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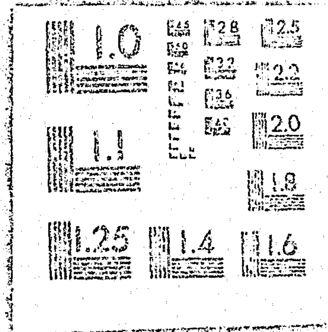

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LAW, MENTAL DISORDERS AND THE JUVENILE PROCESS, VOLUME I

Samuel Dash, et al

Research Foundation of the Bar Association of the District of Columbia

Prepared for:

Social and Rehabilitation Service

December 1971

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Significant Findings

1. The Child Guidance Clinic model of referral for diagnosis of alleged delinquents who may be emotionally disturbed, studied in the District of Columbia Juvenile Court in 1969, does not provide effective screening nor does this process meet the special needs of the juvenile because: (a) there is a wide variability and informality in detection of emotional disturbance by probation officers who initiate most referrals; (b) the bulk of the questions asked of the clinic are diagnostic and general and probation officers indicate that they do not know how to frame questions to obtain more comprehensive answers; (c) the clinic reports usually give routine answers to these routine questions in written form and contain recommendations which often can't be implemented.

2. A complete psychological evaluation of a sample of probationers comparable in age, sex, and type of offense to the Juvenile Court of the District of Columbia caseload of probationers not referred to the Clinic revealed evidence of severe retardation, brain damage, critical identity problems and numerous other indices of emotional disturbance. This evidence, as well as the deficient screening, suggest that at least 50% of the youngsters who come before the juvenile court are emotionally disturbed, and that in 20-25% of that group the disturbance is of severe proportions.

3. Juveniles courts are identifying children who are blameworthy so concepts from the criminal law such as competency to stand trial and the insanity defense should be used to remove juveniles without the required mental or emotional capabilities from the juvenile correctional process

4. Emotionally disturbed juveniles need and are entitled to counsel from the moment they are taken into custody until the juvenile court ceases to have jurisdiction.

5. In accordance with the juvenile justice system's responsibility to develop a comprehensive system to refer out the severely disturbed juvenile and to provide therapeutic rehabilitation for the large numbers of emotionally disturbed juveniles retained within the system, a model is recommended based on the creation of a policy-making, teaching and research clinic available for consultation at all critical points in a juvenile proceeding and a reorganized probation department which screens for emotional disturbance at intake, classifies each juvenile for an individualized disposition and matches the delinquent with a probation officer who indicates a potential for working with this type of delinquent.

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This 5-year (1967-1971) study of the District of Columbia's program for identification and treatment of delinquent juveniles with mental disorders found the child guidance clinic referral model to be ineffective and anachronistic. Volume 1 of the four-volume report examined referrals made to the clinic during the period May 1969-December 1969 and discovered that most referrals were made by probation officers who asked only general questions of the clinic and made poor use of the clinic's answers. Recommendations are made for a new model providing for screening emotional disturbance at intake, classification for individualized dispositions, and matching of each delinquent with his probation officer.

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LAW, MENTAL DISORDERS AND THE JUVENILE PROCESS

FINAL Vol. I Dec. '71

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December 1971

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ABSTRACT

This report examined the effectiveness of the juvenile court's system for detecting and its legal philosophy for handling allegedly delinquent juveniles who may be emotionally disturbed. Studies of the May-December 1969 referrals to the Child Guidance Clinic of the District of Columbia Juvenile Court, an analysis of a sample of children not referred, and interviews with D.C. and other probation officers reveal: 1) there is no clear understanding of emotional disturbance or consistant program for its detection within the court; 2) most questions asked of the clinic are diagnostic and general and produce stereotyped and unimplementable reports; 3) the referral process does not detect much severe emotional disorder and organic pathology in the juvenile court population.

A reexamination of the parens patriae philosophy of the juvenile court in the light of constitutional requirements indicates that incompetency to stand trial and the infancy and insanity defenses can be used to avoid delinquency adjudication for juveniles of limited mental or emotional capacity. A survey of attorneys for such children reveals their acceptance of the utilization of incompetency and insanity but few attorneys see their role in early referral out of the system of emotionally disturbed juveniles or development and follow-up of treatment plans for juveniles within the system. When treatment is not forthcoming, the constitution, statutes and case law entitle the juvenile to a right to treatment.

A model, implementing the juvenile court's responsibility to refer out and to rehabilitate the emotionally disturbed, is recommended providing for screening for emotional disturbance at intake, classification for individualized dispositions and matching of each delinquent with his probation officer. The clinic would emerge as a policy-making, supervising, teaching, research and evaluation unit available for consultation in juvenile proceedings.

TABLE OF CONTENTS

Chapter		Page
	Preface	i
I.	Introduction	1
II.	The Child Guidance Clinic: An Assessment of the Diagnostic Process	7
III.	The Probation Division: The Detection of Emotional Disturbance	49
IV.	A Psychological Portrait: An Independent Study of Juvenile Probationers not previously tested for Emotional Disturbance	81
V.	A Model: A System for Screening and Rehabilitation	99
VI.	Mental Capacity of the Child Before the Juvenile Court	117
VII.	The Role of the Attorney for the Emotionally Disturbed Delinquent	194
VIII.	Psychiatric Examinations: The Legal Considerations	258
IX.	The Juvenile Right To Treatment	303
X.	The Original Parens Patriae Concept and the Emotionally Disturbed Juvenile	343
XI.	The History of Psychiatric Services for Juvenile Courts	366
XII.	Summary. Conclusions and Recommendations	405

TABLE OF CONTENTS

		Page
Appendix A --	1. Referral to Guidance Clinic	438
	2. Data Collection Sheet	439
	3. Questionnaire for Probation Officers	440
	4. Response Categories for Questionnaire for Probation Officers	447
Appendix B --	1. Questionnaire for Attorneys	458
	2. Summary Tables for Questionnaire for Attorneys	470
Appendix C --	Project Reports and Publications	501
Appendix D --	Bibliography	502

SUPPLEMENT

Transcript of Conference on THE RIGHT TO TREATMENT and THE RIGHT TREATMENT — Following Page 512

PREFACE

This project on the detection and processing by juvenile courts, particularly that of the District of Columbia, of allegedly delinquent juveniles who are also emotionally disturbed was supported by a five-year programmatic grant from the Division of Child Welfare Research and Demonstrations Grants Program of the Department of Health, Education, and Welfare.

This final report is the work of the last two year phase of the grant, conducted under the auspices of the Research Foundation of the Bar Association of the District of Columbia, with the cooperation and support of the Institute of Criminal Law and Procedure of Georgetown University Law Center. The project staff for this final report was:

Project Director: Professor Samuel Dash*
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Principal Clinical Investigator: Dr. Walter Shorr
Research Attorney: Freda Lippert
Research Assistant: Jeffrey A. Keiter
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The Supplement to the report contains a transcript of the conference on "The Right to Treatment and the Right Treatment" held at Georgetown University, Washington, D.C., April 30, 1971. This conference was also funded under this grant and provided an opportunity to present papers on related topics and to discuss the conclusions of this project with selected professionals involved in juvenile court work.

During the first three years of the grant the project was under the supervision of the Committee on Laws Pertaining to Mental Disorders of the Judicial Conference of the District of Columbia Circuit. The work of the project during this period formed the basis of reports and recommendations of the Committee to the Judicial Conference at its annual meetings. These reports and recommendations, which were approved by the Judicial Conference, have previously been submitted to the Department of Health, Education and Welfare and are listed in Appendix C. The staff of the Committee on Laws Pertaining to Mental Disorders which worked on the project during this initial period included:

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We are also indebted for the initial leadership given to the project by the Judicial Conference Committee on Laws Pertaining to Mental Disorders especially the Chairman, Francis M. Shea and the Chairman of the Subcommittee on the children's project, Judge Charles Fahy. In addition

we are grateful to the staff and Board of Trustees of the Research Foundation of the District of Columbia Bar Association for their encouragement and assistance in administering the fiscal requirements of the grant.

We want to extend our thanks for all the help and assistance we received from the Juvenile Court of the District of Columbia (now the Juvenile Branch of the Family Division of the Superior Court of the District of Columbia). We want to express our appreciation to the entire staff of the Child Guidance Clinic and the Social Services Division, and also to the many others in this court and other juvenile courts who made this report possible.

December 31, 1971

Samuel Dash

Alice Brandeis Popkin

Walter Shorr

Freda Jane Lippert

I. INTRODUCTION

The processing by juvenile courts, particularly that of the District of Columbia, of allegedly delinquent juveniles who are also emotionally disturbed has been the focus of a series of different studies by this research project.

It is not surprising that the generally recognized failure of the juvenile system to rehabilitate delinquent youth is true also of these youth who are in addition emotionally disturbed. The increasing incidence of mental disorders manifested by youth in general as well as the heightened level of juvenile crime have overtaxed the limited resources of the juvenile court.

The failure of the juvenile court's treatment of emotionally disturbed delinquents reflects two basic difficulties: The first is the juvenile court's legal view of emotional disorder, and the second is the system utilized by the court for screening the emotionally disturbed.

The theory behind the juvenile court's handling of the mental disorder of a child is that his mental condition is just one more factor to be considered in working out the individualized treatment of a delinquent at disposition. The concept of the juvenile court was that a child who broke the law should be dealt with not as a criminal but under the *parens patriae* power of the state, as a child who needed care, education, and protection. Under this rehabilitative theory, there was no need for a special reference to the mentally ill child.

The theory of the juvenile court that emotional disturbance is handled at disposition has hampered the recognition of the responsibility of the court to refer emotionally disturbed juveniles for treatment out of the system at the earliest possible moment or to provide treatment within the system. In reality, an individualized treatment plan for an emotionally disturbed juvenile is rarely made at disposition or followed-up to completion.

Juvenile courts have assumed that they possess an effective method of detecting mental illness. By and large, juvenile courts use the child guidance model of referral for diagnosis and have established liaisons with mental health specialists. The time consuming and expensive process of referral is not an effective screening process. It does not detect mentally ill juveniles nor does it provide recommendations which can be utilized.

This project conducted a series of studies initiated in 1969 which explore the referral for recommendations of the Child Guidance Clinic of the then District of Columbia Juvenile Court. The first three studies are dealt with in Chapter II which concerns the Child Guidance Clinic. The first study dealt with the referral source. Questions about emotional disturbance are most likely to be raised by the social work staff and directed to the Child Guidance Clinic, in the form of a clinical referral. All of the referrals received by the Child Guidance Clinic of the juvenile court for the latter half of 1969 were reviewed. This analysis allowed us to discern what percentage of the total social service staff

utilized the Clinic services, as well as the kinds of probationer behavior which prompted their concern.

The second study relating to Child Guidance dealt with the questions raised by the social service staff at the time of referral to the Child Guidance Clinic. The focus of this study was to determine the kinds of psychological consultation probation officers sought in their work with clients; and what were they trying to find out.

In the third phase of the work on the Child Guidance Clinic, all of the psychological reports and the accompanying test data for the 253 youngsters referred in the preceding probation study were reviewed in detail. Thus, the study attempted to make a decision about the responsiveness of the psychological report. Furthermore we sought to determine whether this team of mental health specialists attempted to assist the probation officer articulate his questions more clearly.

A fourth study reported on in Chapter III on the Probation Division examined the probation officers, by personal interviews, in three major cities in depth. The focus of the interview was to assess (1) their level of experience, (2) the degree to which they seemed able to determine clues or signs of mental illness in their probationers, and (3) what additional skills or training the probation officers felt would enhance their role.

The fifth study, reported on in Chapter IV as A Psychological Portrait examined a group of probationers whose age, sex, and offense were characteristic of the juvenile court population, but who were not referred for

evaluation to the Child Guidance Clinic. Our purpose was to determine if their psychological protocols reflected evidence of emotional disturbance which was neglected during the probation process. The results of all these studies suggest that unless a delinquent manifests severely disturbed pathology, he will find himself part of the court's caseload.

Chapter V presents a model for screening and rehabilitation which will help the juvenile court to meet its responsibility to detect and to treat the emotionally disturbed delinquent.

The project has also examined legal problems raised by the emotionally disturbed delinquent in juvenile court. In the first instance, concepts which limit the application of the criminal law to mentally ill children and could have a place in limiting and defining the jurisdiction of the juvenile court were considered. Chapter VI explains the possible uses of such criminal law ideas as incompetency to stand trial, the insanity defense, intent and the infancy defense in creating a fair juvenile justice system.

The attorney's role for the emotionally disturbed child from arrest to disposition is examined in Chapter VII. A survey for attorneys conducted by this project, adds relevant information to this chapter on how lawyers deal with their emotionally disturbed juvenile clients.

The legal considerations in psychiatric examinations are analysed in Chapter VIII.

The right to treatment as applied to juveniles is discussed in Chapter IX.

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The right to treatment as applied to juveniles is discussed in Chapter IX.

To provide a proper perspective on how the present juvenile court system deals with mentally ill children, a brief history of how the original juvenile court structure viewed such children is included as Chapter X.

The creation of psychiatrics services for juvenile courts and some of their history is outlined in Chapter XI.

Finally some conclusions and recommendations growing out of all the various phases of our work are drawn together in the Summary, Conclusions and Recommendations contained in Chapter XII.

For the purpose of this report we have defined the term "emotional disturbance" in its broadest sense to include all forms of mental illness or disability, ranging from overt psychoses to transient situtional disturbances. The definitions of emotional disorders for children and adolescents are less precise as a result of the ongoing personality development and emotional growth which occur during these years. These are emotional crises associated with various stages of a youth's development, but the severity of these crises allows the clinician to make qualitative judgments. Within the broad framework of the term, emotional disturbance, we are really discussing the particular symptoms which characterize a child's adjustment to his environment. Some of the judgments resulting in a label of emotional disturbance have to do with the intensity of these symptoms, and include assessment of the child's affect as well as his behavior. Do the symptoms intrude on a child's functioning? Are they productive or destructive? Do the symptoms interfere with the child's

ability to relate to other people? Is he excessively withdrawn, excessively aggressive, etc? This report deals with the system for processing and the philosophy for handling the alleged delinquents who may be emotionally disturbed within this definition.

II. THE CHILD GUIDANCE CLINIC:

An Assessment of the Diagnostic Process

The current research sought to explore the functioning of a Juvenile Court Child Guidance Clinic in considerable detail. The basic concern was to assess the effectiveness with which this clinic serves the Court and its juvenile population. Several studies, each an outgrowth of the major issue, will be reported upon in the ensuing pages. The diagnostic model upon which clinics of this type have traditionally operated will be reviewed in its various functions, and the juveniles who were served by the Clinic will be described. The content of the psychological evaluation performed at the Clinic will be reviewed, and some judgments regarding the degree to which these evaluations respond to referral questions will be attempted. The Clinic's actual and potential role as a mental health consultant will also be discussed.

A. Development

The Child Guidance Clinic of the Juvenile Court under review was established in 1942. Its establishment reflected a concern for understanding the motivation for delinquent behavior, and the implicit wish to rehabilitate the young offender. Precedents for the District of Columbia Juvenile Court clinic were available in Boston and Chicago. The major focus of these early court clinics was diagnosis. The data obtained as a result of a diagnostic evaluation was perceived as an

essential factor in treatment.[1/] However, treatment *per se* was to be undertaken by other social agencies.

The District of Columbia Child Guidance Clinic has grown with the court. It began with 1 psychologist. The current staff consists of four psychologists and a clinical aid who serves as receptionist and secretary. The Chief Psychologist and one of his staff possess a Ph.D. The third staff member is currently engaged in a doctoral program. The fourth staff member holds a Master's degree, with additional graduate work and clinical training.

The Clinic is housed within the judicial complex, in proximity to the courtroom and probation staff. The offices are private, and readily lend themselves to the confidential setting required for an evaluation.

While there have been slight modifications in role as the directorship of the Clinic and the Court's judges have varied, the psychological or diagnostic evaluation has remained the major function of the clinic. The bulk of the Clinic's time and resources are reserved for evaluations, and this is the function attributed to the Clinic by other court personnel.

1/ Throughout this study, the word "treatment" is used to refer to efforts at intervention intended to improve and cure problem behavior.

B. The Referral Process

The Clinic receives referrals via the telephone or by direct probation officer contact. All referrals must be accompanied by the referral form which is included in Appendix A. The referral form requests demographic data, such as birthdate, sex, school experience, offenses, previous testing, etc. There is a large blank area on the referral form which provides space for detailed referral questions, and an inquiry as to whether a conference is desired in addition to a written report.

In most cases, a social history is submitted as part of the referral. The completeness of the social history varies considerably with the circumstances at intake, the length of time the case has been active, and the nature of the youth's offense. There appears to be a greater effort to obtain more complete social data in waiver cases, homicides, and other serious charges. Additional factors appear related to the skill and orientation of the social service officer preparing the report, as well as the frequency with which a case has been transferred from one staff member to another.

Within the current framework of the Court, referrals are maybe made by the social work staff at intake or during the course of probation. A referral may be prompted by the youth's behavior during an interview, the nature of his crime, or factors which emerge from the social history. Referrals are also generated by the judge, as he hears a case, or by the

defense attorney. As probation continues, critical questions such as terminating probation, poor responsiveness, new offenses, or the need for additional treatment result in the majority of requests for a psychological evaluation.

In 1969, 510 cases were evaluated: in 1970, 630 cases were evaluated. Nevertheless, there is a waiting list. At the time the research was initiated, the clinical aide who schedules appointments reported a delay of three weeks. Currently she reports a delay of one month. As a result of administrative changes during the past year (1970-1971) which made the Juvenile Court part of the Family Division of the Superior Court of the District of Columbia, there had been an increase in the number of referrals to the Clinic. The Clinic does attempt to give emergency referrals priority; and, thus, the waiting list has extended beyond a month at various points during the course of this research.

C. The Psychological Evaluation

The circumstances preceding a psychological varies with the individual youth. If he is residing at home or in a community based facility, he would arrive for his appointment much as he would to any similar outpatient clinic. Depending on his age, anxiety, and family circumstances, he may be accompanied by an adult guardian. At times his probation officer may introduce him to the Clinic staff, but this is generally not so. If a youth is at a detention facility, supervision is

more stringent He is accompanied by a guard, a counselor, or both He may be handcuffed if it is felt that he will attempt elopement or escape Obviously these special situational variables clearly affect conditions of rapport, motivation, anxiety, and the general validity of the psychological evaluation.

The referrals are assigned to the Child Guidance Clinic staff on a rotating basis The evaluation requires approximately two to four hours and may be completed in a single session or extend over several sessions depending on problems of individual ability, rapport, distractability and fatigue, etc

D. The Test Battery

In discussions with the four Clinic psychologists during the past year, and as a result of an intensive review of 253 psychological evaluations completed during a six month study period, the individual psychological tests most frequently utilized in an evaluation are as follows: the Wechsler Intelligence Scale for Children, the Rorschach, the Bender-Gestalt, and projective drawings. Various other tests such as the Thematic Apperception Test (T.A.T.), some scales of the Minnesota Multiphase Personality Inventory (M.M.P.I.), a sentence completion test, and other visual-motor performance tests are occasionally included in the evaluation

Suffice it to state briefly that the Wechsler intelligence scales are used to obtain a measure of general intelligence or I.Q. The

Rorschach test is a complex projective test whose interpretations deal with personality function and conflict. The Bender-Gestalt is a perceptual-motor test and is utilized to detect signs of brain damage and perceptual-motor dysfunctions. The projective drawings analyze the subjects' drawings of people and/or a house and tree, and may be used to obtain information about body-image, role, and other dimensions of emotional expression. The T.A.T. is rooted in personality theory and also attempts to gain insight about personality functioning and inter-personal expression. The M.M.P.I. is a personality inventory and attempts to highlight personality traits and patterns in order to make behavioral predictions. In the various sentence completion tests the examiner seeks to interpret statements or sentences which the subject completes, in order to gain insight into emotional feelings.

E. Test Interpretation

It is important to note, even in this brief description of psychological tests, that the degree to which one may generalize or interpret the results of the test varies. The variation may reflect the underlying validity of the test itself, the accuracy of administration, and the adherence to the standardized procedures demanded by a particular test, whether or not a complete test is administered, and a host of situational and subject variables alluded to earlier in this discussion.

F. Description of the Client

This aspect of the research is aimed at illuminating the behavior

of those youths who received a diagnostic evaluation. The data includes demographic material such as age and sex, offense, school involvement, etc. Some of this information was included along with the referral questions. Other material has been obtained from a review of the social history available on each client.

All of the cases referred for psychological evaluation to the Child Guidance Clinic during the period from May through December of 1969 were studied. The case material is on file at the Clinic and contains a referral sheet, a social history, the psychological test data, and written psychological report.

During the period studied, a total of 5,659 new juvenile delinquency cases were referred to the juvenile court. 5,074 were male and 585 were female. A breakdown of these figures according to the categories comprising their specific offenses, as well as their separation according to sex and age is presented in the table below.

TABLE I. New Juvenile Delinquency Case Referrals to D. C. Juvenile Court for Study Period*

	BOYS (5,074)		GIRLS (585)		TOTAL
Offense Category	Under 16	16 & Over	Under 16	16 & Over	
I. Acts Against Persons	826	696	54	32	1,608
II. Acts Against Property	1,850	1,053	102	88	3,093
III. Acts Against Public Order	137	269	18	49	473
IV. Truancy	91	3	61	1	156
V. Beyond Control	90	33	134	37	294
VI. Others	11	15	6	3	35
TOTAL	3,005	2,069	375	210	5,659

*The study occurred during the months of May thru December 1969. The figures cited above were obtained from the Quarterly Statistical Report published by the Juvenile Court of the District of Columbia for this period of time.

The same period of time depicted in the table above is utilized for the statistics throughout this section of the report. The tables in this section retain the offense category, the sex and age group. Additional percentage breakdowns are included when appropriate for clarification or comparison.

The figures in Table I represent the pattern of offenses committed by the Juvenile Court population during the fiscal periods under review. The majority of offenses constitute crimes against property, Category II, and are most frequently committed by males below the age of 16. Offenses within the same category (II) committed by males below the age of 16 rank second for males as well as for the total population of cases. The largest number of offenses committed by females falls within Category V, Beyond Parental Control, and are committed by girls below age 16. The second most frequent female offense are crimes against property, by girls below age 16. The same offense committed by the older group of girls follows closely behind.

Inasmuch as the bulk of the referrals to the Child Guidance Clinic are youths already placed on probation, youths placed on probation for the above period of time are represented in Table II.

Table II depicts the number of youths who were placed on probation during the same fiscal period. The two tables are placed in juxtaposition merely for comparison of movement within the different branches of the court system. In most cases those youths represented in Table II do not reflect new referrals. These are youths who generally committed their offenses several months prior to being placed on probation. This phenomenon reflects a case backlog of approximately 5,000 youths and was one of the several criticisms generating support for change in the Juvenile Court in the District of Columbia.

Table III summarizes new cases referred to the Child Guidance Clinic over the same period of months. Once again the reader is cautioned that the youths represented in the three tables are not the same youths. However, the material may be compared in order to show the type of youth who receives probation as a disposition, and, ultiately, the type of youth referred to the Child Guidance Clinic.

TABLE III. New Cases Referred to Child Guidance Clinic for Study Period*

Offense Category	BOYS (184) Under 16	BOYS (184) 16 & Over	GIRLS (59) Under 16	GIRLS (59) 16 & Over	TOTAL
I. Acts Against Persons	43	30	3	0	76
II. Acts Against Property	66	24	10	3	103
III. Acts Against Public Order	1	1	2	0	4
IV. Truancy	4	0	6	2	12
V. Beyond Control	12	2	22	4	40
VI. Others	1	0	6	1	8
TOTAL	127	57	49	10	243

*The offenses recorded in Table III list only the most severe offenses with which a youth was charged. Eighty-five youths were charged with more than one offense. For the remaining ten youths who were studied the records did not list the offense or this offense was ambiguous and does not appear on the table.

This data was obtained from the referral records of the Child Guidance Clinic of the Juvenile Court for the months of May thru December 1969.

The information in Table III was obtained from the case folder at the Child Guidance Clinic. This folder includes a written psychological report, the original test data, a copy of the social history and the referral sheet. Factual data was confirmed by comparison with statistics obtained from the Research and Development Division of the Juvenile Court.

