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THE INFORMAL JUVENILE JUSTICE SYSTEM: A NEED FOR PROCEDURAL FAIRNESS AND REDUCED DISCRETION

by VICTOR L. STREIB*

INTRODUCTION

Since 1899 there have been continual attempts to modify and improve the socio-legal system for delinquent children. The present authorized or "formal" juvenile justice system is the process that has responsibility and authority for public reaction to juvenile delinquency. Included within that process is a collection of public and private agencies, agents, laws, rules and policies dealing with juvenile delinquency. While fundamentally a legal system, the formal juvenile justice system has been given a primarily social service mission designed to reduce delinquency while acting in the best interests of the child and society.[1] The formal juvenile justice system is, however, made up of police officers, prosecutors, lawyers, judges, probation officers and other public officials quite like their criminal justice counterparts.

The formal juvenile justice system began as a "socialized" legal system marked by nonrestrictive procedures and wide agent discretion. After almost seventy years of operation in this mode, the formal juvenile justice system was "constitutionalized" by the United States Supreme Court's decision in *In re Gault*[2] and officially changed to provide procedural due process for juvenile delinquent respondents. The discretion of system agents was also greatly reduced. At about the same time, the "informal" juvenile justice system emerged.

The informal juvenile justice system is not an officially established and authorized socio-legal system for dealing with juvenile delinquency. However, the agents, agencies, rules and policies of the informal juvenile justice system deal with and directly affect delinquent children and often function in lieu of the formal juvenile justice system. The informal juvenile justice system is a collage of public and private social service, medical, educational, and religious agencies. It is characterized by non-

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1. Kent v. United States, 383 U.S. 541, 554 (1966).
2. 387 U.S. 1 (1967).

restrictive procedures which often deny procedural fairness to children and by broad, personal discretion which makes this system essentially impossible for the child and/or his family to challenge. These characteristics were condemned by the Supreme Court as they existed in the socialized model of the formal juvenile justice system.[3] Rather than disappearing when the constitutionalized version replaced the socialized version of the formal juvenile justice system, the lack of procedural due process and unchecked discretion simply emerged as characteristics of the informal juvenile justice system.

This article will discuss the characteristics of both the formal and informal juvenile justice systems and will provide a brief overview of the history of the formal juvenile justice system. Several recommendations for change in the informal juvenile justice system will also be suggested.

ORIGINS OF JUVENILE JUSTICE

From almost the beginning of Anglo-American law, children have been treated differently from adults who commit the same acts.[4] For those children convicted of crimes under early criminal law, the punishment administered was often less severe. Even though convicted of capital offenses, death sentences were often not carried out for children.[5] In other cases, the jury would refuse to convict if a child was facing the death penalty for a comparatively minor offense and the King's pardoning power was used often to save children from execution. Thus, not only did the law make children a special class of criminals but the criminal justice system actually treated children more "gently" than adults.[6]

The origin of juvenile corrections goes back at least to the opening of the New York House of Refuge in 1825,[7] which was established to meet the same kinds of needs the formal juvenile justice system of the 1970's tries to meet. These needs include avoidance of harsh criminal penalties for unfortunate children, segregating "predelinquent" children from hardened delinquents, providing "proper" moral, ethical, political, and social values and role models for deprived children, and treating such

3. *Id.*
4. Rendleman, *Parens Patriae: From Chancery to the Juvenile Court*, 23 S. CAR. L. REV. 205 (1971).
5. Sanders, *Some Early Beginnings of the Children's Court Movement in England*, in NATIONAL PROBATION ASS'N YEARBOOK (National Council on Crime and Delinquency ed. 1945).
6. *See generally* Dyson & Dyson, *Family Courts in the United States*, 8 J. FAM. L. 505 (1968).
7. *See* FOX, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970) [hereinafter cited as Fox].

children as victims rather than offenders. Another example is the Chicago Reform School established in 1855 to serve, not punish, the same class of crime-prone children.[8]

The social and political roots of the juvenile court are debatable. Traditionally it had been thought that the nineteenth century reform movement gave birth to a scientific, objective, and dispassionate juvenile court which would reform and develop wayward children.[9] Alternatively, it has been persuasively argued that the advent of the juvenile court heralded a retrenchment in correctional practice, a regression in poor-law policy, and an encouragement to reach into children's private lives with punitive policies disguised under the rhetoric of rehabilitation.[10] In any event, there is reason to believe that early criminal courts traditionally took a somewhat fatherly and protective attitude toward children. It is debatable whether this was an offer of humanitarian assistance or merely a form of parental punishment. This special attitude toward children, however, was written into law and required of juvenile courts.[11]

Illinois initiated the first formal juvenile court on July 1, 1899.[12] Several states soon began developing juvenile courts based upon the Illinois model. By 1912, almost half the states had juvenile court legislation and every state except two had such legislation by 1925. The federal government passed a juvenile court act in 1938.[13] Thus, by 1925 it is fair to conclude that the formal juvenile justice system existed in all critical elements, in law if not in fact. Unfortunately, however, the states were somewhat less expeditious in implementing juvenile justice legislation than they were in enacting it.[14]

In sum, the concept of special treatment of children under law is several hundred years old. The first juvenile court act is 77 years old. The concept of special correctional institutions for children is at least 150 years old and a somewhat cohesive *system* of juvenile justice is at least 50 years old. Thus, the formal juvenile justice system that "began" in 1899 had a long

8. *Id.* at 1207.

9. *See* D. BESHAROV, JUVENILE JUSTICE ADVOCACY: PRACTICE IN A UNIQUE COURT § 1.1 (No. 4 1974); Mennel, *Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents*, 18 CRIME & DEL. 68 (1972).

10. *See* A. PLATT, THE CHILD SAVERS (1969). *See also* Fox, *supra* note 7, at 1193-95.

11. *See* Schultz, *The Cycle of Juvenile Court History*, 19 CRIME & DEL. 457 (1973).

12. Act of April 21, 1899 Ill. Laws §§ 1, 21 (1899).

13. Act of June 16, 1938, ch. 486, § 1, 52 STAT. 764. *See generally* Ruppert, *Juvenile Criminal Proceedings in Federal Courts*, 18 LOYOLA L. REV. 133 (1971).

14. *See* T. JOHNSON, INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM 5 (1975).

prior history of special treatment for children upon which to base its operating principles.

