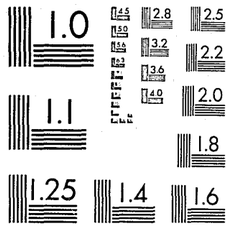

JUVENILE JUSTICE AND DELINQUENCY PREVENTION

Viewpoints of Five Juvenile Court Judges

- Serious and Repetitive Juvenile Delinquency
- Status Offenses and Reoffenses
- Juvenile Delinquency and Detention
- Monitoring the Juvenile Justice System
- The Judge's Role in Improving the Juvenile Justice System

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Prepared for

The Office of Juvenile Justice
and Delinquency Prevention

U.S. Department of Justice

This document was prepared by H. Ted Rubin with partial support provided by the Community Research Center of the University of Illinois at Urbana, under Contract J-012-81 awarded by the Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice. Points of view or opinions stated in this document do not necessarily represent the official position of the U.S. Department of Justice.

September, 1983

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SERIOUS AND REPETITIVE JUVENILE DELINQUENCY

Five veteran juvenile court judges, presiding in urban settings in different regions of the country, express strong confidence in juvenile justice system achievements. They do not equivocate in viewing the juvenile system as vastly superior to its adult counterpart. But each accepts that criminal court handling is necessary for some juveniles in order to protect community safety.

Clearly, they prefer to retain youngsters within the juvenile system and to rely on community-based resources to the extent they can. While favoring the use of the least restrictive alternative, none climb a staircase of graded dispositions, one step at a time, to determine that each less drastic alternative is unsuitable before considering the next.

Each has worked arduously to expand community resources for court youths, but falls back on commitment to a State youth authority as a recourse for the juvenile sanction. What commitment means, however, depends upon the State of jurisdiction and the range of services provided by the State agency.

While three of the courts administer a juvenile program department, no department manages a residential facility geared specifically for the more serious or repetitive delinquent. The jurisdictions represented by two of the judges have enacted rather broad provisions for direct criminal filings of juvenile offenses. Two other jurisdictions initiate all juvenile offenses in a juvenile court except for a modest allowance of direct criminal proceedings. One begins all juvenile offenses in juvenile court, allowing for transfer of a youth to the criminal court following a carefully guidelined waiver hearing.

None of these judges consider serious or repetitive delinquency an overwhelming problem, although this perception may be influenced by the direct criminal filing authorization in a jurisdiction or the fact that the juvenile age maximum cuts off on the sixteenth birthday in one State and the seventeenth birthday in two States. Still, these judges indicate that they have not seen highly visible increases of these types of offenders in their courts in recent years.

Four of the judges would prefer enlarged grants of authority to enable their juvenile systems to serve a more extended array of delinquent youths. One is satisfied with the present balance of juvenile court versus criminal court authority.

Two judges emphasize strongly the need to use incapacitation, brief or lengthy, in order to protect the community or to achieve a sobering impact on an individual. Two others less strenuously voice the need to resort to incapacitation. The fifth contends that his responsibility is to execute the laws of his State and that it is the law alone that determines his resort to institutional placement.

Each of these judges has made an above average contribution to his or her community and to furthering juvenile justice objectives Statewide or nationally. They hold quite definite views as to what should be desirable policy and practice with juveniles whose offenses cause or threaten significant injury or are more chronic. They also differ on certain issues.

The senior jurist of this group, Regnal W. Garff, Jr., became judge of the Second District Juvenile Court, Salt Lake City, Utah, in August 1959. He played a significant role in the architecture of the comprehensive modernization of the Utah Juvenile Court Act in 1965 and with its subsequent amendments. In addition to his law degree, he holds a graduate certificate in social work.

The court's initial jurisdiction extends to one's eighteenth birthday; youths fourteen years of age or older may be subject to transfer proceedings for felony offenses. However, a 1981 amendment, which Garff supported, authorizes the direct filing in a criminal court of eight specified felony offenses charged against a juvenile sixteen years of age or older. The juvenile court may recall this matter on its own initiative and regain jurisdiction over this matter. Judge Garff is not without mixed feelings about his support of this provision which was intended, in part, to obviate the inability to extradite a juvenile who may have committed one of these offenses and fled to another State.

Few youngsters are direct filed in this district, few are transferred, two new thirty-bed secure juvenile facilities in Salt Lake City and Ogden are replacing the long-standing and much larger State delinquency institution; and a counterbalancing expansion of community-based services by the State youth correctional agency provides these court enriched services which remain subject to judicial review and control. Commitments to the State are indeterminate until one's twenty-first birthday unless sooner discharged.

The probation department is judicially-administered, which Garff contends is of the utmost importance. The department works from five neighborhood offices and maintains average supervision caseloads of about thirty youngsters. While Reg Garff would prefer that the minimum age for transfer be raised to fifteen years from fourteen years, he is fundamentally satisfied with the basic structure of current Utah juvenile court powers.

No law mandates what he must do. Judicial system discretion is maximized, which he strongly prefers while recognizing its dangers. "The more you get

away from flexibility, the more you are saying that people are all alike and that they commit crimes for the same reasons. I just don't think that's true."

Reg Garff is well aware of the "top three percent of our system," the chronic offenders who tax his confidence in a juvenile's ability to stabilize his behavior, and he believes that constraint of freedom must follow when he loses confidence in this youngster's rehabilitation potential. He is not ambivalent about transferring to criminal proceedings a youth who has been through the State institutional system, or a "hard customer." He is quite willing to transfer, also, repetitive burglars, since he deems burglary a form of violence even though personal injury may not have occurred. And he will commit to the State other chronic offenders who have had the opportunity to change, through the wide array of services orchestrated by this court, but whose reoffenses indicate a need for a restraint that is "emotionally painful" to the youth.

He will make sure an armed robber spends time either in a State evaluation or institutional setting, believing these youths need to understand that the judge does not look lightly at such offenses. Also, he will commit serious offenders when nothing else is available, but would not institutionalize a first time property offender.

While Judge Garff stresses the accountability of youths, he also emphasizes the accountability of the juvenile court, not only to ensure that proceedings are legally correct and fair, but to assure that the services offered youngsters by the probation department and all community agencies are delivered effectively. Each court youngster and each agency serving this youth are reassessed each three to six months at a judicial review hearing. More than the other four judges, Garff works at involving each youth and parent in the hearing process and in suggesting what the judge should decide upon as the disposition.

What he wants to happen, most of the time, when he transfers a juvenile is that the youth will spend some time in the county jail, not in the prison. Yet, he knows that fifty percent of transferred offenders are placed on adult probation, "which has no meaning to that kid." Judge Garff believes that one of the components necessary to avert transfer is restrictive punishment. "Many chronic offenders believe that crime pays and it's good business. Because they believe that nothing significant is going to happen to them, they take their chances. So punishment is 'treatment' which causes some to be willing to make changes in order to avoid the pain of more severe confinement."

And Garff is not averse to using a State evaluation center for its ostensible purpose of comprehensive diagnostic assessment, but also for assessing this youngster's response to a temporary loss of freedom.

What does he find works reasonably well with these youngsters when retained in the community? The basic team probation effort that emphasizes responsibility and the involvement of both juveniles and parents. It uses clearly

delineated treatment goals and methods as augmented, on an individual need basis, by additional court orders and the array of services now available: fines, victim and community service restitution, tracking, day care, mental health treatment, and nonsecure residential programs.

What he would like to have available for these types of youths that is now lacking is an expanded day care program involving education, individual, group, and family counseling, together with a subsidized employment program. The educational program would be a combination of academic and prevocational training. Enrolled youngsters would be tracked and monitored carefully during off-school hours. Yet, to him, a strong probation agency is the key.

Garff acknowledges that his hearings are different with these types of youngsters. "My tone of voice changes, my countenance changes, I'm much more formal with the attorneys and with everybody, and there's no banter. It's strictly business. It's pretty much a complete change of game plan." He rejects any mechanical tailoring of sanctions to specific offenses, believing strongly in individualized assessment of personal and family resources and of a youngster's probable response to different resource alternatives. Severity and chronicity influence him strongly, but the structure of the home and its ability to support and control the child expand his nonconfining dispositions.

Judge Garff maintains a hands-on policy with private agencies and with executive branch agencies that service youngsters within his jurisdiction. He will make suggestions as to components to be included in their treatment plans, carefully reviews the treatment plans they must submit, and measures what they have done or have not done at review hearings. He would not intrude on how the State youth correctional facility deals with youngsters he commits to their custody, though he generally determines how long the up to ninety day evaluation confinement study by the State agency will take. He indirectly monitors the county-operated detention center program through his court director's regular meetings with the detention center director. He obtains the outpatient mental health services he wants from the externally-administered clinic housed at the court.

Judge Garff does voice concerns regarding early institutional releases of some youngsters committed to the State. This is due to the lack of tight aftercare programs capable of coping with more violent and chronic offenders. He indicates that resources such as tracking, group homes, proctor homes (twenty-four hour care and supervision are provided an individual youth in the proctor's own residence), and other efforts mounted by State youth corrections in recent years do effectively deal with the needs of most of the committed youths when released from an institution to parole status.

Finally, Reg Garff views the judge as the constant factor in assessing the strengths and weaknesses of different program services in terms of their fit with these juveniles. "You have a frequent change of personnel and agencies as a youngster may 'progress' from probation to out-of-home nonsecure placement to incapacitation. The judge can become the stablizing factor to the

juvenile and the community. Consistency is better assured by having the same judge deal with the same case over the period of time the juvenile court system is involved. The chronic offender comes to know the system pretty well and learns how to manipulate the various workers and agencies to his own advantage. Hopefully, the judge will be above this type of manipulation and will provide consistency to the case handling approach. Judges who have a working knowledge of available resources and possess flexibility have the best possibility for dealing effectively with these juveniles."

Romae Turner Powell became judge of the Fulton County Juvenile Court, Atlanta, Georgia, in January 1973. She had been the senior referee of this court for five years prior to her judicial appointment. She is a Trustee and presently Secretary of the National Council of Juvenile and Family Court Judges.

In Georgia, initial juvenile court jurisdiction extends to a youth's seventeenth birthday. Judge Powell prefers that this limit be extended by one year, to equate with the age of majority and the most common age maximum in other States.

A comprehensive rewrite of the Georgia Juvenile Court Code had been enacted in 1971 with a provision that the maximum age of jurisdiction would increase to the eighteenth birthday on July 1, 1983. Judge Powell supported the subsequent repeal of this provision on the basis that the legislature had failed to award juvenile courts the necessary monies to implement this change. Her court would have required additional detention capability, probation staff, and funding for staff training to accomplish the extended jurisdiction, "and the legislature was not willing to do that."

Georgia law provides that the juvenile court has concurrent jurisdiction with the Superior Court in regard to a child alleged to have committed an act which, if committed by an adult, would be punishable by loss of life of confinement for life. Further, capital offenses filed in juvenile court subject the juvenile to transfer if he is thirteen years or older. Transfer to criminal prosecution is authorized for those fifteen years of age or older at the time of an offense. The offense may be a felony, misdemeanor, or even a local ordinance violation.

Romae Powell would prefer, as public policy, that all juvenile offenses receive initial consideration in the juvenile court with the court authorized to transfer juveniles sixteen years and above, basically on the criterion on nonamenability to juvenile system rehabilitation. While she does not hesitate to waive youths who have offended with the same design, plan, and attitude

of an adult, she deems that the transfer of fifteen-year-olds or even thirteen-year-old murderers is "cruel and inhuman treatment under the U.S. Constitution."

In her view, placing children in adult prisons at early ages motivated the development of the juvenile justice system in the first place, and, she states regretfully, "It seems to me that we're going back to those same factors."

Commitments to the Georgia Division of Youth Services are for an indeterminate term not to exceed two years. Such orders may be extended an additional two years following a further court hearing. The division administers a number of community-based resources which it utilizes as institutional alternatives or following institutional confinement. Unlike in Utah, Judge Powell retains no authority over youths committed to the State who are placed in alternate local resources.

Powell, earlier, had been displeased when the division sometimes released youngsters from institutional confinement following relatively brief periods. Accordingly, she did not oppose Georgia's enactment of a Designated Felony Act, in 1980, which was modeled after New York's 1976 provision. Following proof of one of eleven designated offenses by a juvenile thirteen years or older, the court may invoke restrictive placement. This involves placing custody in the division for a period of five years and compels no less than one year in a State youth development center.

Not wanting to send youngsters to the adult system, but also not wanting them released by the State after just several months of confinement, Judge Powell welcomed this act so she could say to the division, "You're going to keep this child longer and work more intensively with him than with other offenders."

She acknowledges that she has seen a modest increase in the number of serious offenses such as murder, armed robbery, and rape, but indicates that the court sees far fewer of such offenses than the general public believes is true. She notes considerable recidivism but no path of escalating seriousness with re-offenses.

She waives to criminal court, in addition to "sophisticated violent offenders who are beyond our helping," arson cases if there was a reasonable expectation someone was in the building that was burned, and youngsters passive at the scene of a serious offense, but who had been part of the plan, and had earlier been committed once or perhaps twice to a youth development center.

In general, she does not bind over chronic burglars or other property offenders since many of these youngster, if not most, can be helped in the juvenile system. "More has been done to these youngsters than has been done for them, and the adult system does not give these youngsters the necessary guidance they need." But she will waive a chronic burglar who is using these thefts as a livelihood or way of life and was perhaps twice earlier committed to a youth development center.

In Romae Powell's court, " a child commits himself to the training school." She comments that she has given that child chance after chance and the youngster knows what the consequences will be. Also, she will place a youngster in the court's detention facility for thirty days "to get him in a frame of mind to change his lifestyle." She will then release the child to him home under a "nonfinal commitment," and during these thirty to sixty days the juvenile must demonstrate his ability to follow court and parental rules.

A further hearing measures the changes that have or have not occurred and leads to the judge's returning the youngster to probation or executing the commitment to the division. She may recommend that the State use a particular program for a child. If she recommends a youth development center, the State tends to accept her recommendation because "they know that Judge Powell has done everything to keep that child in the community."

She speaks positively of the court-administered probation agency's achievements with youngsters, but is aware that probation's efforts with more serious and repetitive youths involve just somewhat more intensive counseling and a greater pooling of community resources to assist this youngster. What does she consider an effective community-based program for more troublesome youngsters? She lauds "The Challenge," a day school program administered by the division, which includes an education component, skills training, health counseling, tutorial services, part-time jobs for older youngsters after school, recreation, and checking and monitoring youngsters when school is not in session.

There are two types of programs that she wishes were more available for her use with these youngsters: a short-term residential mental health facility that is integrated with outpatient services, and a residential drug and alcohol center which could shift its youngsters into the mental health stream following stabilization. However, she considers that mental health services are not the answer for typical chronic juvenile offenders.

A judicial colleague has commented that Romae Powell has the patience of Job in the courtroom. "While with more serious and repetitive youngsters my words may be harsher, I never raise my voice. I may use a different inflection and emphasize certain words, but a calm kind of authority is what I provide. If I stay calm, youngsters and parents remain calm."

Equal justice factors into her decision when she has co-perpetrators before her. She will explain to them distinctions she makes based on their prior record or the stronger role one may have taken in the planning and execution of the offense. Otherwise her approach is to individualize youngsters, look carefully at how the act was committed and the consequences of the offense, assess the child's adjustment and family strengths, and reach a decision based on the needs of the youngster before her.

Her penalties relate to the deliberateness of the act as well as its consequences. Judge Powell stresses that youngsters are responsible for their misbehaviors. She also holds them responsible for their rehabilitation. From

the bench, she teaches the reasons behind laws and youngsters' responsibilities to obey these prohibitions. The probation experience extends this awareness.

She does not underestimate the influence of peer groups on juveniles, but stresses "you must keep working with the child on his own individual responsibility regardless of peer group pressures." Further, "juvenile courts must teach youngsters the consequences of their misdeeds. You cannot let them be irresponsible and then at seventeen years, boom, require them to then be suddenly responsible."

Fundamentally, she takes a hands-off position as to influencing the work of private and noncourt agency efforts with court clientele. Judicial review hearings of probations is not regularized in Atlanta. But her close working relationships with countless agencies provide her with the information she needs to make realistics assessments of what they can and cannot accomplish.

Seymour Gelber was appointed judge of the Dade County Circuit Court, Miami, Florida, in July 1974. He requested assignment to the court's juvenile division and has served exclusively on the juvenile bench since then. Currently, he chairs the America Bar Association's committee to implement juvenile justice standards nationally.

Chairman of the Dade-Miami Criminal Justice Council for a number of years and a Ph.D. holder whose major studies were in criminal justice, Seymour Gelber's frequently-issued delinquency and adult crime study reports and recommendations have enabled him to impact substantially on local and State policy and practice. More recently, his highly-publicized statements have stressed the reduction in juvenile arrests and the adult dominance of violent crime offenses.

Florida's jurisdictional age extends to the eighteenth birthday. An extremely broad option now allows the prosecutor to direct file in criminal court any felony or misdemeanor by a juvenile over sixteen years of age. Such a charge against a misdemeanant may be remanded to the juvenile court division in the absence of two prior juvenile court convictions, one of them for a felony charge.

Further, a capital offense against a child of any age may be direct filed in a criminal court. Cases initiated in a juvenile court may be transferred to a criminal court for any crime committed by one fourteen years or older. The Florida Juvenile Justice Act sets out as a purpose the recognition that "the application of sanctions which are consistent with the seriousness of the

offense is appropriate in all cases." Commitments to the Department of Health and Rehabilitative Services are for an indeterminate period but not to exceed one's nineteenth birthday.

By law, this period shall not exceed the maximum term of imprisonment which an adult may serve for the same offense. Judge Gelber is largely satisfied with the present jurisdictional structure as to juvenile crime except that he would prefer to have authorization to institutionalize juveniles fourteen through seventeen years of age for a determinate period up to five years.

He has indicated to the prosecutor's office that it is filing criminal cases on a number of juveniles who could be more appropriately handled in juvenile court; he would like criminal division judges to invoke their discretion with direct filed youngsters to remand more cases for disposition by a juvenile court judge following criminal court adjudication.

Prosecutor use of the direct filing option has reduced the number of transfer hearings Gelber has conducted since its enactment. Court time saved because of this and a reduced number of delinquency arrests and subsequent court petitions is leading him to assert greater court control over the pre- and post-institutional services provided by the State.

Florida legislators, several years, ago retitled probation as community control. Florida juvenile courts do not administer community control or pretrial detention. All basic services to delinquent youths are administered by the department or by private nonprivate agencies under contract with the department.

Gelber has been fearless in telling the department what it should or should not do, even if he lacks statutory authority to influence their activities. Once, he transferred the department's authority to administer the detention center to a blue ribbon commission he appointed following extensive hearings. He has ordered the department to place youngsters in out-of-State facilities and often preempted the department's authority to select a particular institutional setting prior to the 1981 legislative authorization that, following commitment, the department must provide a judge with a ranked listing of the three resources it believes most appropriate for this child, with the judge authorized to alter this rank ordering.

Who are the youngsters Gelber transfers to criminal courts? Almost all have earlier been committed to a State facility. He disagrees with any standard that would prohibit him from transferring a chronic property offender. "Certainly the kid who has committed ten burglaries and has been in six programs is going to go on committing burglaries and we're going to go on not changing him in any significant way."

He commits youngsters to the "State school" when "that's about all there is left for them, when I've tried them in several other programs and there are more serious or chronic reoffenses, if the original crime, perhaps even the

first offense, is a serious one that warrants commitment, or if I think that the crime is of a nature that affects the community significantly."

Judge Gelber is no great enthusiast for the community control services provided the court by the State agency. Recently, he took steps to make this program more accountable by initiating judicial review hearings a month or two following a probation disposition. However, he is big on the local Boys Club educational remediation program he orchestrated by bringing together the Boys Club that wanted to do more with delinquent youths and a corporate donor, who indicated an interest in funding a project that could enhance future opportunities for impoverished delinquent youngsters.

The Miami program involves seventy youths, all living in the Liberty City ghetto area, who have experienced at least five arrests. Each morning, staff counselors check whether each youngster is in school and at the end of the school day transport the youngsters in vans to the Boys Club for their special four hour program. There, twelve staff teachers work with the youngsters, using a ratio of one teacher to two younsters, for an hour each of math and reading. Dinner is provided along with recreation and a daily group counseling session. Gelber says that for this program, "We were not looking for easy kids, but not for impossible kids either." The program expanded to a second Miami site in early 1983 to serve an additional thirty youths.

What else would be helpful with more serious or chronic juvenile offenders? He would like to see the State turn over a training school to a nonprofit foundation that currently operates several camps for the department. And, he is following with interest the development of a remotely-based tent and farmhouse setting where his colleague, Judge William Gladstone, now on leave from the court to serve as the governor's delinquency adivsor, has initiated a program, administered by Associated Marine Institutes, a private nonprofit organization, that combines a lengthy reforestation and erosion control work experience with a follow up in a local AMI ocean school program. Judge Gelber is a strong enthusiast for private-sector administered rehabilitation programs. He would limit the governmental agency role to processing youngsters through the system into the hands of the private sector. "I find governmental agencies too often lack motivation, are unimaginative, and find it more comfortable and safer to simply follow the rules."

Gelber suggests that his demeanor with more troublesome youngsters is no different that in other hearings. He doesn't think it makes any difference if a judge becomes more somber or mounts an elaborate lecture. "The kids know if they are serious offenders and they expect a serious consequence."

He likes to present statutes which grant the judge broad discretion at disposition and opposes legislative constraints which "would mandate this or that because legislators are not satisfied with judicial performance."

In his early years as a judge, he pushed the rehabilitation model more than today. The change followed his learning that State rehabilitative efforts

were less effective than he had thought. He believes he incapacitates youths more often now than earlier. He holds equally prominent the court's responsibility to the community and to the youth. Nonetheless, he accepts his community responsibility as foremost with violent juvenile offenders, but with repetitive youngsters "will gamble more with the community's chips."

However, a repetitive offender whose reoffense occurs with a short time space will be "immobilized and locked up to give him time to meditate." The incapacitation will occur either in the adjacent detention center or through commitment to a State resource. It follows that Gelber believes juveniles are responsible for their offenses and "have to know there's a price to pay." Still, he searches for community-based programs that might work with a youngster.

He will not hold a hearing without defense counsel representing the youth and admonishes public defenders that they have a serious responsibility to help the court find the most appropriate program for a youngster.

Until recently, his concern that institutional stays were not as long as he desired and that could not control whether a committed child was indeed institutionalized led him to transfer more youngsters to criminal jurisdiction. But Florida law now requires that the State agency respect the judge's preference as to a particular disposition and enables a judge to veto an institutional release date he deems premature.

While believing that far more can be done to assist court youngsters, especially early in their delinquent careers, "I don't subscribe to the theory that every child can be saved. If that's true, it's not by me."

Edward J. McLaughlin became judge of the Onondaga County Family Court, Syracuse, New York in January 1973. Earlier, he had served as a Federal and local prosecutor and as counsel to State legislative committees concerned with crime and wtih criminal code revision. Extremely interested in teaching the law, he has taught courses at law and social work schools and at community and university colleges for a dozen years. Further, he has written more than forty trial court legal opinions that have been officially published in New York State legal reports.

In New York, initial juvenile delinquency jurisdiction extends to one's sixteenth birthday. Just three other States set a maximum age this low. The New York Juvenile Justice Reform Act of 1976 empowered judges to invoke restrictive placement for specified designated felony acts.

Depending upon the offense, the Division for Youth is required to confine a youth for no less than either twelve months or six months in a secure setting, and followed, finally, by either three years or two years of intensive supervision.

Youngsters subject to these provisions must be at least fourteen years of age. Further legislation in 1978, the Juvenile Offender Act, permitted direct criminal charging of fourteen and fifteen year olds for a wide range of crimes and reduced the age of criminal responsibility for murder to thirteen years. Penalty provisions were made less severe than for adults convicted of criminal offenses. Additional provisions authorized removal of certain cases from criminal to family court.

Conversely, there is no statutory provision for a family court judge to transfer a youth to a criminal court. The statute does provide that no delinquency proceedings can be initiated against a child under seven years of age. All of this is not Ed McLaughlin's idealized version of what public policy should be in regard to delinquent youths.

Preferably, he would raise the minimum delinquency age to ten or twelve years, increase the maximum initial age to the eighteenth birthday, and enable transfers to criminal court throughout the entire age spectrum of the juvenile jurisdiction. He would retain the treatment purpose of the Family Court Act and, therefore, transfer to criminal proceedings younsters who are found unamenable to juvenile court treatment and for whom a sentence of punishment is indicated.

