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This Issue in Brief

The Future of Parole—In Rebuttal of S.1437.—While S.1437 appears to deal with the problems of uncertainty and disparity in criminal sentences, it actually would cause more harm than good, asserts Cecil C. McCall, chairman of the U.S. Parole Commission. Disparity would increase with the elimination of the parole release function and judicial discretion would be needlessly restricted, he adds. Congress should preserve the gains made in the 1976 Parole Reorganization Act, and retain the Parole Commission in its present role as the term-setter for prison sentences of more than 1 year, he concludes.

Criminal Diversion in the Federal System: A Congressional Examination.—Timothy Kevin McPike, deputy counsel to the Senate Subcommittee on Improvements in Judicial Machinery, examines the history of Federal involvement with the pretrial diversion concept, including a chronology, a brief description of the contents of past legislative attempts, and an indepth examination of the current legislative proposal. The hearings held by the Senate and the position taken by the Subcommittee are thoroughly discussed as they reflect the trend in current thinking on several important issues in the pretrial diversion area.

Methadone: Blessing or Curse.—The use of methadone in the detoxification and maintenance of narcotic addiction has been accepted as a viable treatment method. However, diversion and abuse of methadone are becoming serious problems. This article by Dr. George Gubar does not advocate one position or the other concerning the long-standing controversy about the use of methadone. Rather, there is an attempt to describe the historical background of methadone, its diversion, and some suggestions as to possible approaches to reduce its abuse.

Social Climate and Prison Violence.—Some explanations of prison violence center on the personal motives of chronically disruptive inmates, and assume that such persons are violence-prone in all sorts of settings, asserts author Hans Toch. Other explanations have centered on prison conditions, but have over-generalized prison impact, or (more frequently) they have highlighted deterrent features, such as security measures. This article examines and illustrates ways in which prison subenvironments may contribute to the

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A Re-Examination of Family Court Intake

BY EDWARD PABON

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DESPITE all the defects found by its critics and the overstatement of accomplishments claimed by its champions, the Illinois Juvenile Court Act of 1899 stands as a magnificent achievement. It revolutionized the judicial system by establishing a court that removed children from the cruel and punitive atmosphere of criminal court. It barred detention of juveniles in adult jails and required that they be separated from adults if unavoidably confined in the same institutions. It was premised upon the fact that children are different from adults and must be treated differently: "that the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by its parents . . ." Toward that end, it authorized probation services to investigate, represent, and supervise juveniles and placement in foster homes, private agencies, or institutions designed for children. Even more incredible, the concept spread, so that separate juvenile courts replaced criminal court for children within less than 30 years.

The establishment of the juvenile court stands as a momentous event. Today, the court and the system of which it is the centerpiece need to be refurbished, rearranged, reformed. They need a new structure, new concepts, new definitions, new procedures. The court's jurisdiction must be expanded in some ways, reduced in others. Self-righteousness and omnipotence must be replaced by fairness, openness, and an admission of fallibility. The juvenile court is unique; it also must be fair. No where is this need for fairness more in evidence than at the intake screening or entrance into the juvenile justice system.

Prior to the injection of due process measures into the juvenile justice system through a number of court decisions in the 1960's and early 1970's,[1] there seems to have been little concern with petitioners, screening or the general operations of

[1] Lawrence J. Schultz and Fred Cohen, "Isolationism in Juvenile Court Jurisdiction," in Margaret K. Rosenheim, *Pursuing Justice for the Child.* Chicago: University of Chicago Press, 1976, pp. 20-42.

juvenile court intake. This may have been due to the conception of the juvenile court as a nonadversarial, paternal body concerned with the well-being of the troubled youth brought before it.

