

1968

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Recommended Citation

Charles W. Tenney Jr., *The New Dilemma in the Juvenile Court*, 47 Neb. L. Rev. 67 (1968)

Available at: <https://digitalcommons.unl.edu/nlr/vol47/iss1/5>

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THE NEW DILEMMA IN THE JUVENILE COURT*

Charles W. Tenney, Jr.**

Recent years have witnessed a mounting crescendo of concern over the administration of our juvenile courts. In general, this concern has manifested itself in two somewhat contrasting attitudes. On the one hand, juvenile court judges are castigated for handing out light "sentences" and kid glove treatment to tough young hoodlums who steal our automobiles, deface our landscape, defile our daughters, and disparage our cherished institutions—all, probably, while hopped up on narcotics or barbiturates.¹ On the other hand, the juvenile court and its judges are seen as instruments of oppression, inequity, and injustice, masquerading behind a facade of benevolence and concern for the "best interests of the child."² To the critics on both scores, apologists for the juvenile court reply in the now familiar litany: the juvenile court is not a criminal court; delinquents are not criminals; disposition is not punishment.³

Like all distortions, each of these points of view contains a grain of truth; but also like all distortions, such "truth"—if we can call it that—lies somewhere very near the outer edges of reality in the juvenile court. Concern over the operation of any public institution is, of course, a healthy phenomenon. We encourage and ap-

* Portions of this paper were delivered originally at the workshop program, Metropolitan New Orleans Youth Problems Clinic, New Orleans, Louisiana, May 7, 1966.

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¹ See e.g., J. Edgar Hoover, *The Faith of Free Men* (remarks before the Supreme Council, Ancient and Accepted Scottish Rite of Freemasonry, Washington, D.C., October 19, 1965); Holtzoff, *Shortcomings in the Administration of Criminal Law*, 17 HASTINGS LAW JOURNAL 17 (1965).

² Beemsterboer, *The Juvenile Court—Benevolence in the Star Chamber*, 50 J. CRIM. L.C. & P.S. 464 (1959); F. ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE* 50 (1964).

³ Chief among the defenders of this traditional view of the juvenile courts was the late Paul Alexander, for many years judge of the juvenile court in Lucas County, Ohio. His numerous writings on the court include: *A Legal Look at the Juvenile Court*, 27 CLEV. B.J. 171 (1956); *The Lawyer and the Juvenile Court*, 8 JUV. CT. JUDGES J. 21 (1957); *Constitutional Rights in the Juvenile Court*, 46 A.B.A.J. 1206 (1960); *The Fable of the Fantastic Delinquents*, 24 FEDERAL PROBATION 13 (1960).

The wellspring of judicial authority for the position was *Commonwealth v. Fisher*, 213 Pa. 48, 62 A. 198 (1905); and see *In re Holmes*, 379 Pa. 599, 109 A.2d 523 (1954).

plaud it. A concern which is, however, based on a distorted image of reality can result in the creation of as much misfortune as it seeks to overthrow. I suggest that each of the views mentioned above is quite distorted and that to the extent that they are seen as posing questions for resolution, whatever resolutions are offered in response will overlook entirely the central—and to me the most difficult to resolve—problem of the juvenile courts. All other issues are ancillary to it; no organization of the court or strategy adopted by it can disregard it. The problem, I suggest, is this: given reliable data on the probable etiology of delinquent conduct, on the manner in which such conduct becomes escalated from isolated or episodic to habitual, repetitive behavior, and given at the same time society's attitudes toward such behavior, how may the juvenile courts best achieve the goal of eliminating, or at least minimizing, the incidence of this behavior? It is in the context of this statement of the problem that I intend to discuss, briefly, some legal aspects of the juvenile court—namely adjudication, disposition, and the "legal rights" of children in court, and to conclude the discussion with a modest proposed solution.

The matter is more than one simply of academic interest. We are standing today on the threshold of a broad and sweeping re-examination of the juvenile court's philosophy and procedures of which the recent United States Supreme Court decisions in *Kent v. U.S.*⁴ and *In re Gault*⁵ are only the vanguard. By examining present attitudes and law with respect to the several legal problems mentioned, perhaps we can perceive the point of balance between the polar positions outlined above and thereby also plumb the possibilities of developments yet to come.