THE FORMAL JUVENILE JUSTICE SYSTEM

Socialized Era of the Formal Juvenile Justice System

From 1899 until 1967, the formal juvenile justice system operated under a concept of law and justice "so altered as to be virtually unrecognizable in any traditional sense."[15] Rather than a legal system which reacted to violations of the law or which provided a forum for resolution of legal disputes, the socialized juvenile justice system attempted to intervene *before* serious violations of law occurred. The socialized juvenile justice system tried to predict future behavior of the individual involved, rather than deliberating over evidence as to past criminal acts of the individual. Rather than provide typical governmental services to a citizen, the socialized juvenile justice system was to offer approximately the same care, custody, and discipline that a loving parent would offer to a child. The socialized juvenile justice system is often presented as an adaptation of the medical model as it might be applied to troubled children, *i.e.*, "early identification, diagnosis, prescription of treatment, implementation of therapy, and cure or rehabilitation under 'aftercare' supervision."[16]

Beginning in 1899 with separate legislation, separate court hearings, probation supervision, and institutional segregation, the socialized juvenile justice system set out to achieve the lofty goals established for it. Unfortunately, it is now generally accepted that these goals were never achieved.[17] However, during the almost 70 years of its existence it progressively pursued those goals. This socialized juvenile justice system embraced five pivotal philosophical elements:

(1) The superior rights of the state over the rights of the child and his parents;
(2) Individualized justice for each child;
(3) The juvenile status of delinquent as somewhat different from and less serious than the adult status of criminal;
(4) Informal, non-criminal procedure instead of legalistic, criminal procedure; and

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15. *See* F. FAUST & P. BRANTINGHAM, JUVENILE JUSTICE PHILOSOPHY: READINGS, CASES AND COMMENTS 145 (1974) [hereinafter cited as FAUST & BRANTINGHAM].
16. *Id.* at 147.
17. *In re* Gault, 387 U.S. 1 (1967); Kent v. United States, 383 U.S. 541 (1966).

(5) A remedial, preventative, correctional purpose rather than a punitive, threatening purpose.[18]

A key element separating the socialized juvenile justice system from the constitutionalized juvenile justice system is informal, non-criminal procedure. The socialized juvenile justice system was functionally much like the present constitutionalized juvenile justice system, except for the legal steps and functions required by *Gault* and its progeny. A child was commonly brought to court by a police officer or other responsible adult, such as a school counselor, neighbor, or parent. The judge would consider the case in an informal conference and examine the allegations against the child and any evidence in favor of the child. Based upon this conference and consideration of the evidence, the judge would decide upon the child's delinquent status. If delinquency was found, the judge would order an appropriate disposition, which could be probation, institutionalization, or some other "treatment" mode. Thus, all of the basic functions were performed in the socialized juvenile justice system as are performed in the constitutionalized juvenile justice system, albeit in a much more informal and perfunctory manner. The socialized juvenile justice system simply left presentation of the child's side of the case to the same system agent responsible for presentation of the state's side of the case.

The socialized juvenile justice system diverged from the comparatively legalistic criminal justice system in 1899 and spent perhaps the first thirty or forty years of its sixty-eight year life trying to match its rhetoric with action. It progressively became more and more "socialized" by continuing to try new and more individualized treatment techniques to react to delinquency. The constitutionalized juvenile justice system, which officially replaced the socialized system in 1967, was also more rhetoric than action during the first few years of its life.[19] Only recently has the constitutionalized system become what could be called truly legalistic or constitutionalized.

Constitutionalized Era of the Formal Juvenile Justice System

The term "constitutionalized" should not mislead one into assuming that the socialized juvenile justice system did not operate under the provisions of the United States Constitution and the various state constitutions. The formal juvenile justice system has always been a system of law and as such has always

18. Caldwell, *The Juvenile Court: Its Development and Some Major Problems*, in JUVENILE DELINQUENCY: A BOOK OF READINGS 362-63 (R. Giallombardo ed. 1966).

19. Lefstein, Stapleton, and Teitelbaum, *In Search of Juvenile Justice: Gault and Its Implementation*, 3 L. & SOC. REV. 491 (1969).

been governed by constitutions. However, the Warren Court found many applications of constitutional privileges and rights in the adult criminal justice area during the 1960's and subsequently transplanted most of them into the formal juvenile justice system for the benefit of juvenile delinquents. The constitutionalized era of the formal juvenile justice system began in 1967, the year the United States Supreme Court decided *In re Gault*.[20] After *Gault*, juvenile courts were required to follow certain guidelines established by this decision. Several juvenile courts had been following similar legalistic guidelines before 1967, yet, even more juvenile courts were following the socialized, informal guidelines after 1967. Thus, the terminal points of the constitutionalized juvenile justice system are no more clear-cut than the terminal points of the socialized juvenile justice system. Nevertheless, for the purpose of analysis, there are two, rather distinct eras of the formal juvenile justice system.

The constitutionalization of the formal juvenile justice system was anticipated in 1966 by the Supreme Court:

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. . . . There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[21]

Other earlier cases had indicated that the fourteenth amendment and incorporated constitutional rights apply to children as well as to adults.[22]

While *Kent v. United States* had held that the waiver hearing must respect the essentials of constitutional due process and fair treatment, *Gault* held that this requirement also applies to the adjudicatory hearings as a requirement of the due process clause of the fourteenth amendment to the United States Constitution. Under *Gault*, due process includes proper notice of the charges and hearings to the child and his parents, the right to effective counsel for the juvenile delinquent at the adjudicatory hearing, the right to confront and cross-examine adverse witnesses, and the right not to be a witness against one's self.

Within a few years after *Gault*, the United States Supreme Court had decided two other major cases dealing with the

20. 387 U.S. 1 (1967).
21. Kent v. United States, 383 U.S. 541, 555-56 (1966).
22. Gallegos v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948).

fourteenth amendment and the formal juvenile justice system. In *In re Winship*,[23] the Court held that proof beyond a reasonable doubt is among the essentials of due process and fair treatment required by *Gault* during the adjudicatory stage. The Court's opinion was limited to cases in which the juvenile is charged with an act which would constitute a crime if committed by an adult. The primary bases for this holding were the reasonable doubt standard within fourteenth amendment due process, the comparable seriousness of a felony prosecution and a finding of delinquency resulting in loss of liberty for several years, and a belief that the reasonable doubt standard would not destroy the beneficial aspects of the juvenile process.