He has dismissed his own manslaughter adjudication of a child who had killed his father because, at the dispositional trial, there was insufficient evidence that the youth was in need of treatment or supervision, as required by the law. Conversely, he believes that certain youngsters are not treatable, that there are ten, eleven, and twelve year old professional criminals, and that such youths should be transferred since present law does not authorize him to punish youngsters.

Since the statute not only requires a finding of being in need of treatment or supervision, but a further finding that treatment or supervision is available, McLaughlin would find it necessary to dismiss a case if the Division for Youth appeared in his court and submitted proof that a particular youth is not treatable within its resources or those it cannot command.

McLaughlin takes the language of the law most literally and seriously. In one of his decisions, he ruled that he could not constitutionally commit a youngster to restrictive placement under the Designated Felony Act. Since the Act mandates that the minimum time periods must be served as specified, no child can petition back to the committing court to modify the placement if treatment, in fact, is not being provided, or to terminate the placement because he has been rehabilitated. Such determinate sentencing, he concluded, is more akin to criminal court punishments and family court judges are precluded from administering punishment. Further, punishment can only be meted

out constitutionally if there is a jury trial provision and the full panoply of rights that accompany the criminal process. New York law denies family court juveniles the right to have a jury trial. Accordingly, McLaughlin placed this youngster with the Division for Youth but not as a designated felon.

The foundation of McLaughlin's judgments are, distinctly, the governing laws. When asked when he tends to commit a youngster to the State, he responds "when the evidence is sufficient at the dispositional trial." If, from the evidence, he finds that a youngster is in need of treatment or supervision and this is available, his choices are to place a youth on probation, or commit him to the Commissioner of either the Division for Youth or the Department of Social Services.

But if the Commissioner of Probation considers the youth is untreatable through probation resources, then the disposition is narrowed to the latter two options. If the probation commission considers a youth treatable, McLaughlin will enter such an order as a less restrictive alternative disposition.

The Department of Social Services purchases care for youngsters at 166 private institutions across the State. McLaughlin does not specify a particular private institution for placement, since "I'm a judge. I'm not an MSW or Ph.D. or an institutional director." He rules on the courtroom evidence as to the need for treatment rather than the adequacy of treatment at a particular facility.

Such placements, by law, continue for up to eighteen months. But he carefully instructs each child he places of his right to petition the court to modify or terminate this placement and has made clear to the law guardians who represent youngsters in his court that they have a duty to investigate and petition the court for this relief upon the child's request.

At such hearings, he has found sufficient evidence to transfer a juvenile from one institution to another, from an institution to a group home or foster home, and from a foster home to a group home.

In 1971, the administration of probation services was shifted by the legislature from judicial administration to county executive administration. McLaughlin prefers the present arrangement. While he confers on an ad hoc basis with the probation commissioner from time to time, he considers that probation officials and those of other private and public agencies are professionals, and that neither his training nor official function provides him with a basis to intrude upon their professional judgments or treatment methods.

He believes that, in general, quite suitable services are available to most juveniles who are within the court's jurisdiction. He speaks enthusiastically about community outpatient mental health services that serve certain of the court's more troublesome and troubled youngsters.

Needed by the Onondaga County Family Court is a series of specialized treatment foster homes. Youngsters who have a significant emotional disturbance combined with delinquency manifestations and also with runaway tendencies are "unplaceable." The outpatient mental health services are present along with other nonresidential services, but a residence is missing.

He tries very hard not to alter his demeanor or message with more serious and repetitive youngsters. Here again he utilizes legally-oriented thinking: "These juveniles have not committed crimes, they're delinquents. Society, through the legislature, has said these children have not committed crimes. The children didn't say it and I certainly didn't say it; society says that these are acts of delinquency. So a judge should not indicate that the nature of the offense influences his judicial decision."

McLaughlin believes that his judicial hearings have "tremendous impact" on youngsters, not because of any particular communication level he has reached with a youth but because he believes he plays by the rules. "When society plays by the rules, a youth accepts this. If he feels he's gotten screwed, he's disillusioned. I want everyone leaving my room to know I play by the rules." And the rules, for McLaughlin, include a lawyer for every child, a lawyer who doesn't say, "Whatever you think, Judge," but is adversarial and demands that the State prove its case at each stage of the proceedings.

His rules encompass extensive and explicit advisements to juveniles of their right to return to court and request a change or an end to placement, to report any abuse that may occur in placement, and to appeal his decision.

Unlike the other judges, McLaughlin wants less discretion rather than more. Since he cannot provide a jury trial and since there is no public monitoring of the court, "It is better to provide judges with precise guidelines or the public will look on the court as arbitrary and capricious, an institution to punish the poor."

He offers similar and consistent responses to related questions: How has your administration of sanctions changed over time? "I'm not authorized to administer sanctions. But my dispositions have not changed because I rely on the evidence. They've got to present the evidence, and on the basis of the evidence presented, I make a decision." Do you see juveniles as responsible for their offenses? "If they prove it. If the defense lawyer can prove that a youth did not have the specific intent or the capacity to form a specific intent, then the charge is dismissed. That's society's rule."

Finally, Judge McLaughlin rejects trying to influence how the probation department or other agencies intervene with court youngsters. The law does not provide him with this authority and he suggests that he lacks the professional background to tell human services professionals to see a youngster "every two days, once a week, each three weeks, or at all." He also rejects the idea of a judicially-determined sentence duration. Prior to such a termination date, many youngsters would be rehabilitated but could not be released.

James S. Casey became judge of the Kalamazoo County Probate Court, Juvenile Division, Kalamazoo, Michigan, in February 1976. Since then, he has presided over juvenile matters in this court which also has jurisdiction over the administration of estates and proceedings concerning mental illness and retardation. Despite an opportunity to transfer to the probate division of this court and fact that his law practice, prior to his judicial appointment, had emphasized estate matters, he has preferred to apply his main judicial energies to the cause of children.

The Michigan Juvenile Code has not experienced extensive modernization. A major update with which Casey was heavily engaged, prepared in the late 1970s, but did not receive sufficient agreement to obtain enactment. The present law has no provision for the direct filing in criminal court of any youngster. In Michigan, initial jurisdiction as to delinquency extends to one's seventeenth birthday.

The juvenile court is authorized to transfer juveniles fifteen years and over for criminal proceedings who are charged with a felony offense. State juvenile court rules and appellate decisions have carefully guidelined the transfer proceeding.

Judge Casey does not believe his State is prepared to advance the initial jurisdictional age to the eighteenth birthday. He opposes direct criminal filings, contending the present code structure is quite satisfactory except that he would prefer an additional option with more serious and repetitive offenders. He wants the opportunity to commit certain youths at age fifteen or sixteen to a specialized youthful offender facility where they would remain to the age of twenty-five unless rehabilitated and sooner released.

While he waives few juveniles to the criminal court, he believes these numbers could be reduced through such a long-term commitment option. In Michigan, the seriousness of an offense cannot be the sole reason for transfer. This is one criterion among others. The likely capability of a juvenile achieving rehabilitation within the juvenile system is another.

In practical terms, since Michigan institutions cannot retain juveniles beyond their nineteenth birthday, the protection of the public security, still another waiver criterion. sometimes prompts transfer when it is believed that rehabilitation cannot be accomplished by that age.

The more common offenses that Jim Casey waives are murder, armed robbery, and rape. He will also transfer repetitive property offenders when legal

requirements are met, but is reluctant to transfer a property offender who has not been earlier serviced by the available local and State facility programs. His most difficult decisions concern very serious offenses where the youth has had no or little prior court-ordered program involvement.

Commitments to the Michigan Department of Social Services are not only for delinquent institutionalization; the department also administers youth forestry camps, halfway houses, group homes, foster homes, and can purchase residential care at private institutions. While the department has legal control over the particular resource used for a committed youngster, a department liaison consults closely with Casey's probation staff to review the range of State resources that might be invoked and to collaboratively work out the resource that will be utilized following a judicial order. "And so the disposition is clear. The only break of such an agreement that has occurred was when the designated space did not become or remain available, but an alternate plan was developed until this slot opened."

Another crossing of the boundary between the court and the State Department occurs now when Judge Casey, approximately two weeks prior to a youth's release from a delinquency institution, receives notice of the pending discharge. He is invited to submit comments, and he often has, and objections, which he sometimes has, to the pending release.

His communications do receive consideration. While he would prefer increased judicial control over institutional releases, "since the community sees the judge as responsible," he does not believe it is wise for judges to predetermine the institutional stay duration at the time of the dispositional hearing. Some youngsters would be rehabilitated prior to that date; others would require longer than the stated period. Still, he experiences frustration when, on some occasions, youngsters are released earlier than he believes desirable.

The Kalamazoo court is a low transfer, relatively low commitment court. Judge Casey is interested in reducing these rates still further. A computerized information system is being developed to enable the court to more systematically and more speedily identify delinquent-prone youngsters in order to make an earlier and more concerted effort to help deal with their problems. Once identified, more comprehensive intervention would be arranged.

Youngsters he commits are those who continue to reoffend, or who offend more seriously, and for whom probation and other resources administered or arranged by the court, have been found wanting. The court does sentence older or repetitive felony offense youngsters to a thirty or ninety day stint in its detention center, seeking to forestall commitment. These youths may be released to the court's home detention program during this interim. The court's probation agency also maintains several intensive caseloads of fifteen high risk youths, another attempt to provide close supervision and lessen commitments.

What other resources does his court need? A program that works effectively with parents. Strengthening a family's ability to manage their own and their

youngster's problems is of critical importance to Judge Casey who believes that too few energies go into working with parents. "Unless we are able to get the cooperation of the parents and make them understand that we are trying to help them with their child, we're going to have their child before us again."

To meet another need, an alternative education program was initiated by the court in early 1983. Casey has observed that court youngsters are often way behind in their basic educational skills. These need to be improved for these youngsters to have a chance. Yet he recognizes that an alternative school needs to work very hard at bridging the gap to return youngsters successfully to regular school programs.

Judge Casey strongly supports his probation department's efforts. But he would like to have the staff acquire more extensive and useful knowledge about the resources and programs that are best for certain types of youngsters.

He believes that judges overrate the effectiveness of their lectures to a child. The child is interested in the sentence rather than the lecture. He believes that what his official disposition will bring into play will have greater impact than what he says. However, his message differs somewhat with more serious and repetitive offenders.

With them, he explains briefly that there is a transfer procedure and they could be treated as adults. He also explains to sixteen year olds that an offense after the seventeenth birthday will find them in adult court and that, due to their juvenile record, the criminal court might jail or imprison them.

Early in his career he committed more youngsters to the State, including "lots of juvenile burglars." In time, he recognized that institutions did not work with families and he sought other ways of handling these youths, including more intensive probation and other community resources he helped develop.

He believes that juveniles are culpable for their offenses and has been trying to speed up court processes and improve handling consistency so they are made to feel, at an earlier time, more responsible for their actions than they are now.

Jim Casey is sure that some youngsters would benefit from earlier incapacitation, either at local or State levels, "but we don't know which ones." He carefully assesses the safety of the community with his dispositions, but he is also trying to figure out dispositions that take care of the child's problems.

His approach is to "first look at the youngster, how he ticks, what caused him to get to this point, and then match this with the seriousness of the offense to see if we have to prioritize the protection of society, all while I'm trying to figure out a way to avoid reoffenses and took for resolutions short of locking them up. Merely 'locking them up' does not solve the problem."

Since probation, detention, and the alternative school are all under the court's administration, Judge Casey asserts extensive influence over these programs. He does not want to yield the resources the court now administers to the State, an issue that is looming in Michigan.

He advocates discretion for juvenile court judges since they need to individualize children and programs, and contends that substantially narrowed discretion would probably end up with more set programs for each child. Still, he would support legislation making the law more clear along with rules which made procedures and guidelines more specific so there is more equal application of juvenile justice county-by-county.

COMMENTS AND IMPLICATIONS

It needs to be remembered that this presentation is focused on the more difficult cases presented to juvenile court judges, a relatively small percentage of cases but ones that judges, and not only urban judges, must confront. These are sensitive judges who have very real concerns for the youngsters who appear before them daily, want to help these juveniles achieve a brighter future, but are very mindful of a responsibility to protect the community's safety and well-being.

None of their statutes provide the more idealized jurisdiction set forth by national standards, that every juvenile case be initiated in a juvenile court up to the eighteenth birthday, and that transfer eligibility be limited to those fifteen or sixteen years of age or older whose offense is a felony or a more serious specified felony.

Jurisdictional comportment with such standards would face these judges with a higher frequency or more serious and chronic offenders. There is no support among these judges for the recommendation of one national task force that only offenses against persons should be eligible for transfer, nor is there any sentiment for the determinate sentencing concept that other reformers have urged.

With one exception, there is a preference for broad-scale judicial discretion, a not unexpected finding from the judiciary. Though individualistic decision making raises certain policy concerns, these judges look beyond the simple title of the offense to examine the nature and circumstances of how it was effectuated and, indeed, the sophistication of the action and the actor. A youth's prior record factors materially in the crucible of the judicial assessment and decision.

Individual judge perceptions of the judicial role as guardian of court children, the community interest, and the law's requirements also impact their decision.

Rehabilitation remains reasonably alive and well in these courts as does community-based juvenile corrections. The opportunities as well as the limits of the probation function are recognized, together with the need for a greater variety of dispositional options within the community.

To curb the spate of laws that have more recently made it easier to criminalize youngsters, and to reduce the need to transfer juveniles to criminal court or even to commit them to the care of delinquency institutions, it would seem that rehabilitation agencies need to provide more program options for youngsters. Reduced court intervention with status offenders and lesser delinquents would enable limited resources to be applied more concertedly to middle-range and even above middle-range offenders. Yet these judges hold interest in more effective intervention with younger offenders.

Judicial support should be noted for the use of more intensive probation and tracking, programs that extensively take over the time of juveniles in their day-to-day lives, and improved work with families. The growth of judicial review hearings for youngsters on probation and the agencies that are to serve them should be noted.

That four judges prefer to extend juvenile court turf to claim or reclaim certain juveniles who now undergo adult court handling should be considered by policymakers in undertaking code revisions. Transfer provisions in all but a few juvenile codes allow criminal court handling when necessary, while permitting a more adequate juvenile rehabilitation system to work with more difficult youngsters.

Burglary reduction has been a particularly stubborn problem and prevention efforts by law enforcement, citizens, and juveniles themselves require a continuing high priority. Since judges view burglaries as quite serious, despite their classification as property rather than person offenses, it is necessary that youngsters understand this early. It seems important, however, that the juvenile justice system distinguish among burglaries, so that, for example, the breaking and entering of an unoccupied building is not weighed as seriously as that of an occupied home. Program prioritization might well focus more concertedly on youth burglars, committed to the State more commonly than any other offender and, as shown here, vulnerable to transfer to criminal proceedings.

Despite public opinion to the contrary, significant freedom deprivation occurs in these courts. Victims and the more general public need to be advised that juvenile courts do take their community protection responsibility seriously.

Just as legislatures have provided more explicit guidelines to the transfer hearing to narrow the range of idiosyncratic decision making, so it would seem desirable for lawmakers, despite the disagreement of many judges, to guideline a commitment to the State option. Juvenile code purpose clauses favoring retention of the child with his family or in the community should be reinforced by statutory criteria that buttress this direction.

Statutory explication of a no less restrictive alternative requirement, with requisite written judicial findings, would be supportive of these judges' general preferences for community dispositions.

Since transfers are sometimes effectuated due to a judicial expectation that a State youth agency will "deinstitutionalize" a committed youngster after perhaps four to six months confinement, it seems valid to suggest that State agencies negotiate informal arrangements with judges regarding the projected stays of more difficult youths.

The judges see little merit in judicial determination at disposition, of an institutional stay duration, but express concern regarding a perceived early release for certain more serious or chronic youngsters. Since judges do treat more serious and chronic offenders more severely, should not offense-based factors dominate institutional release timing decisions?

Further, while State youth authorities seek to maintain their prerogative to control institutional release dates, accommodation to judicial recommendation does occur and additional accommodation, as in the Michigan example of pre-release notice to the judge, offers balance in bridging this boundary.

Yet, of course, State agencies should not accommodate judges who want each youngster confined for the maximum possible term or who deny that agency any opportunity to use its various resources with flexibility to better meet the needs of individual youngsters.

Juvenile prosecutors, in recent years, have become influential officials in these and other juvenile courts. It is important that judges and others urge the appointment of more senior, more sensitive, more holistic assistant prosecutors to juvenile courts. This setting should not be visualized only as a training ground, and prosecutors should take on the responsibility of becoming well-acquainted with all local and State level resources, and what is achievable through the juvenile justice system.

The preceding suggestion applies as well to public defender assignments and, though this is more difficult to achieve, with private defense counsel appointed by the courts. Defense attorneys need to be intimately familiar with the nature of the juvenile justice system's workings, and not only insist that legal proof be present, but promote the court's adherence to its own legal standards and document dispositional alternatives that are less restrictive.

Further, while the Gault decision did not mandate that juveniles faced with the possibility of institutionalization be represented by counsel, representation is the preferred policy. Judges should be insistent and legislatures should mandate that juveniles are ineligible for commitment unless they are indeed assisted by counsel.

Obviously, even in a court with the fullest array of available resources, some juveniles need to be transferred and others committed to State juvenile resources.

A criminogenic society requires more than admonishments, good intentions, and counseling to halt juvenile offenses and to protect community safety. Yet, certainly, we can do more to protect and enhance a child's best interests. Enlightened judges, those whose viewpoints and experiences are presented here, and there are many more but not enough of them, are doing much to advance the cause of juvenile justice and the futures of the more difficult youths who trouble us all.

STATUS OFFENSES AND REOFFENSES

Five veteran juvenile court judges, presiding in urban settings in different regions of the country, have made major accommodations to revised public policies curbing juvenile court intervention authority with status offense youths. The status offenses of runaway, incorrigibility, and school truancy have been the primary juvenile noncriminal misbehaviors they have contended with during their judicial careers.

The judges are far more supportive of a prohibition on the commitment of status offenders to juvenile delinquency institutions than of a ban or near ban on secure detention usage with these youngsters. Just one indicates support for the basic excision of court jurisdiction over these youths.

They contend, with the one exception, that rehabilitative intervention orchestrated by the court can be beneficial with these juveniles. The availability of secure detention usage enhances the potential of this intervention.

Each recognizes that policy debates as to noncriminal misbehaviors have had merit and that these matters should not be allocated the same court priority as either delinquency or abuse and neglect cases.

Two of the States represented have never cleanly separated out status offenses from the delinquency jurisdiction. Their laws do not prohibit locking up these youngsters in secure detention although court guidelines constrain but do not prohibit this. A statute in one State and an executive agency regulation in the other bar their placement in State delinquency institutions.

In two other States, separate status offense jurisdictional categories were enacted years ago. In one, status offense detention is barred legislatively; in the other, it is permitted up to seventy-two hours and may be extended by a judge or referee for an additional forty-eight hours. The law, in both jurisdictions, prohibits commitment to a delinquency institution for status offense or reoffense.

In the fifth State, status offenders are categorized as dependent children. Its juvenile justice act disallows the use of secure detention or delinquent institutionalization for these youths. However, a recent Supreme Court decision in that State permits judges to punish status reoffenders for contempt of court and sentence them to secure detention for a period of time.

However, the judge from that State whose views are described here disagrees with the use of contempt for this purpose and does not utilize it. He believes that legislative intent sought to prohibit such confinements. He is joined by one other judge of the five in not utilizing secure detention for these youths under any circumstances.

Two other judges resort to inherent contempt powers in selective cases to lock up status reoffenders, while the final judge is permitted by law to and will detain certain status offenders upon initial or subsequent offense. No judge "bootstraps" a status reoffense into a delinquency petition.

Four jurists note a significant reduction in the number of formal status offense petitions in their courts. The fifth observes an increase with such petitions, occasioned by a local school policy to active file truancy petitions even though this State's laws fully bar any incarcerative sanctions.

In two States, the primary service responsibility for status offenders has been shifted, by statute, from probation staff to the public social services agency.

Just one judge requires defense counsel with all status offense matters. Another mandates a counsel requirement when parents are the petitioners.

One judge has urged his legislature to enact an emancipation statute permitting the court to free children under the age of majority from responsibilities to and from their parents. He is least hopeful among the judges as to the value of court intervention with incorrigible and runaway youths and contends that those running from their homes are grateful for voluntary assistance and do not need the court or court label, while those running to something are generally unaided by the court or what it might set in motion.

All courts have experienced important changes in how they encounter noncriminal misbehaviors. One judge had vigorously contested efforts to curb the court's authority with these youths. Two were actively engaged in efforts to shift the court's role to a last resort posture. Two others were not engaged in State-level policy debates.

All must contend with citizen and agency requests for an expanded exercise of court authority with these youths. And three judges voiced express concern with what they perceive as a negative impact on these youngsters due to the court's diminished authority. They suggest that these youngsters gain no respect for court intercession efforts when "there is no teeth in the law," and court "muscle" cannot be utilized upon a violation of court-ordered conditions.

The senior jurist of this group, Regnal W. Garff, Jr., became judge of the Second District Juvenile Court, Salt Lake City, Utah, in August 1959. Utah juvenile courts, historically, have been extensively engaged with a rather wide range of status offense violations. Judge Garff worked actively with the legislature and other interested groups to fashion statutory and rule changes that "made sense for Utah." Although the court's detaining authority, and until some years later its institutionalizing authority went unchanged, major

alterations were approved that 1) shifted primary service responsibility for runaway and beyond control youngsters from the court's probation arm to the State social services agency, 2) retained the juvenile court in a back-up role when these social service efforts failed to achieve their goals, and 3) authorized the court to mete out fines for curfew, alcohol, and tobacco violations.

Garff's conviction, underlying his efforts, was that it is a vital State function to provide necessary services as well as necessary behavior controls. The probation intake office may file a formal petition with these matters only when the "earnest and persistent efforts" of the servicing agency have failed to correct these misbehaviors.

A Statewide court rule buttresses this statute. Court referrals must specify what earnest and persistent efforts have been taken to deal with these difficulties and that the problems constitute a behavioral condition beyond the control of the parent, guardian, or custodian, thus endangering the child's welfare.

Referrals also must state the result that formal court intervention is expected to achieve that which cannot be obtained through voluntary alternatives. Detention centers are prohibited from accepting custody of such youngsters unless the referral is accompanied by such documentation.

Judge Garff is quite pleased with the revised Utah policy. Numerous nonresidential and residential programs are provided status offense youngsters by the Division of Family Services and its subcontracting agencies. For 1981, just 36 "ungovernable runaway" and 48 "ungovernable" offenses were referred to the court, a far cry from the 1,904 runaway offenses and 537 ungovernable offenses referred a decade earlier.

Habitual truancy cases are handled in conference by the court's referee. These referrals also must specify a showing of earnest and persistent efforts by parents and school authorities and the apparent failure of these attempts. Judge Garff comments that "any juvenile court judge can attest to the fact that a vast majority of delinquents appearing in court are academically retarded. Very often this is due to sustained truancy over a period of years. The truancy program, developed on a trial basis with one school district in Salt Lake County, was so successful that all school districts have now joined in this program. The court has been a reluctant participant since it increases the burden of dealing with status offenders considerably. Yet, statistics show this effort has been extremely effective in keeping children in school."

Further, juvenile curfew, alcohol, and tobacco violations are now handled through posting bail by mail. A failure to contest the charge converts the bail money into a fine, satisfying the youth's obligation. The court obtained statutory authorization to use 20 percent of this income and that derived from fining delinquent youths, to administer a community service restitution program for law violating youngsters.

A written court directive to law enforcement agencies provides that ungovernable and runaway youngsters are to be taken to a youth services center, administered by the division, from which necessary nonsecure residential placements and other services can be effectuated. Judge Garff reports that "there was initial resistance by the police to taking children anywhere other than to the detention center. However, after a period of training and reinforcement of the court directive, law enforcement officials now use the youth services center without hesitation." The division, however, may request secure detention for youngsters it has difficulty controlling, but social work staff rather than police officers must bring these youths to the county detention facility.

Further, both status offense and delinquent youths who are on formal probation or home detention status and are apprehended or brought in for ungovernability or runaway are to be taken to the detention center, not the youth services center, when not released to parents. Twenty-four hour detention screening is maintained at the detention facility. Referral does not necessarily result in secure detention. Garff has not noticed any reduction in law enforcement's apprehension of status offense youngsters since the policy changes took effect.

Judge Garff will use contempt of court powers to confine certain status offenders in secure detention for brief periods. A recent Utah enactment prohibits placement of status offenders in State delinquency institutions.

No court rule compels defense attorney representation of status offenders in this court, but the juvenile court act authorizes judges to order parents of status offenders into counseling. Judge Garff encourages voluntary participation by parents, but finds it useful to have this authority to admonish unwilling parents that they must participate.