1. Age

TABLE IV. Age at Time of Referral to Child Guidance Clinic.

AGE	FREQUENCY
Under 9	1
9	5
10	4
11	13
12	22
13	39
14	44
15	54
16	36
17	25
18	5
TOTAL	248*

*In five cases, the records were incomplete or confusing as to date of birth.

A review of Table IV indicates that the modal age of referral peaks at 15 and reflects an increasing trend which begins at age 12, an age often associated with the onset of adolescence. There is a decreasing trend after age 15. The small number of 18 year olds may reflect recidivists on whom psychological data is already available, and thus, a new referral is not requested. It may reflect the fact that older youths' offenses were more likely to result in their being committed to an institution without an evaluation by the Child Guidance Clinic. At the time of this investigation, the Juvenile Court waived jurisdiction of very few older youths to the adult court. This decrease in clinic referral with age is unfortunate. Although Table I does reveal that the larger number of offenses are committed by youths of both sexes below age 16, continued antisocial behavior through age 18 may indeed be related to mental health problems, and thus the older delinquent should be evaluated in great detail, rather than neglected.

2. Sex

TABLE V. Sex of Youths Referred to Child Guidance Clinic.

SEX	FREQUENCY
Male	189
Female	64
TOTAL	253

Table I indicates that male constituted approximately 90 percent and females approximately 10 percent of the new referrals. Of the new cases

received by probation, 79 percent were male and 21 percent female. The new cases referred to the Child Guidance Clinic during the same period indicate 75 percent male and 25 percent female. The figures suggest that once probation is selected as a disposition, the male to female proportions reflected in the referrals to the Child Guidance Clinic do not significantly differ from those represented in overall probation sample.

3. Accomplices

In the attempt to become more familiar with the caseload referred to the Child Guidance Clinic the aspect of group involvement was explored. No information was available for 41 percent of the sample after a search of the social records. Of the remaining group, 32 percent commited the crime for which they were charged without accomplices. Fourteen percent committed the offense with one other person and 17 percent were involved in a group offense. This is potentially rich data in understanding some of the contributing aspects to delinquency. Some of the offenses committed in pairs of two or in groups were committed by siblings or cousins. In other instances, there were indications that "gang pressure" prompted the act.

4. Offense Categories

A total of 531 crimes were committed by the 253 youths in the Child Guidance Clinic sample. 448 represent crimes by males, 83 represents crimes by females. Most of the referred youths committed only a single offense. However, a small percentage of youths were charged with

several crimes in a short period of time extending over several consecutive days or weeks. Another group of referred youths committed their offense at one specific date, but the complexity of the offense resulted in several charges, e.g., burglary and resisting arrest.

5. Intelligence

The I.Q. was obtained from the psychological report. The tests routinely used by the Clinic are the WISC and the WAIS. The results do not generally reflect a full administration of the intelligence scales. In many instances either the verbal section or performance section, or selected subtests therein, were administered. I.Q. scores or estimates were unavailable for 41 of the clients, which comprises 16 percent of the sample. This is a high figure in light of the clinic's emphasis on diagnosis. It may reflect resistance on the part of the client or other situational factors. Of the remaining 212 subjects, the breakdown of scores is depicted below in Table VI.

TABLE VI. I.Q. Scores of Youths Referred to Child Guidance Clinic.

I.Q.	FREQUENCY	PERCENTAGE
50 or below	7	.03
60 - 69	26	.12
70 - 79	65	.31
80 - 89	67	.32
90 - 99	26	.12
100 - 109	16	08
110 - 119	3	.01
120 or above	2	.01
TOTAL	212	

Average intelligence falls within the I.Q. range between 90 to 110. On the basis of the normal distribution of I.Q.'s in the total population, this would include 50 percent of the population. For the Child Guidance sample it includes only 20 percent. Much has been written about the inequity and subsequent penalties which urban minority groups encounter in standard intelligence testing. Therefore, these results are not surprising, and emphasize once again the inadequate assessment of the actual skills which this group possesses. If one were to expand the Normal or Average I.Q. range to encompass I.Q. scores from 80 to 110, and includes youngsters considered Dull Normal on standard intelligence tests, the data more closely approximates the normal distribution of intelligence for the total population. In planning rehabilitation for the type of youth in this study, it is essential to draw a distinction between ability and achievement. Unfortunately, most candidates for rehabilitation programs or special vocational or educational training are compared according to their standard achievements and the possibility of ten point margin of error is frequently not taken into consideration.

Only 2.2 percent of the normal population is considered mentally defective and possess an I.Q. below 69. In those youngsters referred to the Child Guidance Clinic, 15 percent of those who were tested, test as mentally defective. Less than 1 percent of the court sample had superior intelligence and tested above 120, as compared to 9 percent of

the normal population.

G. Categories of Referral Questions Submitted by Probation Officers

In the foregoing section a brief description of the youths referred to the Child Guidance Clinic was provided. It has been stated that some of the factors resulting in a referral lie with the youth and his offense, other referral sources may emerge at any phase of the court process. During the course of our research in 1969-1970, the vast majority of referrals occurred during probation. The probation staff were the agents of the court who were likely to have the most frequent contact with a youth, and were generally the staff who would attempt to implement treatment recommendations.

In a pilot study prior to the major investigation, brief personal interviews and spot checks of the referrals submitted to the clinic suggested that the referral mechanism utilized by probation was neither systematic nor comprehensive. Since an adequate referral appeared so basic to obtaining treatment, or any other special clinical service for that matter, the investigation sought documentation for these impressions.

This phase of the research attempted to discern what percentage of the total Social Service staff made use of the Child Guidance Clinic and the kinds of mental health questions which they raised.

H. Staff Description

The Social Services Division of the Juvenile Court comprises two major subdivisions: Intake and Probation. At the time of this study,

the Probation section consists of 33 staff and 6 supervisors. Within this latter subsection there are two levels of staff classification. The professional social worker generally holds a Masters degree from an accredited graduate program. The pre-professional generally holds a Bachelor's degree and may have additional experience as a counselor, nurse, or other related service.

I. Frequency of Referrals

Within the probation section, 24 officers, or 73 per cent of the line staff made referrals to the clinic. Nine officers, or 27 per cent did not. Of the 24 referring staff, 12, or 50 percent made only 4 or less referrals during the six-month study period. In fact, 7 of these 12 officers actually made 2 or less referrals. Five probation officers, or 21 percent, made between 5 and 10 referrals. Six probation officers, or 25 per cent, made between 11 and 20 referrals. Only a single staff member made more than 20 referrals (less than 1 percent). The results are summarized in Table VII.

TABLE VII. Frequency of Referrals by Probation Officers*

Range	Number of Probation Officers
0	9
1-4	12
5-10	5
11-20	6
Over 20	1
TOTAL:	33

*This table includes line staff only; supervisiors are not included. In only one instance did a supervisor make any referrals.

J. Categories of Referral Questions

The referral questions raised by the probation division were recorded exactly as they appear on the Juvenile Court Referral Form (Appendix A) submitted to the Child Guidance Clinic. Several attempts were made to group the statements according to their similarity of content or according to some underlying concept. Initially, a large number of categories or groups of responses were formulated. After each trial grouping, individual data sheets were selected at random to test the suitability of the categories. This pilot effort suggested that the early categories were overly specific and promised a cumbersome data analysis based on very small samples. Specific items were regrouped and new categories were devised. Seven categories were finally agreed on.

The final categories reflect somewhat of an overclarification of the probation officer's questions. Simple statements were easy enough to categorize. However, there were numerous instances where questions were not articulated clearly. At times this was the result of the very specificity of the question. For example, one probation officer asked, "Why is C attracted to a married man and not a boy her own age?" In another instance the referral sheet states that ". . . M has delivered the illegitimate child of her stepfather's brother, and reports illicit relationship with stepfather. Is the home a bad environment?" From the preceding example, it seems clear that the social worker knows that the home is not a suitable environment for the probationer, and,

in fact, she has documented the reasons in her very referral. While her question has been coded to fit the categories developed for the study, this is an instance which seemingly requires a conference in order to clarify the question. A discussion of this recommendation (conferences) is available in a later section of this report, but the example is inserted here lest the reader be led to believe that the questions were as clear as the following categories suggest. Seven categories, each containing subsections which were utilized as criterion for inclusion within the particular category were developed.

1. Diagnostic
    1. General evaluation
    2. Need for extensive psychiatric evaluation
    3. I.Q.
    4. Personality
    5. Organicity
    6. Addiction
    7. Sexual
    8. Academic potential
    9. Other special fears or problems

This category deals with diagnostic statements. Examples of probation officers' questions within this category are: What is the child's I.Q.? Describe his personality. Is this boy drug addicted? Are there underlying physical problems which cause his behavior?

2. Placement
    1. Return to home (generally from institution)
    2. Removal from home
    3. Department of Welfare placement (Laurel, Junior Village)
    4. Halfway house or shelter placement
    5. Foster care placement
    6. Special educational placement
    7. Vocational or rehabilitation program placement
    8. More structured environment (not specifically defined)

These questions deal with placement changes for the probationer. If

a youth has been accumulating new offenses, his officer may question the advisability of commitment. In Beyond Control complaints the advisability of removal from the home may be frequently raised. If a probationer has done well at an institution, the probation officer may ask for help in deciding his readiness for return to the community.

3. Behavioral Characteristics or Predictions
   1. Self concept
   2. Level of Maturity
   3. Suicidal
   4. Danger to others
   5. Peer relationships

Category three, Behavioral Characteristics or Predictions, generally reflects an attempt on behalf of the probation officer to assess the risks involved with particular youths. The bulk of these questions are directed towards learning how dangerous the youth is to himself or the community. At times they reflect the probation officer's sensitivity to the additional stress which he notes in his client. In attempting to diminish the risks he asks for help in making predictions about success.

4. Home and Family
   1. Feelings toward rent or parent surrogate
   2. Feelings toward siblings
   3. Feelings toward home (not specifically defined)
   4. Special problems in home

Category Four, Home and Family, includes questions which are generated as the probation officer observes the child interact with his family. They may also reflect a failure of a youth's parents to participate in probation, or occur when the probation officer learns of changes in the home environment, such as remarriage, death, divorce, which seemingly

affect his client.

5. Probation
   1. Perception of court and/or probation
   2. Appropriateness of probation
   3. Specific suggestions or techniques for probation counseling
   4. Questions of change in probation officer (sex or experience)
   5. Terminate or continue probation

Category Five, Probation, specifically deals with questions directed at modifying the probation procedure. They generally include the term "probation" in the referral question. They may or may not be part of a broader question touched upon in other categories. These questions frequently occur at such times when probation is either going well or poorly.

6. Waiver Study
   Is the referral primarily the result of the waiver process?

Category Six, Waiver Study, is highly specific. It is part of a formal procedure prior to waiving juveniles to the adult court. When this question occurs, the youth in question generally has an extensive record of offenses, or is involved in an offense of serious magnitude, or falls between the ages of 16 to 18. More often than not, all of these variables are present.

7. Treatment
   1. Psychotherapy
   2. Hospitalization
   3. Residential therapeutic school
   4. Need for additional or supplementary treatment
   5. Broad or general treatment planning and/or recommendations

When a probation officer raises the question of treatment, it is

often his first insight into the severity of a youth's emotional disturbance. In some way these youths appear different in their ability to benefit from routine probation experiences. Questions in this category may emerge as a result of particular psychiatric symptoms, or the level of anxiety which the child generates in the probation officer.

K. Coding of Referral Questions into Categories

1. Methodology

After developing the seven categories the investigator and his assistant attempted to code the referral questions submitted for each of the 253 youths in the Child Guidance Clinic sample. All of the data had been previously transferred to the Data Sheet Referral Forms, depicted in Appendix A.

Step 1. Each referral question was read aloud and partitioned into meaningful units according to content. Some questions were concrete and specific, others were multi-dimensional.

Step 2. The Referral Categories were consulted and an attempt was made to match the language of the referral units (questions) with the language of the various subheadings (criterion) within the seven categories. Key words, such as probation, psychotherapy, treatment, family, etc., were sought.

Step 3. If these key words were absent, or did not reflect the content of the question, detailed discussion occurred until the meaning of the question was agreed upon, and the categorization seemed appropriate to both raters.

Step 4. After completing the original coding process, approximately fifty referral questions were selected on a random basis and re-coded at a later date. While a correlation coefficient was not obtained, it was evident that there was virtually no revision in the original classification.

A cumulative summary of the results of this procedure appears below in Table VIII.

TABLE VIII. Categories of Probation Officers' Referral Questions*

Categories	Frequency of Occurrence	Approximate Percentages
I. Diagnostic	378	56
II. Placement	36	5
III. Behavioral	42	6
IV. Home and Family	61	9
V. Probation	40	6
VI. Waiver	2	less than 1
VII. Treatment	115	18
TOTAL:	674	

*The reader should note that while there were 253 youths studied, a probation officer may raise several questions in a single referral. The complexity of a particular question may result in rating several subdivisions within a single category, and thus the total for any one category may exceed 253.

2. Discussion of Results

The bulk of the probation officers' questions are diagnostic, comprising more than half (56 percent) of all of the referral units recorded. These results are consistent with the traditional functioning of the Child Guidance Clinic. A more detailed analysis of Category I indicates that most of the requests (29 percent) are for a general evaluation. Frequently the original referral form merely stated "general evaluation", without further refinement.

With similar frequency (26 percent), the probation officers ask whether or not their probationer appears to need further psychiatric evaluation. He does not amplify his concern, or list additional clues to guide the psychologist. In subsequent interviews with probation officers, it became apparent that the impetus for this type of request was often linked to a lack of progress in probation.

One specific question within the Diagnostic Category which does occur with regularity (20 percent) asks for the I.Q. Thereafter, the percentages for the remaining subheadings decline sharply. One might anticipate that the subheading Special Fears would be more relevant to the course of probation. While it is true that Diagnostice Category is also coupled with other categories of referral questions, the 56 per cent figure is so disproportionately greater than any of the remaining percentages (Table VIII) that one may comfortably state that stereotyped diagnostic questions, rather than specific diagnostic concerns, are characteristic of the clinic referrals.

Category VII, Treatment, was the second major category of the probation officers' concern. While the total percentage of recorded items was considerably lower (18 percent) than the preceding category, the probation officer pattern was quite similar. Specific questions dealing with treatment alternatives are not asked. Fifty-five percent merely request broad or general recommendations. The possibility of a useful response to such a referral question is further reduced since probation officers do not generally request conferences wherein they might indicate the kind of treatment they have attempted with their probationers prior to the Clinic's evaluation. In interview, probation officers generally appeared committed to working with their charges, and often were willing to make substantial personal investments, but felt that they lacked treatment experience.

Category IV, entitled Home and Family, ranks third in the frequency of its occurrence. However, there is a striking drop in percentages to only 9 percent in contrast to the high of 56 percent obtained in Category I. While Category IV does not appreciably differ in the frequency of its occurrence from any of the remaining categories, it is noteworthy in that the subheadings more directly focus on the youth on probation, rather than the probation process. The majority of these referral questions were "feeling" questions. How does the youth feel about his home? How does the youth feel about his parents? How does he feel about his siblings?

Only 6 percent of the total items recorded fall in Category III,

Behavioral Characteristics or Predictions. Category III also tends to focus on who the child is as an individual, and the kinds of predictions one may make based on his personality functioning. It is within this category that the issue of being a danger to oneself or others occurs. Ordinarily, one would anticipate that this would be a prime concern in an urban court setting where violent offenses are increasing. In fact, the depth interviews with the probation staff support this impression. They are concerned, but they do not ask the clinic for help in making a decision about this variable. Category III also raises the question of the youth's maturity. The low percentage suggests that there is only minimal focus on this aspect of development. Some of these questions may be implied in the Diagnostic category, but the potential refinement or richness with which the clinic may respond is much greater in Category III than in Category I.

Category V, Probation, generates only 6 percent of the total referral questions. Category V is considerably more specific than the broad treatment dimensions of Category VII, and focuses on probation as a depth experience. It examines the relationship involved in probation, the youth's feelings and perception of the probation experience, and ultimately questions the relevance of the probation system.

Category II, the Placement Category, receives only 5 percent of the total number of referral questions. Category II is very specific in citing placement alternatives which are utilized by probation officers

and encompass the network of court facilities. The results suggest that probation officers do not specifically ask the clinic for help in deciding amongst these alternatives. Some of the reasons for this may be that routine guidelines are followed which relate to the severity of the youth's offense and the degree to which he appears able to function in the community and accept controls.

As stated previously, Category VI, the Waiver Category, is highly specific and demands psychological evaluation. The number of waiver studies is a very small percentage of the total court caseload and thus it is not surprising that less than 1 percent of the clinic's referrals seem to be generated on this basis.

3. Summary Statement

The foregoing discussion reveals that the probation staff tends to ask rather routine questions of the Child Guidance Clinic. Depth issues do not appear to be articulated in referrals to the clinic. Inasmuch as the seven referral categories were developed on a pragmatic basis, one may assume that these issues do exist. In interviews, the probation officers confirm that they do struggle with complex mental health questions, but they have come to feel that the Clinic will not appreciably enlighten them.

L. Child Guidance Clinic Responses to Referral Questions

The referral questions submitted to the clinic by the probation staff have been described in detail. When the probation officer was asked to comment upon the adequacy of the clinic's response to his

questions,[2/] 17 percent considered the report valuable, another 42 percent felt the report was generally helpful. Forty-one percent responded negatively. In order to assess this dimension of the Juvenile Court's mental health system and in an attempt to account for the high level of dissatisfaction with the clinic, the psychological data provided by the Child Guidance Clinic for the 253 referral cases was reviewed.

1. Methodology

The review was initiated independent of the referral questions and prior to the construction of the categories utilized in the coding procedure. The reports were screened in the Receptionist's Office at the Child Guidance Clinic. The tests administered for each case were recorded and direct quotations from the psychological reports were transcribed. The quotations selected reflect I.Q. scores, diagnostic impressions, personality patterns, behavioral descriptions, and any recommendations for treatment or other forms of intervention.

The categories developed for the referral questions were adapted and utilized to code the clinic's reports. One additional category, VIII Emotional Functioning, was added.

Prior to coding the psychological data, the reports were reviewed again in order to make certain that all of the pertinent information

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2/ See item III-3, Probation Officer Questionnaire, Appendix A.

was abstracted. The coding was performed by the investigator and his assistant according to the procedures developed to analyze the referral questions. An individual psychological report might contain data which could be coded for any one or all eight of the existing categories. A description of the categories appears below.

2. Categories of Child Guidance Clinic Responses

I. Diagnostic

The first category deals with diagnostic statements. While these statements do not always conform to the specificity of the American Psychiatric Association Diagnostic and Statistical Manual, they highlight characteristics within the diagnostic subheadings and are generally stated clearly.

II. Placement

Category II conforms closely to the Placement Category used for the probation officers' referral questions. They represent specific placement recommendations made by the psychologist and often appear exactly as they are listed under Category II subheadings.

III. Behavioral Characteristics or Predictions

The third category, Behavioral Characteristics or Predictions, is more complex and required the investigator's judgments in order to differentiate these items from personality traits or diagnostic indices of Category I. The material included in this category more closely reflects a concept rather than a direct quote from the psychological

evaluation. These statements are interpretive and reflect the clinic psychologist's responses in a more global way. They offer predictions about future behavior as opposed to discussing current behavior patterns characterized by a diagnosis.

IV. <u>Home and Family</u>

The fourth category, Home and Family, is also evaluative. However, these statements are readily discernible in the body of the report and confine themselves to a discussion of the child's home and family.

V. <u>Probation</u>

The fifth category, Probation, is rather specific. The items are generated in response to questions about the probation process, and must be answered directly if they are to receive a rating for this category.

VI. <u>Waiver Study</u>

Category VI is also specific. Frequently the test material available to the probation officer is more inclusive, but the report was completed for this specific purpose.

VII. <u>Treatment</u>

Category VII, Treatment, generally specifies a more formal clinical program oriented towards meeting the personality needs of the child. This category differentiates between this form of intervention and academic or probation related recommendations. It acknowledges the need for special mental health planning on behalf of the child in question.

VIII. <u>Emotional Functioning</u>

Category VIII is new and does not appear in the categories devised to analyze the probation officers' questions. In part it reflects a qualitative judgment by the investigator about the richness of the psychological report. It acknowledges greater attention specifically to the individual child, as opposed to those statements in Category I which reflect an attempt at clinical diagnosis and which are more generally applicable. For example, merely reporting an I.Q. score would be sufficient to enter a rating in Category I. It seemed important to make special note of those reports which provided an in-depth description of the child's emotional functioning, and it allowed the investigator to make a clearer decision about the adequacy of the clinic's report.[3/]

3. <u>Discussion of Results</u>

a. <u>Response Categories</u>

The results of the coding into categories is summarized in Table IX.

3/ In reviewing the psychological reports, there appeared to be particular styles of reporting test results. Some of the translation of the test material into categories was difficult since the original content seemed stylized and stereotyped, and reflects the investigator's personal judgments.

TABLE IX. Categories of Child Guidance Clinic Responses

Category	Frequency of Occurrence
I. Diagnostic	217
II. Placement	39
III. Behavior	26
IV. Home and Family	13
V. Probation	10
VI. Waiver	4
VII. Treatment	183
VIII. Emotional Functioning	96
TOTAL:	588

Nearly all of the Clinic's reports made diagnostic statements, but few of these statements are sufficiently comprehensive to meet the requisites prescribed by the American Psychiatric Association Diagnostic and Statistical Manual. The reports generally provide an I.Q., some assessment of reality ties, and cite organic dysfunction if it is detected. (In reviewing the original psychological test data available in the case folder, this investigator felt that these clues are often missed.) Some attempt at personality description occurs, as evidenced by the relatively high score for Category VIII, the supplement to Category I. The relevance of this material varies from report to report. The same descriptive phrases reoccur in strikingly different test protocols and seemingly reflect the individual psychologist's style or "set" rather than the youth being tested. Other reports are excellent in their development of a clinical hypothesis and in tracing its effect on a

probationer's life. The extent to which the different psychologists utilize interview techniques, as well as the completeness of the administration itself, also affects the richness and depth of categories VIII and I.

The results obtained in Category VII reflect the clinic's affirmative reply to the probation officer's questions regarding the need for further treatment. The Child Guidance Clinic does not provide this treatment. The Health Department Services are most frequently recommended, even though it is generally known that treatment services for youth have been gradually disappearing, and that the recommendation is so difficult to implement that it is unrealistic. Family treatment recommendations also occur with frequency when the referral is a Beyond Control case; but the recommendation "male probation officer" is perhaps the most characteristic recommendation. Psychiatric hospitalization is almost never recommended.

Statements pertinent to the next highest category, Placement, appear with markedly less regularity in the psychological report. Placement in a program of special education may be advised when the I.Q. figure is very low, but the Clinic appears much more reluctant to comment on whether or not a child should be removed from home and placed in an institution. The recommendation for a more structured environment accounts for the bulk of the responses in the Placement category, but the specifics defining such an environment are absent.

Category III, Behavioral Prediction, occurs with surprisingly limited frequency in the Clinic's reports, and is a denial of an issue significant to each phase of the Juvenile Court's functioning. Acting-out behavior is inherent in all juvenile offenses, and its curtailment is essential to effective rehabilitation. At intake the social worker makes some predictions about behavior, the judge clearly considers it in arriving at a disposition, and the probation officer constantly refines his perception of this variable as he relates to his client. Perhaps the Clinic avoids the issue because the probation officer doesn't clearly articulate his requests for predictions, but certainly it is implicit in each referral.

The remaining categories, Home and Family, Probation, and Waiver, occur with minimal frequency in the psychologist's report. Some of these issues overlap subheadings of categories which are dealt with, but require a specificity of response to which the clinic has been reluctant to commit itself. At the time of this research, the Clinic did not handle waiver cases. One would ordinarily anticipate that a court clinic should be expert in this area. Such a clinic has the most consistent experience with delinquents, daily exposure to the special needs of the court, and participates in the legal process. However, the clinic clings to its traditional role, and seems to avoid its specific role.

b. Adequacy of the Psychological Report

The categories of referral questions and the categories of Child Guidance Clinic responses have been ranked according to their

respective frequency of occurrence in Table X.