ADJUDICATION

It is often stated but seldom documented that, since approximately ninety-five percent of all juveniles admit the allegations of a delinquency petition, there is usually little need for a hearing on its merits. Assuming the accuracy of this estimate, it certainly minimizes problems with respect to fact finding, although other difficulties may at the same time arise as a result. It is interesting to note that similar estimates are made with respect to criminal defendants.⁶ The reasons for this circumstance with respect to adults have in recent years received concerted attention; with respect to

⁴ 383 U.S. 541 (1966).

⁵ 387 U.S. 1 (1967).

⁶ D. NEWMAN, *CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL* 1 (1966).

juveniles, the question has almost never been raised. The estimate is never set at one hundred per cent, however, and so there remains the problem of how to provide for the remainder. Furthermore, often overlooked or disregarded is the question of what procedures ought in any event to be provided—what, in other words, should be the complexion of the system.

The dialogue with respect to juvenile court hearings usually focuses on matters of evidence and standards of proof. As to evidence the complaints typically are that traditional rules of admissibility are ignored; competency of witnesses is disregarded; hearsay is permitted; unsworn testimony is accepted.⁷ In reply, it is argued that the proceeding is an informal one; that the judge is competent (as typically he is held to be in a criminal trial without a jury) to disregard improper or weightless testimony; and that strict adherence to formal rules of evidence detracts from the informality sought to be created in the proceeding.⁸ And, of course, when matters of adjudication and disposition are merged in one hearing, it is said that strict rules of evidence may prevent the court from obtaining important facts on which to base a disposition.⁹

Without at this point concluding as to the relative soundness of either such position, I suggest that this dialogue no longer bears any relationship (if, indeed, it ever did) to the realities of what the juvenile court seeks to accomplish. Instead, it is carried on at a strictly theoretical, professional level—not unlike discussions reputed to have occurred in pentagon circles among the several branches of the armed forces as to who should develop what armaments systems, with little thought of how best to defend this nation. Apologists for present juvenile court procedures are, to a man, the personnel of the juvenile courts who leap to defend present practice because it is that to which *they* are accustomed; and equally to a man the critics of such procedures are members of the legal profession trained in traditional courtroom procedures and who view any departure from such tradition as certainly unfamiliar, frequently inequitable, and probably unconstitutional. During a lull in the debate, we sometime ought to ask, "Who here speaks for the child?"

⁷ Compare Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957); Antieau, *Constitutional Rights In Juvenile Courts*, 46 CORNELL L.Q. 387 (1961), with Rosenheim, *The Child and His Day in Court*, 45 CHILD WELFARE 17 (1966).

⁸ ADVISORY COUNCIL OF JUDGES OF THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY, *PROCEDURE AND EVIDENCE IN THE JUVENILE COURT Passim* (1962).

⁹ *Id.*

DISPOSITION

The disposition of the adjudicated delinquent is thought to be—and probably is—the single most important step in the juvenile court process. Here, legal problems for the most part may be laid aside and an open-ended inquiry may be made into what is best for *this* particular child. Unrestricted by minimum and maximum sentences or mandatory jail terms for repeaters, a program tailor-made for the child may be devised. In theory, the possible kinds of disposition seem almost unlimited. A recent report of the Juvenile Delinquency Committee of the American Bar Association's Criminal Law Section listed 106 possible dispositions which a juvenile court judge might make of a child found to be delinquent.¹⁰ This aspect of "individualized justice," with its provision for social investigations and indeterminate sentence, has been imitated in some adult criminal courts.¹¹ In theory the advantages and justice of this approach are unassailable.

Unfortunately, as so often is the case, our practice fails to measure up to theory. Rather than 106 possibilities, the judge's practical choices are usually reduced to three: he may dismiss; he may place the child on probation; or he may commit him to an institution. The present insufficiencies of staff and facilities render none of these alternatives especially exciting. Dismissal means a complete loss of control and sanction beyond, perhaps, a parting admonition from the bench. Probation is little better, when the officer carries a load often of as many as sixty cases or more and hence sees the child only once or twice a month—if at all.¹² And commitment to a training school, pre-occupied with problems of security, means little more than a six month stretch in "Charleytown"¹³—custody for awhile, but not much more.