Reg Garff considers that the revised, current approach to this "difficult social problem" constitutes the best of both worlds. Voluntary, noncoercive methods and services are maximized; secure detention and court petitions are used sparingly; the probation department can concentrate on more serious and repetitive delinquency.

Romae Turner Powell became judge of the Fulton County Juvenile Court, Atlanta, Georgia, in January 1973. She is a Trustee and presently Secretary of the National Council of Juvenile and Family Court Judges. Judge Powell had vigorously opposed, unsuccessfully, statutory changes that have diminished the court's authority with status offense youngsters.

She much preferred the earlier broad discretion granted to judges. She acknowledges the court may then have had too much power, "but the child

got the message that there was power. With today's too little power, the child gets the message there is no power, and that he can do whatever he wants to do and nobody will do anything about it."

She has accommodated the new policy but hasn't relinquished her opposition. Her deep-seated feeling is that a status offender is "just as much a threat to society, if not more of a threat, as a child who is delinquent." To her, future society is jeopardized when youngsters grow up without respect for authority. This, then, becomes a societal problem. While some children grow out of this rebelliousness, others do not. Judge Powell has seen many former status offenders return to her court as adults who have neglected or abused their own children. She believes this is one way future society is negatively impacted by former status offenders.

The Georgia term for status offender is unruly child. Georgia law definitively specifies that the violation of a condition of supervision by a child who has been adjudicated unruly must be treated as a further unruly offense. Bootstrapping, then, is prohibited, though the statute authorizes commitment of an unruly child to the State youth agency if the court first finds the child is not amenable to treatment or rehabilitation. Eighteen unruly Fulton County youngsters were committed to the State during 1981, none of them by Judge Powell. The Division of Youth Services does not place these youths in State delinquency facilities.

Status offense referrals to this court have lowered visibly. For 1981, 642 runaway, ungovernable, and truanting youngsters were reviewed at the probation intake level, compared with 1,532 such youths a decade earlier. Just 212 formal petitions were filed with these matters and other unruly offenses such as alcohol use or possession.

Georgia law permits status offender detention up to seventy-two hours. At the detention hearing, a child may be detained an additional forty-eight hours. The court maintains twenty-four hour onsite detention screening. Two probation crisis counselors screen all status offenders. They provide immediate services to these youngsters and their families and certain ongoing counseling and referral services which narrow the use of secure detention and formal petitions.

Judge Powell has fashioned a specialized approach with the limited number of unruly youngsters she experiences. She places unruly children under specific order to attend school, to not leave home without express parental permission, or to forego contact with a particular person. They are advised that a violation of such an order will be punished as a contempt of court. This is particularized in the court order received by the child. A violation of the order, following a finding at a further hearing, results in the placement of this youngster in the court's secure detention facility.

Youngsters serve one day in detention for each day of a school or away-from-home violation. Judge Powell believes this approach is authorized by two

statutory provisions that enable a court to enforce its orders by contempt procedures. But she would like appellate review to substantiate or disaffirm this approach. She does not use the contempt vehicle as a means of placing a child with the State youth agency.

Intake petitioning criteria with status offenses are based largely on whether the efforts of probation crisis counselors have been unsuccessful and whether the parents have utilized available community services and the child nonetheless refuses to continue counseling, go to school, or comply with parent requirements.

Detained status offenders in this court always have defense representation. She has noted a modest amount of upward relabeling when an essentially unruly youngster, who may also have committed a minor delinquency offense, is charged with the delinquency. This may occur when a runaway child has also taken his parents' car without permission or when a police pickup of a runaway is accompanied by a modest disturbing of the peace. It is done to obtain a lengthier detention stay or, conceivably, to remove constraints with potential delinquent institutionalization.

But she believes these are exceptions. She is certain that police arrest fewer status offenders than they used to because of the reduced sanctioning power of the court.

Judge Powell does not initially order the parents of unruly youngsters into counseling or to do or not do anything, though she may strongly suggest what they should do. Her belief is that parents should not initially receive such orders because they have not had their day in court with a hearing that determines they have failed to provide adequate supervision or have contributed to their child's unruly behavior.

This scenario may change at a subsequent hearing, when serious parental deficiencies are pinpointed which may undermine the youngster's compliance with court orders or the parent is seen as contributing to the child's unruliness. Judge Powell may then have a special summons issued and a hearing held where the parent needs to show cause why he or she should not be placed under specific orders of the court to accomplish or to refrain from doing certain activities. Evidence from the probation officer at this hearing might show that the parent discouraged the child from attending probation interviews, refused to send the child to school, or failed to assist the child in important ways. "I can then find they are in some way not supporting the probation officer's efforts, and order them to stop doing what they are doing, and make sure the child gets to the probation officer and to a particular community program, as needed." This is done by a protective order, authorized by statute.

Romae Powell suggests that, "When you don't have any way to enforce that which the law orders must be done, then I'm for taking status offenders completely out the court structure." But she prefers reversion to the earlier broad grant of discretionary authority to judges to either the current status with status

offenders or their excision from the court's jurisdiction. In the meantime, she has developed her own approach to enforcing the orders she does enter.

Seymour Gelber was appointed judge of the Dade County Circuit Court, Miami, Florida in July 1974. He requested assignment to the court's juvenile division and served exclusively on the juvenile bench since then.

He took no active part in the policy debates that led to Florida legislative changes relating to status offenders. The Florida enactments went beyond the changes legislated in many States. There, a status offender is denominated a dependent child. The dependency definition that incorporates status offenses is also somewhat tighter. It requires a finding of <u>persistent</u> runaway, <u>persistent</u> disobeying of parental requirements, or habitual truancy. The classification progression in this State was initiated with status offenders classed as delinquent youngsters, was later altered to place these youths in their own classification of child in need of supervision, and now categorizes them as dependent children.

Secure detention is limited to juvenile law violators. The law prohibits the incarceration of "status offense dependents" in a State delinquency facility. All governmental social services to these youngsters, as well as to other dependent, neglected, and delinquent youths, are provided by the State Department of Health and Rehabilitative Services.

Judge Gelber considers the present approach a "good policy," though he has misgivings. He recognizes that "we were locking up a lot of these kids in 'State school' and places like that. That's what created the problem and caused the change. As a result of the change, we can't lock them up, we don't do anything."

Of course, the court tries to get these youngsters back into school, to obtain counseling, to get them into certain programs, and to persuade youngsters it is in their interest to follow court directives. "But there are some status offenders who probably would be better off if we had more control over them and could require them to stay in a program."

He believes a far smaller number of status offenders are now brought to court than formerly. He sees few status reoffenders, perhaps because "the parents or someone recognize the system can't do very much, so they just don't come back." But it may also be true that "some kids, apparently, are impressed by a day in court and some success has been had with families getting together better."

Judge Gelber believes that most truanting youngsters, following court hearing, do start back in school, but he suspects that in the long run they drop out again. He sees this as little different with delinquent youngsters, "The ones you can put in 'jail.' Most of them go back eventually to what they were doing before."

A firm believer in judicial discretion, he contends that he would use greater discretion effectively and assert controls that would be beneficial to a number of youngsters. Yet, he reasserts that he is comfortable with the present law.

Has he used his contempt powers to sentence a status reoffender to secure detention? He has not since that would be "backdooring" the legislative intent. "Also, I'm very leery of using contempt power. Judges can run away with that authority and go beyond a rational response." Even though the Florida Supreme Court affirmed a sentence to secure detention following a further runaway subsequent to a trial judge's warning that the breach of a condition would lead to contempt proceedings, Seymour Gelber will not alter his approach on this issue short of legislative change.

That parents are the petitioners with status offense dependency cases is a further barrier to runaway and ungovernability petitions since this format affixes certain responsibility on the parents for their child's status. The court can expect the parent-petitioners will admit to the petition, since they initiated it, and that no trial will ensue. It is a last resort for parents and not encouraged by social services staff or prosecutor.

Judge Gelber does not appoint legal counsel for these youngsters. "The kid is not in any jeopardy of being jailed. All those niceties that we're concerned about are not advised in this proceeding. All you can tell them is go to school or go to counseling. He doesn't need a lawyer for that." However, for a delinquent youngster on formal probation status brought back into court for a truancy or runaway, Gelber mandates defense representation.

How do status offense dependency hearings differ from delinquency hearings? "There are less legalisms involved. I get right to the problem. I might have the special school support program check out what help can be provided. I sometimes get a kid transferred to a different school, which I can do easier than the parents can. I try to support the parent and not ingratiate myself with the kid. I try to shake up the kid enough to try to do something and also encourage the kid by showing him I want to help. I enter lots of orders and they're not hollow orders because the kid doesn't know anything except that I'm the judge and I can put him in 'jail,' although I cannot or will not."

He will order parents to go to counseling and do or not do lots of other things, treating this disposition the same way he treats other dispositions.

Judge Gelber does not see any upward relabeling. "If this were attempted, the case wouldn't go anywhere. It would be diverted." His assumption is that there is no diminution in social services provided these youngsters and families

and that the schools may be doing more since the courts do less, and this is good. He devotes much less time to these cases since there are far fewer or them.

Edward J. McLaughlin became judge of the Onondaga County Family Court, Syracuse, New York, in January 1973. He is the one judge in this group who considers it is better public policy to excise status offenders from the court's jurisdiction.

His view is based not on an ideological position that noncriminal misbehaviors are not the law's business, but rather on a more practicable perspective that is hinged on his conception of the role of courts and is juxtaposed with the constraints courts must now use in regard to these youngsters.

Judge McLaughlin believes that the court function is to provide due process and apply muscle. Since the latter can no longer be applied, there is no reason to provide a judicial system due process avenue in these matters.

New York was the second State in the nation to enact a separate status offense classification, person in need of supervision (PINS), that took effect in 1962. Statutory amendments in the 1970s precluded this court's use of either secure detention or delinquent institutionalization for PINS youngsters.

Judge McLaughlin has not seen a diminution of PINS petitions, however; the probation department's intake unit filed 375 PINS petitions during 1981, 75 percent of them for ungovernability and 25 percent for truancy. But, just 45 of these youngsters were placed on formal probation and another 45 placed away from their families in nonsecure facilities.

His concerns regarding labeling factor into his view. In this regard, he classifies ungovernable youngsters into two subgroupings, about equally divided. One consists of those who are desperately looking for help and will accept any help offered. "Why label them as ungovernable to give them help?" The other includes those wanting everyone to get out of their lives. "They reject treatment. You put them somewhere and they'll run; they've got problems but won't accept treatment. So why give them another burden to carry?"

Further, in his view, a PINS label subsequently may become more damaging than a delinquency decree. "A PINS girl applies for a job. Her employer somehow learns of her label and assumes she was sexually permissive. A male delinquent later applies for a job. His employer learns of the former delinquency status. The boy states he had stolen a car. The employer comments, 'Boys will be boys.'"

He supports education officials' interest in encouraging truanting youngsters to return to school, but is sensitive to a youngster's apprehensions and conflicts regarding educational institutions. "I used to have bright red hair. Red-haired people are expected to test the rules, and I did. I got kicked out of the parish parochial school because I didn't like the nuns touching my red hair. This all makes me more understanding."

He recalls that seventy-five years ago, child advocates fought to provide a right for children to go to school, but that today school officials sometimes want to "jail" children who fail to exercise this right.

Judge McLaughlin treats status offenders no differently from delinquent offenders except that incarcerative placement is not utilized. He will not use the contempt of court approach or any other to order secure detention or confinement in a State delinquency facility for a status reoffender.

In his written opinion published in New York State court reports, McLaughlin rejected the bootstrapping of a further PINS violation into a juvenile delinquency charge. He ruled that a girl, placed in a foster home who runs from the home, had not been placed in such a detention facility from which an unauthorized departure constitutes a criminal-type escape.

His decision noted that characteristic PINS behavior is "more harmful to the child than to the social order and the rules of law," and affirmed that "the court can but follow the laws as they are enacted by the legislature." His opinion called on the legislature to either remove status offenders from the courts or allow runaways to be maintained in a secure setting. It also suggested enactment of a pre-majority emancipation procedure.

All status offenders appearing before McLaughlin must be represented by law guardians, and "I'm sure not going to let a law guardian I've appointed sell his kid down the river." He sees the law guardian's function as pushing the probation agency and the court to utilize the least intrusive alternative. He will not order parents of status offenders into counseling since he has no statutory authority to do this.

What, then, has been the effect of policy changes in his court and community? More nonsecure residential beds, a monitored release program that telephones schools each day and parents each week concerning nondetained status offenders, no PINS children in either the county detention facility or State delinquency instituitons, but no attrition with the judicial work load.

He would like to see fully sufficient alternatives in place were the legislature to repeal the court's jurisdiction over these youngsters. He summarizes his preference for removal with a critique that present policy "deceives children, demeans the court, and labels two groups of children, neither of whom deserve it."

James S. Casey became judge of the Kalamazoo County Probate Court, Juvenile Division, Kalamazoo, Michigan, in February 1976. The Michigan Juvenile Code has never achieved extensive modernization. For example, the code is silent as to the requirements of the Gault decision; juvenile court rules promulgated by the Michigan Supreme Court heal that deficiency.

Status offenders are still juvenile delinquents in that State and there are no statutory constraints as to the detention or institutionalization of these juveniles. State juvenile court rules, however, prohibit the secure detention of status offenders except for repeated runaways and children requiring evaluation and treatment that cannot take place in a nonsecure setting. Further, an executive order of the Michigan Department of Social Services prohibits the placement of status offenders, committed to the State, in secure delinquency institutions.

In recent years, a new juvenile code was drafted and Judge Casey worked actively on a judges' code revision committee, and with the legislature in the drafting process and the attempts to obtain passage. Enactment failed, however, in part because judges and others interested in juvenile justice reforms could not achieve agreements in regard to policies concerning status offenders.

Casey had supported the draft version which would have created a family in need of supervision jurisdictional category. This would have required clear and convincing evidence that all alternatives had been attempted prior to a court's taking jurisdiction. The proposal would have sharply curbed the secure detention of these youngsters, authorizing only confinements not to exceed five days for juveniles who run away from court-ordered placements, or who fail to appear for court hearings.

James Casey clearly prefers the use of the court only as a last resort with ungovernable and runaway youngsters. He has largely achieved this direction in Kalamazoo County. He wants the full array of court alternatives to be in place and operating effectively, indeed has spearheaded such an appropach in his community. But he contends that, nonetheless, certain repetitive runaways and other status offenders will be in danger and require court-orchestrated efforts.

As to children endangering themselves who are not responsive to voluntary efforts, "if we totally eliminate a court role, I think we could just be chalking those youngsters up to a future that's not good for them."

He draws a parallel with mental illness cases, part of the jurisdiction of his probate court where he serves as chief judge. Eight years after a statutory

change required the use of the least restrictive mental health alternative, adequate services have not yet been developed to meet the law's objectives. "My feeling is that we should look at what is going to happen before we make a radical change."

His ideal view would include the surrender of the court's jurisdiction with habitual truancy. "It's been too easy for schools to refer truants and let the court be the hammer. In the past, detention was expected and used. But this hammer has been all but eliminated by the pressures of Federal and State governments. It wasn't good policy to mix truants with serious delinquent offenders." He would like to have the schools provide for these youngsters within their own system, but recognizes that community taxpayers will need to support the further expenses the schools would incur for more comprehensive and alternate programs.

The heart of the current Kalamazoo effort is the court's status diversion program consisting of five probation counselors and a supervisor, a project in operation since 1975. It serves both status offenders and minor criminal first offenders through direct services, referral to community resources, and program development which has stimulated projects for these youngsters under external agency sponsorship.

Due to these efforts, just 4.6 percent of the nearly 7,000 youngsters serviced over a seven year period have required formal petitions. For these two classes of youngsters, just 48 petitions were filed in 1980 and 31 in 1981.

The court's 1981 annual report is instructive: "Status Diversion was designed to be 'people' oriented and not 'system' or paperwork oriented. The freedom from hours of court hearings and volumes of paperwork allowed diversion workers to do what they were expected to do--help people."

Judge Casey approved detention of status offender guidelines in 1980 which specify that "No status offender shall be detained unless special circumstances exist which make detention the only feasible placement alternative."

The special circumstances that are specified, but are not limited to, include: emergency placement necessitated by a parent's refusal to provide adequate care, an absence of an alternative placement, or the need for evaluation or treatment by qualified experts that cannot be reasonably obtained otherwise.

The guidelines direct judges and referees to detail on the hearing record the reasons and circumstances requiring detention. They shall review the child's detention status every ten days. Further, the detention of status offenders under special circumstances has been expressly set forth in another policy directive as the lowest priority for detention admission.

A State-supported runaway center in Kalamazoo furthers this court's sparing use of secure detention. Also, an eight-bed shelter facility for runaway girls had helped as well, although its four year life terminated in 1981 when

continuation funding could not be obtained despite extensive court efforts. Today, at any given time, there are just one or several status offense youngsters held in secure detention.

Casey's viewpoints concerning status offenders have changed markedly since his first year on the bench. "Then I was treating status offenses similar to criminal offenses. I saw these youngsters as having problems which the court had to solve and with the resources we had available, detention and whatever. I was not then yet in touch with current thinking and reading and the deinstitutionalization movement."

Soon after, he realized there was a "great difference" between these youths and law violators and established as court policy "that we're going to treat them differently and we're not going to lock them up unless there is some special reason to do so, protection, primarily."

Today, his court will commit a small number of status offenders to the State, targeted for care in private institutions purchased by the State. Still, Judge Casey doesn't like to see these youngsters mixed with delinquent youths, even in private institutions. He is perturbed on learning that some status offenders remain in care longer than delinquent youths, though he is aware they may have special emotional problems which are stated as the reasons justifying lengthier stays.

A status reoffender, like an initial status offender, may meet the detention criteria and be held in the court's detention facility. Accordingly, a contempt of court device need not be resorted to, and Judge Casey indicates that, were laws restraining detention enacted, he "would not want to use a technical way to get around a statutory directive." Nor would he resort to bootstrapping to convert a status reoffense into a delinquency charge to enable delinquent institutionalization.

By Michigan Supreme Court rules, status offenders who are petitioned by their parents must receive legal representation unless an attorney, appointed by the court as guardian ad litem, approves waiver of counsel. This rule is adhered to in Kalamazoo where attorneys are also routinely appointed with habitual truancy cases when placement away from the family in a nonsecure facility is under consideration.

Judge Casey observes that lawyers in status offense matters function differently than with delinquency cases. The former cases are sometimes a mystery to defense lawyers who appear to examine more the social and psychological issues than the legal concerns, yet "they don't lie down on the job." Prosecutors need to approve all formal status offense petitions as to legal form, but appear in the court only with contested status offense trials. These are rare.

Judge Casey has not observed upward relabeling of status offenses; these cases are delinquency matters in Michigan. The parents of delinquent youngsters,

and thereby status offense youngsters, may be required by statute to follow reasonable court rules designed for the well-being of their children. Judge Casey will enter special orders requiring parents to attend counseling sessions at specified agencies or with a probation officer. He resorts to the parental order more in status offense than law violation cases. Otherwise, his hearings differ little between these two classes. "I don't spend much time lecturing any kind of youngster."

What has been the impact of his court's and the State agency's policy changes and program enhancements with status offenders? Judge Casey observes that police agencies more likely refer curfew violations back to the parents or to the court's status diversion program. Law enforcement officials appear to be more hesitant to arrest runaways because they recognize the court cannot effectively handle all of these cases and at the same time give due consideration to more serious delinquent offenders. These officials like the runaway center program and "are not knocking our doors down anymore asking us to take in status offenders."

Except for the small number of formal status offense petitions, regular probation officers can apply their energies exclusively to delinquency cases. Compared with 1976, "unbelievably few status offenders are held in secure detention," though Judge Casey would like to reduce their numbers still further.

Judge and referee hearing workloads have been cut back substantially along with the clerical time earlier used to prepare these petitions. The payment of counsel fees has been reduced. These youngsters no longer receive placement in State training schools.

A few local school officials do not like the changes, though they are not left unaided by the court because of its extended diversion effort. Judge Casey holds to a last ditch concern to offer protective services to children through the court, and he believes that his community wants children protected.

His redesign of the court's approach to status offenders has been assisted by his reconceptualization of this issue, together with the Federal and State funds that were made available and substantial community interest in furthering this direction. He is restless to achieve further changes but will require a brighter economy or added statutory restraints to intrude still less with these youngsters.

Doing what he has done has occasioned some community criticism since there was no "cover" of legislative mandates. But he is confident these changes have been responsibly implemented and that he had looked ahead to help facilitate the alternatives that enabled him to draw tighter detention as well as intake guidelines.

COMMENTS AND IMPLICATIONS

The experiences and viewpoints reported here reveal the marked policy changes that have abbreviated juvenile court workloads and checked the use of secure detention and delinquent institutionalization for status offense youths.

Pronounced diversion is evident.

While three jurisdictions authorize secure detention for one or more types of status offenses at the time of an initial offense, screening mechanisms, alternative resource availability, and a changed attitude regarding confinement on a pretrial basis have sharply narrowed the opening to the detention center doorway. Such restraints apply with status reoffenses as well.

Accordingly, as in Atlanta, both initial and status reoffenders can be held in secure detention for up to five days provided the attending circumstances surmount the screening and preliminary hearing barriers. Conversely, as in Syracuse, neither initial offenders nor reoffenders can be held in secure detention under any circumstances. There is no statutory distinction between initial and reoffenses in any of the five States. In the three jurisdictions where status offense detention is permissible, second and subsequent offenders are probably more likely to be held.

There is a distinction in two jurisdictions, however, where judges utilize their contempt authority to sentence status reoffenders to a stint in secure detention. This disposition is ordered in the aftermath of a judicial hearing that determines court orders were violated. This action is not the same as the holding of an alleged status reoffender in pretrial detention pending a determination as to whether a valid court order has been violated. This latter scenario was the subject of 1980 congressional amendments to the Juvenile Justice and Delinquency Prevention Act and of regulations which were subsequently issued.

Several appellate courts have reviewed this use of juvenile court contempt as a punishment vehicle and additional reviews would be useful, as the Atlanta judge hopes will occur. The Florida Supreme Court, as cited earlier, approved a trial court's use of its inherent contempt authority to sentence a child to forty days in secure detention. The conditions earlier placed on the child to not run away again were found reasonable and the trial judge had appropriately stated in his earlier order that a breach of conditions would lead to contempt proceedings.

The Minnesota Supreme Court has ruled that secure facilities can be utilized following a contempt proceeding, but only if the trial court has found the most egregious circumstances, all less restrictive alternatives have failed, and the institutional mixing of these youngsters with delinquent juveniles will be kept to a minimum. The Wisconsin Supreme Court has entered a similar ruling and has expressly placed the primary duty of seeking out alternatives to incarceration on the juvenile court and its personnel.

The Illinois Appellate Court, while noting the historic validation of court contempt authority, voiced concern with its use as "an attempt...to erect a parallel system of juvenile justice to that provided by the Juvenile Court Act."

Present judicial resort to the contempt power is indicative of the frustration judges feel when confronted with the continuous flaunting of their orders in the face of statutes constraining their discretion. The desire to assist as well as control such youngsters who come back before juvenile court judges remains a strong one.

In the main, a massive redesign has been accomplished that curbs the interventive role of juvenile courts with status offenders. But some of the slippage from the pure form objectives of reformers is noted with the use of contempt, a more permissive detention usage, and with the not unexpected modest upward relabeling.

It should also be observed that not all fifty States entered into a compact with the Federal government, that the prohibition on institutionalization has been accomplished more by executive order than statutory change, but that some States' detention constraints exceed Federal minimums.

Further, different States as well as local jurisdictions have their own character or "culture," where policies and practices integrate a rather wide array of traditions, personalities, expectations, and other variables.

The Federal initiative has accommodated "valid court concerns" in general. It has furthered the great change in attitude and perception that now widely distinguishes noncriminal misbehaviors from criminal misbehaviors. Its monitoring requirements and funding of alternatives have been important and need to continue if additional slippage is to be avoided.

Appellate decisions concerning bootstrapping a status reoffense into a delinquency petition, therby permitting delinquent institutionalization, have been divergent. Interpretations depend upon statutory provisions. Rulings in New York, North Carolina, and California, among others, have prohibited this practice. Texas allows it. Preferable legislative policy would disallow this form of slippage. Status reoffenses should remain status offenses. They may constitute violations of court orders, but do not fall within a generic delinquency definition of a law violation.

Whether or not a given State further reclassifies status offenders into a dependency category, the issue as to the particular governmental agency to provide basic social services to these youngsters in germane. The transfer of this responsibility from the probation agency to the public social services department is associated with a perspective of community rather than court responsibility. Retention of this function with the probation agency continues this function with officials more used to control-oriented intervention. In the absence of statutory redesignation or of specially directed funding, social

services departments have not appeared eager to offer widespread assistance to these youths.