The *Winship* majority opinion had reaffirmed, just three years after *Gault*, the requirements of fourteenth amendment due process as they affect the adjudicatory hearing within the formal juvenile justice system. However, the majority opinion was written by Mr. Justice Brennan during the waning days of the so-called liberal Warren Court. A harbinger of things to come might well be Mr. Chief Justice Burger's persuasive dissent:

> . . . I dissent from further strait-jacketing of an already overly restricted system. What the juvenile court system needs is not more but less of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.[24]

One year later the United States Supreme Court issued a majority opinion in which Mr. Chief Justice Burger joined. In *McKeiver v. Pennsylvania*,[25] the Court considered the last of the trappings of fourteenth amendment due process: right to trial by jury. The Court held that trial by jury in the formal juvenile justice system adjudicatory hearing is not a constitutional requirement. Taking exhaustive measures to justify this holding, Mr. Justice Blackmun's plurality opinion argued that the Court had regularly refrained from imposing all criminal procedural rights upon the formal juvenile justice system, that influential advisory agencies had not recommended jury trials for juvenile proceedings, and that the various state formal juvenile justice systems needed the freedom to experiment in their attempts to achieve the high goals of the formal juvenile justice system.

In *Kent* and *Gault*, Mr. Justice Fortas wrote majority opinions which revised fundamental premises of the formal juvenile justice system. Juvenile court judges were no longer permitted

23. 397 U.S. 358 (1970).
24. *Id.* at 376 (Burger, C.J., dissenting).
25. 403 U.S. 528 (1971).

to ignore procedural niceties in order to do what they thought best for the child. The Court had concluded that the formal juvenile justice system was incapable of matching action with rhetoric, largely because of the significant gap between social scientists' aspirations and abilities, and the apparent lack of funding and personnel to implement the social scientific knowledge that was available. However, in the Burger dissent in *Winship* and the Blackmun plurality opinion in *McKeiver*, we find a rekindling of faith in the ability of the socialized juvenile justice system to achieve its goals. It seems reasonable to suggest that the formal juvenile justice system is now coming back to a middle ground between the socialized juvenile justice system and the constitutionalized juvenile justice system. The formal juvenile justice system of the 1970's may be described most accurately as a synthesis of the two previous eras of the formal juvenile justice system.[26]

The Formal Juvenile Justice System as a Legal System for Children

From its beginning in 1899, the juvenile court has been a court of equity with administrative functions incidental to equity jurisdiction.[27] The first juvenile court was not a new and independent court but was simply one of several jurisdictions of a general circuit court. As a court, the juvenile court carries with it the aura of courts in the Anglo-American common law tradition. Juvenile court judges, prosecutors, the child's counsel, and other court officers are not likely to forget they are in a courtroom, which puts inherent limits upon the informality and procedural liberties so common in juvenile justice rhetoric.[28] Children and their parents may also feel the sense of dignity and "sacredness" found in our courtrooms. The wood paneling, judicial dais, and prominent flags present the unmistakable impression of the majesty of government. If the juvenile court were an administrative agency instead of a court, it would have rules and regulations by which to operate but would not have that sense of awe that a courtroom and a judge may inspire.

All other functions and subsystems of the formal juvenile justice system are also first and foremost parts of a legal system. For example, the police/investigatory subsystem is operated primarily by police officers and other police employees. This first subsystem of the formal juvenile justice system is so similar to its

26. *See* FAUST & BRANTINGHAM, *supra* note 15, at 360.
27. *See* O. KETCHAM & M. PAULSEN, CASES AND MATERIALS RELATING TO JUVENILE COURTS (1967).
28. *See* S. DAVIS, RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM (1974).

criminal justice counterpart in its major functions as to render the differences more of academic curiosity than of practical importance. Police investigation of offenses, apprehension and questioning of juvenile suspects, examination of evidence, and other typical functions at this stage of the formal juvenile justice system are governed by legal rules and principles almost identical to those of the criminal justice system.[29] In some particulars, however, the formal juvenile justice system is more restrictive than the criminal justice system. For example, detention of a juvenile after apprehension but before appearance before a judicial officer may be more restricted for children than for adults in similar circumstances, *e.g.*, no right to bail.

The other stages and functions of the formal juvenile justice system are similar to those of their criminal justice counterparts. Probation officers supervise an official, legally prescribed correctional program called probation. The rules of probation must be kept within legal limits. The power and authority of the probation officer is defined by statute and other primary sources of law, as are the rights of the probationer to receive or reject proferred treatment. Also, revocation of probationary status can occur only after a hearing complete with evidence, witnesses, and lawyers.[30]

While juvenile institutions act in many ways like social service agencies, they are nevertheless governed by law. The juvenile institution is no less a legalistic agency within a legal system than is a criminal prison within the criminal justice system.

The formal juvenile justice system is clearly a legal system governed by constitutions, statutes, and case law, and influenced by the long history of Anglo-American jurisprudence.[31] Concurrently, the formal juvenile justice system has been given a largely social service mission to accomplish. Let us now examine this dimension of juvenile justice.

The Formal Juvenile Justice System as a Social Welfare System for Children

Although cloaked in the garb of the American legal system, the formal juvenile justice system is also a social welfare system[32]

29. *See* P. HAHN, THE JUVENILE OFFENDER AND THE LAW, §§ 17.1-17.6 (1971).

30. *See generally* Klapmuts, *Children's Rights—The Legal Rights of Minors in Conflict with Law or Social Custom*, 4 CRIME & DEL. LIT. 449 (1972).

31. *See* R. TROJANOWICZ, JUVENILE DELINQUENCY: CONCEPTS AND CONTROL (1973).

32. *See* Tenney, *The Utopian World of Juvenile Courts*, 383 ANNALS 101 (1969) [hereinafter cited as Tenney].

in that it is a collection of private and public services attempting to ameliorate social pathology through a systematic method of adjusting an individual's relationships with other persons and with the wider social environment. More specifically, the formal juvenile justice system is a collection of public and private youth-serving agencies, attempting to reduce juvenile delinquency through a systematic method of modifying the juvenile's behavior so as to improve his personal and communal relationships. Many prominent youth-serving agencies, for example the Boy Scouts of America and the Young Men's Christian Association, are similar social welfare systems for children and differ from the formal juvenile justice system more in their scope than in their purpose.