TABLE X. A Comparison of the Rank Order of Probation Officer Referral Categories and Child Guidance Clinic Response Categories

Rank	Probation Officers' Categories	Child Guidance Clinic Categories
1	I. Diagnostic	I. Diagnostic*
2	VII. Treatment	VII. Treatment
3	IV. Home and Family	II. Placement
4	III. Behavioral Characteristics or Predictions	III. Behavioral Characteristics or Predictions
5	V. Probation	IV. Home and Family
6	II. Placement	V. Probation
7	VI. Waiver	VI. Waiver

Using the Rank Difference Method for small pairs of observations, a positive correlation or rho of .74 is obtained, indicating a high degree of relatedness between the referral and response categories. However, this correlation must be interpreted in light of the preceding discussion of the relevance of the referral questions and their responses.

The probation officers and the clinic psychologists both emphasize diagnosis and treatment, as seen by Table X, but this in and of itself provides no assurance that meaningful diagnostic material is obtained or that treatment recommendations will be implemented.

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*Category VIII, Emotional Functioning, is supplementary and considered in Category I for this comparison.

In addition to rank order, judgments about the adequacy of the psychological reports were also made on an individual basis for each of the 253 cases. The referral question and the "response" quotations abstracted from the psychologicals were rated on a three point scale. The investigator made a judgment as to whether the referral question was answered, partially answered, or poorly answered. These judgments were based on the quantity and quality of the psychological data. A complete answer attended to all of the probation officer's questions and provided insights about the youth being evaluated. A partial answered dealt with at least one of the referral questions, but generally offered no additional psychological recommendations. A poorly answered rating indicated a neglect of the referral question and generally reflected an irrelevant or stereotyped evaluation.

Sixty-four percent, or 161 of the 253, reports were judged as answered; 61, or 24 percent, of the reports were judged as partially answered; and 31, or 12 percent, as poorly answered. The figures are spuriously high in that they reflect responses to questions which in and of themselves are not always meaningful or representative of what the probation officer is really concerned about. The degree of correlation more clearly depicts the maintenance of the traditional referral system; it does not assure the effectiveness of that system.

M. Summary and Conclusions

The Juvenile Court was built on a foundation service and rehabilitation. Underlying this philosophy is the belief that the juvenile

justice system has developed an effective method of screening and treating those juveniles who are emotionally disturbed. It relies on the Child Guidance Clinic model of referral for diagnosis and treatment, and assumes that the remaining youths on probation are essentially without mental disorder.

The current research has explored the mental health system practiced by the court and found system failures at every level of operation. Emotional disorders are not effectively detected at intake, and consequently juveniles are placed on probation without adequate treatment provisions. The probation officers who receive these youths are frequently new at their job and inexperienced. They feel unfamiliar with the network of court resources and are even less aware of the services in the extended community. They seek assistance from the Child Guidance Clinic, but appear unable to articulate questions which result in a meaningful response. The Clinic processes the child in a stereotyped fashion which, when it is modified, results in a more limited service rather than a creative response. The model after which the Clinic patterns itself is several decades old, and is one which never adequately met the special needs of the court.

Superficially both divisions, Probation and Mental Health, are performing adequately, but in fact the benefits to the disturbed delinquent are minimal. The probation officer frequently is unable to make use of the formal psychological report, or is left with recommendations which

justice system has developed an effective method of screening and treating those juveniles who are emotionally disturbed. It relies on the Child Guidance Clinic model of referral for diagnosis and treatment, and assumes that the remaining youths on probation are essentially without mental disorder.

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cannot be implemented. The quality of the psychological report varies with the individual psychologists at the clinic, as does the reliability of the data. Standard testing procedures are modified (which in and of itself may be useful in the court setting) but standard interpretations are drawn from the test data.

There is a lack of communication between the Child Guidance Clinic and the probation staff, and the referral process is minimally utilized (Approximately 7 per cent of the juveniles referred to the court are seen by the clinic.) Yet at the present time the referral process is initially the sole key to detecting emotional disturbance, and the major vehicle by which treatment is initiated. While there may be a valid need for a diagnostic evaluation, in specific cases, this should not be the major function of a court clinic. If referral questions are understood and formulated appropriately, the number of diagnostic evaluations can be reduced considerably. Prior to initiating a diagnostic evaluation, the clinic should confer with the probation officer requesting the evaluation, and assist the officer to articulate with clarity just what he really wishes to learn about his probationer. Then the clinician can assess whether testing will in fact provide the desired answer. If testing is appropriate, which tests should be utilized? If the probation officer is really raising a question of intelligence for some rehabilitative placement or to assess completely, projective testing may not be needed. Similarly, if the probation officer wishes to know more about his probationer's personality, the clinic should not force

cannot be implemented. The quality of the psychological report varies with the individual psychologists at the clinic, as does the reliability of the data. Standard testing procedures are modified (which in and of itself may be useful in the court setting) but standard interpretations are drawn from the test data.

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the probation officer to settle for an I.Q. Each time a question is raised, the Clinic must learn to perceive the question as a valid signal of concern, but to not interpret the question in a literal sense. The very process of attempting to clarify a question may provide the probation officer with a meaningful answer. If a referral question is ambiguous, or the request for an evaluation seems premature, the clinic staff should outline the preliminary stages which merit exploration.

The Child Guidance Clinic should not wait for referral questions, but should offer daily service relevant to the courts' functioning. In the role of mental health consultant, the clinician should be instrumental in training intake officers in the use of more effective treatment modalities; he should be teaching attorneys how to interpret clinical reports and clinical symptoms; and he should be conferring with judges in order to assist them in making appropriate dispositions. The Child Guidance Clinic should be a center for training and supervision in mental health concepts and techniques, and should conduct didactic seminars for all levels of staff. The Child Guidance Clinic in a juvenile court must develop its role in response to the specific needs of that court. They can not function as if they were operating out of a mental hospital or a community treatment center. As the clinic offers training in mental health concepts to other professionals, who deal with the Court, the Clinic must also acquire a sufficient core of

knowledge and the significant guidelines relevant to these professions. The clinician must understand the legal interpretation of terms such as insanity, incompetency, and attempt to bridge the gap between disciplines in order to better serve an individual child.

Instead of being intimidated by court procedure, the clinician must remove himself from the adversary model and offer his skill and special training wherever it is needed. He must strive to interpret a youth's behavior to the court in a fashion which the court can perceive as relevant to the legal framework on which it functions. He must learn to avoid lingo and highly technical terms yet still communicate the essence and implications of these terms.

Our recommendations emphasize early and flexable intervention. It can not dictate the roles that the Clinic should assume. The ultimate function reflects the particular needs of the juveniles served by the court, and the court staff. The model will change as the staff changes. The model will change as the nature of juvenile crimes changes. What will not change is the need for the Clinic to be relevant.

III. THE PROBATION DIVISION:

The Detection of Emotional Disturbance

Despite the earlier goals of the juvenile court to provide a comprehensive corrective experience for delinquent youths, the major corrective service which the court currently offers is probation. The effectiveness of probation is dependent on the probation officer's skill, training, and understanding of the youth before him. Probation officer judgments are not solely based on professional experience, but also on personal attitudes, values, and beliefs, particularly in areas such as mental health, morality, and punishment.

In light of the significance placed on the probation service and the ultimate effect it may have on a youth's future life, this project attempted to discover in more detail how the probation division dealt with problems presented by the emotionally disturbed delinquent. Probation officers in three major cities were interviewed in depth in order to assess their experience and skill in detecting and responding to clues of emotional disturbance, and the kind of psychological consultation they sought in their work with clients.

Whether or not a delinquent youth is detected as emotionally disturbed depends, in good measure, on his probation officer. Probation officers from divisions in several states were studied in an attempt to grasp some of the professional and attitudinal issues which govern their performance. A questionnaire was developed as a guide to this task.

Initially, a half dozen open-ended interviews were conducted with

probation personnel who were asked to discuss their jobs, problems which they encountered, their feelings about their clients and court procedures, and any ideas they had which might result in an improved probation system. They were asked to assess the effectiveness of probation and to sort out the characteristics unique to this form of intervention. Questions about crime, juvenile delinquency, and mental illness were also raised. As responses emerged from these interviews, a preliminary conceptual framework was assembled, and a structure was developed which was implemented in the remaining interviews.

As the interviews progressed, it became apparent that an abundance of data was being obtained in some of the critical areas, to the neglect of data in other areas of equal importance. The open-ended quality of the interview was provocative, but it did not assure sufficient data, and thus it became clear that a standardized interview would be more useful.

A preliminary interview was developed which greatly improved the data gathering process. It assured that all of the topics under investigation were covered despite the diverse emphasis that a single probation officer might express. With the written questions before him, the investigator could easily say "let's turn to this item now" or "we should cover this area, too". The form of the preliminary interview was modified after ten interviews. New questions were added and existing questions were regrouped. The final interview appears in the form of a questionnaire in Appendix A.

The questionnaire was divided into six sections:

Section I Description of Practice

Section II Detection of Emotional Disturbance

Section III Mental Health Evaluation

Section IV Role of the Judge

Section V Role of the Attorney

Section VI Inservice Training

A. The first section, Description of Practice, attempts to gauge the probation officers' professional experience, age, sex, and geographic locale. This data is summarized in Table I.

TABLE I. Description of Probation Officer Sample

	District of Columbia	California	Massachusetts
Sex			
Male	13	8	7
Female	11	3	3
Age			
20 - 30	10	1	0
31 - 40	10	2	3
41 - 50	4	6	4
Over 50	0	2	3
Juvenile Experience			
Under 1 year	5	0	0
1 - 3 years	8	0	0
4 - 6 years	6	2	1
7 - 10 years	2	1	3
Over 10 years	3	8	6
Cases Handled			
Under 50	2	0	0
50 - 100	8	0	0
101 - 150	6	0	0
151 - 200	2	0	0
*Over 200	6	11	10

*May be as high as several thousand.

Probation officer's responses were gathered from Massachusetts, California and the District of Columbia. The project was based in the

District of Colubmia and it was possible for the investigator to interview all of the District of Columbia probation officers.

In Massachusetts, only the chief probation officer and several key people within the Division of Legal Medicine were interviewed, and a list of probation officers in urban and rural jurisdictions was obtained. These jurisdictions varied in size and whether or not they had clinical facilities attached to their particular probation division. An introductory cover letter and the questionnaires were mailed to each of the probation officers on the Massachusetts list. Ten responded.

The California data was gathered in San Francisco. Again, the chief probation officer was interviewed by this investigator. After learning the goals of the project and the heterogeneous sample of probation officers desired for the study, the chief probation officer and his assistant then distributed the questionnaires to probation officers in San Francisco. Eleven responses were received from California.

The questionnaires were used as interviews only in the District of Columbia. In Massachusetts and California, the respondents submitted written answers to the questionnaire.

Within the District of Columbia, the Probation staff comprises the major section of the Social Services Division of the juvenile court. The remaining section, Intake, is also a significant link in the network of juvenile court procedures. However, the Child Guidance Clinic study indicated very few mental health referrals from this division and thus they did not receive Probation Officer Questionnaires. Instead,

conferences were held with the Director of the Social Service Division, and the Chief of the Intake Section to discuss mental health procedures and obtain relevant statistics about the detection of emotional disturbance.

A total of 45 questionnaires were obtained.

B. The second section of the interview, Detection of Emotional Disturbance, is among its most important sections. In this section, the term emotional disturbance is defined in its broadest sense to include all forms of mental illness or disability, and there is an attempt to discover in detail the particular probation officer's perception and sensitivity to signs of emotional disturbance.

The preliminary interviews suggested that unless a probation officer had internalized or incorporated a concept of emotional disturbance, gross behavioral clues were neglected, and more subtle signs were likely to remain entirely undetected, with the consequence that a referral for treatment would not occur.

The interview was not perceived as a test and the probation officer was encouraged to answer as fully as he could. He was instructed to identify clues or signs of disturbance. He was guided in refining his thinking by the request to compare youths labeled as emotionally disturbed delinquents, with other delinquents without apparent emotional disorders. Within this section the special procedures initiated by a probation officer in response to emotional disturbance are explored. There are

questions dealing with referral, evaluation, and follow-up. Similarly, there is an attempt to explore the probation officer's attitudes about delinquency and mental illness, and his familiarity with mental health services and facilities.

In order to study the detection process more closely the probation officer was asked, "How do you detect emotional disturbance? What clues or signs do you look for?" (Section II, question 3.) Because of its significance to the total research, the responses to this question have been analyzed in considerable detail. The probation officers' responses may be partitioned into six categories.

1. Observations in Interview
   a. Posture
   b. Passivity or silence
   c. Marked hostility
   d. Marked anxiety (tense, nervous)
   e. Marked depression
   f. Several of above (3 or more)

2. Communication
   a. Vague or inappropriate (language or thought)
   b. Bizarre or irrational (language or behavior)
   c. Heightened reactivity or sensitivity
   d. Provocative (physical or verbal)
   e. B locked or impeded communication
   f. Quality of relating in interview

3. Behavior
   a. Impulsive
   b. Compulsive
   c. Destructive (person or property)
   d. Self-destructive
   e. Under achievement (academic or vocational)
   f. Consistent inability to accept rules and regulations
   g. Special symptom (drugs, alcohol, truancy, pregnancy, etc. of psychiatric disorder
   h. Several of above (3 or more)

4. Relationships
   a. Family
   b. Peers
   c. Adults
   d. Authority

5. Indications in Past History or Referral Source
   a. School
   b. Mental/physical health
   c. Police
   d. Family
   e. Peers
   f. Several of above (3 or more)

6. Nature of Crime

7. Reality Concepts
   a. Poor stimulus/response awareness
   b. Self-image
   c. Age norms (appropriate/inappropriate)

The results of this classification indicate that Category 3, Behavior, and Category 4, Relationships, appear to be two dimensions which are crucial to a probation officer's judging of a youth as emotionally disturbed. Both categories rely on judgments reported to the probation officer by other persons or agents, as well as judgments which the probation officer makes as a result of his own observations. There is a striking difference noted in the use of these two categories between the local probation division and those probation officers from other states. The out of state probation officers unanimously utilize behavioral characteristics, whereas the District of Columbia division appears much more interested in the dimensions within the Relationships category.

Some examples of the out of state responses to this question are as follows:

Probation Officer 3: ". . . an overwhelming demonstrable lack of impulse control; severe self and/or destructive behavior; self defeating patterns of behavior."

Probation Officer 5: ". . . repeated and intensified patterns of acting out, disturbing an irrational behavior within the home, school, or outside setting. Person is not at ease with himself--and may be enmeshed in a self destructive mode of life."

Probation Officer 28: "Inability to function, self-destructive activities. Compulsive activities. Lack of awareness of stimulus-response their behavior has on others."

Illustrations of the District of Columbia officers' concern with relationships are noted in the following statements:

Probation Officer 6B: ". . . the way he relates to parents in a family conference, does the mother dominate and answer for the child? In school see how he relates to teachers."

Probation Officer 17B: ". . . the way he relates in the interview process, and his manner of relating in his family . . ."

There is also contrast between the two groups of probation officers in that the District of Columbia officers appear to strongly rely on the feedback and personal reactions to the juvenile's communications (Communication category) within the probation setting. The District of Columbia officer seemingly attributes the discomfort he experiences in the probation session to emotional-laden content emanating from the probationer. The probationer's verbal communications seem not to make sense. Ostensibly, this appears to be a valid dimension for judgment. However, as a result of the probation staff interviews, the examiner wonders if the sense of discomfort reflects situational variables rather than client variables. The strangeness which the probation officer

reports may also be the result of differences in intelligence, language, and aspirations between the probation officer and his client.

In detecting emotional disturbance the out of state probation divisions seem more likely to use a series of several clues, in contrast to the emphasis of particular clues as employed by the local division.

Several of the District of Columbia probation staff were new at their job at the time of the interview (see Table 1). The older probation officers in the District of Columbia division did not report great discomfort with their probationers, nor did they indicate that the language and communication dimensions presented a problem for them. They tend to judge behavior patterns relative to internalized norms for the juvenile probation population as a whole. If they make a judgment about inappropriate behavior, it is more likely to be critically different from the behavior of most of the delinquents.

The detection process will vary greatly between the probation officers whose responses are quoted.

Probation Officer 2B:
"1. How does the child feel about himself?
2. Are there signs of depression? Is he withdrawn?
3. What are his peer relationships like?
4. What role or image does he have at school, is he the butt of jokes?
5. Are his parents or sibs bizarre?
6. Is he interested in violence on TV or in the community?
7. Are there signs of any addiction?
8. How does he perceive his parents' opinion of him?
9. Does his mother see him in a fixed or rigid way?
10. Can he voice criticism of his parents, or is he in fear of losing them?"

Probation Officer 37: ". . . crying during the interview . . ."

Probation Officer 44: "We have a mental health clinic, everyone apparently in need of evaluation is referred to it--and depending on its report--what is indicated is implemented."

The detection process was studied further in Section II, question 4, "In what ways, if any, do you feel the emotionally disturbed delinquent differs from other delinquents?" The responses were complex and in order to retain all of their richness it was necessary to establish specific categories for this question. They appear below.

1. Little or no difference

2. Nature of law violation
   a. Bizarre
   b. Aggressive
   c. Self-destructive
   d. Situational
   e. Group norm
   f. Motivational
   g. Nature of law violation

3. Probation experience
   a. Recidivism
   b. No progress
   c. Poor probation officer rapport
   d. Less responsive to probation experience

4. Personality
   a. Inner conflict
   b. High reactivity
   c. Overly impulsive
   d. More rigid
   e. Less able to handle problems
   f. Immature
   g. Passivity
   h. Disturbance more severe

5. Relationships and Communications
   a. Peer
   b. Family
   c. Authority
   d. School
   e. Law
   f. Less able to communicate and fewer relationships

6. Other
   a. Environment
   b. Need more extensive psychiatric treatment
   c. Aimless
   d. Less competent

Three major categories appear significant. Of these, Category 4, Personality, receives the highest ranking. The results are consistent across the local and out of state probation divisions. Both groups isolate personality traits or characteristics generally consistent with signs of emotional disturbance. It is interesting to note that the probation officers can more clearly define pathological personality traits on a comparison basis but seem less able to isolate these traits as clues for detecting disturbance. Generally the responses to this question suggest that probation officers feel the emotionally disturbed delinquent seems less able to handle a variety of problems which include his antisocial behavior, but extend to other areas of his life as well. All of the probation officers indicate that the emotionally disturbed delinquent is uncomfortable in personal relationships. This evident with his family, peers, and a host of additional relationships which occur when he comes in contact with school and the law. Difficulty in peer relationships emerges as an especially strong sign of disturbance. The probation

officer sees many youngsters, several of whom know each other, and thus he is exposed to patterns of relationships against which he may make judgments. Some probation officers report that the youths themselves may report that a particular probationer is "crazy". The probation officer is quickly sensitized to the importance of peer relationships in an adolescent's life. Disturbed Family Relationships also seem to offer the probation officer some clues as to the degree of emotional disturbance in a client. From a family history, he may perceive patterns of family maladjustment and their effect on a probationer becomes more clear. On the other hand, if the probation officer feels that he is interviewing a stable, responsible family and cannot locate variables within the family which contribute to delinquent behavior, he may then make a judgment that the youth before him is emotionally disturbed.

The probation officer has learned that the Nature of the law violation may in itself reflect emotional disturbance. While he expects youths in certain situations to steal cars, etc., he does not expect them to commit bizarre, self-destructive or blatant sexual crimes. The more sensitive probation officer states that the emotionally disturbed delinquent's motives for committing a crime are different from his non-disturbed peer. Many delinquents associate with "bad company" or "the wrong crowd" or "get into trouble". But they cite the disturbed delinquent's entry into crime as being more autistic and more closely related to his need to be caught, punished, or possibly to retaliate for some injustice which he thinks society has brought upon him.

Probation Officer 2B: ". . . if a delinquent commits a crime with a group of kids it's a social thing. With a disturbed child, often the acting out is self destructive, self hatred, punishment of his parents or probation officer. Often he's acting out some inner compulsion."

Probation Officer 47: "A child rejected at home often projects his hostility toward the police or school. Some emotionally disturbed youngsters deliberately get caught in a sudden, subconscious 'call for help'."

The relationship between the law violation and emotional disturbance has also been studied in Section II, question 5, "Does his emotional disturbance appear to be related to his charge?" One-third of the probation officers who were interviewed felt that there definitely was a relationship between emotional disturbance and the particular charge which brought a youth into court. An additional 25 of the probation officers, or 60 percent of the total probation sample, felt that a youth's emotional disturbance and the offense charged were at least sometimes related to each other. Only six of the 44 officers felt there was no relationship at all between the two at all. As stated previously, these results would be consistent with the probation officer's belief that the motivation for the criminal activity may be related to emotional disturbance, but they do not report any clear correlation between a particular offense category and emotional disturbance. Some trends which do emerge suggest that the charge, beyond parental control, and the charge of truancy as well as bizarre sexual offenses are often indicative of emotional problems.

We have explored some aspects underlying the probation officer's skill in detecting emotional disturbance and isolated some of his attitudes about the relationship of delinquency to emotional disturbance. Section II, question 11 asks how the probation experience differs from a treatment experience. The results of this question not only offer ideas about treatment, but also convey some sense of the probation officer's perception of his own role. The bulk of the probation officers indicate that there are basic differences in the focus of probation and the focus of treatment. They perceive probation as an imposed form of intervention by the legal system. They cite the major focus of probation as the reduction of antisocial behavior, as opposed to ameliorating intrapsychic conflicts or attending to the probationer's "inner self". They cite the limited amount of time and the limited frequency with which they can meet with their clients as a result of heavy caseloads and other court responsibilities as inconsistent and inadequate with treatment goals. They state that they do not have the latitude of confidentiality associated with treatment, and that their clients do not participate on a voluntary basis.

The involvement of probation officers with probationers reflects an adversary system. The child must attend, or there are legal consequences. Probation officers report that they feel unprepared to offer treatment because they lack sufficient training in this area. They consistently indicate they wish for more supervision and more training. Most probation

officers do not perceive their clients as attending meetings on a voluntary basis.

On the other hand some probation officers felt that youngsters who might be frightened by psychotherapy would talk to a probation officer, and thus they cite the potential service which might be offered.

In the foregoing questions, probation officers clearly indicated many differences between probation and treatment. The majority cite a major difference in focus between the two processes. Nevertheless, they all indicate that they are seeing emotionally disturbed juveniles within their caseload. When given the option as to whether or not the court should offer direct mental health treatment services to these youths (Section II, question 10), 50 percent of the probation officers felt these services should be provided directly by the court. They report long waiting lists in outside referral agencies. They report poor inter-agency communication and a failure to receive basic reports on their client's progress. More often than not, they feel they lose contact with a client once he is referred. Most wish to have some group of mental health experts directly available to the court, to handle crises and offer direct supervision. Some probation officers felt that when a child is referred outside of the court to a treatment facility, that facility often neglects legal considerations and responsibilities, and they allude to the differences between goals discussed in the previous questions. One-fourth of the sample felt that the court was not in the mental health business and thus should make referrals to appropriate treatment agencies.

They emphasize role conflicts and responsibilities and feel that the court is sufficiently burdened by its legal tasks and should not assume the additional burden of treatment. The remaining 25 percent of the sample would be satisfied with using court facilities, or outside agencies, or both, as long as their probationer's treatment needs were met.

Fifty-six percent of the probation officers replied that they did attempt to transfer emotionally disturbed delinquents out of the juvenile court and into a mental health program (Section II, question 7). While the question was not sufficiently specific to discover whether or not the probation officer literally closed these cases or not, the mere fact that so many probation officers made out of court referrals, supports the need for additional therapeutic services. Only 20 percent of the probation officers indicated that they never transfer their client out of the court, but, again, it is unclear whether or not they obtain mental health services and retain jurisdiction, or simply relied on probation as the major form of intervention or "treatment".

