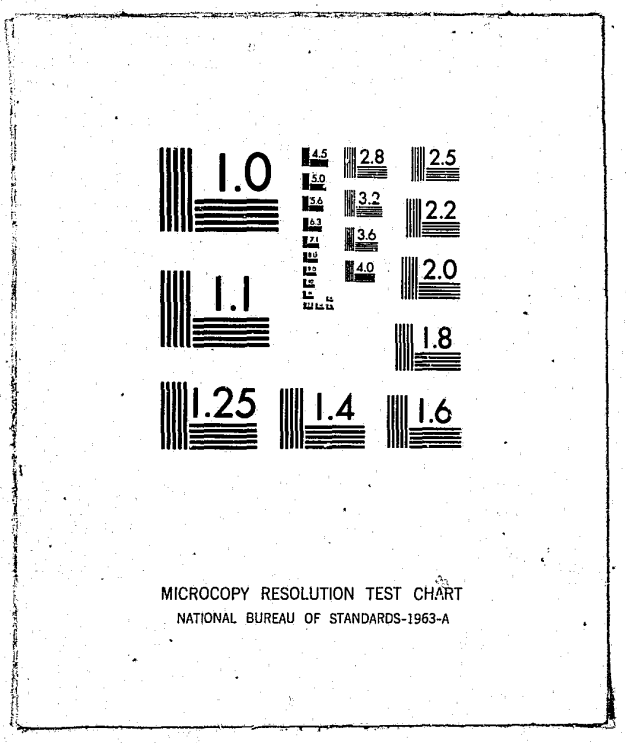
If you have issues viewing or accessing this file contact us at NCJRS.gov.

National Criminal Justice Reference Service

ncjrs

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

Date Filmed

OCTOBER 13, 1980

National Institute of Justice
United States Department of Justice
Washington, D.C. 20531

620178

COMMENTS ON JUVENILE DELINQUENCY

MAX WYMAN

NCJRS

OCT 9 1979

ACQUISITIONS

Alberta

BOARD OF REVIEW
Provincial Courts

REPORT NO.3 AUGUST 1977

TABLE OF CONTENTS

PREFACE

The terms of reference of the Board of Review make it clear that the Government is seeking specific answers to specific problems which have arisen in the administration of juvenile justice in the Province of Alberta. For this reason, the Board made a deliberate choice to recommend changes that lie within the jurisdiction of the Government to make. These recommendations are contained in the official report of the Board of Review. Although important, these recommendations, confined within such a framework, are narrow in scope, and hardly touch the far-reaching problem of juvenile delinquency as the public sees that problem.

The Juvenile Delinquents Act governs the control of juvenile deliquency for the whole of Canada, and enunciates a philosophy that permeates all of the systems of juvenile justice used in the western world. It is a philosophy whose validity I cannot accept, and believe should be replaced. For this reason, I have chosen to make use of our last term of reference to write a second report. This term of reference invites members of the Board to write about all matters deemed relevant to the problems being considered. The official report of the Board of Review and my report overlap to a limited extent in their material content.

The present report reflects four years of study of the literature of juvenile delinquency. The appended bibliography will give an idea of the extent of such writings. What the bibliography does not do is to make apparent the contradictions and confusion, the myths and the false reasoning, which have led, for example, to the strong movement for the abolition of the juvenile courts of the United States.

In order to understand fully the contradictions and confusion that now exist, it is, in my opinion, worth the while to trace back through history the different ways different societies have chosen to treat their offending children. This report is, therefore, long, and it is to some extent philosophical in content. The final recommendations are, however, positive and practical. I believe them to be worth consideration on a provincial and national scale.

Throughout the manuscript, footnotes appear on appropriate pages, and are numbered sequentially only for that page. Such footnotes are not numbered sequentially for the report as a whole. Verbatim quotations have been written in italics, some of them have been taken from secondary, rather than primary, sources. Since some of the quotations appear in several

secondary sources, no one such source has been identified as responsible for the accuracy of the quotation.

I cannot let an opportunity pass without thanking my secretary, Irene Maj, for 21 years of outstanding service and infinite patience. To her must go the credit for the technical quality of the present report. Professor A.A. Ryan of the University of Alberta severely edited the raw manuscript with which he had to work. Although I accept all responsibility for the thoughts contained in this report, Professor Ryan helped me express those thoughts in clear and succinct words. Finally, I must thank Professor Peter Freeman, Law Librarian of the University of Alberta, for bringing to my attention the thousands of pages of material, contained in books and articles, which he believed important for me to read.

Max Wyman
September 1, 1977

REPORT ON JUVENILE DELINQUENCY

INTRODUCTION

About 2000 years ago, Socrates wrote:

> *Our youths now love luxury, they have bad manners, they have disrespect for authority, disrespect for older people. Children generally are tyrants. They no longer rise when adults enter the room .... They gobble food and tyrannize their teachers.*

Since the time of Socrates, criticism of youthful behavior has grown sharper and harsher, and one must conclude that few societies have been satisfied with the behavior of their children, and fewer have been able to cope with it. Yet every generation of adults has had its theories as to the causes of juvenile misbehavior, and how to correct it. The causes advanced have ranged from pauperism to pampering, and the cures from *tender loving care* to *hard work, hard fare, and a hard bed.*

At the beginning of the 19th century for example, the concern of people in Great Britain was reflected in the *Report of the Committee for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis,* dated London, 18th May, 1816. It concludes:

> *That the following appear to be the principal causes of these dreadful practices:*
>
> *The improper conduct of parents.*
> *The want of education.*
> *The want of suitable employment.*
> *The violation of the Sabbath, and habits of gambling in the public streets.*
>
> *That, in addition to these primary causes, there are auxiliaries which powerfully contribute to increase and perpetuate the evil:- These may be traced to, and included under, the three following heads:*
>
> *The severity of the criminal code.*
> *The defective state of the police.*
> *The existing system of prison discipline.*

In one form or other, these and similar statements have been repeated thousands of times, and some have become ingrained beliefs about why young people act as they do. But even today, there is little evidence to support their validity. The truth is that we do not know why people lie, cheat and steal.

In the past two centuries, hundreds of committees and commissions throughout the world have investigated the causes

of juvenile delinquency. Some of their reports have profoundly affected the legislation of their time: others have been quietly forgotten. This report will in due course refer to several of these reports, in particular to *The Challenge of Crime in a Free Society*, Report of the President's Commission on Law Enforcement and Administration of Justice, 1967.

In view of the work of the hundreds of committees and commissions mentioned above, why has the Government of Alberta seen fit to establish yet another Board to investigate a problem which by now would seem to have been studied beyond the point of diminishing returns? Continued study is necessary because no one has come up with a valid answer to a vexing problem that has now existed for thousands of years.

The so-called *juvenile* population of Canada numbers about 4,600,000 young people between the ages of 7 and 17, about 45,000 of whom face charges in juvenile courts in any year. Some 75% of these charges are disposed of by dismissal, reprimand, probation, or fine; the remainder result in the placement of somewhere between 1500 and 3500 juveniles[1] in detention facilities funded by the provinces.

A rough probability calculation would indicate that about 92% of our juvenile population make it through the ages from 7 to 17 without any contact with the juvenile courts, and that less than 0.2% are placed in institutions. And since the charges against juveniles range from trivial violations of municipal by-laws to major violations of the Criminal Code, indications are that only a very small percentage of offenders find themselves in serious enough conflict with the law to be considered a threat to our way of life. Comparable American statistics reveal a not dissimilar pattern in the United States, even with ten times our population and problems exacerbated by conditions that do not exist in Canada. A recent report indicates that the United States had in detention only 48,050 juvenile delinquents[2].

Why then do so many people see the juvenile delinquency problem in another and more disturbing light? The answer can be illustrated by information about shoplifting supplied by one department store in the City of Edmonton. This store annually loses merchandise with a value equivalent to about one percent of its sales. The shoplifting is about equally attributed to employees of the store and the general public. However, juveniles are involved in an estimated 70% of the external thefts, amounting to $350,000 per year (equivalent to about 0.35% of

[1] This is one among many statistics that is difficult to establish with any accuracy.

[2] Allan J. Couch, *Diverting the Status Offender from the Juvenile Court*, Juvenile Justice, Vol. 25, November, 1974. These data apply as of June 30, 1971.

total sales). Since the average value of items stolen is about $8.00, juveniles must take about 40,000 items per year from this one store. If to losses attributable to shoplifting, we add those resulting from breaking and entering, we can arrive at the following estimates:

(1) Alberta juveniles steal over 500,000 items per year, with a total value probably in excess of $4,000,000; and

(2) hundreds of thousands of juveniles commit theft at least once in any year.

Since the juvenile population of Alberta now numbers about 400,000, the problem that the public sees may well involve the sporadic *criminal* behavior of a majority of the juveniles of the province. If we consider also the losses through juvenile vandalism, public concern becomes even more understandable. The same pattern of behavior is exhibited by juveniles all over the world, and indeed seems rooted in the widespread disrespect most people seem to have for the rights and property of others.

As has been suggested above, delinquent juveniles fall into two distinct groups, those who are formally charged and appear in court, and those whom the courts never see. Extensive data on these two groups of delinquents are not available for Canada, but we were fortunate enough to obtain California statistics for 1973. Because California coincidently has about the same total population (about 21,000,000) as Canada, as well as about the same population of juveniles (about 4,500,000), their statistics can reasonably be expected to have some validity for our study.

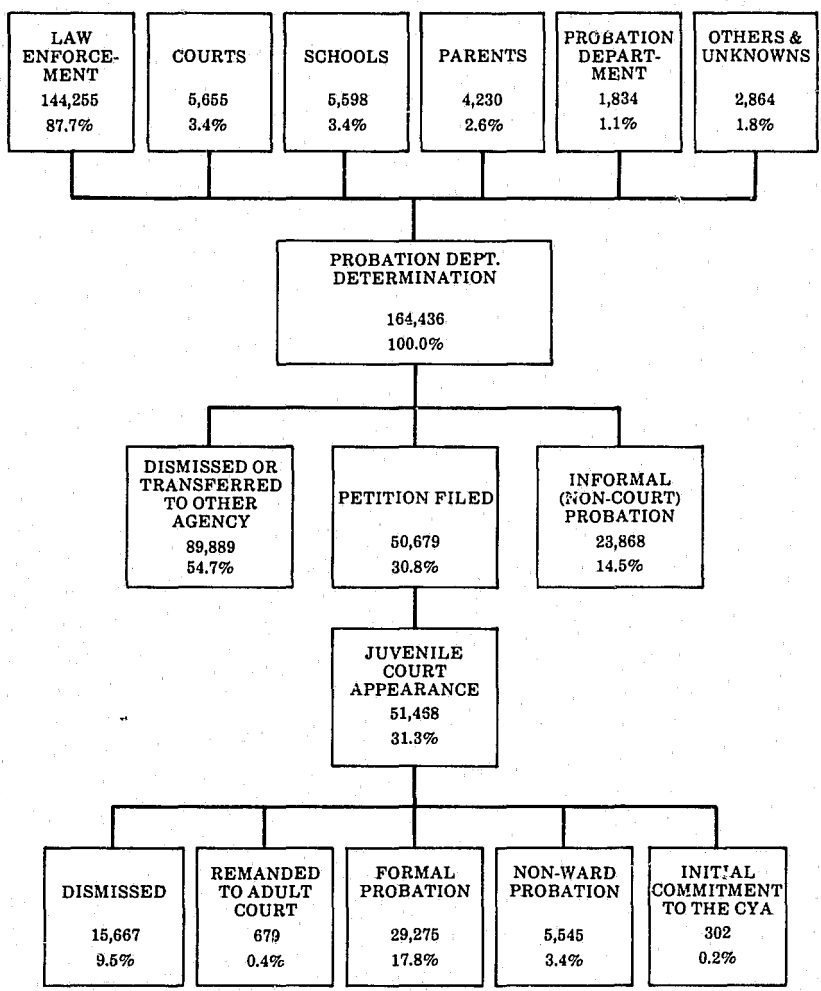
California police have the legal discretionary power to treat juvenile offenders in either of two ways. They may inform the parents and release the offenders with a warning, or they may send them through the juvenile justice system. Of the approximately 500,000 juvenile offenders apprehended in 1973, about 70% were released with a warning. The remaining 30% were disposed of by the juvenile justice system as shown in chart (B) below.

Although in 1973 the California police or related agencies referred 164,436 cases to the Probation Department for screening, formal charges by means of a petition were filed in only 50,679 cases, that is in the cases of about 10% of the juveniles caught committing an offence, or of about 1% of the total juvenile population. These data, however, are not complete.

According to surveys conducted among victims of crime, not only are more than 50% of serious crimes not reported, but in almost 80% of those instances where they are reported the police

Chart (B)
JUVENILE COURT PROCESS (based on 1973 data)

Sources from which delinquent juveniles were originally referred to California probation departments.



**The difference of 789 cases between the petition filed and juvenile court appearance figures is due to the varying time differential between filing and disposition.*

fail to identify the offender. Indeed, so large is the volume of undetected or unsolved crime that it is difficult to draw valid conclusions about juvenile delinquency without taking into account the effect of this so-called statistical *dark number.*

Since the police have the closest contact, they must play an important if limited role in juvenile crime prevention. If, as the California figures indicate, the juvenile courts deal with only 1% of the juvenile population, then those courts can have little effect on the major problem the public sees. Moreover, public rehabilitation institutions affect only a tiny fraction of the juvenile population. Nothing those institutions can do, for good or for bad, can have any effect on the delinquent tendencies of the juvenile population in general.

Although the courts and their attendant institutions may play essential roles in our system of justice, they can at best react to criminal behavior. Society must look to other institutions for the prevention and control of juvenile delinquency.

Criticism of the system of juvenile justice in the western world is harsh, and, in our opinion, unjustified. For example, the eminent Roscoe Pound once remarked that . . . *the powers of the Star Chamber were a trifle in comparison with those of our juvenile court* . . . . This statement is false. In fact, the juvenile courts of the western world lack even the power that is routinely given the adult courts and find their efforts hamstrung as a result.

Even the Supreme Court of the United States has been critical in this way of the juvenile courts.

> *Juvenile court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure . . . . The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based on constitutional principle has not always produced fair, efficient and effective procedures. Departures from established due process have frequently resulted not in enlightened procedure but in arbitrariness.*

With equal validity, the court might have said:

> *The presence of substantive standards has not necessarily meant that children received careful, compassionate, individualized treatment. The presence of procedural rules based on constitutional principle has not always produced fair, efficient and effective procedures. Over the years, the courts,*

using established due process, sent hundreds of children, under the age of ten, to the gallows.

The debate about the use of the legal procedures of adult *due process* in a juvenile setting is not new. At the beginning of the 19th century, Sir John Eardley Eardley-Wilmot asked whether it was better *to have numbers of our fellow creatures ruined by a strict adherence to ancient rules of trial: or numbers saved by a salutory departure from them?* This too is dangerous rhetoric because it denigrates the important role the rule of law has to play in the protection of the lives of free men and women.

It is most unfortunate that both sides in the debate about due process tend to substitute specious reasoning for compelling evidence, and rhetoric for knowledge. To say that children should have fair hearings and due process flows from a fundamental principle of justice. It does not follow, however, that the legal procedures of a juvenile court must be identical to those of adult courts. Although this report will return to this important issue, we might pause for the moment to recall the warning of Mr. Justice Blackmun:

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it.

As he suggests, a serious attack is now being made against the juvenile courts of the western world. Indeed, the very existence of those courts is now being threatened.

History may have a great deal to teach us about how we should treat our children, but its lessons are not those that the Supreme Court of the United States is attempting to teach.

When society looks upon the pervasive so-called delinquent tendencies of youth, it is unfortunate that it should look to the wrong institution to cope with a massive social problem whose solution lies beyond its capabilities. The burden of making ethical, decent and legal behavior commonplace should not rest on courts not designed for that purpose. It is a role of the courts to convict and punish persons guilty of criminal behavior. More important is the role these courts must play to oppose the intrusion of the state into the lives of innocent people. A system of justice, be it adult or juvenile, should not be charged with any other function.

Right up till the end of the 19th century, the western world continued to treat its offending children as midget adults. At the

beginning of the 20th century, however, society turned to a new philosophy of juvenile justice and a new mode of administering that philosophy. It turned to these innovations with great expectations and high hopes that a long standing and vexing problem would now be solved. After spending billions of dollars, it is now becoming clear that those great expectations will not be fulfilled and that those high hopes have turned to ash. The goodwill and willing financial support that were given to this new system of juvenile justice turned to hostility, a hostility that has been accompanied by a demand for change and reform. But that has been the history of all of our institutions, the school, the church and, indeed, the government itself. At various times, society has looked toward each of these institutions with great expectations, expectations that were far higher than any society had the right to demand. When those institutions did not produce the expected miracles, a period of disillusionment set in. That period usually became trying times for the institutions involved.

THE HISTORY OF THE RISE OF THE 20'TH CENTURY PHILOSOPHY OF JUVENILE JUSTICE

Although much has been written about the carefree days that are supposed to be such a vital part of the childhood years, it is probably closer to the truth to say that children have seldom occupied an enviable position in any society. For thousands of years, the law punished children as if they were midget adults, and yet that same law curtailed their freedom by making them chattels of their parents, or chattels of the state.

In early Roman Law, a father had an absolute right to put a child to death. Indeed, Tacitus considered it a weakness of Mosaic Law that Jewish parents did not enjoy such a right. Be that as it may, on the treatment of children, Mosaic Law was not all that different from early Roman Law. In Exodus, 21:15 and 21:17, we read:

21:15 *And he that smiteth his father, or his mother, shall be surely put to death.*

21:17 *And he that curseth his father, or his mother, shall surely be put to death.*

The basis of Tacitus' critical comment can be found in Deuteronomy:

21:18 *If a man have a stubborn and rebellious son, which will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them:*

21:19 *Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city, and unto the gate of his place;*

21:20 *And they shall say unto the elders of his city, This our son is stubborn and rebellious, he will not obey our voice, he is a glutton, and a drunkard.*

21:21 *And all the men of his city shall stone him with stones, that he die; so shalt thou put evil away from among you; and all Israel shall hear, and fear.*

Although, as Tacitus claimed, Jewish children were entitled to some sort of trial before the elders of the city, the consequences of Mosaic Law were much the same as the corresponding consequences of early Roman Law. It took thousands of years from the time of Moses before secular law governing parent-child relationships showed any significant difference in substance from the old biblical law. By the middle of the 17th century, however, secular law began to recognize that there were bad

parents as well as bad children. For example, in the *General Laws and Liberties of New Plimouth Colony*, published in 1671, we find:

> *If any Childe or Children above sixteen years old, and of competent Understanding, shall Curse or Smite their Natural Father or Mother; he or they shall be put to Death, unless it can be sufficiently testified that the Parents have been very Unchristianly negligent in the Education of such Children, or so provoked them by extreme and cruel Correction, that they have been forced thereunto, to preserve themselves from Death or Maiming.*

The Hebrew word that has been translated into *curse* had the original meaning *to hold lightly*. The 17th century, therefore, protected children under the age of 16 from a sentence of death for what would now be deemed to be trivial forms of misbehavior. Also, children of the age of 16 or over were given some measure of defence.

Throughout history, the laws of society have paid lip service to the fundamental right of parents to raise their children as they see fit. But every society, including our own, has had its share of serfs, slaves, and Helots, those second class citizens not guaranteed the full protection of the law. States, on the slightest of pretexts, have separated children from their parents, and dealt with them as non-citizens. After writing at considerable length on the wisdom of the poor-laws of 17th and 18th century England, particularly those that allowed the state to separate the families of the so-called wretched poor, Blackstone concluded that there was a law for the rich that did not extend to the poor:

> *The rich indeed are left at their own option, whether they will breed up their children to be ornaments or disgraces to their family.*

It is unfortunate that the philosophy and practice of the modern system of juvenile justice is so rooted in the poor-laws of England, and in the way they were enforced. England's pauper class was despised as vicious and depraved. To the middle and upper classes it was axiomatic that the pauper class was the source of all criminals. It was also axiomatic that, if left unattended by the state, pauper children would wallow in the moral filth of their pauper parents, and that they were inevitably candidates for prison or the grave. By this kind of logic, it was an act of humanity to separate pauper children from pauper parents, to send young children abroad, to indenture them for years to a stranger, with complete insensitivity to the possibility that such people might have any kind of life as a family.

It is sobering to recall the sordid history of the workhouse, the almshouse, the poor house, the orphanage and the house of refuge because they were the rehabilitation centers of their day. Societies traditionally treated the recipients of their welfare little differently from the way they treated their criminals. Indeed, in the minds of some, the two groups were one and the same. It is no wonder, then, that there are people who maintain, as we were recently told, that any child, no matter how good or how bad, is better off as a child of the streets than as an inmate of any rehabilitation center of this continent.

At least in Alberta, this contention is false, but it is so widespread that it is time to look carefully and objectively at the modern rehabilitation center free from the aura of the sordid past.

But another current of thought had begun to surface. Nineteenth century reformers in England and the United States began to lose their interest in the prevention and rehabilitation of criminal behavior, and began to focus attention on the legislation and legal procedures defining and punishing children as criminals. That change in interest reflected changed theories of the causes of juvenile delinquency.

Early in the 19th century, Sir John Eardley Eardley-Wilmot suggested juveniles below a certain age should not be subject to the law of felony with respect to theft. He suggested instead that theft be treated as a summary offence, and that a summary form of procedure be used to handle juveniles charged with theft. His list of primary causes for the alarming increase in juvenile delinquency is interesting:

1. *delay in trials;*
2. *delay in punishment;*
3. *the contamination of the gaols;*
4. *the disgrace of a public trial; and*
5. *the stigma of a verdict.*

His argument is equally so:

> *Gentlemen, it is with the utmost diffidence that I offer to the consideration of the legislature this proposed alteration of our penal code, as respects Juvenile Delinquents. If I am not mistaken, the advantages to the public will be immense; and by the adoption of this new enactment, those deserted objects who have so early fallen the victims of Ignorance and Depravity, will be guided through this world and prepared for a better . . . .*

In searching for a remedy by which this increasing evil may be effectually checked, the only true foundation of success must rest upon the just and accurate view of the cause which produces it. It is not to save the youthful delinquent from punishment, but in order to prevent that very punishment from being the instrument of increasing the evil, that I would apply the remedy; and if, long before he has become a public spectacle at the bar of a criminal court, I could save him from so great and fatal a degradation; if before his heart is hardened in villainy or rendered desperate by a verdict of guilty, I could inflict a punishment which should produce better effects; then, I confidently assert, that a step would be gained in the prevention of crime, which would soon be felt in every part of this extensive empire.

The arguments of those who opposed Wilmot's suggestions have an equally modern flavor and have endured over the years; in the words, for example, of the Reverend T. Coker Adams (1828):

We have now arrived at that part of your Pamphlet which projects a measure for diminishing the cause of Crime. In itself the most important part, in its propositions the most objectionable.

Let us first turn our observations to those inestimable privileges, of which your alteration of the law so sweepingly deprives us.

It abrogates that merciful provision of the Law, which enacts that the Person charged with felony shall be taken before a Magistrate, in order that it may be clearly ascertained by him, whether there be a reasonable suspicion of guilt, before he be committed for trial.

It removes that important Ordeal of the Grand Inquest, whose duty it is, to inquire whether there be at least sufficient prosecuting Evidence for putting him on his Defence.

It takes away that glory of our Constitution, his Trial by Jury, which we are told, by the highest authority 'is an admirable criterion of Truth, and a most important guardian both of public and private Liberty.'

It robs him of that safe means of Defence, which, a technical, a watchful and a skilful advocate is the most competent to suggest.

And lastly it deprives him of That intricate knowledge of law, of evidence, and of the mode of giving evidence . . . .

Following his detailed defence of legal due process, the Reverend Adams advances two perceptive conclusions: first that

the rate of increase of crime is determined by the rate of increase in population, and second that the rate of increase of crime far exceeds the corresponding rate of increase in population. If heed had been paid to him, current rates of crime might have been anticipated.

The debate continued until the end of the last quarter of the 19th century. At that time, English reformers such as the Reverend Benjamin Waugh were asking for special tribunals for juveniles:

> *Can there be any doubt that justice towards our juvenile offenders is seriously perverted through the want of a suitable tribunal of judgment?*
>
> *Some seven thousand children are brought before the magistrates of London in a single year. The stake is sufficiently serious to demand careful attention.*
>
> *Our convict prisons, it is belived by persons who at once have authority to speak and lack the liberty to do so, are supplied with a large proportion of their inmates from the juvenile victims of fatally unsuitable proceedings of law . . . .*
>
> *Did you ever consider that big and little offenders are passed through the same courses of law; that a child of nine hears the bolt lock him in the same station cell, is bewildered by the same 'so help you God,' is handled by the same gigantic officials, and stands, or surely is held up, in the same dock, and looks upon the same solemn deputy of the Crown as a murderer! . . .*
>
> *A New and Distinct Tribunal! This is the best device! A tribunal of citizens – men and women – superintendents of Sunday schools, teachers of day schools, if you will, –why not? Citizens whose functions should be magisterial, whose legal qualifications should be their ability to read the living literature of English children, whose Act of Parliament should be their moral instincts, with the discretionary powers of a domestic Habeas corpus ad satisfaciendum, – above all, who had committed and had not forgotten the appetitive and pugnacious follies of youth, and could 'Laugh them o'er again.'*
>
> *Cannot some way be devised which should make clear the merits of every act of child-crime, be sensitive to fair play, be alive to the common weal, regard a child as the father of a man, see him in wider, deeper, higher, more lasting relationship than his relationship to some pitiless, petti-fogging pastry-cook, recklessly indifferent to everything in heaven, earth, and under the earth, but the loss of a two-penny pie!*
>
> *Is it not time to let the ridiculously big name 'Juvenile Crime' drop from our language, and the consequent hideous impersonation, a Juvenile Criminal, vanish from our fancy, – time*

to relieve the stealing of apples of the tremendous word which law thrusts upon it, – to drop the humbug of the legislative distinctions 'Felonious Intent,' 'Misdemeanour,' 'Depredation,' 'Assault with intent to do grievous bodily harm,' and all the rest of it? – to talk and act towards a young ragamuffin sensibly, at least as sensibly as we talk and act towards the more fortunate child of our homes? Might we not by a reasonable economy in hateful and degrading names economise in robbery of juvenile chances, in soured spirits, in perverted powers, in ghastly destinies? Is it not possible that by nicer names on the tongue might be achieved ends more just to the child, more loyal to the State?

Does it not occur to you that a hard-and-fast law against children's deeds, which we have thought proper to call crimes, is horribly ridiculous?

Is there anything new under the sun? The concepts of diversion and the evils of labelling, about which there is so much current debate, are hardly discoveries of the late 20th century.

The debate raged for the whole of the 19th century. But although the pitch increased, basic differences remained the same. To the liberalists, the offence was the crux; the status of the offender was irrelevant. Theft was theft, and the punishment should be the same, no matter who was involved. To reformers, with equal insistency, society had an obligation to teach the child the meaning of right before it had the right to punish the child for committing a wrong. It is important to digest the pattern of this debate because the same pattern has persisted, and is being repeated today.

As always, when emotions are involved, advocates of drastic reform used anecdotal material, a handful of instances involving obvious injustices, to attack a legal system designed to adjudicate thousands of cases. Extravagant claims were made that the legal system was a disgrace, that it was intolerable, that it had to go. The defenders of the system spoke out on equally subjective grounds and magnified the dangers they felt to be involved in the proposed reforms. It is a sad commentary to have to make, but after two centuries of debate, we are no closer than we were 200 years ago to knowing the degree of truth contained in those conflicting extravagant claims, nor are we any closer to appraising the validity of that excessive rhetoric. It is important to keep this in mind when we come to evaluate the same rhetoric in today's setting.

In any event, the reformers won. By the end of the 19th century new legislation regulating the behavior of juveniles was

passed, and new courts to administer the new laws were established. Although the State of Illinois was among the first to pass such legislation, this was only the culmination of a century of struggle by reformers in both England and the United States. It is they, the reformers, not the State of Illinois, who will have to take the credit or the blame for the direction the administration of juvenile justice took in the 20th century.

The new legislation and the new courts were ushered into the 20th century with a fanfare that was worthy of the ancient triumphal march into a conquered city. The core of the new philosophy of juvenile justice was clearly enunciated in the Illinois Act:

> *This act shall be liberally construed to the end that its purpose may be carried out, to wit, the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents . . . .*

The present Juvenile Delinquents Act of Canada goes much further:

> *This act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.*

Some modern legislation even uses the phrase *wise and kindly parent,* however this may be construed.

But the symptoms of the great changes that swept the world in the centuries marked by the American and French revolutions, the rise of romanticism and humanitarianism, evangelical religion and universal education, also include the explosion of physical science and then of psychological or psychiatric science. The first part of the 20th century belonged to Freud. In social interaction, it was the age of psychiatry, and the enthusiasm, as would be expected, spilled over into the rule of law. Law, in the words of Judge B. Lindsay (1906):

> *. . . was to bring into the life of the child all of those aids and agencies that modern science and education have provided through the experts in human conduct and behavior; in a word, to specialize in the causes of so-called bad things as doctors would in the cause of disease. . . .*
>
> *He, (the child), is taught, literally, to overcome evil with good. He is taught his duty to society, the meaning of law – why*

ordinances are passed, and by a system of education he is taught to know how to help himself, and to make himself honest and industrious ... It will thus be seen that our institution (juvenile court) is a school-court.