Traditionally, intake screening has been done by probation officers/caseworkers who received referrals in delinquency cases directly from police agencies. Upon review of the case, the probation officer made a decision based primarily on social factors whether the referral should be brought to the attention of the court. Depending upon the officer's involvement with the particular juvenile, his or her philosophy with respect to what is in the child's best interests and his or her legal analysis of the case, it was either brought to the attention of the court and filed, or was informally adjusted. Under this system of screening, a juvenile could be subject to "punishment" in the guise of "help" through commitment to state institutions.

In the 1960's and early 1970's, there was a growing sense that children had fundamental constitutional rights at least equal to those of adults. It seemed fundamental to many that a legal analysis of the case should precede any social analysis where possible nonvoluntary consequences could flow to the child. In this light, it became more important that the case be screened for legal sufficiency so that a child would not be subject to even a "voluntary adjustment agreement" without a legally sufficient, prosecutable case to justify such action.

A second force for change was public awareness that juvenile crime posed a significant problem. There was a growing sentiment that juveniles be held accountable for their crimes regardless of their social needs. In New York State, the Juvenile Justice Reform Act of 1976 requires the Family Court, for the first time, to consider the protection of society as well as the needs of the respondents in conducting juvenile delinquency proceedings. Fourteen- and 15-year-old juveniles who are accused of "designated felony" acts, which would constitute certain violent felonies if committed by an adult, may no longer be diverted from Family Court processing without the consent of a judge. While the Act focuses on the post-petition stages of the court process, it raises important procedural and organizational issues with respect to the prepetition or screening stage.

Thus, the thrust of recent legislation and court decisions, together with the present state of disparity and unfairness in the present intake process,[2] has prompted attention to be focused on this process. As underlying offenses governing the referral of youngsters to court intake become more serious and the consequences of such referrals more restrictive, there is a pressing need for closer examination of the intake screening process.

The purpose of this article is to discuss the screening of cases in which *juvenile delinquency is alleged,* in order to pose questions of standards and organization at intake screening. In place of the current intake screening system, the establishment of a juvenile case assessment unit in the office of the prosecuting attorney for a locality is recommended. The criteria for deciding whether a case would be adjusted should be the seriousness and circumstances of the conduct alleged, the juvenile's age, and the number and nature of the prior contacts with the juvenile court. It is hoped that the article will encourage government officials, legislative leaders, citizens' groups and professionals to re-examine the intake mechanism, and that remedial action will be taken if that is thought necessary.

Parens Patriae and Unaccountability

Under the parens patriae concept the juvenile court has been granted very broad discretion in assuming jurisdiction over a wide array of youth problems. As an analysis of juvenile codes reveals, very few limits are placed on the courts in this regard,[3] and juvenile court judges have almost complete discretion in determining the scope of court intervention. Moreover, basic to the juvenile court philosophy is the concept of "individualized justice," which asserts that decisions about the juvenile must be governed by his/her needs, particular personal circumstances, and the requisites for his rehabilitation. As benevolent as these criteria may be, they give court officials a degree of discretion hardly matched anywhere in the judicial system. Subscribing to the principle of parens patriae and individualized justice gives court officials the authority to determine when and how to intervene on the basis of personal and professional belief systems, moral commitments, perceptions of community sentiments, and administrative convenience. Moreover, the lack of an active

[2] Barry Krisberg and James Austin, *The Children of Ismael: Critical Perspective on Juvenile Justice.* Palo Alto, Calif.: Mayfield Publishing Company, 1977, pp. 91-101.
[3] M.M. Levin and Rosemary Sarri, *Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States.* Ann Arbor: University of Michigan, 1974.

appeal system results in little pressure for court accountability.

A national survey implies that the excess of discretion also results in objective inconsistencies in the modes of operation within juvenile courts and wide variations among them.[4] Having very broad discretion, juvenile court officials can structure and define the court's mode of operation with reference to a few limits. Therefore, they can operationalize their personal belief system in the court with little challenge. The only major constraint imposed on them is the need for organizational survival and maintenance.