In any circumstances, direct service provisions should not be limited to just one or the other of these governmental agencies. The schools and other public and private social service organizations have vital roles to play. Further, several national assessments have pointed out an overreliance on the use of counseling mechanisms in seeking to help these youths and their families, and the underuse of educational and employment counseling as well as job training. Psychologically-oriented treatment should be just one of the responses available to such problems. Yet incorrigibility and runaway matters do suggest shortcomings in a family's interactions for which skillful family counseling may be useful.

The Gault case, of course, dealt with a juvenile law violation and the possibility of delinquent institutionalization. The provision of free counsel to status offense youths has been less evident across the country than with delinquent youths. It would seem to be better policy if, at a minimum, legal counsel was mandated for all status offenders subject to secure detention, to removal from their families, and when a parent is the petitioner. The fact that an enhanced prosecutor role with juvenile delinquency matters, at the intake stage and beyond, is not evident with status offense matters, does not relieve the need for defense counsel representation.

Overall, status offenses are a far less prominent dimension of juvenile court workload than formerly. However, this area does not truly constitute a nonissue. Whether and how a juvenile court should retain its jurisdiction with these youngsters remains of concern, along with the use of secure detention. A developing matter is the court's use of contempt authority with these youngsters. Jeopardy to ongoing funding of alternative programs presents problems to stabilizing policy implementation.

Despite the present in-between policy, that these youngsters are not fully out of nor into court, what is clearly evident is the award of fundamental responsibility for these youths to noncoercive services. It seems fair to say that judges, on the whole, have not been in the forefront as to these changes, though for years urban judges have allocated low priority to these matters. But judges are individualistic, have differing legal and social perspectives, and, like others, do change their views over time.

Irreverent children will not disappear over time, however. They may or may not disappear from the court scene, but their absence or reduced presence there does not mean they are no longer misbehaving. It may mean that juvenile court judges can concentrate on more serious societal concerns of delinquency, child abuse, and neglect.

JUVENILE DELINQUENCY AND DETENTION

Five veteran juvenile court judges, presiding in urban settings in different regions of the country, strongly emphasize protection of the community in determining whether alleged delinquents should be held in secure detention pending further court determinations. The apparent seriousness of the present offense together with prior record considerations are strong influences on decisions they make at detention hearings regarding retention or release.

These legal facts, along with the juvenile's age, are the fundamentals relied on by three of the judges. The legal facts are very important to the other two judges, who also look closely at such social facts as family strengths and a parent's ability to control the youngster. The time space between present and prior offenses is noted carefully by several judges in assessing the risk of community endangerment with release.

Three judges contend there is merit in capturing a child's attention by providing an opportunity for him to think through what he may have done during a holding period in secure detention. In general, reoffenders are more likely to be detained, particularly those youngsters already on probation status or those who had earlier been released and are awaiting court disposition at the time of reoffense. In these situations, there is a further detention purpose, to show the seriousness of the court's enforcement interest.

Intake staff provide twenty-four hour onsite detention screening services in two communities and fourteen hour onsite screening capability in a third. In the other two jurisdictions, apprehended youngsters are brought before a judge or referee during court hours for a preliminary detention determination; during other hours, detention center staff hold authority to reject admission of certain types of youngsters.

In general, detention hearings are held on the day following admission to a detention center, except with weekends. One court holds Saturday detention hearings. Detention hearings in all courts are recorded.

In two jurisdictions, statutory detention criteria are quite broad: release shall occur unless there is predictive danger to the person or property of others or to the child. Criteria are narrow in two other jurisdictions. In one, prediction is grounded on the "serious risk" of a further crime being committed. The second permits detention with any felony offense, or with a misdemeanor when accompanied by specified prior record or predictive characteristics. The criteria are relatively narrow in the fifth State and based on a combination of offense seriousness with release endangerment, or premised on the need to detain a youngster for an evaluation not obtainable through other means.

A further statutory criterion, predictive absconding, is present in all five statutes. Nowhere is it utilized commonly.

Just one court is mandated to follow an express no less restrictive alternative prerequisite to detention use. The most frequent statutory phrasing is that youngsters shall be released to their parents unless detention criteria are met.

Probable cause to believe a detained youngster has committed a particular offense is a significant phrase of the detention hearing in just one court. In two others, this is reviewed pro forma and invariably found. In a fourth, the presence of a prosecutor-prepared petition at the time of this hearing obviates the need to assess probable cause. Probable cause is not examined in the fifth court. It is usual for judges or referees to check different boxes on a detention hearing form to specify the statutory criterion that was met in holding a child further.

Two of the three courts that employ referees delegate detention hearings to these officials. The third court retains detention hearings as a judicial function since, "This is one of the areas of easiest abuse by staff and direct judicial oversight is necessary."

Divergent opinions are voiced as to the desirability of rushing the completion of a formal petition prior to the detention hearing. The supporting view is that a judge has some assurance that a legal review by a prosecutor has found merit with the police complaint. The oppositional view is that this causes more youngsters to be channeled into the formal system since the speedy time frame forecloses more comprehensive intake assessment of diversion and other court alternatives.

Defense counsel is a requirement at detention hearings in two courts. In a third, there is clear encouragement to invoke counsel at this stage. A fourth advises of the counsel opportunity while a fifth judge does not routinely advise of this right. One judge indicates that stronger defense advocacy would reduce detention holds, shorten detention durations, and increase the use of home detention in his jurisdiction.

Three judges have functioned in important roles in the development and promulgation of detention intake guidelines for use by probation staff screeners. All three of these courts administer the probation function. Judges in the other two courts have taken a hands-off view regarding detention screening. Probation is an executive agency function in both of these courts. Yet, these two judges have taken rather dramatic actions in regard to detention center overcrowding.

One court has promulgated guidelines that require law enforcement documentation of an endangering condition before intake screening staff can consider detention admission. Two judges have been actively engaged in expanding the range of secure detention alternatives in their communities.

Home detention programs, with complements of from twenty to sixty youngsters, are available to three judges. These jurists are enthusiastic as to the

program's approach and achievements. Detention screeners cannot spin off youngsters to home detention; only referees or judges can make this decision at a detention hearing. Monitored home release, which uses telephone checks rather than daily face-to-face contacts, is available to a fourth judge.

One judge is equally concerned as to both nonsecure and secure detention usage. He contends that judges should be more aware that a youngster's everyday existence is disrupted significantly with nonsecure out-of-home placement. Conversely, another judge is not adverse, at an arraignment hearing, to order into detention a child who had been released and not detained following apprehension. In part, this constitutes this judge's approach to monitoring detention screening decisions by the intake staff.

Two jurisdictions provide a detained youngster with a right to bail. A judge of one of these courts comments favorably on this practice. When parents deposit money with the court, they are more interested in controlling the youngster at home in order not to lose the money they have deposited.

Several statutes permit a court to transfer a detained youngster to jail when he is beyond the control of the detention center's management or endangers others there. Judges in those jurisdictions report they have transferred fewer than one youngster annually.

Just one judge has structured a further review procedure for all youngsters not released at detention hearing. Two statutes permit court sentences to detention. Another judge uses a contempt vehicle as the basis for a sentence to detention.

> The senior jurist of this group, Regnal W. Garff, Jr., became judge of the Second District Juvenile Court, Salt Lake City, Utah, in August 1959. He had chaired the planning committee for the juvenile court complex and detention center that was dedicated in 1963. The forty-bed detention facility, administered by the county, was expanded by an additional sixteen beds in 1981. Judge Garff doubts that "any other juvenile justice system in the country has looked at its detention practices more than we have, looked so hard at the kind of kids it was holding, and developed as many alternative programs so youngsters wouldn't have to be detained. The original forty-bed facility took care of our needs for eighteen years only because of the alternatives we created."

Detention hearings have been held daily in this court since 1965. Detention screening was instituted by the court's probation arm a year later. About that time the detention center, with strong court encouragement, developed

a network of foster home alternatives to secure detention. In the early 1970s, an extended shelter facility was constructed adjacent to the detention center to care for eight to ten youngsters who required temporary care in a more structured, nonsecure facility. Home detention, administered by the county detention center, was added several years later. It handles a maximum of twenty juveniles.

Judge Garff routinely sets detention reviews for youngsters he orders held at detention hearings and for whom approval is not granted to staff to release upon the fulfillment of certain conditions. He conducts these reviews in a conference with the intake officer or by examining reports submitted by this officer. The court, for which he has served as administrative judge through virtually all of his tenure, long ago promulgated detention guidelines and more recently issued directives to law enforcement officials setting out criteria and procedures required for bringing youngsters to the detention facility. Detention center staff utilize these guidelines in screening referrals during the ten nighttime hours that intake staff are not onsite to make screening decisions. Detention staff is precluded from releasing youngsters complained against for thirty-eight specified offenses.

For Garff, a primary purpose of detention "is to hold a youngster safely until a petition is filed and a hearing held, or until he can be released." During a detention stay, it is important to provide "opportunities for development such as keeping abreast of school work if he's in school, and some help with emotional problems and conflicts that he has while he is there."

What youths should be held? The juvenile who would jeopardize the community if he were not detained. Reg Garff acknowledges that he might also hold some juveniles who, if released, "are really going to hurt themselves, emotionally or physically." He adds, "If you can stabilize them and their home situation after a couple of days in detention, then they are back in control of their lives again and it's possible to release them." Predictive endangerment of the community and the child's self-endangerment probability are the two most prominent criteria set forth in State juvenile court rules.

He bases his detention hearing decisions on three primary factors: past record, seriousness of the present alleged offense, and controls at home. He may release a youngster with a prior record and a relatively serious offense "if there is structure at home and the parents are in control." Weak parental controls suggest to him the advisability of using the home detention program.

Court guidelines direct the initial detention of serious offenses against persons. Judge Garff may later release these juveniles to home detention. "For example, I've got three or four armed robbers on home detention right now, but it took us some time to stabilize those situations before the release." Further, property offenders with a substantial past record will generally be held for a period of time, but not first property offenders except for home burglaries. "Overall, I don't get very many at detention hearings who do not have a past record." Probationers who reoffend may be released to the field

probation officer with a directive that the youth is not to go anywhere except school or work without parent accompaniment; the probation officer is to provide almost daily contact and monitoring of this form of house arrest.

Garff's support of both home detention and its analog, tight controls asserted by probation officers with probationers who reoffend and are released, is based on his belief that these tracking efforts help keep youngsters out of more costly residential programs, "not only more expensive, but also more confining." He also contends that these youngsters "may well do better when they are not fully dependent on someone else for defining their limits and telling them what to do. Soon they are going to be responsible for their own decisions." As is common elsewhere, some youngsters released to home detention are returned to secure detention not because of a new violation, but due to noncooperation or a failure to adhere to rules. A further detention hearing is provided in these situations, though this is not seen as a requirement, since home detention is considered an extension of the secure detention facility.

Court judges hold all detention hearings, but the referee conducts shelter hearings. This is a deliberate strategy with Judge Garff since detention hearings give judges "a better pulse with what's happening," and because it is "probably one of the areas for easiest abuse by staff...it can be by judges, too." He has a youngster's file at the hearing and reviews the printout which recites earlier offenses and dispositions. He reviews notes he recorded at prior hearings with this youngster which are stored in the file. He also assesses the police report. On infrequent occasions, he has dismissed a case due to insufficiencies contained in this report, releasing the youngster. Since there is no statutory or constitutional requirement to provide probable cause hearings for detained youths, probable cause considerations are not a complement of these hearings. But a case is now pending in the U.S. District Court in Utah that asks that this procedure be required. Garff does not routinely advise that counsel can be obtained; neither prosecution nor defense counsel appear routinely at these hearings. However, intake staff are required to advise juveniles of the right to counsel and other constitutional rights.

Reg Garff has confidence in the intuitions he has developed in the courtroom and the "gut feeling I get about certain youngsters." This inclines him to hold onto some juveniles, providing other statutory requirements are met, and, typically, to set these cases for review a day or two later, releasing them after this slightly extended stay.

The next day detention hearing may pose problems with some cases when there has been insufficient time for the intake officer to get together with the parents and investigate the matter sufficiently. "Sometimes I don't have enough information to make an intelligent decision. I don't want to hold up the release of the kid if he can be released. This is when I approve a release by the probation officer, because he'll meet right after the hearing with the parents and the child and can release him that same morning." On occasions, Garff will recess the case to enable an intake officer to meet, quite possibly for the first time, with the family and then to return to court with the information the judge needs for his decision.

The Utah statute, in regard to detained juveniles, requires a preliminary investigation and the filing of a petition wtihin five days. To Garff, the preliminary inquiry makes sense but a more accelerated petition requirement makes no sense. "Once the petition is filed, the case is on its way. This jeopardizes the child and puts more kids into the system." He contends that any number of youngsters, initially detained, can be handled without formal petition, and that probably few would be dismissed if the investigation were conducted after the petition had been filed. "We tend to forget that it's a traumatic experience for people to be involved with the court, since we deal with this every day. Most people are pretty uptight, nervous, and upset when they have to come to court."

He does use the contempt route to sentence delinquent reoffenders to secure detention. They are not separated there from other youngsters, which he would prefer. He would like these youths to be isolated from the basic detention center program, which most youngsters "tend to enjoy," in order to have time to think and be just with themselves. Overall, Judge Garff values the full range of detention alternatives available to court youths and the merits of the short secure detention stay, as well.

Romae Turner Powell became judge of the Fulton County Juvenile Court, Atlanta, Georgia, in January 1973. Senior referee in this court for five years prior to her judicial appointment, she participated in the drafting of a court order, issued in December 1972 and still in effect, that set a population cap of 72 juveniles to be housed at the adjacent detention facility. This center, constructed in 1960, was built to hold 144 youngsters. As late as 1971, the center held dependent and neglected youngsters as well as delinquent and status offense youths. At that time, the facility averaged 100 youngsters in placement each day. The male population was regularly in excess of the then 72-bed male capacity and quite a few of the more difficult to manage boys were being transferred to the county jail.

The court order designated detention class priorities from one through eight in order to effectuate its findings "that 72 is the maximum number of detained male or female juveniles that can be treated in a safe environment." The first priority consists of "those charged or adjudicated as to an offense in the nature of a capital felony"; the second relates to those "who are found to be dangerous to self or society and whose custodian is not available or is unable to function as such"; the third covers juveniles confined by order of court following plea or trial, or for contempt, not to exceed twenty days; the eighth priority is "any child detained pursuant to the Juvenile Court Code of Georgia."

The order directs the detention center director, when the population cap is approached, to certify for release youngsters having the lowest numbered priority. A judge must approve the release of juveniles in the top four categories.

The care of dependent and neglected youngsters was shifted to the public social services agency. Twenty-four hour onsite detention screening helps implement the court directive. Crisis counselors have been added to the detention screening effort and contracts were signed with two residential child care agencies for nonsecure beds. Two detention center rooms were redesigned as maximum security holding rooms for use "when some of these kids become overly aggressive. We can lock them in there now instead of transferring these boys to the local jail." These two rooms are "self contained from the other rooms and more secure."

The statute directs that no youngster shall be detained unless it is required to protect the "person or property of others or of the child," the child may abscond or be removed from the jurisdiction, or if there is no parent or guardian able to provide supervision and return the child to the court when required. Judge Powell operationalizes this law to detain "the very serious offender whose detention is necessary for the security of the community." Another part of her assessment of community security is whether a child, if released, might harm himself. A likely detainee is the juvenile, already within the court's jurisdiction, who is alleged to have committed additional crimes. Other than with the more serious offenses, social factors form an important part of the initial detention decision, particularly a parent's ability to control his youngster and return him to court. Judge Powell's discussions of appropriate detention utilization are directed more to the ability of a parent to control his youngster and return him to court than to the ability of a parent to control his child and keep him out of further difficulty pending court determination.

With youngsters already on probation status, the assigned probation officer's opinion is important. Indications that a juvenile is cooperative, attends counseling sessions, and is likely to return to court encourage release. Misdemeanor offenses and reoffenses are a lower priority for detention than felonies.

The Georgia statute requires an "informal detention hearing" within seventy-two hours and specifies a right to counsel notification at this stage. Judge Powell has tacked onto this hearing a requirement of a finding of probable cause to believe this juvenile has committed the alleged offense. The probable cause dimension is addressed first. "If you can't find probable cause, there is no reason to hold a detention hearing. The child must be released." She adds, "It does an injustice to a child to detain him without having justification, both in regard to probable cause and to the detention criteria. Further, the child needs to understand why incapacitation is needed if we are to effectively rehabilitate him. He may not agree, but at least he understands why the action was taken. We've got to teach youngsters responsibility, so when the child understands our due process procedures, he understands the court has tried to be responsible in carrying out the laws of the State."

Referees conduct all probable cause and detention hearings in Fulton County. A checklist is used that requires a probable cause finding and is "thoroughly

specific as to the reasons for detention." The youth and his parent are given a copy of the preliminary order following the hearing. Youngsters detained at these hearings are not reviewed again as to the continuing necessity for detention. Formal petitions must be filed within seventy-two hours of the hearing.

Detained Georgia youngsters have a statutory right to bail on the application of a parent or guardian. "A parent can come right in from the preliminary hearing, sign the bond request form, and come before the judge." A commercial bond may be arranged, a parent may sign a person recognizance bond, or the judge has the option to overrule the referee's decision to detain and release a youngster, though Judge Powell has general confidence in referee judgments. In determining the bond, she will question the parents or take testimony as to parental controls over the youngster, how well the child is doing at home, school, and in the community, and the child's earlier court status. The offense does not factor in unless it is one of the most serious charges.

Romae Powell interprets the statute to clearly encourage the use of less restrictive alternatives to detention. "There must be justification for the initial detention. We have to keep as many children out of detention as possible." As elsewhere, release to parents is the first consideration. Nonsecure residential facilities are available as an alternative for delinquent youngsters. There is no home detention program. The court's detention population limit sets the tone here and the cap has not been exceeded since its establishment. The law does not bar sentences to detention and Judge Powell utilizes this recourse, generally for a twenty-day stint, with some youngsters found in violation of their probation conditions. The violation may be a new offense. A violation may be a technical one such as the frequent failure to attend scheduled sessions with the probation officer. These latter youngsters will be priority for release if the detention center cap is approached.

Seymour Gelber was appointed judge of the Dade County Circuit Court, Miami, Florida, in July 1974. He requested assignment to the court's juvenile division and has served exclusively on the juvenile bench since then.

He sees, as the primary purpose of pretrial detention, the protection of the community from delinquent youths who have committed crimes that suggest a likelihood of further criminal activity. Very secondary to this, since it so rarely arises, is to make certain a child will appear at future court hearings.

His version of an ideal policy is 1) for an intake screener to make the initial determination of the need for detention, 2) a prosecutor

to conduct a legal screen and represent the public interest when intake screeners want a youngster held, 3) adversarial public defender challenge to the detention recommendation, and 4) a judicial decision.

Judge Gelber is critical of 1981 Florida amendments that extend both police and prosecutor influence with the initial detention decision. The law provides that if the law enforcement agency and intake officer disagree as to whether the criteria are present or whether secure detention should be required, the prosecutor shall make the final decision. If either the intake officer, the law enforcement agent, or both determine that a child who meets the criteria should be released, only the prosecutor may authorize release. Gelber clearly prefers that the detention decision vest exclusively with the intake officer. The law also specifies any number of felony, misdemeanor, and prior record situations that allow youngsters to be held. Lesser first misdemeanor offenders are perhaps the only classification that cannot be detained.

These enactments sharply reversed a law approved in 1980 that had made it far more difficult to lock up youngsters prior to trial. The 1980 version had included a least restrictive alternative prerequisite, and, while also offense specific, required more severe offenses or present offense--past offense combinations to be eligible for detention admission. "Since the 1981 enactments, defense attorneys have little room to argue that criteria have not been met. It's almost automatic. All a judge has to do is be there and be in a bad mood and a whole line of kids will stay locked up."

With exceptions, detention hearings are held the day after admission. Intake staff have to reach a decision as to whether a case should be filed within twenty-four hours of admission. Generally, intake and prosecution complete their combined reviews and a petition is filed prior to the detention hearing. Gelber prefers that the prosecutor has investigated the matter before he does. "This is another screening factor I rely on. I know that the prosecutor thinks he has a case worth prosecuting and I know the specific charge or charges, rather than having only the police report before me and what the policeman thinks the offense is." The process is quick, sometimes too speedy to allow enough time to acquire all relevant information, "But a judge has the kid and other people before him, information as to what the others have done, a public defender is involved, and the judge has a rounded picture from which his own quick study can be acted upon."

Seymour Gelber strongly concurs with the basic criterion of community threat based on offense and offense history. At hearings, he carefully examines these legal factors and, with prior record cases, the time space between previous and present offenses. He is more inclined to hold than to release both person and property offenders. But he checks out whether an aggravated assault charge was a neighborhood fight or "three kids jumping another kid walking down the street, stealing his wallet, and beating the hell out of him." The victim in the first scenario may have been beaten just as badly, "but it's two kids who got into a fight. After that it gets to the question of who started the fight. Then, it's really not as important--two guys got into a fight." To him, other

aggravated cases may or may not be aggravated matters. "I look at school assaults carefully. If the victim is another student, I don't get exercised. But if the victim is a teacher, that's it, this guy stays."

Florida juvenile courts do not administer either probation or detention. Gelber prefers this as policy. Consistent with this, he does not favor court-directed detention guidelines. He speaks positively of intake screening decisions in Dade County, and adds that "screeners should not be too concerned about what the judge will do; I'm more concerned with what the screeners do." He frequently decides it's been a good idea to have held a particular juvenile for a couple of days, but that he can now be released or placed on home detention (titled "nonsecure detention" in Miami).

"I suppose I see a little more often a kid who was held who shouldn't have been held than a kid who should have been held and wasn't." From time to time, at arraignment hearings held for youngsters who have not been detained, Gelber resolves that the community protection concern has not been considered adequately, and proceeds to order this youngster into secure detention. He may order a juvenile held for only a few days, but "If I got to the trouble of taking a kid who has been out on the street for two weeks and lock him up, I'll probably keep him there until trial because I have to take this seriously." Florida law requires an adjudication hearing for detained youngsters within twenty-one days, or within ninety days for nondetained youngsters. There is no bail provision.

Gelber encourages public defenders to approach him about releasing any youngster he ordered held in detention. Often he is responsive to these requests, either releasing a youngster outright or to home detention. "If they come back in several days and tell me they have found his mother or father, or have a program for him, or bring his principal or coach or rabbi or somebody and say, 'we're going to look out for him,' I'll release him."

Judge Gelber forthrightly states detention is punishment and is confident there is preventive merit with its use. "It's the height of self-deceit to not accept that this is punishment."

A probable cause finding is an accompaniment to the detention hearing, but this is routine. Gelber can only recall one or two instances where probable cause was not found.

No juveniles go unrepresented by counsel at these hearings. Public defenders are always present unless private attorneys have been retained by the family. Earlier, when the court experienced less frequent public defender turnover, "quality defenders argued everything staunchly and well. There was vigorous probable cause challenge and this helped maintain the integrity of the court. But I wear down lawyers a lot. With a new defender, there's a frenzy of activity, then they get kind of worn down, and when they realize I'm not as bad a fellow as they've heard, they tend to stop contesting. But it's not their job to find out whether I'm a good fellow."

Prosecutors are always present at these hearings as well. Gelber observes that if a defender is working hard, the prosecutor has to work hard. If the defender is casual, the prosecutor treats these matters more casually, and then "there's only one person in the court, the judge, and that's not what a court's supposed to be. Khomeini can have that, but we're not supposed to have that."

Legal factors dominate Gelber's detention hearings. Both the law and Gelber's values are slanted strongly toward community protection. But he contends that vigorous defenders can "whittle down a judge. When they keep coming back at you, you start saying, 'Well, maybe I won't hold that kid.'" The compromise, not infrequently, is the sixty capacity home detention program that draws strong support from this judge.

In 1979, Gelber, though not administrative judge at the time, undertook an extensive formal review of the newly-completed detention facility that appends the court. By agreement, public defenders had filed the case in his court division. Evidence was received as to construction deficiencies, severe overcrowding, staff shortages and shortcomings, an insufficient school program, and the paucity of medical services. Judge Gelber ended up appointing a blue ribbon citizen commission to take over operations of the center for thirty days and appointed several other groups to look into different areas of operation. "Out of it came a lot of changes. We didn't solve the space problem. Although I set a cap, it was not an enforceable cap. But the education process was strengthened, medical screening was improved, added staff members were hired, and staff training programs were instituted."