Juvenile delinquency was now a disease, and society would look to the social and medical sciences to establish the causes of, and effect the remedies for, this new disease. Extravagant hopes for what the new legislation, the new courts, and the new sciences could do remained high into the latter half of the present century. The same Roscoe Pound who likened the powers of the juvenile court to those possessed by the Star Chamber also claimed the creation of the juvenile court to be *one of the most significant advances in the administration of justice since the Magna Carta.*

Reformers who gain power would not be human if they did not yield to the temptation to use the law to impose the light of their morality on those who cannot or will not see. The Freudians argued then, as some argue now, that they could not work their miracles unless they had physical control over the children who needed saving. They argued then, as some argue now, that it really did not matter how they gained that control because they promised miracles, not punishment. The courts listened, and many of the safeguards used to protect the innocent from being punished were not used in the juvenile court. They were not deemed necessary because it was assumed that the worst that could happen to any child was to be treated in such a way that he or she would become a better child.

As an illustration of the philosophy that *the end justified the means,* we shall quote at some length from a 1905 judgment of Mr. Justice Brown in a case heard before the Supreme Court of Pennsylvania, a case in which it was claimed that *the juvenile was not taken into court under the due process of the law:*

... it is important that the powers of the court, in respect to the care, treatment and control of dependent, neglected, delinquent and incorrigible children, should be clearly distinguished from those exercised by it in the administration of criminal law – it (the Act) is not for the punishment of offenders but for the salvation of children, and points out the way by which the state undertakes to save, not particular children of a special class, but all children under a certain age, whose salvation may become the duty of the state, in the absence of proper parental care or disregard of it by wayward children. Its protecting arm is for all who have not gained that age (16) and who may need it for protection....

To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public

punishment and disgrace, the Legislature surely may provide for the salvation of such a child, if its parents or guardians be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state's guardianship and protection. The natural parent needs no process to temporarily deprive his child of its liberty by 'confining' it in his own home to save it and to shield it from the consequences of persistence in a career of waywardness. Nor is the state, when compelled as parens patriae, to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts. . . .

The design is not punishment, or the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child. . . . Every statute which is designed to give protection, care and training to children, as a needed substitute for parental authority and performance of parental duty, is but a recognition of the duty of the state as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated . . . .

(The underlining above is ours.)

In spite of all of the qualifications, it is clear that Mr. Justice Brown is now speaking about your child and mine, that he is echoing Sir John Eardley Eardley-Wilmot and Reverend Benjamin Waugh. Children should not be called into court as easily as parents order them to come home. Children should not be confined by the state, even for their own good, as easily as parents would send them to bed. Parents and children are entitled to protection from such an intrusion by the state.

An 18th century court once held it to be an act of depravity to teach a child to be a gymnast, an act that legally allowed the state to separate the child from his or her parents. Although being a gymnast in those days was roughly equivalent to being a call girl today, the same type of protective thinking still permeates modern legislation used to govern the care and behavior of children. A child can be separated from its parents because:

(1) the child has been found associating with an unfit person;

(2) the conduct of the parents endangers the morals of the child; or

(3) the child has been convicted of delinquency because of immoral behavior;

or other vaguely defined forms of behavior which are judged

without proof to be such that they will make a child grow up into an adult criminal.

The belief that it is possible to identify the forces that influence a child to become an adult criminal is illustrated in the case of a young girl who was convicted of delinquency because she sang in a restaurant where beer and wine were sold. Her conviction was upheld by unanimous decision in the Washington Supreme Court:

> *The Act, in its application to the delinquent, is not punitive in its nature or purpose. The policy under this law is protection, not punishment. Its purpose is not to restrict criminals, to the end that society may be protected and the criminal perchance reformed; it is to prevent the making of criminals. Its operation is intended to check the criminal tendency in its inception, and protect the unformed character in the facile period from improper environment and influence. In short, its motive is to give to the weak and immature a fair fighting chance for the development of the elements of honesty, sobriety and virtue essential to good citizenship.*
>
> (The underlining is ours.)

It is one thing to speak about preventing the making of criminals and giving the weak and immature a fair chance to grow into good citizens, but it is another to identify the environment that will make a particular child develop into an adult criminal. It is our conviction that, as they did hundreds of years ago, people still falsely believe that they can identify accurately the forces that will make children *early candidates for a prison or the grave.*

Judges had now to predict the future behavior of each child brought before them. The wisdom of Solomon would not have been enough to predict day after day how these hundreds of children would act in the years to come.

It is fair to say that the superior courts watched over the actions of the juvenile court. In Mill vs Brown, a boy of 13 was charged with, and found guilty of, stealing a box of cigars. He was committed to the Utah industrial school for a period of eight years, until he reached the age of 21. Eight years of confinement for an action for which an adult first offender would have received no more than a fine of $50. The Utah Supreme Court struck down such a cruel and unjust punishment, and that boy went home to his parents. But even in that verdict the court was moved to say:

> *Such laws (against juvenile offenders) are most salutory and are in no sense criminal and not intended as a punishment, but are calculated to save the child from becoming a criminal.*

The whole and only object of such laws is to provide the child with an environment such as will save him to the state and society as a useful and lawabiding citizen, and to give him the educational requirements necessary to attain that end . . . . As we have already pointed out, the proceedings of the juvenile court do not fall, nor are they intended to come, within what is termed criminal procedure, nor are the acts therein mentioned, as applied to children, crimes.

During the first half of the 20th century, then, the liberalist philosophy of one law for all gave way to a special *law* for juveniles, which may be recapitulated as follows:

1. Since children are not fully responsible for their actions, they should not normally be convicted of criminal behavior.
2. The social and medical sciences provide an accurate identification of the forces that impel a child to follow a path leading to an adult life of crime.
3. The social, medical and educational sciences provide methods for returning a wayward child to the path that leads to the development of well-adjusted and productive adults.
4. Legislation regulating the behavior of children should be designed to be protective in nature, and used to save children from entering an adult life of crime. Such legislation should not be punitive.
5. A child should not normally be made to endure the stigma of a public trial.
6. A child should not normally be made to endure the stigma of public conviction for any sort of misbehavior.
7. The offending behavior which brings a child to the attention of a court is only incidental to the hearing that court must hold. The court must investigate all the factors that led to the difficulties of the child, and then must choose the course of action that is dictated by the best interest of the child.

In short, the new philosophy rejected the liberalist view of the law, and substituted for it a positivist philosophy. In *Juvenile Courts in the United States,* Herbert Lou presents the aggressively false extremist point of view:

It is perhaps the first legal tribunal where law and science, especially the science of medicine and those sciences which deal with human behavior, such as biology, sociology, and psychology, work side by side. It recognizes the fact that the law unaided is incompetent to decide what is adequate

treatment of delinquency and crime. It undertakes to define and readjust social situations without the sentiment of prejudice. Its approach to the problem which the child presents is scientific, objective, and dispassionate. The methods which it uses are those of social case work, in which every child is studied and treated as an individual.

These principles upon which the juvenile court acts are radically different from those of the criminal courts. In place of judicial tribunals restrained by antiquated procedure, saturated in an atmosphere of hostility, trying cases for determining guilt and inflicting punishment according to inflexible rules of law, we have now juvenile courts, in which the relations of the child to his parents or other adults and to the state or society are defined, and are adjusted summarily according to the scientific findings about the child and his environments. In place of magistrates, limited by the outgrown custom and compelled to walk in the paths fixed by the law of the realm, we have now socially-minded judges, who hear and adjust cases according not to rigid rules of law but to what the interests of society and the interests of the child or good conscience demand. In place of juries, prosecutors, and lawyers, trained in the old conception of law and staging dramatically, but often amusingly, legal battles, as the necessary paraphernalia of a criminal court, we have now probation officers, physicians, psychologists, and psychiatrists, who search for the social, physiological, psychological, and mental backgrounds of the child in order to arrive at reasonable and just solutions of individual cases. In other words, in this new court we tear down primitive prejudice, hatred, and hostility toward the lawbreaker in that most hide-bound of all human institutions, the court of law, and we attempt, as far as possible to administer justice in the name of truth, love, and understanding.

(The underlining is ours.)

As late as 1969, the New York Court of Appeal attempted to define the special status of the juvenile court without a similar shotgun attack on the courts in general:

A main objective of the special system of law for treating young juvenile offenders is to hold them as children apart from the usual methods and ineradicable consequences of the criminal law .... The proceedings were not designed to be punitive but were for the protection and training of a child found in difficulty; and would be administered by humane and parentally minded Judges whose end was not to punish, but to save the child.

The successful juvenile court is concerned primarily with the totality of factors which cause a child to meet difficulty in his

life, and only incidentally with the event which brings the child to the court, which may itself play only a small role in that problem.

The judge, acting as a mature and well-balanced parent, tries to find the answer to the child's trouble; and only if all else fails and there is no other recourse, does he commit the child to any institution, and even then he tries to find the one best suited to the child's needs and having the fewest punitive policies.

Nothing could be farther removed in temper and purpose than this from the criminal court for adults. And although it has failed, as all human institutions have a tendency to do, always to reach its highest purpose; and has sometimes in method and result seemed to act like a criminal court, it is not reasonably arguable that in the half-century or so of its existence in the United States the juvenile court has profoundly changed for the better the way children in difficulty are treated by the public legal system.

In such a court, the accoutrements of the process evolved from the 18th Century experience with the rigors of common-law prosecutions – public trial, shields against self-incrimination, adversary inquiry into the single event which brought the child to court – seem irrelevant.

(The underlining is ours.)

The contradiction between the implications of the last paragraph and the main argument of the statement deserves careful consideration.

It is, of course, impossible to quarrel with the humane objectives of the new philosophy. It is not difficult, however, to quarrel with the provably false assumptions of that philosophy. Its great expectations involved unattainable miracles which would come back to haunt the new philosophy during the latter half of the 20th century. It is, unfortunately, a hopeless philosophy that should now be rejected and replaced.

If we have been strangely quiet about Canadian cases and Canadian comments, it is because Canada has always been a follower, never a leader, of the United States in the field of juvenile justice. Our silence should not, however, be interpreted as meaning that there have not been important Canadian cases[1] involving juveniles and the law.

[1]I am grateful to the Student Legal Services of the University of Alberta for providing the Board with a copy of *Juvenile Law Handbook With Case Digests*, prepared by Regan James. The handbook contains an excellent analysis of problems involving juvenile law, and a comprehensive list of cases involving juveniles and the law.

THE JUVENILE DELINQUENTS ACT OF CANADA

In 1908, the Parliament of Canada, following the lead of the Illinois State Legislature, passed a *Juvenile Delinquents Act* which has remained virtually unchanged for almost 70 years. According to W.L. Scott, draftsman of the Act,

> *The juvenile court was the first attempt in the history of jurisprudence to eliminate from the law the element of hostility toward the lawbreaker and to substitute, therefor, a social objective.*

Section 3(2) of the Act defines this attitude more precisely:

> *Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision.*

Section 38 of the Act is even more explicit as to purpose:

> *This Act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.*

In practice, however, the Act is not nearly as protective of the welfare of children as these statements of purpose would lead one to expect. To illustrate, let us try to determine to whom the Act applies. Sections 2(1) and 2(2)(a) respectively say:

> *2.(1) In this Act*
>
> *'child' means any boy or girl apparently or actually under the age of sixteen years, or such other age as may be directed in any province pursuant to subsection (2);*
>
> *2.(2) The Governor in Council may from time to time by proclamation*
>
> *(a) direct that in any province the expression 'child' in this Act means any boy or girl apparently or actually under the age of eighteen years, and any such proclamation may apply either to boys only or to girls only or to both boys and girls.*

Alberta is the only province that has defined a *child* to be a boy under the age of sixteen and a girl under the age of eighteen. So much has already been written protesting the discriminatory

aspect of this definition, there is no need to enter this particular debate. Indeed, a case attacking the legal validity of the definition is proceeding through the courts.

As it stands, the Juvenile Delinquents Act seems to apply to all boys from birth up to the age of 16, and to all girls up to the age of 18. One might, at first glance, envisage the possibility of a five year old child being charged with an offence under this Act. But Section 2(1), in its definition of *juvenile delinquent*, introduces a whole jungle of confusing provisions from other Acts:

> *'juvenile delinquent means any child who violates any provision of the Criminal Code or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute . . .*

For example, Sections 12 and 13 of the Criminal Code provide that:

Section 12.	*No person shall be convicted of an offence in respect of an act or omission on his part while under the age of seven years.*
Section 13.	*No person shall be convicted of an offence in respect of an act or omission on his part while he was seven years of age or more, but under the age of fourteen years, unless he was competent to know the nature and consequences of his conduct and to appreciate that it was wrong.*

However, since no person under the age of 14 can be tried as an adult, Sections 12 and 13 cannot apply to anyone being tried in an adult court.

If the concept of violating a provision of the Criminal Code differs from the concept of being convicted for that violation in the legal as well as the everyday sense of these words, Sections 12 and 13 of the Criminal Code cannot be used in any way to modify the Juvenile Delinquents Act. In fact, it seems possible that these two sections cannot be made to apply to anyone being tried in any court in Canada, and that they should be struck from the Criminal Code. If they do apply to the Juvenile Delinquents Act, they clearly bring the doctrine of *mens rea* into the concept of delinquency, a doctrine that seems to be ignored in the juvenile courts of Canada.

The problems connected with the legal age of a juvenile delinquent do not end here. According to Sections 74 and 75 of the Child Welfare Act of Alberta:

Section 74. *Any child apparently or actually under the age of 12 years who contravenes any provision of the Criminal Code or any federal or provincial statute, or any by-law of any municipality shall be referred to the Director who may extend such services as he considers advisable and who may for the benefit and protection of the child cause the child to be apprehended under Part 2.*

Section 75. *No child apparently or actually under the age of 12 years shall be charged with being a juvenile delinquent without the consent of a judge.*

Finally, Section 9(1) of the Juvenile Delinquents Act skips from under 12 to over 14 to define the position of an older juvenile in relation to the courts:

Section 9(1) *Where the act complained of is, under the provisions of the Criminal Code or otherwise, an indictable offence, and the accused child is apparently or actually over the age of fourteen years, the court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the court is of the opinion that the good of the child and the interest of the community demand it.*

We do not intend to express an opinion as to whether these sections form a cohesive and legally consistent whole, but if they do not, they should be rewritten. If they do, certain consequences flow from their application. It would appear that the benevolent control of juvenile delinquency envisaged by the framers of the Juvenile Delinquents Act apply with certainty only to youngsters who are 12 or 13 years old. Above the age of 13, children can be subjected to the rigors of an adult court. Below the age of 12, a judge has the power to declare the child to be beyond the jurisdiction of the juvenile system of justice.

It is hypocrisy for a society to claim to have adopted a solicitous and forgiving philosophy to guide it in its treatment of its delinquent children, and then to subject 14 year old youngsters to the trauma of a public trial, a public conviction, an adult punishment, and imprisonment in an adult jail. Every one of these actions is contrary to the accepted philosophy of juvenile justice. We may question the integrity of a system that

for the good of the child makes a public spectacle of 14 year old Steven Truscott and has an adult court say to him:

> *You will be taken from this place to be held in custody until December 8th, 1959, at which time you will be hung by the neck until you are dead.*

We are of course aware that the judges of the juvenile court rarely use the powers given to them to waive their jurisdiction to an adult court, but this restraint is to the credit of the judges, not to the credit of our juvenile legislation. It is denigrating to the juvenile courts to have superior courts say, as some have, that the juvenile courts have neither the capability nor the competence to try children for serious or repetitive forms of criminal behavior. Such an attitude would restrict the role of the juvenile courts to the adjudication of cases on the level of the theft of a *two-penny pie.* An elaborate and costly system of juvenile justice cannot be justified if it is to deal only with trivial cases.

Another problem arises where very young offenders are concerned. In spite of Section 12 of the Criminal Code, which prohibits the conviction of a child under seven of an offence, the legislation does not seem to provide for the concept of an infant, a person so young that the law deems it impossible for such a child to commit any offence.

We also question the wisdom of giving the Director of Child Welfare and juvenile court judges unfettered discretion about the way an offending child under the age of 12 will be treated by the system of juvenile justice. Discretion of this kind is normally not dispersed but is reserved for the Attorney-General. With no legislative guidelines directing how this power over juveniles is to be exercised, it is doubtful whether children under the age of 12 are being treated in a uniform way throughout the system. No public check can be made because of the confidential nature of juvenile hearings.

Moreover, the definition of juvenile delinquency is so broad that it has often been described as covering everything from spitting on a sidewalk to murder. Every type of misbehavior committed by a juvenile is lumped under a blanket offence, and the offender is charged with being a juvenile delinquent. If we want children to learn the importance of the rule of law, and the way the law applies to them, we should logically be telling them that they are subject to any of 50,000 or more offences listed in the statutes and by-laws which the courts are empowered to enforce. There are, for example, almost 100 sections of the Criminal Code that deal with various aspects of theft, many of which become ludicrous when applied to children. Serious consideration should be given to the framing of one law to cover all aspects of juvenile theft.

Finally, Section 20(1) of the Juvenile Delinquents Act seems to give a juvenile court judge sweeping powers of disposition:

Section 20(1) *In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the circumstances of the case:*

(a) suspend final disposition;

(b) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;

(c) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;

(d) commit the child to the care or custody of a probation officer or of any other suitable person;

(e) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or to the probation officer as often as may be required;

(f) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;

(g) impose upon the delinquent such further or other conditions as may be deemed advisable;

(h) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the lieutenant governor in council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if there is one; or

(i) commit the child to an industrial school duly approved by the lieutenant governor in council.

However, these powers of disposition are seriously curtailed by Section 78(1) of the Child Welfare Act:

Section 78(1) *Where an order in made under section 20, sub-section (1), paragraph (h) or (i) of the Juvenile Delinquents Act (Canada) committing a child to a superintendent or to an industrial school, the child shall be deemed to be committed to the custody of the Director as a temporary ward of the Crown pursuant to section 24, subsection (1) as follows:*

(a) where the order is for a fixed period of time which does not exceed one year, the child shall be committed to the Director for the period of time specified in the order, or

(b) where the order is for an indefinite period of time, or for a period of time in excess of 12 months, the child shall be deemed to be committed to the Director for 12 months.

No matter how serious or repetitive the misbehavior, an Alberta juvenile court judge[1] cannot order a juvenile to be held in a closed secure facility for an extended length of time. Some juveniles commit new crimes before the ink on the order disposing of a previous conviction has properly dried.

In the course of this century, dissatisfaction with the regulation of juvenile behavior has led to the setting up of commissions, committees and boards to review the system of juvenile justice, and all have proposed legislative changes. On one occasion, Parliament got as far as the first reading of a Young Offenders Act, but vigorous opposition led to its withdrawal. A proposed new act, called *Young Persons in Conflict with the Law*, has circulated across Canada and has suffered a similar fate. Although another proposal, *The Young Offenders Act* (1977 version) has replaced the Young Persons in Conflict with the Law, it is too soon to measure the reaction to this latest proposal.

As far as we are aware, the last body appointed in Alberta with the sole purpose of investigating juvenile delinquency was a commission set up by Order-in-Council, dated September 27, 1966. Since the legislative regulation of juvenile delinquency rests, in the first instance, within the jurisdiction of the Federal Government, we conclude that any meaningful changes in the Juvenile Delinquents Act are years away.

[1]I am aware that the Provincial Government has amended the Child Welfare Act in order to give juvenile court judges the power to confine juveniles in closed secure facilities. Since there is a legal dispute about the ability of a provincial government to confer this power, I have not changed the comment given above.

THE ADMINISTRATION OF JUVENILE JUSTICE IN ALBERTA

Most juvenile delinquents in Alberta, as in California and elsewhere, come into contact with the system of juvenile justice through the police who exercise their discretionary powers as follows to release about 75% of them:

1. they warn the juvenile of the serious consequences of such behavior;
2. they return the child to his or her home and inform the parents of the behavior involved; and
3. they file a report[1] that ultimately reaches an appropriate social worker.

Where it is deemed advisable, the social worker writes to the parents indicating the nature of the social services available for help, and offering to help if the parents so desire.

The Board was informed by the Edmonton police that they may depart from the procedure outlined above if they find that the home of the juvenile is unfit, and that the child is suffering from neglect. They explained that sometimes the easiest way of removing a juvenile from an unsatisfactory home environment is to lay a charge of delinquency.

The 25% who are not released are charged by the police and appear before the juvenile courts. These charges laid directly by the police account for about 95% of all heard in the juvenile courts. In Calgary, there is, however, one additional step before a court hearing takes place. A screen committee, consisting of representatives of the police, the Attorney-General and social services, goes over all files, and decides which juveniles will go to trial and which will not. In spite of this screening process, the Calgary juvenile courts hear as many cases as are heard in Edmonton.

After being charged, the juvenile will normally be released to the custody of his or her parents, although a juvenile who cannot be identified, is a known runaway, or is charged with a serious offence may be held in a detention centre. An appropriate social worker will be notified of the charges laid, and will offer his or her services to the parents and the juvenile involved. The social worker then sets about gathering background information about the life of the juvenile.

The law requires that juveniles charged with delinquency be granted a hearing within four days of apprehension, and duty counsel is available for them in both Edmonton and Calgary.

[1]After a review of the report, the police may sometimes decide to lay a charge.

This policy is, however, too recent for its results to be assessed. Over 95% of the juveniles admit guilt, and no formal trial is held. The remainder are tried, and of these about 80% are convicted. Where there is no conviction, the charges are withdrawn, dismissed, or adjourned.

An idea of the numbers of juveniles involved can be gained from an application of these percentages to the population statistics for Alberta in 1973. There were in Alberta in 1973 about 400,000 persons of juvenile age. Of these, about 20,000 to 30,000 had some direct contact with the police, and 3,592 were convicted of delinquency. All told, in that year the courts registered 3,742 convictions. It is our estimate[1] that somewhere between 150 and 250 actual trials were held in the juvenile courts during 1973.

The following table sets out the nature of the offences that led to conviction for delinquency and the frequency of each offence.

TABLE 1
NATURE OF DELINQUENCIES
OF JUVENILE DELINQUENTS, ALBERTA, 1973
Source: Statistics Canada

No.	Nature of Delinquency	Total
	GRAND TOTAL	3,742
	CRIMINAL CODE	
1.	Assault causing bodily harm	34
2.	Assault on peace officer and obstructing	17
3.	Buggery or bestiality, gross indecency	1
4.	Causing bodily harm and danger, wounding with intent	7
5.	Common assault	66
6.	Criminal negligence, no bodily harm nor death	3
7.	Criminal negligence causing death	1
8.	Criminal negligence in operation of motor vehicle	27
9.	Indecent assault on female	10
10.	Indecent assault on male	3
11.	Murder	2
12.	Murder, attempt to commit	1
13.	Rape	1
14.	Other delinquencies against the person	9
15.	Armed robbery	1
16.	Breaking and entering	1,058

[1]These data are highly suspect. They do not agree with data we have obtained from other sources. They are used to illustrate whether a phenomenon is measured in tens, hundreds, thousands, and should not be interpreted in any other way.

17.	Extortion	7
18.	Robbery	17
19.	False pretences	10
20.	Fraud and corruption	16
21.	Having in possession	191
22.	Take motor vehicle without consent	44
23.	Theft	907
24.	Theft from mail	13
25.	Theft of automobile	176
26.	Theft of bicycle	52
27.	Arson and other fires	13
28.	Trespassing at night	1
29.	Other interference with property	108
30.	Forgery and uttering	21
31.	Offences relating to currency	1
32.	Attempt to commit and accessories	13
33.	Bawdy house, inmates	1
34.	Disorderly conduct	20
35.	Driving while impaired	5
36.	Driving while intoxicated	3
37.	Escape from lawful custody	2
38.	Failing to stop at scene of accident	2
39.	Offensive weapons	13
40.	Public mischief	4
41.	Various other offences	1
	Total	2,882
	FEDERAL STATUTES	
42.	Food and Drug Act	18
	Juvenile Delinquents Act:	
43.	Contributing to delinquency	1
44.	Immorality	23
45.	Incorrigibility	4
46.	Unsatisfactory probation	20
47.	Narcotic Control Act	117
48.	Railway Act	1
	Total	184
	PROVINCIAL STATUTES	
49.	Game and Fisheries Act	1
50.	Highway Traffic Act	227
	Liquor Control Act:	
51.	Intoxication	21
52.	Other	353
53.	Petty Trespass Act	2

54.	Truancy	18
55.	Other provincial statutes	38
	Total	660

MUNICIPAL BY-LAWS

56.	Traffic: Motor vehicle	3
57.	Other municipal by-laws	13
	Total	16

It is interesting to note that breaking and entering and theft of all kinds make up about 80% of the offences against the Criminal Code, that offences against municipal by-laws are few in number and probably trivial, and that about half the offences against federal and provincial statutes involve alcohol or drug abuse.

The number and variety of offences listed here show the need for courts to cope with juvenile crime, but not the need for special courts to try juvenile offenders. The need for such special courts does, however, become evident when the disposition process is examined.

A social worker will normally accompany a juvenile to a court hearing, but will take no part in that hearing. If the juvenile is convicted, the social worker will present to the judge a pre-sentence report containing a great deal of background information about the family, school, and community life of the juvenile. In most instances, the social worker will make a recommendation on the disposition designed to meet the needs of the juvenile. The judge may also require the juvenile to undergo psychiatric analysis before disposition is made. Armed with this kind of information, Alberta juvenile court judges made the following dispositions for the 3,742 juveniles who were convicted for delinquency in 1973.

ALBERTA — 1973

Source — Statistics Canada

Disposition	Total	Percentage
Reprimand	577	15.4
Indefinite detention	1	.0
Probation, court	1,859	49.7
Probation, parents	3	0.1
Fine or restitution	443	11.8
Training school	—	—
Mental hospital	1	.0
Suspended disposition	91	2.4
Suspended driver's license	3	0.1

Gaol	—	—
Penitentiary	1	0.0
Reformatory	—	—
No disposition	749	20.0
Absolute discharge	3	.1
Conditional discharge	—	—
Adult court	6	.2
Probation terminated	5	.1
Total	3,742	100.0

These statistics would be more valuable if the juveniles placed on probation by the court were not counted with those who are made temporary wards of the Director of Child Welfare. The following table of the corresponding statistics for Canada seems to give a better indication of the dispositions used by the juvenile courts.

ADJUDICATION AND DISPOSITION

Source — Statistics Canada

CANADA — 1973

Disposition	Total	Percentage
No action	224	1.4
Repatriated	37	0.2
Adult Court	93	0.6
Dismissed	584	3.5
Adjourned sine die	3,637	21.9
Reprimand	178	1.1
Indefinite detention	73	0.4
Probation, court	3,888	23.4
Probation, parents	876	5.3
Fine or restitution	3,886	23.4
Training school	389	2.3
Mental hospital	13	.1
Final disposition suspended	2,615	15.7
Absolute discharge	23	.2
Conditional discharge	62	.5
Probation terminated	1	.0
Total	16,579	100.00

The juvenile courts in Alberta, and elsewhere, show consummate patience waiting for a child to grow up. They will place an offending child on probation once, twice, three times or even more often, and will only, as a last resort, separate a family and an offending juvenile. The probation officers and social workers try and try again to improve the environment of the family, and to keep the family unit together.

It is abundantly clear that juvenile courts use the dispositions, adjournment sine die, reprimand, probation, fine or restitution, or disposition suspended, almost to the exclusion of all other forms of disposition. If the Canadian data are inclusive, only 402, a tiny fraction of the delinquents brought to the attention of the system of justice, are ordered confined in one type of institution or another. Admittedly, unless the classification of *Probation, court* includes juveniles placed into open type facilities, these data must be considered incomplete.

They do, however, provide ample justification for society to set up courts for juveniles separate and apart from the adult courts. In Canada, breaking and entering is a serious offence that renders an adult liable for life imprisonment. For the same offence, a juvenile can only be committed to an institution for a period of one year. It is too much to ask the same judge to sentence adult offenders to years in prison, and, in almost the same breath, to give juveniles a stern lecture and send them home. Unless society wants to incarcerate thousands of juveniles, the risk involved in having juvenile offences adjudicated in adult courts is too great to take.

Our simplistic overview of the juvenile justice system of Alberta does not claim that injustice never takes place in that system, nor does it adequately describe the heartbreak that the system is called upon to witness almost every day of every week. The overwhelming goodwill the people of the western world have for their children makes it certain that, no matter what the philosophy or legislation actually says, the de facto administration of any juvenile system of justice will produce per capita data little different from what has been produced thus far.

The proposed new Act called *Young People in Conflict with the Law*, which has now been withdrawn, pinned its faith on what it calls *diversion*, a scheme for diverting part of the stream of juvenile delinquents from the courts to the jurisdiction of a board consisting of a mixture of professionals and non-professionals. This concept is, of course, not new. In the 19th century, Benjamin Waugh called for diversion from the courts for the same reasons as are being given today. Moreover, diversion is not an experimental technique. Its results have been assessed over a long period of time.

Although the philosophy behind diversion permeated the western world, Europe, particularly the Scandanavian countries, adopted a system of juvenile justice that was different from the system adopted in the United States and Canada. At the beginning of the 20th century, the United States and Canada established new courts to administer juvenile justice apart from the adult courts. These new courts were called upon to adjudicate upon a single all-embracing form of misbehavior called *juvenile delinquency*. Many European countries followed a different course. In Sweden, for example, no such crime was introduced, and, indeed, in that country, juveniles can only be brought before an adjudicative tribunal by means of neglect proceedings. Further, the competent authority is the Child Welfare Board, a group that is composed of a mixture of professionals and non-professionals. Sweden has in fact long had the essence of the diversionary system being proposed in *Young People in Conflict with the Law*[1].