Nearly all of the probation staff attempt to provide some interpretation of a psychological evaluation to the delinquent's family (Section II, question 8). They are less likely to discuss the results with the juvenile himself. The general implication obtained from the questionnaire is that the youth cannot really understand the subtle concepts involved. However, the actual probation interviews suggest that the probation officer is uncomfortable in confronting the youth with evidence of his emotional disorder. Part of their fear is in threatening the youth, and part of their

fear is that rapport will be adversely affected. Yet, if this matter is handled appropriately, it can be supportive for the youth to know that he can receive help. Eighty-seven percent of the probation sample do employ the power of the court to insure treatment, and will make it a condition of probation if either the youth, or his family, are reluctant to comply with treatment recommendations (Section II, question 9). However, most of the probation officers find it more useful to gain voluntary approval for treatment. They stated that if the family or youth were really resistant to complying the court had not really been successful in forcing attendance at therapy sessions. A small number of probation officers make treatment a condition of probation if they sense that there is even remote motivation for treatment on behalf of the client or his family. Frequently, it serves as a "face saving" device for a partially motivated youngster who then can state that he is only reporting to treatment because the court has forced him to. It is interesting to note that many of these youths remain in treatment long after probation is completed.

Section II has discussed some of the special problems presented by emotionally disturbed youths within the probation system. It highlighted the tremendous variability and informality in the detection process, and the limited understanding of what constitutes emotional disturbance. The results indicate there is no consistent program of detection utilized by probation officers as a group, or even within a single probation division. The data has cited some procedural trends, but in truth these trends were more clear to this investigator as a result of data analysis techniques,

than they were to the probation officers who reported these procedures. Probation officers do not feel equipped to provide treatment for emotionally disturbed youths, nor are they satisfied in making referrals to outside treatment agencies. They cite many justifications for their feelings. What is very clear is that 75 percent responded that the emotionally disturbed juvenile did not generally receive the treatment they felt appropriate for him.

C. In the third section, Mental Health Evaluation, the network of clinical services available to the probation officer in his work with emotionally disturbed youths is explored. This section of the study attempts to discover the probation officer's perceptions of a clinical-psychological evaluation constitutes and the kinds of information he feels a clinic can offer. In effect, why does he refer? What is the focus of his inquiry? He was also asked to make recommendations, if he felt they were appropriate, as to how a clinic could be useful to him.

All of the probation officers indicated that they made use of the mental health evaluation process in order to learn more about their client. However, in the Child Guidance Clinic Study, in Chapter II of this report, it was discovered that this statement simply does not hold up. At the time of this study, 27 percent of the District of Columbia probation staff made no referrals whatsoever, and 50 percent of the remaining staff made four or less referrals in the six-month period of the study. While there is no similar data for the out of state probation divisions, it is quite likely that their referral systems are also overtaxed, but not utilized with

maximum efficiency or gain.

The breakdown of the Referral system is apparent when one notes that clinical evaluations are not routinely ordered at a specific time, particularly not prior to disposition (Section III, question 5). In the District of Columbia, one-third of the probation officers reported that they order an evaluation early but do not define the term, "early", in any meaningful way. From the Child Guidance Clinic Study, it was learned that the vast majority of referrals are generated during probation, and then only at times of probation crisis. Thus, while the probation officer states that he would like the benefit of a clinician's help, the very limited number of his referrals, and the failure to make referrals at critical points such as intake, and disposition, indicate that the probation officer does not always attempt to obtain this help. Probation officers in the three states all reported that there was no resistance to their request for a psychological evaluation (Section III, question 6). Apparently, the clinics do not turn requests down. However, in the District of Columbia court, the three to four week waiting period often makes an evaluation useless in that probation has made an independent decision on processing the youngster, and the legal machinery has continued without the psychological material.

The major means of communication between clinicians and probation officers is through written reports and memoranda. Conferences between members of the two divisions are not routine and generally occur only at the specific request of the probation officer. When the probation officers were asked whether the examining psychologist or psychiatrist was available

for conference prior to court, (Section III, question 9), a good proportion of the probation officers indicated they did not seek a meeting. Several felt that conferences would be possible and stated, furthermore, if a psychologist or psychiatrist were subpoenaed, he did appear in court.

The investigator attempted to gain insight into the kinds of help the probation officer sought from the mental health experts. They were asked the kinds of information they felt the Child Guidance Clinic could offer (Section III, question 2). Their responses may be divided into four categories, as follows:

1. General Evaluation
2. Treatment Recommendations
3. Probation Recommendations
4. Specific Personality Features

Consistent with the results obtained from the Child Guidance Clinic Study, most of the probation officers state that they would like general evaluations from the Clinic. However, their concern for treatment techniques and recommendations appears equally intense. Generally all of the subheadings above are rated as important. The probation officer wishes to obtain as much information as possible. However, the Child Guidance Clinic Study suggests that he does not know how to phrase his questions for a comprehensive response. All of the probation divisions studied indicated a desire for descriptive and comprehensive diagnostic material.

In developing the probation questionnaire, the investigator hoped to gain information which could then be utilized in recommendations for

improving the probation process. In line with this goal, probation officers were asked to describe the kind of psychiatric or psychological report which would be most helpful to them (Section III, question 4). It is important to note that the same questionnaire reveals that only 27 percent of the probation officers felt that the reports were adequate. [See Child Guidance Clinic data for confirmation.]

The probation officers' responses to these questions appear quite complex and generate several recommendations. First, they felt that the reports needed to be clear, concise, and in language which they understood. During the course of the interviews, this investigator frequently was asked to help interpret psychological reports which probation officers happened to have on their desks. At times, the reports seemed to have useful recommendations, but they were not written in a fashion which enabled the probation officer to implement them in his work with his client. Fifty percent of the probation officers studied strongly emphasized the need for recommendations which could be implemented. Probation officers felt that the clinic's recommendations may be theoretically sound, but, in the light of the shortage of facilities, the lack of funds, or the limited inner resources which characterize their juvenile caseload, there was little or no realistic possibility of implementing the stated recommendations. There was a general desire for a less superficial and stereotyped discussion of the client. The probation staff desire reports which go into greater depth, and are more descriptive of a youth's overall functioning.

It is interesting to note that one of the criticisms which occurs, albeit with less frequency, is that the reports do not attend to the special issues of the juvenile court. The clinic reports generally do not make statements about competency, insanity, etc. The probation officers feel that in effect they have to make these judgments without the professional support of the Child Guidance Clinic.

The results obtained in this section offer clues to why the system of detection and referral of emotionally disturbed juvenile delinquents fails. Paramount is the partitioning out of a single delinquent to several sub-agents of the court; i.e., the probation division handles probation; the clinical division handles evaluations, etc. There is a failure to integrate all of the material available for a single child in order to develop a court program which is sufficiently perceptive and definitive so that probation can be successful. The question of emotional disturbance should be explored for every child immediately at intake. The Child Guidance Clinic should not wait for referrals, but should take an aggressive and responsible role in the detection process. It would seem so much more valuable to anticipate psychiatric problems based on screening and evaluation and prevent crises, rather than perform evaluations merely to document that a crisis exists. The probation officer says he wants more information but does not always request it. The Child Guidance Clinic states that the questions which are directed to it are ambiguous but makes no attempt to obtain clarification. The Probation Officer Questionnaires indicate great dissatisfaction with the evaluative process,

and thus it is not used. When it is not used, emotional disturbance will not be detected. Until there is a conjoint effort to establish and utilize a clinical evaluation unit which is satisfactory to both the probation officers and the clinicians, neither group can appropriately lay blame to the other for the existing failures.

D. In Sections IV of the questionnaire Role of the Judge, and Section V of the questionnaire Role of the Attorney, questions about the role of the judge and the role of the attorney are asked. The probation officer is part of a network, in which the judge and the attorney are equally significant links. In a subtle way, the questions in sections IV and V attempt to assess the older probation officer's response to changes in the juvenile court, particularly the increased presence of attorneys, and the adoption of more formal legal procedures. Several of the questions which appear in the Probation Officer interviews were also included in a similar questionnaire constructed for Attorneys. Thus, it was possible to compare discrepancies in function, role perception, and attitude. The attorney, probation officer, and judge were asked not only to comment upon their own role but upon each others' roles as well. Questions which appeared in both the probation officer and attorney questionnaires are asterisked in the Appendix.

When probation officers were asked if the judge was responsive to their recommendations, there was unanimous agreement that he was (Section IV, question 1). The probation officers perceive themselves as the judge's

primary source of information about a child. Their appearance in court requires preparation and it is not without personal anxieties. The experienced probation officer comes to know the preferences of individual judges and structures his material in order to maximize its importance in his brief presentation before the bench. Not all of the probation officers stated that the judge agreed with their recommendations, but generally they felt he had been responsive and made use of their material. A small number of probation officers reported that they had some experienced individual judges who were so biased, that in those instances their recommendations seemed to have little effect on the judge's decision. A few others indicated that the nature of particular crimes often determined the judge's decision rather than the probation officer's recommendations.

Prior to the Gault decision, attorneys were not generally present in the juvenile court. The probation officer dealt with the judge directly and to some degree acted as both advocate and prosecutor. The emergence of the attorney in the juvenile court has caused upheaval to the system and particularly to the probation officer. He is no longer the major source of recommendations for the judge's consideration. Now the judge must take into account, and respond to the attorney's recommendations too. Many aspects of the probation officer's former role have been challenged by the attorney.

The discussion of the probation officer's responses to the questions in this section does not depict the emotionality which was so obvious in the actual interviews, but individual quotes will be cited in order to

illustrate the intensity of feeling around these issues. Four major categories appear to represent the probation officer's perception of what the lawyer's role should be (Section V, question 1). They are as follows:

1. Essentially legal representation;
2. Legal representation with social-emotional interest--treatment planning, community rehabilitation;
3. Comments which imply that the attorney is not acting in the best total interest of the child; and,
4. Comments which indicate that the lawyer is not necessary and should not be included in juvenile court proceedings.

All of the probation officers felt that the attorney should play a role in the juvenile court. However, 86 percent of the sample felt this role should consist of legal counsel in order to insure the juvenile's legal rights. Nevertheless, twenty-five percent of the probation officers in the District of Columbia made comments which implied that the attorney was not acting in the total best interests of the child. It is an interesting paradox that while the probation officer feels the attorney should confine himself to a legal role, he then criticizes him for not attending to the total interests of the child. In effect, the probation officer is asking the attorney to allow him to formulate rehabilitative planning and accept his judgment about the best interests of the child, Yet it is clear that the attorney's entire defense is based upon the attorney's perception of what constitutes the best interests of the child, and the attorney's assessment of what constitutes the best legal representation.

Probation Officer 3B: "The attorney should operate in the best interest of the child, he should consider the child's total home and community, he should not operate just like it was an adult case."

Probation Officer 1B: "Their [attorneys'] objective seems to be to win a case rather than what's best for the child. Their objective is to get the kid back on the street."

Probation Officer 7B: "I don't see the lawyer playing a relevant role in the juvenile court--They assume all cases get the bad experience of the Gault situation. His specific role should be to protect the child's civil rights and he should not be involved with the total child."

Probation Officer 11B: "I'm confused, I've had battles since I've gotten here. I've recommended detention, and the lawyer gets a child set free for superficial reasons. I'm confused, legally he may be right, but I don't know how much."

In order to further explore the probation officer's feelings that the attorney does not act in the total best interests of the child, the probation officer was asked to comment on how perceptive he thought attorneys were regarding a client's mental condition (Section V, question 2). Seventy-five percent of the probation officers in the District of Columbia felt the attorney was not perceptive of mental health needs and that his concern with legal issues often led to the neglect of treatment measures or rehabilitative programming. It is a very sharp contrast that only 4 of the out of state probation officers felt this was true. Their responses reflect a greater working together with attorneys. While they agreed with their District of Columbia colleagues in the previous question that the attorney's role should be essentially legal, apparently they are more willing to communicate ideas to the attorneys, and are more successful at serving as mental health advisors to attorneys. At least half of the out

of state sample replied that the attorney was perceptive to his client's mental health condition. One wonders if the probation officers in the District of Columbia are not in fact perceived as adversaries by the District of Columbia attorney and as representatives of the legal "establishment" which is destructive to the juvenile, and thus avoided by the attorney. The out of state probation officers indicated that there is variability in an attorney's grasp of mental health issues. Sometimes they say the attorney perceives the problem but not the treatment. They also stated that the attorney was better able to note a serious emotional disturbance, but was less aware of the more subtle forms of mental illness. They also report that sometimes the attorney will only acknowledge the presence of emotional disturbance if it is documented by a medical officer.

Probation Officer 47: "Usually he's [attorney] quite perceptive. If his client seems abnormal, he often requests a psychiatric examination."

Probation Officer 1: "Generally he's as perceptive as the probation officer handling the [juvenile]."

Probation Officer 3: "Usually aware of conditions but horribly unaware of treatment programs and the paucity of them."

Probation Officer 4: "Only aware of most gross mental distress not aware of the personality disorder which distorts."

All of the probation officers said that they conferred with the juvenile's lawyer, but generally they had to initiate this conference, and that the attorney did not routinely familiarize himself with the probation material (Section v, question 3).

In attempting to assess the results of probation officer-attorney conferences, the probation officer was asked whether he felt the juvenile's

lawyer was responsive to his recommendations (Section V, question 4). In the District of Columbia, all but two probation officers felt the attorney was not responsive. In other states, more than half of the sample report that he was. Both the District of Columbia and out of state probation officers acknowledged that there was some variation based on the attorney's experience, his personality, and, more important, whether or not the attorney felt that the probation officer's recommendations supported his own.

The probation officers sense that the presence of attorneys in juvenile court has not only affected their relationship with the judge but with their own probationers as well. When asked how he felt the juvenile perceived his attorney's role (Section V, question 5), the District of Columbia probation division clearly stated that the juvenile saw his attorney as a means of "beating the rap" and "going free". This impression was also shared by two-thirds of the out of state probation officers.

Very few probation officers felt that the juvenile fully understands the role of the attorney. Furthermore, they commented that the juvenile saw the attorney for such a short period of time that, despite the attorney's receptivity, the juvenile did not have sufficient involvement with his attorney which enabled him to think that his lawyer could help him with any other life problem, beyond getting him released from court. Several of the District of Columbia probation officers imply that the juvenile is either confused or distrustful of his lawyer's role. Almost none of the probation officers feel that the juvenile perceived his attorney as a confidante or friend.

Probation Officer 2B: ". . . some kids can relate and like him. If he is an older guy and moralized it turns kids off. Many parents complain about the lawyer."

Probation Officer 1B: "The kids are not stupid, they use him. Some view him as a means of 'beating the rap'. The less sophisticated don't even know what he's there for."

Probation Officer 3B: "When you're in trouble with the law you need a lawyer. I go along with the Gault decision. Often these kids don't have the financial means. Some lawyers are good, some are bad."

Probation Officer 29: ". . . his mouthpiece. . . "

Probation Officer 33: " . . the attorney's main objective is to obtain a non-delinquent finding."

E. The sixth section, Inservice Training, deals with training issues. Many studies make recommendations for major revision without exploring the needs of line personnel. Our own research has suggested that no plans for changes will be effective unless they can be digested and implemented by these personnel. Within this section, the probation officer is asked to define areas of additional training which would allow him greater productivity (question 1). His familiarity with referral resources is assessed by asking whether or not he has visited or heard about these resources (question 2). Finally, in an attempt to get at the basic core of probation, the probation officer's feelings about the youths in his caseload and his preferences for working with particular types of youths are explored (question 3).

Ninety percent of the probation officers who participated in the survey replied that they had visited both the detention and treatment facilities to which they send their probationers. They state unanimously

that these sites were visited prior to the youth's arrival, and during the course of his confinement.

Discussions with the administrators and staff of the local facilities indicate that these statements are not accurate. They report that youths frequently complete detention without a single visit from their probation officer, despite requests for this service by the youth and the detention center.

The figure is probably spuriously high for treatment facilities as well. In an earlier discussion of the research, probation officers stated that they lost contact with their probationers when he was referred to outside agencies. Furthermore, when referral services were discussed during the interview, it was apparent that many probation officers merely had a cursory familiarity with community facilities, generally based on comments they had overheard, rather than actual visits. If probation officers are unfamiliar with referral agencies, those youth who require the treatment services provided by the agencies are not likely to receive the help they need. The mere size of probation caseloads, and the officers's appointments at court, etc., also suggest that his time is so heavily committed that he is unable to establish the communication with referral agencies which might facilitate the treatment for emotionally disturbed delinquents.

There was unanimous agreement by line staff and supervisors that additional inservice training and supervision were desirable. Supervisors report very limited budgets for training, but state that they constantly

seek inexpensive seminars and courses for their staff. Budget is not the only difficulty. The probation officer's caseload often leaves him unable to commit time away from the office. It is ironic, however, that many probation officers feel the best probation officer is the kind who pursues his role in a variety of settings, and meets with probationers in the community, on the street, at the school, etc.

There was a strong wish for additional training in counseling techniques and group therapy techniques. Probation staff report that the case presentation method of training was particularly useful. There is a desire for refined screening techniques, as well as a greater input into administrative decisions and procedures. There was consistent support expressed for a less formal and more immediate liaison and system of communication with the mental health service.

Twenty percent of the local and out of state probation officers report no preference for a particular type of client. They report satisfaction with a heterogeneous caseload, or enjoy the challenge presented by individual probationers. However, 80 percent do express a preference. This item highlights the crucial neglect of this variable in assigning probationers to officers. None of the probation divisions reported a formal system of case assignments. Individual supervisors occasionally discover that particular officers have success with a particular type of child, but may or may not act on this knowledge. Seventy-five percent of the officers indicate personality preferences. Some prefer aggressive active youths, others are intimidated by these same youths. Similarly,

ithdrawn youngsters provoke discomfort in some probation officers and hallenge others. Preferences are also indicated in terms of age, sex, nd offense. In the latter category, several probation officers indicated hat they do not like to work with addicts, others indicated they did not refer "run-away" or "out of parental control" girls.

IV. A Psychological Portrait: An Independent Study of Juvenile Probationers not previously tested for Emotional Disturbance

In the preceeding chapters the functioning of the Child Guidance Clinic and the Probation Division of the Juvenile Court (now the Family Division of the Superior Court of the District of Columbia) were reviewed in relation to the services provided for those juveniles selected for psychological evaluation. The data reveals that the actual number of juveniles referred to the Clinic comprise a proportionately small sample of the total case load, and that the number of Probation Officers who make these referrals represent an equally small sample of the total Probation Staff.

The minimal utilization of the referral process coupled with the probation officer's ambiguous discrimination between mental health and pathology vividly indicates that seriously emotionally disturbed juveniles pass through the system undetected, and untreated. In order to observe this phenomenon, a group of juveniles who completed the intake process, and had been on probation for a period of six months to a year, without being referred for a psychological evaluation were independently tested. The psychological protocals obtained from these youths were then reviewed by a group of independent clinical psychologists.

A. Selection of the Sample

The Quarterly Statistical Report published by the Juvenile Court of the District of Columbia provided the basis for selecting the youths who were to be examined. The Statistical Report delineates new delinquency referrals according to offense category, as well as age, and sex of the juvenile, and thus provides a pattern of the various types of youths represented in the court caseload. The pattern which reflected the case load as it appeared during the months of May thru December 1969 was utilized. A discussion of this pattern, as well as the figures for the period of time encompassing this research are cited in Chapter II, Table I of this report. By way of brief review, the majority (almost 90%) of these referrals are males, below the age of 16, whose offenses are likely to be acts against persons. The female juvenile offender, also tends to be below the age of 16, and her offenses are primarily characterized as truancy or beyond parental control.

Twenty juveniles, corresponding to the above distribution, were sought. An IBM print out obtained from the Research and Statistical Division of the Juvenile Court presented the investigator with a list of juveniles who were placed on probation at least six months previously. The IBM data was subsequently checked with the card file or registry maintained by the Probation Division. An extensive list of candidates was gathered for each of the offense age-sex sub-cells in the last quarterly report for fiscal 1969 and the first and second quarterly

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1 OF 3

reports for fiscal 1970. Names were selected in order of presentation on the IBM print-out. The print-out did not indicate whether or not a particular juvenile had been referred to the Child Guidance Clinic. If the Clinic had in fact received a reference the particular name was deleted from the list. Since the print-out was chronological, the first selections represented juveniles who had been on probation for a year or longer.

B. Transistions and Crisis

The selection process extended over several weeks and mirrored the transition which the court was experiencing. The study was initiated at a time when the Court was in a major crisis. The Court had gained the reputation for being inefficient and ineffective. The court was challenged for its inability to curb juvenile crime, as well as its failure to rehabilitate. There was a massive backlog of cases; some juveniles were detained for inordinately long periods of time, while other juveniles were accumulating new offenses, while still awaiting a court appearance for a previous offense. Rehabilitative facilities were overcrowded and labelled as breeding grounds for criminal behavior, and much publicity attended a senate investigation of the court. Administrative guidelines were weak, and records were misplaced or lost. It was during this same time that the Chief Juvenile Judge, who had presided for almost a decade, died.

It was also during this same period that the Juvenile Court, lost the autonomy it previously held, and was incorporated into the Superior Court as a result of a long awaited reorganization of the entire District of Columbia court structure. Judges from the adult criminal court, without training or experience in dealing with juveniles were rotated thru the juvenile court, and major policy decisions affecting probation occurred. In an attempt to reduce the massive backlog, youngsters who would have remained on probation for longer periods of time were dismissed prior to one year.

As a result, many of the youngsters who met the selection criteria were no longer available. Ultimately the 20 juveniles who were tested tended to be on probation for 6 to 8 months at the point of selection rather than for a year.

Another factor which curtailed the list of subjects was also involved in the crisis of the court's transition. As the new judges attempted to meet the guidelines which emphasized rapid and early justice, they were confronted with their lack of experience and began to refer increasing numbers of juveniles for psychological evaluation, seemingly as a means of diminishing the public's criticism of the court backlog. The waiting list for the clinic expanded considerably, but never-the-less cannot be interpreted as a greater awareness of the juvenile's emotional problems. Of the 36 youngsters whom the examiner initially attempted to locate, 10 had subsequently been committed to institutions as a result of further offenses or a probation crisis. However, these youngsters

still had not received a psychological evaluation.

The number of potential subjects from the IBM print-out continued to diminish as a result of the time lapse between the initial phase of the research and the testing phase and the frequent inability to locate adequate case records. These difficulties serve as a dramatic illustration of the need for new procedures.

C. The Test Procedure

Twenty juveniles were tested. Ten of these evaluations were conducted by this investigator, four were conducted by a school clinical psychological with many years of experience, and 6 were conducted by doctoral candidates in clinical psychology, under close faculty supervision.

The juveniles were contacted by their probation officer and asked to participate. They were informed that the purpose of the evaluation was for research, and in order to obtain ideas for new programs and procedures. It was explained that participation was not compulsory, and that the particular youth was selected because of his age, and the fact that he had been on probation for a while. Each subject was provided with carfare, but no other remuneration. Only one juvenile was unwilling to participate.

The evaluation were conducted at the probation division offices or at the research offices across the street from the court.

D. Tests Administered

Each subject received a complete Wechsler Intelligence Scale, a Rorschach, a Bender-Gestalt, and the House-Tree-Person test.

E. Test Protocols selected for Study

Although 20 subjects were tested only 12 of these were selected for the final study, since the goal was essentially illustrative. Each of the twenty protocols was assigned a number which was concealed and placed. The first 12 numbers which were drawn were selected for study.

Each test protocal was prepared in on identical manner before it was submitted to the evaluating psychologists.

1. A summary sheet was constructed for the Wechsler Scale. The individual Wechsler Subtests and both their raw scores and scaled scores, as well as the Verbal, Performance, and Full Scale I.Q. was recorded on the summary sheet. In, addition, the juvenile's responses to the vocabulary subtest were typed and included, in order to provide a sample of the juvenile's language.