Characterization of the formal juvenile justice system as more of a social welfare system than a legal system is not new or unorthodox:

> 1. The theory of the District's Juvenile Court Act, like that of other jurisdictions, is rooted in social welfare philosophy rather than in *corpus juris*. Its proceedings are designated as civil rather than criminal. The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.[33]

As a result of this fundamental social welfare premise, this "peculiar system for juveniles"[34] historically did not follow the traditional legal rules of criminal proceedings or even the much less demanding legal rules of civil proceedings.[35] Juvenile justice agents were not trying to seek revenge or punish the child but were simply trying to provide him with proper parental custody and protection.[36]

As a protective social welfare system, the formal juvenile justice system is given as much legal freedom as can be tolerated and still remain within the family of legal systems. The formal juvenile justice system is more accurately described as existing in the overlapping area between the intersecting circles of legal systems and social welfare systems. Of course, all legal systems are partly social welfare systems and vice versa, but the formal juvenile justice system seems to straddle the centermost point between the two.

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33. Kent v. United States, 383 U.S. 541, 554 (1966).
34. *In re* Gault, 387 U.S. 1, 17 (1967).
35. *Id.* at 17 n.22.
36. *See* Edwards, *In Loco Parentis: Definitions, Application and Implication*, 23 S. CAR. L. REV. 114 (1971).

JUVENILE JUSTICE GOALS, OBJECTIVES, AND OPERATING PRINCIPLES

Juvenile justice has been burdened with goals and objectives that are extremely difficult to attain. In a very real sense, juvenile justice is asked to do what the child's parents, local community, school system, etc. have not been able to do. The formal juvenile justice system must seek the same goals and objectives any "good, American parent" would seek for his or her child[37] and not simply punish the child. As stated in *Kent*, "[t]he State is *parens patriae* rather than prosecuting attorney and judge."[38] Indeed, rehabilitation of the child is the predominant goal of the entire formal juvenile justice system.[39] Obviously, society is best protected from future delinquent behavior if a child is successfully rehabilitated. Our society has assumed, apparently without argument, that the child is best served by the formal juvenile justice system if he is taught to avoid delinquent behavior in the future. Thus, rehabilitation of the child serves the two masters of the formal juvenile justice system: the best interests of the child and the best interests of society.

By its very existence and ability to act, the formal juvenile justice system should deter delinquency among all children. To effectively deter delinquent behavior, the formal juvenile justice system must be characterized by thorough investigation of delinquent acts, swift apprehension of delinquent children, prompt and accurate adjudication of the facts, and imposition of just dispositions.[40]

Operating principles of the formal juvenile justice system include those inherited from law, those inherited from social service, and those required by the practicalities of governmental operations. American legal concepts require the formal juvenile justice system to follow the precepts of the Bill of Rights and the fourteenth amendment.[41] These legal operating principles are today much like the operating principles of the American criminal justice system, particularly in such specifics as the rights to counsel, notice, proof beyond a reasonable doubt, and a fair evidentiary hearing.[42]

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37. *Id.*
38. Kent v. United States, 383 U.S. 541, 554-55 (1966).
39. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 80 (1967) [hereinafter cited as PRESIDENT'S COMMISSION].
40. *Id.* at 88.
41. *See, e.g., In re* Gault, 387 U.S. 1 (1967).
42. *See* S. FOX, CASES AND MATERIALS ON MODERN JUVENILE JUSTICE (1972).

Operating principles inherited from the social service origins of the formal juvenile justice system require it to serve the needs of its clientele. Thus, the formal juvenile justice system must determine the needs of the particular child in question and do its best to serve those needs. Likewise, the needs of the society it serves must be determined and met to the extent possible.[43]

The practicalities of governmental operations dictate that the formal juvenile justice system live within reasonable budgets, hire agents from the available pool of candidates, treat delinquent children with therapeutic skills limited by man's knowledge, and operate within the vagaries of modern society. Thus, the legal and social service exhortations concerning rehabilitation of the delinquent child may often be negated by the practical reality of limited financial resources to provide psychiatric care or, more fatally, by the present lack of socio-psycho-medical knowledge about the kind of behavior being treated. Regardless of the goals, objectives, and operating principles of the legal scholars and social service theorists, the formal juvenile justice system must deal with children who live in a real world.

INFORMAL JUVENILE JUSTICE SYSTEM OPERATIONS

An Overview

Although *Gault* seemed to have sounded the death knell for the socialized juvenile justice system and its twin characteristics of informal procedures and unchecked discretion, the socialized juvenile justice system did not die but simply changed its name and went "underground." The present informal juvenile justice system has taken over the attitudes and characteristics of the socialized juvenile justice system and has largely displaced the formal constitutionalized juvenile justice system. The current popularity of diversion from juvenile court has resulted in a revival of the procedures for handling alleged delinquents that were specifically and emphatically denounced in *Gault*.

The informal juvenile justice system now exists parallel to and often in competition with the formal juvenile justice system. The informal juvenile justice system is that collage of social service agencies which serve the youth of a community but which are not a regular part of the formal juvenile justice system. Such agencies are the recipients of referrals from formal juvenile justice system agencies and include youth service bureaus, drug abuse clinics, community mental health clinics, church youth groups, family counseling agencies, and regular

43. *See* Tenney, *supra* note 32.

probation officers acting in an unofficial capacity in supervising a child under "informal probation."

This latest era of juvenile justice might be described as the bifurcation of juvenile justice into formal and informal systems rather than a synthesis of socialized and constitutionalized positions.[44] Many jurisdictions have formalized this bifurcation by legislation which channels the child who violates criminal laws into the formal system and the child whose delinquent acts are not criminal law violations into the informal system.[45] Often the formal juvenile system serves as a backstop for the informal juvenile justice system, allowing system agents to threaten the child with being processed through the formal juvenile justice system if he does not "volunteer" for informal supervision.