Citizen groups maintained their involvement. A follow-up study three years later found substantial progress but many problems remaining. Gelber's cap of 120 youths is regularly violated, although the expanded home detention program reduces still more serious overcrowding. The State legislature has now funded construction of an additional 120 beds. Twenty-four hour onsite detention screening has been in place for many years.

Gelber doesn't know if additional alternatives would reduce the detention need. He finds it "frightening" that though juvenile arrests have reduced 14 percent, "I get the feeling that most of the kids in there need to be there." But he notes that a further home detention expansion might be able to reduce the population by 10 percent, and if public defenders constantly went back before the judge another 10 percent or so might be released. Foster homes and nonsecure shelters are used, but for youngsters the court wants to release anyway.

Judge Gelber, an avid reader of delinquency research studies, is aware of findings that show substantial fallacies in predicting what offenders will reoffend. But he believes a study of offense frequency probably would show that juveniles who constantly commit crimes within short intervals are likely to commit additional violations. As to another research finding that detaining a juvenile correlates with petitioning the juvenile and a more serious disposition for the juvenile, Gelber disagrees. He is more likely to release to

the community at disposition a juvenile who has been held in detention until that time. "The youth has experienced incapacitation and I sometimes feel he doesn't need more."

Edward J. McLaughlin became judge of the Onondaga County Family Court, Syracuse, New York, in January 1973, and its administrative judge two years later. The delinquency jurisdiction in New York State extends from a child's seventh until his sixteenth birthday. A statute prohibits the secure detention of youngsters under ten years of age. The county social services department administers the quite new (1976) thirty-two bed detention facility and contracts with private organizations for alternative nonsecure residential programs. The Hillbrook Detention Home also serves as a regional facility that provides care on a purchase of service basis to out-of-county juveniles.

Secure detention is sparingly utilized throughout New York State. During 1981, a total of 249 county youngsters were held in the local facility. Judge McLaughlin attributes this modest figure to the statute's steep detention admission standard, "probably the toughest in the country." At detention hearing, the law requires a judge to release a juvenile to his parents "unless there is a substantial probability that he will not appear in court on the return date or unless there is a serious risk that he may before the return date do an act which if committed by an adult would be a crime." The latter criterion, of course, is the one that is most frequently considered.

Doesn't this involve your prediction of whether the child will reoffend? "Not my prediction, but the evidence presented. Generally, it is the serious risk of the commission of another crime, which is a rather petty crime like petty larceny. If this is the fifteenth petty larceny a boy is charged with, obviously there would be a serious risk he would do this again by the adjourn date, so he would go to detention. How many times do you get a recidivist bank robber who is fourteen? A child could commit a murder, and if that's all you have, you might have to release him to the community, so it is awkward."

The evidence McLaughlin requires for holding a youngster under the serious risk standard encompasses information as to the number of previous petitions, the time space between petitions, and the number of adjudications. Evidence concerning a substantial probability a youth will not reappear in court requires information he has failed to appear in court in the past.

Would it be better policy if the law required a serious risk of a reoffense that was likely to result in substantial harm? "No," Judge McLaughlin indicates,

"because the whole theory of the juvenile justice system in New York is treatment. They are not interested in the seriousness or the nonseriousness of the act, except to the extent it gives the court jurisdiction to then interfere with the child's life for the purpose of treatment. Any differentiation that juvenile burglars are different from juvenile robbers or different from juveniles who commit petty larcenies undermines the entire philosophical structure. Maybe we should, but we shouldn't do it piecemeal. The policymakers want to change the philosophy, fine, but let's not just change it here or there."

McLaughlin continues, "It's hard to believe, but in ten years I know I have not put a dozen children in detention as a result of a hearing. I don't want to characterize myself as some kind of a blazing whatever. I follow the statute exactly. Generally, the reason that few youngsters are detained is because the State lacks evidence of a serious risk of an imminent reoffense. A lot of times they ask to hold youngsters and I say, 'fine.' Then I ask the law guardian, 'does your client want a detention hearing?' The attorney says, 'Yes.' I say, 'fine, proceed.' The prosecutor then says, 'Well, I don't have any evidence, no witnesses are here.' I then say, 'He's released.'"

There is a third category of child that McLaughlin will admit to the detention center, the voluntary admission. This is the more frequent situation when he utilizes detention, although hardly common. It occurs on the motion of the child's lawyer if neither of the two statutory criteria have been met. It involves a delinquent child who refuses to return home. "Even though we have no statute which permits a child to divorce his parents, I will accept this juvenile's request."

The difficult-to-detain New York statute recently underwent challenge in the Federal courts. In September 1982, a U.S. circuit court affirmed a Federal district court ruling in a New York City case that the statutory scheme and practices under it violated due process. The appellate court was concerned that the potential reoffense provision encompasses any and all crimes, fails to set out substantive criteria that might guideline the factors to be considered in reaching the serious risk conclusion, and that detention decisions are made on the basis of limited information presented in summary fashion. The court also noted that despite the presumption of innocence, a substantially greater number of juveniles are confined in pretrial detention than are confined after disposition. "Crime prevention is not a sufficiently compelling governmental interest...to justify shortcutting the fundamental procedural requirement that imprisonment follow, rather than proceed, adjudication." Judge McLaughlin is hopeful that the two present statutory standards will be retained but that certain guidelines, "buoys in the channel," will be provided family courts "to cut out the abuses of detention."

The law, otherwise, provides for a detention hearing within three days or the next court day, whichever is sooner. Since prosecution-approved petitions are filed prior to the hearing, probable cause is not examined, as with adult cases in that State where a grand jury indictment eliminates the necessity for a probable cause finding by the court. Adjudicatory hearings are extremely

speedy for detained juveniles, and are to be held within three days of the filing of the petition, though a brief continuance may be granted. McLaughlin notes that "under the exchange principle, we allow preventive detention for children and, in exchange, give them very prompt hearings." He is critical, however, that the same speedy fact finding requirement does not apply to youngsters held in nonsecure detention. "Detention, whether the lock is turned on the door or not, is such a tremendous interference with your freedom that the same adjudicatory hearing date requirement should be mandated."

Other statutory time frames provide, for those held in secure detention, a dispositional hearing within ten days after adjudication. This may be extended an additional ten days. Further, no youngster can remain in secure detention in excess of forty-five days without the approval of a judge or the State youth agency.

No home detention program is available to McLaughlin. He opposes additional residential alternatives to detention. "When they gave us additional nonsecure beds, the total number of detentions increased. They could give every family court judge in the State an armory and he could fill it." At present there are just eight detention centers in New York State. The law prohibits jailing family court youngsters.

Early in his tenure, Edward McLaughlin took swift action following a visit to the detention center formerly maintained by the county. He discovered the center was above capacity, that individual room doors opened inward, that a mattress was brought out from under the one bed for the second youngster to sleep on at night, and "The problem was you couldn't open the door. I called in the fire marshall and he was furious. He brought a letter he had sent the county two years earlier, warning about this. So, I closed the center. I said, 'These are our children. I'm not going to hold them in an unsafe place, not for now or for ten minutes. They are all going.' Within half an hour, it was down to capacity. Do you realize how annoying it was for the head of the facility to say the judge had just closed the place down? And the sheriff had to call in deputies at time and a half to put these kids in a car and send them 160 miles to Buffalo and the next morning turn around and bring them back to court. That was the end of the problem. Then they built the new Hillbrook."

Judge McLaughlin is a legal literalist. He has no statutory authority to sentence a youngster to the detention center and he will not make any attempt to subvert the law. When he commits a youngster to a State institution, and the juvenile is to be held temporarily at the detention center pending placement, he advises the youth's law guardian: If the youngster is not transported within a few days to the institution, he should file a habeas corpus writ on the ground the youth is not obtaining treatment, or a petition to terminate the judge's placement order because treatment is not being provided as required by law.

James S. Casey became judge of the Kalamazoo County Probate Court, Kalamazoo, Michigan, in February 1976, and chief judge of this court in early 1977. His court administers the adjacent forty-bed detention facility as well as the probation department. For 1981, the detention center maintained an average daily population of twenty-nine youngsters. Adjacent counties can purchase care for children at the Kalamazoo facility.

The Michigan statute delimits the use of pretrial detention to 1) those whose home conditions make immediate removal necessary, 2) those who have run away from home, 3) those whose offenses are so serious that release would endanger public safety, and 4) those detained for observation, study, and treatment by qualified experts. The third criterion is most used in practice. A Michigan Supreme Court rule makes clear that a single serious offense is sufficient to hold a youngster under this standard. A rule also clarifies that before the court may order detention for observation, study, and treatment, there must be a hearing with clear and convincing evidence presented as to why this process cannot take place outside the detention center.

Judge Casey notes that the statute and rules differ substantially from the criminal court measure as to whether the alleged offender is likely to appear for further court proceedings. The essential juvenile code objective is to protect the community safety pending court proceedings. The court's policy directive specifies detention priorities. The first classification includes homicides and serious assaultive crimes, assault and battery, armed robbery, and rape. The second class includes property-related felonies, such as breaking and entering, arson, auto theft, and malicious destruction of property. The third priority is larceny type offenses; the fourth covers probationers who run away from out-of-home placements; the fifth permits detention of status offenders under special circumstances. Youths on probation for a law violation who subsequently commit a status offense tend to be detained.

Juveniles apprehended during daytime are brought directly before the court for intake screening. When the intake officer recommends detention, a preliminary hearing is held immediately before one of the three referees. The State rule requires advisement of the right to counsel and free counsel at this stage. Prosecutor participation is the exception; defense representation is more frequent. Eligibility for detention under the statute and rules is considered along with whether the police report constitutes adequate probable cause to justify an offense violation. Upon demand, though this is not frequent, a full, witness-based adversarial probable cause hearing must be held within ten additional days. Except with the rare murder charge, all detained youngsters have a right to bail and their parents must be advised of this. When

bond is posted, generally it is a deposit of 10 percent of the amount with the court. Ninety percent of this is returned when the child appears at further hearing.

Judge Casey sees bail as a good way of involving parents with the court. "If they put up $100, they don't want to lose it and they're going to help us detain the minor at home." The court's detention priorities criteria are administered by detention center staff after court hours. Detention hearings are held the next day for youngsters admitted to the detention facility after court hours. The court regularly holds Saturday detention hearings as well as Monday detention hearings over a three-day holiday. This practice, unusual in juvenile courts, follows the State rule that detention hearings shall be held within forty-eight hours, "not excluding weekends and holidays."

Casey directs that his referees examine each offender and offense on an individual basis and factor in the prior offense history in determining seriousness and public endangerment. He consideres a home burglary a serious offense since youngsters could end up being shot or committing a still more serious offense inside the home. Youngsters placed on probation who reoffend and those charged with an offense, who are released and then reoffend prior to the initial adjudication, are quite routinely detained, though there is a "case-by-case analysis." In general, these are detainable persons, as far as Casey is concerned, "because there is no way of putting teeth into probation if you can't enforce the conditions." While offense data dominate the detention decision with the priority one class, social factors enter into the decisional equation quite significantly with lower priority classes. Again, bail is a back-up requirement of the law. "We have to do it and we do do it."

A Statewide rule requires that detained youngsters be adjudicated within forty-two days of the preliminary hearing. Casey has shortened this to a twenty-one day rule in his court. Review detention hearings are not held with detained delinquents, though this is on Casey's agenda. Referees in this court conduct detention hearings. Casey has questioned, on hearing trials of detained youngsters, whether it was necessary to detain some of these youths. He is anxious to reduce the detention center population and is aware that the center has just about emptied its facility at Christmas time, on occasion, and the community crime rate did not seem to increase.

Another Michigan Supreme Court rule sets forth that if a child is not released, "the child must be placed pending trial in the least restrictive placement that will meet the child's needs and the needs of the public." While local shelter care resources are utilized, the home detention program is the major alternative used to implement this rule.

Jim Casey is delighted with the home detention program the court initiated in 1981. The program combines a number of his objectives without jeopardizing public safety. "The police love it. The police know the probation officers and the kids on the program." Referees direct home detention placements at preliminary hearings, or following brief detention stays. Contractual rules

are agreed to with the youngster and his family. Contract violations return the juvenile to the detention center; staff need not wait for a reoffense to take place. With few exceptions, youngsters are returned to the home detention program following an additional stay in the detention facility. The success of the home detention program triggered its use, as well, with adjudicated youngsters who are one step away from State institutional commitments. The overall program's three probation officers serve a total of thirty juveniles.

Michigan law authorizes a court to transfer fifteen year and older youngsters to a jail when they cannot safely be maintained at a detention facility. Judge Casey is certain that the court has transferred no more than three such youngsters during the past six years; two of them were juveniles committed to the State awaiting training school placement. Before his initial resort to jail use, Judge Casey, with two staff members, visited and inspected the jail.

Does the fact a youngster is detained more likely result in a petition and a more severe disposition? A petition, yes, but a more severe disposition, no. Detained youngsters are not more likely to be institutionalized, "at least not nowadays. If a child does a good job in detention, he's probably got it made as far as disposition is concerned, especially since the home detention program has been expanded to serve juveniles on a post-dispositional basis."

By statute, the court may place youngsters in the detention center. This is done occasionally, for periods of from thirty to ninety days. Casey doesn't like the fact that these youngsters are not segregated from others awaiting adjudication or disposition because the use of a specially designed rehabilitation program is curbed.

Overall, he considers that he has made substantial strides in reducing and shortening detention stays, and in stimulating greater awareness that detention is a scarce resource whose essential purpose is to reduce the endangerment of public safety. He is at work to develop other alternatives so that no girls will need to be held in secure detention. The court's newly-implemented day placement center may further reduce the use of detention, and State commitments as well.

In his ideal world, James Casey would like to see an attorney as an advocate for each child at detention hearings, and regularized detention review hearings five to ten days after the initial decision to detain. He would also like to advance the timetable for adjudicatory hearings on detained youngsters to fifteen days.

COMMENTS AND IMPLICATIONS

It is evident that the so-called legal factors dominate judicial considerations regarding the use of detention in these five courts. The seriousness of the presenting offense, the prior record, the time space between offenses, and

whether one is presently on probation status are principal criteria. Social factors receive stronger consideration with lesser offenses and lesser records. Of these, a family's apparent ability to control its youngsters is most prominently reported.

Protecting the public from further endangerment is the most commonly cited purpose of detention. Of course, this adds up to preventive detention and the assumption of guilt rather than a presumption of innocence. It can be seen to constitute a pretrial punishment for vast numbers of youngsters who do not suffer a posttrial punishment that deprives them of freedom.

Some youngsters, obviously not all, may be deterred from future criminality by this experience. It has behavioristic if not legalistic merit in that punishment is swiftly administered. Some youngsters do get themselves together better after a few detention days. Some do think things over. Others are traumatized by the experience, however benign the environment. Not all detention center environments are benign, and even well-administered centers, at times, have difficulty protecting youngsters from each other or from adult staff members. Clearly we need detention centers, but it is useful to be reminded again by one judge that detention, even nonsecure detention, represents a more massive dislocation of a child's everyday life than we get numbed into believing.

A stronger legal framework has begun to surround the use of detention and to better define its requirements and procedures. It is probable that legal standards and due process safeguards will expand further in future years. Concurrently, there has been a wholesome emplacement of detention alternatives, a somewhat improved description of who should be detained, and greater attention to more abbreviated rather than more prolonged use of this resource.

Juvenile court judges and the juvenile justice system have not been unresponsive to the public's rightful concern for its own safety and wellbeing. But there has been no stampede to vastly expand secure detention use to placate public pressures, Instead, a far more intelligent detention policy is evolving, although its underlying principles remain ambiguous.

Detention hearings are now mandated in all States, a not immodest revolution, quietly executed in the main, in the post-Gault years. This has forced early judicial measurement of individual offenses and offenders against statutory holding criteria and whether, even where criteria are met, detention need exists and whether detention alternatives may be suitable. There appears to be merit in structuring review detention hearings or other review procedures for youngsters not released at the initial detention hearing.

Though less widespread, courts and other governmental agencies responsible for detention admission and retention have, more recently, promulgated guidelines that help operationalize the statutory language. Further, by statute, rule, or court decision precedent, a number of States now require judicial satisfaction that legal probable cause exists to believe that a detained offender has committed the offense as charged. While it appears that often there

is little ceremony or substance attached to this element, the requirement has symbolic value in further encircling procedures within the rule of law.

More lawyers attend these hearings. More State laws require that judges or referees specify the reasons for further detention, though placing a checkmark in a box on a form is used to handle this requirement in certain courts. Further, time frame requirements to complete adjudication and disposition for detained youngsters are more evident in statutes and rules, and there is a clear trend to implement a fast track case movement for detained youths.

Refinements in the screening process regulating detention admissions are maturing and are more available around the clock. Intake officers and authorized detention center staff members increasingly enforce detention admissions criteria and bar automatic entry to these facilities. This is far from universal, but the trend is evident. More communities have made shelter care and foster homes available to youngsters who do not require secure detention but are not able to return to family homes. The growth of home detention programs has been noteworthy, particularly in more urban settings. At the moment, home detention programs are as attractive at the preadjudicatory level as community service restitution is at disposition.

In the light of the freedom constraints that home detention programs impose, and their design to return youngsters to secure detention following a breach of contractual rules, it appears to be wiser policy to require a judicial finding that detention criteria have been met before a youngster is placed into this program. Though detention screeners can make valid judgments as to who might benefit from home detention and thereby avert several nights of secure detention, assurance that legal standards have been met seems a better prerequisite to program assignment.

It is hoped that other States will not follow Florida's lead in empowering police officials and prosecutors to shape the detention admission decision. Admission standards, published by the court or agency responsible for admissions following consultation with collaborative juvenile justice officials, will hopefully avoid the spread of the Florida overreaction.

More States now authorize sentences to secure detention. Due to certain of the above-described developments, the general exodus of status offenders from these facilities, and perhaps influenced by the demographics that juveniles comprise a smaller part of the population than they did several years ago, space exists in a number of detention facilities. Some judges see merit in a detention sentence for providing relative short term punishment and reeducation objectives. These youths can be maintained within the court's jurisdiction without their surrender to a State agency. This provides flexibility with dispositional options and is akin to the split sentence or shock probation strategy of the criminal court judge. Yet it can be overused, overthreatened, accompanied by insufficient program design, and poses the issue of segregation of these juveniles from other detention center residents.

The influence of the judge is central to the execution of wisely executed detention policy. The judge is the centerpiece in insuring compliance with legal standards, requirements, and procedures. Judicial advocacy for suitable detention facilities and their alternatives has engendered improved detention resources and greater program options in numerous communities.

When necessary, as evidenced in this account, judges can take dramatic actions to improve detention center administration. Also, they can promulgate and monitor detention guidelines, check unnecessary detentions, clarify necessary detentions, and oversee time frame adherence. With their responsible task, they need certain flexibility and discretion, but this, too, should not go unchecked.

MONITORING THE JUVENILE JUSTICE SYSTEM

Five veteran juvenile court judges, presiding in urban settings in different regions of the country, indicate that judicial oversight over a more broadly ranging juvenile justice system is an integral part of their responsibilities. Indeed, one judge pronounces this is his most important responsibility.

The judges differ in how they exercise this function. This span stretches from everyday hearings where probing judges push for specifics regarding supervision and treatment schemes for juveniles and extends to setting a clear tone that children's agencies are unequivocally expected to adhere to legal and professional standards, with the judge's door wide open to receive and take action upon complaints concerning deficiencies.

In many ways they administer a guardian role in regard to children, some of the best of parens patriae, but within a contemporary due process framework. Their monitoring oversees the system's conforming to requirements that are intended to enhance the wellbeing of juveniles. They seek to ensure that agencies entrusted with service responsibilities for a youngster indeed provide this service. The monitoring is alert to abuses of children. It is concerned with adherence to promulgated criteria used with discretionary decision-making. It is very watchful of case process time practices and speedy trial rules.

A judge's self-monitoring is more difficult. He or she can more easily provide responses as to whether agencies and their agents are performing their tasks appropriately than these representatives feel able to provide a judge with honest feedback as to judicial performance.

The judges trust but retain some skepticism with what these agencies will achieve, just as they hold out uncertainty with an errant youngster's promise to reform. The judges are too able and experienced to grant carte blanche to these agencies and simply ratify what the latter seek from the court and promise to perform.

The judges report that the performance standards they project, together with their watchfulness, prompt stronger compliance and heightened achievement. They realize that even with well-managed collaborative agencies, slipups occur, bureaucratic systems diminish humanistic service delivery, and some youngsters do get lost in the shuffle.

Improved management information systems provide them with useful record information and statistical data that enable better informed case decisions, provide a basis for determining that reports are submitted and hearings are conducted in a timely fashion, and facilitate a better sense of how the juvenile justice system is functioning.

They visit institutions and agencies, seek out formal and informal sources of information on agency practices and problems, and have learned not to let their pride in their own probation departments, where they are court administered, blind them to substandard practices there, as well.

A monitoring device that is increasing in use with formal delinquency and status offense cases is the review hearing. Periodic reviews enable ongoing judicial oversight of case development and planning. Some juvenile codes have provided for review hearings in these matters for years. More recently, review hearings have been mandated quite extensively for dependent, neglected, and abused children. Several judges acknowledge that their review experience with these latter types of children has influenced an expansion of a review hearing format with delinquency and status offense cases.

One judge pervasively utilizes review hearings with all types of juvenile court youngsters. In a second court, probationers placed out of their home receive semi-yearly judicial review. A third judge recently initiated review probation hearings; earlier, he regularized such proceedings with youngsters released from State institutional custody. Two other judges rely on internal administrative review performed by probation and collaborative agencies.

The senior jurist of this group, Regnal W. Garff, Jr, became judge of the Second District Juvenile Court, Salt Lake City, Utah, in August 1959. Judge Garff has served as administrative judge of this three-judge, one-referee court through most of his tenure. His application of the monitoring function is a daily matter in his court. It applies beyond the judicially-administered probation department to any organization engaged with a court youngster, except with institutional commitments to the State youth agency. But it extends to the nonsecure community-based programs of that agency.

He notes, "You have to take care because you may invade the prerogatives of someone else, some other agency or private provider, and yet if they have a child by virtue of an order of this court, then I have a right to monitor what they do."

Garff's rationale for monitoring includes other foundations. For one, he doesn't believe anyone else consistently performs this function. Further, he holds strong feelings that when the State intervenes into people's lives, these people should have something to show as a result of the intervention. Finally, since the ultimate decision is the judge's, and a judge must rely on other people to do this work, then there needs to be an accountability to

the judge because the judge holds this responsibility. It becomes unequivocally clear, from observing the Garff courtroom and in talking with staff members of agencies who appear there, that these officials know they must be expecially well-prepared for this judge's hearings.

The Utah Juvenile Court Act mandates that an order for probation or placement "include a date certain for a review of the case by the court, with a new date to be set upon each review." His timeframe is for holding these reviews each three months; depending on case circumstances, he may schedule the hearing earlier or later, but never to exceed six months.

Quite specific agency treatment plans form the basis for review hearings. The probation plan is completed by the neighborhood probation team within thirty days following a probation disposition and is filed with the court. Specific judicial approval is required for other agencies' treatment plans that are submitted at a dispositional hearing or within thirty days thereafter.

Review hearings measure what all parties, including the agencies, have accomplished, as required by the treatment plan. At review, variations from the scheme must be defended and modifications to the plan are considered.

Reg Garff's judicial management style is in tune with accountability, for himself, for youngsters and families, and for agencies. Garff, a strong advocate of judicially administered probation services, believes that court superintended staff members better assure continuity between judicial expectations and the execution of judicial policies and orders. He holds scheduled separate monthly meetings with 1) the court's director, 2) top and middle managers, 3) the entire staff, and 4) the other judges to set and clarify policy and review court performance.

Experienced probation supervisors continually review probation officer adherence to court guidelines and requirements. The guidelines cover detention screening, intake, treatment plans, and field officer activities. Garff notes that review hearings further his familiarity with a case, demonstrate the court's continuing interest, and enable him to assess the competency and reliability of probation, social service, and correctional personnel.

An array of hearings allows him to oversee the implementation of court expectations. The State juvenile court's highly regarded computerized management information system provides its judges with the record information they need for hearings at the different processing stages.

At detention hearings, Judge Garff reviews a printout of a youth's prior record and the disposition of these offenses. He is attentive to whether youngsters admitted to detention meet court criteria. For those not released, he periodically reviews updated information furnished by an intake officer or meets with the officer to determine whether release can be accomplished. He has rejected some of these reports when they fail to specify what has been done or needs to be done to get a youth out of detention.

At arraignment hearings, offense and record information allow him to double check that this case was desirable for formal petitioning. Here, he is also alert to the timeframe between the offense, the petition, and the hearing. He will ask staff members why a particular case may have exceeded the court's norm.