2. The Rorschach and inquiry were typed, but were not scored.

3. The Bender Gestalt, and House-Tree-Person drawings were reproduced.

4. The juvenile's age, sex, and offense were listed. No other information was provided.

5. A cover letter was included instructing the psychologists to review each protocol carefully and requesting him to answer the following questions:

a. Clinical

i. Does this youth show evidence of emotional disturbance or an organic disorder?

ii. How severe do these symptoms appear (mild, moderate, severe)?

iii. What diagnosis might be attributed to this case?

iv. What kinds of treatment recommendations would you make for this youth?

b. Legal

i. What aspects of this material should be considered by a probation officer or judge in developing a rehabilitative plan for this youth? Please list the specific test items which you feel are relevant (i.e., evidence of low I.Q., evidence of specific strengths or weaknesses, etc.).

ii. Does the psychological material offer any clues as to whether or not this youngster is competent to participate in the court proceedings?

iii. Based on your evaluation of the data, do you feel probation is a sufficient form of intervention or does this youngster appear to require additional mental health services? Please list specific recommendations (i.e., psychotherapy, hospitalization, education, etc.).

F. Psychology Rating Board

Nine psychologists were asked to evaluate the protocols and complete

the questionnaire. The Rating Board knew that the study dealt with the Juvenile Court, but were not familiar with the project. They were informed that the protocols were court cases, but did not know who had tested the juveniles, nor were they familiar with the basis on which the protocols were selected.

Each psychologist was given 4 protocols to evaluate. Each protocol was rated by three different psychologists.

All of the psychologists held Ph.D's in clinical psychology, and reflect excellent training. All are currently employed as professional psychologists, 3 of the psychologists currently hold positions of major responsibility as a division chief or director of training.

G. Case 1

This fifteen year old black female was place on probation because she is beyond parental control. On the WISC she obtains a Verbal I.Q. of 67, a Performance I.Q. of 71, and a Full Scale I.Q. of 66, which is mental defective.

Two of the rates felt there was clear evidence of both emotional disturbance, and organic malfunction. The third rater felt the diagnostic evidence was unclear, but that the symptoms themselves were severe and labelled her as mentally retarded.

All of the raters emphasized this girls very limited intelligence, and the likelihood that she will require prolonged guidance. Probation alone would be seriously inadequate, and the rates point to a need for remedial education, job training, psychotherapy, family counseling, and

and ultimately residential care if improvement does not occur. Two of the raters report that sexual acting out is likely to occur, and that close interpersonal relationships in general will present problems.

All of the raters anticipated that there would be difficulty in this youngsters' understanding of the legal procedures, and that she may well become disorganized under stress, and manifest poor reasoning ability. While she appears competent to participate in court proceedings, they felt her participation could only be minimal.

In summary, all of the raters felt that probation alone would be seriously inadequate, and that the psychological evaluation offered relevant guidelines.

H. Case 2

This almost 16 year old black female was charged with truancy and beyond parental control. Her scores on the WISC are as follows: Verbal I.Q. of 77, Performance I.Q. of 78, and Full Scale I.Q. of 75. She is functioning in the borderline range of intelligence, but shows some evidence of higher potential.

There is disagreement between the raters as to the seriousness and etiology of this girl's difficulty. One rater perceives her as mildly retarded possibly on an organic basis. The second rater sees her as passive aggressive and potentially volatile. The third rater concurs with the preceding diagnosis but rates the symptoms as less intense. All three agree that she is need of supervision and can benefit from

psychotherapy and vocational training. They feel probation is not likely to offer sufficient emotional growth or guidelines.

The raters felt this girl was competent and imply that a court appearance can help her understand cause and effect relationships, and serve to enforce impulse controls.

I. Case 3

This 16 year old black female was considered beyond parental control. On the WAIS her Verbal I.Q. is 82, her Performance I.Q. is 87, and her Full Scale I.Q. is 83. She is functioning at the lower thresholds of average intelligence.

The raters concur on mild symptoms of emotional disturbance, and all diagnose her as having a personality disorder. They perceive that she possesses additional strengths and more emotional resources than she is able to utilize. Feelings of unmet dependency and a sense of her own inadequacy seem to have turned this youngster against society and her family.

All of the raters feel some form of environmental intervention emphasizing remedial education, family therapy, vocational opportunities, and a supportive rather than threatening approach are required. They feel her perceptions of reality are accurate and that she could definitely participate in court proceedings. They did not feel however, that probation alone would offer sufficient intervention.

J. <u>Case 4</u>

This 17 year old black male was charged with unauthorized use of an automobile. On the WAIS his Verbal I.Q. is 90, his Performance I.Q. is 91, and his Full Scale I.Q. is 90, all of which are average.

The raters all felt there was moderate to severe evidence of emotional disturbance and highlight the "aggressive" or "hostile" features of his personality. They acknowledge his good intellectual potential and recommend psychotherapy to help him deal with his "oral sadism" his "unrest and turmoil" and "his potential for becoming sick & acting out violently".

There was consistent agreement that this youth was competent to participate in the court proceedings, but required intensive therapeutic intervention.

K. <u>Case 5</u>

This 17 year old black male was charged with Burglary and placed on probation. On the WAIS he possesses average intelligence. His Verbal I.Q. is 92, Performance I.Q. is 95, and Full Scale I.Q. is 93.

The raters describe this youth as essentially without emotional disturbance, but feel that he is not utilizing his resources. The raters each comment on his self concept as a male, and express a desire for more of a social history. Two of the raters suggest involvement with a male figure, as a model. The recommendations are for realistic supports such as job training, extra curricular activities and help in socialization.

The raters agree that this youngster is competent. There are several indications that appropriate probation services would be the treatment of choice.

L. <u>Case 6</u>

This 16 year old black male was charged with burglary. On the WAIS his Verbal I.Q. is 77, his Performance I.Q. is 82, and his Full Scale I.Q. is 78. Intellectual potential appears to be low average.

All of the raters point to this youth's emotional disturbance. To feel the symptoms are severe, and that he is probably psychotic. The third rater reports that he is "poorly organized, erratic, and unstable". The raters feel there was a major need for psychotherapy. They cite this youth as loose and regressed and possibly becoming "openly violent", the psychotic process remains unchecked.

While there was some feeling that this boy could still cooperate in court, the raters felt that his statements would have to be carefully assessed. One of the raters felt that in light of his capacity for deterioration under stress he may well not have been functioning at the time of the burglary with which he was charged.

M. <u>Case 7</u>

This 13 year old black male has been charged with robbery. He is functioning in the borderline range of intelligence. His WISC Verbal I.Q. is 72, his Performance I.Q. is 78, and his Full Scale I.Q. is 72.

There is consistent agreement that this youth manifests moderate symptoms of emotional disturbance. His heightened reactivity and low

threshold for frustration suggest a character disorder or unsocialized aggressive reaction. The raters emphasize the need to help this youngster maintain control and recommend a half-way house or more confined residential placement. Remedial education as well as therapeutic counseling are recommended. Probation in itself does not appear to offer sufficient rehabilitative promise.

Despite his impulsivity, this youngster was considered competent to participate in court.

N. Case 8

This 15 year old black male was charged with robbery with force and violence. On the WISC he attains a Verbal I.Q. of 81, a Performance I.Q. of 72, and a Full Scale I.Q. of 75. His functioning falls within the Borderline to Dull Normal I.Q. range.

This is a youth in need of major therapeutic services. The raters report that his symptoms are severe and reflect both emotional disturbance of psychotic proportions and organic involvement. They all documented the need for extensive psychological, psychiatric, and sensory investigation, and recommended this be performed in an in-patient facility. They point to his poor emotional control the tension generated in interpersonal relationships, as well as weak role identification.

Two of the raters felt this boy was incompetent to participate in court proceedings, the third rater felt that he might be marginally competent. They felt probation would be an inadequate form of intervention and recommended hospitalization.

O. Case 9

This black male youth, almost 16, was charged with robbery with force and violence. On the WISC, his Verbal I.Q. is 90, his Performance I.Q. is 86, and his Full Scale I.Q. 87. Intellectual functioning is essentially average.

This boy is perceived as emotionally disturbed. His symptoms were judged to be moderate to severe. The raters report on this youths "angry feelings" and his "authority conflicts", and that he is "ridden with aggressive impulses". His anger appears quite close to the surface and he demonstrates considerable emotional lability.

In light of this lability one rater felt his hold on reality was tenuous, and thus was only marginally competent. The two remaining raters cite a need for psychotherapy and feel probation would not offer enough service, but feel the boy is competent to participate in the court proceedings.

P. Case 10

This 12 year old black male youngster has accumulated two offenses, assault and rectal sodomy. On the WISC his Verbal I.Q. is 85, his Performance I.Q. is 79, and his Full Scale I.Q. is 80. The scores indicate low average intelligence.

This boy was judged as showing severe emotional disturbance as well as related organic disturbance by two raters, and moderate organic dysfunction as well as an adjustment problems, by the third rater. The

raters responded with great intensity, and convey a need for in-patient care, medication, and extensive evaluation, in order to help this youngster adapt to his limitations, control his impulses, and still cope with the world. They highlight his gross inability to participate in court proceedings and state with clarity the many additional services he requires beyond probation.

Q. Case 11

This 15 year old black male was placed on probation as the result of a burglary charge. On the WISC his scores are well in the average range with a Verbal I.Q. of 82, a Performance I.Q. of 107, and a Full Scale I.Q. of 93. Nevertheless the minor who tested this youth reports that he is unable to read, exception in very limited way.

The 3 raters report moderate to severe symptoms of emotional disturbance. Two of the three, felt that further examination was required in order to rule out underlying organic problems. They point to emotional "constriction", coupled with aggressive impulses. They see this youth as needing confirmation and reassurance of his potential, and recommend remedial training, occupational planning and psychotherapy. One of the raters felt this youth was not competent, two felt he was. This is the only youth who reflects disagreement by raters as to his competence to participate in court proceedings.

R. Case 12

This 14 year old black male was charged with assault and robbery with force and violence. On the WISC he attains a Verbal I.Q. of 82, a Performance I.Q. of 99, and a Full Scale I.Q. of 89. His intellectual functioning is scattered across the average range.

All of the raters felt this youngster manifested signs of emotional disturbance, but judged his symptoms quite differently, ranging from mild to severe. They agree on the diagnosis as a personality disorder, associated with anxiety inadequacy and acting out. The raters feel this youth will require a patient and teaching therapist before this boy can present himself from translating his bad feelings into anti-social behavior. They feel he has to be gently guided towards self exploration, recommended psychotherapy, remedial education, and a series of supportive and corrective environmental experiences.

They feel he was competent to participate in court proceedings.

S. Summary and Discussion

Of the 12 cases evaluated by the psychology raters, all but 1 youngster was considered to manifest a variety of signs of emotional disturbance or organic disorder. In six of the cases, or 50 percent of the clinical sample, the pathological signs were of such severe proportions that the raters felt the possibility of psychosis or retardation was so great that the juveniles perception of reality and his ability to make judgements was seriously impaired.

The single youngster who was not judged to the emotionally disturbed was not without symptoms of distress. However, his problems were considered comparable to the stress other adolescents experience and there was no particular evidence of an affective or thought disorder. For this youngster, probation was considered an appropriate and promising response to his anti-social behavior.

For each case, the rater was able to abstract the test responses and test patterns upon which his judgements or interpretations were based. Each youngster was rated by three psychologists. In general these youths appear culturally, emotionally, and psychologically deprived. In several, their impulses are so close to the surface and their control so tenuous that additional crises of various kinds are likely to occur. Some will undoubtedly return to the court with new charges, (this has proved to be so, after checking records since the evaluation) other may require hospitalization or secure custody. Yet none of these youngsters were selected for referral to the Child Guidance Clinic, as a result of the intake process, or during the period of time they had been on probation. Eleven were rated as needing additional services beyond probation, which include psychotherapy, remedial education, vocational training, family counseling, and residential care. All of the raters felt that the psychological evaluation provided data which would be useful and frequently essential for an effective probation experience.

Two youngsters were considered incompetent to participate in court proceeding. There was disagreement as to whether or not a third youth

was competent. For several others, while the raters felt these juveniles could participate in their court proceedings they imply limited or questionable participation. This is a fact that the attorney as well as the probation officer must begin to explore in more detail.

All 12 of these juveniles are underachieving in school as well as in the rest of their lives. While there are indications of higher intellectual potential, within the group, less than half emerge with clearly average I.Q. test scores.

It is important to recall that these raters did not receive the social history and related data available to the probation officer, and were still able to develop meaningful recommendations. Think how much richer their responses might have been had they seen the social history and interviewed the juvenile.

These 12 youngsters are not different than those who were tested by the Child Guidance Clinic, in fact a few appear much more disturbed, but, they were not referred. The selection process is not effective and it must be revised. One cannot rely on probation officers intuition, or what ever additional circumstances prompt a referral. As the procedure functions there are too many indications that seriously emotionally disturbed juveniles pass throught the system undetected and untreated. Each juvenile must receive an independent screening which is based on psychological test data. There are precedents for such a system. One example is discussed in the proceeding chapter.

V. A Model: A System for Screening and Rehabilitation

The preceding studies have demonstrated with clarity the failure of the current system of juvenile trial and disposition to serve as an effective means of rehabilitating emotionally disturbed juvenile offenders The studies illustrate a system which is inappropriate both in principal and practice. The vague conceptualization of the meaning of emotional disturbance and its effect on a youth's life, as well as the increasingly punative function of the Juvenile Court in response to the increase in juvenile crime negate rehabilitation.

The present chapter will discuss the major factors which contribute to the aforementioned failures and suggest alternative approaches to rehabilitation; and ultimately a new model for processing juvenile offenders.

What appears most markedly absent in the present juvenile court is a guiding philosophy. Without such a philosophy the major functions of the court appear irrelevant and arbitrary both to the court staff as well as the juvenile offender.

The court must consider first whom it must serve, and then continuall assess the quality and appropriateness of this service in light of its guiding philosophy. The court must then accept the responsibility for initiating alternative programs for those youths over whom it will not take jurisdiction. The concept of processing a child through a legal mill is simply insufficient.

It has been assumed that the Intake Section of the Juvenile Court fulfills these functions. The goal of Intake is reputedly aimed at understanding the individual juvenile and the circumstances which surround his offense. Theoretically, it is at this point of entry that the court may assess whether or not a youth should be retained by the justice system, released to the community, or referred to another agency. 1/

Traditionally, intake officers have been social workers who are trained in interview techniques and are familiar with the guidelines for preparing a social study. However, the amount of professional training which an intake officer possesses varies with the type of juvenile court in a particular jurisdiction. In communities which have a well-defined and often separate juvenile court, the intake officer is more likely to be a social worker. In rural communities, where the juvenile court is an extension of the adult court, the intake officer may merely be a court clerk.

An intake interview may proceed in a formal manner according to defined guidelines but frequently these interviews are less formal, and data is gathered as a result of talking with the juvenile and his family.

1/ This project has not examined the legal questions involved in a juvenile court's screening of children before it has issued a petition in the case.

The informal interview does not guarantee that all pertinent data will be obtained. The duration of the intake process may be completed in a single interview or extended over several weeks in order to collect school records, medical records, previous court actions, etc.

The probation study shows that even experienced probation officers do not consistently articulate or attend to signs of emotional disturbance. They appear unclear about the boundries of emotional disorders, and frequently unable to distinguish fixed patterns of disorder versus situational problems. Similarly, problems of retardation and brain damage also go unnoticed. All of these factors suggest that current intake procedures are not adequate, and characterized by immense variability. A failure at this critical stage in the juvenile justice system has ramifications for all subsequent court procedures. At intake an effective and intergrated system of justice and rehabilitation should emerge, rather than the destructive and often ineffectual process which our research has unearthed.

<u>How can this system be revised, and what are the functions which are essential to a more effective intake program?</u> The intake staff should consist of the best trained staff available to the Juvenile Court. The intake officer must reflect superior training in mental health, sociology, and have an understanding of rehabilitation programs. He must be familiar with the specific rules and services of the court he represents, and in addition he must have a comprehensive knowledge of other community agencies. The intake process must become more predictable and assure formal

data upon which judgements and recommendations may be based. The most apparent question which one may raise is, why go to all the trouble or why is it relevant? It is relevant because the brief screening which intake has traditionally provided has failed in a number of ways. The screening is so cursory that relevant social material is often absent and judgments are based on intuition and chance. Intuition and chance might be adequate if probation generally is successful, but again this has not been the case. Many youths have been admitted into the juvenile justice system who never should have been there. Once admitted, they reap little benefit. Some of these juveniles present marked degrees of emotional disturbance and should best be treated within a mental health system. Other youths who have been admitted on the basis of special juvenile offenses reflect family problems which could better be handled by social agencies. There has been adequate publicity about the youths who go through the system as a result of a minimal offense and come out well-educated for a criminal career. It is a myth that a less detailed system of intake classification saves time. It may save time in the initial intake process. However, the ensuing failures which result are more time consuming in terms of repeated processing, re-arrests, and other probation crises.

The major functions of intake must be amplified to include evaluation, classification and referral.

A. Evaluation.

Some evaluation of a youth is necessary before any realistic planning can occur. The need for this evaluation remains consistent whether the youth is retained in the judicial system or referred out. Decisions must not be made on an arbitrary basis. If rehabilitation is to be effective, the system must tailor it to fit an individual youth's needs. An evaluation must consider intellectual and emotional factors as well as physical, developmental, and socio-cultural factors.

The model for intake which is discussed in the following sections hypothesizes an evaluation for every youth who is referred to the court. Obviously this is a massive task and will require planning and discussion prior to implementation. The suggestions below are to serve as key indicators of specific services. As the court develops its philosophy it can meet these key points in a variety of ways.

The project is recommending that intake make use of evaluative procedures in an orderly fashion beginning with global screening and concluding with a complete and comprehensive mental and physical examination when required. The decision as to the inclusiveness of an examination should be evident from the data obtained. Is it sufficient to be able to make recommendations as to whether or not a child should be retained in the juvenile justice system? If he is retained can the data provide information as to the service or disposition which is most likely to lead to successful rehabilitation for a particular youngster? Have basic questions about the child's competence to stand trial been answered?

In addition to the interview, the initial screen must include some objective data in the form of tests to document the intake officer's early impressions. Screening tests at this first level should be brief, preferably capable of group administration, and machine scoreable in light of the volume of tests. Testing agencies are available for these services and contracts for these services and contracts can be developed. If the results of the screening instrument suggest impairment in some aspect of a child's development i.e., emotional, intellectual, etc. The next level of testing should be in initiated. Thus not all juveniles who are referred to the court need receive every test. The intake officer can decide, based on objective scores and his own interview whether or not additional evaluation is required.

1. Intellectual Factors.

While most courts generally acknowledge the importance of intelligence and have developed statutes dealing with individuals of very low I.Q. within their "defective delinquent" laws, there is no routine assessment of intelligence prior to processing a juvenile. Intake officers generally assume that a youth has average or near average intelligence. Frequently this is not the case. In our Child Guidance Clinic Study, which considered this factor, we found that more than 46 percent of the population had below average I.Q.'s and an additional 32% test in the Dull Normal Range. In our independent testing of youths within the court population who were not referred to the clinic, 42 percent clearly had below average I.Q.'s and an additional 25 percent tested in the Dull

Normal Range. Nevertheless, they were considered responsible for their actions and were expected to participate in the legal and rehabilitative process which often was meaningless to them because they failed to understand what was happening to them. Their ability to make causal relationships was severely impaired. The potential success of a program and the techniques utilized within that program would be quite different for retardates and average youths. The need for caution and information exists in both directions. Not only must allowances be made for a youth with limited intelligence, but there must be equal concern to avoid mislabeling a withdrawn, disturbed, or uncommunicative youth of average ability. The trained clinician can assess intelligence in both formal and informal fashion based on his familiarity with the abstract and conceptual components which underlie the aggregate of abilities generally labeled "intelligence". One would not ordinarily anticipate an intake officer to have comparable clinical acumen [although he might as a result of supervision and training]. And, thus, it is strongly recommended that intelligence testing become a routine part of the intake process. We are not recommending that full scale intelligence scales such as the Wechsler Intelligence Scale for Children and the Wechsler Adult Intelligence Scale be routinely used since they may require one or more hours to administer and score. However, the intake officer should be instructed in the utilization of brief screening measures. Two examples would be the Ammons Picture Vocabulary Test and the Quick Test.

Detailed instructions for the administration of these tests are available to professionals and the training of intake officers in their usage could easily be conducted by the Child Guidance Clinic or some equivalent clinical representative. Various sections of the standardizes intelligence tests, such as the Wechsler Scales, could also be administered for the purpose of screening. Several individual subtests, such as the Vocabulary Subtest and the Block Design Subtest, would offer broad clues as to whether or not a youth possessed average intelligence. Other scales which are less verbal in content, such as the Raven Progressive Matrices, might also be adapted for the screening purposes. If the screening measures suggest low I.Q. or other major intellectual barriers or malfunctions, then a more comprehensive evaluation could be undertaken.

2. Emotional Functioning.

For the purposes of this study, we have defined emotional disturbance in the broadest possible sense, and would suggest that the intake officer do the same. In order to achieve this goal, the intake officer must be tutored in normal development as well as abnormal psychology. He should be sensitized to the emotional crises characteristic of different age levels, particularly adolescence. While the severely atypical or the severely emotionally disturbed youth is detected with relative accuracy, this group represents a very small percentage of the court's caseload. Once again, it is the more subtle forms of emotional disturbance which remain undetected. Basic concepts which distinguish between health and illness must be part of an intake officer's education.

Similarly, he must also become responsible for assessing the source of his own anxiety and distinguishing it from other clues of emotional disturbance which are present in an intake interview. What are the ways that an intake officer can distinguish a true disorder in thinking, or truly inappropriate behavior? Once again, our research suggests that the most effective way is to utilize objective techniques in the form of brief screening tests. We are recommending paper and pencil personality measures which may be machine scored and for which there are various subgroup norms. One example would be group administration of the Minnesota Multiphasic Personality Inventory. Other illustrations of tests which require less time and a lower level of reading ability take the form of sentence completion tests, etc. We are not suggesting that each child receive comprehensive projective testing. However, if the screening tests reflect marginal or pathological indices, these youths clearly should receive a full psychiatric and psychological evaluation. Just as the waiver proceedings require a complete mental examination, we would suggest that very young children brought before the court, as well as children who seemingly reflect intense relationship problems, or children whose offenses are bizarre in content or grossly inappropriate for their age, also receive a complete mental examination.

3. <u>Physical Factors</u>.

Physical factors may be relevant to intake in any one of several dimensions. The most apparent would be a physical-medical problem which should be explored by further laboratory testing. The intake officer should be alert to a history which suggests epilepsy, particularly the more subtle manifestations of epilepsy. Another medical question which occurs with surprising frequency may be the early stages of pregnancy. Are there indications of drug addiction, or is there evidence of other neglected physical problems which will affect the child's behavior and/or development? One's physical being can also affect personality and the intake officer should carefully attend to unusual body characteristics or clues of sensory impairment. A child who has been puny or small in stature may have to overcompensate by aggressive behavior. Another child who may be physically handicapped may reflect his dissatisfaction with himself and the world vis-a-vis an antisocial adjustment. Youths who are isolated from their peers or mocked by them because they are homely, obese, or considered physically unattractive may gravitate towards "fringe group" companionship characterized by delinquent activity. It is not uncommon for delinquents to manifest school failure. It would be important in the intake process to attempt to assess whether any of this failure is the result of physiological factors. There has been an increasing awareness of the relationship between reading problems and minimal brain damage, often due to poor prenatal care and the inadequate medical attention received by poor people.

4. Socio-Cultural Factors

It would be naive and presumptuous for our project to attempt to discuss these factors within the brief framework of our proposed model. However, they can not responsibly be ignored. Terms such as "cultural deprivation" and the "ghetto child" must be considered by the intake officer. If the officer is to understand the motivation for an offense or the youth's perception of the significance of his act, he must be familiar with the subcultural values of the youth before him. If the officer is to make recommendations to the court, he must be able to relate the youth's offense to the youth's life. Is the behavior constituting the offense atypical for this youth, his family, his peer group, etc.? Does the youth understand that society at large perceives his offense as atypical? How broad is the youth's awareness of the world around him? The effectiveness of any form of intervention or punishment must be relevant to the individual at whom it is directed. Whether the court acknowledges it or not, it, too, is founded upon a value system and often the court's values are discrepant from those of the juvenile before the court. The court must develop goals and aspirations which are realistically attainable. Otherwise, they can not be implemented. This process is well documented by failures in probation as well as failures in detention and other forms of incarceration. The emergence of neighborhood workers who are members of a delinquent's community as well as former delinquents and convicts as rehabilitation aids seems to be a step in the appropriate direction, and a more realistic attempt to

meaningfully relate to delinquents.