A functional analysis of the informal juvenile justice system would reveal almost exactly the same functions being performed as in the formal system with the exclusion of the juvenile court judge, the strict legal procedures and the formalistic juvenile court hearings. The misbehaving child is reported to an informal juvenile justice system agent, an investigation is conducted, a decision as to the child's misbehavior is made by an informal juvenile justice agent, remedial action is designed for that child and is administered by the informal juvenile justice system. Although the child is not formally adjudged to be a delinquent, the action taken against the child is typically quite similar to that which would have been imposed by the formal juvenile justice system. Such action includes counseling by a probation officer ("informal probation"), treatment by a psychologist or psychiatrist in a community mental health program, special tutoring for school, counseling and assistance for the entire family, and admittance to private institutions quite comparable to state juvenile institutions.[46]

While the formal juvenile justice system is composed primarily of police, prosecutors, respondents' attorneys, judges, probation officers, and institution counselors, the informal system is composed of school counselors, probation officers acting in an unofficial capacity, youth counselors from a variety of community agencies, and persons working within private institutions. The variety of community agencies differs widely according to the community, but typical agencies are youth service bureaus, youth crisis centers, drug counseling services, youth employment referral services, and similar agencies.

44. Shullenberger & Murphy, *The Crisis in Juvenile Courts—Is Bifurcation an Answer?*, 55 CHI. B. REC. 117 (1973).

45. *See* F. MILLER, R. DAWSON, G. DIX & R. PARNAS, THE JUVENILE JUSTICE PROCESS (1971).

46. *See* J. MORRIS, FIRST OFFENDER: A VOLUNTEER PROGRAM FOR YOUTH IN TROUBLE WITH THE LAW (1970).

Often an individual agency will constitute the entire informal juvenile justice system for a child. For example, the youth service bureau might be requested by a frustrated mother to intervene in her child's life. An agent of the bureau will investigate the situation and talk with the parents and the child. The agent will decide if the child is "guilty," whether treatment is required, and if so, will design and implement a program for that child and family. In this common example, the bureau is functionally the entire informal juvenile justice system from initial report of the problem to imposition of the remedial action.[47]

Points of Entry

A child may be thrust into the informal juvenile justice system by various means. One common way is for the child who commits a delinquent act to be handled informally by the police. The child is counseled by the police and/or referred to a social service agency for counseling and then released from the formal juvenile justice system.[48] This is not based upon any legal coercion or threat of bringing the child into court, such as is typically the means by which a child is encouraged to seek counseling at subsequent points in the formal juvenile justice system.[49] Rather, in this situation the counseling agent must depend upon the sincere desire of the child and his parents to seek rehabilitation. Predictably, these instances are rare. Alternatively, the act of delinquency may simply be remembered by police officials and used to justify more legalistic handling of a subsequent provable offense by the child.

More specifically, the child may be placed in the informal juvenile justice system either by the individual police officer ("street adjustment") or by the police agency acting through its juvenile division ("station adjustment").[50] An example of how the individual police officer could activate the informal juvenile justice system is to lecture the child like a stern father, generally observe his behavior for some time thereafter, and then decide whether or not the child has benefited from the advice. If the child seems to have responded favorably to the

47. *See* S. NORMAN, THE YOUTH SERVICE BUREAU: A KEY TO DELINQUENCY PREVENTION (1972) [hereinafter cited as NORMAN].

48. D. PURSUIT, POLICE PROGRAMS FOR PREVENTING CRIME AND DELINQUENCY (1972).

49. R. Sundeen, A Study of Factors Related to Police Diversion of Juveniles: Departmental Policy and Structure, Community Attachment, and Professionalization of the Police, 1972 (unpublished dissertation, University of Michigan).

50. *See* Stratton, *Crisis Intervention Counseling and Police Diversion from the Juvenile Justice System: A Review of the Literature*, 25 JUV. JUST. 44 (May 1974).

lecture, the previous delinquent act is forgiven. If the child does not seem to have responded favorably to the officer's suggestions, the officer must decide whether to simply forget about the case or to consider some other possible option.[51] This "street adjustment" of the child by an individual police officer may be more frequent in a small town situation, where regular surveillance of the local children is an almost daily occurrence, than in the more impersonal large city or urban area. The propensity for "street adjustment" of a delinquency case also varies greatly between individual officers and between police agencies.[52]

In lieu of the "street adjustment," the police officer could apprehend the child and take him into custody.[53] Following the records preparation process, the police agency must then decide whether to refer the child to the juvenile court or channel him into the informal juvenile justice system. This latter process, often referred to as "station adjustment,"[54] occurs when the decision to take responsibility for counseling a child is made at the police station as a result of an agency deliberation. It is not unusual for "station adjustments" to involve elaborate hearings and the imposition of sanctions by the police agency.[55] These sanctions may include a curfew, restricted association with certain persons, or counseling. In this situation, police agencies function as the entire informal juvenile justice system. Police investigate the reported offense, apprehend the suspected delinquent, gather and present evidence in a hearing, and decide the degree of involvement by the child in forbidden activities. They then decide whether or not the child needs treatment. If treatment is required, the police design, institute and monitor the proper program.

A child may also enter the informal juvenile justice system at the court screening stage of the formal juvenile justice system. When the police formally refer an alleged delinquent to juvenile court, probation officers perform a screening function to divert those cases that do not warrant court action. In some instances, the case may be dismissed. Even if the screening officer does not dismiss the case outright, it is still possible, even probable, that the case will not proceed to the filing of a formal court petition alleging delinquent behavior.[56] The case may be han-

51. *See* Somerville, *A Study of the Preventive Aspect of Police Work with Juveniles*, 1969 CRIM. L. REV. 407.

52. *See* R. KOBETZ, THE POLICE ROLE AND JUVENILE DELINQUENCY (1971).

53. *See* Klein, Rosenweig & Bates, *The Ambiguous Juvenile Arrest*, 13 CRIM. 78 (1975).

54. PRESIDENT'S COMMISSION, *supra* note 39, at 82-83.

55. *See* Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 HARV. L. REV. 775 (1966).

56. *See* Croxton, *The Juvenile Court: Some Current Issues*, 46 CHILD WELF. 553 (1967).

dled informally in two typical ways, either of which are means of utilizing the informal juvenile justice system.[57] The screening officer may refer the delinquent suspect to a social service agency such as a youth services bureau for counseling and any other services which might be required.[58] If the referral produces favorable results, the delinquent suspect will not go to juvenile court. Whether or not the referral results are favorable is a decision typically made by the screening officer at a subsequent time. This decision is based upon information from the social service agency to whom the child was referred. If the delinquent suspect does not respond favorably to counseling, the screening officer or comparable agent must decide whether the case should be reconsidered. If no apparent value would result from such a reconsideration, the delinquent suspect could be dismissed. The alternative would be to rescreen the case to determine if other action would be more appropriate. In effect, the informal juvenile justice system is backed up by the threat of resort to the formal juvenile justice system. If the child falters during informal counseling, he is "threatened" with juvenile court.