The problem of disposition is compounded by yet another circumstance. Juvenile court judges are not deaf. They hear (incessantly, it must sometimes seem to them) the cry of "mollycoddling" from professional critics and the public as well. And though the judge may reply in terms of "individualized justice,"

¹⁰ *Disposition after Adjudication in Juvenile Court*, report of the American Bar Association's Criminal Law Section, Committee on Juvenile Delinquency (1964).

¹¹ P. TAPPAN, *CRIME, JUSTICE and CORRECTION*, 555-559 (on presentence investigations), 433-437 (indeterminate sentences) (1960).

¹² See, e.g., Smith, *Probation Supervision: A Plan of Action*, 18 CAL. YOUTH AUTH. Q. (1965), estimating the median juvenile probation caseload in California at about 80 cases per officer.

¹³ The sobriquet given by its youthful residents to the Illinois State Training School for Boys, St. Charles, Illinois.

his practice may tell quite a different story. In practice the judge may very well "tailor" his disposition to fit, not the individual, but his offense. I have no documentation for this assertion beyond the results of two superficial inquiries I made recently, but they are suggestive. The Children's Bureau's *Juvenile Court Statistics* for 1963 indicates that the commitment rate for juveniles who committed offenses against the person (rape, robbery, murder, etc.) averaged 32.5%; for property offenses (burglary, larceny, joyriding, etc.) the average was 21%; and for "minor" offenses such as vandalism, drunk driving, and driving without a license, the average was only 10%.¹⁴ The question of the relation of the act involved to the sanctions applied against the individual is always relevant. Within a theory of "individualized justice," however, this relationship may in practice be accorded more importance than it is entitled to. Such compromises, in the eyes of many critics, serve to disqualify the claim of "treatment" according to the needs of the individual.

Two further compromises on the theory of "individualized justice" deserve mention. The first is the fact that despite statements about the non-penal, non-punitive, therapeutic nature of the juvenile court process, some juvenile courts can and do commit juveniles *directly* to penal institutions.¹⁵ This has, for example, been law and practice in Pennsylvania for many years; and the laws of a number of other states contain similar provisions.¹⁶ Even the child who is committed by the juvenile court to a juvenile institution may find himself eventually in an adult penal institution. In Maine, for example, a child over fifteen years old who is committed to the Boy's Training Center may be transferred summarily to the Men's Reformatory upon a finding (without notice or hearing) by the center's superintendent that he is "incurable."¹⁷

The second compromise should properly be thought of as also a *kind* of disposition. It is the matter of *waiver* of a child from the juvenile to the criminal court for prosecution. Nearly every state provides for such procedure. Typically, it may be used where a felony allegedly has been committed and the juvenile court judge finds that the resources available to the court are not adequate or appropriate to handle the juvenile effectively.

As with dispositions, it appears that many decisions to waive a juvenile to criminal court are based primarily if not exclusively on

¹⁴ United States Department of Health Education and Welfare, *Juvenile Court Statistics*, 79 CHILDREN'S BUREAU STATISTICAL SERIES, 12 (1963) Table 5.

¹⁵ W. Sheridan, *Delinquent Children in Penal Institutions*, CHILDREN'S BUREAU PUB. No. 415, *passim* (1964).

¹⁶ *Id.*

¹⁷ Me. Rev. Stat. Ann. tit. 15, § 2717 (Supp. 1967).

the seriousness of the acts alleged. This is at least understandable, especially where the offense is particularly repulsive and community sentiment rises high. In such circumstances, it requires more than ordinary courage for the judge to refuse to waive. A good example of such courage is the decision of Milwaukee's juvenile court Judge Howard Brown in a case involving the unprovoked homicide of a sixteen year old white boy by three Negro youths. Following a hearing on the question of waiver, Judge Brown decided to retain jurisdiction. His opinion is reported in full in the *Juvenile Court Judges Journal*.¹⁸ Certain of its language is worth repeating here. After summarizing and rejecting various arguments in favor of waiver, Judge Brown lists two reasons why, notwithstanding the seriousness of the offense, the juvenile court should retain its jurisdiction:

For one thing, the state will, of necessity, have to face up to need for additional resources and additional research and knowledge in the field. So long as they can hide their problems by locking up people and forgetting about them, they don't have to handle them or meet the problems.