B. Classification.

As a result of the evaluative phase, the process of classification may occur. During the classification phase, all of the data available on an individual can be integrated to understand that individual in terms of his unique qualities which distinguish him from, or relate him to, other individuals. The function of classification should be to perceive a juvenile as an individual and to make plans accordingly.

Classification may occur along a host of dimensions. To some extent this is dictated by the rules of the court. These rules indicate that particular crimes have to be petitioned and, thus, the youth is retained within the juvenile justice system. Another early classification may result in civil commitment to a mental hospital. A third broad classification or differentiation may result in dropping the charges and releasing the child to his family or some other responsible community agency. Within these categories as well as others to be discussed, judgments are based on intellectual and emotional factors. The risk factors, i.e., how dangerous is the youth to himself or the community, are also considered. While these factors are essential, they are insufficient for developing a meaningful program of intervention. The court is responsible for making the youth's experience in the court system as useful as possible. This is the court's responsibility to the community as well as to the youth.

The state of California has developed and refined a system of classification over the past ten years.[2/] Extensive research under the broad title of the Community Treatment Project offers insights into classifying delinquents which have been evaluated for their success. The classification system employed in California is utilized well after the intake process. In fact, only those youths who have failed in previous probation at the local level are moved into the Community Treatment Project, which is a state level system.

It would seem more useful to implement the classification process at intake rather than wait for probation failures. The Community Treatment Project classifications are based on a theory of individual interpersonal development.[3/] The theory distinguishes different levels of interpersonal maturity. These levels are labeled "I", or Integration, levels. For a further discussion of these levels, it will be necessary to review the literature suggested in the foot note. Briefly, each level cites particular ways in which an individual perceives his environment as well as the specific way he interacts or functions within his environ-

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2/ Palmer, T.B., Turner, J.K., Johns, D.A., & Netto, V.V., 7th Progress Report; An Evaluation of Community Treatment for Delinquents jointly sponsored by the California Youth Authority and the National Institute of Mental Health (MH 14734, formerly MH 00598) (1968).

3/ Sullivan, C.E., Grant, M.Q., and Grant, J.D., The Development of Interpersonal Maturity: Applications to Delinquency, Psychiatry 20, 373-385 (1957)

ment. There are many sublevels within the broad integration level. The sublevels differentiate even further the pattern of response and the expression of underlying needs and feelings. Thus, the subgroup level attempts to focus with specificity on how an individual will respond or behave.

The Community Treatment Project has found that approximately 99 percent of the delinquent adolescents they see fall within the second, or "lower", the third, or "middle", and the fourth, or "higher" level of integration.

A brief description of these I-level categories appears below.[4/]

The following is a capsule account of the "lower" (I_2), "middle" (I_3) and "higher" (I_4) maturity levels, together with the nine delinquent subtypes:....

Maturity Level 2 (I_2): An individual whose overall development has not progressed beyond this level view events and objects primarily as sources of short-term pleasure or else frustration. He distinguishes among individuals largely in terms of their being either "givers" or "withholders", and has little conception of interpersonal refinement beyond this. He has a very low level of frustration-tolerance together with a poor capacity to understand many of the basic reasons for the behavior or attitudes of others toward him. The delinquent subtypes are:

4/ This is a partial revision of the summary account which appears in: Warren, M.Q., The Community Treatment Project after 5 years, California Youth Authority, (1967).

1. Asocial, Aggressive (Aa) - often responds with active demands, open resistance, "malicious mischief", or verbal and physical aggression when frustrated by others.... 2. Asocial, Passive (Ap) - often responds with passive resistance, complaining, pouting or marked withdrawal when frustrated by others....

Maturity Level 3 (I_3): More than the I_2, an individual at this level recognizes that certain aspects of his own behavior have a good deal to do with whether or not he will get what he wants from others. An individual at this level interacts primarily in terms of oversimplified rules and formulas rather than from a set of relatively firm, generally more complex internalized values. He understands few of the feelings and motives of individuals who are organized differently than himself. More often than the I_4, he assumes that peers and adults operate mostly on a rule-oriented or intimidation/manipulation ("power") basis. The delinquent subtypes are:

1. Immature Conformist (Cfm) - usually fears, and responds with strong compliance and occasional passive resistance to, peers and adults whom he thinks have "the power" at the moment. He sees himself as deficient in social "know how", and usually expects rejection.... 2. Cultural Conformist (Cfc) - likes to think of himself as delinquent and tough. Typically responds with conformity to delinquent peers or to a specific reference group.... 3. Manipulator (Mp) - often attempts to undermine or circumvent the power of authority-figures, and/or usurp the power role for himself. Typically does not wish to conform to peers or adults....

Maturity Level 4 (I_4): More than the I_3, an individual at this level has internalized one or more sets of standards in terms of which he frequently attempts to judge the behavior and attitudes of himself as well as others.* He recognizes interpersonal interactions in which individuals attempt to influence one another by means other than promises of hedonistic or monetary reward, compliance, manipulation, etc. He shows moderate-to-much ability to understand underlying reasons for behavior and has some ability to respond to complex expectations of others on a moderately long-term basis. The delinquent subtypes are:

1. Neurotic, Acting-out (Na) - typically and actively attempts to deny - and distract himself and others from - his conscious feelings of inadequacy, rejection, or self-condemnation. Sometimes he does this by verbally attacking others, or by "gaming" and conning....

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* These standards are not always mutually consistent, or consistently applied.

2. Neurotic, Anxious (Nx) - frequently manifests various symptoms of emotional disturbance - psychosomatic complaints, etc. - which result from conflicts produced by feelings of failure, inadequacy or conscious guilt.... 3. Situational-Emotional Reaction (Se) - responds to immediate family, social or personal crisis by acting out - although his childhood and pre-adolescent development seem fairly normal in most respects.... 4. Cultural Identifier (Ci) - expresses his identification with an anti-middle class or with a non-middle class value system by occasionally acting out his delinquent beliefs and/or by "living out" in commonly unacceptable ways. Often sees himself as competent and, sometimes, as a leader among peers....

Once a youth has been classified, the court is considerably better prepared to make a disposition which is not only meaningful but has some chance of success. The classification considers so many phases of a youth's life that intervention can occur at any one of these phases both as a means of preventing crises as well as a means of treating crisis situations. The classification system may be extrapolated for use within the community as well as within a detention facility. It acknowledges the fact that some youngsters would function more comfortably in small group homes versus a larger institution. It acknowledges the fact that one youth may benefit from a secure controlled environment while another may be provoked by the same setting and need a considerably less structured setting. Some youths are capable of gaining insight and participating in a depth relationship with a probation officer. Other youth's personality or intelligence would preclude this type of relationship.

Developing an adequate classification system is effortful and requires considerable training of the intake officer who must perform this task. Similarly, the gathering of the data used to classify the

juvenile is time consuming and may require several interviews with the youth and his family. Several questions arise.

What about youths who are not placed on probation? Is intensive classification wasteful in these situations? If the intake officer encounters a youth who appears essentially normal and has some stable family or other community ties and for whom this encounter represents a first offense, the intensive classification and evaluation may not be necessary. However, the intake officer's familiarity with an overall classification system will sharpen the degree of accuracy with which he selects these youths as well. For other youths who represent the small group who are apparently psychotic and for whom civil commitment appears appropriate, evaluation and classification may be deferred to the mental hospital. However, the majority of the youths who appear at intake remain in the judicial system and the problem of effective intervention is the responsibility of the court. Thus, classification is appropriate.

C. Referral.

The concept of referral may be interpreted in several ways. In the proposed model, we are recommending that the juvenile court make referrals within its own network of services as well as to outside agencies. If the intake section has proceeded with the evaluation and classification as previously discussed, the referral process will be a natural outgrowth of these procedures. If probation is the treatment of choice, delinquent youths and probation officers will be matched according to systematic criteria and based on the information gathered during intake. The

youths who require confinement would also be referred in a systematic fashion. Judgments would be made on the particular treatment model offered by an institution, the anticipated length of confinement, the security risk, and the institution size. If a youth is referred out of the court for treatment, treatment needs can be documented, and the treatment plan can be justified.

The overt offense which brings a youth to court reflects a crisis in and of itself, regardless of whether or not there is evidence of severe disturbance. It does not seem likely that the traditional model upon which referrals are based, wherein mental health versus mental illness, promises any improvement in services to the court. The suggested revisions in the referral procedure are oriented towards seriously meeting the "best interests" of the child. Best interests cannot be determined on a cursory basis. Referral decisions can only be made after detailed investigation.

VI. MENTAL CAPACITY OF THE CHILD BEFORE THE JUVENILE COURT

The theory behind the juvenile court was that a child who broke the law should be dealt with not as a criminal but, under the *parens patriae* power of the state, as a child who needed care, protection, and rehabilitation.[1/] The juvenile courts were not to punish a child for his act which would have been a crime if committed by an adult, but on the contrary were to look at the antisocial act as a signal that the child needed care.[2/]

Juvenile courts were supposed to save children from a life of crime, and deal with such pre-delinquent conditions as poverty, begging, and vagrancy.[3/] Soon after the founding of the juvenile courts the concept of "delinquency", which originally related to violation of state statutes or municipal ordinances, was broadened to cover "incorrigible" child-

1/ *In re* Gault, 387 U.S. 1, 15-16 (1967).

2/ In the words of Julian W. Mack, the purpose of the juvenile court was not to determine whether

> ". . . this boy or girl committed a specific wrong, but what is he, how has he become what he is, and what had best be done in his interest and in the interest of the State to save him from his downward career." Mack *The Juvenile Court*, 23 Harv. L. Rev. 104, 119-120 (1909-10).

3/ *See* Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 Stan. L Rev. 1187 (1970) for a discussion of the theory that juvenile courts were established to deal with pre-delinquent conditions such as poverty, begging, and vagrancy which were thought to be conditions leading to a life of crime.

dren,[4/] so that delinquency became a catchall category. The juvenile courts also had dependency and neglect jurisdiction so that it was often not clear what was the basis of the court's action.

The juvenile courts were supposed to use the behavioral sciences to discover the underlying problems involving the child. Over time the distinction was lost between a child who had done something and needed rehabilitation and a child who had done nothing but had serious problems and needed help. The social investigation of the child's background was used to demonstrate how much a child needed help. Furthermore, the psychological and psychiatric diagnosis seemed to give a scientific basis for the view of delinquency as sickness requiring treatment.[5/] As the years passed, the dominance of the social worker in the probation departments of the juvenile courts added strength to the view of the court as a finder of cases needing assistance.[6/]

4/ See, e.g., Law of May 11, 1901, § 1, subd. 1, [1901] Ill. Laws 141 (Amended 1905). The 1905 Illinois law defined a delinquent child, in part, as: "any child under the age of sixteen (16) years who violates any law of this State ... or who is incorrigible; or who knowingly associates with thieves, vicious or immoral persons; or who, without just cause and without the consent of its parents or custodian, absents itself from its home or place of abode, or who is growing up in idleness or crime... Law of May 16, 1905, §1, subd. 1, [1905] Ill. Laws 152.

5/ *See* Lou, *Juvenile Courts in the United States* 202 (1927).

6/ Tappan, *Juridical & Administrative Approaches to Children with Problems*, in Justice for the Child, 156-59 (M. Rosenheim ed. 1962).

In the establishment of the juvenile court there was a legislative recognition that children should not be subject to adult criminal responsibility because they were not yet intellectually and emotionally mature.[7/] Environmental conditions were considered to have rendered a youth's will incapable of knowing or being able to choose between good and evil so that a juvenile offender should not be held fully responsible for his acts.[8/] Whether a child understood the meaning of what he had done was not a criteria for the court's jurisdiction because if he did not comprehend the nature of his act, then, from the point of view of society he needed to be rehabilitated even more.[9/]

Legal concepts that might limit the application of criminal law against children due to immaturity and mental or emotional capability

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7/ See, e.g., State v. Monahan, 15 N.J. 34, 39, 104 A.2d 21, 23 (1954).

8/ Miller, Responsibility - In Criminal Law and in Treating Juvenile Offenders, 23 U. Kan. Cty. L. Rev. 266, 281 (1954); Precker, The Treatment of Juvenile Offenders in Murder Cases, 41 J. Crim. L. 49, 51 (1950-51).

9/ See, Fox, Responsibility in the Juvenile Court, 11 Wm. & Mary L. Rev. 659 (1970).

did not appear to have any application in juvenile court. In the light of the landmark Gault decision,[10/] it is necessary to look at the legal implications of the mental and emotional condition of juveniles who come before the juvenile court.

A number of legal tools are usable in juvenile court to question a child's capacity to understand or control his actions or to comprehend the juvenile proceedings. There is the question of competency to stand trial which relates to the ability of a child to understand and assist in his own defense. There is the question of whether the infancy defense, the common law's way of considering whether a child's immaturity frees him from criminal responsibility, can be applied in juvenile court. There is the issue of whether mens rea, or intent, and, hence, a child's capacity to form intent is an element which must be proven in the juvenile court when what would otherwise be a crime if committed by an adult is alleged. There is also the issue of the applicability of the insanity defense to juvenile proceedings.

Competency to stand trial, capacity to form intent, the infancy and insanity defenses raise complex issues of criminal responsibility in a juvenile setting. As the assumptions behind the juvenile court change,

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10/ In re Gault, 387 U.S. 1 (1967) held that the Fourteenth Amendment due process requirement applied to juvenile courts and, specifically, that a juvenile, charged with delinquency, was entitled to the privilege against self-incrimination, adequate notice, the right of confrontation, and right to counsel.

it is natural to turn to criminal law precedents for guidances but these concepts have to be given meaning for children before the juvenile court. This section discusses the applicability of competency to stand trial, the infancy defense, intent, and the insanity defense to juvenile proceedings.

Competency to Stand Trial

It has been the rule for several centuries under the common law that the accused must be able to understand the nature of the proceedings against him and render effective assistance in his defense.[11/] This principle, called competency to stand trial, is included in the constitutional guarantees of due process, so that a defendant must not only be physically present when tried, but also mentally and intellectually capable of participating in his own defense.[12/] Competency relates to an individual's capacity to comprehend what is going on and to participate in his own defense at the time of trial.[13]

11/ Robey, Criteria for Competency to Stand Trial: A Checklist for Psychiatrists, 122 Amer. J. Psych. 616 (1965).

12/ There is a duty of a court, even if not properly raised by defendant, to inquire into defendant's competency to stand trial because otherwise an accused would be deprived of his constitutional right to a fair trial. Pate v. Robinson, 383 U.S. 375 (1966).

But cf. Ennis, Civil Liberties and Mental Illness, Crim. Law Bull. Vol. 7, No.2 (Mar., 1971), which indicates that there are a few extraordinary situations when an incompetent defendant can be tried.

13/ Although the test of competency varies, essentially the competency

Competency should not be confused with criminal responsibility which is considered through the insanity or infancy defenses and relate to the juvenile's mental capacity at the time of the act of which he is accused.[14/] Competency is generally recognized as a necessary prerequisite to trying a juvenile court case, however, there are few cases or statutes to this effect. One of the reasons is that the easiest way to handle the legal issue is to find that the juvenile is in fact competent.[15/] If the particular child is competent then there is no need to decide whether or not an incompetent delinquent can be tried in a delinquency proceeding.

In a case involving a juvenile, In re M.G.S.,[16/] on two separate

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test is:

"To be considered competent to stand trial an individual must possess sufficient mental capacity to comprehend the nature and object of the proceedings and his own position in relation to these proceedings, and to be able to advise counsel rationally in the preparation and implementation of his own defense." Robey, supra note 11, at 617. See also State v. Lucas, 30 N.J.Z 37, 72, 152 A.2d 50, 69 (1959); People v. Jensen, 43 Cal.2d 572, 576, 576, 275 P.2d 25, 28 (1954).

14/ Robey, supra note 11, at 617.

15/ In a recent New Jersey case, the juvenile's ability to participate in the proceedings had not been questioned. In this case, the court stated that the testimony supported the conclusion that the juvenile understood both the charge and the nature of the proceedings sufficiently well to allow him to comprehend his position and consult intelligently with counsel in the preparation of his defense. In re State in Interest of H.C., 106 N.J. Super. 583, 591 & n.1, 256 A.2d 322, 326 & n.1 (Morris County Juv. & Dom. Rel. Ct. 1969).

16/ 267 Cal. App.2d 329, 72 Cal. Rptr. 808 (Ct.App. 1968).

occasions, one in adult and one in juvenile court, the juvenile was considered incompetent to stand trial and referred to a state hospital.[17/]

17/ Id. at 332, 72 Cal. Rptr. at 809

M.G.S. had come before the juvenile court in April of 1966 and had been declared unfit for juvenile court consideration. Two informations were filed in Superior Court charging a robbery and discharging a firearm in a dwelling. The juvenile pleaded not guilty by reason of insanity. Two of three psychiatrists thought the minor was legally insane. The third psychiatrist stated that the minor was sane both at the time of the commission of the act and was able to stand trial. The court, in doubt as to the minor's sanity, ordered the minor committed to the state hospital on July 22, 1966. In October M.G.S. was certified by doctors as able to understand charges and cooperate with his attorney. The juvenile then moved that at the hearing when he was declared unfit as a juvenile, he did not have counsel and the Superior Court certified the case back to the juvenile court. In November 1966, a petition charging the juvenile with violating Section 602 of the Welfare and Institutions Code of California which relates to acts which would be a crime if committed by an adult. Two days after the petition was filed, the psychiatric clinic recommended immediate emergency hospitalization. The juvenile court directed the mental health counselor to file a petition of mental illness and in December committed the child to a hospital on this petition and continued the juvenile delinquency petition until the minor was released from Carmarillo State Hospital. Upon receipt of a letter from a doctor at Carmarillo Hospital that the minor was "competent", to participate in the proceedings, and incidentally should be placed in a controlled environment if further acting out occurred, a hearing on the delinquency petition was set where the minor was committed to the Youth Authority. On appeal this decision was reversed because the minor had not personally admitted to the robbery or authorized his counsel's statement to that effect. An additional factor was that the lawyer had failed to raise the insanity defense which violated the constitutional guarantee of due process of law. Id. at 331-32, 72 Cal. Rptr. at 809-11.

The M.G.S. case is an interesting demonstration of the important of consideration of the mental condition of a juvenile. For the assumption that the juvenile justice system operates to protect the mentally ill child in some way is certainly disproven by the attempt to waive him to adult court, plead him guilty, and finally send a repeatedly hospitalized mentally disturbed juvenile to a correctional institution.

There are statutes on incompetency to stand trial in juvenile court. The recently enacted District of Columbia Court Reform and Criminal Procedure Act of 1970[18/] deals directly with the question of incompetency to stand trial in delinquency proceedings.[19/] If after a mental examination, the court decides that the child is incompetent due to mental illness or substantial retardation, it must suspend further proceedings. If the juvenile is allegedly delinquent, and declared incompetent, the corporation counsel must initiate civil commitment proceedings for mental

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18/ Pub. L. No.91-358, 84 Stat. 473 (July 29, 1970).

19/ The act provides:

> (c) (1) If as a result of a mental examination the [Family] Division determines that a child alleged to be delinquent is incompetent to participate in proceedings under the petition by reason of mental illness or substantial retardation, it shall, except as provided in subsection (2), suspend further proceedings and the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 or 11 of title 21. [Title 21, Chap. 5 referred to in the section above is entitled "Hospitalization of the Mentally Ill." Chapter 11 is entitled "Commitment and Maintenance of Feebleminded Persons."]

illness or retardation. Section 16 - 2315 (c) (2) gives the court direct authority to confine a child to a suitable facility until his competency to participate in transfer proceedings is restored.[20/]

20/ Section 16-2315 (c) (2) of the D. C. Court Reform and Criminal Procedure Act of 1970 relates to incompetency to participate in waiver proceedings and provides:

"(2) If a motion for transfer for criminal prosecution has been filed pursuant to section 16-2307 and the [Family] Division determines that a child alleged to be delinquent is incompetent to participate in the transfer proceedings by reason of mental illness, it shall suspend further proceedings and order the child confined to a suitable hospital or facility for the mentally ill until his competency is restored. If prior to the time the child reaches the age of 21 it appears that he will not regain his competency to participate in the proceedings, the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 of title 21." [Title 21, Chap. 5 referred to in the section above is entitled "Hospitalization of the Mentally Ill."]

In the District of Columbia in the second decision of the District of Columbia Circuit in the Kent case, 401 F.2d 408 (D.C. Cir. 1968), the court held that a "seriously mentally ill juvenile" could not be waived. This decision appeared to cover juveniles who were mentally disordered but who could not be civilly committed. The D. C. Juvenile Court responded by requiring all juveniles who were to be waived to have a psychiatric examination to see if they were civilly committable. Thisnew Section 16-2315 (c) (2) made it clear that mental illness short of incompetence is not a bar to transfer. "This constitutes a statutory reversal of the decision in Kent v. United States, 401 F.2d 408 (D.C. Cir. 1968), and it is clear that the reversal is deliberate." Lawton, Juvenile Proceedings --The New Look, 20 (Nos. 2 & 3) Amer. U. L. Rev. 342, 353 (1970-71).

This act recognizes that there are children who may be mentally ill or retarded but deemed competent to participate in court proceedings[21/] The act merely provides for suspension of the delinquency charges upon commitment for incompetency In order to be removed entirely from the system, the child would have to remain incompetent until the age of 21. Thus, a child would seem to be subject to further juvenile proceedings after being released from civil commitment. A child would seem also to be subject to further juvenile proceedings even if he was thought to be incompetent, but was not civilly committed as a result of the commencement of the civil proceedings.[22/]

The Legislative Guide for Drafting Family and Juvenile Court Acts provides that if a child is committed as mentally retarded or a mentally

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21/ Darling, Youthful Offenders and Neglected Children Under the D.C. Crime Act, 20 (Nos 2 & 3) Amer U. L. Rev 373, 41? (1970-71)

22/ Section 16-2321 provides that if no examination has been held due to the competency issue and mental illness is discovered after fact-finding and before disposition, an examination may be ordered. Section 16-2321 (c) further provides that if the examination does not indicate that commitment proceedings should be initiated or such proceedings do not result in commitment, then the juvenile court shall proceed to disposition While this provision seems to refer directly to the examinations under this section, it is so broad that combined with a reading of Section 16-231 it would seem to mean that if such proceedings do not result in commitment that the court can proceed to disposition.

ill child the petition alleging delinquency shall be dismissed.[23/] While it is desirable to dismiss the petition if the juvenile is civilly committed as in the H.E.W. Guide, juveniles may well be incompetent and mentally disturbed but yet not meet the requirements for civil commitment.

23/ W. Sheridan, Legislative Guide for Drafting Family and Juvenile Court Acts, §40 (c), (Children's Bureau Pub. No. 427, 1969) [hereinafter cited as H.E.W. Guide]. The comment to that section states:

> "This section is new. It provides for the disposition of children who are found to be mentally ill or mentally retarded. Its effect is to prevent a finding and commitment of such children as neglected, delinquent or in need of supervision." Id.

The question of mental deficiency and retardation obviously has some bearing on the issue of a juvenile's competency to stand trial. This study, however, has not attempted to deal with this question. A recent study, sponsored by the N.I.M.H., discovered that the legal procedures and practical methods for dealing with "delinquent" retardates -- those mentally retarded children who are charged initially with having committed a delinquent act -- vary considerably from jurisdiction to jurisdiction. For example, in some states, the Juvenile Court is given specific jurisdiction over "feebleminded" children with the power to commit them, after an adjudication of "feeblemindedness," to an institution for mentally retarded persons. In other jurisdictions, the juvenile court has the power to commit delinquent retardates only to "correctional" institutions -- that is any institutions not equipped to deal with retarded delinquents as a special class. Any hope for treating the delinquent retardate in an institution specifically for retarded persons is provided by obtaining a "transfer" from the correctional institution to an institution for retarded children. At this point, of course, the child has already been adjudicated "delinquent." For a fuller discussion of the N.I.M.H. study see Ferster & Courtless, All Men Are Not Created Equal; A Study of the Legal Status of the Mentally Retarded, 1971 (unpublished book based on study: "The Mentally Retarded and the Law," funded by N.I.M.H. (MH-O-1947)).