If the child is not diverted into the informal juvenile justice system by this point, one last opportunity exists. The diversion may take place near the end of the adjudicatory hearing. That is, the juvenile court judge may withhold judgment and choose an informal alternative for the child.[59] The "most informal" alternative would be for the child to be released. This might occur if the delinquent acts have been proven but the child and family have been undergoing counseling and seem to have resolved their problems. Consistent with the goals of juvenile justice, the child avoids a formal adjudication of delinquency and the stigma attached thereto.

More commonly in this "last chance" diversion into the informal system, the child would either be placed on "voluntary," informal probation or would be referred to a social service agency for counseling. "Voluntary" or informal probation requires the child to perform in an almost identical fashion as he would be required to perform on formal probation but no formal pronouncement of delinquency or probationary status is involved. Typically, if the child refuses to "volunteer" for informal probation, the judge adjudicates him delinquent and the formal juvenile justice system continues to handle the case. If

57. Ferster & Courtless, *The Intake Process in the Affluent County Juvenile Court*, 22 HAST. L.J. 1127 (1971).

58. *See* NORMAN, *supra* note 47.

59. *See* Snyder, *Impact of the Juvenile Court Hearing on the Child*, 17 CRIME & DEL. 180 (1971).

the child does "volunteer" for informal probation, he waives such basic constitutional rights as the right to counsel, right to a dispositional hearing, right to challenge evidence, etc. The child is simply processed by the informal juvenile justice system in whatever manner seems appropriate, with the child having no realistic opportunity to object or challenge decisions.

If the child is placed on informal probation and performs satisfactorily, typically he will be discharged from informal probation and depart from both the formal and informal juvenile justice systems. If he does not perform satisfactorily on informal probation, he might still be released from both systems if it seems fruitless to have him placed in a formal correctional situation. However, it could be recommended that the child return to the formal juvenile justice system and that the juvenile court judge enter the judgment previously withheld.

A similar sequence occurs if the child is referred to a social service agency for counseling. If the child responds favorably to counseling, he departs from the systems. If he responds unfavorably to counseling, he may be released from the formal juvenile justice system or referred back, adjudicated delinquent, and sent on to a formal dispositional hearing. The decision as to whether the child performed satisfactorily on informal probation or responded favorably to counseling is made ultimately by the juvenile court judge. The judge acts upon the report and advice of the probation officer monitoring the child's performance in the informal juvenile justice system.

In the above described manner, the formal juvenile justice system diverts a majority of alleged delinquents into the informal juvenile justice system and, in effect, transfers authority to the informal system to do what is best for the child and society. In so doing, the procedural fairness requirements ordered by *Gault* are rendered inapplicable since participation in the informal juvenile justice system is "voluntary." The child can effectively be denied the right to notice of charges, an attorney, the right to remain silent, to confront and cross-examine witnesses, and the right to any specific level of proof by the informal system.

To return to the medical model and parent/child analogy, the juvenile is seen as a sick infant and the informal juvenile justice system is the parent/physician/child psychologist. The informal system does not permit the juvenile to deny the delinquency manifested by the misbehavior, just as the physician does not permit the sick infant to deny the disease indicated by the fever, coughing, and other physiological symptoms. The informal system, as would the physician, simply observes the child very closely, diagnoses the problem, and orders the cure to

be implemented expeditiously. To give children a concrete opportunity to prevent some of these symptoms from being examined or to prevent implementation of the cure would seem to be improper behavior for a parent or a physician, or for a social agency serving in those roles.

Informal system agents may see themselves as comparable to the laudable social worker who discovers an abandoned baby on the front stoop and takes in the perishable foundling to provide it with food, clothing, shelter, and the multitude of other ministrations needed by such an infant. Suggesting that such a servant of humanity should be restricted in providing this essential rescue or should have to prove in a court (beyond a reasonable doubt) that the foundling needs such rescue would test the limits of community tolerance. To suggest that the abandoned baby has a right to remain on the front stoop unbothered by overly-eager governmental agents is assumed to blaspheme conventional common sense.[60]

As extreme as the above analogy is, it reveals the ramifications of the characteristics of the informal juvenile justice system. We punish persons only reluctantly and only after we are certain that we must. We help persons eagerly and do not wait until we are absolutely certain of their need. Therefore, the formal juvenile justice system may seem irrational because it requires procedural patience and a high degree of certainty before we can help a needy child. Thus, the informal system responds to fill a perceived void by serving children's needs while avoiding the procedural "red tape."

Consider other child-serving agencies today as a comparison. Is it not typical in agencies whose purpose it is to help needy children to want to do so with as little resistance from outsiders as possible? Do charitable organizations expect the recipients of their free goods and services to challenge these gifts and to exercise extensive rights to refuse them? Similarly, few have challenged the actions of the informal juvenile justice system in the face of its popularity. Few have considered the informal system's striking resemblance to the socialized model of the formal juvenile justice system which the Supreme Court had tried to eliminate almost ten years ago. However, many of the actions of the informal system disregard the generally accepted minimal standards of procedural fairness and must be scrutinized very closely.

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60. *See* Brennan & Klinduka, *Role Expectations of Social Workers and Lawyers in Juvenile Court*, 16 CRIME & DEL. Q. 191 (1970).

Recommendations for Change

It is not recommended that the informal juvenile justice system be abolished or even modified in any drastic manner. The Supreme Court tried to abolish the socialized juvenile justice system and it reappeared as the informal juvenile justice system. If we try to abolish the informal system, we can assume it too will reincarnate. However, the informal juvenile justice system must be modified on behalf of the children it affects.

First, there is a great deal of pressure on the allegedly delinquent child to "voluntarily" participate in the informal system. For the child accused of an act of delinquency, the only alternative to "voluntary" cooperation with the informal system is to be processed through the formal system. In theory, the only coercing factor is the "threat" of justice, *i.e.*, to be processed by the formal system in a lawful and just manner and be dealt with as decided by the formal system. This alternative of formal system "justice" entails much more than is suggested. Consider the emotional impact imposed upon a child as a result of being apprehended by the police, transported to the police station in the back of a patrol car and subjected to the dehumanizing records-preparation process. Moreover, the adjudicatory hearing can be emotionally damaging to a child. The last resort of the formal juvenile justice system—the state juvenile institution—may very well irreparably harm the child. This is the "justice" with which we threaten the child in order to coerce him into "volunteering" for the informal juvenile justice system.