Secondly, the community, in retaining this matter in this court, will see the need to adopt realistically the philosophy of the juvenile court in seeking the salvage and rehabilitation of nonconforming children. The community will face up to the need to reject vengeance, punishment for its own sake, retribution, and the need for a scapegoat to purge its feelings of dissatisfaction in social conditions that we are frustratingly unable to solve or handle.¹⁹

Such arguments are not only compelling in terms of giving reality to the philosophy of the juvenile court; they are also a rather blunt indictment of the public's lack of understanding, and of Judge Brown's colleagues who react to the pressures created by such misunderstanding.

The *Kent* case, mentioned earlier,²⁰ also involved a waiver situation. Kent, sixteen years old at the time of the events, was picked up by District of Columbia police on charges of rape, robbery and housebreaking. He was questioned by police on the day of his arrest and on the day following. On the second day, his mother engaged a lawyer who arranged a psychiatric examination for Kent and also filed a motion for a hearing on the waiver. The District of Columbia Juvenile Court Code provides for a "full investigation" on the waiver question but states no criteria for the decision itself. The juvenile court judge never ruled on counsel's motion, held no hearing or conference with Kent or his counsel, and entered an order waiving jurisdiction without giving any reasons therefor.

¹⁸ 16 *JUV. CT. JUDGES J.* 23 (1965).

¹⁹ *Id.* at 24.

²⁰ 383 U.S. 541 (1966).

Kent appealed the waiver decision and also sought a writ of habeas corpus, both without success. In the United States district court he was indicted for rape, robbery and housebreaking, convicted, and sentenced to from thirty to ninety years on the latter two counts. However, because he was found not guilty by reason of insanity on the rape charge, he was committed to St. Elizabeth's Hospital for psychiatric treatment. The court of appeals affirmed,²¹ and the Supreme Court granted certiorari. In an opinion written by Mr. Justice Fortas, the Court reversed, 5 to 4.

The majority conceded the latitude accorded the judge in a waiver proceeding, but indicated that it was nevertheless not complete and that the statute required at least sufficient procedural regularity to satisfy the basic requirements of due process and fairness:

The statute does not permit the Juvenile Court to determine in isolation and without the participation or any representation of the child the "critically important" question whether a child will be deprived of the special protections and provisions of the Juvenile Court Act...

... [T]here is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults, with respect to a similar issue, would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not.²²

On its face, the *Kent* decision appeared to be one based on non-constitutional grounds, based instead on statutory interpretation and the supervisory power which the Supreme Court exercises over inferior courts in the federal system. Nowhere in the court's opinion was this explicit, however, and certain of the language above quoted has more breadth than ordinarily would be required in a case involving simply statutory interpretation and judicial rule making. Furthermore, there is in the opinion one explicit hint that Kent's denial of counsel, by denying him an opportunity to function does pose problems of constitutional dimension. In concluding that Kent was entitled to a hearing and his counsel entitled to access to records, the opinion states; "[w]e believe that this result is required by the statute *read in the context of constitutional principles relating to due process and the assistance of counsel.*"²³

This should have been the signal alerting courts and legisla-

²¹ *Kent v. U.S.*, 343 F.2d 247 (D.C. Cir. 1964).

²² *Kent v. U.S.*, 383 U.S. 541, 553 (1966).