At dispositional hearings, he looks at both the content and the quality of social studies. Subsequent review hearings assess compliance with treatment plans. Time constraints prohibit his having the child and family present other than at probation and State youth agency reviews. For these other cases, reviews are held regularly, but only with the social worker and his or her report.

He recalls one review where the worker provided a very glowing report on how a boy had made such a great adjustment at a boys' ranch, would be released in two weeks, and then would be monitored at home. "When he was through, I said, 'That's really interesting because I signed a pickup order on this boy two weeks ago when he ran away from the ranch, and he's still on the run. Now, how can you give that kind of report?' And, he turned red and said, 'Well, I guess I have him confused with another boy.' That was a blatant example of false reporting to the court."

Judge Garff recounts another example. "A State youth agency tracker failed to appear at a review hearing where the boy and his parents advised me they had not seen the tracker for three months. So I reset the hearing and the tracker was present and told me all about the contacts he'd had with this kid. And I said, 'That's interesting, because they were here two weeks ago and said they'd never seen you.' He said, 'That's true, but I've checked by phone with the school and the parents.' And I said, 'That's not what tracking is. Tracking requires personal contact by you with that boy, and if you don't do that I'm going to have to take him off your program.' This happened to be a tracker who usually does a pretty good job, but he did even better after that."

Probation review hearings, uniquely, are held in the neighborhood probation unit. The youth's progress and compliance with requirements are considered, as shown in this excerpt:

Judge (while skimming report): How are you getting on at home?

Boy: I have my ups and downs.

Mother: Yes, but some downs regarding chores and coming in late.

Judge: And at school?

Boy: I did well the first half of the semester.

Probation Officer: He had high motivation, generally, until he lost his job. His follow-through has fallen off. I am concerned with his school work. I am impressed that his parents are more assertive with him.

Judge: The bookkeeper says you owe $26.

Boy: I paid it yesterday.

Judge: I agree with the probation officer and we'll see you again three months from today. Okay?

Boy: Okay.

Judge: I am generally pleased with the report.

In another context, referee findings and recommendations, which require Judge Garff's approval, are examined, particularly the more major recommendations which are scrutinized for consistency with court policies.

Garff questions, however, whether there is any way of really monitoring a judge, "because most people are afraid to give you candid feedback." In conferences with senior court managers, he obtains information as to how their respective staff members are responding to his hearings and decisions. He picks up other indicators from agency representatives who may converse with him, and from other people in the community, professionals and nonprofessionals, who relate what court participants have said about Garff hearings.

He knows that some commentators are in awe of judges and others have an axe to grind with the judge. But, "I really don't have any way of monitoring myself, other than my own feelings of discomfort."

Judge Garff acknowledges that he now does much more monitoring than he had earlier. "The genesis of that is that there are many more programs now. With more cases, more alternatives, and more procedures, the opportunity for foul-up is a lot greater."

Romae Turner Powell became judge of the Fulton County Juvenile Court, Atlanta, Georgia, in January 1973. She had been senior referee of this court for five years prior to her judicial appointment. The court utilizes two judges and two referees. Judge Powell is not the administrative judge of this court.

She believes that judges are pivotal in ensuring that the juvenile justice system works according to the way the legislature had planned for it to work and that juvenile court philosophy is instituted in behalf of children and families. She also mentions that judges should do their utmost to see that laws are passed which help the court implement this philosophy.

Underpinning Romae Powell's approach to monitoring is the statutory direction to restore a child

as a law-abiding citizen in the community, preferably in his own home. For her, assuring that each child receives the treatment or correction that would accomplish legislative goals is a main responsibility of the juvenile court judge.

The stretch of her direct monitoring function covers only court-administered programs such as the probation agency and the referees. She does not extend her surveillance role to the Georgia Division of Youth Services which has the sole prerogative to determine the appropriate resource, community based or State based, for youngsters she commits to their care. Her hands-off approach is developed from an appellate court perception of the separation of powers doctrine. This is not her preference. She would like to retain authority with youngsters placed in State resources to better insure that rehabilitation and treatment are indeed provided. The public holds judges accountable for these juveniles, but the court cannot directly oversee State agency performance. Nonetheless, a number of accommodations have been made to the judiciary by the State agency. A Liaison Committee of the Georgia Council of Juvenile Court Judges has reached agreement with the agency regarding general length of stay, judicial recommendations for particular programs to be utilized, and linkages and resource development that largely meets judicial expectations.

Nor does she extend the monitoring function to private agencies that receive court children into their care. "But we keep open communications with all agencies. It baffles me when I hear judges talk of problems with agencies. If I have a problem, I'll pick up the phone and say, 'We've got to sit down and talk about this,' and we do and we work it out." Her court hearings, agency visitations, memberships on agency boards, judicial organization activities, attendance at educational conferences, and wide network of professional associates provide her with the information about agency programs that is needed to reach her dispositional decisions consistent with legislative goals.

"Having our own probation service makes it easier for our requirements to be understood and our orders to be carried out." Court rules and administrative memoranda guideline probation, referee, and clerical personnel, as well as prosecution and public defender representatives, as to the tasks necessary for compliance with court requisites.

For example, to eliminate detention center overcrowding, this court placed an official cap of seventy-two as the maximum number of detained youngsters that can be treated there in a safe environment. The court order established eight priority classifications as to detained youths. This classification guides intake staff with initial decisions as to whether a child should be admitted to detention. When the cap is approached, staff members prepare recommendations for judicial approval of release of detained juveniles based on these priorities.

The Fulton County process combines a detention hearing with a quite adversarial, witness-based probable cause hearing, conducted by a referee. If probable cause is found, and continuing detention is seen as necessary, Georgia law authorizes judges to set bail and release a child on bond.

In such circumstances, Judge Powell reviews the child's detention priority and the reasons for his nonrelease. In effect, she monitors initial detention admission and referee decision documentation before concurring with these officials in setting the bail amount. If dissatisfied, she sends for the probation officer or referee "who just about always have justification for their decisions."

The district attorney is a further check on intake officer and referee judgments that a case should proceed formally. Prosecutors have rejected petitions which court officials have approved. Few cases emerge through that sieve that she considers should not have been formally petitioned.

This court does not utilize either supplementary detention reviews for youngsters ordered held at detention hearings or review hearings for youngsters placed on formal probation. Supervisory probation officials are responsible for overseeing these matters.

The extremely explicit probation conditions she pronounces with each case are valuable to Judge Powell's use of monitoring. These conditions form the structure for probation staff members' exercise of their role. When a child is officially found in violation of a condition, the probation officer and the child then testify as to the extent of the child's compliance with all conditions. She has received feedback that probation officers sometimes consider they are on trial, when required to document what they have attempted to do in a case where a youth has violated probation conditions.

These conditions do not particularize the specifics of what the probation officer will do with and for the child. They include both typical provisions as well as requirements tailored to an individual child and his offense. For example, with a weapon incident, "You must not carry a knife or any other kind of weapon of offense or defense outside of your home," or with a theft, "You must pay restitution of $265 for the ring taken from the victim."

For youngsters who manifest truancy problems, Judge Powell will frequently order that the youth carry a school attendance card to his teacher and show it to the probation officer at each counseling session. She will also condition a grant of probation upon a youngster's successful completion of a written essay. She may require 500 words on why he should not take the law in his own hands or, with one whose offense involves drugs or alcohol, 500 words on how drugs and alcohol can affect his life. Later, she will read these reports, upon their submission by the juvenile, not infrequently returning them for an expanded effort.

Her explanations of the purposes of probation, the nature of each condition and the reason for it, the necessity for compliance, and the seriousness of the court's interest in enforcement are explicated in extensive detail. This derives from her early experience as a referee when attorneys for youngsters, returned to court on violations, contested alleged violations on the basis that a probation officer had never told the juvenile to go to a particular agency

or find a job or come home at a certain hour. "At that time, probation officers did not maintain careful documentation, and it was the kid's word against the integrity of the probation officer. So I changed that so we don't have to go through proof problems as to whether they did or didn't tell the child what to do."

No youngster now leaves her courtroom without having heard the judge make such detailed and comprehensive statements. The explicit probation conditions form the basis for Judge Powell's review of probation department reports which request early termination of a youngster from probation status due to an apparent successful adjustment.

These reports are reviewed by a probation supervisor and the chief probation officer before submission to the judge. "This is a full report as to what the child has done and what the probation officer has helped the child and family accomplish in carrying out the terms of probation. But if the report omits reference to a particular condition, I send a little note back and say, 'Condition No. 4 has not been complied with.' Sometimes a probation officer will personally come to my office and say, 'I did so-and-so, but I didn't write it down,' and I will say that 'there may be a question in the future as to whether that child did go for mental health counseling or alcohol or drug counseling and his level of participation, and this may be important with others who may work with this child.'"

Judge Powell makes case notes during a hearing. At the conclusion of a hearing she writes notes as to her findings and orders, which then go to a typist for transcription and are available when she reviews the prepared order for signature. She scans earlier case notes when she has a further hearing with a child.

A different approach to monitoring involves her comparison of annual court statistics with prior years. She looks for offense frequencies and trends in different areas of Fulton County. She has used these data to stimulate expanded social services in areas, outside the inner city, where the range of programs for youngsters is more narrow.

Finally, Romae Powell has extended her monitoring function in recent years, stimulated by general criticisms of the juvenile justice system nationally and within Georgia. "My monitoring is a little keener now, to see that we are responding to what society and the community feel we ought to be doing. And if what they want us to do and what we think we should do are different, then we have to be able to show that what we are doing is working. If the system isn't working, we, as judges, need to know why. By monitoring much more closely what the court is doing and what the people who work for the court are doing and how they provide services, we can better justify the existence of the court, improve the system where it needs to be improved upon, improve on the services they say are not being provided, and help the children and the community at the same time."

Seymour Gelber was appointed judge of the Dade County Circuit Court, Miami, Florida, in July 1974. He requested assignment to the court's juvenile division and has served exclusively on the juvenile bench since then. This is a five-judge, no-referee juvenile court division. Gelber took over the administrative function in July 1982.

He sees the monitoring responsibility as the most important role of a judge. He expanded on this theme in a lengthy article in the Miami Herald in August 1982, "This may indeed be the ideal time for the juvenile judge to return to center stage, not because judges are better leaders, but because control and responsibility must be centralized to make certain that the right things happen...both the offender and the overseer need to be held accountable. The main function of the juvenile court judge should be to monitor the treatment and the sanctions provided the youngsters. Absent this kind of control, no one seems to be in charge and the results are often inadequate."

Judge Gelber exercises his monitoring function extensively. Without hesitation, he will "move in" on agencies, court employees, and State employees when their performance seems deficient. "I'm very demanding." What he has discovered is that "the more you order them to do, the more they will do. It's like a pad of foam rubber. You sit on it and it goes down and you don't sit on it and it bounces up. Most of the time they're happy for you to order them to do something, even though they may not be required to do it. Now there is a reason why they must do it."

In Florida, a State executive agency has administered probation, detention, and all social service functions for about a decade. Gelber prefers this as public policy, believing that other components are strengthened to become forces of their own. "Judges retain all the power they had before except it is not directly granted to them, one has to assert it." These organizations now have equal power, "but the judge is a little more powerful than they are."

In his view, the judge exercises control by the fact that the court does not administer probation or detention. The shifting of these programs to the executive has resulted in a stronger social service system, he contends, though its bureaucratic elements are prominent and its thoroughness and work product quality are too frequently deficient.

His perception of bureaucracy buttresses the demands he makes on the conglomerate Department of Health and Rehabilitative Services. He will direct them

to provide certain treatments outside of their plan or preference, and generally they will respond that they will make an exception in his case.

Youngsters are typically released four to five months after commitment to an institution, but if he says he wants a youngster kept there for a year, the agency will disagree but then get back to him and say that it can work this out. This is because "the bureaucracy is always ready to satisfy any demand it perceives as coming from a higher power. It prevents problems and that's their greatest interest in life, not to provide services for their clients, but to avoid problems. If you are going to provide a problem for them, they will do whatever they can to avoid it."

Florida law requires, with detained youngsters, an adjudicatory hearing within twenty-one days from admission, and for nondetained youngsters, within forty-five days of apprehension. Several years ago, Gelber conducted an investigation of 120 cases dismissed by the court because of the prosecution's failure to be prepared for trial within these time frames. Staff turnover problems and inadequate internal monitoring procedures were then remedied. A related problem was that intake officers were unable to complete their inquiries and bring cases before the prosecutor in a timely fashion. Staff shortages were blamed. Seymour Gelber's response was, "I don't care if you have to parachute more workers in here, you get them here and process those cases." Staff members were brought in from other regions of the State and the agency caught up with its work. "I suppose I had that authority, I don't know."

Gelber seeks skillful trial work and sound judgments from prosecutors and defenders. After a hearing he will suggest where they may have made tactical errors, insufficient investigations, or, with a defender, failed to advocate an alternative dispositional option he might have utilized.

His hearings are briefer than those most juvenile court judges conduct and he engages youngsters in communication less often and less intensively than is evident in other juvenile courts. He readily uses constraint as deterrent and punishment, yet pushes collaborative agency staffs hard to design individually tailored programs that give juveniles a better opportunity to make it, as with this example:

Judge: Would you be more specific?

Probation Investigator: I could come back with a more specific plan.

Boy's Attorney: John is a functional illiterate.

Judge: John, what do you want to do?

Boy: Learn how to build things.

Mother: I have eight kids, another one is in jail, John needs something.

Probation Investigator: If you could give me some latitude...

Judge: He may need testing and vocational rehabilitation. I want him referred. I want a written report in ten days of what the plan should be for the next thirty days.

Despite Gelber's practice of demanding specific plans for youngsters, he quite often rules that the proposed program is too general and sets a further hearing for a more complete report.

Community control (probation) reviews are not required by Florida law, but Gelber initiated this procedure in January 1983, with all judges agreeing to its use and without any verbalized objection from the department. He believes that review hearings will prompt agency staff to initiate services more speedily and more responsibly since he and other judges will be looking over their shoulders.

Judge Gelber, earlier, achieved some of this effect with his commitments to the State for placement in halfway houses. He frequently ordered written progress reports, with the counselor but not the child present for the judge's review.

Because he believes that the time period immediately after a youngster's return from the "State school" is critical, he finessed a court rule requiring a judicial appearance at the time of each youth's return. An aftercare program is worked out and agreed to at this hearing.

Getting this juvenile into an education program at that stage is important to Gelber, as is keeping him there. Many of these cases are then set down for thirty or sixty day review with the counselor and a written report. "If it appears that the kid isn't doing well, I might set it down for further hearing. Normally, however, I say 'okay.'"

Judge Gelber uses his hearings, and the questions he pointedly asks, to find out if staff members are fully familiar with their cases. He is far more accepting of reports and recommendations from agency staff members who clearly appear to know their youngsters.

Using another approach, Gelber conducted broadly-based hearings on deficiencies in the adjacent detention center's administration, physical facility, general program, educational component, medical services, and its overcrowding problem. Without challenge to his actions, he temporarily transferred administrative responsibility to a blue ribbon commission he had appointed and set a population cap. The capacity maximum is not always adhered to, but these actions spurred expansion of the home detention program, a legislative appropriation to expand detention center capacity, and "the director of the 'jail' resigned."

He contends that moving in on this problem was necessary to shortstop still more serious problems. While it was a severe undertaking, he suggests judges

must be careful, under more normal circumstances, about getting into operational aspects that weaken the authority of each managerial level.

"If you become too involved, everyone feels he is handcuffed by what you do, and then you are undercutting the balance that exists. And, if I have occasion to be critical, I'll go out of my way to laud a worker the next time, if it is merited. I make demands with incompetent higher-up managers, but try not to hurt them professionally because it would weaken the fabric of the system."

He, too, finds it very hard for a judge to monitor himself. The position has the built-in problem that "you're so sure that you know more than the others," and "one of your worst enemies is the fact that there's nobody to say, 'Hey, wait a minute, what about that?' If there is someone, you're not listening or they're reluctant to test you."

He notes that senior State agency managers are not reluctant to tell him he was wrong on something. He also finds longer-term public agency lawyers helpful in this regard. Judge Gelber suggests that he also monitors himself by his virtual nonuse of the contempt power.

Edward J. McLaughlin became judge of the Onondaga County Family Court, Syracuse, New York, in January 1973. He has served as administrative judge of this now five-judge court since 1975. The court does not use referees. There are several dimensions to his perception of the court's function in monitoring the juvenile justice system.

"There is no official role, but there is a tremendous unofficial role to assure that everyone does his job--the probation officers, law guardians, court clerks, everybody." A judge does this by setting a tone, a tone that he or she is there as society's referee to see that everyone gets his rights.

He suggests that if you do this correctly, you end up with the best possible monitoring system. "The parties, attorneys, agency representatives, all feel comfortable coming to a judge and telling him or her that something is not right, and they know they will not be criticized for bringing this to judicial attention." The judge, then, in a professional way, needs to pursue this concern to see if the allegation is true. "Instead of two eyes and two ears, you've got 500 eyes and 500 ears."

In court, the tone is set when a judge holds himself out as willing to admit and confess his own errors and those made by the court. When a clerical error

causes an inconvenience to parties or attorneys, or when he is late taking the bench, McLaughlin's apology is immediate. The judge, then, must play by the rules and impose the rules more stringently on himself that anyone else.

Along with this, a judge must be insistent that all legal standards are followed. The court record must be full and correct, and all rights must be awarded. He believes that if the court respects youngsters' rights, they will have more interest in respecting someone else's rights.

"So the tone is that none of us, not the judge, not the social worker, nobody is bigger than the people. The people set the laws and I've got to obey them as much as anyone else. Judges who walk around with the idea that they don't have to obey the rules are inviting others not to obey the rules." The letter, in addition to the spirit of the law, overrides the tone he seeks to set. Probation officials, social agency representatives, and attorneys confirm that McLaughlin's insistence on full adherence to legal and constitutional standards has changed the practices of law enforcement agencies, youth-serving organizations, and lawyers.

Edward McLaughlin does not push the court's collaborative agencies to spell out their treatment plans and goals with particularity, believing they have as much an obligation to do their jobs as he has to do his. While noting that he is a judge and youth agency staff members are professionals working in their own sphere, McLaughlin is aware that bureaucratic inertia does set in. He seeks to deal with this, in part, through his numerous written case decisions. More than forty of these have been officially published in New York State court decision reports.

Presumably, the affected agencies read these as do the attorneys. Clearly, he is prepared to cite these precedents when a similar fact or legal situation arises in his courtroom.

Among his decisions that affect social agency and attorney practice are 1) prosecution must submit proof of the age of the child as a prerequisite to a court's acquiring jurisdiction; 2) in New York State, the delinquency age range is from one's seventh until his sixteenth birthday. A fifteen-year-old probationer, charged with a new offense, cannot be held in secure detention against his wishes beyond his sixteenth birthday. He is unequally denied a right to bail by the juvenile system that is afforded another sixteen-year-old who has been charged in a criminal court; and 3) parents who initiate a status offense petition are not authorized by law to later withdraw the petition because of dissatisfaction with the disposition ordered by the court.

Another published opinion guides probation officials and attorneys as to when a formal petition must be filed in regard to a youngster, earlier placed on informal adjustment by a probation intake officer, who breaches his adjustment agreement. Such petitions must be filed within two months from the date of the intake decision, rather than within two months of the date of the offense.

McLaughlin's tone was enunciated to executive agencies and attorneys during his first week on the bench. On visiting the county detention center, he discovered a girl who had been resident there 245 days. The different agency officials he contacted for explanation and action gave various reasons why they had not been able to successfully place this youngster.

So, everyday at noontime (he does not eat lunch), he convened the agencies and the attorneys, from ten to sixteen people, to ask them about progress on the case and what they were doing about it. "And they would say, 'Judge, there's no point in coming back tomorrow. We won't have any response to our letters.' And I would say, 'You never can tell. You can make some phone calls or something.' They'd all come back and I'd make them sit there until two o'clock. It took just five days to get the placement and that's the last time I've had that problem because they know exactly what I'll do each noontime."

He has, since then, on hearing a request to continue a dispositional hearing concerning a child held in detention for thirty days awaiting placement, adjourned the case just one day to force speedy execution of a placement arrangement. An alternative inconveniencing strategy he uses is to set a matter down for a very prompt dispositional hearing. "The law requires both that a child be in need of treatment and that treatment be available. If you have the treatment program, fine. If not, I will need to discharge and dismiss this case."

Law guardians, part of his monitoring strategy to secure adherence to the law, have also been given a clear message from McLaughlin to maintain a squeeze on youth-serving agencies to do their jobs and to do them promptly. Law guardians are not discharged from their appointments when a youth is placed in the custody of these agencies. The youngsters and their parents have the lawyer's card. They have been informed by the judge and the attorneys to report to the attorney any abuse the child may suffer in placement and of the court's interest in holding a further hearing if the placement is unsatisfactory or the child considers himself rehabilitated, but is not released by the agency.

New York judges are required to visit at least four types of detention and rehabilitative facilities approximately each seventeen months. McLaughlin does more than meet this requirement. New York judges have received evaluation reports prepared by the State youth agency as to the private facilities that are available to court youngsters. McLaughlin reviews these reports when they pertain to resources actually used by his county, as well as reports of investigations of conditions in Division for Youth institutions. A 1979 division transmission memo records McLaughlin's phone call following an institutional visit. "The cottages are a wreck...the isolation rooms might be held unconstitutional...a lack of programs...the boys he spoke with were not unhappy."

An administrative judge, he reviews weekly reports on the number of new petitions by type, the number of cases newly assigned to and closed out by each judge, and each judge's pending active caseload. He will talk with a judge who seems bogged down and will get a visiting judge assigned to help out as necessary. Yet these reports are self-regulating. Each judge gets a copy,

watches his own performance, and "we all know we're watching each other." He also oversees the entire court's compliance with the State court office requirement that all fact finding hearings be completed within 90 days and dispositions within 180 days. State court reports prompt his checking into probation predisposition studies that are not filed within thirty days.

McLaughlin does not hold regular meetings with probation managers. He will meet with probation officials on an ad hoc basis, and the latter will submit to him for review proposed changes in procedures or discuss particular problems. He believes it is better for probation and detention to be administered other than by the court.

He believes that since what he stands for is well-known, this department and other agencies will come to him and consult him appropriately. He has not used contempt powers with these agencies since he has indicated what they need to do and they do it.

He hopes the atmosphere he has created enables lawyers and others to let him know when he may be in error. He monitors his own legal foundations through the arduous research he conducts with his written opinions, the surveys of family law developments he has published in different law reviews, and in preparation for his own extensive law teaching in colleges and universities.

He also monitors himself "by the world's most sensitive conscience. I'll wake up at 3 a.m. and remember that a law guardian failed to file a report. This is my 'computer' when I arrive at court and I'll have my secretary call the attorney. This is not a formal monitoring system, but I think it works well."

James S. Casey became judge of the Kalamazoo County Probate Court, Kalamazoo, Michigan, in February 1976, and chief judge of this court in early 1977. He is one of two judges and three referees who serve the juvenile division. He was a professor of law in the College of Business, Western Michigan University for nine years prior to his judicial appointment.

The underpinning of Judge Casey's monitoring view is that the juvenile court is responsible for its children and the care they receive. This position is buttressed by the recognition, in more recent history, that there might be more rhetoric than reality with promises to provide services so that one does not necessarily take these promises for granted.

He has instrumented a number of approaches for the court and its probation and detention units to enhance accountability to the law and to

youngsters and families. He believes that locally-based organizations, such as his court, "are more responsive to the people that State agencies. The latter are more oriented to centralized policy, prefer not to answer questions from local citizens who may have problems, and can explain away their actions or inactions as required or hamstrung by policies and regulations from the State capitol."

For a court to be effective with its workload, it cannot serve merely as a dumping ground for cases that should be but are not handled by external agencies. The schools and the voluntary and noncoercive community agencies are the front line and the juvenile court should backstop their efforts.

For James Casey, review hearings constitute "the key to the juvenile justice system." He reached this recognition over the years as the court's primary judicial officer hearing child abuse and neglect cases. With these matters, his orders have specified who will counsel each member of the family, and when and where medical treatment will be obtained, where and when parental visitation will take place, the parenting class in which a parent must enroll, and other particulars that must be accomplished in order, for example, for the court to return the children to their parents at the next hearing.

Written detention and intake guildeines in this court prompt greater handling consistency. Worksheet and checklist forms used by its referees better assure that rights are protected and that court findings and dispositional decrees are carefully specified.