The coercion may begin early in the formal system. A school counselor may tell the child and his parents that unless the child subjects himself to the informal system the school counselor will have no choice but to report the delinquent acts to the police. A frustrated parent may threaten to call the police unless the child "volunteers" for the informal system, or a juvenile police officer may suggest counseling by an informal system agency in lieu of formal referral of the case to the juvenile probation office. The primary point of transfer to the informal system, however, is the court screening juncture. The juvenile probation officer examines the case and may recommend informal or unofficial probation. The alternative, of course, is the filing of a formal court petition alleging delinquency. At all of these points the child can choose to "volunteer" for whatever informal counseling or other treatment program is being recommended and thus avoid any further punitive processing by the formal system.

It is apparent that the child typically does not have any effective means of avoiding the informal juvenile justice system.

All of the apparently knowledgeable adults are recommending the painless, attractive alternative as a favor to the child and working with him to avoid the harsh, punitive alternative. The child is told that the alternative to counseling is formal court action and the ultimate punishment, the institution, is expressly or impliedly threatened. It is critical to realize that the child has no defense attorney or neutral, objective, knowledgeable person from whom to seek advice. When the probation officer or police officer tells the child that they have ample evidence to send him to an institution, the child has no means of challenging that assertion or even making an educated guess as to that possibility. The child does not realize the extreme rarity of institutionalization or know what type of punishment to expect. In short, the child is at the complete mercy of the informal juvenile justice system agent and has no other source of objective and accurate information with which to make a decision.

The primary problem is not the intentions or services provided by the informal system agents and agencies, but rather is the fact that this "voluntary" system for serving children in trouble is not in any meaningful way "voluntary." The solution lies not in doing away with or radically altering the informal system but in making its services available to children and families on a strictly voluntary basis without the present coercion which pervades the system. Making the system truly voluntary should increase the ability of the system to serve children by providing services that children sincerely desire rather than imposing services through threat of institutionalization.

Several means exist for solving this problem. The formal juvenile justice system agents who divert children into the informal system can be required to eliminate their coercive techniques and simply but completely inform children and their families of the availability of various services. The agents and agencies making up the informal juvenile justice system could saturate the community with information about the availability of their services and actively go into the community to provide services to anyone asking for them. In order to provide an effective check on the over-zealous "child-helper," we could require that every child and family receive competent, personal legal advice as to the strength of the case against them and the probable outcome of the case if continued within the formal juvenile justice system. This legal advice would tend to offset the biased claims of police and probation officers as to the legal merit of cases they have prepared. The end result would be to continue to make available the present variety of services to children on an informal basis and make them truly voluntary.

Otherwise, we are subjecting children to juvenile justice, either formal or informal, through threats and coercion without any realistic means for the child to evaluate his situation.

A second major problem with the informal juvenile justice system is the unclear and inconsistent goals and operating principles of its various agencies. Analyses of the formal system reveal many similar inconsistencies within a system that is much more cohesive and single-minded than the informal system. Although the formal system has no system manager, there are relatively few agencies to manage. Moreover, all of the formal juvenile justice agencies accept or operate within legal guidelines and requirements as established by *Gault* and its progeny. That is, the formal system is at least partly a legal system governed by and operating under law.

The informal juvenile justice system is not a legal system in any meaningful way, at least not to the extent of the formal system. So long as the child and the family are "voluntarily" participating in a dispositional mode, few restrictions are placed upon agencies providing services. In fact, the informal system is made up of agencies with a variety of fundamental premises. One agency might be part of a fundamentalist protestant church group trying to "save" all children they counsel. Another agency might be staffed by local college students whose drug counseling concerning marijuana might be strikingly different from the drug counseling by the juvenile probation officer. A rural communal counseling agency might teach children that getting back to the land and leading a natural life is the only solution while a neighborhood youth club teaches how to cope with life in the urban neighborhood. Confusion could well be the result for the child shuttled around from agency to agency and from counselor to counselor.

Conflicting goals and principles make evaluation of a child's "success" within the informal juvenile justice system almost impossible to measure meaningfully. Is the city teenager who does not get along well in the rural communal setting a failure? Is the child who accepts Jesus Christ as his personal savior a success? Perhaps we must turn to such effectiveness and success measures as reducing the frequency and/or seriousness of future acts of delinquency. Accuracy in measurement is quite difficult even in the formal system where the child is at least under some official supervision and where repeated acts of delinquency would be somewhat difficult to hide. In the informal system, the child is under very loose supervision, if any, and often the supervisors will not report every misstep by the child, unlike official agents of the formal system who might feel a

professional duty to report all wrongful conduct. The college student/drug counselor may be less willing to report to the police his counselee's admission of continued marijuana use than would be a probation officer for similar conduct of his probationer. The very unofficial nature of the informal juvenile justice system makes measurement of effectiveness very difficult if not impossible.

Even worse than the formal system's lack of a system manager is the lack of any meaningful supervision or coordination in the informal juvenile justice system. Agencies which receive official referrals from the juvenile court or family court must meet various requirements and may be subject to inspection and evaluation, but few such requirements exist for the agencies of the informal system since no official referral may be made. The children and their families are free to "voluntarily" participate in any activity which is not in itself illegal, regardless of the nature of the activity or the imposition upon the life of the child. While there might exist an "officially approved" list of informal youth service agencies, referrals to these agencies are typically made privately by individual agents. There is a total absence of any public hearing or even any record of what recommendation was made to the child by the agent. Thus, the appropriateness of the recommendation may be limited only by the agent's particular faith in Jesus, transcendental meditation, team sports, or mountain climbing.

A fundamental problem lies with the present lack of any control over these agencies by the formal juvenile justice system. The formal system should continue to be aware of the services provided by these agencies and make this information available to all children and families in the community, including those children of official interest to the formal system. However, the formal system should take measures to determine the goals and operating principles of these various agencies and refuse to recommend any agency which would not be utilized under a formal probation program. For example, specifically religious groups might be excluded because of first amendment religious freedoms. Agencies presenting rather severe intrusions into a child's life should not be recommended out of respect for the child's right to privacy. This is not to say that these agencies would be prohibited from working with children, but simply that they would be excluded from the informal juvenile justice system to the extent they are utilized by the formal system.