²³ *Id.* at 557 (emphasis added).

tures throughout the country to the fact that certain current procedures might before long run aground on constitutional bars. The waiver situation was only one such. Even with the qualification that the procedure be a "critically important" one in order for constitutional questions to arise, other facets of the juvenile court proceeding appeared vulnerable to attack from this quarter. Both adjudication and disposition would seem to be "critically important" stages in the juvenile court proceeding. Such importance would appear to give rise to at least a right to counsel at such points.²⁴

Questions concerning the extent of applicability of constitutional safeguards in juvenile courts were not long in being answered. In 1964, Gerald Gault, a fifteen year old boy, was taken into custody by the Gila County (Arizona) sheriff as a result of a complaint of lewd telephone calls to a woman neighbor of the Gaults. The following day, a hearing was held in juvenile court on a petition filed by the Superintendent of the juvenile detention home. The petition specified no particular acts as the basis for the requested "protection" of the juvenile court; the complainant was not present at the hearing; and Gault's parents were provided with no copy of the petition. Several days later, a second hearing was held, following which the judge ordered Gault committed to the State Industrial School for the period of his minority.

Since no appeal from a juvenile court adjudication is provided under Arizona law, Gault's parents petitioned for a writ of habeas corpus. The writ was denied, and review was sought in the Arizona Supreme Court. Appellant's numerous assignments of error included lack of notice of the charges; denial of the right to counsel and of the right to confront and cross-examine witnesses and accusers; denial of the privilege against self-incrimination; and denial of the rights to a transcript of the proceedings and to appellate review. The Arizona Supreme Court affirmed the denial of the writ.²⁵ Appellants petitioned the United States Supreme Court for the allowance of an appeal. On May 15, 1967, the Supreme Court reversed.²⁶

²⁴ Indeed, a number of state courts interpreted *Kent* as imposing at least the constitutional requirements of due process on juvenile court proceedings. See, e.g., *Dillenberg v. Maxwell*, 68 Wash. 2d 481, 413 P.2d 940 (1966); *Paquette v. Langlois*, 219 A.2d 569 (R.I. 1966), *In re Winburn*, 32 Wisc. 2d 152, 145 N.W.2d 178 (1966); *Francois v. State*, 188 So. 2d 7 (Fla. 1966); *Peyton v. French*, 207 Va. 73, 147 S.E.2d 739 (1966). See also, *Shannon v. Gladden*, 413 P.2d 418 (Ore. 1966); *Jackson v. Johnson*, 364 F.2d 233 (6th Cir. 1966) (both holding that a remand hearing was not a critically important stage).

²⁵ 99 Ariz. 181, 407 P.2d 760 (1965).

²⁶ *In re Gault*, 387 U.S. 1 (1967).

Acting on the premise that the Due Process Clause has a role to play in juvenile court proceedings, the Court, Fortas, J., undertook to determine its precise impact on such proceedings. The Court held that the delinquency petition must set forth the alleged misconduct with particularity, and that sufficient advance notice be given to provide reasonable time to prepare; that where the proceeding may result in commitment to an institution, both the child and his parent must be advised of the child's right to counsel, and to the appointment of counsel if they cannot afford to pay; that the constitutional privilege against self-incrimination applies to juveniles as well as adults; and that confrontation and sworn testimony were prerequisite to a finding of delinquency. It declined to rule on the constitutionality of denying any appellate review and a transcript to juveniles, but suggested that it would be less cumbersome to provide both than to remit one to habeas corpus remedies.

It is now apparent that the Court will very probably (and with few exceptions) apply to juvenile courts and juvenile institutions most of the constitutional rights now afforded adult offenders. The exceptions would appear to be those procedural differences from criminal procedures which either appear to promote what to the Court seem acceptable goals of the juvenile court (e.g., confidentiality) or on which there is no firm mandate in criminal proceedings (e.g., admissibility of hearsay). The deepest fears of the many who argued against converting the juvenile court into a "juvenile criminal court" seem now thus to be all but realized. On the other hand, as Mr. Justice Fortas' detailed opinion massively documents, the *Gault* decision is a major step forward in promoting "equal justice for juveniles." It seems, therefore, that in the not too distant future, most, if not all, of the rights presently accorded criminal defendants will be provided for juveniles as well. The coming contest will be waged on the plains of legal theory with one of the ground rules being the assumption that delinquency is a matter of judicial concern and therefore belongs in court. In this contest the "legalists" have all the big battalions—including the biggest one of all, the United States Supreme Court.

This, I suggest, is unfortunate. It is unfortunate because, as is so often the case when law alone is relied on, it resolves a conflict without solving the problem. It resolves in this instance the conflict between traditional apologists of the informal juvenile court approach and those who argue that a proceeding which takes place in a *court* should be attended by full legal procedures and safeguards. It leaves standing, however, perhaps entirely untouched by any procedural change, the problem which I stated at the commencement of this paper. What can the institutions of law con-

tribute to the control and elimination of delinquent conduct? This is, after all, the end such institutions were designed to promote; and, since *Gault* draws some powerful analogies between the realities of juvenile institutions and those of the criminal process, it seems worth mentioning that despite the increased solicitude for the rights of the criminal accused, recidivism and the crime rate appear generally to remain unaffected.

One answer is, of course, that *Kent* and *Gault* and their progeny are concerned explicitly with *rights*, not *results*. But it is exactly the difficulty often encountered in avoiding confusion between rights and results that leads to this writer's concern.

SOME THOUGHTS ON PROBLEM SOLVING

In my work for the National Council of Juvenile Court Judges I occasionally had the opportunity to talk with adjudged delinquents about their court experience. I have been much impressed with their views of the process which, for the most part, seem to be that it is, in a word, "unfair." A group of boys from the Lookout Mountain Boys Training School in Golden, Colorado, for example, when asked how they thought the juvenile court process might be improved, suggested such changes as: informing the child in advance of the hearing of the witnesses and evidence against him; providing the child with the services of an attorney; giving the child an opportunity to talk in court; and providing for a hearing on revocation of probation or parole. A recently reported Canadian research project indicates similar findings:

We found that children in training schools were very sensitive to judicial procedure. They resented lack of specific charges against them, lack of formal evidence of guilt—in fact, lack of the due process of law which we afford every adult criminal but apparently deem unnecessary with respect to a child offender.²⁷

In substance, this is the rationale of those who argue for the increased "legalization" of juvenile court procedures. Obviously, it has an aspect of validity. The prospects for rehabilitation of one who sees himself as unfairly or unjustly dealt with would seem poor indeed. Greater attention to traditional legal rights thus "represents a sound therapeutic procedure, as it is difficult to treat a child who feels his disposition is unfair . . ."²⁸ It is worth noting, also, that despite official disclaimers, the juvenile apparently perceives the juvenile court as in the nature of a "junior criminal

²⁷ Grygier, *The Concept of the "State of Delinquency"—An Obituary*, 18 J. LEGAL ED. 131, 135 (1965).

²⁸ *Id.* at 136.

court"; he is in court because of something "bad" he has done, and he is in juvenile rather than criminal court simply because of his youth.

Once it is concluded that the child's image of the juvenile court is "improved" by conforming the juvenile court to more traditional adult proceedings, however, the discussion usually ceases. I must confess that in the past I have approached the problem of the juvenile court in this fashion. But, as I suggested above, this resolves a conflict without solving the problem. The development of tighter legal safeguards can, at best, never be more than a *partial* solution to our problem; it may be more detrimental than leaving matters in status quo.

Whichever way we turn with respect to the legal aspects of the juvenile court, whether or not we adhere to the traditional theory of informality, we cannot escape the fact that the process is an official, legal process the end result of which is to label the child a delinquent. Indeed, increased formality, provision for counsel, etc., may serve to reinforce this labelling: If I am so labelled as the result of a procedure which insures against mistaken results, is this not further proof that what the court determines—that I am a delinquent—must be true? Nor is this consequence diminished where the child is found not delinquent simply through lack of adequate proof. Furthermore, it appears that labelling a child as delinquent as the result of no particular offense, but instead because he is "incorrigible" or "unmanageable" may be particularly damaging. The result of the legal process thus becomes not only a determination of whether (and if so, what) rehabilitative steps may be taken; it becomes as well a means of investing the child with the social role of a delinquent.²⁹

Since the child's self-image is determined by the manner in which others, particularly official "others," view him, if this view is of the child as a delinquent, he begins to think of himself as one. This in turn produces further delinquent behavior which commences again the vicious cycle. As I understand it, this is what the behavioral scientists call the "self-fulfilling prophecy"; and this I suggest is the central dilemma of the juvenile court—for by resorting to traditional legal process to control delinquency we seem actually to promote its prevalence. What this in turn implies is that methods ought to be sought for controlling objectionable be-

²⁹ See, Kvaraceus; *Juvenile Delinquency* 1, 29, UNESCO (1964): "Sometimes punishment confirms delinquency. It can have a compelling psychological effect on the child who comes to that he deserves it and, so, must justify it . . ."

havior without promoting in its actor the disarmingly secure belief that it is also inevitable.³⁰

Before making one modest proposal as to how this might be accomplished, there is another behavioral science concept which I think might prove useful in solving the dilemma. This is Leon Festinger's theory of "cognitive dissonance."³¹ In general, this theory states that where one simultaneously holds two incompatible ideas, dissonance occurs, which in turn creates tension. The individual seeks to reduce this tension by reducing the dissonance. This may be done by bringing the ideas closer together—by making them more compatible. As applied to a system of rewards and punishments, this suggests that one who seeks to engage in some discrepant behavior will refrain from doing so as long as the punishment is severe and certain enough. The dissonance created by his desire to engage in the behavior and the obverse of the desire to be punished is reduced by refraining from the activity. As Cohen has described it:

Since threats of punishment, and like rewards, are reasons for doing something one does not want to do, the more strongly they are invoked, the more the person may be willing to support the discrepant stand, but the less dissonance he will experience and the less his true attitude will change. Thus, the less coercion, beyond the minimum necessary to obtain compliance, the greater the dissonance and the greater the consequent attitude change...³²

With respect to delinquency control, our system becomes terribly inefficient. Compliance is achieved at the cost either of a control agent virtually on every street corner or by constant reprocessing of the individual through the courts. Furthermore, the severity of the punishment becomes the rationalization for the individual as to why he refrains from the behavior. It has been suggested that compliance achieved through a mild threat, on the other hand, removes the individual's justification of severe punishment for refraining from the activity and requires him instead to rationalize compliance by devaluing the activity. A recent clinical experiment using children and toys supports the validity of this suggestion.³³

These two concepts, the "self-fulfilling prophecy" and the theory of cognitive dissonance, seem to me to be highly useful tools in fashioning means for control of at least some delinquency problems. They suggest the value of a control mechanism which avoids the

³⁰ *Id.*

³¹ L. FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

³² A. COHEN, *ATTITUDE CHANGE AND SOCIAL INFLUENCE* 88 (1964).

³³ Aronson, *Threat and Obedience: The Low Pressure Approach for Getting Children to Obey*, 3 *TRANSACTION* 25 (1966).

creation or reinforcement of a child's self-image as a delinquent; and of one which employs sanctions sufficient to avoid negating the value of compliance while at the same time remaining mild enough to prevent alternative justification for such compliance.

One such mechanism already exists in one state—New Jersey—and it has recently been proposed that it be extended to other jurisdictions.³⁴ Briefly, this is what New Jersey calls the Juvenile Conference Committee—a group of laymen within a community who are given concurrent jurisdiction over certain minor acts of delinquency which otherwise would require a court appearance or would go unnoticed altogether.³⁵ Their authority is limited to first offenders; and the use of the committee as an alternative to court appearance is entirely voluntary. Sanctions usually are no more than the hearing itself, sometimes a warning, sometimes a warning coupled with suggestions for modifying behavior.

The use of the New Jersey Committees is, unfortunately, somewhat limited: the offense must be the first and one of only "minor" seriousness; the "layman" on the committees are not entirely that: the chairman is an attorney who is also a referee of the juvenile court, and other appointees include a probation officer and a police officer; since it lacks authority even to impose mild sanctions, the committee is reduced to a consultive capacity. The Committees do, of course, have the advantages of relieving the juvenile court of some of its workload and of stimulating and promoting community interest in delinquency control.

Elson and Rosenheim have recently made a similar proposal.³⁶ They also view such committees as providing community interest and involvement in the work of the juvenile court and, of course, in reducing the judge's workload. And they add the benefit of the committee's personnel uncovering additional community resources which might be used in a disposition. Also, they agree that jurisdiction should be voluntary and limited largely to first offenders. As to personnel, the authors would require a lawyer member on each panel; other panelists are described as "well-qualified"; "[s]ome members should have professional backgrounds . . ."³⁷

The potential which such committees hold for the control of delinquency is truly an exciting one. It is submitted, however, that

³⁴ Hubin, *Volunteers Serve the Court*, 15 JUV. CT. JUDGES J. 19 (1964); Elson & Rosenheim, *Justice for the Child at the Grassroots*, 51 A.B.A.J. 341 (1965).