However, if we look at the de facto results of the Swedish system, the treatment of Swedish children and their parents does not differ significantly from the corresponding treatment in the United States and Canada. The Child Welfare Board warns both children and their parents, and in these cases no other action is taken. It also issues a large number of probation orders, and only a small number of children are ever separated from their parents.

Although I reject the claim that a diversionary system of juvenile justice would produce revolutionary changes for the better, I also reject the claim that the result of the introduction of such a system would be disastrous. In fact, I believe that little different would happen to the juveniles subjected to one system or the other. There are, however, important reasons why Canada should retain a court-oriented form of administering juvenile justice.

Those who administer juvenile justice in Canada must contend with a philosophy that is not possible to practise and with laws that may be inconsistent or obsolete. Changes are needed, and will be recommended. Yet it is still our considered judgment that the present system accomplishes most of the things a good system of juvenile justice can be expected to accomplish. These results are now obtained because of the obvious dedication and competence of the many people who work in the various agencies involved in the system of juvenile justice.

---

[1]The diversionary system remains a part of the new proposal, *The Young Offenders Act* (1977 version).

THE ATTACK ON THE JUVENILE COURTS OF THE UNITED STATES

For the past five years, major debates have been taking place in the United States about the place of juvenile courts in a system of justice, and indeed about whether or not such courts need to exist or should exist. Some recurring themes in these debates include:

1. the place of adult due process in juvenile courts;
2. the justification for legislating certain forms of behavior to be illegal for juveniles but legal for adults, the so-called *status offences;*
3. the effectiveness of rehabilitation programs for juveniles; and
4. the philosophy of a juvenile justice system.

For the first 60 years of this century few, if any, cases involving juveniles were appealed to the Supreme Courts of the United States and Canada. Although the lower courts of these two countries had tried millions of cases, and had heard appeals from some of them, the punishments involved were too mild to make it worthwhile to appeal to the ultimate court of either country. By 1970, however, there had appeared in the Supreme Court of the United States several cases appealing extremely harsh punishments imposed and upheld by the lower courts. The judgments of the Supreme Court, and the comments accompanying those judgments, have focused attention on some of the issues mentioned above. Since these judgments have important implications for Canada, we shall discuss in detail the issues involved in three cases which have received considerable publicity and comment.

The first case was tried in the District of Columbia, where a juvenile is defined as a person under the age of 18, but the Juvenile Court Act contains the following waiver of jurisdiction clause:

> *If a child of sixteen years of age or older is charged with an offence which would amount to a felony in the case of an adult, or any child charged with an offence which if committed by an adult is punishable by death or life imprisonment, the judge may, after full investigation, waive jurisdiction and order such child held for trial under the regular procedure of the court which would have jurisdiction of such offence if committed by an adult: or such other court may exercise the powers conferred upon the juvenile court in this subchapter in conducting and disposing of such cases.*

A 16 year old boy by the name of Kent was brought before a juvenile court on two charges of rape and six of housebreaking and robbery. After receiving a report that the boy was suffering from severe psychiatric disorders, his lawyer made an application asking that the juvenile court retain jurisdiction and that the boy receive treatment in a hospital.

The juvenile court judge ordered a waiver of the jurisdiction of the juvenile court, requiring Kent to stand trial in an adult court. Other than saying the order was made after a full investigation, the judge gave no reasons for his decision. No actual waiver hearing was held, and the judge did not consult with the boy, the parents of the boy, or the legal representative of the boy. An appeal against the order failed in a District Court, because that Court would not question the integrity of the judge as to whether the required full investigation had or had not been made.

Kent was then tried in an adult court. There is no question that in that court he received full due process which included a jury trial and legal representation. The jury acquitted him on the two charges of rape, by reason of insanity. The same jury, however, convicted him on the remaining six charges, and he was sentenced to serve five to 15 years in jail on each count, the sentences to be served consecutively. It was ordered that he be confined in a mental institution until he was certified sane, and that he then be imprisoned for a period of time somewhere between 30 and 90 years.

Although a verdict mixing findings of insanity and guilt may seem strange, that is not the issue to which we direct attention. In our opinion, the central issue should have been the harshness of the punishment that was imposed.

The decision of the District Court was upheld by the United States Court of Appeals for the District of Columbia, and an ultimate appeal was made to the Supreme Court of the United States. Since this was the first challenge in this century against a decision of a juvenile court to reach the Supreme Court of the United States, it would have been of great value if that Court had chosen to address itself to the many issues brought to light by the Kent case. But it did not so choose. It chose instead to limit itself to an examination of the validity of the procedures used to issue the waiver order, refusing even to consider the substantive validity of that order, and making no comment on what would be the proper use of the waiver procedure in a modern system of juvenile justice. Indeed, in spite of the eloquent words of the majority judgment written by Justice Fortas, the actual finding

was simply that the order waiving the jurisdiction of the juvenile court should be struck down on the following technical grounds:

(a) the waiver hearing requested by Kent was not held;

(b) access to certain records was denied to Kent's counsel;

(c) the order contained no reasons for waiving jurisdiction.

Kent rightly won, but for society, it was a pyrrhic victory at best. Although the Court clearly stated that due process in a juvenile court need not correspond identically with due process in an adult court, it passed over the larger issue of precisely what procedures a juvenile court should follow with the following essentially meaningless statement:

> *It assumes procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness as well as compliance with the statutory requirement of a 'full investigation'.*

How does this Supreme Court statement square with the following statement of the New York Court of Appeals?

> *In such a court, the accoutrements of due process evolved from the 18th century experience with the rigors of common-law prosecutions – public trial, shields against self-incrimination, adversary inquiry into the single event which brought the child to court – seem irrelevant.*

The words *due process* and *fair hearing* have only that meaning which is ascribed to them by the law. If that meaning, as it applies to the juvenile court, is not the same as that defined for an adult court, the time is overdue for the law to spell out the rules of procedure a juvenile court must follow.

It is probably true that the Kent case would never have reached the Supreme Court if it had not been for the extremely harsh sentence that was imposed. Since the legality of the sentence could not be attacked, the only defence open was an attack against the procedures that were used. From a Canadian point of view, the Kent case suggests that Canadian answers are needed to the following questions:

1. What meaning should be attached to the concept of due process in a juvenile court?
2. In view of the harshness of the sentences that can be imposed by an adult court, should a juvenile, under any circumstances, be tried in an adult court?
3. If the answer to question 2 is yes, under what specific circumstances should a juvenile court judge waive the jurisdiction of the juvenile court?

Current Canadian legislation does not provide sufficient answers to any of these questions.

In the second case, a juvenile by the name of Gerald Gault was ordered confined in a state institution for a period of six years for making an obscene telephone call. The facts, as recorded in *Supreme Court Decisions and Juvenile Justice* by Noah Weinstein, are as follows:

> *. . . a petition was filed on the date of the hearing, but was not served on or shown to the boy or his parents. The petition stated only that the boy was a delinquent minor and made no reference to the factual basis for the judicial action; the complainant was not present at the hearing and no one was sworn; the juvenile officer stated that the boy admitted making the lewd remarks after questioning out of the presence of the juvenile's parents without counsel and without being advised of his right to silence: neither boy nor his parents were advised of the boy's right to silence, or of the boy's right to be represented by counsel and of the right to appointed counsel if they could not afford a lawyer.*

The Supreme Court of the United States held that Gerald Gault had been denied due process of the law because that process includes:

(1) Written notice of the specific or factual allegations, given to the child and his parents or guardian sufficiently in advance of the hearing to permit preparation.

(2) Notification to the child and his parents of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.

(3) Application of the constitutional privilege against self-incrimination; and,

(4) Absent a valid confession, a determination of delinquency and an order of commitment based only on sworn testimony subjected to the opportunity for cross-examination in accordance with constitutional requirements.

The third case, that of Samuel Winship, follows the same pattern. An extremely harsh punishment is followed by an attack on the procedures used to impose that punishment. Twelve year old Samuel Winship was accused of stealing $112 from a woman's purse. In finding the boy delinquent, the juvenile court judge stated that guilt had been established by the principle of *preponderance of evidence*, and that *proof beyond reasonable doubt* was not required. He then sentenced the boy to

confinement in a state institution for six years. On appeal, the Supreme Court of the United States ruled that:

> ... *juveniles, like adults, were constitutionally entitled to proof beyond a reasonable doubt during the adjudicatory stage when the juvenile was charged with an act which would constitute a crime if committed by an adult.*

With these precedents, the practices of denying jury trial to juveniles and of holding in-camera trials for juveniles are coming under constitutional attack. Slowly but surely, these cases are wringing from the Supreme Court the conclusion that due process in a juvenile court is identical with due process in an adult court. Slowly but surely, the Supreme Court is forcing the juvenile courts of the United States into the pattern of the criminal courts, and the separate existence of the juvenile courts is now under severe attack. It is apparent that Canadian answers are needed to the following questions:

1. Although charges in the juvenile courts are based on specific offences, the actual charge remains a blanket one, namely juvenile delinquency. Should the blanket charge be replaced by specific charges?
2. Is there a purpose to be attained by keeping young offenders confined in public institutions for long periods of time, and is that purpose being attained?
3. Is there necessarily any relationship between the treatments of juvenile and adult offenders when the offence is the same?

We seem to be so afraid to speak about the criminal behavior of juveniles that the words *an act which would constitute a crime if committed by an adult* appear over and over again in the literature of the law. It is time to spell out the offences with which juveniles may be charged, and to rely no longer on vague and implicit references to adult law.

The Supreme Court of the United States has chosen to ignore such major issues as those raised above, and has concerned itself with the appearance of justice being done rather than with a determination of whether justice is actually being done. Of this, the Kent case provides a perfect example.

These actions of the Supreme Court have evoked thoughtful reactions that should be taken into account in the development of a new philosophy of juvenile justice. Representative of those critical of the actions of the Supreme Court is Mr. Justice Harlan:

> ... *The Court has, even under its own premises asked the wrong questions: the problem here is to determine what forms*

of procedural protection are necessary to guarantee the fundamental fairness of juvenile proceedings, and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts.

These are restrictions intended to conform to the demands of an intensely adversary system of criminal justice; the broad purposes which they represent might be served in juvenile courts with equal effectiveness by procedural devices more consistent with the premises of proceedings in those courts. As the Court apparently acknowledges, the hazards of self-accusation, for example, might be avoided in juvenile proceedings without the imposition of all of the requirements and limitations which surround the privilege against self-incrimination. The guarantee of adequate notice, counsel, and a record would create conditions in which suitable alternative procedures could be devised; but, unfortunately, the Court's haste to impose restrictions taken intact from criminal procedure may well seriously hamper the development of such alternatives. Surely this illustrates that prudence and the principles of the Fourteenth Amendment alike require that the Court should now impose no more procedural restrictions than are imperative to assure fundamental fairness, and that the States should instead be permitted additional opportunities to develop without unnecessary hindrance their systems of juvenile courts.

These are thoughtful words indeed, and indicate the direction Canada and its provinces should go. The Juvenile Delinquents Act should include rules of procedure that constitute a minimal guarantee of fundamental fairness in all juvenile courts in Canada. Although the rules of procedure of adult courts are not irrelevant here, it does not follow that they should be applied directly in whole or in part in a juvenile setting. Federal legislation should provide minimal guarantees, but the provinces should be free to develop juvenile courts to meet their specific needs. The imposition of a valid Quebec procedure on Alberta courts could, for example, result in a miscarriage of justice rather than act as a guard against it.

In a dissenting opinion in the third case presented above, that of Samuel Winship, sentenced to six years for theft from a purse, Chief Justice Burger wrote:

The Court's opinion today rests entirely on the assumption that all juvenile proceedings are 'criminal prosecutions,' hence subject to constitutional limitations. This derives from earlier holdings, which like today's holding, were steps eroding the differences between juvenile courts and traditional criminal courts . . . . What the juvenile court systems

need is not more but less of the trappings of legal procedure and judicial formalism; the juvenile system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court. Much of the judicial attitude manifested by the Court's opinion today and earlier holdings in this field is really a protest against inadequate juvenile court staffs and facilities; we 'burn down the stable to get rid of the mice.'

My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigors and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile court era. I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts, which is what we are well on the way to accomplishing.

These ominous words of the Chief Justice are worth heeding. The juvenile courts of the United States are now in danger of being abolished because of attacks begun by the Supreme Court and carried on by other individuals and agencies. As the Chief Justice indicates, *much of this judicial attitude* has really been *a protest against inadequate juvenile court staffs and facilities.* The protest is, of course, directed to the so-called *attendant institutions.* But, however inadequate these *attendant institutions* may be, they are not the courts. The courts should be judged on their own strengths and weaknesses. It should be said at this point that in Alberta the attendant institutions are, by any reasonable measure, a success.

THE SO-CALLED CAUSES OF, AND CURES FOR, DELINQUENCY

So much has been written in attempts to explain why people act as they do, and to propose mechanisms by which society can persuade its citizens to conform to general standards of behavior, that it would seem that the solution should have been found long ago. But, as one moves from one to another of the theories related to human behavior and its control, the best that can be said of them is that many probably contain some truth, but that none gives a cohesive theory of how to predict or control human behavior.

Yet in spite of all of the variations from theory to theory, two broad themes persist. The first asserts that people are the product of the environment in which they live, and that their behavior can be predicted from a knowledge of their interaction with the environment. The second asserts that people are born with the characteristics which determine their behavior, and that their behavior can be predicted once those biological factors are understood.

By far the oldest of the environmental theories assumes that poverty is the root of all evil, and that evil disappears if poverty ceases to exist. This assumption is a fundamental tenet of Marxism, an assumption that capitalism has built-in evils which will disappear with a proper distribution of wealth. Representatives of communistic countries proudly proclaim that their countries have no crime. Privately, however, these same representatives will admit that their countries suffer from the same problems, both in degree and kind, that exist in all other countries.

Earlier societies carried the poverty-crime theory to an extreme, equating the pauper class and the criminal class. Modern expressions of this theory are less extreme but equally suspect. For example, the Atlanta Commission on Crime and Juvenile Delinquency (1966) concludes that:

> *It is inescapable that juvenile delinquency is directly related to conditions bred by poverty. If the Fulton County census tracts were divided into five groups on the basis of the economic and educational status of their residents, we would find that 57% of Fulton County's juvenile delinquents during 1964 were residents of the lowest group which consists of the principal poverty areas of the City of Atlanta. Only 24% of the residents of the county lived within these tracts.*

They support their conclusion by reference to an assertion by Wheeler and Cottrell:

There are, in fact, real differences leading to more frequent assaults, thefts, and breaking and entering offences in lower socioeconomic areas of our urban centers.

Such statements ignore the inherent weaknesses in statistical analyses of this kind. Workers in the field know that crime statistics are unreliable, and that conclusions based on them should be considered suspect. Nevertheless, some social workers claim that the unrealiability of the statistics alone is not enough to invalidate the differences they reveal.

The particular index (or percentage) used to measure criminal behavior is often chosen for its dramatic value, but rarely will it yield an accurate picture of the problem to be solved. Although we have not attempted to obtain population statistics for Fulton County, our knowledge of other regions makes us reasonably certain that the same phenomena could have been described by numbers of the following magnitude. It might have been claimed that 2% of the juveniles living in lower socioeconomic areas of Atlanta became delinquent in 1964 while the juvenile population living in other areas produced a 1% rate. If, in fact, the only issue is the reduction of juvenile delinquency, the latter indices make it evident that a society should not spend millions of dollars to reduce the 2% rate to 1% without reasonable assurance that the expenditure can accomplish the desired result, and whether, in fact, the expenditure is worthwhile. Simplistic analyses of this type leave unexplained the high rates of juvenile delinquency found among higher socioeconomic groups.

A report by the President's Commission on Law Enforcement and Administration of Justice, 1967, called *The Challenge of Crime in a Free Society* is among the most comprehensive documents that assume a causal relationship between environment and crime. On the basis of the most elementary analyses, the President's Commission makes sweeping recommendations like the following:

Reduce unemployment and devise methods of providing minimum family income.

Reexamine and revise welfare regulations so that they contribute to keeping the family together.

Improve housing and recreation facilities.

Insure availability of family planning assistance.

Provide help in problems of domestic management and child care.

Make counselling and therapy easily obtainable.

Develop activities that involve the whole family together.

Involve young people in communitiy activities.

Train and employ youth as subprofessional aides.

Establish Youth Services Bureaus to provide and coordinate programs for young people.

Increase involvement of religious institutions, private social agencies, fraternal groups, and other community organizations in youth programs.

Provide community residential centers.

Combat racial and economic school segregation.

These are by no means all of the recommendations of that Commission. They do illustrate, however, the sweeping nature of these recommendations which, if implemented in the United States, would cost that country hundreds of billions of dollars, and which, if implemented in Alberta, would cost this province hundreds of millions of dollars. Although they may well be social policies governments should adopt, the Commission offers no proof, and indeed cannot offer any proof, that the adoption of these policies would in any significant way affect the rates of juvenile delinquency. Although life might become better, these rates might even increase.

Many of these recommendations, such as the reduction of poverty, are good in themselves, but they should not be coupled with claims that they will change or control the behavior of young people. The reduction of poverty is, for example, a policy that Canadians should willingly adopt, without demanding that the success of that policy be measured by the future behavior or misbehavior of our children. It was a myth to believe that the miracles promised by the reform movement of the 19th century would actually be realized in the present century. It would, in our opinion, be the substitution of one myth for another to believe that the programs recommended by the President's Commission would necessarily lead to reduction in the rates of criminal behavior.

It is, for example, a dubious claim that welfare regulations can somehow be used to keep the family together. The break-up of the family unit is not a phenomenon peculiar to welfare recipients. Indeed, there is some reason to believe that more families would break up if they could afford to do so. Even if welfare regulations could keep more families together, this would not be proof that keeping welfare parents together would somehow reduce juvenile delinquency.

All of these sweeping recommendations are based on a false stereotype of the supposed characteristics of the typical juvenile delinquent. So many of us have such false stereotypes in our minds that it is worthwhile to reproduce in full the picture of the typical juvenile delinquent as envisaged by the President's Commission:

A sketch drawn from the limited information available shows that disproportionately the delinquent is a child of the slums, from a neighborhood that is low on the socioeconomic scale of the community and harsh in many ways for those who live there. He is 15 or 16 years old (younger than his counterpart of a few years ago), one of numerous children – perhaps representing several different fathers – who live with their mother in a home that the sociologists call female-centered. It may be broken; it may never have had a resident father; it may have a nominal male head who is often drunk or in jail or in and out of the house (welfare regulations prohibiting payment where there is a 'man in the house' may militate aganist his continuous presence). He may never have known a grownup man well enough to identify with or imagine emulating him. From the adults and older children in charge of him he has had leniency, sternness, affection, perhaps indifference, in erratic and unpredictable succession. All his life he has had considerable independence, and by now his mother has little control over his comings and goings, little way of knowing what he is up to until a policeman brings him home or a summons from court comes in the mail.

He may well have dropped out of school. He is probably unemployed, and has little to offer an employer. The offenses he and his friends commit are much more frequently thefts than crimes of personal violence, and they rarely commit them alone. Indeed, they rarely do anything alone, preferring to congregate and operate in a group, staking out their own 'turf' – a special street corner or candy store or poolroom – and adopting their own flamboyant title and distinctive hair style or way of dressing or talking or walking, to signal their membership in the group and show that they are 'tough' and not to be meddled with. Their clear belligerence toward authority does indeed earn them the fearful deference of both adult and child, as well as the watchful suspicion of the neighborhood policeman. Although the common conception of the gang member is of a teenager, in fact the lower class juvenile begins his gang career much earlier, and usually in search not of coconspirators in crime but of companionship. But it is all too easy for them to drift into minor and then major violations of the law.

This is pure and dangerous fantasy. It wraps up into one package almost every misconception anyone has ever had about the type of person a juvenile delinquent really is. In order to bring out the nature of this fantasy, we list here most of the characteristics that are commonly supposed to mark a juvenile delinquent. A juvenile delinquent is commonly supposed to:

1. live in the slums;
2. be 15 or 16 years old;
3. be a member of a large family;
4. belong to a family with no father, or whose father is a drunkard or a criminal;
5. receive almost no parental control;
6. be a school drop-out;
7. be unemployed;
8. engage in theft rather than violence;
9. belong to a gang;
10. have a distinctive hair styling and a distinctive way of life;
11. show hostility toward authority of any kind.

The Commission does not seem to realize that less than 1/10 of 1% of the juvenile population would exhibit all of these characteristics. Our statistics indicate, for example, that 65% of juvenile delinquents are still in school, and that only about 0.8% are unemployed. Similarly, over 80% of juvenile delinquents are raised by, and live with, both parents.

It is close to the truth to say that the totality of characteristics listed in the Commission's stereotype belong to no one, and remedies based on these characteristics will, therefore, apply to no one. Society will be coerced into spending millions of dollars on programs that will once again show no return. Even considered individually, these particular characteristics have a severely restricted application to the population of juvenile delinquents.

To illustrate this fantasy further, let us consider the behavior of young people who currently attend universities. In that population there is a marked over-representation of people who come from middle and upper income homes. They certainly have not dropped out of school, and they are several years older than the ages mentioned for the typical juvenile delinquent. Indeed, almost every characteristic the Commission includes in its stereotype is absent in the university population. Most of the desirable characteristics the Commission would like to produce are already present in that population. With such desirable characteristics, how does that population behave?

Although cheating has always existed in universities, modern cheating has now taken a virulent form. Only about one out of 10 applicants gain entrance into professional faculties like law and medicine. Competition for places in those faculties involves not only the working for high marks, but sabotage. Some students now deliberately destroy the laboratory experiments of classmates, or steal important reference material from the library, or give false information to classmates, in an attempt to lower the grades of those with whom they are competing. When one student robs another of a career in medicine or law, not the stealing of a *two-penny pie* but grand larceny is involved. The reward for such larceny may be a life-time career in a top-paid profession. This new form of cheating is taking place not among the weaker students but among the best students, among the upper 10% of achievers in the university, whose histories do not exhibit the characteristics so widely accepted as the cause of deviant behavior. Education does not necessarily make for better people. What it attempts to do is ensure that society has a supply of educated people. Just as society is at a loss to know how to cope generally with juvenile delinquency, universities are unable to cope with this growing form of delinquency among superior students.

During the past 25 years, West Point has had 11 major cheating scandals that involved, each time, a substantial number of its student population. In spite of the rigid discipline of West Point and the claimed deterrent value of harsh punishment, in this case mandatory expulsion, examinations have not only been stolen but sometimes sold.

It is not our purpose to judge harshly the behavior of young people who are no better and no worse than their parents were at their age. Our purpose is to expose the mythology that still clings to our beliefs about human behavior.

The overrepresentation of the poverty-stricken class among juvenile delinquents has led over and over again to the unfounded conclusion that a reduction in the rate of delinquency would follow from a reduction in the rate of poverty. But the depression-ridden 1930's were not accompanied by an increase in delinquency, and the rising rate of affluence of the western world since that time has been accompanied by a rising rate of delinquency.

From 1945 to 1975, the birth rate in the United States decreased by 50%, family real income increased about 100%, educational attainment increased significantly, but with all that, serious crime per 100,000 persons still increased by over 200%. These statistics contradict the claim that poverty, large

families, and low educational levels are necessarily linked with crime. Simplistic causes and simple cures for juvenile delinquency are myths.

The classic of all biological theories claiming to explain criminal behavior is the *born criminal* theory of Cesare Lombrosa. Lombroso thought that criminals could be identified by physical characteristics, particularly those of the skull:

> *This was not merely an idea, but a revelation. At the sight of that skull, I seemed to see all of a sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal – an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. Thus were explained anatomically the enormous jaws, high cheek-bones, prominent superciliary arches, solitary lines in the palms, extreme size of the orbits, handle-shaped or sessile ears found in criminals, savages, and apes, insensibility to pain, extremely acute sight, tattooing, excessive idleness, love of orgies, and the irresistible craving for evil for its own sake, the desire not only to extinguish life in the victim, but to mutilate the corpse, tear its flesh, and drink its blood.*

Although history has dealt Lombroso's *born criminal* theory the fate it deserved, its lesson seems not to have been learned. We still insist on inventing stereotypes of the delinquent which have no more claim to validity than Lombroso's stereotype has. With its limited knowledge of the causes of delinquency, society might well avoid dependence on stereotypes.

Although Lombroso's primitive theory was soon discredited, his central theme of the *born criminal* persists in modern biological theories of human behavior. Physical characteristics have been used to classify people as being endomorphs, mesomorphs, or ectomorphs. Mesomorphs are claimed to have a strong impulse to do whatever they want to do, and to have little ability to recognize the consequences their actions may have for others, to be in effect the Lombrosian born criminals, even though different physical characteristics are involved. More recently, we have witnessed the birth of the short-lived chromosome theory of criminal behavior.

In its extreme form, the biological theory of human behavior postulates that inborn characteristics determine lifelong behavior. The logical extension of this determinist theory is the selective breeding of human beings. Whether or not this theory has validity, it must be dismissed as obviously impossible to implement in the world as we know it.

In contrast with the environmental emphasis of the President's Committee in the United States, and the deterministic philosophy of the *Lombrosian school,* Scotland recently adopted a new system of juvenile justice based on individual differences. The Kilbrandon Committee rejected the environmental theory that juvenile delinquency is the product of social and economic conditions, and adopted a modification of the biological theory that insists that deviant behavior results from a maladjustment in, and malfunction of, the personality of the individual involved. It claims that a child's problem is individualized, and can only be solved by the use of persuasion. It assumes that any system of rehabilitation would fail if the treatment could not be altered from time to time to meet the needs of the child. The Committee argued that a court would not be flexible enough for this type of rehabilitation:

> *A doctor treating even a comparatively well-understood disease could not operate in this way. The doctor prescribes a course of treatment and observes the patient's response to it over a period. On the basis of his observations, he continues the treatment or prescribes a different course, more drastic or less, as the situation appears to him to require. But he does not continue a course of treatment where, as a result of his observations, he is satisfied that it is doing no good or that it has served its purpose and its continuation is either unnecessary or positively harmful.*

Accepting the stereotype of the juvenile delinquent as a maladjusted and malfunctioning person, Scotland has removed the function of disposition from its juvenile courts, and made a major commitment to individualized social casework.

The Kilbrandon Committee in Scotland and the American President's Commission on Law Enforcement based their recommendations on two completely different and antithetical assumptions. The two resulting systems of justice bear no resemblance to one another.

If the President's Commission is right when it says that delinquency is *a pattern of behavior produced by societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist,* it follows that the problem is of such magnitude that no system of juvenile justice could cope with it. It is accordingly unfortunate that the Commission can offer no compelling evidence that its proposed solutions will contribute to the prevention of juvenile delinquency.

On the other hand, the Kilbrandon Committee is inconsistent when it insists that maladjustment and malfunctioning are

the causes of delinquency, and then gives a lay committee of volunteers binding power to curtail the freedom of a juvenile, and to prescribe the form of therapeutic treatment the child must undergo. If delinquency is to be envisaged as a maladjustment in, and malfunction of, the personality, then surely diagnosis and treatment should be entrusted to professionals, not lay volunteers.

It is unfortunate that both the President's Commission and the Kilbrandon Committee based their recommendations on particular stereotypes of a juvenile delinquent and particular forms of a behavioral theory. There is no known behavioral theory precise enough to distinguish, on an a priori basis, those children who will become delinquent from those who will not. Environmental theories lack this precision because by no means do all children living in an unfavorable environment become delinquent, nor does a favorable environment produce only non-delinquents. Biological theories have an analogous weakness. None of these theories is deterministic in nature, and all of them deal only with probabilities. Although it may be possible to predict with accuracy that 50% of the children living in a certain slum district will become delinquent, it is not possible to predict with any accuracy which children living in that slum will become delinquents and which will not. Further, these theories cannot prove that the elimination of slum conditions will have any effect on the rate of juvenile delinquency.

The same difficulties attend all theories of rehabilitation, depending as they do on modifying the behavior of youngsters who have come from certain environments or who possess certain biological characteristics. It is impossible, in our opinion, to justify the unholy marriage between the administration of justice and the pseudo-scientific behavioral theories that exist today.

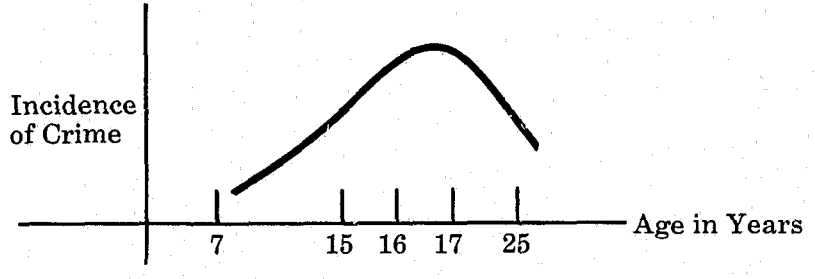
It is important, therefore, that the public be aware of the things behavioral theories can and cannot do. In this century, much excellent research has been done in this field. Some of it is constructive, some of it is frightening, and some of it is inconclusive.

It is frightening to learn that the same rehabilitative programs will help some children and harm others, with no way of distinguishing, before the fact, which children will be helped and which will be harmed. This knowledge should at least alert us to the necessity of tempering our desire to do things for children by a measurement of what is actually being done to those children.

It is disappointing to learn that some community-based programs, designed to prevent delinquency, yield inconclusive results. Although such programs may normally cause no harm, they seldom seem to improve the situation. At least the inconclusive nature of the results of these experiments should serve to make a society wary about spending millions of dollars on a prevention program without substantial evidence that it will actually achieve its goal.