Detention hearings are combined with probable cause determinations to provide referee review of detention admissions and of the prosecutive merit of a complaint. Prosecutors review and must approve all petitions. Status offenders, retained in detention by a referee, are reviewed each ten days thereafter by the referee. Juveniles ordered held in detention pending an away-from-home placement, private or public, receive a judicial officer review hearing if placement is not actualized within thirty days. The purpose is to keep placement pressure on the agencies.

While delinquency dispositional orders are less particularized than with neglect cases, court-approved treatment plans do provide a beginning basis for administrative or judicial review three to six months down the road. "The plan must be relevant to the case problem." Court dispositions do spell out the level of intensity of probation supervision from among three classifications.

Juvenile probationers, placed out of their homes in nonState facilities, are back in court each six months for a review hearing. The case progress of other probationers is reviewed by a probation officer's supervisor each three months. With some youngsters, the administrative review is supplemented by a referee review of the case file; the probation officer may or may not be required to be present. Judge Casey is interested in working out face-to-face referee reviews of all probationers each six months.

Commitments of youngsters to the State Department of Social Services, which administers both nonsecure and secure facilities and also purchases care at private institutions, specify that the court retains the right to conduct a periodic review of this commitment.

This leads to the court's being notified of the pending release of a youngster from State custody and enables the court to communicate its agreement or disagreement with this plan. The court's working relationship with the local office of the State agency results in general agreement as to the specific program the State will utilize for a committed youth.

The secure State facility that serves Kalamazoo youths submits bi-monthly reports on their progress and problems. The court responds with information about the child based on the court's earlier experience with the youngster.

The form and content of predisposition reports are still unsatisfactory to Judge Casey. This is undergoing review by the court's administration. "They contain a big, long discussion about the family without relating the content to the reason the child is before the court. I want the probation officer's recommendations and alternative recommendations to indicate if it is feasible to get the youngster into the articular program. I want their expertise as to what is best and what is available, not just a conglomeration of possibilities. I have rejected some reports and adjourned dispositional hearings to a later date because they were not sufficiently helpful. Too often, they expect the judge to devise a scheme, but I keep telling the staff that lightning is not going to strike in my chambers or courtroom.

Judge Casey is very attentive to caseflow management and has spurred improvements that have expedited speedier time frames with the conduct of hearings and trials. A caseflow manager is employed by the court to calendar cases and monitor the several case movement deadlines imposed by law. The court has cut in half the time allowed for adjudication of detained youngsters. The new computerized management information system further assists case monitoring.

A Casey-approved referee's handbook facilitates the correctness and uniformity of these officials' work products. The chief referee reviews the work products of his two colleagues. Casey reviews proposed referee findings and recommendations "quite carefully" as a further check, both for accuracy and compliance with the court's general philosophy. He looks to whether any of these cases should instead have been diverted from the court, instead been placed on the court's consent calendar, or received a different disposition.

Judge Casey also both enjoys and finds it valuable to the court to write rather lengthy legal opinions that determine more contentious issues. He is interested in guiding the different agencies and attorneys as to law and procedure.

There is no public defender service. Instead, about fifty-five attorneys are appointed by the court to represent delinquent/status offense youngsters, neglected children, and the parents of neglected children. To further the

quality of their representation, Judge Casey arranged with these attorneys that they would represent just one category of client and specialize in this particular type of representation. Training seminars have been conducted by the court for the specialized attorneys.

Like other judges, he experiences difficulty in obtaining assessment of his own performance. Early on, he sought probation officer comment on his case handling. Several were critical that he had juveniles stand up in front of his bench to enter pleas or receive dispositions, the approach used with adults in criminal courts.

He agreed and quickly switched to having the youngsters sit at the table that faces the bench during proceedings. But, generally, he believes that those who participate in court hearings are hesitant to tell a judge what they think. Casey would like to hear more.

As a professor, he was used to student evaluations as a measurement tool. He found these instructive; they helped him become a better teacher. He acknowledges that he likes to hear positive strokes, but wants more than this. In his frequent meetings with other Michigan judges, he deliberately inquires into their practices and procedures to use as a comparison with his.

He contends that judges should be required to enter specific findings of fact on the record in order to facilitate sounder decision-making and to serve as a basis for review upon appeal. He wants more of his decisions to be appealed, a form of monitoring, so that disputed issues can be resolved by a higher authority.

In Casey's words, "The buck stops with the judge." Carefully-based legal decisions and discretionary dispositions are important, but not enough. A juvenile court system needs to set and monitor high standards for itself and all others granted responsibility for court youngsters. And the judge needs to set an example by his interest and attitude so that concerns are brought to his attention and "he can be on top of these problems."

COMMENTS AND IMPLICATIONS

There appears to be a keener sense, now, on the part of the juvenile court judges, to extend their oversight functions both within and beyond their courtrooms. There remain juvenile courts, of course, that view this function more narrowly or that have failed to realize the values that can derive from more expansive monitoring.

From earlier approaches that focused on reviewing a youngster's adherence to court conditions and requirements, monitoring methods have broadened to incorporate different agencies and agents as well.

It appears evident that judicial interest is critical to effectively accomplish such monitoring endeavors, though judges only hear and see a limited part of what occurs or fails to occur. To extend their eyes and ears, judges need to promote a monitoring system that encompasses the auditing of case processing decisions, the time required to move cases stage by stage, and direct service delivery accomplishments. Self-monitoring by probation officers and collaborative agency staff members, other court personnel, and attorneys is a valuable precursor.

Relevant statistics and case reports are other elements. Supervisor review of staff products is another. Clear court guidelines and consistent judicial expectations are important features. The issue of whether the judicial branch or executive branch administer probation, detention, and other social services may modify the approach taken but need not thwart this function. The best interest of children and of communities is what is relevant. The mode of court monitoring of external agencies needs to consider their independent status but also their co-related existence. There are indications from several courts of boundary crossings at the sacrosanct line of the State-administered institution or the State contracted-for service.

Despite extensive grants of legislative authority to State youth agencies to control their own destinies, there are instances of legislative compromise that award certain review or durational stay determinations to the judiciary. There is much merit to judges not invading the thicket beyond the State institutional door, but there is merit also in keeping the court's door open for a future hearing concerning the nature of the institutional care provided, as authorized in New York and administered in Syracuse. The remedy, upon negative findings, is not telling the institution how it must do its job, but rather to remove the child who is not receiving necessary treatment services.

While a basic consensus exists within the juvenile justice community that the system should be better coordinated and more collaborative, this same consensus is aware that friendly working relationships may well cover over substantial deficiencies in one or more of these programs, and that youngsters can be lost in the shuffle of the priority of professional peer group camaraderie.

The tensions engendered by judicial review, at different processing stages, can prompt useful discovery and uncovering. There are consistent reports that agencies perform better when they know the juvenile court is serious about their performance.

A stock in trade of national standards is the recommendation that judges familiarize themselves with agencies utilized by the court. Visitations are also encouraged by court administrators, probation personnel, and public and private attorneys representing the child's or community's interests. These are useful, but more may be covered than uncovered. A probation officer visiting a probationer placed in a private facility should be interested not only in the child's adjustment, but also in the facility's administration of its program and the quality of care provided.

Periodic audits of agency performance, internally performed or, preferably, externally conducted, have merit.

Approved case processing guidelines and criteria directed at more informed and more uniform discretionary decision-making are now more evident, personnel are increasingly assigned to evaluate adherence to these guidelines, more carefully delineated probation and treatment plans are being prepared which, however, leave room for necessary flexibility, and the review hearing concept is more widely embraced.

Despite this embrace by more judges, very real constrains on judicial time availability combined with the often large number of juveniles on probation status hinder the maximization of the review hearing potential.

While suitable reviews can certainly be performed by referees where these officials are employed, preference should be stated for the exclusive performance of the judicial officer hearing role by the judiciary. Simply, their influence is more pretigious; inherently, they compel greater accountability.

Three approaches to the review process were set out by these judges. Full review hearings with youngsters, families, and agencies participating; reviews conducted exclusively with agency workers and agency reports; administrative reviews by supervisory officials in probation and executive agencies. In Salt Lake City, all three approaches are utilized.

Beyond this, the tone, the stance taken by the judge that encourages the communication of shortcomings to appropriate officials, including the judge, is vital. Preferably, a judge's consideration of alleged shortcomings should be done on the record, in formal hearing with an individual case. But an informal convening of the judge, agency officials, and attorneys can lead to constructive ways of dealing with or averting problems. In some situations, it is wiser for court officials other than the judge to represent the court's interest in such negotiations.

Judicial methods, views, and emphases as to monitoring differ, yet all five judges take this responsibility seriously. How they administer this function has evolved over time, but they see this role as of increased importance.

Monitoring approaches need to be adapted to judicial style and each local juvenile justice environment. Obviously, judges should not be tyrannical, but they need to be more than mere ratifying agents for others.

Those whose work products are subject to judicial oversight often enter complaints or even jeremiads, and may think they are on trial. Yet they should hold no concern if they have executed what they are pledged to perform.

This review, together with what is known about current monitoring practices by funding agencies, suggests quite plainly that courts will increase their reviews, request more specifics, and pursue more rigorously what others have or have not accomplished on behalf of youngsters, families, and communities.

THE JUDGE'S ROLE IN IMPROVING THE JUVENILE JUSTICE SYSTEM

Five veteran juvenile court judges, presiding in urban settings in different regions of the country, are in full agreement that a judge's commitment to improve the broader juvenile justice system is a critical ingredient of his job.

It is a long-standing tradition in the juvenile court world that its judges have a special responsibility and opportunity to improve the world of its children. Early juvenile court judges zealously urged the universalization of these specialized forums, the development of separate detention and institutional facilities, and the provision of probation and social services to save children. Today's jurists, though preempted with more juveniles, more hearings, more law, and more lawyers, continue this leadership and change agent function. Their rhetoric is more realistic. Their methods remain wide-ranging, but are attuned to issues pertinent to their locales and the priorities they perceive. They implement this role internally to improve the administration of their courts and externally to obtain more effective and expanded services to youngsters and families. They understand the pivotal role of the judge as informed advocate and opinion leader.

These judges are prominent members of public commissions and private agency boards. They testify before legislative committees and speak to individual legislators concerning the policy directions they consider most appropriate to juvenile justice system objectives. They support funding requests that might strengthen the provision of the more basic or more enriched program services to court youngsters and a more extended range of service options. They regularly interpret to an array of public gatherings the court's processes, the problems they face daily, and approaches that might be taken to alleviate community and court problems.

The judges teach in higher education settings or in continuing education seminars directed at legal, criminal justice, and social service practitioners. Two judges cite the value of their written trial court decisions in furthering the quality of legal proceedings and juvenile justice agency practices. One judge constantly prepares articles for the media that assess juvenile justice statistics, research, trends, and opportunities. Another judge has for years utilized a citizen advisory board to expand public input to the court and extend citizen activity in behalf of court goals.

The reasons judges cite for executing the far-flung improvement and advocacy role are both altruistic and more personal. As to the former, they may well be in the best position to know the strengths and shortcomings of the juvenile justice system and to interpret its needs. Too few others speak out in behalf of children. The judge position contains great "clout," which reinforces the obligation of the judge to exercise this opportunity. Along the second dimension, there is indication that the more services and alternative programs the

judge facilitates, the easier becomes the judicial task. Hearings are less often continued and less often prolonged in search of the right program for a youngster. Further, teaching and writing efforts extend the juvenile court constituency and the number of persons who understand and might defend the juvenile justice system.

The judges see no clear reason why criminal court judges should not be as actively engaged in improving the adult counterpart system, although they acknowledge that the plight of children and the greater hopefulness for their rehabilitation constitutes a special driving force for the juvenile court judge.

The priorities the juvenile court judges use in seeking to improve the system change over time. They learn to focus their efforts toward achieving resources they consider to be the most necessary. They become more selective with the public speaking opportunities that are offered in order to direct their energies and viewpoints to groups best able to obtain what they feel is needed in their communities.

They are extremely responsive to media inquiries and interview requests, being aware both of broad media audiences and the power of the media to damage their credibility when they fail to cooperate. They also operate off of their own professional strengths and qualities. The expression of their concern, then, may emphasize formal meetings, informal contacts, or targeted speeches and writings. The telephone is a constant ally. Their schedules include breakfast meetings, luncheon meetings, late afternoon or evening meetings, and, on occasion, Saturday meetings.

Sacrifice of their time during noncourt hours goes with the job. Yet, at home at night or on weekends, they fret and strategize, communicate with colleagues or interest groups, and pen letters, directives, or articles aimed at upgrading their courts and the lives of children and families.

The five judges presented here have achieved notable attainments with their improvement and advocacy efforts. Unfortunately, not every community can record equal achievements for its juvenile court judges. Some judges don't care. For others, the juvenile court jurisdiction is but one aspect of their court workload and they may lack a special commitment to the former. There is, however, a significant number of juvenile court judges across this land who strive quite valiantly to reduce the gap between noble juvenile court purposes and actual juvenile court achievements.

The senior jurist of this group, Regnal W. Garff, Jr., became judge of the Second District Juvenile Court, Salt Lake City, Utah, in August 1959. He was a key figure in the Utah juvenile code modernization of 1965 and its subsequent amendments. Holder of a graduate certificate in social work,

he has been an ever present simulant to innovative rehabilitation directions in the court's probation department and with agencies in his community and State.

Garff notes that, "Since children really are helpless, since they have no lobbying groups speaking in their behalf, since they have no one they can pay to argue their interest, the juvenile court must speak for them to obtain the services the the protection from abuse that they require.

He adds, "It's the court's role to motivate and energize the community to develop resources that we perceive as being necessary. That's why I and the other judges are very active in the community. That's why we sit on advisory boards. That's why we're on task forces and ad hoc committees. If you look at my vita over the years, it's been a long history of community involvement and I don't get involved in community affairs because I want to run for political office. I get involved because I feel it's my responsibility to orient the community to what the court is doing, to open up communication, but also to make demands of the community as to what our needs are. I can't do that unless I have a good rapport with them."

Experience has taught him to try to pick the areas where he would most like to see change, communicate his interest in such an issue, and obtain an invitation to join the particular committee or have his opinion solicited as to its merit. Or, he will accept or seek membership with other efforts whose products might not be critical, but whose membership contains governmental officials and others with whom it is important to form closer relationships.

He had this in mind, for example, in accepting membership on a particular committee organized by the chairman of the county commissioners. Some months later it was easy for him to call up the commissioner to urge that the county sell a particular property to the State for construction of a new, small, secure delinquency institution. This took place, in 1982, following a legislative decision to close down Utah's large delinquency institution and construct several thirty-bed secure facilities, including one in Salt Lake County. Over sixty sites had been considered and different groups had objected to each location. Garff could say to the commissioner that all judges favored this direction and that the local resource was necessary. "The commissioner said he was glad I had called because he was wondering where I stood on this. He had taken a lot of heat and needed to know of our support. Somebody needs to know where the judges stand, because judges have a lot of influence in the community. Even though people badmouth the court, when it comes down to the final analysis, the judges are the experts in the minds of the community and its leadership. Clearly, there are times when you need to be involved and take a stand." Garff's call to the commissioner, along with additional efforts by himself and others, influenced the decision to sell the land. The new facility will open in 1983.

Garff emphasizes the importance of presenting the court's view and making sure others don't distort this. He represents the State Board of Juvenile Court Judges as ex officio member of the Utah Judicial Council, a body that has been examining court restructuring in this State. He will not miss this group's meetings. If other members offer inaccurate views of juvenile court workings or viewpoints, Garff is quick to correct these. Were he absent, distortions might continue.

Reg Garff recounts another example where he got himself invited onto a county youth commission that was advisory to the county social services department. This solicitation of appointment followed his learning that misinformation had been presented as to what the court was doing and what the court needed. "Membership gave me a forum for correcting misrepresentations and for stating the court's position on issues that were being presented." Garff was able to thwart commission interest in recommending legislative transfer of the probation function to the executive branch.

Garff contends that judicial successes in improving the system make his job easier. The more dispositional alternatives he has available the better chance there is to be successful. He chaired a State mental health advisory committee. He chaired a local mental health committee that succeeded in positioning a mental health evaluation and treatment team in the juvenile court complex, smoothing and speeding service delivery to court youngsters.

As to the probation officers and collaborative agency workers appearing in his court, Garff says, "What I demand of professionals is professional performance, and 'don't insult my intelligence by trying to snow me or by dealing in broad brush strokes, because that is not what I am looking for.' I treat them as professionals and that means I have greater expectations of them than I would of a lay person or a volunteer." With his management staff, he sees his role as motivating and stimulating the officials who have primary responsibility for job performance and staff training to do their jobs.

The Utah juvenile code authorizes the appointment of Statewide and district juvenile court advisory committees to study and make recommendations concerning the operations of the juvenile courts, facilities and services used or needed for court youngsters, and programs designed to prevent or correct delinquency and other children's problems. Judge Garff is a strong advocate of court citizen advisory groups, notes the direct and indirect benefits that have accrued to the court over many years due to committee efforts, but adds, "It's always been a challenge. The challenge is to make an advisory board effective and not just a token. It takes either a judge who is really motivated to work closely with the committee or an assigned staff member who can provide needed direction. Our board has had its ups and downs over the years."

All three judges of this court sit in on monthly committee meetings and two staff members have a liaison role to the committee as part of their responsibilities. Membership always includes one or more State legislators, a tradition that has proved extremely valuable to the court. A State senator member

was directly responsible for obtaining the appropriation to add a new courtroom and needed office space to the court building. Advisory committee members lobby directly with the legislature in conjunction with the court's budget (the court is State funded) and with other pertinent legislative issues that arise. They perform liaison roles with important community groups and State and local agencies. They have strengthened the juvenile court influence in regard to other courts and have provided advice and counsel needed by this court in working out policy directions.

Garff's personal resume cites a lengthy list of training, teaching, and writing activities, and most particularly, board and committee affiliations. This enumeration includes judicial bodies, mental health services, law enforcement planning councils, a district drug abuse steering committee, youth agency boards, education planning projects, an international adoption agency, and many more. Garff advises judges to be discreet about accepting board and committee roles. Different groups want judges' names on their letterheads. His criterion is the value to the courts were he to accept membership. He has learned "the hard way" to stay off boards of agencies whose services are used by the court. Membership may promote the court's use of that resource disproportionately. Funding sources for that agency might feel the judge will become irritated with them if they fail to provide more generous sums. The program may deteriorate, but the judge's visibility on its board might retain for it a higher than merited status.

In a law review article he authored in 1975, Reg Garff commented on the power and influence of the juvenile court judge. "The art is to use that power to further the administration of justice to better serve those people coming before the court. It requires a willingness on the part of the judge to get involved and this involvement means not just while on the bench. No one should be more acutely aware of the needs and problems of the court than the judge. From his vantage point, the elevated bench ought to give him greater perspective of more than just the courtroom."

Romae Turner Powell became judge of the Fulton County Juvenile Court, Atlanta, Georgia, in January 1973. She has served as President of the Georgia Council of Juvenile Court Judges and is presently a Trustee and Secretary of the National Council of Juvenile and Family Court Judges. She holds to a strong conviction that judicial interest in improving the juvenile justice system is a requisite for this position.

Judge Powell considers that "the judge is the main person who should know about the juvenile justice system and should be the advocate for what is necessary to improve it. The judge can best interpret to legislators, other political officials, community organizations, and community

leaders what the system needs, how they can best go about providing changes, and how the changes should take effect. If the judge is not the one to take the leading role, then I don't know who will."

Powell firmly believes that full-time juvenile court judges who preside in separate, specialized juvenile courts are best able to fulfill this mission and its leadership potential. She was influential in the successful opposition to efforts in her State to unify juvenile courts within the general trial court structure. It was her belief that the assignment of judges on a rotation basis for anywhere for six months to a year or two to the juvenile or family division would more likely be viewed as a punishment than an opportunity. While a number of States have moved in the unification direction, Georgia opted otherwise. It approved an act providing for separately organized juvenile courts. This involved more than five years of struggle by Powell and other supportive judges to convince the governor, legislature, and the more general judiciary of the merit of the opposing view. In part, she utilized her memberships on the Georgia Constitution Revision Committee, Judicial Council, and Judicial Planning Committee toward this end. "Full-time specialist judges can focus more on improving this system and developing resources to meet the needs of children and families."

Judge Powell utilizes the media frequently to interpret juvenile court philosophy, procedures, and needs. She doesn't initiate coverage but has let the media representatives know that she is available anytime they want to talk with her or want her to appear on one of their programs. She is no stranger to television panels or radio commentaries. But she also knows the reality of interviews with the press. A twenty minute interview with a reporter ends up as six lines in a newspaper. Further, "If you tell them something good about a program, they aren't going to print that. But if Judge Powell says 'the law authorizes police officers to pick up truanting youngsters and either return them to school or bring them to court,' that is controversial and will be printed."

Though for years she accepted virtually every speaking opportunity offered, "I just don't have the energy that I had before, so I try to speak to those groups that I feel will have the most impact and where I can get interested people to do something in the juvenile justice area." Still, it remains a priority for her to accept speaking engagements in schools and before other groups where a prominent black official, such as Judge Powell, represents a role model and someone to emulate.

Romae Powell suggests the private nature of juvenile courts makes them obscure to the public, that few know how the court operates. Accordingly, a critical way to increase accessibility and accountability is to interpret what the court is doing and why. While judges, assisted by top management take the lead with such ventures, she encourages line probation officers to go out and address groups as well as to accept memberships on community agency boards. They will need to clear such invitations with the chief probation officer, but she knows of no occasion where approval has not been granted. Judge Powell notes the

special quality of the probation officer's educational contribution: "Probation officers are not part of the administration. They are not that protective of what is or is not happening in court. They would be more open, and I think that's good."

About five years ago, Judge Powell restructured her daily court calendar to consolidate all hearings into the first three days of the week. Without sacrificing the individualization of her hearings, she has freed herself up to schedule meetings, speeches, and catch up on legal research, court orders, and correspondence on Thursdays and Fridays. "So when I am called to sit on a board, 'you will have to have your meetings in the evenings after 6 p.m. or on Thursdays or Fridays, otherwise I cannot serve.'"

Her lengthy personal resume is filled with memberships and officerships: judicial and bar association groups, crime commissions, private children's agencies, Atlanta University, her church. Her activity with a church committee led to the development of a clinic and counseling center that is utilized regularly by court children and families. "Had it not been for my involvement, they would not have gotten the grant. They have gotten the grant renewed because it has been a good program." Romae Powell also points with pride to her instrumental role in implementing two paid work programs for youngsters that also provide tutoring, counseling, and work skills training.

In mentioning her lengthy membership on the board of directors of SEARCH Group, Inc., she describes her unsuccessful effort to abort the national project to make each State's criminal histories available to all other States. "I took the position that if you have served your time in jail and completed your punishment, you should then have all that behind you. Adult criminals should not be kept on a perpetual merry-go-round where society never lets them forget and, in order to survive, they may well need to resort to further crime. The adult system should be like the juvenile system. Your record should not follow you. There should be some way to seal or purge that record. It should be like the bankruptcy court where you start life anew. But the vote always came down with everybody against me."

Judge Powell also uses her improvement efforts to encourage the court's probation department to develop the interest, motivation, and philosophy to "help kids." She takes the position that "the buck stops here." The court cannot delay anything that it knows must be done and must address issues and needs head on and find solutions.

She contends that criminal court judges have as substantial an improvement and interpretation role as juvenile court judges, but finds the former less interested in effectuating this responsibility. "They put them in jail to rehabilitate them, that's supposed to be the reason for incapacitation. I think the judges should push for actual rehabilitation to take place while that person is incapacitated. They should urge training and skills programs so that when the person is released he'll be able to pursue those fields and find honest work. Offenders do return to their communities and judges need

to help citizens understand that when the debt is paid, they need to help this person and give him a chance to pursue what he has learned while being rehabilitated."

And what should be the qualifications for a juvenile court judge? Legal training and knowledge, interest in being on that bench, knowledge about social problems that involve children and families, interest in working on these problems and working with collaborative agencies, and an appropriate judicial temperament. Above all, an interest in trying to improve the juvenile justice system.

Seymour Gelber was appointed judge of the Dade County Circuit Court, Miami, Florida, in July 1974. He requested assignment to the court's juvenile division and has served there exclusively since then. Three years before taking the bench he completed a Ph.D. degree in higher education, which included major course work in criminal justice. Media publication of the numerous statistical studies he conducts in the court and as chairman of the regional criminal justice council has furthered citizen understanding of the nature of delinquency and crime.

Gelber comments on the judge function: "Probably his major role is to monitor the social work programs to make sure that the intervention and rehabilitation programs are actually working and taking place. I think he also has a creative role in designing programs so that his experience can be applied with academic knowledge and research that has been amassed. Fortunately, he has the authority both as a judge and as a political figure to cause change to occur."