At the local level, the court is subject to very few external influences or conflicts, further pointing to the broad autonomy it enjoys. This does not deny that on occasion there may be a public controversy about court performance, when a dramatic case or the zeal of a moral crusader stirs public sentiment. But these are infrequent occurrences. Undoubtedly, juvenile courts are sensitive to the political undercurrents in the community and attempt to avoid controversy, and this serves as an important constraint.

Thus, what may determine the mode of operations in juvenile courts is the interaction between the belief system of the judges and his representatives, and their sensitivity to the political sentiments in the community. The combination of these factors generates a system of juvenile justice that is particularistic, idiosyncratic, and frequently arbitrary. It is a system in which the voices of those it claims to serve are least likely to be heard.

Efforts to develop more rational policies and reform in juvenile courts are thus highly frustrated by excess discretion in all phases of the court process. Judicial standards, for example, cannot be implemented unless the discretion is reduced and an effective system of accountability is established.

The Intake Process in the Juvenile Court

A prominent juvenile court judge has described court intake as a unique and valuable tool.

> Intake is a permissive tool of potentially great value to the juvenile court. It is unique because it permits the court to screen its own intake not just on jurisdiction grounds, but within some limits, upon social grounds as well. It can cull out cases which should not be dignified with further court process. It can save the court from subsequent time consuming procedures to dismiss a case. It provides machinery for referral of cases to other agencies when appropriate and beneficial to the child. It is a real help in controlling the court's caseload.[5]

Juvenile court intake, in one form or another and under one name or another, has been a feature of juvenile courts since their inception. As far back as 1910, the workload and unstandardized method of this screening mechanism were noted. In 1913, when a firsthand study of leading courts was made by the Committee on Juvenile Courts of the National Probation Association, it was found that nearly every probation officer visited had spontaneously developed some method of his own to informally screen juvenile cases.[6]

In most states and in the District of Columbia, juvenile court statutes provide for some type of intake screening process. In 30 states and the District of Columbia provisions make intake screening mandatory; in eight states it is discretionary; and in two states provisions do not clearly indicate whether there is either mandatory or discretionary intake screening.[7] The Family Court Act of the State of New York provides that the rules of court may authorize the probation service to undertake screening. However, the 1962 Rules of the Family Court as adopted by the Administrative Board of the Judicial Conference of the State of New York provides that the probation service shall undertake intake screening. As mentioned above, a 1976 amendment to the Family Court Act prohibits the screening and diversion of a youth accused of a "designated felony" act without the consent of a judge.

In New York State, intake screening procedures for the juvenile court are provided by the local department of probation, which are organized differently in terms of function, type of client, or location in the various counties. As defined by the New York City Department of Probation, intake's primary responsibilities are "to examine situations to establish jurisdiction, ascertain persons who can be diverted through referral to other treatment resources or held at the intake level for short term counseling, and to forward to the court those matters requiring judicial intervention."[8] Whether or not these services are performed, probation provides a valuable function by shielding the court from disastrous caseloads. In 1975, 62 percent (26,083) of all

[4] Rosemary Sarri (ed.), *Brought to Justice? Juveniles, the Courts, and the Law.* Ann Arbor: University of Michigan, 1975.
[5] Wallace Wanlkes, "Juvenile Court Intake—A Unique and Valuable Tool," *Crime and Delinquency,* Vol. 10, April 1964, p. 123.
[6] Sanford Fox, *Modern Juvenile Justice.* St. Paul, Minn.: West Publishing Company, 1972, p. 589.
[7] Levin, *op. cit.*
[8] New York City Department of Probation, "General Order No. 17-77," December 1977, p. 100.01.

alleged delinquency cases in New York State were adjusted at intake.[9]