The physical sciences have had great success in determining cause-effect relations that allow physical theory to be used to predict the behavior of almost all the macroscopic phenomena of the universe. It is not the fault of the social and medical sciences that such cause-effect relations have yet to be discovered in these fields. Indeed, it is even possible that such relations do not exist and that single causes may yield many different effects. Under these circumstances, the best a theory could ever do would be to give the probability to be attached to a particular effect when the single cause is known. There exists a great need for fundamental research to be done in the social and medical sciences, and society must wait for the future to bring major discoveries in these fields. In spite of this seemingly pessimistic appraisal, there is a little bit of evidence that might allow us to design a system of juvenile justice in which we might have some confidence.

There is some evidence which makes it reasonable to believe that the incidence of criminal behavior varies with age according to the graph below:



According to this pattern, the incidence of crime increases steadily with age until a peak is reached, after which both interest and participation in crime steadily decline. It would therefore appear that a wise society will view its juvenile justice system as a holding operation which will allow maturation to solve a problem for which no other solution is known.

The pattern of behavior mentioned above seems to hold in every country in the western world. Strangely enough, the age of maximum criminal behavior seems to be intimately connected with the age at which a child can legally leave the school system. The peak year seems to occur in Great Britain between the ages of 13 and 15, in Canada between the ages of 15 and 17, and in the United States between the ages of 16 and 18. These data point out the need to seriously rethink the age at which children may legally leave the school system.

In spite of these data which seem to indicate a strategy of waiting for children to grow up, no society that cherishes democratic principles should ever condone the violation of its laws, no matter whether the offender is young or old. It is a real challenge to juvenile legislation to preserve the belief in the rule of law, and at the same time to incorporate legally the strategy of waiting for children to grow up before the state intervenes seriously in their lives. Present legislation does not meet this challenge.

No society should view without concern the massive loss of property caused by theft and vandalism. But policies based on rhetoric or mythology will not solve a vexing problem that has been with us for thousands of years. There is still much to be learned about human behavior, and much research will be necessary to produce the knowledge that we do not yet have. And even should we attain that knowledge, there is no certainty that an acceptable solution to the problem of juvenile delinquency will necessarily follow.

THE ATTENDANT INSTITUTIONS

In addition to the juvenile courts, the attendant institutions of a juvenile justice system are now under severe attack. It is important to assess the validity of this attack.

Periodically, anecdotal incidents involving inmates, or former inmates, of penal institutions give rise to a public outcry for change in these institutions, change that has two quite different aspects.

Many of us fail to see the need to cage people like animals, and almost all of us will object to the use of brutal forms of punishment that one would not normally inflict on any animal, let alone upon a human being. When stories of brutality circulate among the members of the public, the reaction is instinctual and swift. The worst is assumed, and the public demands that penal institutions become decent places in which to live, and that inmates be treated with the dignity that one human being should accord another.

The institutions that attend the juvenile courts are not immune to this type of reaction. As mentioned earlier, a sociologist, speaking of anecdotal incidents involving suicide and insanity, publicily stated that juvenile delinquents would be better off as children of the streets than they would be in any institution on this continent that is being used to confine children. Although this statement is certainly false for many institutions, some governments have listened to sweeping statements of this kind, and have closed institutions used to house juvenile delinquents.

When a former inmate of a penal institution returns to society and commits a particularly brutal crime, public reaction is equally swift, but takes a different form. In this instance, the demand for change involves a change in the inmates who are being released from those institutions. Almost always, there will be a sweeping claim that the programs of rehabilitation are failures, and that they are returning to society people whose anti-social attitude has not been changed. It was in this vein that Justice A. Fortas wrote, in connection with the Kent case:

> *There is evidence, in fact there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.*

Although these are clever words, it would have been better if they had never been written. Similar specious but unjust attacks have been made over and over again on the system of juvenile justice and the work of the attendant institutions.

It is sheer nonsense to claim that juveniles suffer when a comparison is made between their treatment by the juvenile justice system and the corresponding treatment their older brothers and sisters receive from the adult system. The handful of cases that have reached the Supreme Court of the United States are hardly typical of the millions of juvenile delinquents who have received compassionate treatment from the juvenile courts, and who have been protected from the harsh punishments adults receive for similar forms of behavior.

Almost all research projects use the rate of recidivism to measure the success or failure of programs of rehabilitation. If ultimate success means the inmate must live the remainder of his or her life completely free of criminal behavior, a standard of behavior is expected of delinquents that few people, if any, achieve. We are reminded of the words[1] of Montaigne, who wrote in 1588:

> *No man is so exquisitely honest or upright in living but brings all his actions and thoughts within compasse and danger of the lawes, and that ten times in his life might not be lawfully hanged.*

In the 400 years since those words were written, the laws governing capital punishment have drastically changed. Realizing that the nature of criminal behavior was unlikely to change, society deemed it prudent to change the laws governing that behavior.

The rate of recidivism cannot of itself serve as a measure of the success or failure of a penal program. The questions now arise, if a rehabilitation program raises the educational levels of achievement of inmates, should that necessarily be considered a measure of success of the program? Or again, if a rehabilitation program teaches a violent offender to live in harmony with a prison environment, should that be a measure of success of the program? We believe that a rehabilitation program will never be deemed to be a success until attainable goals are carefully defined for the program. It will take several indices to measure the achievement of such goals.

In an excellent review of research on rehabilitation programs[2], Robert Martinson reports on the results of a wide range of programs involving:

1. educational and vocational training;
2. individual counseling;
3. group counseling;

[1] This is, of course, an early translation of the words Montaigne wrote.

[2] Robert Martinson — *What works? — questions and answers about prison reform* — The Public Interest, Number 35, Spring 1974, pp. 22-54.

4. milieu therapy;
5. medical treatment, particularly plastic surgery;
6. decarceration;
7. psycho-therapy in a community setting;
8. probation or parole instead of prison;
9. intensive supervision.

We can do no better than to use Martinson's own words to describe the results of his review.

> *Having entered this very serious caveat, I am bound to say that these data, involving over two hundred studies and hundreds of thousands of individuals as they do, are the best available and give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say that we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment. And neither is this to say that factors 'outside' the realm of rehabilitation may not be working to reduce recidivism – factors such as the tendency for recidivism to be lower in offenders over the age of 30; it is only to say that such factors seem to have little connection with any of the treatment methods now at our disposal.*
>
> *From this probability, one may draw any of several conclusions. It may be simply that our programs aren't yet good enough – that the education we provide to inmates is still poor education, that the therapy we administer is not administered skillfully enough, that our intensive supervision and counseling do not yet provide enough personal support for the offenders who are subjected to them. If one wishes to believe this, then what our correctional system needs is simply a more full-hearted commitment to the strategy of treatment.*
>
> *It may be, on the other hand, that there is a more radical flaw in our present strategies – that education at its best, or that psycotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behavior. Our present treatment programs are based on a theory of crime as a 'disease' – that is to say, as something foreign and abnormal in the individual which can presumably be cured. This theory may well be flawed, in that it overlooks – indeed, denies – both the normality of crime in society and the personal normality of a large proportion of offenders, criminals who are merely responding to the facts and conditions of our society.*

This opposing theory of 'crime as a social phenomenon' directs our attention away from a 'rehabilitative' strategy, away from the notion that we may best insure public safety through a series of 'treatments' to be imposed forcibly on convicted offenders. These treatments have on occasion become, and have the potential for becoming, so draconian as to offend the moral order of a democratic society; and the theory of crime as a social phenomenon suggests that such treatments may be not only offensive but ineffective as well. This theory points, instead, to decarceration for low-risk offenders – and, presumably, to keeping high-risk offenders in prisons which are nothing more (and aim to be nothing more) than custodial institutions . . .

Besides, one cannot ignore the fact that the punishment of offenders is the major means we have for 'deterring' incipient offenders. We know almost nothing about the 'deterrent effect,' largely because 'treatment' theories have so dominated our research, and 'deterrence' theories have been relegated to the status of a historical curiosity. Since we have almost no idea of the deterrent functions that our present system performs or that future strategies might be made to perform, it is possible that there is indeed something that works – that to some extent is working right now in front of our noses, and that might be made to work better – something that deters rather than cures, something that does not so much reform convicted offenders as prevent criminal behavior in the first place. But whether that is the case and, if it is, what strategies will be found to make our deterrence system work better than it does now, are questions we will not be able to answer with data until a new family of studies has been brought into existence.

Although we accept Martinson's pessimistic appraisal of the failure of all programs of rehabilitation, we must point out that this pessimism stems almost entirely from a single index, the rate of recidivism, that is commonly used to measure the success of a program. There is, however, a real danger that this pessimism will lead society to conclude that it can do much less for children in conflict with the law than it is doing now with no ill effects, and that the present level of funding can accordingly be safely reduced. It might be argued, for example, that all attendant institutions should have one and only one program, and that no specialized programs should be funded. Although there is a collective sense in which such conclusions might be true, there is an individual sense in which these conclusions might lead to tragedy.

A brief from the Child Welfare Branch, Department of Health and Social Development, Province of Alberta, says:

In implementing its programs for children and families, the Child Welfare Branch operates on the conviction that children are best cared for by their natural parents, and that most parents wish to raise their children well and have the right to do so in their own way.

We agree with this conclusion and often wonder at the patience shown by our courts and by our social workers in their attempts to preserve the family life of the juveniles with whom they come into contact. Indeed, many of us might be inclined to say that these attempts go far beyond the point of no return. But there comes a time when even that patience is exhausted, and some juveniles must be committed to publicly supported institutions. In Alberta, some 300 of the juvenile delinquents who became temporary wards of the Director of Child Welfare over a period of 16 months were assigned to the following institutions.

PERIOD: DECEMBER 1, 1972 - APRIL 30, 1974[1]

1.	Youth Development Centre	133
2.	Westfield	50
3.	Spruce Cliff Centre	58
4.	William Roper Hull	27
5.	Mapleridge	10
6.	Oakhill Boys Ranch	17
7.	Don Bosco Dominic Savio	5
	Total	300

Although some of these institutions have some closed facilities in which juveniles can be kept under lock and key, many are run as open institutions from which juveniles can run away if they will. At any one time, the number of juveniles who are temporary wards under the Juvenile Delinquents Act lies somewhere between about 400 and 600. Some are cared for in other settings like the family, foster or group home.

What type of child is committed to one of the six institutions mentioned above? Almost all of them are maladjusted and malfunctioning children who do not seem able to function properly in their family home. Although all have problems, very little else of a universal nature can be said about them. In native intelligence, some are below normal, even subnormal. Some, however, are above average. In learning achievement, some are complete illiterates. Others, however, are on a par in learning achievement with non-delinquents in their peer age group. Some

[1]The Board has been told that these are not reliable statistics. They are again used to show orders of magnitude.

have severe emotional problems. Others seem to be normal children in this respect. Indeed, although delinquents in this group number only in the hundreds, they seem to exhibit many of the intellectual, educational, and psychological characteristics found in the general population of this age group, though in different proportions.

If ever a juvenile delinquent is to find *individualized justice,* then, he or she will find it among the attendant institutions, and not in the juvenile courts. We say this without implying any criticism of those courts.

What kind of success should a society expect of institutions that are called upon to cope with an extremely broad spectrum of deviant behavior by juveniles? There will be no success if society demands miracles. With our present limited knowledge of psychiatry, some of these juveniles will spend most of their lives wandering in and out of the mental institutions of our province. With our limited knowledge of anti-social behavior and its control, some of these juveniles will serve life sentences on the installment plan among the various penal institutions of our country. About 60% of them will, however, return to society and will, sooner or later, disappear from the criminal justice system.

The educational achievement of these institutions is remarkable to say the least. On the average, they are able to advance the reading levels, and learning achievements, of their students by two months for every month of instruction. Since the average length of stay of a juvenile in such an institution is less than one year, these institutions do well to raise the average grade 4 reading and achievement levels of those who enter the institution to an average grade 6 level by the time they leave. Such a juvenile is hardly qualified to face the complex society in which he or she must live, and it is little wonder that such children appear again and again in the juvenile justice system. It is a truly remarkable achievement that some children have attained grade 12 matriculation during their stay at one or more of the institutions mentioned above.

Juveniles who have shown violent and anti-social behavior in their family or community settings are taught to curb their violence, and most of them learn to live in harmony at least in an institutional setting. Those who work in these institutions refuse to admit that there are *hardcore delinquents.* They see with their own eyes how some of the most *hardened* of these juveniles can be taught to obey the rules of the institution, and how to live in an institutional community. Unfortunately, after release, few of these juveniles can transfer this knowledge to the open setting of their homes or of their communities, and they too reappear as juvenile offenders.

It is most unfortunate that the goals of penal institutions are usually stated in terms of impeccable motives like the *moral rehabilitation and restoration to good citizenship* of the people confined to those institutions. The reformers have justified the huge costs of these institutions on the basis of the large monetary gains that would be obtained by returning to society good citizens who would be ready to make substantial contributions to their communities. When millions of dollars are expended on these institutions, and it later appears that these expenditures have brought nothing in return, then society will tend to view with hostility everything that goes on in those institutions.

If people would but go into the attendant institutions, they would find children who have problems, but they would also find that these children are neither saints nor devils. Although it is possible to provide for their physical needs, like a decent place to live, and decent food, the help that can be given them to learn to cope with their problems is limited. All require further education, and some who are illiterate require individual tutoring. Some have severe emotional problems, and the only help that can be offered is intensive psychiatric care. There is no assurance that any part of the group, let alone the majority, could be turned into useful citizens, even if they were to spend their lives under institutional control. As long as the staff of these institutions have only a few months to work with such children, the help that they can give will be minimal indeed. About all that it is reasonable to expect of these institutions is that they teach these children how to survive in the complex society in which they must live, in the hope that they will not become an excessive burden on that society. That lesson, and that lesson alone, we judge to be the true measure of the success or failure of an attendant institution.

As far as we can see, the costs of these institutions run somewhere from $50 to $100 per day per inmate. These are, of course, astronomical costs when compared to the corresponding costs of educating a child in an ordinary school, or for that matter the cost of educating a student in a university. These are costs that are bound to be questioned when the return to society is so small. The costs are not excessive, however, when one compares the one-to-one ratio between children and teachers required to overcome complete illiteracy to the one-to-one ratio required to help autistic children. Nor are the costs excessive if one compares the cost of psychiatric help required by some of these children with the corresponding cost of medical care given to the sick.

The millions of dollars being spent in the province to provide the so-called treatment institutions for juvenile delinquents are

completely justified when one considers the only other alternative. It would be inhumane for any society, let alone an affluent society like ours, to say to small groups of troubled 12, 13, 14 year olds, *your physical needs will be met but you are not worth helping in any other way.*

If this report sounds pessimistic, it is because that tone was deliberately chosen. It was deliberately chosen to counteract the excessive optimism of the child-savers who have promised to use the knowledge of the social and medical sciences to divert children from an adult life of crime into the mainstream of productive citizens. These promises have not been kept, and indeed could not be kept.

Science has made great strides in providing the means for physically handicapped people to adjust to a society that has to some extent ignored their special needs. If science has not made comparable progress in helping people who exhibit deviant behavior of various kinds, it probably means that the truly big ideas of the social sciences still remain for the future to discover. Until that day comes, society should offer juvenile delinquents help on a trial and error basis, because, at this time, there is nothing better to offer. No promise should be given to the juvenile or to society that favorable results will or will not be accomplished. Above all else, we must be honest with ourselves and realize that the expenditures involved are justified by humane considerations, and not because of any financial or ethical returns that those expenditures might gain for society.

No one should have serious doubts about the dedication of the people who work in the agencies that administer juvenile justice. They try this program and discard that one, always seeking the miracle that will help the particular child placed in their care. If they fail to find the miracle, it is not for want of trying. Neither should failure be attributed to insufficient funding by the Alberta Government. Failure occurs because miracles are elusive to find, and difficult to produce.

It is not true that all socially maladjusted juveniles should be considered to be candidates for confinement, nor is it true that well adjusted juveniles will never commit a serious offence. Nevertheless, the stringent selection of juveniles for confinement seems to ensure that the population of the attendant institutions will have a large proportion of maladjusted juveniles with which to cope. If this be true, then we believe that no attendant institution should house more than 20-25 juveniles at any one time. In large numbers, there would be the danger that a sub-culture would emerge, and maladjustment might become normal in that sub-culture.

It has often been claimed that an attendant institution should simulate as closely as possible the setting of a good home. Although there is considerable truth in this claim, one must not overlook the fact that some other environment, say a hospital setting, may well be what some of these youngsters actually require. Although I have little knowledge of the diverse kinds of facilities that should be provided in attendant institutions, I believe that every juvenile justice system should have attendant institutions of the following types:

1. Detention Centres

When the police decide to charge juveniles, there is need for secure facilities to hold some of these juveniles for a few days at a time. Time may be needed to identify the juvenile, to contact his or her parents, and to establish whether the parents are willing to undertake custody of their child. Sometimes children are runaways. If the home of a runaway is outside of Alberta, time is needed to return that juvenile to the jurisdiction of his or her home province. If the runaway lives in Alberta, it may be necessary to hold the youngster in secure facilities to ensure that he or she appears in court to answer the charge that has been laid. These are just some of the reasons why some children must be held securely under lock and key for a few days at a time. A facility designed to serve these purposes is called a detention centre.

Since no charges have been proven against the juveniles held in detention centres, they should appear in court for trial within a few days after apprehension. Since children are involved, detention centres should provide classroom facilities, recreational facilities, and easy access to medical aid if needed. As near as we can tell, forty-bed detention centres in each of Calgary and Edmonton should serve the needs of those cities for some years to come. Smaller detention centres strategically placed throughout the province should be able to cope with the need for such centres outside of Calgary and Edmonton.

One word of caution needs to be added at this time. There is little use in building adequate detention centres to meet a specific need if they become inadequate because they are used for other purposes. The Calgary Detention Centre is a case in point. A detailed study by Ms. Joan Brockman of a sample of 120 of the 1,329 admissions between May 1, 1975 and April 30, 1976, shows a serious misuse of this facility.

The greatest misuse of the Calgary Detention Centre seems to be the holding of youngsters who are waiting to be placed in another type of facility. Some youngsters have already appeared

in court, and have been referred by the court to the Director of Child Welfare. In the sample, 23% of these juveniles waited from 8 to 132 days (an average of 51.2 days) just to be placed. If the waiting time to appear in court is included, the average stay in the Centre increases to 65.8 days. If one looks beyond the statistics of just one year, the average length of stay increases to 148.4 days. Indeed, there is one youngster who has spent 321 days in the Calgary Detention Centre, a facility that is supposed to get children in and out in a period of about 4 days.

There were, of course, many reasons given to explain these statistics, most of which are probably true. It is claimed that there is sometimes no alternative because there is a severe shortage of foster homes, group homes, and other institutions in which these juveniles are supposed ultimately to be placed. It has also been claimed that there is an unnecessary delay in administering the orders required to place juveniles in other institutions.

Be that as it may, there is no justification for a process that makes juveniles wait over 7 weeks on the average before they can start on programs designed to help them overcome their individual problems. Whatever the causes of this statistical picture may be, they should be rectified as soon as possible.

This province needs detention centres for the purposes outlined above. When the average length of stay in such a facility exceeds 3-4 days, then the causes should be determined, and remedies applied.

2. Hospital Facilities

The police have told us that they do sometimes have to hold juveniles with severe emotional problems, some of whom have given evidence of suicidal tendencies. As one might expect, they also find juveniles suffering from severe abuse of alcohol or narcotics. There seems to be a need for some type of hospital facilities for treating juveniles who require immediate medical help. It is unlikely that the usual detention centre could provide the immediate medical help that is sometimes required. Certainly, Albertans should avoid incidents like the suicide of a juvenile in Ontario who was being held in what was claimed to be the wrong type of holding facility.

In discussing this problem with the police, we were told that the ordinary hospital is not too sympathetic to the medical needs of juvenile delinquents. It was claimed that some hospital-based psychiatrists declare a juvenile to be free of psychiatric problems, after an examination taking no more than five minutes. It was also claimed that some hospital-based psychiat-

rists have recognized a juvenile delinquent as a repeater, and refused admission on the grounds that the juvenile was a chronic sociopath for whom psychiatry could do nothing. We have not investigated the truth of these claims, nor do we propose to do so.

There exists the possibility that hostility may develop between two services administered by two different jurisdictions, particularly when either or both lack financial support and/or adequate physical resources. It might be wise to have some hospital-type facilities administered by the Director of Child Welfare. We have been unable to establish the provincial needs for such facilities, or the costs involved. For this reason, further study of this problem should be undertaken by the Director of Child Welfare.

3. Secure Facilities

There are about 100 to 150 juveniles in the province who should be placed in secure facilities from which they cannot easily escape. Some show a behavior that is dangerous to themselves and/or people with whom they come into contact. Some show a repetitive misbehavior that apparently cannot be arrested in any other way. When we speak of secure facilities, however, we do not envisage a jail. A high fence and adequate surveillance should suffice to hold most juveniles. Even these so-called chronic offenders are still children and should be offered all the help this province can give. Secure facilities should include:

1. adequate place for 20-25 juveniles to live;
2. adequate facilities to provide good and nourishing meals;
3. adequate dental and medical care;
4. diversified educational programs designed to attract attention and interest;
5. adequate recreational facilities.

4. Foster Homes, Group Homes and Other Open-Type Facilities

In the light of conventional wisdom, we agree that most of the remaining juveniles whom the courts decide must live away from their natural homes should live in an open-type of facility, the foster home, the group home, and the like. We are aware of the so-called runaway problems, and the claim that many juveniles are out on the street committing offences before the ink on their commitment orders is dry. If there is any hope that these juveniles will ever cease to be a burden to a society, they must learn to live and function in an open setting. Running away

should not in itself be considered offensive behavior. When life becomes intolerable, running away in the physical sense is a natural defensive weapon. More serious is what might be called running away from reality. Juveniles forced to live in a closed environment may seek escape in this way, sometimes to the point of legal insanity. There is, however, a limit to the amount of repetitive misbehavior a society can tolerate. Juveniles who persistently run away and continue to commit crimes may leave society no alternative but to commit them to closed institutions.

5. Assessment and Research Centres

Although discussion of the need for assessment and research centres could logically have come right after the discussion of detention and hospital facilities, the recommendation for a new kind of major research-oriented assessment centre was left till the end of our discussion so that we might give it special emphasis.

It is most unlikely that the information available at the time of disposition will give substantial clues to the type of program to which the juvenile might best respond. It is more likely that much more information should be obtained through a systematic resort to intelligence testing, achievement testing, psychiatric testing, and the like. Even though it might take months, such testing would be justified if it led to a program which would catch the attention and interest of the juvenile.

It is at the same time recognized that the immediate application of the test results might be difficult. If all that the system can offer a juvenile is a decent place to live, the regular academic or vocational type of program, social counseling, and adequate recreation facilities, no matter what the tests reveal in the way of need, testing information will be of limited use while the juvenile is in custody.

Even where a variety of programs exists, it seems unlikely that promising individualized programs can be effective in periods of months rather than years.

In spite of these limitations, we recommend the creation of one well-equipped and well-staffed assessment and research centre for this province. The purpose of the centre would be to innovate and test treatment programs designed to help particular types of juveniles on both short-term and long-term basis. The conclusions resulting from tests done on individual juveniles should be made available to the juvenile and to the parents, at least insofar as the results indicate the kind of help they should seek and where such help is available. They might

not in fact be able to use the information until after the juvenile had left the attendant institution.

As mentioned earlier, we have become convinced that attendant institutions should be relatively small in size, housing not more than 20-25 inmates. Such institutions could not support individual assessment centres but would rely on the major assessment centre for guidance and assistance.

The field of juvenile delinquency, like others, suffers from its fads and fancies. At the moment, community-based facilities and community involvement seem to be the rage. This province should not invest millions of dollars on fads or fancies, and would be well advised to demand that the assessment and research centre establish the validity of any new program that is proposed. That centre should also, of course, test the validity of programs in current use.

The creation of a first-rate, research-oriented assessment centre should be given a high priority among the endless list of new programs seeking government funding. It is hard to disagree with Martinson when he writes of a need for a new family of studies to be carried out. This province can afford to support research in this field, and a research-oriented assessment centre should be assigned the task of promoting and supervising the necessary studies.

By and large, this province has been generous in the funding of the physical facilities used to confine juvenile delinquents. Most of those we have seen provide decent living conditions, in some instances, far better conditions than the family homes of the juvenile concerned. Most seem to be well-designed for their purpose, without being extravagant in what they provide. On the other hand, there is absolutely no reason to believe that present standards are too high.

There is, however, a lack of certain types of facilities, particularly secure and research facilities, at least some of which we have reason to believe will be made available in the near future.

A PHILOSOPHY FOR A SYSTEM OF JUVENILE JUSTICE

It is almost trite to say that we cannot be complacent about freedom. But trite or not, we cannot take this freedom for granted when we have seen in our lifetimes that fundamental freedoms can vanish at the stroke of a pen, and that people can be imprisoned or die, not because of what they do, but because of what they believe.

There is a place for administrative law, but it must not be permitted to encroach upon the proper domain of the autonomous court. In the words of Karl Llewellyn:

> *Angel or devil, a man has a claim to a fair trial of his guilt. Angel or devil, he has a claim to a fair trial, not of his general social desirability, but of his guilt of the specific offense charged against him. Such is the letter of our law. Such also is our law's spirit. For letter and for spirit there is a reason. Law is administered by men. We do not trust men to be wholly wise, or wholly fair. Above all, we do not trust men to be wise or fair to those with whose opinions, with whose interests, with whose dear-held beliefs their own interests, their own dear-held opinions, clash. 'General social desirability' of others, through most of history, has meant to men in power such attitudes and actions and opinions as do not threaten their own continuance in power .... There must be some objective certainty, that men can fix upon and see and prove, before we trust officialdom to act. It is too easy to find 'general' indications against one's enemies – be they Bolsheviks, or Democrats, or rivals for the Tenth Ward leadership .... The job of court and jury is to see whether the suspect has committed the particular offense.*

Unfortunately, the current philosophy of juvenile justice does not, we feel, extend this *claim to a fair trial* to our *delinquent children*, or, indeed to their parents.

Some of the assumptions upon which this current philosophy of juvenile justice is based are both implicit and explicit in a 1959 statement of Senator Thomas C. Hennings, Jr., Chairman, United States Senate Subcommittee to Investigate Juvenile Delinquency:

> *My first observation is a rather obvious one. It is that the juvenile court cannot be isolated from the rest of the community's treatment facilities. It is a part, perhaps the most important part, of the formal treatment picture. Its function is to diagnose; to prescribe treatment, both within and without the court; and then to see to it that the treatment is carried out.*

From the above-mentioned statistics and recidivism rates, it is obvious that little effective case evaluation is made and that few proper corrective steps are taken at this one important point in a delinquent's career – his first contact with a juvenile court.

Yet it is at this point the average delinquent is most amenable to changing his behavior pattern and not at the later stages when we have what amounts to intractable young criminals. This is the crucial point. This is the point that must be more adequately developed because, as we have seen in sharp focus in New York, and tangentially in other cities, it is here that the juvenile courts are weakest. And it is here that we must have people who are adequately trained to separate the potentially habitual delinquents from the educable ones.

To recapitulate, the current philosophy of juvenile justice, as represented in this statement, rests on the following sweeping assumptions:

(1) juvenile delinquency is a disease that can be diagnosed and treated;

(2) juvenile court judges have the knowledge to make a valid diagnosis for every juvenile delinquent appearing in their courts, and have the knowledge to prescribe, and supervise, a proper form of treatment for each and every juvenile delinquent;

(3) there exists a body of behavioral theory that will enable juvenile courts to separate the so-called *hardcore delinquents* from those whose anti-social behavior can be corrected by treatment and education;

(4) effective treatment can be administered to young offenders after their first appearance in a juvenile court.

Unfortunately, all of the evidence that has been presented and examined so far in this Report supports the conclusion that each and every one of these assumptions is false.

The weight of the assembled evidence leads us to the unequivocal conclusion that a juvenile court cannot function as a kind of social agency. It should be a court of law. We do not, however, accept the feasibility of the Russian philosophy reflected in the words of a Moscow judge:

... Every single violation must be uncovered, with no exceptions. Everyone must know for certain that it is futile to break the law .... Law enforcement must expand before it withers away.

However many violations may or may not be brought before the courts in Russia, we know that less than 15% face charges in

Canada, and that a percentage of these are acquitted. It is obviously not futile for criminals to break the law in Canada; the odds are with them. Turning Canada into a police state is, of course, out of the question as a possible remedy for this state of affairs. Criminal behavior involves a deep, infinitely complex, and unsolved societal problem to which the police, the court, and the penal institutions can react but which they cannot solve.

Society must do more than protect the freedom of children, and protect itself from unacceptable behavior on the part of its children. It must also work towards giving all children the opportunity to grow into happy and well-adjusted adults. It must attempt to ensure that all children have an adequate home, adequate food and clothing, and adequate medical and dental care. It must also attempt to assist parents to teach children to respect our fundamental value system:

(a) the difference between acceptable and unacceptable forms of behavior, legal or otherwise;

(b) respect for the law, the value of conformity if you will;

(c) respect for the freedom and property of other people;

(d) the importance of dissent to a free society, the means of dissent in such a society, and the limits to dissent imposed by that society;

(e) the importance of the role work plays in enabling a society to remain free.

We must guarantee that the state will not, without just cause, curtail the freedom of parents to raise their children. The state should require that parents provide for their children, educate them, and inculcate in them our values, but it should also intervene between children and their parents in certain limited circumstances.

In the first place, when good parents cannot provide for their children, the state should provide the needed resources without intruding on the right of the parents to raise their children in their own way. In these cases, social agencies should make the purely administrative decisions required.