One area where Gelber's monitoring has sparked change has been at the adjacent juvenile detention center. He conducted extensive hearings four years ago as to the center's overcrowding and program deficiencies. He appointed a blue ribbon commission to take over the administration of the center from the State executive agency for thirty days. Citizen groups are still functioning there. The center's education program has been improved, medical screening was expanded, more staff were employed, staff training programs were instituted.

Gelber uses other forms of pressure in regards to the executive agency's provision of services and resources for dependent and delinquent children. These tend to be serious cases where a youngster needs special treatment and where the State tells him it lacks funds for such a program or the child appears ineligible for it. "It becomes obvious to me that nothing is going to happen,

so I say, 'We'll have a hearing on this with the division head and discuss this matter.' Invariably we never have the hearing because they'll come in a day or two later and say they have found a place for him. My position is plain, that I will force them to do this. I indicate that I may or may not have this authority, but 'the only way we will know is if you refuse to do this, then the appellate court will decide. Are you willing to subject yourself to the community reaction concerning the damages being done to this child or are you going to go out and find a way of helping this kid?' Always they have found the treatment."

Judge Gelber prefers the Florida system where probation, detention, and all social services are administered by a State agency rather than by the court, though he is recurringly critical of the services provided or not provided court youngsters. He transmits a very clear message to the numerous agency representatives who come before him that reports need to be thorough and that they need to know their youngsters and be involved with them. He operates on a selective basis. Staff representatives do not know which cases he will select for more intense scrutiny and follow through. "I don't have the time to save the whole world or my whole calendar."

When a counselor fails to respond with sufficient knowledge as to a selected case, Gelber will adjourn the case to a latter date for a more comprehensive report. Sometimes, but not often, he will call the staff supervisor to enter his concern so that when the staff member goes back to the office, "He will catch hell, which is what I want. But I don't want to cause too much commotion because we need to work together, so I try to get the best out of the workers that I can."

Gelber indicates he is a lot tougher on lawyers than social workers. This relates to posttrial discussions for educational purposes, rather than for conduct during the trial. "I appear to be angry, but this is very controlled and they don't know I'm not angry. Most of the time I do this after a hearing when we will sit down to review the trial. And I'll say, 'If you hadn't asked that particular question, they wouldn't have given you that answer which killed you. I was going to rule for you until your question brought out information that hurt your case.' Or I'll say, 'Why did you argue that law when you didn't have any case decisions to support it?'"

For many years, Seymour Gelber had been the administrator of the county prosecutor's office. Staff assignment to the juvenile court was one of his responsibilities. "For some time, the present chief prosecutor followed the tradition I had established and assigned all kinds of inept people here." After many conversations with this official, Gelber obtained selections to the court of generally competent prosecutors, assigned for more substantial periods. He has had similar discussions, but less success, with public defender officials.

Gelber is constantly collecting juvenile court data and analyzing national and local delinquency and crime statistics. He spends numerous weekends writing articles for newspapers, some of which have been syndicated nationally.

One study assessed 708 delinquency cases scheduled for trial over a three month period. He found 42 percent of these cases were continued to a future date, largely at prosecutor request due to the nonappearance of victims, witnesses, and police officers. Another 19 percent were dismissed by the court when the prosecutor was not prepared to go to trial on the second trial date. He noted, "It is alarming to have one of every five defendants walk out of court scot free without ever having faced any possible penalty." Gelber's alarm resulted in improved prosecution case preparation and a better targeted victim-witness notificiation program.

Gelber published another study that examined the relationship between drug use and delinquent behavior. Of 115 juveniles he sentenced during a particular time span in 1981, just 5 percent involved drug charges and another 5 percent were found under the influence of drugs when they committed a nondrug law violation. His report concluded, "Where is the drug problem? If the courts are not attending to it, who is? The schools? The social work system? Who? These questions are still unanswered."

Other Gelber studies have been published in the local press in recent years and have drawn next-day editorial comments, letter to the editor commentaries, and television attention. They include, "Extent of Hispanic Crime in Miami Beach," "A Profile of Dade County Juvenile Crime, 1980," "A Little Perspective, Please, on Crime in Dade," and "Impact on Dade County Juvenile Crime Arising from Cuban Boat-Lift," among others.

Articles he has published project several recurrent themes. One is the continuing decline in the number of juvenile arrests and the smaller than generally perceived extent of juvenile commission of violent crimes. His "Treating Juvenile Crime," syndicated by the New York Times in late 1981, suggested a two-track juvenile court system: the application of traditional rehabilitation methods to those thirteen years and under, and authority for judges to sentence older juveniles to terms up-to-five years. He also urged far greater involvement by the private sector in working with predelinquent and delinquent youths and lowering from sixteen to fourteen years the age of compulsory school attendance. His final view was that "Juvenile delinquents are not taking over the world. There is no need for overreaction, and even less for giving up." Numerous other published articles hammer away at these same themes.

His lengthy August 1982 article in the Miami Herald, "Juvenile Justice System: Opportunity is Knocking," suggested ways for the court to better address its current workload. The basic removal of status offenders from the court, the expanded authorization for direct criminal filing of more serious and repetitive youths, and decline in the number of juvenile arrests had reduced case filings. He proposed, and indeed has realized much of the following: probation review hearings; judicial hearings with youngsters at the point of release from State institutions; a transfer back for juvenile court sentencing of juveniles filed in criminal courts who did not merit harsher criminal court penalties; judicial rather than executive agency review of youngsters committed to the State, and now alleged to have failed to comply with program requirements

or to have reoffended; and the use of part of the projected local detention center addition for a short-term rehabilitation program for youngsters who could be sentenced to this facility by the court.

Seymour Gelber takes pride in the project he orchestrated at the local Boys Club, bringing together a corporate contributor and a private agency that was interested in working with harder core Miami juveniles. This after-school intensive education effort, combined with counseling and recreation, serves one hundred youngsters at a given time and is being replicated with the assistance of the same corporate giver in Los Angeles.

Judge Gelber approaches legislative change not by testifying before legislative committees but through talking with individual key legislators and through his suggestions in Miami newspaper articles.

What has experience taught him as to discharging his improvement role more effectively? That judges cannot cause basic changes in society. There is little one can do to more fundamentally improve the plight of children. Thus community protection must take priority

And what are the desirable qualifications for a juvenile court judge? Lots of patience and tolerance, an ability to sit and listen to problems, legal knowledge, interest and competence, and some feeling for people.

Edward J. McLaughlin became judge of the Onondaga County Family Court, Syracuse, New York, in January 1973. Administrative judge of this now five-judge court, he has worked arduously to improve internal case flow and records management

For McLaughlin, a judge's improvement function begins with assuring that everyone involved in court proceedings is accorded the rights guaranteed them under the statutes and the Constitution. He is concerned that too many juvenile court judges, past and present, "act as a superparent or supernatural caseworker" and abandon the function society has provided them to act as judges. "We operate under the legal fiction that every person is aware of the laws. Now, if you're going to impose that standard on a child, for a judge to know in fact what the law is and then disregard the law gives scandal to the child and the family. A judge who places a child in detention when has no legal power to do this, but detains the youngster because he feels this is going to be good for child, abandons his position as a judge. He gives the worst possible

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example to the child that might makes right and one can disobey the laws if he has the power to do this. And this is precisely the lesson we are trying to dissuade youngsters from learning."

Judge McLaughlin contends that the judicial function to assure rights goes hand in hand with the judicial obligation to correct wrongs. This responsibility extends to taking action on deficiencies or agency failures to adhere to laws that he discerns from the bench. It extends beyond this, for example, to offer suggestions to the legislature to improve current statutory provisions. The judge should seek to correct juvenile justice system wrongs in ways that are least harmful to the system. If informal approaches with agency directors fail, "then he has no other alternative but to go and make the matter public." The legislative initiative is superior to passive recurrent complaining that a particular senator is terrible or causes negative results.

He believes that judges also have an obligation to be involved in bar associations and professional judges' associations (during 1982 he was President of the New York State Family Court Judges' Association), "to read, and to be aware of the changing philosophy. If you're only a judge for five or six hours a day, which is your bench time, you're not really a judge."

More than most judges, Edward McLaughlin teaches and writes. For six years he commuted to New York City to teach at the John Jay College of Criminal Justice, City University of New York. He helped initiate the police science curriculum at a local community college and for years taught criminal law and procedure to police students. Since 1974, he has taught courses regularly at Syracuse University in the University College, the College of Law, and the School of Social Work.

He notes that this teaching is also a pursuit of one's enlightened self-interest. Most people do not know what goes on inside family courts. People may learn the result of the court action but do not know the reason for it. He cites an example: Child abuse allegations are brought before the court. The case is not proven and the child is returned to his parents. The judge was obliged under his oath of office to dismiss the petition. Subsequently, the child is seriously injured or killed. The newspapers criticize the court. The code of ethics prohibits full judicial response to the criticism. The judge must depend on attorneys and other persons who understand court practices to defend them. Teaching attorneys, caseworkers, police officers, and others build up a bank of people who know what goes on, so when the court is criticized for some reason, "at least you've got this constituency out there. They may not agree with what you did, but at least they can say, 'Well, maybe this is what happened. I'm not sure, but maybe this is how it happened.'"

McLaughlin pairs his teaching with writing out case decisions. More than forty of these have been published in official New York State court reports. On taking the bench, very few decisions were being written or published concerning family court matters. Lawyers then had little guidance as to the interpretation of statutes. McLaughlin has also had published three law review

articles that analyze legal case developments or juvenile justice directions. His full-time law clerk, Lucia B. Whisenand, has been important to his writing achievements. She has worked with him for a number of years and holds graduate degrees in both law and public administration. She also assists him in analyzing court data and in helping draft court administration reports. In turn, the law clerk supervises law school interns who provide further legal research assistance.

Since New York State judges administer neither probation nor detention services, McLaughlin relies heavily on the attorneys, known in that State as law guardians, to require that appropriate services are rendered court children. When he first came on the bench, "too many attorneys would say. 'Whatever you say, judge.' I would not appoint those lawyers on another case. They were trying to make me into the child's lawyer when they were the law guardians and they've got to present their children in a vigorous advocate fashion." McLaughlin's unequivocal message that law guardians shall zealously represent their clients' interests helps implement his cardinal principle that a judge's first duty is to assure the rights of children.

His efforts with the juvenile probation agency focused on making them truly independent of the court, following the legislative transfer of this function from judicial to executive sponsorship. "For four or five years I spent an awful lot of time telling the probation officers, 'You don't work for me anymore, don't make any recommendations that you think I want, don't come to me and say, Judge, what do you want? You're the professional, you've got the qualifications, you've got to sleep with your decision, you do the best you can.' I will go to bat for them before the county legislature for more funds for intake workers or something like that. But essentially they treat themselves now, thank goodness, as independent professionals." To retain his own independence, he will have his law clerk review proposed changes in probation regulations since this procedure may be litigated before him.

To facilitate expanded services for family court clients, McLaughlin tries to be what he terms "the yeast." "First you get a little publicity, not very much, about the need, or you bring this to the attention of the right people. You are 'jiggling the bait.' Someone in the community will respond and offer an organization's help. You go out and talk to the group. They form a small cadre of people who will become involved. You make phone calls to get them appointments with appropriate public officials. And you lend your name. It works. The next thing you know they don't call you anymore. They're off and running all by themselves."

Years before he took the bench, McLaughlin was the yeast for one of the first replications of the Vera Foundation's Manhattan Bail Project, in Syracuse. More recently, he was able to assist the Junior League in establishing a conflict resolution center to work with voluntary clients in resolving disputes and lesser delinquencies and crimes.

A program need that he has not yet achieved is one that would use volunteers as court appointed guardians for children. Interested citizen organizations

wanted to help with neglected infants or abused youngsters. "But I also talked about their involvement with sexually acting out fourteen-year-old girls and with fifteen-year-old mothers, whose parents have brought petitions, but whose parents cannot serve as their guardians. Then they became chary and questioned whether they had the competency to become involved with ungovernable girls and their hostile parents. So, I'm working with another group on this now, and I'll get this guardian ad litem program even if it takes years."

Judge McLaughlin is an ex officio member of the Family Court Citizen Advisory Committee instituted by the county executive in the aftermath of a tragedy to a child that occurred prior to McLaughlin's tenure. The quite new juvenile detention was an important achievement of this group. More recently, members were responsive to his request to renovate the family court area of the courthouse, helping orchestrate funds to achieve this.

For McLaughlin, obtaining community support and community funding for program and service needs is a process of obtaining support from the community. "If you want money for a citizen dispute resolution center, you're competing with the ballet, the symphony, and the art museum. Nobody comes down off a mountain in a glowing white robe with the tablets under his arm and announces what's going to happen. If you want to succeed, you're going to have to show the people responsible for spending the taxpayers' dollars that the public wants them to spend its money in this particular way."

James S. Casey became judge of the Kalamazoo County Probate Court, Kalamazoo, Michigan, in February 1976, and chief judge of this court in early 1977. He has worked actively to improve the court's internal operations, the effectiveness of its probation and detention programs, community services to youngsters, and a new legislative framework for the Michigan juvenile code. He is a firm believer in the advocacy role of the juvenile court judge to obtain better services for children and families.

Casey was a full-time law professor in the College of Business at Western Michigan University for nine years before his appointment to the bench. There he became familiar with computer and word processing developments. His belief that a court's management of cases can be run in a similar fashion to a well-managed business stimulated his ongoing interest in achieving better court administration. One of his first actions was to appoint a court administrator with experience in probation and detention operations and a court management background as well. Together, they have innovated the series of managerial changes and revised program efforts that have brought Statewide recognition to this court.

Judge Casey is convinced that "the chief judge needs to have daily communication with the administrator and has got to listen to that person's advice. You set the policy guidelines; the administrator is responsible for day-to-day operations. And you do not interfere with this. The judge should not create an environment where the administrator is to just blindly follow what the judge tells him to do. The administrator shouldn't be so awed by the judge that he's not willing to tell you you're off base with this crazy idea. The administrator also has to keep the judge informed as to problems that cause 'vibrations' in the community."

Casey meets with his administrator at least daily, either on his arrival at court in the morning or before leaving court about 5:30 or 6:00 p.m. There are other planned and ad hoc conferences. The administrator meets with the three judges of the court every other Monday when certain policy matters and court developments are considered en banc.

James Casey takes special pride in his successful effort to obtain funding for the juvenile court administration building that was opened in 1978. Prior to that date, juvenile court hearings were held in the multi-function downtown courthouse. It was his decision to locate the facility on a site adjacent to the court-administered detention center. Total court and program services are now better coordinated. He is also pleased that, at least for the present, he was able to retain local court administration of the detention program. There had been interest on the part of county commissioners in shifting the administration of this center to the State. However, the commission accepted Casey's contention that the entirety of the Kalamazoo County juvenile court system is enhanced when the court retains responsibility for the detention program.

Judge Casey has worked assiduously at constructing close working relationships with county commissioners, the local power structure, and the Kalamazoo Foundation, among others. He notes that he has probably spoken to every service club in town during the noon hour and countless other organizations as well. One talk to the local Rotary Club led to his membership in that organization and his weekly attendance at their functions. This has reduced the isolation he experiences in the away-from-downtown juvenile court center; through contacts originating at the Rotary Club, he has built any number of bridges that have led to a wide support and assistance network for the court.

To date, he has obtained financial support from the Kalamazoo Foundation to furnish the children's waiting and visitation room at the court, to initiate a citizen guardianship project to support court-related agency programs, and for computer and word processing equipment. "These people know me and know that if I get a dollar from them, they'll get a dollar's worth and more." While still dissatisfied with the status of court management efficiency, modernization has made substantial progress. There have been major improvements in court scheduling, caseflow management, and record keeping. Also, "we now have recidivism data that is no longer hand-tooled, counted up like monks used to do. We can now prove that are doing a job here." He uses

rehabilitation effectiveness studies as part of his educational and interpretation approach with community groups.

Casey has played a prominent role in effecting a number of other improvements: the revitalization of the Michigan Children's Charter, a several decades old organization initiated as a vehicle for the training of probate and juvenile court judges, as an active force in State legislative and public policy decisions; the designation of Kalamazoo County as a site for a foster care review board demonstration project; the training and appointment of citizen volunteers as court-appointed special advocates for youngsters; a small residential facility for status offense youngsters; the court's status offense diversion project; a ten-bed psychiatric crisis center for youngsters at a nearby hospital; and STOP, the court's anti-shoplifting program which also uses volunteers. "Volunteer programs have been the backbone for community input to a system that, because of confidentiality, is normally hidden from the public. We have over 250 volunteers working in the various programs from probation to clerical work. In a public safety millage election three years ago, these volunteers played a major role convincing the electorate that the approval of the millage would benefit the community. Our share of the funds from the millage were used to implement the home detention program."

Casey's teaching skills are drawn on heavily in judicial and justice system training efforts. He is a frequent presentor at judicial institutes and Statewide training ventures that involve judges, referees, probation officers, public and private social agency personnel, court clerks, and attorneys. He has a special interest in the training of attorneys, "since the Michigan Juvenile Code is old and broad and attorneys learn little about this area in law school. Juvenile courts are a mystery to most lawyers; the service component of the court is different." In recent years, Casey worked strenuously on a commission to develop a new State juvenile code, but legislative passage has still eluded the proponents. Judge Casey also handcrafts a number of extensive legal opinions annually, which he distributes to the specialized bar that practices in his court and to probation and social service administrators.

A current Casey project is to develop a county-wide coordinating council of all major social services providers. Casey sees considerable duplication of efforts by these agencies and hopes the council will serve as a forum to facilitate improved services to children and families without the need for multiple caseworkers to invade clients's homes.

What is your advice to new juvenile court judges as to the exercise of the improvement role? Judge Casey urges that unless the new judge has had extensive experience in the court as a referee or in another position, he or she should proceed slowly. "If I went back and looked at what I said my first year, I believe I'd cringe. A new judge thinks he or she is an expert on everything within one month of election or selection. It's better to take time to learn the law, how the system functions, what community agencies provide, and how to work with these agencies without being an adversary before you do anything. Otherwise, it's too easy to shoot from the hip, stir people

up, and then leave them flat." He recommends that after some experience has been gained, judges may well explore a project with the staff and other professionals, reshape this idea, and then initiate advocacy. He sees a particular project approach as superior to "being expansive and trying to cover everything."

What do you consider important criteria with the selection of juvenile court judges? Considerable experience as an attorney in juvenile court, a good lawyer, someone who can relate to the problems of children and families, preferably someone who's been a parent to two or more children since then they know kids aren't alike and you can't fit them into a mold, one who's willing to listen to family problems every single day and "to listen to a lot of filthy, rotten, dirty stuff regularly, which is sexual abuse and neglect," and an interest in being a special advocate for children.

COMMENTS AND IMPLICATIONS

The array of endeavors activated and orchestrated by these five judges is impressive. They are attentive to system improvement efforts and greater system accountability during their "bench time," but are the first to say this is not enough. They illustrate a wide span of goal-directed activities which take place outside courtroom hours. These jurists understand that a juvenile court judge can have a special role and influence in his or her community.

While this is a more common denominator of juvenile court judges than judges of other courts, juvenile court jurists have no monopoly on this function. One has only to look at the Chief Justice of the United State Supreme Court and his broadly-based advocacy for improvements in court and correctional administration, or to the chief justices of many State supreme courts who increasingly exercise administrative responsibility for entire State court systems and work to strengthen the brace of justice in their jurisdictions. Certainly, many criminal court judges have been at work on program alternatives to reduce jail and prison overcrowding and to facilitate improved pretrial release, diversion, probation, and other rehabilitation undertakings. Nor are judges of the civil courts strangers to reform and improvement efforts.

Still, it is the juvenile court judge from whom we expect the most. There is the compelling need to improve the welfare of the children, families, and communities they serve. There is the deep reservoir of interested citizens whose humanism seeks channels for brightening the future achievements of disadvantaged and delinquent youngsters.

Over time, strengthening current services and expanding resources for youngsters has been a favored and noteworthy priority for judicial activism. While any number of service programs fall short of goal, experience innumerable administrative and programmatic shortcomings, become preoccupied with maintaining their existence and slight their occupation with juveniles, countless

youngsters and families have been aided and the judges who helped inspire these resources should be applauded.

More recently, judges have been engaged in strengthening legal and constitutional safeguards for court clients. A current focus is to improve a juvenile court's internal management. While judges need to prioritize their energies and their use of time, and while individual courts need to address different priorities at different times, both external and internal changes and improvements require address.

Despite the generalized admiration for the exercise of the improvement role by juvenile court judges, several caveats and considerations should be reviewed.

The exercise of the improvement role should not sacrifice the primary judicial responsibility for individual case hearings and making informed case decisions, and, for administrative judges, for overseeing the management of the court. The improvement function takes time, and this time should not be taken from court hearings or in a fashion that delays court hearings.

Judges will disagree as to what is the desirable legislative policy or what should be the role and function of a juvenile court. This is as should be expected. Judges emerge from diverse backgrounds, have inculcated particularized values, preside in idiosyncratic community environments, and have differing interests.

Not all juvenile court judges will take special advantage of the improvement opportunities this position provides, but they can still be valuable and valued judges working in a more low-key fashion.

Certain high-key judges can be high on rhetoric but deficient in the thoroughness and manner with which they conduct case hearings. Judicial biases may overwhelm legal standards. The deference awarded judges can lead to forms of judicial tyranny. Attorneys, appellate courts, judicial discipline bodies, involved citizens, and others remain important adjuncts to checking judicial excesses.

Judges need to realize that they can be used inappropriately. They may also use others as much to further their own careers as to advance the welfare of juvenile courts. These uses are not necessarily antagonistic. The heightened stature of a judge may bring benefits to this court's children during his or her tenure. But the belief that judges are listened to more attentively than others does not mean that judicial insights or recommendations are more valid. Without adequate study, preparation, and care, the influence of a judge may not remain influential. The robe itself is not enough. And judicial audiences should require more from judges than good intentions or unsupported assertions.

Judges need to develop strong court administrative staff and, with judicially-administered probation, able probation managers and research and planning capabilities. A judge's improvement effort can be expanded into an overall

court improvement effort when skilled managers and valid research augment this direction. Of course, close communication between the judge and these other officials is vital so that there is general consonance.

Three of the judges presented here have administrative responsibility for the juvenile probation function. Of these three, two also hold administrative responsibility for the juvenile detention center. These judges demonstrate a special interest in bringing about high performance standards for these functions. The buck stops with them. Yet the several judges who lack administrative responsibility for these program services are watchful of the nature of the care provided court youngsters by executive agencies. They seek quality performance from independent probation or detention agencies with whom they collaborate.

Those judges who are overall administrators of these functions strongly prefer to retain this responsibility. Those who lack these responsibilities see strong merit to executive administration. It is obvious that all five judges are active on a broad front in their quests to improve their juvenile justice systems. Those who administer these functions do not end their quest with achieving probation or detention effectiveness. Those who do not administer these functions tend to begin their quests along other fronts.

The five judges function in differently structured courts. Two are exclusively juvenile court judges, presiding in separate juvenile courts. By definition, they have a very specialized focus. One is a general trial court judge assigned, by request, to the court's juvenile division. His court then is different, but his role is similarly specialized. The fourth judge presides in a family court whose jurisdiction includes intrafamily criminal offenses and child support among its family matters. The fifth is a chief judge of a probate court whose jurisdiction encompasses juvenile matters as well as mental illness and retardation and estate administration. He has preferred to concentrate the bulk of his energies on the juvenile jurisdiction.

Regardless of court structure, each judge in his or her own way is an above average if not outstanding advocate for juvenile justice improvements. It appears true that it is more difficult to find general trial court judges interested in the juvenile division assignment and also motivated to execute the improvement role with ardor during the usually limited tenure of this assignment. But, judges can be attracted to the intriguing juvenile forum. Its law and legal procedures are challenging, as is its potential for administrative experience and, of course, the change agent role for community betterment. Judges who have pride in their legal skills no longer need to feel alien in these settings. Further, the rotation of judicial generalists into and out of specialized juvenile divisions builds a bank of judges who have greater understanding and interest in this forum. Yet, brief term assignments do appear to mitigate against the more extended exercise of the valuable improvement role.

More specialized juvenile courts do tend to attract judges more interested in the broader improvement function. Many have excelled at this and given

luster to this tradition. Other have been less distinguished, have isolated themselves from judicial colleagues, and, indeed, have developed fiefdoms.

Involved citizen groups, collaborative social agency professionals, the media, attorneys, and yes, judges should be advocates for the selection or election of competent attorneys, self aware, with interest in the opportunities inherent in the challenge of serving as juvenile court or juvenile court division judges. Our children can only be the beneficiaries.

END