However, as with so much of the juvenile law, little detail regarding probable cause or sufficiency of evidence is available in the state codes; statutes generally suggest that the interest of the public and the juvenile should govern the screening decisionmaking process. Thus, the statutory regulations do not provide the court intake officers with operating guidelines which could aid them in making decisions on whether or not to refer a case to court or to attempt to divert the case from court through adjustment, referral to an agency, or counseling. The questions of which juveniles and which petitions are to be screened in or out are left to the discretion of the individual officer. In fact, according to a recent report, "Criteria, set down in probation guidelines, cannot be applied to individual cases except in very general terms and that, rather, it was often up to the personal inclinations of a specific intake officer to determine what would happen."[10]

The Decisionmaking Process at Intake

The lack of standards governing decisionmaking at the intake level implies a confidence that frivolous or inappropriate referrals will somehow be screened out. Yet, some researchers have found little standarization in the handling of juveniles at this level.

Kinney, Klem, and Myers utilized case records from a random sample of 870 youngsters referred to Cook County (Illinois) intake during 1947-48 in determining the association between 21 family, offender, and offense related variables and the extent of supervision received by the court.[11] They found that seriousness of present offense, offender's prior record, and number of previous court appearances to be strong correlates of handling. Still significant but much less so were the extent of previous institutional or foster care experience, and identity of the complainant. The researchers concluded that treatment-relevant factors were not operative at the intake level, for reasons which they could not determine. Sorting by offense history may well have been seen as a simple method of classifying cases for further processing which did not require great effort on the part of the intake staff.

Eaton and Polk found in examining the 8,615 juvenile cases referred to the Los Angeles County probation intake unit in the year 1956, that the previous referral record greatly influenced intake decisions.[12] In addition, they found that family configurations and juvenile's age were also significant factors. Finally, Eaton and Polk found that seriousness of present offense played an insignificant role in the intake decisionmaking process—a finding in direct contradiction with the Kinney, et al., study. The study's findings of family structure and age as significant factors, coupled with the rejection of seriousness of present offense as a factor, introduced to juvenile justice research the notion that nonlegal variables were playing crucial roles in the juvenile intake process.

Terry collected record information on all police referrals to the Racine County (Wisconsin) juvenile court intake from January 1958 to December 1962.[13] Three of the twelve record variables examined were found to be significantly related to intake decisionmaking: seriousness of the present offense; number of previous offenses; and age. In agreement with previous studies, he found socioeconomic status, race, sex, ethnicity, to be unrelated to intake processing.

Kiekbusch observed a juvenile court's operation at St. Joseph County (Indiana) in which he collected record data on 13 suspected determinant variables of processing on a 20 percent systematic random sample of all delinquency referrals to intake for the years 1970-1971.[14] The study found the following five "strongest" predicators of dispositioning: (1) prior disposition index, (2) family configuration, (3) current legal status, (4) social control function of complainant, and (5) present offense index. His findings show sex, race, age, ethnicity to be unimportant factors in intake decisionmaking.

Harris and associates examined 300 recorded cases in the intake unit of an upstate county in New York State, and found that family and school data were far more powerful predicators of severity of handling and placement than any past or present delinquency information.[15] Juveniles with poor home situations, poor school performance, and residence in low status neighborhoods were

[9] Division of Criminal Justice Services, *1977 Comprehensive Crime Control Plan*, New York State, p. 143.
[10] Division of Criminal Justice Services, *Probation: Problem Oriented Problem Plagued*, undated, p. 34.
[11] J. Kinney, J. Klem, and S. Myers, "Selective Factors Involved in Differential Treatment of Youth Offenders at the Juvenile Court of Cook County," unpublished M.A. thesis, University of Chicago, 1971.
[12] J.W. Eaton and K. Polk, *Measuring Delinquency*. Pittsburg: University of Pittsburg Press, 1961.
[13] R.M. Terry, "Screening of Juvenile Offenders: A Study of Societal Reaction to Deviant Behavior," dissertation, Ann Arbor: University Microfilms, 1965.
[14] R.G. Kiekbusch, "Juvenile Court Intake: Correlates of Dispositioning," dissertation, Ann Arbor: University Microfilms, 1972.
[15] Henry Paquin, *Characteristics of Youngsters Referred to Family Court Intake and Factors Related to Their Processing*, Albany: State University of New York, 1976.

generally more likely than any other youngsters to be referred by probation for a court hearing.