In the second place, when bad parents neglect or abuse a child, the state must intervene. There was a time when there were no *bad parents*, but one need only read *The Throwaway Children* by Lisa Aversa Richette to react with tears and nausea to the cruelty that some parents impose upon their children. In such circumstances, a humane state must intervene and remove children from the custody of their parents. We must remember, however, that parents have a historical freedom to raise their children, and that this is a fundamental freedom which must be

protected and preserved. A court order should normally be required to separate a child from its parents[1].

The Child Welfare Act, which governs neglect procedures in Alberta, has been useful, but needs redrafting to reflect the changing values of our society.

Abuse proceedings do not come under a single act and are generally governed by legislation like the Criminal Code and the Juvenile Delinquents Act. In the case of neglect or abuse, the police or a government social agency should lay a charge against the parents requiring them to respond in a court of law. The child, as the victim, should not be required to participate except possibly as a witness. Although existing legislation does not provide that cases involving the welfare of children must be adjudicated by a juvenile court, we recommend that the possibility of such legislation be considered, particularly since some social workers have told us of an unfortunate subterfuge they have used to circumvent the present law.

These social workers say that their investigations tell them clearly when child and parents should be separated. They say further that since child neglect is difficult to prove in a court of law, they prefer to lay a more easily proved charge of delinquency against the child. During the disposition, the social worker will recommend that the child be separated from its parents, and the judge will allow the parents to speak to this issue. This practice is indefensible.

To begin with, we have not found evidence of the validity of present behavioral theory to convince us that the judgment of a social worker is enough to justify the separation of parent and child, particularly when the social worker admits that neglect cannot be proven in a court of law. We recall the words of Karl Llewellyn:

> *We do not trust men to be wise or fair to those with whose opinions, with whose dear-held beliefs their own interests, their own dear-held opinions, clash . . . .*
>
> *There must be some objective certainty, that men can fix upon and see and prove, before we trust officialdom to act.*

No parent should be forced to give up the care of a child because of a clash of opinion with a social worker about how to raise a child. If there is provable neglect, the proper respondent

[1]The word *normally* is used to recognize that there are instances in which a child might die if it is left with some parents for another hour or another day. In these and other circumstances, the state must act immediately and cannot wait for a proper court order. Separations of this type should be measured in days, to give a court the time to act.

is the parent, not the child, and the parent is entitled to demand that something substantive be proven in a court of law. The freedom of parents to raise their children is too important to be curtailed by any agency other than a court of law.

Moreover, if the issue is neglect, not a minor delinquent act by the child, it is a miscarriage of justice to submit the child to a stigma from which more privileged children are immune.

Such a procedure can also be inhumane. If there are other children in the home, they should not have to become overt delinquents before the state intervenes. Any indication of juvenile delinquency in a family should automatically trigger an investigation into the possibility of child neglect. If neglect is confirmed, help should be given to all children in the family, not just to the one in difficulty with the law.

Social workers have told us that they can predict almost to the day when each child of a delinquent family will be sent to them. This waiting game is not good enough. The state should make help available at the first sign that juvenile delinquency is associated with neglect.

We recommend, however, the continuance of the right of parents to contract the surrender of the custody of a child to the Director of Child Welfare, since we see no good end to be served by forcing parents to raise children they do not want.

Finally, it must be envisaged that the state might intervene in the lives of juveniles who offend the laws of that state. Juvenile delinquency is a fact, and the following statistical table of juvenile convictions for violations of the Criminal Code of Canada in Alberta during 1973 is convincing evidence that this province must have laws regulating juvenile behavior. The question which we asked ourselves was *what should be the philosophy behind such laws and what should these laws try to accomplish?*

TABLE 1

NATURE OF DELINQUENCIES
OF JUVENILE DELINQUENTS, ALBERTA, 1973

Source: Statistics Canada

CRIMINAL CODE

No.	Nature of Delinquency	
1.	Assault causing bodily harm	34
2.	Assault on peace officer and obstructing	17
3.	Buggery or bestiality, gross indecency	1

4.	Causing bodily harm and danger, wounding with intent	7
5.	Common assault	66
6.	Criminal negligence, no bodily harm nor death	3
7.	Criminal negligence causing death	1
8.	Criminal negligence in operation of motor vehicle	27
9.	Indecent assault on female	10
10.	Indecent assault on male	3
11.	Murder	2
12.	Murder, attempt to commit	1
13.	Rape	1
14.	Other delinquencies against the person	9
15.	Armed robbery	1
16.	Breaking and entering	1,058
17.	Extortion	7
18.	Robbery	17
19.	False pretences	10
20.	Fraud and corruption	16
21.	Having in possession	191
22.	Take motor vehicle without consent	44
23.	Theft	907
24.	Theft from mail	13
25.	Theft of automobile	176
26.	Theft of bicycle	52
27.	Arson and other fires	13
28.	Trespassing at night	1
29.	Other interference with property	108
30.	Forgery and uttering	21
31.	Offences relating to currency	1
32.	Attempt to commit and accessories	13
33.	Bawdy house, inmates	1
34.	Disorderly conduct	20
35.	Driving while impaired	5
36.	Driving while intoxicated	3
37.	Escape from lawful custody	2
38.	Failing to stop at scene of accident	2
39.	Offensive weapons	13
40.	Public mischief	4
41.	Various other offences	1
	Total	2,882

Historically, the western world has wavered between two conflicting philosophies of law which are, to the layman, unhelpfully labelled *liberalist* and *positivist*. To the liberalist, law is a rigid set of laws, rigidly and undeviatingly applied. To the positivist, law is flexible, and places faith in lengthy periods of

corrective detention. We shall discuss these theories as theories one and two.

To be successful, the first theory of rigid law and enforcement implies an unequivocally defined set of offences, and a consistent set of sanctions. The abolishing of capital punishment in Canada in favor of a mandatory life sentence produced a law of this kind, which had its first test in Alberta, and involved a 16 year old boy who was convicted of killing his step-father. Because of the age of the boy, and certain other circumstances, there were those who felt that a cruel and unjust punishment was imposed, that there must be something wrong when the law requires those who adjudicate to treat a boy of 16 and a hired killer in exactly the same way.

The second theory holds that the capacity of an offender to harm others, and possibly himself or herself, can be accurately measured. It asserts that an offender should accordingly be confined until rehabilitation has reduced his or her capacity to harm to a tolerable level. In a society operating under this philosophy, the 16 year old boy mentioned above might have been given a suspended sentence. The same philosophy attempts to justify long periods of confinement for even relatively minor offences. Clearly this is our present philosophy of juvenile justice, and we shall not attempt to present all the evidence that discredits it. Instead, we shall examine the pros and cons of the theory of clear-cut laws with understanding enforcement of those laws.

Would it be possible to define in an unequivocal way a set of offences applicable specifically to the behavior of children? A closer examination of the Table of Criminal Code offences for which juveniles were convicted in Alberta in 1973 (see pages 69-70) suggests that such a code would be possible.

Indeed, the long list of Criminal Code offences in the Table might, for all practical purposes, be reduced to something like the following five broad categories:

1. theft and attempted theft;
2. assault;
3. murder and attempted murder;
4. manslaughter;
5. vandalism.

As noted earlier, theft and attempted theft by breaking and entering account for over 80% of all Criminal Code violations. The hundreds of sections of the Criminal Code that are necessary

to distinguish different shades and aspects of theft among adults have little relevance to the behavior of children. Few are ever used in charging children.

Even if one includes the so-called status offences like truancy, or running away, we venture the opinion that no more than 20 offences need be defined to regulate completely the behavior of children. We therefore support the basic assumption of the *liberalist*, that a firm code can be drawn up to define unequivocally what constitutes offences against the law by juveniles. We are convinced, however, that the broad spectrum of punishment meted out by an adult court is unnecessary and undesirable in a juvenile court. Indeed, although the present spectrum of dispositions of our juvenile courts appears to be satisfactory, we suggest that a short list of dispositions such as the following would be sufficient:

1. absolute discharge;
2. reprimand;
3. a fine not to exceed $100;
4. restitution not to exceed $500;
5. probation;
6. confinement for a period not to exceed two years.

We agree with the philosophy that says that the purpose of a sanction is the punishment of an offender, including both the sanctions applied to an adult or a juvenile. Children must become aware that juvenile courts exist, that these courts sting, that they can hurt. The picture of a stern judge meting out justice in accord with a rigid code of law would, we believe, do more to convince delinquent children that juvenile courts are good places to avoid, than the present picture of a parental judge placing a protective arm around the offending boy or girl and giving sage advice.

The limited number of offences that need to be spelled out to regulate the behavior of children, and the limited number of sanctions that need be imposed on offending children, make us believe that a liberalist philosophy is appropriate for application in the juvenile realm. We would therefore recommend that two new acts be written:

1. a Federal Juvenile Offences Act to replace the Juvenile Delinquent's Act;
2. a Provincial Juvenile Offences Act to collect all juvenile offences subject to provincial or municipal jurisdiction;

and that these acts be written in the liberalist tradition.

The simplified lists of offences and sanctions given above were introduced for the purpose of illustration and as a basis for argument, not to provide a blueprint for the two acts recommended. These acts should be framed only after full consultation with the police, juvenile court judges, and representatives of all of the government social welfare agencies concerned with the welfare of children.

We imply that the blanket term *juvenile delinquent* would disappear from the language of the law. There are those who claim that labelling people with harsh terms denoting anti-social behavior causes harm to those so labelled. These people argue for the elimination of the term *juvenile delinquent.* I do not believe that the anti-social behavior of young people has semantical causes or semantical cures. Besides, it is certain that youngsters convicted of theft will continue to be called thieves, a more opprobrious term. Whatever term is used in the law to describe anti-social behavior will in time become a pejorative term in that context. It is a waste of time to attempt to avoid using direct terms to describe forms of behavior forbidden by law.

We recognize that it is easier to discuss the writing of legislation in a *liberalist* tradition than it is to specify the detail that such acts should contain. As a step in this direction, we shall now address attention to questions like, *who is a juvenile under the law, what is due process in a juvenile court,* and *how should these acts be administered?*

THE INFANT, THE JUVENILE AND THE ADULT

If we wish to extend a legal benevolence to our children not extended to our adults, we must first define the terms *child* and *adult*. Many of us would like that definition to be based on the capacity of an individual to accept responsibility. The reformers of the 19th century insisted that a society had an obligation to teach its children the meaning of right before it was justified in punishing a child for committing a wrong. Since children mature at different rates, it has been argued that the period of benevolence should extend to an age that ensures that the vast majority of children have the maturity to understand the serious consequences of illegal forms of behavior.

If the line dividing childhood and adulthood comes to early in life, the benevolent treatment accorded children will give way to the harsh treatment imposed on adults for no other reason than that the child has become one day older. On the other hand, if the division comes too late in life, there will be large numbers of people who have been given most of the freedoms enjoyed by adults, but are not required to accept the attendant responsibilities. It would pose a dilemma, for example, to find that a young couple charged with the neglect or abuse of their child were themselves legally still children.

We must conclude that any definition of *child* will be attended with difficulties. Although reasons can be given for this or that choice of definition, there is no proof that one definition is better than another; any choice will be arbitrary. But a choice must be made.

After adopting a legal definition of *child*, society must decide whether to give legal recognition also to the concept of *infant*, a child deemed to be too young to commit a crime. Although we believe that Canada has embraced this latter concept, not all countries have done so. Indeed, there is a record of the criminal conviction of an 18 month old baby so that it might accompany its mother to prison. There must be a better way to accomplish such a purpose. In summary, we recommend that the concepts of *infant*, *juvenile*, and *adult* become a part of federal and provincial law, and that these concepts be defined in an unequivocal way.

Although these concepts are already a part of Canadian law, the way in which they are treated is confusing and may well involve contradictions. Different statutes seem to give different meanings to these concepts. We accordingly feel it necessary to examine in some detail the ways in which they appear in the Criminal Code of Canada.

Sections 12 and 13 of the Code, which were quoted earlier, limit the liability of children under seven years of age, and over six but under 14, to conviction for an offence:

Section 12: *No person shall be convicted of an offence with respect of an act or ommission on his part while he was under the age of 7 years.*

Section 13: *No person shall be convicted of an offence with respect of an act or ommission on his part while he was 7 years of age or more, but under the age of 14 years, unless he was competent to know the nature and consequence of his conduct and to appreciate that he was wrong.*

It is of interest and importance to know that sections such as these can be traced back virtually unchanged over 600 years to the time of King Edward III. Two centuries ago, Sir William Blackstone described the criminal law governing infants and juveniles as follows:

> *But by the law, as it now stands, and has stood at least ever since the time of Edward the Third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is, that 'malitia supplet aetatem.' Under seven years of age, indeed, an infant cannot be guilty of felony, for them a felonious discretion is almost an impossibility in nature; but at eight years old he may be guilty of felony. Also, under fourteen, though an infant shall be prima facie adjudged to be doli incapax; yet if it appear to the court and jury that he was doli capax, and could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burnt for killing her mistress: and one boy of ten, and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged . . . .*
>
> *And there was an instance in the last century where a boy of eight years old was tried at Abingdon for firing two barns; and it appearing that he had malice, revenge and cunning, he was found guilty, condemned, and hanged accordingly.*

Unless Blackstone made an unintended slip, there is a curious hiatus in the description given above. He would seem to be saying that there is no law pertaining to a child over the age of six but under the age of eight. For the purpose of illustration, it will be assumed that an error was made, and that the words *but at eight years old* should read *but at seven years old.*

The law as it was applied to children for hundreds of years vividly illustrates the difference a day can make. From a stage of absolute immunity, a child passed in one day to a stage in which the stake and the gallows became stark realities. In the 20th century harsh sanctions like the whip, the dungeon, the stake, and the gallows were replaced by mild forms of punishment like the reprimand, fine, and limited terms of confinement. The ultimate sanction of confinement is now not only used sparingly, but normally with a benevolent purpose in mind. The transition from the stage of absolute immunity from the law is now to a stage of benevolent treatment by the law.

Although society must specify the age at which a child ceases to be an infant and becomes a juvenile, statistics suggest that a precise cut-off date need not be the subject of major discussion and debate, that it could, in fact, be any age under perhaps 10. In Alberta, in 1973, no children were convicted of delinquency at the age of seven, three were so convicted at the age of eight, and nine at the age of nine. Out of the juvenile population of 400,000 or so, only 12 of those under the age of 10 were convicted of delinquency. It would seem that no significant harm would come to society if a child remained a legal infant until the age of ten. We recommend, for this reason, that all federal and provincial legislation governing the offending behavior of children should contain identically-worded sections to the following effect:

> *No person under the age of ten can be deemed to have committed any offence under this Act.*

This would mean that a child under the age of 10 could not be brought before a court except by some form of neglect proceedings administered by an act like the Child Welfare Act.

Blackstone's description of the law as applied to children suggests that juvenile law had incorporated a form of the doctrine of *mens rea*, the *doctrine of the guilty mind*, long before this doctrine became part of the criminal law. Be that as it may, the judges of that day had no difficulty in asserting that young offending children, under the age of 10, *had malice, revenge and cunning*, and this assertion made it possible to hang eight and 10 year old boys. In spite of Blackstone's claim that the cunning of one 11 year old boy can be compared with the naivety of a another aged 14, the maturation process is more than difficult to measure for even the same child over short periods of time, and the validity of such measurements from child to child is unprovable. It is most difficult, for example, to explain to a child why the Robin Hood form of theft should be forbidden by law. The law developed slowly and reflects an amalgam of philosophies which children cannot be expected to understand.

We believe that juvenile law would serve its purpose better if it stated simply:

This is the law and if you disobey it you may be punished in the following way.

We believe further that the courts should be charged with administering the law, not with explaining or defending it.

We realize that this is an authoritarian view of the law that, within limits, imposes the doctrine of strict liability on young persons. We also realize that an age must be specified when adult law becomes operative. Although historically this age has fluctuated, it has now narrowed to three choices, 16, 17 or 18. For the reasons given, we favor 18 as the age of legal adulthood, but we have no theoretical[1] objections to a choice of 17 or 18.

At the age of 16 in our society, a person may drive and own a car, leave school, enter the labor force and leave home, and some marry. In our view, the life style of 16 and 17 year olds is closer to the life style of adults than to the life style of children of 15 or younger. Since the incidence of criminal behavior seems to peak somewhere between the ages of 15 and 17, this age group would constitute a majority in attendant institutions if the age of adulthood were set at 18.

It would be unwise, in our opinion, to house 16 and 17 year old delinquents in attendant institutions with younger children. If the period of benevolence is extended to 18 in Alberta, new facilities should be provided for some of the delinquent 16 and 17 year olds. Since it will take years to provide these facilities, we feel that the age of adulthood should not be set at 18 until they are made available. We are at the same time aware of the counter argument that they will not be built until the age of adulthood is in fact set at 18.

For some years, the State of California has had the reputation of having one of the better systems of juvenile justice. In that State, a juvenile becomes an adult at the age of 18. On June 26, 1976, the Sacramento Union carried an article under the headline:

Juvenile justice delcared a failure.

The article was based on statements made by Stephen A. Byrne, a Grand Jury Foreman for the Sacramento County, and by Edmund C. Kehberger, Chairman of the Law Enforcement Committee of that Grand Jury:

---

[1]The word *theoretical* is used because there do exist some practical objections to this particular choice.

The two men said the grand jury 'has become convinced of the failure of existing methods of attempting to cope with juvenile crime.'

The law enforcement committee in a special report on juvenile crime said 'it was determined that without exception there was a feeling of complete frustration shared by every county agency involved in attempting to deal with juvenile lawbreakers.'

The committee in meeting with top local county juvenile officials said it was 'the consensus of all present, with the exception of the public defender, that the present method of handling juvenile crime is a total, unmitigated failure.'

In commenting on the report, Byrne said one of the major problems today is that many youngsters are under the impression that nothing will happen to them if they do wrong because they are under 18.

He said the Boys Ranch was intended to be a shelter to help runaway and troubled boys but now houses young tough criminals who were sent to the California Youth Authority.

Many jurisdictions that have opted for 18 are now being challenged because it is claimed that there are too many 16 and 17 year olds who are repetitively engaging in criminal behavior and who are literally thumbing their noses at those who must administer the juvenile justice system. It is also claimed that these older juveniles are making a shambles out of the attendant institutions. These are of course cogent arguments that should not be ignored, and the mistakes made by the State of California should not be repeated in Alberta.

Nevertheless, society should consider seriously *the difference a day can make* argument that has already been advanced. It has been mentioned that juveniles indulge in breaking and entering in almost a one-to-one correspondence with their older brothers and sisters. Once over the line dividing child from adult, offenders may be liable to life imprisonment, although the day before, confinement for a period of one year would have been considered a harsh punishment indeed. This is not just an academic argument because the harshness of the adult system seems to take immediate hold on youthful offenders. Such statistics[1] as are available would indicate that in Alberta 99.9% of the age group 16-24 who were charged were convicted, and that 49.4% were sent to a jail or to a penitentiary. Compassionate people will certainly want to delay such harsh treatment of the young as long as possible.

[1]Later in the report, these statistics will be given in greater detail. Stale statistics are used because current statistics do not seem to be available. These statistics may not apply today.

After considering everything that we have read or been told, we have reached the somewhat uncomfortable decision that, under present conditions in Alberta and in Canada, a person who is 16 years old or older should fall within the jurisdiction of the adult system of justice. We therefore recommend that

> *the period of benevolent treatment of children by the law begin at the age of 10 and end at the age of 16,*

and that this policy be adopted throughout Canada. Since, however, it is of over-riding importance that the period of benevolence be the same in all provinces, Alberta should, if necessary to give uniformity across Canada, seriously consider adopting 18 as the age at which a person enters the adult system of justice.

THE WAIVER PROCEDURE

As has been mentioned, section 9(1) of the Juvenile Delinquents Act provides that the juvenile court may order juveniles over 14 to be proceeded against in an adult court:

> *9(1) Where the act complained of is, under the provisions of the Criminal Code or otherwise, an indictable offence, and the accused child is apparently or actually over the age of fourteen years, the court may, in its discretion, order the child to be proceeded against by indictment in the ordinary courts in accordance with the provisions of the Criminal Code in that behalf; but such course shall in no case be followed unless the court is of the opinion that the good of the child and the interest of the community demand it.*

The wording of the section makes it clear, however, that such an order may only be given when there is substantial evidence that it will be not only in the interest of the community but also of the child. It is not intended that the jurisdiction of the juvenile court should ever be lightly abandoned. In Alberta, the waiver procedure is used not more than five or six times per year, and in the whole of Canada, about 100 times per year. In both instances, the procedure is used in only about 1/10 of one percent of the cases appearing before the juvenile courts. Juvenile court judges obviously do not use this procedure lightly. Normally it is used only if a serious crime is involved, or if the juvenile has a history of repetitive criminal behavior. It is easy to understand why juvenile court judges are at their wits' end when called upon to cope with 14 or 15 year olds who have, for example, accumulated over 50 convictions related to breaking and entering. There is no disputing that it is in the interest of the community to stop such behavior, and it is usually not difficult to prove that the only facility available to stop the behavior is an adult jail. However, the judge must also prove that the good of the child demands such a disposition. How is the good of the child to be measured? In our opinion, section 3(2) answers this question in an unequivocal way:

> *3(2) Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender, but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision.*

There is no need to consider a situation in which the facts of a case demand a finding of innocence. In such a case, the juvenile courts are as competent as the adult courts to reach a just verdict. Let us therefore assume that the juvenile is guilty, and will be adjudged so by whatever court that tries the case.

Even here it is clearly the intent of the Act that the juvenile be proceeded against in a regular court only if it can be proven that the adult system of justice has facilities that will offer the child more help, better guidance, and better supervision than the institutions that attend the juvenile system of justice can offer. When the only facility the adult system can offer a 14 or 15 year old is jail and imprisonment with hardened criminals, it must surely be true that the second condition of the Act can never be met.

Since there have been at least 20 appeals against the use of waiver procedures, the superior courts of Canada have had a chance to comment on this particular procedure. In general, their comments are platitudinous and rhetorical when they attempt to prove that the good of the child demands that the waiver procedure be used. A sampling of these comments follows:

1. *the dangers of the 'in camera' trial in a juvenile court far outweigh the advantages such a trial can claim;*
2. *the protection of the defendant demands the open court and the due process only an adult court can give;*
3. *the informal procedures of the juvenile court are not suitable for trying serious offences against the Criminal Code.*

Such statements seriously denigrate the juvenile courts. They deny the validity of every principle upon which the existence of a juvenile justice system must rest. If it is true that the juvenile courts are competent to try only trivial cases, they should be abolished. We are grateful to provincial judge Walder G.W. White for the thoughtful and honest analysis of the waiver procedure which he gave in connection with a waiver hearing:

> *If he is convicted of the offence he might be subject to the adult penalties which are very severe, but he might well be dealt with within the juvenile system by being placed on probation and returned to the care of the Director. The effect of conviction would be to increase penalties available without removing any of the existing penalties or treatment which are presently existing. He would also be subject to some publicity and would have an adult record . . . .*
>
> *I am not one of those who subscribe to the theory that it is in the interests of both the community and the child that the trial be held elsewhere than in the juvenile court because the fine points of defences available to persons accused in the juvenile court are not as readily available in the juvenile court as they might be in another court. The juvenile court has a full reporting system and I am convinced that a trial can be held*

with full protection for the juveniles interests in the juvenile court. I therefore decline to accept an invitation to waive on that ground as suggested in the case re Cline . . . .

(The underlining is ours.)

The validity of the waiver procedure must also be questioned in cases where the child intends to plead guilty. In such cases, the waiver procedure must be justified on the unproven grounds that the open adult court is in some way better than the closed juvenile court, even when a juvenile is being tried. Yet when a juvenile pleads guilty, the effect of that open adult court, as Judge White indicates, is to expose the juvenile to severe adult penalties, to open publicity, and to all the ramifications of an adult criminal record. Although these are serious consequences, the juvenile will get absolutely nothing in return in cases where the disposition of the adult court might still lead to the confinement of the juvenile in one of the attendant juvenile institutions. The end result here surely makes a mockery of the words, *the good of the child demands that the waiver procedure be used*.

During a two year period, the boy involved in the waiver hearing mentioned above had appeared in juvenile court to answer about 25 charges of theft, breaking and entering, illegal possession, and robbery with violence. From the age of 13, there had been an escalation in the seriousness of his criminal behavior and ultimately he faced a charge of criminal negligence in the use of a firearm causing a death. Even though it would seem that he is one of the *rotten apples* of the juvenile population, Judge White went to heroic lengths in attempting to find a suitable place for him in one of the institutions attending the juvenile court. Finding that no such place existed, Judge White reluctantly ordered that he be proceeded against in the regular courts. In his written judgment, Judge White was moved to write:

The tragedy of this situation is that he should still be dealt with in some sort of juvenile system.

We agree with Judge White and make the following recommendations:

1. The juvenile courts and their attendant institutions should be separate and apart from the corresponding adult courts and penal institutions.
2. All juvenile offenders without exception should be tried in a juvenile court, and, where necessary, should be confined in a juvenile attendant institution.

These recommendations can have no meaningful implementation unless adequate facilities are built to confine juvenile offenders who commit serious crimes, or who commit crimes on a repetitive basis. In order to avoid any ambiguity, it is being recommended that the waiver procedure be abandoned.

If, however, the waiver procedure is retained, it has a serious flaw which should be rectified. As things now stand, it is possible for a judge who holds appointments in both the juvenile court and the provincial court to:

1. initiate the application for waiver of jurisdiction;
2. rule on the application for waiver of jurisdiction; and
3. conduct the preliminary hearing in the provincial court if the waiver application succeeds.

Indeed, the claim has been made that this particular sequence of events took place in the Steven Truscott case. In connection with another case, Mr. Justice Bastin of the Manitoba Queen's Bench Division wrote:

> *The transcript of the proceedings before the learned juvenile court judge shows that no real inquiry was made as to the offence complained of or as to the character and background of the juvenile. Counsel for the Crown pointed out to me that the Crown purposely withheld information as to the offence since the same Judge would normally be the person to try the juvenile, as juvenile court judge, or to conduct the preliminary hearing if a charge were to be laid under the Criminal Code. My comment is that an application under Section 9 of the Juvenile Delinquents Act is a very serious proceeding and the inconvenience of having another magistrate conduct the subsequent hearings should not interfere with a complete and searching inquiry.*
>
> (The underlining is ours.)

If a judge is supposed to enter a trial with no prior knowledge of the facts at issue, this sequence of events should never be allowed to happen. We agree with Judge Bastin that *an application under Section 9 of the Juvenile Delinquents Act is a very serious proceeding* . . . . The seriousness of the proceeding makes it wrong for the crown to withhold information. In addition, a judge hearing a waiver application becomes tainted and should not conduct the subsequent trial, no matter whether that trial is held in a juvenile or provincial court. Legislation should ensure that such a sequence of events cannot take place.

THE USE OF DISCRETION

We do not agree with the extreme view of the purpose of law presented by the Moscow judge quoted earlier:

> ... *Every single violation must be uncovered with no exceptions. Everyone must know for certain that it is futile to break the law .... Law enforcement must expand before it withers away.*

If the province of Alberta were to parade hundreds of thousands of youngsters through a juvenile system of justice each year, a day in court would become a commonplace event in the lives of children. Indeed, for some juveniles, a day in court might well provide a welcome relief from the day-by-day tedium of attendance at school. If Alberta is to avoid the staggering costs and less than desirable results of a police state, various agencies must be empowered to exercise discretion as to whether or not juvenile offenders will be required to undergo all of the procedures of the system of juvenile justice. In our system, the police, the crown prosecutors, and the judges are given discretionary powers which they exercise in quite different ways.

THE DISCRETIONARY POWERS OF THE POLICE

For the first half of this century, it would appear that Canadian society did not consider juvenile delinquency to be a serious problem, and was content to allow the police and parents to work together in an attempt to control the illegal behavior of children. This attitude toward delinquent behavior has now changed, and the out-cry against some forms of destructive behavior has become shrill indeed.

Certainly the time has come when the discretionary powers of the police should be re-examined. According to section 450(1)(,) of the Criminal Code:

> *A police officer may arrest without warrant a person whom he finds committing a criminal offence . . . .*

Since the operative word is *may*, not *shall* or *must*, this section has been interpreted as giving the police discretionary powers to decide whether or not to lay a charge against an offending person. As far as we are aware, the police do not have this power with respect to offending juveniles. The act that will ultimately replace the Juvenile Delinquents Act should rectify this omission, but guidelines should also be included to state how this discretion is to be used.

Sometimes the police abandon their original intent to warn the child and inform the parents when the home environment is found to be bad. Some homes, for example, are found to be filthy from neglect; in others, one severely alcoholic parent is found to be the only parent in the home to supervise the behavior of the child. In order to effect the removal of a child from a bad home of this kind, the police may resort to charging the child with delinquency. Although the police act out of compassion in such cases, this practice should be stopped.

It is tragedy enough that a child comes from a bad home without the added burden of being made the respondent in a situation where the proper charge is one of neglect against the parents. Moreover, to mark a neglected child with the stigma of a conviction for delinquency when children who come from better homes receive no such treatment for acting in the same way is a manifest injustice. In our opinion, the proper course of action is for the police to warn the child, inform the parents, and refer the matter to the appropriate social agency for investigation and action.