One final problem with the informal system is the unbridled discretion exercised by its agents. The informal system is a personification of the rules of men, not of law, and in this

respect differs from the fundamental premise of American socio-legal systems. In the informal system, decisions are made almost totally by persons unsupervised in any meaningful way and unchecked by any systemic force. For example, if an informal system agent decides that a certain child needs to participate in group counseling which involves intense personal attacks upon him by the group, that child must either participate in these sessions or be deemed a failure by that agent, by the agency, and typically, since such activity may comprise the child's only experience within the system, by the informal juvenile justice system as a whole. Whether or not the group counseling was appropriate for that child and whether the group counseling was conducted in a reasonable manner are questions that may never be raised.

The socialized era of the formal juvenile justice system reflected a similar system for handling delinquent children. In that system the agents had almost total power over a child and could decide upon proper activities for the child without having their decisions effectively challenged. The bases for their decisions were almost never revealed and yet were very important factors in the treatment of delinquents. If a child's personal mannerisms were offensive to the agent, a rather severe sanction could be imposed without revealing the true reasons for that decision. The *Gault* decision and numerous observers have soundly criticized unchecked discretion for decision-makers with such awesome power over the lives of children. As a result, the socialized juvenile justice system was officially abolished and replaced by the constitutionalized or proceduralized juvenile justice system.[61] Juvenile justice agents with such great powers over children were required to follow fairly rigid procedures and their discretion was greatly reduced.

Notwithstanding *Gault*, the socialized juvenile justice system is alive and well and living within the informal juvenile justice system. The attitudes, prejudices, and discretionary practices which characterized the socialized system were simply transplanted into the informal system to provide room for the constitutionalized system. As a result of *Gault* and its progeny, the juvenile court judge can not escape the constitutionalized juvenile justice system and he remains largely a captive within its confines. However, the role of the juvenile court judge is now being played by the juvenile probation officer and by other youth counselors.

The juvenile probation officer is now the person who, like his predecessor, may accept without effective challenge the truth

61. *In re* Gault, 387 U.S. 1, 20 (1967).

of accusations against the child, examine the "whole child," including any personal characteristics he thinks important, and draw from his wisdom the proper course for the child to follow. As with the judge in the socialized system, this decision is effectively impossible to challenge without encountering a cure worse than the disease. No attorney represents the child's side of the case, no hearings are conducted, no particular procedures are followed, and no persuasive amount or kind of evidence must be produced. The child is simply accused of doing something authoritative adults find objectionable and is forced to accept often significant interference in his life. The formal alternative is something all of the apparently knowledgeable adults agree is much worse.

The child caught up in the informal juvenile justice system receives one particularly cruel punishment never imposed upon children that were involved in the socialized juvenile justice system. In the socialized era, the children were never promised a fair hearing or a chance to challenge their accusers. They knew from the beginning that adults would decide their fate and they could only accept it. In the informal system, however, children enter having been taught about justice for the accused and their right to their day in court, only to find such rhetoric to be thwarted by the system's own processes.

The informal system must be proceduralized as was the socialized system. Decisions having significant impact upon children and their families must be subject to review by objective persons and according to objective, non-discriminatory principles. For the same reasons we protect children from the socialized system we must proceduralize the informal system. The only solution, albeit a most regretful one, is to remove as much discretion as possible from all agents of the informal system. As was persuasively explained in *Gault*, following proper procedures need not prevent agents and agencies from serving the needs of children.[62] These agents should simply reveal the true bases for their decisions, subject those decisions to the scrutiny of supervisors and others, and impose only minimum-intervention treatment programs upon children.

Conclusion

Procedural due process is not a cure-all and cannot be relied upon to solve the many problems in juvenile justice. However, a legal system for children devoid of procedural due process was utilized, studied, and found insufficient after almost

62. *See id.* at 26.

seventy years of operation. Almost ten years ago, when the socialized system was rejected, a constitutionalized system emerged characterized by procedural due process. Now, even before the constitutionalized system has been fully implemented in many jurisdictions, another "socialized" system has developed. Once again, procedural fairness for children is being denied.

History tells us that as soon as we proceduralize the informal system a third parallel system may emerge again to divert children away from proceduralized systems and process them in a discretionary manner. It seems as if persons who work with troubled children actually refuse to give up their discretionary power. If these people are denied overt exercise of that power in one dimension, they will simply find another dimension in which to act. When discretion was revoked from the judge, it seemed to migrate to the probation officer. If we take discretion away from the probation officer, will the juvenile police officer become the new surrogate judge or will it be another agent as yet unknown to juvenile justice? The very nature of juvenile justice agents is apparently to do what they think best for children under their control and to find inventive ways to accomplish this end in spite of laws, regulations, and job descriptions.

This phenomenon suggests a belief among juvenile justice agents in unchecked discretion and in the inappropriateness of procedural protections for children. Juvenile justice agents and agencies which see themselves as serving humanity may understandably have less concern for procedure than for meaningful results. They believe that procedural requirements are meaningless if the children being served receive nothing of value from the system/servant. Such juvenile justice agents look first to the value of the services being provided to the children and then try to fit the service-providing activities within the general requirements of law. If the agent perceives that the child "obviously needs" professional counseling, but due process of law makes imposition of such counseling difficult if not impossible, then the child may be coerced into "volunteering" for unofficial, informal probation so that the necessary services can be delivered. In this manner, the procedural requirements are followed only so long as they do not hinder the achievement of the desired result, as perceived by the agent. Inventive means can be and are devised to circumvent the procedural requirements whenever necessary. This clash between procedure and results will be largely unavoidable as long as the system is partly a legal system and partly a social welfare system. However, propo-

nents of either objective should understand the reasons behind the strong desires for each objective. The primary problem lies with those people who stress results regardless of procedural requirements. Such proponents must be educated in the basic Anglo-American legal premise of "rule of law, not of men" and the understandable desire of our society to avoid despotism, regardless of whether it is centered in the White House, the court, or the juvenile probation office. For many reasons firmly rooted in the experiences of the human race, despots claiming benevolence as their sole motivation are to be avoided. By applying procedural rules equally to all cases, the dangers of despotism can be avoided and the desired results for children and for society can still be achieved.