Finally, Cohen investigated processing decisions in three juvenile courts as to formal petition vs. informal handling of the case.[16] The first court was most apt to have formal petitions filed against juveniles based on seriousness of the offense, referral agency, and the detention decision outcome. The second court's decision to file a formal petition was related to the seriousness of the offense, the number of previous court referrals, and the detention decision outcome. Finally, the decision was related in the third court to being idle, being referred by a miscellaneous agency, and coming from a broken home. The author concluded that the factors most closely associated with processing decisions appear to vary considerably among the three courts, and the ability to account for a large proportion of the variance in these decisions is limited. However, there is "some evidence to suggest that nonlegal factors such as being idle or being referred to the court by parents, school, or welfare agents lead to unfavorable consequences in terms of the type of treatment meted out by the court."[17]

It is difficult to summarize the collective findings of the studies reviewed because of the substantial contradictions which they represent. It seems clear that the factors which determine the flow of juveniles through intake to court are complex in themselves and in their interactions, and that we know very little about the process whereby some juveniles are screened out of the juvenile justice system and others formally entered. This question of which juveniles are appropriate for informal handling has been a perplexing one for intake units all along, and has become more of a problem with the move toward greater diversion. The research literature examined suggests that intake units are taking a broad variety of offense, offender, and family related factors in their consideration in the screening decision. Such a variety of factors, many of which are nonlegal variables, must be assessed in terms of fairness, reducing discretion, and increasing accountability.

[16] Lawrence Cohen, *Delinquency Dispositions: An Empirical Analysis of Processing Decisions in Three Juvenile Courts*, Washington, D.C.: Law Enforcement Assistance Administration, 1975.
[17] *Ibid.*, p. 54.
[18] New York City Department of Probation, *op. cit.*, p. 100.08.
[19] Division of Criminal Justice Services, *Juvenile Violence*, April 1976, p. 61.

The Failure of Probation Intake

The New York State Family Court Act authorizes the Probation Department to perform intake screening to determine in which cases it is in the best interest of the child and the community to proceed with court processing. It does not specify the basis upon which this determination is to be made. Moreover, the administrative regulations of department of probation do not specify the weigh of assessment or provide specific guidelines for consideration of their respective criteria. For example, the General Orders of the New York City Department of Probation state *merely* that:

> A referral to court is to be made when the following situations occur:
> 1. The refusal of the respondent to participate in the intake process, provided the complainant desires to proceed.
> 2. A request by any party for access to court is made.
> 3. A designated felony act is alleged.
> 4. Class A & B felonies and assault in the first degree other than designated felony acts are alleged.
> 5. A case requires legal determination for resolution.
> 6. There is need for detention.
> 7. A pattern of delinquent behavior appears to exist.
> 8. There is a pending delinquency proceeding.[18]

As with so much of the juvenile law and administrative regulations, little detail regarding probable cause or sufficiency of evidence is available. Factors such as seriousness of present offense, past delinquency record, and strength of the allegations interact with the juvenile's and parent's cooperativeness, intake's resources, and the ever-present issue of "best interest" of youngster and community to make the decision a very complex one. As a result, individual intake officers are largely responsible for making intake decisions based upon informal criteria derived from their own experience and observations.

It has been generally assumed that a large proportion of the cases which are referred to the juvenile court reflect an underlying felony allegation and/or a pattern of prior adjustments for delinquency. Yet, research has found little uniformity in the handling of juveniles at the various levels of the juvenile court process and the same offense may result in different handling, or different offenses may result in identical handling depending on the individual officer. The Office of Children's Services Report on Violent Juveniles reported that 53.5 percent of juvenile arrests for a felony against the person in New York City were adjusted at intake, and an additional 27.2 percent were dismissed or withdrawn at the fact-finding hearing.[19] Another study of six counties

in New York State indicated that an overwhelming number of intake officers stated that they depended heavily on their perceptions of the *attitude* of the youth and his parents in decisionmaking.[20] The study also reported that two-thirds of all burglary and about half of all robbery charges were adjusted at intake, whereas two-thirds of all runaways and half of all truancy and ungovernability cases ended up in court.[21]

Since some intake officers lack the training, experience, and judgment to make screening decisions wisely, some juveniles who have committed serious criminal offenses and who should be judicially processed for the sake of public safety are handled nonjudicially. Conversely, juveniles who do not present any real threat to public safety may be unnecessarily processed and suffer the detrimental consequences of being stigmatised as a delinquent as a result. The variation in disposition of case by offense raises serious questions as to the purpose served at intake in such courts.

How effective in terms of recidivism is probation intake? One study indicated that 44.1 percent of sampled cases referred by intake to an agency re-entered the juvenile justice system on a subsequent complaint or offense within one year of the initial contact.[22] In fact, the recidivism rate on cases referred to an agency was much higher than the recidivism rate for any other disposition, i.e., adjustment or termination. Another study showed that 53.3 percent of the youth in a sample of adjusted cases had been charged with a delinquent or criminal act on more than one occasion after the adjustment in the study; 27.6 percent had four or more charges.[23]

Finally, intake screening can conserve scarce judicial resources. As it has been pointed out, more than half of all delinquency cases brought to the attention of the courts are handled nonjudicially without the filing of a petition at the intake level. During 1975, a total of 25,668 new petitions of alleged delinquency were filed in New York City Family Court. Out of this total of new petitions filed, intake officers closed 15,894 cases without referring them to the court for a petition, while referring 9,774 for court processing.[24] Yet, this function is not consistently and fairly performed by current intake procedures. In 1975, 34 percent of delinquency cases petitioned to court in New York City were dismissed for failure of proof at either the factfinding or dispositional level.[25]

[20] New York State Senate Research Service, *Family Court—The System That Fails All*, Albany, May 1977, p. 56.
[21] *Ibid.*, p. 58.
[22] Family Court Task Force, *N.Y.C. Department of Probation, Family Court Intake Processing*, Economic Development Council, April 1976, p. 26.
[23] Division of Criminal Justice Services, *Intake Adjustments*, unpublished study, September 1977.
[24] ———————, *1977 Comprehensive Crime Control Plan*, New York State, p. 144.
[25] *Ibid.*, p. 192.

Reducing Discretion

It should stand as a "given" that any court is a court of law, where legal matters are processed according to regularized procedures and rules, where lawyers are central to the presentation of cases, and where there is a developed body of case law upon which judicial decisionmaking is based. Yet, such a legal environment has not characterized juvenile courts until recent years, and, still, today, juvenile court adherence to legal regularity is erratic.

It is clear, and understandable, that the juvenile court plays only a minor role in preventing or controlling juvenile delinquency. Other institutions and informal arrangements, notably the family, are far more important in directing juveniles away from the law violations in which nearly all apparently engage at one time or another, and toward law-abiding social behavior. Nevertheless, limited as they may be, the duties of the juvenile court and its services are inescapable. And the way in which they are discharged is important, if not decisive. A civilized society has the right to demand fair, firm response to deviant behavior. Serious misconduct by juveniles should not and cannot be ignored, nor can threat of serious harm to children.

Agencies of law enforcement and justice are the usual instruments to implement social condemnation of intolerable conduct. That they perform their duties faithfully is eminently desirable; that they perform them with scrupulous attention to fairness and procedural regularity is vital. The commitment to due process is as important in juvenile justice as it is when adults are held to account for antisocial conduct. It seems fundamental that a case be screened for legal sufficiency and appropriateness prior to a social analysis where a child would be subject to even a "voluntary adjustment agreement" without a legally sufficient, prosecutable case to justify such action. The state, in seeking to promote the "best interest of the child," is not licensed thereby to proceed in irregular ways.