The effect of this provision in the H.E.W. Guide then is to dismiss the juvenile delinquency petition only if the mental health system will take control of the child. Similarly, the provisions of the D. C. Court Reform Act assume that the child is incompetent only if he is civilly committable.[24/]

Both the D. C. Court Reform Act and the H.E.W. Guide equate incompetence with mental illness. Psychiatrists and lawyers also tend to confuse incompetency with mental illness.[25/] A child may be mentally ill, but, nevertheless, competent. The reverse is also possible that is, that a child may not be mentally ill but yet be incompetent.

The Massachusetts juvenile court act also provides for competency examinations.[26/] Competency has been raised from time to time in Boston area juvenile courts, and if raised would immediately lead to a psychiatric evaluation. The prosecution and the defense rely on the psychiatric report, but if the juvenile is emotionally disturbed but not

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24/ It should be noted that if the [Family] Division finds that a child is incompetent "to participate in the transfer proceedings by reason of mental illness", it can order the child directly to a hospital. See Sec. 16-2315 (c) (2), note 20 supra.

25/ Robery, supra note 11, at 617, 621.

26/ Mass. Gen. Laws Ann. ch. 123, §100 (1958).

psychotic, he will usually be processed through the juvenile court system.[27]

When the competency of the juvenile to stand trial is considered, in most jurisdictions, the test which is used is that found in adult criminal law statutes or case law, because no mention of competency is made in most juvenile codes.

Rule 41 of the Model Rules for Juvenile Courts[28] provides:

Rule 41--Physical and Mental Examination

> Following the filing of a petition, the court may order that the child shall be examined by or under the direction of a physician, surgeon, psychiatrist, or psychologist, to aid the court in determining. . .
>
> (2) the child's competence to participate in the proceedings:

And the comment notes: "A pre-adjudication examination may also be necessary if the child's competency is in issue. . ." The rules apparently assume that a mental examination may be necessary on the issue of competency.

One of the reasons that competency has been so little defined in a juvenile court context is probably that the theory behind the juvenile

27/ The limited facilities for evaluation and treatment are a major problem in considering any mental health problem of a child. Interview with Wesley Orchard, attorney, Massachusetts Defender Committee, Boston, Mass. July 6, 1970.

28/ Council of Judges of the National Council on Crime and Delinquency, Model Rules for Juveniles Courts 86 (1969) (hereinafter cited as Model Rules).

court makes competency of little significance. If the juvenile court is acting in a child's best interest, it then becomes unnecessary to consider if the child is competent or not to stand trial. If a child's competency is raised and he is found competent to stand trial, there is no need to determine that a competent juvenile is necessary to a delinquency adjudication. Thus, raising the issue of incompetency to stand trial requires the juvenile justice system at the beginning of the case to study the mental condition of the particular child in front of the court.

Experience with the Competency Concept

Experience indicates that the issue of whether a juvenile is competent is raised in juvenile proceedings. In the survey of attorneys with the juvenile court experience conducted by this project in 1970,[29] 39 attorneys, or 48 percent, said they had raised the issue of the incompetency of the juvenile to stand trial in juvenile court.[30] In a survey of juvenile court judges conducted by this project in 1968,[31] 17

29/ A Questionnaire Survey of Attorneys [hereinafter cited as Attorney's Survey] dealing with the role of counsel for the mentally disordered juvenile in juvenile court proceedings was conducted from 1970 to 1971 by the Research Foundation of the Bar Ass'n of the District of Columbia Project on: "Law, Mental Disorders and the Juvenile Process." For the tabulation of results see Tables I to XLIII of Appendix B.

30/ Attorneys' Survey, supra note 29, Table XXI of Appendix B.

31/ A Questionnaire Survey of Judges [hereinafter cited as Judges' Survey] dealing with mentally disordered juveniles was conducted during 1968 by John A. Donovan who was then working for this project. The 34 questionnaires of the judges who responded out of the 100

out of 33 judges responded, "yes" to the question: "Has the question of incompetency to participate in juvenile proceedings been presented in your court."[32/]

These answers show that there is acceptance of the competency concept in juvenile proceedings. One Mississippi judge clearly stated: "Competence is a prerequisite to delinquency."[33/] A delinquency finding may be made regardless of competency, one attorney reported, because the judge feels he is helping the child so competency is not important.[34/]

The legal issue is often handled by finding that the juvenile is competent, but a Chicago attorney's statement points out that raising the point is helpful to the juvenile as follows:

> Yes--nine times out of ten, the child was examined by the Court clinic services & found competent to stand trial. But it is a useful device to obtain a clinical evaluation which will influence the disposition after the adjudication. 35/

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juvenile judges contacted are retained in the offices of this project. The results of this survey are also discussed in Donovan, The Juvenile Court and the Mentally Disordered Juvenile, 45 N.D.L. Rev. 222 (1969).

32/ Judges' Survey, supra note 31.

33/ Judges' Survey, supra note 31, Questionnaire 1.

34/ Attorneys' Survey, supra note 29, Questionnaire 24.

35/ Attorneys' Survey, supra note 29, Questionnaire 96.

Raising the issue of incompetency produces a variety of results that may help the juvenile, according to the attorneys' survey. In explaining the results of raising incompetency, only one lawyer stated specifically that his juvenile client had been declared incompetent and 4 additional attorneys indicated a generally successful result.[36/] But one attorney was denied a hearing on the issue of competency and 7 attorneys raised incompetency unsuccessful..[37/] The attorneys who raised incompetency obtained the following positive results in some instancies: the case was continued, charges were dropped, civil commitment resulted or juveniles were referred out to the mental health system, received treatment, were evaluated or hospitalized.[38/]

The judges' survey mentioned many of these same results of raising incompetency in explanation of what action the court takes, or would take, when the issue of [incompetency] is raised, and the purposes for raising it. The juvenile court judges also mentioned that juveniles were evaluated, hospitalized, received treatment or were voluntarily admitted to

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36/ Attorneys' Survey, supra note 29, Table XXI of Appendix B.

37/ Id.

38/ Id.

hospital, but the judges also emphasized that the court would be certain that the child had counsel, might appoint a guardian ad litem, or transfer to the probate court.[39] To the related question of what action the court would take if the juveniles were found to be incompetent, the juveniles court judges would continue charges, dismiss charges, transfer to another court, hospitalize or arrange treatment and finally somehow keep within jurisdiction of the juvenile court.[40] The most important difference in answers is the judges' emphasis on being sure that a possibly incompetent child has a competent guardian and appointing such a guardian if necessary.

There were some concerns by attorneys about raising the possible incompetency of the juvenile.

One attorney felt that raising incompetency "...could delay meaningful treatment. This is based on the practical assumption that those found incompetent become unnecessarily 'lost' in the system."[41] Two other

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39/ Judges' Survey, supra note 31.

40/ Id.

41/ Attorneys' Survey, supra note 29, Questionnaire 329.

attorneys highlighted the inadequacy of facilities to do anything about incompetency in juveniles.[42]

Treatment or services are used to justify retaining juvenile court jurisdiction over an incompetent in some way. As an Idaho judge said:

> The juvenile would be transferred to a proper institution [sic] for treatment and/or training, and juvenile or incompetency proceedings by the Court would be terminated. The child would remain in the custody and control of the institution until time of discharge. If it appeared to be in the child's best interest, the Court might retain jurisdiction of the child even after the commitment with the order to the institution that the child be returned to the Court upon release. If the child is found to be incompetent, but for some reason is not placed at an institution, the child might be retained under the jurisdiction of the Court for probation or whatever services the Court or the County Health Department would be able to provide.[43]

Some juvenile courts solve this problem by use of neglect jurisdiction.[44] Neglect and dependency jurisdiction are based on no fault of the child and hence the court avoids questions of incompetency of the juvenile. The juvenile also avoids the delinquent status because he has not been adjudicated delinquent.

The juvenile court may work out treatment either voluntarily or by civil commitment. One judge stated:

42/ Attorneys' Survey, supra note 29, Table XXI of Appendix B.

43/ Judges' Survey, supra note 31, Questionnaire 15.

44/ Attorneys' Survey, supra note 29, Questionnaire 353.

"If a child were found to be incompetent by the Juvenile Court based on an evaluation, the Court would order some affirmative plan worked out with either "civil commitment" to a state hospital for the mentally ill or by the family through a private psychiatric hospital."[45]

The dismissal of delinquency charges if the child is civilly committed, which is not generally required by statute,[46] is sound policy. Only 2 lawyers out of 50 responses concerning what happens mentioned getting the charges dropped.[47] Twelve judges out of 53 responses concerning what action the court would take if the child were incompetent listed dismissal of charges.[48] Entering into treatment may lead to

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45/ Judges' Survey, supra note 31, Questionnaire 27.

Another judge said, "Would try to arrange diagnosis and treatment--either through juvenile court, voluntary by parents or through involvement of probate division which handles commitment". Judges' survey, supra note 31, Questionnaire 7.

An Indiana judge stated:

"If mentally ill, authorize institution of a mental health inquest for committment [sic] to a state mental health facility.

"If incompetent due to retardation, authorize institution of a proceeding for committment [sic] to a state school for feebleminded. Due to the overcrowding of that institution entry under such committments [sic] is problematical.

"If entry cannot be accomplished under either, charge may be held open to tender assistance thru [sic] a probation officer."

Judges' survey, supra note 31, Questionnaire 17.

46/ See Donovan, supra note 31, at 232.

47/ Attorneys' Survey, supra note 29, Table XXI of Appendix B.

48/ See p. 16, supra.

dismissal of the charges at the time treatment commences,[49] but others favor retaining jurisdiction to see if further action by the court is needed.

Some judges and attorneys seem to equate incompetency with civil commitment to a mental hospital. One judge spoke of referral for a sanity hearing and commitment;[50] one attorney stated the "child was usually certified to the hospital;"[51] and another judge said "committed to Central State Hospital by court order if parents refused to make a voluntary commitment of child."[52]

As has been pointed out in adult cases, psychiatrists who make the diagnosis confuse incompetency with a need to be in an institution.[53]

49/ Judge Survey, supra note 31, Questionnaire 32 says:

"If the issue of competency is raised prior to fact-finding and incompetency is established, his petition will be dismissed. If after fact-finding and before adjudication then will not be adjudication. If after adjudication commitment to mental hospital may be final disposition. There may be certification to mental hospital and on release consideration as to dismissing petition."

50/ Judges' Survey, supra note 31, Questionnaire ___ from Multnomah County, Oregon.

51/ Attorneys' Survey, supra note 29, Questionnaire 353.

52/ Judges' Survey, supra note 31, Questionnaire 13.

53/ Robey, supra note 11, at 617; Bukatman, Foy, and De Grazia, What is Competency to Stand Trial?

The concern in the adult cases has been at the tendency to commit an incompetent adult to a hospital, without any finding of guilt, and leave him for a longer period of time than he would have been in jail if he had been found guilty of committing the crime with which he had been charged. For a child who is declared incompetent, it is vital to recognize a preference for treatment on an outpatient basis.[54/] The importance of outpatient treatment can not be overestimated in the opinion of Dr. Bussell of the Chicago Juvenile Court Clinic.[55/] If outpatient treatment is accepted for the incompetent child he may then avoid unnecessary institutionalization, but yet gain the benefit of treatment without a delinquency or mental illness label.

As one juvenile judge stated, the court should attempt to discover "if the individual's condition warrants treatment rather than the authortative control of the court."[56/] The crux of the matter is that a child

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54/ See Dist. of Columbia Super. Ct. R. 110 (b,c) and Comment which indicates that the rule reflects a statutory preference for outpatient examinations. The rule supplements D. C. Code §16-2315. See Pub. L. No. 91-358, 84 Stat. 473, §16-2315 (July 29, 1970).

55/ Interview with Dr. Robert Bussell, Chief Psychiatrist of the Cook County Juv. Ct. Clinic, in Chicago, May 27, 1970.

56/ Judges' Survey, supra note 31, Questionnaire 3.

incapable of understanding the proceedings or of assisting his counsel should be referred for psychiatric treatment rather than a trial. The goal of many juvenile courts in treating a child's incompetence does not seem to be to require him to stand trial on the delinquency charges.[57/] The purpose of obtaining treatment for an incompetent child should be to rehabilitate him.

The Standard of Competency

Assuming that competency is an issue in juvenile delinquency proceedings, then what should the standard of incompetency be? Out of the 73 lawyers who answered the question whether incompetency or insanity should be different in juvenile court from the adult standard, 46 thought there should be no difference.[58/] While 21 out of 33 juvenile judges thought there should be no difference from the adult standard of incompetency.[59/]

Eighteen attorneys thought the standard of incompetency and insanity should be more lenient,[60/] in juvenile court. Only 3 judges felt that the standard of incompetency should be more lenient.[61/]

57/ See Donovan, supra note 31, at 231.

58/ Attorneys' Survey, supra note 29, Table XXV of Appendix B.

59/ Judges' Survey, supra note 31.

60/ Attorneys' Survey, supra note 29, Table XXV of Appendix B.

61/ Judges' Survey, supra note 31.

As one attorney noted "incompetency or insanity should be easier to establish in juvenile court."[62/] A judge felt that doubts about incompetency should be resolved in favor of the child.[63/]

In order to compare the children's standard of competency with the adult standard there would need to be a clearly understood adult standard of incompetency, while actually incompetency is confused with mental illness or the need for hospitalization.[64/]

62/ Attorneys' Survey, supra note 29, Questionnaire 61. As one Michigan judge stated: "More apt to consider incompetent and prejudicial resolving of problem would be tried." Judges' Survey, supra note 31, Questionnaire 7.

63/ Judges' Survey, supra note 31, Questionnaire 16.

64/ Robey, supra note 11, at 618. The article concludes:

"1. Because the law has provided only vague criteria, incompetency to stand trial has tended to be equated with mental illness by both psychiatrists and members of the legal profession.

"2. Many patients are presently hospitalized prior to trial although examination using the above criteria as guidelines would reveal them able to face their charges.

"3. The presence of mental illness does not preclude competency to stand trial. The defendant may show signs of mental illness and, indeed, even show delusional ideation, as long as it does not interfere with his comprehension of the courtroom proceedings and his ability to advise counsel." Id., at 621.

One authority has developed detailed criteria for competency to comprehend court proceedings, to advise counsel, and to await trial in terms of the individual's mental illness or mental deficiency.[65/]

65/ The problems that often face psychiatrists in advising the court on questions of an adult's competency to stand trial are discussed in Robey, supra note 11. The author suggests the following criteria for pre-trial psychiatric evaluation of competency both as to mental illness and intellectual deficiency:

1. Comprehension of Court Proceedings
   Surroundings
   Procedure
   Principals
   Charges
   Verdicts
   Penalties
   Legal Rights

2. Ability to Advise Counsel
   Facts
   Plea
   Legal Strategy
   Maintaining Relationship with Lawyer
   Maintaining Consistency of Defense
   Waiving Rights
   Interpreting Witnesses' Testimony
   Testifying (if necessary)

3. Susceptibility to Decompensation while awaiting or standing trial
   Violence
   Acute Psychosis
   Suicidal Depression
   Regressive Withdrawal
   Organic Deterioration

These criteria for competency to stand trial can be viewed in terms of the normal child who is less competent than an adult. 66/ As one attorney said:

> As to incompetency--the age, intelligence quotient, emotional stability should be taken into consideration, as compared to comparable reaction by normal youth of similiar [sic] age. 67/

With a normal child as the standard, the question remains to what extent a child can comprehend court proceedings or have any ability to advise counsel.

In considering the ability of children to comprehend the proceedings one attorney emphasized the incompetence of all children as follows:

> Incompetency must generally be assumed in a juvenile proceeding in D. C. Most children do not have any idea of what is happening to them and most do not have any interest in the proceedings. . . 68/

When mental disorder is present the ability to aid counsel or comprehend proceedings is further impaired. "Does his emotional disturbance affect his ability to participate in his own defense" was asked of the attorneys in the survey. 69/ Seventy-two percent of the who responded

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66/ "The Court has always considered children less competent than a mature adult." Judges' Survey, _supra_ note 31, Questionnaire 2.

67/ Attorneys' Survey, _supra_ note 29, Questionnaire 16P.

68/ Attorneys' Survey, _supra_ note 29, Questionnaire 290.

69/ Attorneys' Survey, _supra_ note 29, Table XX of Appendix B.

did feel that emotional disturbance in certain circumstances or conditions affected the child's ability to participate Only 22 attorneys or 28% of the lawyers answered this question in the negative.

Two answers to the question whether emotional disturbance affects the ability of a juvenile to participate in his own defense indicate the following difficulties raised by illiteracy, environment, cultural and social deprivation:

> New York, New York: "Sometimes--but so does illiteracy, environment, language (Spanish speaking kids) the court structure, etc."70/

> Washington, D. C.: Definitely, although such ability to participate among under privileged juvenile is relatively impaired in any event.71/

The deprived children who form the vast majority of the clientele of most urban courts have a real problem of "social competence" in a juvenile court setting.

In concluding on the subject of competency to stand trial in juvenile court, it is evident that the concept already has meaning in that setting and is used properly by some juvenile courts to keep incompetent juveniles out of the juvenile correctional system. This is as it should

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70/ Attorneys' Survey, _supra_ note 29, Questionnaire 15.

71/ Attorneys' Survey, _supra_ note 29, Questionnaire 219.

be, for any question "present competence to face and understand a hearing should be resolved so as to provide maximum protection for child."[72/] A child who is questionably competent to stand trial can be referred for treatment out of the juvenile correctional process. The duty of the juvenile court is increasingly seen as the duty not to adjudicate a child delinquent;[73/] and this principle should be applied in competency cases.

The standard of competency to be applied to children raises difficult questions. The ability to comprehend the proceedings and advise counsel is limited in children and can only be judged in terms of the normal child. Certainly the younger children can not be "competent" in any real sense. In these cases it would be important to see if the child has a competent guardian, and appoint one if necessary. Secondly, for any child under 12 a psychological and psychiatric examination should be required when there is the slightest question of competency.

The older child, in juvenile court, overwhelmingly the deprived child of the inner city, has a limited competency to understand court proceedings at best. Such a juvenile has an impaired ability to communicate and when emotional disturbance is added to his problems, his impaired ability to communicate is further impaired. Many juveniles

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72/ Judges' Survey, *supra* note 31, Questionnaire 11.

73/ *See* Fox, *supra* note 9, at 682-84.

before the juvenile court also have a low IQ which further limits their competence as does the turbulence of adolescent years particularly in a modern urban setting.

Even using the adult standard of competency, it is obvious that many juveniles do meet the standard of incompetency. It presents an early chance in the juvenile court process to focus on the individual mental processes of juveniles. When appropriate consideration is given not only to the age and mental capability of the child but also to giving maximum protection to a child, the concept becomes even more useful. Incompetency to stand trial in a child does not need to be equated with mental illness or hospitalization. Such an expanded view of incompetency, must be combined with a preference for out-patient treatment so that the use of the concept does not necessarily lead to institutionalization.

Common Law Infancy

Long before the creation of the juvenile court, the common law had developed a legal presumption as to the incapacity of children of tender years to commit a crime using the test whether the child knew the act was wrong.[74/]

This common law presumption of immaturity, otherwise known as the infancy defense, arose out of the universal assumption that there should be some mitigation of the criminal responsibility of children because

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74/ Perkins, Criminal Law 837 (2d ed. 1969).

there was a question whether a child knew an act was legally and morally wrong.[75/] Infancy has constituted a defense in criminal court under the common law since the beginning of this nation.[76/]

The common law rule provides a way of dealing with the immaturity of a child. A child under seven is conclusively presumed not to be criminally responsible for his acts. A child between seven and fourteen is presumed not capable of appreciating the nature of his acts or knowing that these acts are wrongful. This presumption, however, can be rebutted, by the state proving affirmatively as a matter of fact that, despite lack of years, a child had sufficient capacity to entertain criminal intent.[77/]

75/ See Williams, The Criminal Responsibility of Children, 1954 Crim. L. Rev. 493, 494; F. Woodbridge, Physical and Mental Infancy in the Criminal Law, 87 U. Pa. L. Rev. 426, 438 (1939).

76/ For an informative discussion of the history of the common law presumption in America prior to the founding of the juvenile court see Fox, supra note 9, at 659-64. The infancy defense appeared in America during colonial times, having been based on the English common law view that the immaturity of a child was grounds for being excused from responsibility for a crime. This legal concept did not develop significantly in the 1800's in the United States because children were rarely dealt with as criminals where rules of legal responsibility become significant. But when a juvenile was tried under criminal procedures, the common law exception from responsibility did appear from time to time in the 19th century.

77/ Heilman v. Commonwealth, 84 Ky. 457, 1 S.W. 731 (1886). The court stated that the intent or guilty knowledge must be proved by strong and clear evidence. The court held that the jury should have been instructed "whether he had mind and discretion sufficient to discern between good and evil and to know the wrongful character of the act." Id. at 461, 1 S.W. at 732.

The common law presumption which is conclusive below the age of seven is of gradually diminishing strength until the age of fourteen is reached when the presumption disappears entirely,[78/] and the child can be held criminally responsible, as an adult.[79/] A child over fourteen is presumed to be capable of criminal intention and hence criminally responsible, unless he can show that for a reason other than immaturity, such as mental illness, he does not have sufficient capacity.[80/]

78/ "While failing to develop techniques comparable to those found in modern juvenile court or youth-correction authority acts, the common law made a very reasonable approach to this problem by taking notice of two ages in order to give due recognition to individual differences. According to the common law a child under the age of seven has no criminal capacity; one who has reached the age of fourteen has the same criminal capacity as an adult, that is, he is fully accountable for his violations of law unless incapacity is established on some other basis such as insanity; while between the ages of seven and fourteen there is a rebuttable presumption of criminal incapacity and conviction of crime is permitted only upon clear proof of such precocity as to establish a real appreciation of the wrong done." Perkins, supra note 74, at 837 (footnotes omitted).

79/ See Clay v. State, 143 Fla. 204, 196 So. 462 (1940).

80/ It is clear that the common law presumption of infancy referred to physical, and not mental, age, so there was no presumption for an adult with an infant "mental" age. See, e.g., State v. Jackson, 346 Mo. 474, 482, 142 S.W.2d 45, 49-50 (1940); Woodbridge, supra note 75, at 453. Cf. In re Gladys R., 1 Cal.3d 855, 867, 464 P.2d 127, 136, 83 Cal. Rptr. 671, 680 (1970).

The juvenile court laws made no mention of the infancy defense probably because the infancy defense was considered obsolete in juvenile court because it was based on a theory of moral responsibility and punishment for crime.[81/] Until recently the general view of the law was that the fact that the child is under the age of common law criminal responsibility and does not understand the wrongfulness of his act does not oust the juvenile court of jurisdiction to deal with him as a delinquent.[82/]

In the Juvenile Court v. State ex rel Humphrey[83/] a child of seven years who had shot and killed a nine year old friend was adjudged delinquent in the Memphis juvenile court. On appeal the Supreme Court of Tennessee ruled that the juvenile court did not have to consider the child's common law incapacity[84/] because juvenile court proceedings are

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81/ Most juvenile court acts have no floor and the court's jurisdiction applies to all children under a certain age. Rubin, Crime and Juvenile Delinquency---A Rational Approach to Penal Problems 56 (1961).

82/ 31 Am. Jur. Juv. Cts. §39 (1958). See Id.

83/ Juvenile Ct. v. State ex rel. Humphrey, 139 Tenn. 549, 201 S.W. 771 (1918).

84/ The juvenile's mother had filed a petition for habeas corpus in criminal court and was awarded his custody. From this judgment of the criminal court the juvenile court authorities appealed to the court of civil appeals. The appeals court upheld the granting of the writ of habeas corpus because the juvenile court lacked jurisdiction over homicide offenses. Id. at 557, 201 S.W. at 773.

not criminal.[85/] The court noted that finding a child delinquent was not the same as finding him guilty of a crime[86/] because the purpose of juvenile court action was to provide for the child's welfare and not his punishment.