This seems to be the policy of the Metropolitan Toronto Police. An officer who apprehends a juvenile offender has four courses of action open to him or to her:

1. *He may caution the child and release him to his parents with no further action.*
2. *He may caution and release to parents but suggest and often arrange referral to a resource in the community for additional help and support, such as counselling or treatment.*
3. *He may charge the child and release him to his parents for future court appearance.*
4. *In the most serious cases, he may charge and detain the child in the observation home at 311 Jarvis Street.*

During 1975, the Toronto police used these discretionary powers in the following ways:

		Number of Cases	% of Total
1.	Caution and release (no further action)	22,669	77.4
2.	Caution and release (referral to an agency)	775	2.6
3.	Charge and release	4,452	15.2
4.	Charge and detain	1,393	4.8
	Total	29,289	100.0

These statistics follow the same pattern as that established in other jurisdictions all over the western world. In any one year, less than 2% of the total juvenile population are required to make an appearance in a juvenile court. Although we have no criticism to make of the way the Toronto police exercise their discretionary power, it would, in our opinion, be a safeguard to uniformity to have juvenile legislation include some such general guidelines about the way the police should use their discretionary powers. For example:

1. all children suspected of causing a death, placing a life in jeopardy, or using excessive violence should be charged;
2. normally, children who give evidence of repetitive criminal behavior should be charged;
3. normally, children who give evidence of escalation in the seriousness of their offences should be charged;
4. all other offending children should be warned of the seriousness of their behavior and released to their parents;
5. the police should report to the appropriate social agency any evidence of neglect which they may uncover.

The actual guidelines should be drafted only after consultation with representatives from all the agencies concerned with the administration of the system of juvenile justice.

THE DISCRETIONARY POWERS OF THE CROWN PROSECUTOR

Although we have not been able to find a legal authority for the use of discretionary powers by the crown prosecutor, these powers are well established and well accepted among all the judicial systems of the western world. Indeed, it is considered the duty of the crown prosecutor to examine all charges that are laid and to decide whether the state will proceed with, or withdraw, these charges. This form of discretion is needed, and should not be curtailed.

In Edmonton, there is some evidence that crown prosecutors are not performing the duty mentioned above in a satisfactory way. Since about 95% of all juveniles plead guilty, there is little reason for a crown prosecutor to be in juvenile court every minute of every day. We have, however, witnessed the following situation:

1. the juvenile pleads not guilty;
2. the case must be adjourned for a week or more because the crown prosecutor is not present to proceed with the trial;
3. when the prosecutor does appear, he or she withdraws the charges.

Since children are involved, the province should make every attempt to interfere with their daily routines as little as possible. If the ultimate decision is to withdraw a charge, the child should not be required to make one appearance in court, let alone two. This report has called attention to the procedure used in Calgary where a committee considers all new charges daily. Although there has been some criticism of this committee, it seems to be true that each day the charges to be withdrawn are separated from those that the province will prosecute. This certainly forestalls the unnecessary appearance in court of juveniles whose charges are withdrawn. Some such procedure should be adopted in Edmonton, even if the members of the committee are all members of the legal staff of the Attorney General's Department.

CONTINUED

1 OF 2

THE DISCRETIONARY POWERS OF THE JUDGE

In Alberta, the discretionary powers of a juvenile court judge do not include the power to confine an offending juvenile to an open or closed attendant institution. Although the power is included in the Juvenile Delinquents Act, it is negated by sections 77 and 78 of the Child Welfare Act. These two sections should be repealed.

DUE PROCESS AND FAIR HEARINGS

Because of the awesome power of the state as compared with the insignificant power of the individual, the state must be bound to follow specified procedures and clear major obstacles before a court authorizes it to intervene in the life of a citizen. The totality of these procedures and obstacles is called due process. A hearing that follows the specified procedures and requires clearance of the obstacles of due process is called a fair hearing.

It should be both the spirit and letter of the law that everyone, without exception, whom the state charges with an offence will be accorded a fair hearing. Having said this, it is important to add that the term *a fair hearing* should not have a unique and absolute meaning that must apply in every instance. What constitutes *a fair hearing* for a murder trial might be quite inappropriate when the charge is jaywalking.

As explained above at some length, the Supreme Court of the United States is slowly but surely imposing on the juvenile courts the same interpretations of the terms *due process* and *a fair hearing* as those terms have in a criminal court. Mr. Justice Harlan and Chief Justice Berger of that Court both disagree with the majority opinion of that Court. Canada should pay special attention to their plea that juvenile legislation be permitted to define these terms in its own way.

We disagree with the sweeping statement of the New York Court of Appeals that the accoutrements of due process seem irrelevant to a court before which a child is brought:

> *In such a court the accoutrements of due process evolved from the 18th century experience with the rigors of common-law prosecutions – public trial, shields against self-incrimination, adversary inquiry into the single event which brought the child to a court – seem irrelevant.*

The evolution of the legal safeguards protecting the freedom of the individual required hundreds of years of experience and thought. Some of these safeguards may have relevance in a juvenile court, and some may not. The separation of those that do from those that do not will require careful thought.

If a society adopts as fundamental the policy that every juvenile will begin his or her adult years with a clean slate, this policy will have deep implications for the definition of due process as it applies to juvenile courts. To begin with, it would obviously be pointless to debate the merits of closed and open juvenile courts, since the policy could not be implemented unless all trials were held *in camera*.

It would also follow that adult courts should not have access to juvenile records. Indeed, no adult court judge should have a

dual appointment as a juvenile court judge, in order to make certain that no judge tries a person as an adult, after having tried that person as a juvenile. The two courts should be distinct entities and should have no connecting links.

Adult due process ensures that every respondent who wants but cannot afford a defence counsel will be provided with one. Should this policy be a part of due process in a juvenile court? Since parents are also involved, who instructs the defence counsel, the child or the parents? Should a defence counsel plead a juvenile guilty just because the parents of the child want that to be the plea? Since both parents and children are involved, it is not easy to decide whom the defence counsel should have for a client, even though it is always the child who is the respondent to the charge.

Although few people will quarrel with the place that sworn testimony, testimony that is subject to cross-examination, should have in *a fair hearing*, other questions of procedure call for discussion and debate:

1. should the trial of a juvenile follow the adversary or inquisitorial form?
2. should the standard of proof required to convict a juvenile be governed by the *preponderance of evidence* or *by proof beyond reasonable doubt?*
3. should the doctrine of *mens rea* play any role in the trial of a juvenile?
4. to what extent should the pre-sentence report, usually containing a social science analysis of the background of the offender and a recommended disposition, be subject to sworn testimony and cross-examination?
5. should a right to appeal imply the creation of a special juvenile court of appeal?

Although some of these questions have been answered for the due process procedures used in an adult court, the same answers are not necessarily appropriate to procedural due process in a juvenile court. Nor should the answers come from superior court decisions on a case-by-case basis. As wise as the judges of the Supreme Courts may be deemed to be, few, if any, have had experience in a juvenile court. It is extremely doubtful whether the Supreme Court of the United States can measure, in any meaningful way, the effects, good, bad or indifferent, their decisions are having on the juvenile courts of the United States. It is most important that those who draft the procedural rules for the juvenile courts consult with those who administer them.

Is the debate over due process, now raging in the United States and spilling over into Canada, an important debate, or is it

just a tempest in a teapot? If the outcome of the debate is measured by its de facto impact on juvenile offenders or on society itself, then the debate is truly a tempest in a teapot. We shall return to this point later in the report.

The members of a society should assert as a fundamental principle that the protection of their collective freedom will best be assured by the protection of the freedom of each individual citizen. Further, a society should assert as a fundamental principle that no one will be confined as a punishment except by a court of law, a court that will give everyone *a fair hearing.* This should be true for our *angels* and our *devils,* as well as for our young and our old. In this sense, the debate is of major importance. For far too long, Canada has ignored the need to protect the freedom of its 8 or 9 million children, and the time has long since passed when Canadian law should have supplied that protection. The fact that injustice to children has been kept to a minimum is to the credit of those who administer juvenile justice systems, not to the credit of the legislation that governs the system.

If Canada is to pay more than lip service to fundamental principles concerned with freedom, the juvenile courts must be accorded respect and status as high as that accorded any other of our courts. It is denigrating to ourselves to regard those courts in any lower way, and to use them only as a last resort. They must occupy a place that is front and centre in the administration of juvenile justice.

All this we should do for ourselves, not for the children who appear in those courts. They are too young to understand the consummate care with which their lives are being treated, and can be expected to be interested only in the outcome of their trial.

In an article *Juvenile Court Reform: Procedural Process and Substantive Stasis,* Jeffrey E. Glen argues long and eloquently for making adult due process an integral part of the procedures of the juvenile court. In our opinion, he weakens his argument by coming to a false conclusion.

> *The rush of procedural reform in the juvenile court is an encouraging development, for the adversary system of fact determination has proven relatively successful in separating truth from falsehood in the judicial setting. But procedural reforms alone will not relegate the American juvenile court to its proper limited place in the total system of social control and environmental assistance to persons in need of services. Only when the juvenile court recognizes that its role is that of the tribunal of last resort, the final barrier of society to totally*

unacceptable criminal behavior by youths, will the court be able to play a profitable rehabilitative role in the American justice system.

(The underlining is ours.)

If the juvenile courts are to act only as tribunals of last resort, to try only freakish behavior of children who commit the crimes of antiquity, then they should be abolished.

In *Juvenile vs Justice*, Senator Birch Bayh, Chairman of the Subcommittee to Investigate Juvenile Delinquency of the United States Senate Committee on the Judiciary, sees the problem differently:

Approximately 1,000,000 juveniles will enter the juvenile justice system this year. Fifty percent will be informally handled by the juvenile courts' intake staff. This amounts to no more than a warning. Forty percent will be formally adjudicated and placed on probation or other supervisory release. However, because probation officers often have case loads of 100 or more, no meaningful solution to individual problems can be developed. Finally, ten percent or approximately 100,000 young people, will be incarcerated this year in a juvenile institution. During previous years many of those young people in the latter class were members of either of the two larger classes formerly described. They needed help from the beginning, but received nothing but threats until now.

The cost of this system is enormous – nearly one billion dollars a year – and it is increasing at a rate of $50 million a year. By far the most expensive and wasteful part of this system are the institutions in which juveniles are incarcerated on a long term basis. The average cost per youth is $5700 – far higher than the average cost of half-way houses or group homes ($1500 per youth) or probation services ($500 per youth). Yet it is in these larger institutions that most young people are placed, and where the most damage is done. This is made clear by the startling fact that recidivism among juveniles is far more severe than among adult offenders. While recidivism among adults has been variously estimated from 40 percent to 70 percent, recidivism among juveniles has been estimated at 74 percent to 85 percent.

Although these data do not agree exactly with data we obtained from another source, the general pattern is the same. Out of the 50,000,000 juveniles in the United States, each year about 1,000,000 or 2% come into contact with the juvenile justice system, and of these about 1/5 of 1% are incarcerated. For 90,000 or more of the 100,000 incarcerated, incarceration is the direct result of guilty pleas by the young people themselves, a set of

circumstances in which the due process of an adult court is irrelevant. In the case of the 10,000 or less who do stand trial, it is almost certain that the outcome might differ if two different procedures of due process are used. But in how many cases would the outcome be different: 1000, 2000, . . . 10,000? It does not really matter because the system would have handled over 1,000,000 juveniles and all outcomes would agree with a maximum possible error of 1%. In view of the known and acknowledged human errors in adjudication, we must conclude that the differences resulting from all forms of due process are too small to be statistically significant. On a purely statistical basis, then, the debate about due process is indeed a tempest in a teapot.

It is data such as these that convince us that Glen is wrong in assigning to the juvenile courts such an extremely limited role:

> *Only when the juvenile court recognizes that its role is that of the tribunal of last resort, the final barrier of society to totally unacceptable criminal behavior by youths, will the court be able to play a profitable rehabilitative role in the American justice system.*

If we read Glen correctly, he would divert almost all forms of delinquency away from the juvenile courts, except the forms involving murder and other crimes of antiquity. Under such circumstances, it is true that adult due process might well have an important role to play. However, this so-called *totally unacceptable criminal behavior by youth* is so freakish and unusual in our juvenile population that the establishment of special courts to adjudicate such behavior is hardly justified. In order to be consistent, Glen should have recommended, as some people now do, that the juvenile courts be abolished. We believe that the juvenile courts have an important role to play and that a form of juvenile due process should be an integral part of the procedures of those courts.

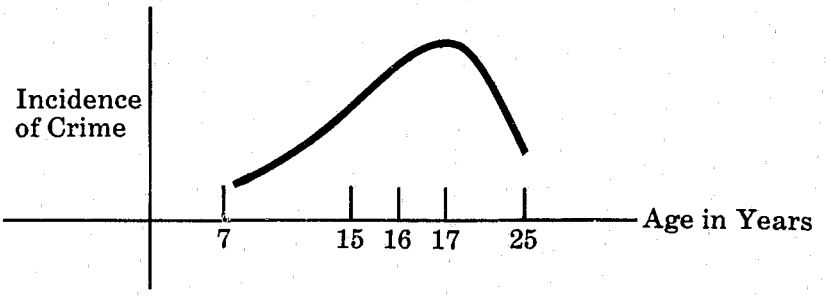
In concluding this section of the report, we cannot refrain from pointing out how false the apparently obvious frequently is. Senator Bayh's claim that the segregation of incarcerated juveniles is obviously enormously wasteful will not stand up under closer examination.

> *This is made clear by the startling fact that recidivism among juveniles is far more severe than among adult offenders. While recidivism among adults has been variously estimated from 40 percent to 70 percent, recidivism among juveniles has been estimated at 74 percent to 85 percent.*

Senator Bayh seems to forget that the cost per inmate in a jail runs at least three times as high as the corresponding cost per inmate in a juvenile attendant institution, and that it is

meaningless to compare the rate of recidivism among adults who are incarcerated for long terms with the rates among juveniles who are not. Indeed, the only consistent conclusion would be that much more money should be spent on the juvenile attendant institutions, a conclusion we would not support.

The difference in the rate of recidivism that Senator Bayh finds so startling is not startling at all. It is in fact predictable, and follows the pattern that the incidence of criminal behavior seems to follow with changing age, as illustrated by the following graph:



Clearly in the juvenile age group interest and participation in criminal behavior is on the increase while among adults it is on the decrease. Since these statistics are independent of rehabilitation programs available in the attendant institutions, they would be startling only if the rates quoted by Senator Bayh had been reversed. Moreover, to say that the adult rate of recidivism has been variously estimated from 40 percent to 70 percent should make one suspect that no meaningful measure of this rate was established by Senator Bayh's committee.

In many ways, we have gone far astray from a due process discussion. We have chosen to do so because almost all of the thousands of pages now being written on the subject exhibit a hostility toward the juvenile justice system, a hostility that that system has not earned. Grandiose reforms costing billions of dollars are being proposed, but as far as we can tell these reforms simply replace one mythology by another. Neither Canada nor Alberta should allow this to happen.

THE DEFENCE COUNSEL AND THE SOCIAL WORKER

As long as society insists that juvenile delinquency is a disease for which cures are known, the role of the defence lawyer in a juvenile trial will remain ambiguous at best, and impossible at worst. On the other hand, the role of the social worker will remain central.

The *treatment philosophy* of juvenile delinquency, the philosophy of those who advocate treating juvenile delinquency as a disease, dies hard, and even advocates of reform seem unwilling to kill it. Variations of the Kilbrandon plan, which remove all jurisdiction over disposition from the court and place it in the hands of a committee of lay people and professionals, are still being mooted. The less radical of these plans might, for example, take the following form:

1. if a juvenile pleads not guilty, the trial will follow strict legal procedures until the court establishes a verdict of guilt or innocence;
2. if the juvenile pleads guilty or is found guilty, an informal committee including the judge, the social workers, the defence counsel, the juvenile, the parents of the juvenile, and anyone else with a vested interest in the life of the child, will arrive at a disposition based on the presumed best interest of the child.

Under procedures such as these, defence counsel will be shackled as lawyers, and expected to have an unrealistic knowledge in fields in which they are not trained. A Special Issue of the Juvenile Court Journal describes the role of the attorney as follows:

> *At the dispositional phase of the hearing the attorney has the following responsibilities:*
>
> *1) to ascertain that any recommendations made by the probation officer or other expert is founded on substantial investigation and objective study from reliable sources. Obviously, he must be familiar with the reports and, hopefully, have some degree of expertise, or at least a working knowledge in the behavioral sciences;*
>
> *2) to present the family's plan for treatment or rehabilitation to the court, and in turn, interpret the court's plan to the family. Generally, courts have a tremendous shortage of dispositional alternatives, and any new ones proffered by the family or their attorney would be extremely valuable;*

3) *once the decision of the court has been made, if no appeal is contemplated, assist the juvenile and his family to accept the treatment plan. This role of liaison between the court and the family is crucial to the success of any rehabilitative planning.*

Those who urge this type of role for the defence attorney tend also to advocate that law schools include in their programs courses on the treatment and rehabilitation of juvenile offenders. But what body of knowledge would supply the content of these courses? Speculative theory lacking experimental validity cannot be expected to provide the working knowledge that is postulated for this particular role of the defense counsel. The statement, *This role of liaison is crucial to the success of any rehabilitative planning,* is dangerous rhetoric because it implicitly assumes that successful rehabilitation programs do exist, an assumption that is almost certain to be baseless. Rehabilitation programs may have a measure of success, but it is not the success envisaged by those who embrace the treatment philosophy of juvenile delinquency.

Indeed, one can only pity the defence counsel who is faced with a battery of facts like the following:

1. the juvenile admits guilt to the defence counsel;
2. the defence counsel is aware of a perfect technical defence;
3. the juvenile has severe problems and is obviously in need of help;
4. the parents of the juvenile are openly hostile to the juvenile, and refuse to take that juvenile back into their home, regardless of the verdict;
5. the defence counsel has little knowledge about the type of help required, nor is he or she aware of whether such help is available in any of the attendant institutions of the provinces.

Such a counsel would have an impossible decision to make as to whether to advise the client to plead guilty. And if the client should be found guilty, it would be impossible for the defence counsel to take part in the dispositional discussion in the way envisaged.

For years to come, the number of juvenile trials in this province requiring the services of a Clarence Darrow will perhaps be measured in hundreds per year, but certainly not in the thousands. It is a fantasy to believe that there will exist a sufficiency of lawyers in Alberta who will have become expert in

dealing in the way envisaged with the problems involved in juvenile delinquency. These cases do not usually involve complex legal questions, and any good lawyer could provide an adequate legal defence if required to do so.

In the Kilbrandon format, it is reasonably certain that social workers will advance the argument that it is impossible to help a child in need of help if the treatment facilities are not given the physical possession of the child involved. They will argue for the confinement of malfunctioning or maladjusted children even though their delinquent acts may indeed be trivial. We reject this argument because it trades the freedom of the child for a promise of help that will rarely be kept.

It is our recommendation that the treatment philosophy of juvenile justice be abandoned, and be replaced by laws written in the liberalist tradition. Legislation would say to children:

> *This is the law and you may be punished in the following ways if you disobey it.*

It will be a real accomplishment if society can get children to obey the law, even though they will rarely understand the rationale for the law. In such a format, nothing more and nothing less should be required of the defence counsel than to act as a lawyer. The defence counsel, when all facts are known, is required to give the juvenile the best legal advice that the facts determine, and that advice might well lead to a guilty plea. In this scheme of things, the defence counsel is one of those major obstacles the state must hurdle before a court will allow the state to punish the accused. Counsel must ensure that the state proves, by whatever standards of proof due process requires, that the allegation is true, and that the punishment is justified. Defence counsel in this way functions as an integral part of due process. A system of justice will be in serious trouble if defence counsel do not so function. They cannot serve the interests of justice properly if they have imposed on them duties and obligations that require professional qualifications they do not have.

There seems to be agreement that the social worker has no role to play during the adjudication of guilt or innocence. During discussions with the juvenile court judges of the province, it became clear that they valued the pre-sentence reports prepared by social workers, and felt that social workers should continue to play an important role during the dispositional part of the trial.

In spite of this faith in the pre-sentence social report, we remain somewhat skeptical about the actual value of these reports. In reading about 50 of them, we found it difficult to be

certain that the different reports were not actually describing the same juvenile. Diagnoses like *this juvenile must improve his or her self-image* permeated these reports, without any evidence being offered that an improvement in self-image would be accompanied by an improvement in behavior. Some years ago it was believed that grotesque defects in physical appearance contributed in a major way to the severe behavioral problems suffered by some children. A program of cosmetic surgery was created, and then later dropped because improved appearance did not result in improved behavior. It is unfortunate that a good program was dropped for the wrong reason. The state should not hesitate to help children remedy defects in physical appearance even though it cannot thereby guarantee improved behavior.

Moreover, although we would place no limitation on the information a judge may request, we are concerned about the weeks of delay in disposition which are necessary to the gathering of information of dubious value. We do not dispute the help social workers can give children, but feel that that help might be given through our system in a more appropriate way.

We feel that every conviction in a juvenile court should be relayed to the appropriate social agency of government, and the conviction should provide legal access for the agency to complete an investigation into the environment in which the juvenile is forced to live. Such a process would allow the agency to take sufficient time for a thorough investigation of this environment, and to prepare charges of neglect, if, indeed, serious neglect is a part of that environment. The process would also allow the state to help other children in the family suffering from neglect, long before they came to the attention of society through delinquent behavior.

Having presented these opinions, we also say that we feel that the somewhat contrary views of the juvenile court judges must be given a great deal of consideration. They see the system working on a day-by-day basis, an experience we cannot share.

We oppose any and all versions of the Kilbrandon plan, a plan that permits adjudication to take place on a formal legal basis, but implies that disposition should be effected by means of a collegial type of discussion that does not involve the court. As far as the future of the juvenile is concerned, the dispositional decision is far more important than the adjudication of guilt. A grave injustice can be done by hearsay evidence that remains unchallenged. For this reason, we support the concept that adjudication and disposition should both follow the prescribed procedures of a fair hearing.

PROBATION OFFICERS

Since the most frequent sanction imposed on a juvenile offender is probation which leaves the child at liberty providing certain conditions are met for a specified period of time, we do not question the need for officers of the court who enforce the orders of the court. Although we shall call the people who do this work probation officers, there is no uniformity in the way the term is used by the various agencies connected with the administration of juvenile justice. Indeed, in some jurisdictions job descriptions do not use the term probation officer at all. There is also no uniformity in the work that probation officers are supposed to do.

Some probation officers told us in no uncertain terms that they were social workers into whose hands the system had placed the care and welfare of the child. They devoted time and effort to solving family problems affecting the child, and did not seem to hesitate to impose conditions on the child beyond those contained in the probation orders of the court. Other probation officers told us their case load was so large that they did not have the time to supervise the orders of the court, let alone supply social service to the family and child involved. These probation officers were frank enough to tell us that the only help which they could give was provided on a crisis basis. When *all hell broke loose,* they would investigate and would attempt to bring the family and the child back to some semblance of normalcy by whatever palliatives that were available. We heard pleas for the reduction of the case loads of probation officers. A case load of 20-25 cases per probation officer was mentioned several times as reasonable.

We support without reservation, the continuation of a probation service for juveniles in this province. Unless probation orders are supervised and enforced, the probation sanction becomes a sham. We feel that it would be far better to free a child without conditions than to impose conditions which are neither supervised nor enforced. Moreover, we have no objection to the combination of probation and social work mentioned above. Even the social service supplied only during crises seems to us worth continuing.

We are convinced that probation officers should have good working conditions, and that where case loads are too high, they should be reduced. But at the same time, we are skeptical about claims that the so-called ideal case load would necessarily mean an increase in the help that can be given to offending juveniles and their families, allowing as it would only about one day a month for the probation officer to work with an individual juvenile and his or her family. We do not believe that this is time

enough for a probation officer to do much to reduce the hostility and tension that can exist between juveniles and their families.

In summary, although we feel that probation work is important and should be continued, we can see little advantage in expanding the service to any significant degree.

A RECAPITULATION AND PROPOSAL FOR A NEW SYSTEM OF JUVENILE JUSTICE

Up to this point in our report, we have tried to examine critically the mass of conflicting and often unsupported opinions on the causes of juvenile delinquency, and on the best ways for society to cope with it. In the course of doing so, we have advanced numerous individual recommendations. It now remains to consolidate these recommendations, to restate the philosophy on which they rest, and to compare our proposed system of juvenile justice with the system now in effect.

LEGISLATION

Although some of our recommendations can stand on their own, many of them depend for their validity on society being willing to abandon the current disease-treatment theory of juvenile delinquency in favor of theories based on the so-called *liberalist* tradition of the law. Under these circumstances, we would have to repeal the Juvenile Delinquents Act and create two new acts in its place: what we have chosen to call a *Federal Juvenile Offences Act* and a *Provincial Juvenile Offences Act.* We do not, however, advance our recommendations at this time as more than a framework in which discussion and debate can take place. Such discussion and debate would necessarily deeply involve all those now involved in the administration of our present system of juvenile justice.

The two new acts would, for example, have to:

(1) define the term *juvenile* in an unequivocal way, and, we would hope, on a Canada-wide basis;

(2) establish the juvenile courts as the only competent authority to try a juvenile;

(3) list a specific and complete set of offences;

(4) list a set of sanctions that might be imposed on juveniles who violate the provisions of these acts, sanctions for which the sole purpose is punishment;

(5) make the juvenile courts the only competent authority to impose these sanctions;

(6) endow the police with discretionary power as to whether to charge a juvenile caught committing an offence, and establish guidelines indicating the basic principles involved in the use of this discretion;

(7) establish in a minimal form the procedures that must be used by those who administer the system of juvenile justice, procedures that will give meaning to the terms *due process* and *a fair hearing;*

(8) provide for the establishment of mechanisms that will ensure that every juvenile, without exception, will enter his or her adult years with a clean slate;

(9) provide for a method of appeal that can take place within the juvenile courts;

(10) ensure that the juvenile courts are separate and apart from all other courts.

POLICE

As in every system of juvenile justice, the police will normally have the initial and major contact with juvenile offenders. We would give them discretionary powers to be used in the following way:

1. in the case of 70%-80% of the juveniles caught committing an offence, the police will be expected to warn the juvenile, inform the parents, and record the event in police files;
2. in the case of the remaining 20%-30%, the police will be expected to lay charges against the juvenile, particularly where:
   (a) a loss of life is involved, a life is placed in jeopardy, or excessive violence is used; or
   (b) the juvenile has a record of repetitive contacts with the police.

In all cases, the police should report to the appropriate social agency any evidence of child neglect that they may uncover. That agency should investigate, and, where the evidence is sufficient, should lay charges of neglect against the parents.

THE ATTORNEY GENERAL

The Attorney General or his or her designee should, each day, review the charges laid by the police, and separate the charges to be withdrawn from those that will proceed for adjudication to the juvenile courts. If a charge is to be withdrawn, a notice of this decision should be sent to the parents and to the juvenile involved as soon as possible. Where the juvenile is to go to trial, the support staff of the courts must provide the juvenile and the parents in writing with:

1. a statement of the specific offence, or offences, the juvenile is alleged to have committed;
2. information as to the legal rights of the juvenile and the parents;
3. a statement of the date and time of the trial; and
4. all other material needed to conform with due process regulations.

It would also be desirable to have a social worker explain in person to the parents and the juvenile the nature of the proceedings the juvenile must face, and answer any questions the parents or juvenile might have.

THE JUVENILE COURTS

Although we are proposing a drastic change in the philosophy of juvenile justice, we do not envisage any significant change in the number or composition of juveniles required to stand trial in the juvenile courts. We would not expect more than 2% of the juvenile population to stand trial in any one year, and that most trials would involve charges related to some aspect of theft or of the destruction of property.

Children do not normally use excessive violence or cause deaths. Such behavior is rare, and might indeed be called freakish. The procedures of due process must apply to children charged with such behavior, but few guidelines can be given to the courts on how to cope with freakish behavior of this type. Since these children unfortunately do exist, it follows that the juvenile courts must be given the attendant facilities to cope with the problems these children create. The same conclusion is also true for the small number of severely emotionally disturbed, sometimes insane, children who find their way into the juvenile courts. Since the number of these children in Alberta is measured in tens, rather than hundreds, the creation of completely independent facilities is difficult to justify, but, nevertheless, some special facility must be provided for them.

For the vast majority of juveniles who must face the juvenile courts, we do not envisage any significant change in the sanctions the courts now impose. About 80% of these children should, and indeed do, receive a sanction that indicates the displeasure of the court, but involves no more supervision than the minimal supervision that can be given by a probation officer. This is as it should be. The typical juvenile delinquent is a sporadic shoplifter who steals something worth less than $10, and not a participant in organized crime. In such cases more harm than good results from delaying trials for weeks so that social background materials can be made available at the time of disposition. Adjudication and disposition of such cases should be concluded in a matter of days.

Finally there are the juveniles, some hundreds in number, whose repetitive misbehavior should be stopped by confinement of one sort or another. Since this is a serious sanction to impose, involving a curtailment of freedom and separation of juvenile and family, we would allow no authority other than a court to impose this sanction, or to specify the length of time such a sanction must be endured. In serious cases of this nature, we would not place any limitation on the time the judge might require to obtain the information he or she deems necessary for a proper decision. Nevertheless, careful thought should be given

to the type of background information that is requested before a disposition decision is made.

If home background information is made available, there is a danger that the children of the rich will be treated differently from the children of the poor; even though their misbehavior is the same. If the parents of the juvenile say they will not allow their son or daughter to return to their home, that information should, in our opinion, have no bearing on the decision to confine, or not to confine, a juvenile. There are many aspects in the state care of children which have no part to play in the punishment of an offending child.

A juvenile court judge who decides to confine a child for a definite period of time should specify in writing whether the confinement will be served in an open or closed type of facility. The judge should expect the state to provide the confined child with a decent place to live, and adequate educational opportunities, but he or she should have no jurisdiction over any special programs designed to help the child.