Some discretion on the part of the intake official in making screening decisions is not only necessary but desirable, especially since the filing of a

petition and the judicial handling of a complaint may well have detrimental consequences. Intake officers, however, can and apparently do abuse their broad and largely uncontrolled discretion in intake dispositional decisions when they exercise this discretion in an abritrary or discriminatory manner. This is the fact when highly subjective value judgments are enforced, or when factors such as race, sex, and socioeconomics status, which should have no bearing on the intake dispositional outcome, actually do.[26]

A Juvenile Case Assessment Unit

With respect to juvenile delinquency matters, the juvenile court should ideally be reserved (and have adequate resources) for the deliberate resolution of cases involving serious criminal conduct. The intake process should protect the court from matters which do not require elaborate factfinding procedures or "criminal-like" sanctions, i.e., victimless and/or minor offenses, while still endeavoring to protect society by sending on as many legally sufficient cases as possible where sanctioning appears necessary.

The establishment of a juvenile case assessment unit within an office of the criminal prosecuting attorney of a locality, authorized to screen all cases in which there appears to be the possibility of a delinquency petition, is a viable alternative to the present intake screening service. Current attempts to devise a new system whereby a probation officer would assess the case from a social perspective, followed by a prosecutor assessing the legal sufficiency of the case, fail to confront the crucial issue of inconsistent patterns of filing. The assessment unit, staffed by specially trained assistant prosecuting attorneys, would determine whether there is a legally sufficient case and whether it is of sufficient seriousness to prosecute. If a case cannot be prosecuted due to lack of evidence, non-legal considerations are unimportant to the decision.

The legislative mandated criteria for deciding whether a case should be adjusted or petitioned should be seriousness and the circumstances of the conduct alleged against the juvenile, the age of the juvenile, the number and nature of the prior contacts with the court, and the use of the least intrusive alternative consistent with the protection of society.[27]

[26] Krisberg, *op. cit.*, p. 100.
[27] M. Singer, "Sending Men to Prison: Constitutional Aspects of the Burden of Proof and the Doctrine of Least Restrictive Alternative as Applied to Sentencing Determination," *Cornell Law Review*, Vol. 58, 1972.

(a) *Degree of Injury Caused or Risked:* In deciding whether a case should be adjusted or petitioned to court, the assistant prosecuting attorney should be guided by the degree of injury caused or risked in a typical case. In choosing among the allowable intake dispositions, the APA would consider the offense in terms of the particular circumstances of its occurrence. He/she would be guided by the recognition that the greater the juvenile's responsibility for the offense, the greater the justification for a more coercive intake disposition. Mitigating or aggravating circumstances, of course, are factors in choosing a less severe disposition.

(b) *Age and Prior Record:* The age of the juvenile is also relevant to the determination of the seriousness of his/her behavior. In most cases, the older the juvenile, the greater is his/her responsibility for breaking the law. Similarly, the fact that a juvenile had a record free of prior serious offenses would indicate a less severe intake disposition and vice versa.

(c) *Least Intrusive Alternative:* The excercise of discretion should be guided by a presumption of minimal intervention in the life of the juvenile. The least intrusive/restrictive category of intake disposition should be considered and rejected by the intake official before more restrictive sanctions are reached.

Essentially, a case should be petitioned to the court when the facts indicate that some form of coercive intervention may be necessary to protect the community. If this judgment is made, then the juvenile's interest in being given a rehabilitative opportunity can only be granted credence within the confines of what is necessary to protect the community. The juvenile's maturity, school attendance and behavior, family situation and relationships, home environment, and attitude should be relevant to an intake screening decision, but should assume lesser importance than the above legislative-mandated criteria in discretionary decisionmaking. The factors that are not relevant include, but are not necessarily limited to the juvenile's race, ethnic background, religion, sex, and economic status.