When a similar question involving the common law infancy defense arose under the Federal Juvenile Delinquency Act in 1958,[87/] the federal courts also concluded that the infancy defense could not be invoked in delinquency proceedings. In United States v. Borders,[88/] a twelve year old was charged with wilfully wrecking an interstate train. The juve-

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85/ Cf. Purvis v. State, 133 Tex. Crim. 441, 442-43, 112 S.W. 2d 186 (1938) and Miller v. State, 82 Tex. Crim. 459, 501, 200 S.W. 389, 392 (1918) which held due to the wording of the Texas juvenile court act at those times that criminal responsibility had to be proven in juvenile court because juvenile court proceedings were criminal in nature.

86/ There had been some controversy as to whether the killing was accidental or deliberate but the juvenile court had found from the evidence that a crime had been committed. Juvenile Ct. v. State ex. rel. Humphrey, 139 Tenn. 549, 557, 201 S.W. 771, 773 (1918).

87/ 18 U.S.C. §§ 5031-37 (1964). Nieves v. United States, 280 F. Supp. 994 (S.D. N.Y. 1968) held that a juvenile is entitled to a trial by jury in all cases under the Federal Juvenile Delinquency Act and that a juvenile can not be required to waive his right to a trial by jury in order to be proceeded against under this act. Cf. In re Fucini, 44 Ill.2d. 305,255 N.E.2d 380 (1970) in which the court held, despite Nieves, that a juvenile was not asked to make a constitutionally impermissable choice when forced to opt to be tried as a criminal, with a jury, or remain under the jurisdiction of the juvenile court, without a jury.

88/ 154 F. Supp. 214, 216 (N.D. Ala. 1957).

nile elected to be proceeded against under the Federal Juvenile Delinquency Act, and moved for acquittal due to failure to prove his criminal capacity. In upholding the denial of this motion, the Court of Appeals accepted the lower court's decision 89/ that the special federal delinquency procedures were enacted with the realization that children do not possess maturity of judgment and capacity to comprehend the nature of their offenses.

The general rule in the reported cases until recently was that a juvenile need not have criminal capacity to be found delinquent, 90/ primarily because rehabilitation of the child would not thereby be advanced and that was the purpose of the juvenile court. There are few reported cases dealing with the issue of whether an infancy defense is permitted in juvenile proceedings. It is probable that the infancy defense has rarely been raised in juvenile courts 91/ because juvenile courts are not

89/ Borders v. United States, 256 F.2d 458 (5th Cir. 1958).

90/ A number of juvenile court cases have discussed whether a juvenile understands the wrongfulness of his act. See In re Smith, 326 P.2d 835 (Okla. Crim. Ct. App. 1958); Ridge v. State, 25 Okla. Crim. 396, 320 P. 965 (1923); Ex Parte Powell, 6 Okla. Crim. 495, 503, 120 P. 1022, 1027 (1912).

91/ Interview with the Honorable Francis Poitrast, Judge of the Juvenile Court, Boston, Massachusetts, in Boston, Massachusetts, July 6, 1970. Judge Poitrast could never remeber the common law presumptions having been raised in his court.

supposed to evaluate criminal responsibility.

The Infancy Defense is Raised in Juvenile Court

The infancy defense was applied to juvenile court proceedings by the Supreme Court of California in a 1970 decision entitled In re Gladys R. 92/ The appellant was a twelve year old girl who had been found to be a ward of the juvenile court for violating the criminal law 93/ under Section 602 of the California Welfare and Institutions code. 94/

The Supreme Court of California sitting en banc reversed the decision of the juvenile court on two grounds, one being the applicability of the infancy defense to juvenile proceedings. 95/ The State Supreme Court based its application of the infancy defense to juvenile court proceedings 96/ on

92/ I Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970).

93/ In re Gladys R., 1 Cal.3d 855, 868, 464 P.2d 127, 129, 83 Cal. Rptr. 671, 673 (1970).

94/ California's Welfare and Institutions Code provides:

> "Any person under the age of 21 years who violates any law of this State...defining crime...is within the jurisdiction of the juvenile court, which may adjudge such persons to be a ward of the court." Cal. Welf. and Inst.'ns Code, §602 (West 1966).

95/ The other ground of reversible error was that the juvenile court had reviewed the social study report before the determination that Gladys had violated the law. In re Gladys R., 1 Cal. 3d 855, 859-62, 464 P.2d 127, 130-32, 83 Cal. Rptr. 671, 674-76 (1970).

96/ Two judges dissented from the application of the infancy defense to juvenile proceedings. Id. at 872, 464 P.2d at 140, 83 Cal. Rptr. at 684 (Burke, J., concurring and dissenting).

Section 26 of the Penal Code which states that children under 14 are not capable of committing a crime in the absence of proof that they knew its wrongfulness.[97/] Since no evidence had been introduced that Gladys knew that what she did was wrong, she could not be made a ward of the juvenile court.[98/] The opinion went on to state that if the legislature had intended to repeal the penal code section on the infancy defense or omit it from Section 602 of the Calif. Welf & Inst. Code the jurisdiction of the juvenile court, it would have done so expressly.[99/] Contrary to earlier decisions,[100/] the court refused to find implicit in the act

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97/ The California code provides:

> "All persons are capable of committing crimes except those belonging to the following classes:...children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness." Cal. Penal Code, § 26 (West 1955).

98/ The final point in the decision of the Supreme Court was that California Penal Code §647 (a) which "applied only to offenders motivated by an unnatural or abnormal sexual interest or intent," is applicable to children. Additional evidence of such abnormal sexual interest as well as additional evidence of the minor's appreciation of the wrongfulness of her conduct could be introduced in any further proceedings. In re Gladys R., 1 Cal. 3d 855, 869, 464 P.2d 127, 138, 83 Cal. Rptr. 671, 682 (1970).

99/ Id. at 863, 464 P.2d at 133, 83 Cal. Rptr. at 677.

100/ Cf. Borders v. United States, 256 F.2d 458 (5th Cir. 1958); Juvenile Ct. v. State ex. rel. Humphrey, 139 Tenn. 549, 201 S.W. 771 (1918).

establishing the juvenile court an attempt to render inapplicable the common law defense of infancy. The Supreme Court of California saw the infancy defense as part of an "overall system of protections afforded to minors".[101/]

The discussion of legislative intent may well have been a rationale[102/] for the Court's policy concerns about the detrimental consequences of a delinquency adjudication. Noting that the protection affored by the infancy defense can not easily be ignored in light of the recent recogni-

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101/ In re Gladys R., 1 Cal.3d 855, 864, 464 P.2d 127, 134, 83 Cal. Rptr. 671, 678 (1970) quoting from People v. Lara, 67 Cal.2d 366, 380, 432 P.2d 202, 213, 62 Cal. Rptr. 586, 597 (1967).

102/ "The argument adopted by the majority concerning legislative intent is far from persuasive. It is true that the § 26 (1) defense was on the books at the time the juvenile court law was adopted, but why assume that the legislature intended it to apply in the juvenile court proceedings? As the Humphrey and Borders decisions prove, there was an equally available rationale that would render § 26 (1) immaterial; the legislature might just as well have been thinking along the lines later articulated by the courts that considered the question. Moreover, if there is anything to the supposition that legislative supporters of the original juvenile court law were genuinely concerned with helping children in trouble, then it makes little sense to attribute to them the simultaneous intent to insulate these same children from the help by means of a sec. 26 (1) defense. Those legislators would hardly have thought of the helping facilities, such as reform schools, as being of the same repressive and punitive nature that the majority of the courts seems to assume them to be. It is difficult to avoid concluding that the matter of legislative intent is little more than a crutch to support the policy decision the court had arrived at through other means." Fox, supra note 9, at 671-72.

tion of the rights of juveniles in juvenile court, the Supreme Court of California stated:

> Strong policy reasons cast doubt upon the placement of a child who is unable to appreciate the wrongfulness of his conduct with an institution where he will come into contact with many youths who are well versed in criminality.103/

Moreover, finding that the common law defense has a universal acceptance, the Supreme Court stated:

> Section 26 embodies a venerable truth, which is no less true for its extreme age, that a young child cannot be held to the same standard of criminal responsibility as his more experienced elders. A juvenile court must therefore consider a child's age, experience, and understanding in determining whether he would be capable of committing conduct proscribed by section 602.104/

The California court recognized the problem, which had concerned the State Attorney General, 105/ that acceptance of the substantive infancy defense might well result in the child going free. 106/ The court sug-

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103/ In re Gladys R., 1 Cal. 3d 855, 866, 464 P.2d 127, 136, 83 Cal. Rptr. 671, 680.

104/ Id. at 864, 464 P.2d at 134, 83 Cal. Rptr. at 678.

105/ Id. at 866 & n. 22, 464 P.2d at 136 & n. 22, 83 Cal. Rptr. at 680 & n. 22.

106/ See Fox, supra note 9 at 671, where the author point out that although it is not discussed the court must have been aware that public safety may be involved in freeing a child who is unaware that it is wrong to sexually molest another child.

gested that to gain jurisdiction over the child the juvenile court might proceed under Section 600 107/ of the Calif. Welf. & Inst. Code, which is the statutory section providing for neglect jurisdiction or Section 601 108/ of the code which grants the court jurisdiction over beyond control cases. 109/

107/ "Any person under the age of 21 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court: (a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control. (b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is an unfit place for him by reason of neglect, cruelty, or depravity of his parents, or his guardian or other person in whose custody or care he is. (c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality." Cal. Welf. & Inst.'ns Code, §600 (West 1966).

108/ "Any person under the age of 21 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his parents, guardian, custodian or school authorities, or who is beyond the control of such person, or any person who is a habitual truant from school within the meaning of any law of this State, or who from any cause is in danger of leading an idle, dissolute, lewd, or immoral life, is within the jurisdiction of the juvenile court which may adjudge such person to be a ward of the court." Id. §601.

109/ In re Gladys R., 1 Cal.3d 855, 865, 464 P.2d 127, 135, 83 Cal. Rptr. 671, 679 (1970).

The court summarized its holding that in order to be found delinquent a child has to understand the wrongfulness of his conduct as follows:

> Section 602 should apply only to those who are over 14 and may be presumed to understand the wrongfulness of their acts and to those under the age of 14 who clearly appreciate the wrongfulness of their conduct. In the instant case we are confronted with a 12-year-old girl of the social and mental age of a 7-year-old. Section 26 stands to protect her and other young people like her from harsh strictures of section 602. Only if the age, experience, knowledge, and conduct of the child demonstrate by clear proof that he has violated a criminal law should he be declared a ward of the court under section 602.110/

The dissenting opinion on the issue of the applicability of the common law presumption of infancy to juvenile court proceedings stated "proceedings in the juvenile court are conducted for the protection and benefit of minors and not to prosecute them as law violators" and "could result in excluding some minors who are in dire need of the care and guidance afforded by the Juvenile Court Law from receiving those benefits."111/

The dissenting judges were very concerned that there could well be a child under fourteen who committed a criminal offense, without the needed proof of his knowledge of wrongfulness, who could not be brought under

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110/ Id. at 867, 464 P.2d at 136, 83 Cal. Rptr. at 680.

111/ Id. at 867, 464 P.2d at 138-39, 83 Cal Rptr. at 680-81.

the juvenile court's jurisdiction by Sections 600 or 601.112/ The dissenters felt that the Gault decision had not changed the *sui generis* character of juvenile proceedings.113/

112/ "The [majority opinion], however, fails to give adequate consideration to the fact that many children who violate a law defining a crime may not be found to come within either section 600 or 601. Under the majority position such children will be deprived of the attention they need in order to become law-abiding citizens. For example, a 12-year-old boy on occasion exhibits a loaded gun in a threatening manner in the presence of another (Pen. Code, §417), and the evidence does not show his conduct was the result of 'a mental or physical deficiency, disorder, or abnormality,' (see Welf. & Inst. Code, §600, subd. (c). A 13-year-old girl has possession of marijuana (Health & Saf. Code, §11530). A 13-year-old boy on one occasion commits statutory rape (Pen. Code, §261, subd. 1), with a willing 13-year-old girl in a private place, or goes joyriding (Pen. Code, §499b) or commits petty theft (Pen. Code, §488). In none of the foregoing instances is there 'clear proof' that the minor at the time of committing the crime had knowledge of its wrongfulness. In the foregoing instances some juvenile courts might conclude that the minor did not come within either section 600 or 601, and additional proof to bring the minor within section 600 or 601 might not be available." Id. at 871, 464 P.2d at 139-40, 83 Cal. Rptr. at 683-84 (Burke, J., concurring and dissenting).

113/ "The common law rebuttable presumption of lack of criminal capacity of a child between 7 and 14 has been regarded as inapplicable in juvenile court proceedings. (Borders v. United States (1958) 256 F.2d 458, 459; see Juvenile Court v. State (Tenn. 1918) 201 S.W. 771, 773; 31 Am. Jur. (1958 ed.) Juvenile Courts, etc., §39, p.317; Rubin, Crime and Juvenile Delinquency (1961) p. 56.) The cited cases reasoned that juvenile court proceedings are not criminal in nature and are not instituted to punish the child for any offense but rather have the purpose of providing for the child's welfare. In this state the Legislature has specifically provided that a juvenile court proceeding shall not be deemed a criminal proceedings. (Welf. & Inst. Code, §503.) In the light of In re Gault (1967) 387 U.S. 1, which held that certain procedural protections required by due process are applicable in juvenile court proceedings, such proceedings may not be regarded in all

Is the decision in In re Gladys R. likely to be followed in other states? It is too soon to tell, but the common law presumption could be revived as another way of focusing on the immaturities and mental capabilities of a child who is caught up in the juvenile justice system.

In most states, acceptance of the infancy defense as applicable to juvenile court hearings is possible given the new attitude towards the juvenile court expressed in In Re Gladys R. It is a foward-looking opinion questioning the use of the delinquency sanction for children of limited mental capabilities. The issue in another jurisdiction could be whether the judges are more concerned as was the majority in In re Gladys R. about the punitive nature of a commitment to training school or as was the minority, about obtaining jurisdiction of the child so something can be done to help him.114/

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cases for every purpose as civil rather than criminal. However, as we pointed out in In re Dennis M., supra, 70 A.C. 460, 472, 'even after Gault. . . juvenile proceedings retain a sui generis character; although certain basic rules of due process must be observed, the proceedings are nevertheless conducted for the protection and benefit of the youth in question. . . .' Thus the conclusion reached in Borders and Juvenile Court remains valid." Id. at 872, 464 P.2d at 140 83 Cal. Rptr. at 684 (Burke, J., concurring and dissenting).

114/ See Fox, supra note 9, at 671.

Besides the complex legal questions involved in the relationship between the jurisdiction of the juvenile and criminal courts and the age of criminal responsibility,115/ there are difficulties with the actual workings of the common law presumption of incapacity between the ages of seven and fourteen.116/ In some states the conclusive presumption of criminal incapacity in children has been raised to age 16 by statute which changes the substantive law in criminal courts in addition to placing children under the exclusive jurisdiction of the juvenile court.117/

115/ Frey, The Criminal Responsibility of the Juvenile Murderer, 1970 Wash. L.Q. 113, 114-15. This article gives a state-by-state review of the interrelationship of juvenile and criminal court jurisdiction in relation to the juvenile murderer and discusses the status of the common law presumption of infancy. The author assumes that incapacity is not involved when the problem is one of juvenile and not criminal court jurisdiction. Id. at 125.

116/ Report of the Committee on Children and Young Persons, Cd. No. 1191, at 36 (1960) (hereinafter cited as British Report).

When Illinois raised the age of minimum criminal capacity in 1961 from age 10 to 13, the legislature commented that in eliminating the presumption of incapacity it was withholding from the jury "an unsatisfactory and uncongenial task." Frey, the Criminal Responsibility of the Juvenile Murderer, supra note 115 at 133 & N.56 See also Id. at 132-33.

117/ A leading case demonstrating the effect of this change is People v. Roper, 259 N.Y. 170, 181 N.E., 88 (1932), in which a 15 year old boy had been convicted of felony-murder in criminal court because first degree murder was punishable by death and that was not within the jurisdiction of the juvenile court. The New York Court of Appeals concluded that the felony of robbery was not a crime when committed by a juvenile and, hence, the killing did not take place in the process of committing a felony. This decision has been extended so that persons under 16 may not be convicted in criminal court of a felony-murder but only of what is called a design murder, which requires proof that the youth intended to kill. People v. Porter,

Even without these legal complexities, with the exception of In Re Gladys R., there is considerable force of precedent against using the infancy defense in juvenile court.[118/] The real problem, as was pointed out in a British Report on the criminal responsibility of children is that the common law presumption of infancy was developed as a dividing line between suffering penalties in criminal court and getting off entirely, which is not the issue at the present time. The British report pointed out that the age of criminal responsibility could only be laid down as part of a total system of protection and control of children. The report concluded that the infancy defense is of doubtful value and that the age of conclusive presumption of criminal incapacity should be raised from seven to twelve with the possibility of it becoming thirteen or fourteen.[119/]

The British Report also recognized the problem of using the standard

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54 N.Y.S. 2d 3 (King's County Ct. 1945). See also Precker supra note 8, at 52-53.

118/ The new District of Columbia Court Reform Act is silent on the common law presumption of infancy. As one commentator on the act remarked: "Incompetency by reason of age alone does not, of course, halt the proceedings." Lawton, supra note 20, at 361 & N.50.

119/ British Report, supra note 116, at 31.

of a child's knowledge of right and wrong;

> This conception is singularly difficult to apply when dealing with children, because we have always to think in terms of the child in his environment, including the climate of opinion in the family and group, as well as physical surroundings. Differing environments may lead to wide variations in the age at which a child comes to this knowledge, so that any rule depending on a fixed age cannot have a sure foundation. Further, the environmental factors may be pulling in different directions. A child of, say, eleven, may know quite well that stealing is wrong, and yet follow the behavior of a group. It is, of course, common to find that a child is under stress from 2 opposing sets of value judgments. The standards of school teaching can be accepted intellectually, and to some extent emotionally, and yet at the same time group standards may control the behavior. The fact that the child 'knows right from wrong' does not mean that we should regard it as a personal responsibility equivalent to similar knowledge in an adult. A child's conception of right and wrong, is, however, of vital importance in dealing with cases. In other words, we can properly use arguments of "knowing right and wrong" to help us deal with a child long before that child is independent of its surroundings to be saddled with a permanent personal responsibility.[120/] (emphasis added)

Thus the report reflects the variety of influences including environment on a child's understanding of wrongful acts.

Significantly the British report concluded with the following assumptions about children:

> (ii) that responsibility in children is not an "all or none" affair and is not solely dependent on knowledge but also upon the capacity to choose between one course of action and another;

120/ Id. at 31.

(iii) that the knowledge of right and wrong, and both the power and desire to choose right, are matters of development in the child and that often precedes the last two;

(iv) that there are many ways of encouraging the child to choose what is regarded as right and of deterring him from choosing what is regarded as wrong;

(v) that as he develops the child must learn to stand on his own feet and to accept greater responsibility for his actions. The change of procedure at 12 will help mark this.121/

Somewhere around 12 to 14 a change in understanding and responsibility of a child for his actions takes place which was recognized long ago in the infancy defense. This view is supported by the British Report and the following citation based on a report on "Authority, Rules and Aggression: A Cross-National Study of the Socialization of children into compliance Systems":

> For example, in the seven participating countries, fewer than 10 percent of the children between 10 and 14 years of age specified themselves as rule-enforcers, able to make themselves follow rules. They evidently reflect little personal responsibility. However, by age 18, many youths (approximately 32 percent of the college group) recognized the role of their own motivations for inhibiting behavior. These data suggest age guidelines for affixing responsibility and ultimately "legal" culpability for juvenile offenses.122/

121/ Id. at 40.

122/ See Tapp, Book Review, 17 U.C.L.A. L. Rev. 1333 (1970).

A recognition of the limitation of a younger juvenile's capacity to commit delinquent acts is reflected in the provision of the Hawaii Family Court Act 123/ that no child under 12 can be adjudged delinquent without a written recommendation of a psychiatrist. In a similar view, but also reflecting opposition to placement of children in custodial institutions, the 1970 White House Conference on Children recommended that, "No child under age 14 should be committed to a training school." 124/

Juveniles are in the process of development and their age, maturity, and mental condition and capacity should effect their personal responsibility for anti-social acts in developing any comprehensive system for children in trouble. The common law presumption of infancy may have a place in juvenile court to serve as a reminder that an immature child who does not understand or is unable to control his conduct should not be placed in the delinquency correctional system.

Mens Rea

Is mens rea, which concerns itself with the voluntariness of conduct combined with the state of mind that accompanies it, an element in a delinquency case?

123/ Hawaii Rev. Laws #333-22 (1955).

124/ White House Conference on Children, Report to the President, 381 (1970).

At common law in order for an adult to be found guilty of committing a crime, he had to have committed the criminal act (actus reus) with criminal intent (mens rea). An adult, with exceptions not significant for this point, can not be found to have committed a crime when he did not have the necessary intent.[125]

The idea that injury can only amount to crime if intentional is not a transient notion, but rather it is universal and persistant in systems of law based on the freedom of human will and the duty of the normal individual to choose between right and wrong.[126]

125/ There are two components of every crime: "One of these is objective, the other is subjective; one is physical, the other is psychical; one is actus reus, the other is mens rea." Perkins, supra note 74, at 743.

"In criminal law, 'intent' signifies a state of mind 'which willingly consents to the act that is done, or free will, choice, or volition in the doing of an act;' it means that the act' is voluntary, that it proceeds from a mind free to act in distinction from an act done without mental capacity to understand its nature, or under circumstances which sufficiently show that it was the result of involuntary forces and against the will.". . . . Yet a criminal intent is not necessarily an intent to do wrong; the voluntary doing of a forbidden act may be enough. At common law, the mental element required in every crime is the 'voluntary exercise of the will, that faculty of the human mind which has the power of choice, and in the exercise of that power wishes, desires, determines or intends. The criminal law forbids and commands various things. If one chooses not to obey, and voluntarily carries that choice, or will, into effect by some act, the two necessary elements of crime are present, and the liability to punishment is incurred. This voluntary choice of doing what the law has declared to be crime constitutes what the law calls a bad or evil intent, otherwise called malice." State v. Monahan, 15 N.J. 34, 49-50, 104 A.2d 21, 29 (1954).

126/ See, e.g., Morissette v. United States, 342 U.S. 246 (1952).

In traditional juvenile court legislation the jurisdictional statement is that "a child who causes designated harm, while entertaining a designated psychological state (intention, knowledge, wilfulness, etc.) is liable to the law for prescribed consequences."[127] Juvenile court law accepts the adult criminal law concept that the court is identifying children who are blameworthy.[128] So long as the juvenile court is identifying delinquents who are "at fault" in the criminal law sense,[129] then it is necessary to consider intent when the child is alleged to have committed an offense which would be a crime if committed by an adult.

127/ Paper by Sanford Fox, Responsibility in the Seventies (April 30, 1971), Supplement p. 214.

128/ Id. at 215. See also H. Fradkin, Disposition Dilemmas of American Juvenile Courts, in Justice for the Child 118-19 (M. Rosenheim ed. 1962). Children incapable or partially capable of intent are entitled to the same protection as the sick or mentally ill. But cf. McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (White, J., concurring).

129/ See, e.g., Wis. Stat. Ann., [title VII, §48.12 (1957) which says:

"The juvenile court has. . . jurisdiction. . . over any child who is alleged to be delinquent because:

(1) He has violated any state law or any county, town, or municipal ordinance;"

Under §48.02 of that statute "child" is defined as ". . . a person under 18 years of age."

The philosophy behind the juvenile court again comes into play and the theory is that the court is not supposed to consider evil intent. The argument is that the idea of <u>mens rea</u> does not belong in children's courts because it is a complex criminal law concept. All the juvenile court has to decide is whether the child did the antisocial act, not his state of mind while doing it.

"Free will, evil intent, moral responsibility and proof of guilt beyond a reasonable doubt are the language of the criminal code. . . and do not apply in juvenile court."[130/] Part of this statement is no longer true, because in <u>In re Winship</u>,[131/] the U.S. Supreme Court held that proof beyond a reasonable doubt was required in the adjudicatory phase of a delinquency proceeding. As reasonable doubt and other due process requirements are made applicable to juvenile court proceedings, much more difficult to argue that the substantive requirements of the

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130/ <u>In re</u> Betty Jean Williams, