under disability, such as children.

3. In loco parentis: in place of a parent; a person charged with a parent's rights, duties, and responsibilities.

4. Court cases will be underlined.

5. Status offense: an act, which if committed by an adult would not be a crime.

6. These are court cases dealing with the education of handicapped children.

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A symposium focusing on the Gault case. Articles by leading scholars on juvenile justice. For those interested in pursuing the immediate impact of Gault, this is a helpful volume.

Hogan, J. O. The schools, the courts, and the public interest. Boston: Lexington Books, 1974. 262 pages.

The school in relation to the courts, the changing role of the court's impact on public education. Court cases are referred to in order to document the court's increasing impact on education. The point could have been made in fewer pages.

Krisberg, B., & Austin, J. The children of ishmael. Palo Alto: Mayfield Pub., Co., 1978.

Selected readings in delinquency--historical, philosophical, development of the juvenile justice system. Readings on causes of delinquency and possible future directions. A good new anthology.

Redl, F., & Wineman, D. Children who hate. New York: Free Press, 1951. 286 pages.

The personality of the delinquent child. An attempt to understand why a child's control system breaks down.

Strahan, R. D. The courts and the schools. Lincoln, Neb.: Professional Educator's Publishers, Inc., 1973.

Public school operations from a legal point of view. State and local concerns in educational policy.

Texas Advisory Committee. Working with your school. Houston: United States Commission on Civil Rights, 1977. 118 pages.

Particular attention is focused on Texas state education however, the contention is that this procedure is applicable elsewhere. Sections on the parent and the public school, legal rights of the students and how to influence school decisions.

White, C. J. (Ed.). Teaching teachers about law. Chicago: American Bar Association, 1976.

Describes alternative styles of teacher education programs and how to implement same in a community.

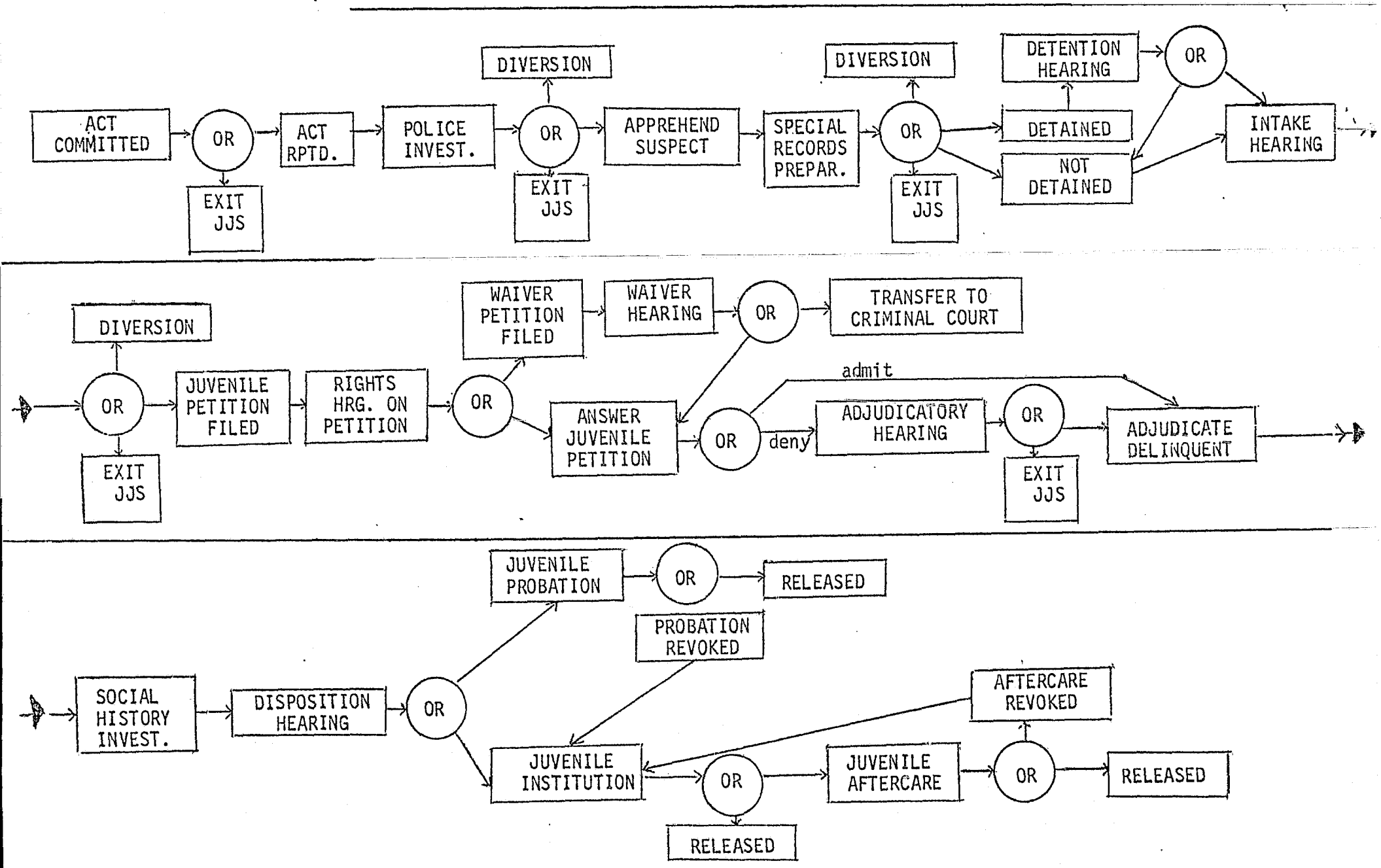
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Figure Caption

Figure 1. Central theme of the juvenile justice process (Streib, 1978 (b).