Screening for the purpose of determining the legal merits of a complaint and for a determination of the protection of the community should be carried out by experienced, specially trained assistant prosecuting attorneys. All cases in which the facts appear to involve underlying conduct which would constitute a felony or a misdemeanor

in adult proceedings should be screened to assess the evidence, determine whether adjustment is appropriate and arrive at a recommendation as to whether the juvenile should be free pending a hearing. The respondent should have the right to counsel if he/she so requests.

The juvenile case assessment unit should retain the discretion to adjust any case alleging juvenile delinquency, even if the case involved a serious violent crime. By "adjust" we mean a decision not to proceed to petition, even though a legal case appears to lie. Adjustment may or may not be coupled with counseling or referral. If adjustment is on condition that the juvenile accept counseling or a treatment alternative, the juvenile should have the right to have the case against him tested in court if he so wishes. Intake screening and the nonjudicial handling of complaints is extremely valuable in protecting some juveniles against the negative aspects of court processing and in diverting legally insufficient cases. Even in serious situations, the circumstances are occasionally such that adjustment is defensible as being in the social interest.

The tasks of the probation service would be limited to the performance of social service functions and referral with respect to cases sent to probation for adjustment by the juvenile case assessment unit after screening. The removal from the probation service of the inappropriate quasi-prosecutorial role should enable them to concentrate more effectively on their remaining functions as a service delivery system. The probation officer would become freer to deal with the juvenile and his/her family as a direct service provider, enabler, an advocate, a mediator, an organizer, and a developer.

The role prescriptions for the probation officer functioning in the enabler role is that of guidance, advice, and assistance to the juvenile and the family. In the role of advocate, the officer persuades other individuals or agencies to represent the interests of his/her client. The focus is on an organization providing the client with services. The role of mediator requires the officer to function as a negotiator and arbitrator, assisting the client in resolving disputes with other peers or with organizations or various authorities. The organizer role entails functions that resolve around social change goals. The focus is addressed to resolve the subtle institutional and societal problems that propel youth into deviancy and delinquency. Finally, the role requirements to fulfill the developer's role is that of nurturing and developing the indigenous community so that functional patterns of adapting to social conditions can occur.

If in the opinion of the assistant prosecuting attorney, the case is so legally or factually deficient that it is very unlikely to meet the legal burden of proof, he/she would have the right to refuse to proceed to petition. Where the jurisdiction of the court cannot be legally invoked, or the facts are such that conduct constituting juvenile delinquency clearly cannot be proved, the case should be screened out of the intake process *finally and entirely*. A case which is legally or factually deficient, would not be sent to the probation service for adjustment; instead, juvenile justice contact would be completely terminated. If on the other hand, the circumstances appear to involve matters which militate against adjustment, the assistant prosecuting attorney would proceed immediately to petition.

A Modicum of Fairness

Discretion, of course, cuts in many directions; it can serve as a tool to treat a juvenile fairly or unfairly, harshly or with lenience. While discretion favoring "leniency" results in frequent newspaper and television reports, discretion favoring "harshness" or resulting in unjust dispositional sanctions goes practically unnoticed by the public and its political representatives. Seen in this light, legislative requirements that specific criteria must be met and stated before a juvenile's case is adjusted or petitioned to court at the intake level, might well bring about a greater degree of fairness at this level. Seen in another light, the diminution of discretion at the intake level continues the evolution begun by the landmark *GAULT* decision a decade ago. *GAULT* and its progeny ushered due process rights into the factfinding process and, as a result, severely limited the great discretion enjoyed by juvenile court judges during the adjudicatory phase of delinquency procedings. If there is a re-examination of the intake screening process along the lines suggested in this article, then it may help to bring a modicum of fairness to the screening phase of the juvenile justice process as well.

END