The welfare authorities might decide to create special programs in an attempt to provide more help for the juvenile than can be expected from a conventional educational or vocational program. Since these special programs will of necessity be experimental in nature, with limited expectation for success, jurisdiction over them should rest with the Director of Child Welfare, who should also have the power to move a juvenile from one attendant institution to another, as long as both are of the type decreed by the juvenile court.

THE ATTENDANT INSTITUTIONS

From the thousands of juveniles in Alberta who make an initial contact with the police, the decision-making procedures keep sifting and selecting juveniles, always attempting to separate the better from the worse. The attendant institutions receive the residue of those sifting and selection procedures, and it is predictable that, on the average, the members of this residue will be educational under-achievers, emotionally disturbed, and generally maladjusted and malfunctioning. Nevertheless, by no means do all of the children confined in attendant institutions conform to the average profile.

In Alberta, the number of juveniles in this residue is measured in the hundreds, and constitutes something like 1/10 - 1/5% of the total juvenile population. This residue will normally consist of children who have had multiple contacts with the system of justice, and who have finally exhausted the patience of extremely patient people. They will have been sent by the courts to these institutions because confinement seems to be the only way to curb their misbehavior.

Under a *liberal system of justice* the sole purpose of confinement is to punish, and the major purpose of an attendant institution is accordingly custodial. Nevertheless, these juveniles are still children, all of whom will normally be under the age of 16 and still subject to the laws regulating compulsory education. Educational facilities must therefore be provided for them in these institutions.

Of these children, some are completely illiterate, some are functionally illiterate, and their general level of educational attainment is about two years behind the average for their age group. These are youngsters who read and comprehend at about the grade three or four level. They must be taught simple things like how to sit and how to listen before they can be taught anything of substance.

The challenge of a classroom in an attendant institution is quite different from the challenge of a classroom in the usual school. The achievement that can be expected in a classroom in an attendant institution is quite different from the achievement that can be expected in the usual classroom. Although both may be called classrooms, the name is about the only thing they have in common.

The educational system of an attendant institution should attempt to teach youngsters how to survive in the world to which they must return. Certainly, they must be taught to read and

write, but that is hardly enough to prepare a youngster of 16 or 17 to go it alone in the world in which we live. Some have yet to learn how to use a ruler, let alone how to use a lathe. Unfortunately, the time a child spends in an attendant institution is too short to make it possible to teach enough to children who need to be taught so much. It takes a tutorial form of teaching to interest juveniles in learning anything at all in a period of time that is measured in months, and not in years. Yet, although this is an extremely costly educational method, it is a cost this province should willingly bear.

Forms of emotional maladjustment are more individual in nature, and take much study and careful assessment before they can be identified. Individual programs might alleviate some of the severe emotional stress from which some of these youngsters suffer, but it is too much to expect that permanent relief will ever result from any program administered in an attendant institution.

Indeed, although this province should spend and does spend millions of dollars on its attendant institutions, no measurable gain can be expected from even expenditures of this magnitude. It is even uncertain whether a youngster confined in one of these institutions will gain or lose from the experience. Yet, as long as society deems it necessary to confine juveniles, it must make heroic attempts to help them, even though the direction to go in order to provide that help is not known.

A COMPARISON BETWEEN THE PRESENT AND PROPOSED SYSTEMS OF JUVENILE JUSTICE

We have discussed in some detail, and with considerable repetition, the major aspects of the *liberal system of justice* which we support in order to bring out the similarities and the differences between that system and the one now in effect.

If the results of the two systems could be analyzed statistically, they would be found to be indistinguishable. Any apparent differences would not be statistically significant. That this is so should come as no surprise because there is nothing seriously wrong with the way in which juvenile justice is being administered in this province at the present time. Juveniles are treated with humane and compassionate care by the various agencies in the system. About all that should be said to these agencies is to keep trying to help children who are desperately in need of help.

Why then bother to change radically a system that seems to be working so well? The answer is that whether or not the differences between the proposed and present systems show up in such statistics, they are still radical enough to provide strong arguments for change.

The disease-treatment philosophy of juvenile delinquency dictates that the system will treat offending juveniles as if they were sick, and emphasizes over and over again that the legislation involved should have no punitive aspects. However, since punishment is part of the present system, the law instructs the system to function in one way, and the system reacts by functioning in quite a different way. That is not the way to gain respect for the law. The present philosophy makes it impossible to administer juvenile law with honesty and integrity. How can a judge impose a fine on a child in a system that insists that no punishment is involved? In order to make legislation conform with present practice, new legislation should be written.

In the proposed system, neglect and delinquency are kept separate and apart. The philosophy of demanding that the system act in the best interest of the child makes it all too easy to charge a child with delinquency when it is the parents who should be responding to a charge of neglect. It would be truly wonderful if society could always act in the best interests of the child, but unfortunately no one knows, and no one can know, what those best interests are for the child who stands before the bench. Such unattainable goals should never find their way into juvenile legislation.

In the proposed system, there will be no Kent-like or Truscott-like cases, a handful of cases whose number would be too small to be picked up in a statistical analysis. As adults, we have made a covenant among ourselves to protect the collective freedom of society by protecting the freedom of the individual in each and every instance where the state threatens to curtail that freedom. That covenant should include the protection of the freedom of children. We have signed this convenant so that we can sleep peacefully at night and not be anxiously awaiting the midnight knock that in some countries is the forerunner of confinement in prisons or asylums without any process at all, let alone due process of the law.

If ever honesty and integrity should go hand in hand, they should do so in the law, but the hopeless philosophy of the present legislation makes that impossible. Even though only about 100 children per year stand trial in adult courts, their existence ensures a contradiction between present philosophy and present practice which only new legislation can correct. All this is said in the realization that though the present system of juvenile justice should be changed, the changes will not provide the people of Alberta with any measurable evidence of better things being accomplished.

There are those who will undoubtedly claim that the proposed changes will make the juvenile courts into criminal courts. If that is taken to mean that some of the safeguards used in the criminal court will be used to safeguard children, then the claim is true. However, on close examination, it will be found that though the terms *due process* and *fair hearing* will be used in both courts, they will be used with different meanings. The benevolence of the juvenile court will be maintained, a benevolence that plays little part in the adult criminal court. The juvenile court will have a distinct identity and purpose, an identity and purpose that differs from the identity and purpose of a criminal court.

JUVENILE DELINQUENCY IN THE LARGE

It has been emphasized that society should not look to a juvenile system of justice to prevent or to control the massive misbehavior of its children. The juvenile courts are geared to process about 2% of the total juvenile population, and the ultimate sanction of confinement is imposed on about 1/5 of 1% of that population. In Alberta, only a few hundred juveniles, out of a total population of about 400,000, are confined each year. Under such circumstances, it is pure fantasy to expect that a juvenile system, be it good, bad or indifferent, can have any measurable effect on the behavior of the 98% of the juvenile population that it never sees.

The massive misbehavior of children is very real and, each year in Canada, children destroy hundreds of millions of dollars of property through theft and vandalism. No society is likely to stand idly by, and say that it cannot do anything to cope with a problem of that magnitude. Something will be done, even though it may turn out to have been a useless thing to do. Some people demand a more rigid enforcement of the law, without considering either the costs involved or the meagerness of the benefits to be obtained. If society wants more enforcement, the juvenile justice system will have to have more police, more judges, more social workers, more lawyers, more people to work in the attendant institutions, and, of course, more physical facilities to house all the people involved. If the system is instructed to cope with 10% of the juvenile population, Alberta should expect to spend about 300 million dollars per year, and many more millions of dollars will have to be spent to build new facilities. Yet the benefits to be expected from such a large expenditure will be meager indeed. The end result will be that thousands of children will be placed on probation, and somewhere between 2000 to 3000 will be confined in provincial institutions. All this money and effort will have little measurable effect on the behavior of 400,000 juveniles, and this is not the solution that Alberta should espouse.

In assessing rehabilitation programs, Martinson mentions two alternatives a society might consider. Some people, he says, believe that juvenile delinquency is a form of maladjustment that can be treated and cured. They will say that present educational systems, social science programs, and medical science programs are inadequate and should be upgraded. They will urge governments to spend millions of dollars on this upgrading on the assumption that a significant improvement in juvenile behavior will be achieved. It is possible that these people are right, and if so society would be wise to spend those millions

of dollars to attain such a worthwhile objective. It is also possible that they might be wrong.

Education at its best, social and medical science programs at their best, may have no significant effect on the behavior or misbehavior of children. Other people, Martinson says, hold the view that children behave or misbehave according to the situation in which they find themselves on a particular day, and at a particular time of day. Children who enter a store for a legitimate reason may leave the store as shoplifters because they found the open display of merchandise an irresistible invitation to steal. People who hold this view urge society to start attacking the circumstances under which children misbehave, and to stop attacking the children themselves. Society might, for example, require that all merchandise offered for sale be kept under lock and key. Such a draconian solution would seriously affect our economy. Even though it might reduce the amount of shoplifting, would it solve all of the problems connected with delinquency? We think not. There is a third alternative that Martinson does not mention.

It is possible that a society that suppresses one form of misbehavior will find that this misbehavior simply surfaces in a different form. The pickpocket of the time of Dickens has disappeared, only to be replaced by the modern shoplifter. If shoplifting is suppressed, God alone knows the next form of theft that might prove attractive to the members of the juvenile population. In *A Challenge of Crime in a Free Society*, the President's Commission wrote:

> *But it is by no means true that a simple infusion of resources into juvenile courts and attendant institutions would fulfill the expectations that accompanied the court's birth and development. There are problems that go much deeper. The failure of the juvenile court to fulfill its rehabilitative and preventive promise stems in important measure from a grossly overoptimistic view of what is known about the phenomenon of juvenile criminality and of whatever a fully equipped juvenile court could do about it. Experts in the field agree that it is extremely difficult to develop successful methods for preventing serious delinquent acts through rehabilitative programs for the child. What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, or psychiatrist.*

(The underlining is ours.)

Although we agree that the prevention and/or control of deviant behavior lie *well beyond the reach of any judge, probation officer, correctional counselor, or psychiatrist,* we take exception with the Commission's conclusion that:

> *What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as a pattern of behavior produced by a multitude of pervasive societal influences.*

As Martinson claims, much of the deviant behavior that we see can be explained as situational deviancy. Even the best intentioned and best behaved youngster might, in certain circumstances, steal something from somebody, or from some store. These are individual acts of deviancy which may be entirely due to particular circumstances, and not necessarily to any societal influence.

Based on what is surely a false assumption, the Commission examines in great detail *a multitude of pervasive societal influences* and proceeds to prescribe an even greater multitude of remedies. With respect to educational systems, the Commission writes:

> *When the school system is not adequately equipped to meet the early learning problems a child brings to school with him, a cycle of deterioration and failure may be set in motion. As the youngster is 'promoted' from grade to grade to keep him with his age mates but before he has really mastered his tasks, failure becomes cumulative. While he may have been only half a year behind the average in fourth grade, for example, recent evidence shows that the achievement gap may widen to three-quarters of a year by sixth grade and to one-and-one quarter years by eighth grade. . . .*
>
> *There is mounting evidence that delinquency and failure in schools are correlated. For example, in comparison of a group of 'A' and 'B' students with a group of 'C' and 'D' ones (both working and middle class), the 'C' and 'D' ones were seven times more likely to be delinquent; boys from blue-collar backgrounds who failed in school have been found to be delinquent almost seven times more often than those who did not fail.*

The *mounting evidence* referred to above is not mounting at all, and correlation and causation are two entirely different concepts. Although a positive mathematical correlation is easily established between any two increasing variables, say the increasing number of automobile accidents and the increasing levels of educational attainment of society, it is a non sequitur to conclude that the increase in one variable is the direct cause for

the increase in the other. Although we do not have access to the evidence mentioned above, similar evidence has come to our attention.

M.E. Wolfgang, R.M. Figlio, and T. Sellin did an excellent cohort study, *Delinquency in a Birth Cohort*, based on data they obtained for all boys born in Philadelphia in 1945. These authors did a competent and honest evaluation of the statistical inferences that can be drawn on the number of contacts these boys had with the police from 1953 to 1963, beginning with their eighth birthday and ending with their 18th. They present the following interesting data:

MEAN INTELLIGENCE QUOTIENT SCORES

1)	Delinquents	101
2)	Non-delinquents	108

AVERAGE HIGHEST SCHOOL GRADE COMPLETED

1)	Delinquents	10
2)	Non-delinquents	11

INDIVIDUAL ACHIEVEMENT LEVEL

	Delinquent	Non-Delinquent	Probability of being Delinquent
Very low	366	322	0.53
Low	362	366	0.50
Average	381	666	0.36
High	149	672	0.18
Very high	75	490	0.13

These data have such an obvious consistency, one is tempted to conclude that the probability of a very low achiever becoming a delinquent is about four times the corresponding probability that a very high achiever will become a delinquent. One is also tempted to conclude that, if we could find a way of making very low and low achievers into average achievers, we should be able to reduce delinquency rates by 1/3, a notable achievement indeed. If these conclusions were correct, society might well look to its school programs to help reduce the incidence of juvenile delinquency. Unfortunately, these data, like all data of this type, suffer from a serious flaw. The authors point out that these figures are based on the number of police contacts these boys show, but they make no effort to measure the hidden delinquency that is always present, nor do they point out that the effect this hidden delinquency will have on their conclusions is not known.

For years, universities and high schools all over the world have conducted self-reporting questionnaires asking students whether or not they have committed offences while they were juveniles. The results uniformly show that over 80% of these students admit to the commission of one or more offences during those years. About 60% said that they had shoplifted at least once in their lives, and about 60%admitted that they had caused wilful damage to property, damage like the breaking of windows or the vandalizing of buildings. As a matter of interest, the data of an entering law class in Sweden once showed that 97% of that class admitted that they had committed offences during their juvenile years.

Although all of these students rank among the high and very high achievers in their senior school program, their admitted delinquencies do not show up in police records. These are therefore among the hidden delinquencies mentioned above. As long as these hidden delinquencies remain concealed, one cannot safely conclude that the probability of a low achiever committing a delinquent act is about four times that of a high achiever. A safer conclusion might well be that the low achiever has a probability of being caught that is four times the corresponding probability of the high achiever. There are in fact many other interpretations that can be given for these data.

Because of their belief in the validity of their assumptions, the President's Commission on Law Enforcement and Administration of Justice makes the following recommendations:

In order that slum children may receive the best rather than the worst education in the Nation, efforts, both private and public, should be intensified to:

Secure financial support for necessary personnel, buildings and equipment.

Improve the quality and quantity of teachers and facilities in the slum school.

Combat racial and economic school segregation.

Help slum children make up for inadequate pre-school preparation.

Deal better with behavior problems.

Relate instructional material to conditions of life in the slums.

Raise the aspirations and expectations of students capable of higher education.

Review and revise present programs for students not going to college.

Further develop job placement services in schools.

Although there is little need to quarrel with social goals designed to provide a better education for part, or all, of the student population, it is a dubious claim that the realization of such goals will result in any significant reduction of juvenile delinquency. Indeed, it is far from clear that the implementation of these recommendations would bring about the postulated educational improvement.

We have little sympathy for the excessive criticism that is now being levelled at our educational institutions. The age old cry of a *return to basics* is now being heard again, but no one seems to know what those basics are except that somehow they were always a part of the curriculum of a generation ago. One has only to compare the state of knowledge at the turn of the century with the state of knowledge today to know that our educational institutions do not have to beat their breasts and shout *mea culpa.* They, like the juvenile courts, are not to blame for the deep societal problems which now exist.

At the turn of the century, the Kitty Hawk had yet to fly. Today, the Apollo and the Mariner cruise with pin-point accuracy through the far reaches of the universe. Small pox and polio were scourges that killed or maimed hundreds of thousands of people. Today, these diseases, and many more, have been eradicated. The knowledge that made possible these and other miracles came directly or indirectly from our educational institutions, and the way to the future lies in stepping forward, not in stepping back.

The most innovative curriculum, taught in the best of physical facilities by the most competent teachers, will fail to accomplish anything among students who cannot or will not learn. All that a society can do is offer children an opportunity to learn. No one should question the need for constant experimentation with innovative curricula designed to catch the interest and attention of an ever-growing mass of students. Students should be made aware that every step on the way to higher education opens doors to the universe that must remain forever closed to those students who do not take that step. At the turn of the century, 95% of the goods produced resulted from the use of human effort, with 5% of that effort being supplied by machines. Some 75 years later, the data are reversed. There is very little room in the employment market for the person who is uneducated or untrained. Students who refuse the opportunity to learn will pay for that decision for the rest of their lives. But what has all this to do with juvenile delinquency? Probably very little.

This country and this province have both embraced a vision in which every child will be educated to the limit of his or her

capacity. Although this vision is still nothing more than a vision, it will never be realized if society demands, as a condition for success, that educational institutions improve the sporadic misbehavior of their students. Education makes for educated people, but is does not necessarily make them better people. In a Hitlerian society, educational institutions can, through fear, be used to make robots of children, but that is too high a price to pay to curb the sporadic and unorganized misbehavior of children.

We are certain that no society will view the millions of dollars of destruction to property through theft and vandalism and stand idly by while that destruction is taking place. Although we have no concrete suggestions to make about how that massive destruction can be prevented or controlled, we would like to offer two bits of advice:

1. Society should not spend millions of dollars on any program that is not based on solid evidence that it will achieve its goals. History tells us of the billions of dollars that have been spent on programs without yielding any modification in the ways that human beings behave. It would be far better to spend hundreds of thousands of dollars on the research that would produce the same negative conclusion. Someday, somehow, research may establish a positive result, and that will be the time those millions of dollars might be wisely spent. The assessment centre envisaged previously in this report should have an important role to play in research into human behavior.

2. It is a tragedy to abandon a good program for the wrong reason. The war on poverty should be fought and won, but the success of that war should not be judged by the behavior of people after the war has been won. If that behavior improves, it should be considered to be an unexpected plus. But if it does not, that should not stop us from insuring that no child goes hungry in the affluent society in which we live. Educational institutions, the juvenile courts, and a host of other social service agencies demand our respect and support for what they can, and do, do. It is a tragedy to withhold that respect and that support because they cannot cope with a vexing problem whose solution has eluded us for thousands of years.

STATISTICAL INFORMATION

In the concluding chapter of his book *The Young Offender*, D.J. West writes:

> *When I was writing this book, a list of questions was sent to me from a student struggling to write an essay on juvenile delinquency and wanting some short authoritative answers. 'Why is there an increase in delinquency?' 'Does it run in families?' 'Why is it so much more marked in boys?' . . .*
>
> *When I look back on these elementary questions, it occurs to me how disappointed this student and other readers may be to find so many of these basic issues discussed, and so few clearcut answers provided. In truth, the subject of delinquency bristles with unanswerable questions. The more one sees of it, the less one sees through it. Delinquency, like ill health, consists of a vast conglomeration of different phenomena, and no simple explanation or cure will be found to fit more than a small segment of the whole. The problems are so many-sided, so changeable, and so complex in all their social and psychological ramifications that we have hardly got to the stage of stating the issues coherently, let alone resolving them . . .*
>
> *In short, in explaining persistent delinquency, as with all unusual behavior patterns, one has to take into account a great variety of factors: social, individual, biological and environmental. The simple answer is a myth . . . .*
>
> *Reliable information about the phenomena of delinquency may be hard to come by; but facts about remedies and their effectiveness are still more scarce. As Grygier put it:*
>
> *'The field of penology has been full of good intentions and false hopes. We have built penitentiaries and expected people to repent; we have assumed that juvenile delinquents need training and will receive it, naturally, from 'training schools' . . . . Only recently have we begun to have second thoughts on these matters and to take first steps in checking our preconceived notions in controlled experiments . . . .'*

(The underlining is ours.)

Although it is difficult to argue against the need for controlled experiments, it would be false to believe that the western world has neglected criminological research. Research workers have carried out thousands of projects, some of which are monumental works, with suggested results that are sometimes frightening, sometimes disappointing, sometimes inconclusive, sometimes contradictory, and sometimes just plain false.

Although none of the research may have answered completely the riddle of human behavior, we cannot agree with blanket statements such as the following by West:

> *One is forced to conclude from these studies that the commonly accepted treatments of individuals are not very useful in preventing delinquency. The conclusion is highly unpalatable to social case-workers and child guidance therapists, whose ministrations are made to seem futile.*

Such a negative conclusion rests on the false assumption that a rate of recidivism is the only index one can, or should, use to measure the success or failure of a rehabilitative program. Since we are unwilling to assume that a life of virtue, completely free of deviant behavior, is a realistic index of a rehabilitative, or any other, program, we believe that other indices should be used to measure the success or failure of the multitude of projects that have already been studied. We do agree, however, that criminological research must continue and be supported, and that this research requires an adequate, accurate, and readily accessible data base. Such a base does not exist in Alberta, nor indeed in Canada.

Statistics Canada publishes statistics about juvenile delinquency apart from the corresponding statistics on adult crime. It also publishes other volumes of statistics which are related to both adult and juvenile crime. Among these different volumes, it is possible to find different bases being used for the reported data.

Up until 1968, juvenile statistics were only reported for groups 7 to 15 years of age. After that date, the different provincial official age limits for juveniles were used to record data. Thus

> *In Prince Edward Island, Nova Scotia, New Brunswick, Ontario, Saskatchewan, Yukon and Northwest Territories the official age limit for a juvenile is under 16 years; in Newfoundland, under 17 years; in Quebec, Manitoba and British Columbia, under 18 years; and in Alberta, under 16 years for boys and 18 years for girls.*

Because the age of the so-called juvenile population varies from province to province, the totalling of provincial statistics becomes an imprecise base for Canadian data. Again, in all provinces, with the exception of Manitoba, Alberta and possibly Ontario, statistical reporting involves all cases dealt with by a judge on either a *formal* or *informal* basis. In Manitoba, Alberta and possibly Ontario, the statistical reporting records only those cases dealt with by a judge on a *formal* basis. Further, there

seems to be sufficient difference in the reporting procedures used by Manitoba, Alberta, and Ontario to justify reporting their data separately. Since the so-called Canadian data exclude the data of these three provinces, they are misnamed. There is no data base from which one might seek factors pertaining to delinquency which might apply to the nation as a whole.

Although the statistics on crime and traffic enforcement are based on police information, the so-called *crimes known to the police*, juvenile statistics are recorded in a different way. They bear no relation to the statistics mentioned above. It is completely confusing to find that the data are collected by means of different definitions, and that there seems to be no meaningful way that conclusions based on one set of data can be related to the corresponding conclusions based on another.

Here are some statistics taken from Alberta data for the years 1971, 1972 and 1973:

AGE OF JUVENILE DELINQUENTS, ALBERTA

Years of age	No. in 1971	No. in 1972	No. in 1973
7	—	—	—
8	3	3	3
9	3	7	9
10	12	26	23
11	31	47	76
12	111	226	255
13	230	384	512
14	340	694	818
15	441	1,043	1,416
16[1]	98	237	290
17	80	206	340
Not Stated	4	3	—

[1] *The juvenile age limit in Alberta is under 16 years for boys and under 18 years for girls; hence there should never be any boys included in the 16 and 17 year age breakdown.*

Note the plaintive footnote at the bottom of the table calling attention to an error of almost 15% in the data. It is difficult to understand how an obvious error such as this was not corrected before the publication of any of these tables, let alone how the

same error was allowed to appear three years in a row. Given a known error of this magnitude, the analyses of these data should be considered to be suspect.

An examination of the data for disposition of charges exposes an error of a different type:

ADJUDICATION AND DISPOSITION BY TYPE OF COURT, CANADA

	1971[1]	1972	1973
Total	31,424	17,692	16,579
No action-Aucune action	716	208	224
Dismissal-Renvoyes	1,171	539	584
Adjourned-Ajournes sine die	7,015	4,449	3,637
Suspended disposition-Decision suspendue	5,625	2,842	2,615

From the fact that these data include dismissals and adjournments, it becomes clear that a very substantial percentage of the data given do not in fact represent a conviction for delinquency, nor do they represent data recorded under *crimes known to police*. At best, these data can only represent juveniles charged with delinquency. Yet, in other tables, these same total numbers are claimed to be an unduplicated count of juvenile delinquents.

An examination of the data for Alberta and Canada over the period 1971 to 1973 shows clearly that there is no basis of comparison between them:

NUMBER OF JUVENILE DELINQUENTS

	Alberta	Canada
1971	1,353	18,657
1972	2,876	17,692
1973	3,742	16,579

At a time when the so-called Canadian data indicate a decreasing trend in juvenile delinquency, the Alberta data indicate an increase of 113% from 1971 to 1972, followed by a 30% increase from 1972 to 1973. This is of course patent nonsense, and such statistics are not only worthless, but misleading. These are some, but by no means all, of the difficulties we have encountered with published statistical information about juvenile delinquency. It is indeed difficult to give any credence to a claim that

[1]In 1971, the so-called Canadian data included Ontario. After that date, the Canadian data did not include the data for that province. For a true comparison, the 31,424 should be replaced by 18,657.

juvenile delinquency is increasing or decreasing when such claims are based on data as unreliable as these appear to be.

In its report *Juvenile Delinquency in Canada (1965),* a Department of Justice Committee published statistical information that seems more meaningful than anything available today.

For example, these statistics contain the following information about juveniles, 7-15 years of age, brought to court:

	Brought to Court		Found Delinquent	
	Canada	Alberta	Canada	Alberta
1961	14,804	1,168	13,357	1,101

Thus for Canada about 90% of the juveniles brought to court were found delinquent, and for Alberta the corresponding percentage is 94. The same report contains the following information about youthful offenders in the 16-24 age group:

	Charged		Convicted	
	Canada	Alberta	Canada	Alberta
1961	19,672	1,887	19,659	1,886

For 1961, these data show that 99.9% of the people charged in Canada were convicted, while in Alberta the corresponding percentage is also 99.9%. Further, for these youthful offenders, the Canadian data show that 38.2% were sent to jail or penitentiary.

We found data such as these of particular interest because of the current debate about the proper place of due process in the juvenile courts. Since the trials of the so-called youthful offenders (16-24 year of age) would have taken place with the full due process of the adult court, it seems hard to believe that the introduction of adult due process in the juvenile court would result in a significant decrease in the number of juveniles convicted for delinquency. The harshness of the adult courts of Alberta in sending 49.4% of convicted offenders to jail or penitentiary should be kept in mind in a discussion of the use of the waiver procedure to send juvenile offenders to adult court. These statistics are, of course, 16 years old and may have little relevance today.

In answer to our inquiry, the Federal Department of Justice stated that the kind of statistics mentioned above had not been gathered for many years, and that the Department could give no help in obtaining comparable data for the 1970's. This is strange

because the very first of 100 recommendations of the Department of Justice Committee reads:

1. *The Dominion Bureau of Statistics should be encouraged to continue its efforts to integrate and improve the accuracy of its various statistical series on crime and delinquency.*

There is of course no reason why governments should gather and print vast amounts of data if the data are never used. Statistics relating to crime are, however, needed and should be used.

Since such an extensive mythology has grown up around the fields of criminology and the administration of justice, there is a real need for data that can be used to distinguish fact from fancy. Justice Fortas states that the provision of defence counsel is the very essence of justice, but the statement is not necessarily true just because Justice Fortas says it is. When the Fortas rhetoric is replaced by the pertinent question, *What observable difference exists between the rates of conviction of the represented and unrepresented accused?*, the answer is that no data exist on which to base such a comparison. Millions of dollars are being spent on legal aid, without any precise knowledge of the effect that legal aid has on the administration of justice. Surely the time has come when the actual effect of legal aid should be measured in a meaningful way.

Wherever one looks in the fields of criminology and the administration of justice, one finds a dismal ignorance that can only be dispelled by the research efforts of many people. Adequate and accurate research in Canada cannot be started without extensive statistical information being made available to the people who work in these two fields. With the modern electronic computer, it is possible to have a major storage and retrieval system that can be computer analysed in a myriad of ways. Indeed, it is possible to have cohort information about every child who is born in Alberta and who continues to live in Alberta throughout his or her juvenile years. Such information would provide an almost incomparable research tool. After adequate research, a government might embark on developing policies costing millions of dollars with the confidence of knowledge, rather than the unjustified optimism of ignorance.

The State of California seems to have a good system of record keeping, and has a research division charged with analysing those records. The California State Legislature requires an assessment by its research division before funding is voted to support any proposed program. As far as we can tell, the state of

keeping criminal statistics in Alberta and in Canada is best described as chaotic. Both of the governments involved should provide the means and mechanisms to ensure that accurate and extensive criminal statistics are kept, and both should provide for an adequate staff and facilities to ensure that continuous use is made of those statistics.

THE YOUNG OFFENDERS ACT[1]

As mentioned previously in this report, the reactions to the recommendations contained in *Young Persons in Conflict with the Law* were so negative that this document has been withdrawn and replaced by another called *The Young Offenders Act.* As far as I can see, these new recommendations violate every principle which should be observed by a sane system of juvenile justice.

In its introduction, *The Young Offenders Act* says:

> *In practice, and particularly in view of changing attitudes toward crime and how to deal with it, the 1908 Act has not fulfilled its promise. In the view of many, young persons have not received proper care and treatment, and are not afforded all the basic rights and protections afforded to adults facing a criminal charge. It is also held that existing procedures fail to protect society and fail to bring about the salutary acceptance of responsibility for delinquent acts that should be part of the education experience of the young offender.*
>
> *Rather, the 1908 Act with its concentration upon the offence of juvenile delinquency tends to label and stigmatize a child, thereby reinforcing a delinquent self-image and perpetuating delinquent behavior.*

Although not one word of criticism has been voiced against the juvenile courts, the role of these courts has been reduced to the point where they might well be abolished. At one point we read:

> *One objective of the proposed legislation is that the application of the formal youth court process should be limited to those instances when a young person cannot be adequately dealt with by other social or legal means. To achieve this objective, the proposed legislation contains provisions that would encourage screening and diversion.*

If one ignores the use of the undefined term *adequately,* it is possible to point out that Sweden subjects no offending juvenile to a formal court process, and the competent authority to deal with such juveniles is *The Child Welfare Board.* Any country can follow the Swedish example, and can abolish its juvenile courts. Before such a drastic action is contemplated for Canada, sound reasons should be given for such a change and ample evidence should be provided that significant gains can be obtained from that change.