³⁵ Hubin, *Volunteers Serve the Court*, 15 JUV. CT. JUDGES J. 19 (1964).

³⁶ Elson & Rosenheim, *Justice for the Child at the Grassroots*, 51 A.B.A.J. 341 (1965).

³⁷ *Id.* at 343.

as described by Hubin and as proposed by Elson and Rosenheim, their value (and hence their organization and function) is in part at least misconceived. If, for example, the problem is one of number of cases, then the solution would seem to lie in adding to the number of judges and court facilities. That the New Jersey Committees are seen as a cheap method of handling more cases is apparent in the fact that committee members are appointed by a judge of the Juvenile and Domestic Relations Court and that committee composition resembles closely the composition of a court staff. If there is value in locating facilities more proximate to the clients served, this might be accomplished by decentralizing the court itself. Indeed, my understanding is that just such a program is currently under consideration in Chicago.

On the other hand, the *real* value in the grassroots committee, in terms of actual control of delinquency, would seem to be in the complete avoidance of stigmatization of the child and in the promotion of his devaluation of his activity through use of mild sanctions. Thus, all semblance of court connection should be avoided; and every effort should be made to insure the committee's *non*-professional composition. Neighbors, friends, relatives should be used; the child should understand that sanctions, if employed, are those developed by those with whom he is in intimate contact and not by the remote and imperious "law"—against which he and his family stand powerless. Sanctions in some cases should be applied locally, and the offender ought to have an opportunity to argue about them.³⁸

In terms of devaluing conduct, the committee's jurisdiction ought not to be limited to only minor offenses or to first offenses. Statistically, the bulk of juvenile offenses are against property—*i.e.*, theft. As to repeaters, they ought not be viewed as failures of the committee simply because its strategy failed the first time. Indeed, it may require several appearances before an effective technique is developed. Neither should the threat of court remain lurking in the background of a committee's decision, for this is simply the threat of greater punishment if compliance is not immediately forthcoming.

³⁸ See McKay, *The Neighborhood and Child Conduct*, 261 AMERICA ACADEMY OF POL. AND SOCIAL SCIENCE, 32, 41 (1949): "[D]elinquency prevention involves the elimination of conflicting values from the neighborhood and the protection of the child from definition as a delinquent. Successful treatment of delinquents necessitates the reincorporation of the offender into conventional groups. Such a program clearly requires some type of neighborhood action."

The committee system obviously is not an appropriate device for all delinquents nor for all offenses. It does seem to have some intriguing possibilities for "normal" miscreants and for most behavior short of the most serious variety. Joyriding is one example of what might be an appropriate offense for committee consideration.

It is not contended that use of juvenile conference committees will "solve" the delinquency problem. It is doubtful in fact whether it could ever be solved without completely reordering our entire social structure. What it may do, however, is to minimize and contain the problem within acceptable bounds.

What are the prospects for using the committees as proposed? I am not especially sanguine on this score. I share with delinquency specialist William Kvaraceus the belief that the control of delinquency may have become so institutionalized—so bureaucratized—that such proposals would be met with concerted and probably effective resistance. Furthermore, it's a nice question altogether whether a community really wishes to control and decrease delinquency. If support for existing or needed facilities is any indication, a proposal for juvenile conference committees could die aborning. On the other hand, support might be based on the fact that the committee would require little or no funds for its operation. If money is not available, then let's see what we can do without money.

The principle value, however, in any "grassroots" program is not that it's cheap. Its value lies in treating the problem at its source, in its natural setting, using resources familiar to the child and which, therefore will remain in his consciousness over a long term. It is indeed a misfortune that many delinquents live in ghettos and slums; but the fact is, they do. Strategies developed in the atmosphere of the training school seem often inappropriate in the context of conditions to which the child must inevitably return.