---

[1]The Young Offenders Act proposed in 1977 has the same title as a proposal made in 1965, but differs significantly from that proposal.

At another point, the following statement can be found about *Transfer to Adult Court:*

> *Inevitably there will be exceptional cases of such gravity that the provisions of the proposed Young Offenders Act cannot effectively deal with the young offender. In such cases, the proposed Act provides explicit guidelines and procedures for the transfer of the case to the adult court. However, in cases involving a young person aged 12 or 13, an application by the prosecutor to transfer a young person to the adult court must have the approval of the Attorney General.*

I seriously challenge the implication that a proper *Young Offenders Act* must inevitably fail to provide the provisions that would allow a juvenile court judge to deal effectively with a trial involving a juvenile charged with a serious indictable offence. Surely we are not challenging the competency of juvenile court judges to hold such a trial?

The new proposal on *Transfer to Adult Court* abandons the concept that there will be a period of time, after infancy, during which the law will take a benevolent attitude toward the illegal behavior of children, a period during which children will be protected from the trauma of a public trial, the harshness of adult sanctions and the serious implications of having a criminal record. According to Statistics Canada[1], there were, in 1973, over 20,000 cases involving juveniles in which the charge was murder, attempted murder, manslaughter, rape, other sexual offences, wounding, indecent assault, robbery or breaking and entering. In spite of its supposed guidelines, it is difficult to see just how *The Young Offenders Act* proposes to handle these cases. The fate of the 12 and 13 year olds involved in such cases will depend on the way ten different attorneys-general choose to exercise their discretion, and the way a multitude of judges will rule on motions to transfer jurisdiction to an adult court. The possibility of 12 and 13 year olds standing trial in adult courts should be considered to be an unwelcome step back into the 19th century.

It is impossible for me to understand how *The Young Offenders Act* can say:

> *. . ., the 1908 Act with its concentration upon the offence of juvenile delinquency tends to label and stigmatize a child, thereby reinforcing a delinquent self-image and perpetuating delinquent behavior,*

and then propose that children be charged with murder, rape, theft and the like. Surely it is not being claimed that the labels society attaches to people who commit these crimes will not stigmatize and will not perpetuate criminal forms of behavior.

[1]Statistics Canada, *Crime and Enforcement Statistics, 1972-73*, Catalogue 85-205.

If the objective mentioned for diversion is coupled with the new policy on the *Transfer to Adult Court*, then the role the juvenile courts will have to play in a juvenile justice system will be seriously reduced. Although *The Young Offenders Act* does not recommend that these courts be abolished, they give no good reason why, in the new scheme of things, such courts should be continued.

The Young Offenders Act proposes to endow all young people with the rights and freedoms contained in the Canadian Bill of Rights, and then promptly proposes to negate some of the fundamental rights contained in that Bill. According to section 2(f):

> *. . . no law of Canada shall be construed or applied so as to deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing . . .,*

yet, under *The Young Offenders Act* no young person would have an unfettered right to a public trial.

More important is the right granted in section 1(b) of the Canadian Bill of Rights:

> *. . . the right of the individual to equality before the law and the protection of the law.*

Since the provinces could not agree on a uniform age at which a person should become an adult, provision is made for the provinces to choose 16, 17 or 18 for this age. Because of this disagreement, it becomes certain that some provinces will choose 16, others will choose 17 and still others will choose 18, with the following implications: in a province that chooses 16, a person aged 16 charged with murder will stand trial in an adult court, and, if convicted, will be sentenced to a mandatory sentence of life imprisonment in an adult jail; in a province that chooses 18, *The Young Offenders Act* would allow the same person to be tried in a Youth Court and sentenced to not more than three years in one of the institutions attending the juvenile justice system.

But the inequality of treatment does not end there. In one province the 16 year old would have a permanent criminal record, but in the other *The Young Offenders Act* provides:

> *. . . that a finding a guilt shall be deemed not to have occurred when a disposition has ceased to have effect . . . .*

In order to comply with the principle of *equality before the law*, legislation governing the behavior of young people should at least ensure:

(a) that the meaning of a *young person* is defined in an unequivocal way throughout Canada;

(b) that no discretion is involved in the transfer of jurisdiction to an adult court.

Although much more could be written about *The Young Offenders Act*, I shall end by pointing out the polemical nature of some of its statements:

The new Act would have the following objectives:

- *to recognize and give formal effect to the changes and innovations in the treatment of young offenders that have come into being to make good the deficiencies of the 1908 Act; . . .*
- *to ensure that a young offender's experience with criminal justice will tend to turn the young person away from further involvement in criminal activity.*

In my study of juvenile delinquency, I have come across no changes or innovations that will make good the deficiencies of the 1908 Act as listed in the proposed *Young Offenders Act*. If such changes or innovations do exist, then the public should be told what they are and what they will cost. Similarly, my studies have uncovered no evidence that any system of juvenile justice can affect rates of recidivism. There is nothing new in this proposal that seems directly linked to obtaining this objective.

Neither the *Young Persons in Conflict with the Law* nor *The Young Offenders Act* makes an attempt to measure in quantitative terms the effect of the recommendations they make. Both are silent, for example, on the role the police are to play in the new procedures. No matter what the legislation says, the police will, and should, continue to warn 70% of offending juveniles and send them home. No matter what competent authority is chosen to deal with offending juveniles, that authority will not separate more than 1% of the juvenile population from its parents. For this reason, neither the old legislation nor the one being proposed can have any effect on the deviant behavior of young people that the public sees. There are good reasons to change the 1908 Act, but they are not the reasons given in defence of *The Young Offenders Act*. It is my recommendation that the Province of Alberta oppose many of the changes being recommended in *The Young Offenders Act*.

CONCLUSION

There is a major need to replace the Juvenile Delinquents Act, but, as far as we know, no alternative has been advanced that accepts the limitations of our present knowledge of human behavior and proposes laws that are consistent with those limitations. This is one of the reasons why I chose to write an extensive report on juvenile delinquency.

As important as it is to obtain new legislation to regulate juvenile behavior, it is probably true that the public is neither aware of, nor concerned about, this particular need. Though the public has raised an outcry about the massive loss and destruction of property through theft and vandalism, the outcry is not for a change in the law but for stricter enforcement of it.

From the earliest times, theft has been counted a sin as well as a crime, but neither the threat of eternal damnation in the hell of an afterworld nor the threat of a living hell in the prisons of this world has had any significant effect on this particular phenomenon. In spite of society's professed loathing for the thief, no judicial, church or school system has ever been able to cope with the thieving behavior of the general population. Surely the time has come when social agencies should be allowed to perform their fundamental functions, and society should look in some other direction for ways and means to cope with the vexing and enduring problem of crime.

Society must realize that there are no easy victories to be won in the war against crime. If there were, our parents and grandparents were clever enough to have won those victories long ago. It must be realized that there is a possibility that there are no victories to be won, easy or not, because the suppression of criminal behavior in one form may simply drive it to reappear in another. It is, however, too early in modern man's history to surrender to such a pessimistic view of criminal behavior. There is so much yet to be learned about human behavior that society should still support the research needed to establish whether a solution does exist, even though it must concede that no solution has as yet been found.

The field of juvenile crime has attached to it a mythology that should have been discarded long ago, but that mythology has endured and is still alive today. Like D.J. West, this report must conclude by saying that it has asked many questions, but answered few. The Solicitor General's Committee has made proposals involving the spending of millions upon millions of dollars, proposals which are not accompanied by a single shred of evidence that their implementation will yield either a significant

improvement in the protection of the freedom of our children or in the protection of society from the offending behavior of those children. If this report convinces the people of Alberta of the need to replace rhetoric with proof before embarking on expensive proposals like that of the Solicitor General's Committee, this report will have been worth the while.

Although this report has focussed on juvenile delinquency, it would be false to suppose that we consider the criminal behavior of children to be in any sense worse than the corresponding behavior of their parents. Someone once wrote something that contained the following thought:

> *The only difference between men and boys is in the different prices they pay for their different toys.*

BIBLIOGRAPHY

1. *Alberta Probation Research Study* — Alberta Attorney General, 1973, Queen's Printer.
2. *Affective Ties and Delinquency* — Eric Linden and James C. Hackler, Pacific Sociological Review, January 1973, pp. 27-46.
3. *Alberta Law Review* — Vol. XII, No. 3, 1974, University of Alberta.
4. *Another Look at the Role of Due Process in Juvenile Court* — Alice Brandeis Popkin, Fred Jane Lippert and Jeffrey A. Keiter, Family Law Quarterly, pp. 233-278.
5. *Appellate Court View of the Juvenile Court* — Graham Parker, Osgoode Hall Law Journal, Vol. 7, No. 2, 1969, pp. 155-175.
6. *Attitude of Parents Toward Juvenile Court Volunteers* — Charles R. Horejsi, Federal Probation, pp. 13-18.
7. *Challenge of Crime in a Free Society* — Report of the President's Commission on Law Enforcement and Administration of Justice, United States Government Printing Office, 1967.
8. *Changing Concepts of Juvenile Justice* — William E. MacFaden, Crime and Delinquency, April 1971, pp. 131-141.
9. *Child and the State: Adversaries in the Juvenile Justice System* — Stephen Wizner, Columbia Human Rights Law Review, Vol. 4, 1972, pp. 389-399.
10. *The Child, the Clinic and the Court* — A Collection of Papers, Johnson Reprint Company, 1970, New York.
11. *Child Offender and the Law* — Canadian Corrections Association, Ottawa, 1963.
12. *Children and Youth Court: A Modest Proposal* — Lois G. Forer, Columbia Human Rights Law Review, Vol. 4, 1972, pp. 337-388.
13. *Children Have Rights* — Children's Committee of the National Council for Civil Liberties, 1971, London, England.
14. *Clinical Psychologist in Juvenile Court* — R. Owen Nelsen, Juvenile Justice, November, 1972, pp. 26-30.
15. *Conflict of Parens Patriae and Constitutional Concepts of Juvenile Justice: Notes and Comments* — George A. Qeinkauf, Jr., Lincoln Law Review, Vol. 6, December 1970, pp. 65-79.
16. *Continuing Turbulence Surrounding the Parens Patriae Concept in American Juvenile Courts (Part 1)* — Kechin Wang, McGill Law Journal, Vol. 18, No. 2, pp. 220-245.
17. *Continuing Turbulence Surrounding the Parens Patriae Concept in American Juvenile Courts (Part 2)* — Kechin Wang, McGill Law Journal, Vol. 18, No. 3, pp. 418-460.
18. *Counsel in the Juvenile Court* — Junius L. Allison, Federal Probation, pp. 25-29.
19. *Courts and Trials: A Multidisciplinary Approach* — University of Toronto Press, 1975.
20. *Criminal Procedure - Discovery* — Law Reform Commission of Canada, Information Canada, 1974.
21. *Cult of the Juvenile Court: 'Justice With Mercy'* — Judge H. Litsky, Chitty's Law Journal, May, 1972, pp. 152-158.

22. *Defence Counsel in Juvenile Court: A Variety of Roles* — Inez Dootjes, Patricia Erickson and Richard G. Fox, Centre of Criminology, University of Toronto.

23. *Defense Counsel: 'Neither Father, Judge, Probation Officer or Social Worker'* — Stephen Wizner, TRIAL Magazine, September/October, 1971, pp. 30-31.

24. *Defence Lawyer's Role in Juvenile Court: An Empirical Investigation into Judges' and Social Workers' Points of View* — Patricia G. Erickson, University of Toronto Law Journal, 126, 1974, pp. 126-148.

25. *Detention Before Trial* — Martin L. Friedland, University of Toronto Press, 1965.

26. *Developments in Juvenile and Family Court Law* — Jeffrey E. Glen, Crime and Delinquency, April 1971, pp. 224-323.

27. *Deviance and Control* — Albert K. Cohen, Prentice-Hall Inc., 1966.

28. *Diagnostic Clinic in a Juvenile and Family Court Setting* — William T. Little, Juvenile and Family Court of Metropolitan Toronto, 1968.

29. *Dissolution of the Training Schools in Massachusetts* — Andrew Rutherford, U.S. Government Printing Office, 1973.

30. *Diversion* — Law Reform Commission of Canada, Information Canada, 1974.

31. *Diversion and the Juvenile Court: Competition or Cooperation* — Phillip Z. Cole, Juvenile Justice, February 1976, pp. 33-37.

32. *Diverting the Status Offender from the Juvenile Court* — Alan J. Couch, Juvenile Justice, November 1974, 18-22.

33. *Effectiveness of the Juvenile Court System* — Senator Thomas C. Hennings, Jr., Federal Probation, pp. 3-8.

34. *Emancipation by Eviction: The Problem of the Domestic Pushout* — Richard H. Cornfield, The Family Law Reporter, Feb. 4, 1975, Vol. 1, No. 12.

35. *Emerging Patterns in the Administration of Juvenile Justice* — Charles E. Cayton, Journal of Urban Law, Vol. 49, 1971, pp. 377-397.

36. *English Juvenile Courts: Recent Changes in Legislation* — Leo Goodman, International Journal of Offender Therapy, pp. 105-110.

37. *Entering a Plea in Edmonton Juvenile Court* — A Report done for the Board of Review by Joan Brockman, Department of Sociology, University of Alberta, August, 1976.

38. *Exploratory Analysis of Recidivism and Cohort Data on the Massachusetts Youth Correctional System* — Robert B. Coates, Alden D. Miller and Lloyd E. Ohlin, Center for Criminal Justice, Harvard Law School, July 1975.

39. *The Family, the Courts and the Community* — The Hon. Mr. Justice Thomas Berger, The Advocate, pp. 122-129.

40. *The Flow of Information in Court: The Juvenile Court in Vienna as an Illustration* — James C. Hackler, Canadian Journal of Criminology and Corrections, Vol. 17(1).

41. *The Future of the Juvenile Court* — Justine Wise Polier, Juvenile Justice, Vol. 26, No. 2, May 1975, pp. 3-10.

42. *Future of the Juvenile Court: Implications for Corrections Manpower and Training* — Ted Rubin and Jack F. Smith, American Correctional Association, 1968.

43. *The Impact of the Juvenile Court Hearing on the Child* — Eloise C. Snyder, Crime and Delinquency, April 1971, pp. 180-190.

44. *International Association of Youth Magistrates Final Report of 9th Congress,* Oxford, England, 1974.

45. *In Praise of Simplicity* — Irving Younger, American Bar Association Journal, Vol. 62, May 1976, pp. 632-634.

46. *In Whose Best Interests?* — Valerie Bean, School of Social Work, University of Leicester, "Family Law", Vol. 6, No. 1, 1976, pp. 119-124.

47. *Justice and Mercy?* — Judge Herman Litsky, The Advocate, pp. 261-264.

48. *Juvenile and Family Courts* — United States Youth Development and Delinquency Prevention Administration, 1966.

49. *The Juvenile Court and Community Involvement* — Judge Michael Corrigan, Osgoode Hall Law Journal, Vol. 10, No. 1, 1972, pp. 221-224.

50. *The Juvenile Court Comes of Age* — Junius L. Allison, Public Affairs Pamphlet No. 419, New York, 1968, pp. 1-20.

51. *Juvenile Court: A Status Report* — Jeffrey E. Glen and J. Robert Weber, National Institute of Public Health, U.S.A., 1971.

52. *The Juvenile Court and Individualized Treatment* — Michael H: Langley, H. Ray Graves and Betty Norris, Crime and Delinquency, January 1972, pp. 79-92.

53. *The Juvenile Court and Parental Rights* — Mary Virginia Dobson, Family Law Quarterly, pp. 393-408.

54. *Juvenile Court Dispositions: Factors in the Decision-Making Process* — Frank R. Scarpitti and Richard M. Stephenson, Crime and Delinquency, April 1971, pp. 142-151.

55. *The Juvenile Court in Law* — W.L. Scott, The Canadian Welfare Council, Ottawa, 1941.

56. *Juvenile Court Intake: An Analysis of Discretionary Decision-Making* — Charles W. Thomas and Christopher M. Sieverdes, Criminology, Vol. 12, No. 4, February 1975, pp. 413-433.

57. *Juvenile Court: Its Context, Problems and Opportunities* — Sanford J. Fox, Boston College Law School, 1967.

58. *Juvenile Court Journal (Special Issue)*

Chapter II	–	*The Philosophy and Theory of the Juvenile Court*
	–	*The Importance of Individualized Justice*
	–	*The Changing Juvenile Court*
Chapter III	–	*The Role of the Juvenile Court Judge*
	–	*Courtroom Setting and the Juvenile's Perceptions of the Judge*
	–	*Technical Terminology*
Chapter IV	–	*The Constitution, Due Process and Changing Times*
	–	*Gault and Due Process*
	–	*Winship and the Quantum of Proof*
	–	*Changing Times*
Chapter V	–	*Rules of Practice and Procedure; Role of the Attorney*
Chapter VI	–	*Detention and Shelter Use and Practice*
Chapter VII	–	*Neglect, Dependency, Child Abuse and Protective Services*
Chapter VIII	–	*Juvenile Court Administration*
	–	*The Judge as an Administrator*

59. *Juvenile Court Judges in the United States – Part II: Working Styles and Characteristics* — Regis H. Walther and Shirley D. McCune, pp. 384-393.

60. *Juvenile Court Reform: Procedural Process and Substantive Stasis* — Jeffrey E. Glen, Wis. Law Rev., 1970, pp. 431-449.

61. *Juvenile Court Reform: The Juvenile Offender After L.B. 620* — Thomas L. Hagel, Nebraska Law Review, Vol. 54, No. 2 (1975), pp. 405-425.

62. *Juvenile Court Standards* — Report of the Committee to Formulate Juvenile Court Standards, U.S. Children's Bureau, 1923.

63. *The Juvenile Court: The Making of a Delinquent* — Michael H. Langley, Law and Society Review, Winter 1972, pp. 273-298.

64. *Juvenile Courts in the United States* — Herbert H. Lou, University of North Carolina Press, 1927.

65. *Juvenile Delinquency* — P.S. de Q. Cabot, Greenwood Press, 1946.

66. *Juvenile Delinquency in Canada* — Report of the Department of Justice Committee on Juvenile Delinquency, Queen's Printer, Ottawa, 1967.

67. *Juvenile Detention: An Eyewitness Account* — Alan Berns, Social Worker, Institute for Youth Development and Juvenile Justice, Boston, Mass., Columbia Human Rights Law Review, Vol. 4, 1972, pp. 303-308.

68. *Juvenile Justice* — Ola Myquist, MacMillan & Co., Ltd., 1960.

69. *Juvenile Justice Administration* — Richard W. Kobetz and Betty B. Bosarge, Professional Standards Division, International Association of Chiefs of Police, Maryland, 1973.

70. *Juvenile Justice: An Explored Unsettled Frontier of the Law* — Editors, Duquesne Law Review, Vol. 9, No. 4, Summer 1971.

71. *Of Juvenile Justice and Injustice* — Irving R. Kaufman, American Bar Association Journal, Vol. 62, June 1967, pp. 730-734.

72. *Juvenile Justice Management* — Gary B. Adams, Robert M. Carter, John D. Gerletti, Dan G. Pursuit and Percy G. Rogers, Charles C. Thomas Publisher (Springfield, Illinois), 1973.

73. *Juvenile Justice Reform: An Historical Perspective* — Sanford J. Fox, Stanford Law Review, Vol. 22, June 1970, pp. 1187-1239.

74. *Juvenile Justice Reform: Innovations in Scotland* — Sanford J. Fox, Professor of Law, Boston College Law School, The American Criminal Law Review, Vol. 12, 1974, pp. 61-101.

75. *Juvenile Law and Procedure* — Monrad G. Paulsen and Charles H. Whitebread, National Council of Juvenile Court Judges, Nevada, 1974.

76. *Juvenile Offenders for a Thousand Years* — Wiley B. Sanders, University of North Carolina Press, 1970.

77. *Juvenile Police Record-Keeping* — Edward R. Spalty, Columbia Human Rights Law Review, Vol. 4, 1972, pp. 461-484.

78. *Juveniles and the Law: An Introduction* — Honorable Birch Bayh, The American Criminal Law Review, Vol. 12, No. 1, Summer 1974, pp. 1-7.

79. *Juvenile's Perception of the Role of Defence Counsel in Juvenile Court: A Pilot Study* — Katherine Catton and Patricia Erickson, Centre of Criminology, University of Toronto, May, 1975.

80. *Juveniles vs Justice* — Birch Bayh, Columbia Human Rights Law Review, Vol. 4, 1972, pp. 309-323.

81. *Law and Order: The Scales of Justice* — Abraham S. Blumberg, Aldine Publishing Co., 1970.

82. *The Law and the Young: Some Necessary Extra-Legal Considerations* – Pamela Walker, Faculty of Law Review, pp. 54-72.

83. *The Lawyer and His Juvenile Court Client* — Junius L. Allison, pp. 165-169.

84. *Legal Bibliography for Juvenile and Family Courts* — Children's Bureau, U.S. Department of Health, Education and Welfare, 1966.

85. *A Legalistic Classification of Juvenile Delinquents* — W. Buikhuisen and R.W. Jongman, Gronigen State University.

86. *Limitations of Legislative Reform* — E. Patrick Hartt, Manitoba Law Journal, Vol. 6, No. 1, 1974.

87. *Louisiana Constitutional Reform: A New Juvenile Court Article* — Eileen Gleason Shaver, Loyola Law Review, Vol. XIX, 1972-73, pp. 273-293.

88. *Maintenance in the Magistrates' Courts: How Fares the Forum?* — Dorothy Kovacs, The Australian Law Journal, Vol. 47, December, 1973, pp. 725-734.

89. *Men Released from Prison* — Irvin Waller, University of Toronto Press, 1974.

90. *Model Penal Code* — American Law Institute, May, 1962.

91. *Models of Procedure and the Juvenile Courts* — Katherine Catton, The Criminal Law Quarterly, Vol, 18, No. 2, March, 1976, pp. 181-201.

92. *Model Rules for Juvenile Courts* — Council of Judges of the National Council on Crime and Delinquency, 1969.

93. *Modern Court Management: Trends in the Role of the Court Executive* — David J. Saari, U.S. Department of Justice, Law Enforcement Assistance Administration, July, 1970.

94. *Monitoring the Juvenile Justice System: How Can You Tell Where You're Going, If You Don't Know Where You Are?* — Paul Nejelski and Judith LaPook, The American Criminal Law Review, Vol. 12, 1974, pp. 9-31.

95. *Need for Reform in the Juvenile Courts* — Judge William T. Little, Osgoode Hall Law Journas, Vol. 10, No. 1, 1972, pp. 225-228.

96. *Neighbourhood, School and Juveniles Before the Courts* — M.J. Power, R.T. Benn, and J.N. Morris, British Journal of Criminology, 12:111-132, April, 1972.

97. *New Approaches in the Juvenile Court Setting* — Lawrence C. Larsen, pp. 157-166.

98. *New Directors for Juvenile Courts: Probation Officers' Views* — Jerry Franklin and Don C. Gibbons, Crime and Delinquency, October 1973, pp. 508-518.

99. *Non-Delinquent Child in Juvenile Court: A Digest of Case Law* — Elizabeth W. Brown and Lee Penny, National Council of Juvenile Court Judges, 1974.

100. *No One Will Listen* — Lois G. Forer, The John Day Co., 1970.

101. *Offense vs Offender in Juvenile Court* — Richard M. Ariessohn, Juvenile Justice, August, 1972, pp. 17-22.

102. *Parens Patriae and Statutory Vagueness in the Juvenile Court* — The Yale Law Journal, Vol. 82, 1973, pp. 745-771.

103. *Parens Patriae: From Chancery to the Juvenile Court* — R. Douglas Rendleman, South Carolina Law Review, Vol. 23, 1971, pp. 205-259.

104. *Persisting Problems of Georgia Juvenile Court Practice* — Lucy S. Henritze, Mercer Law Review, Vol. 23, 1972, pp. 341-360.

105. *Persons in Need of Supervision: Is There a Constitutional Right to Treatment* — Jane K. Klaber, Brooklyn Law Review, Vol. 39, 1973, pp. 624-657.

106. *Philosophy and the Principles of Punishment in the Juvenile Court* — Sanford J. Fox, Family Law Quarterly, pp. 373-384.

107. *PINS - A Concept in Need of Supervision* — Stuart Stiller and Carol Elder, The American Criminal Law Review, Vol. 12, 1974, pp. 33-59.

108. *Proposal to Reorient the Juvenile Court Process* — Douglas J. Besharov, Family Law Quarterly, pp. 243-249.

109. *The Prosecutor* — Brian A. Grosman, University of Toronto Press, 1969.

110. *Prosecutorial Discretion and the Decision to Waive Juvenile Court Jurisdiction* — Washington University Law Quarterly, Vol. 1973, pp. 436-444.

111. *Prosecutors in the Juvenile Court: A Statutory Proposal* — Sanford J. Fox, Harvard Journal on Legislation, Vol. 8, 1970, pp. 33-53.

112. *Radical Correctional Reform: A Case Study of the Massachusetts Youth Correct System* — Lloyd E. Ohlin, Robert B. Coates and Alden D. Miller, Harvard Educational Review, Vol. 44, No. 1, February 1974, pp. 74-111. Appendix — Biographical Data on Jerome G. Miller

113. *Report on the Calgary Detention Centre* — Prepared for the Board of Review by Joan Brockman, Department of Sociology, University of Alberta, August, 1976.

114. *Report of the Commission on Juvenile Delinquency* — Province of Alberta, 1967.

115. *Report of the Committee on Children and Young Persons* — Her Majesty's Stationery Office, London, England, 1960.

116. *Role Expectations of Social Workers and Lawyers in the Juvenile Court* — William C. Brennan and Shanti K. Khinduka, Crime and Delinquency, April 1971, pp. 191-201.

117. *Sentencing as a Human Process* — John Hogarth, University of Toronto Press, 1971.

118. *Social Policy and the Young Delinquent* — Peter Boss, Routledge and Kegan Paul Publishers, 1967.

119. *Some Historical Observations on the Juvenile Court* — Graham E. Parker, The Criminal Law Quarterly, pp. 467-495.

120. *Some Theoretical and Practical Problems in Formalizing the Juvenile Court Procedure* — Symposium sponsored by the Student Bar Association at the UND School of Law in May of 1970 — North Dakota Law Review, pp. 287-315.

121. *Southern Juvenile Courts: A Study of Irony, Civil Rights, and Judicial Practice* — James E. Starrs, Crime and Delinquency (National Council on Crime and Delinquency) Vol. 13, No. 2, April 1967, pp. 289-306.

122. *Standards for Juvenile and Family Courts* — William H. Sheridan, U.S. Government Printing Office, 1966.

123. *Standards for Specialized Courts Dealing with Children* — Children's Bureau, U.S. Department of Health, Education and Welfare, 1954.

124. *Status Offenders Need Help, Too* — Judge Lindsay G. Arthur, Juvenile Justice, Vol. 26, No. 1, February 1975, pp. 3-7.

125. *Studies in Strict Liability* — Law Reform Commission of Canada, Information Canada, Ottawa, 1974.

126. *Supplemental Report on Juvenile Delinquency in Alberta* — Jean Clyne Nelson, 1967.

127. *Supreme Court Decisions and Juvenile Justice* — Noah Weinstein, National Council of Juvenile Court Judges, Nevada, U.S.A., 1973.

128. *Survey of Children with Emotional and/or Behavioral Problems* — Pupil Personnel Services, Edmonton Catholic School System, July 15, 1976.

129. *Task Force on Correctional Services and Facilities* — Department of Attorney General, British Columbia, 1973.

130. *Task Force Report: The Courts* — President's Commission on Law Enforcement and Administration of Justice, U.S. Government Printing Office, 1967.

131. *The Throwaway Children* — Lisa Aversa Richette, Dell Publishing Co., 1969.

132. *Toward an Understanding of the Juvenile Court Process* — Walter G. Whitlatch, Juvenile Justice, November 1972, pp. 2-8.

133. *Trial Courts* — American Bar Association Commission on Standards of Judicial Administration, 1975.

134. *Trying a Juvenile Right to Treatment Suit: Pointers and Pitfalls for Plaintiffs* — Patricia M. Wald and Lawrence H. Schwarts, The American Criminal Law Review, Vol. 12, 1974, pp. 125-134.

135. *The United States Supreme Court and the Juvenile Courts: An Overview* — Maurice B. Cohill, Duquesne Law Review, Vol. 9, 1971, pp. 573-578.

136. *Why Delinquency Prevention Programs in Canada Should not be Evaluated* — James C. Hackler, University of Alberta, 1974.

137. *Work and Teaching Machines as Delinquency Prevention Tools: A Four-Year Follow-Up* — James C. Hackler and John L. Hagan, The Social Service Review, Vol. 49, No. 1, 1975.

138. *The Young Offender* — D.J. West, Penguin Books, 1967.

139. *The Young Offender and the Courts* — D.M. Steinberg, Reports of Family Law, Vol. 6, pp. 86-91.

140. *Young Offenders Before the Courts* — Brian A. Grosman, pp. 6-7.

END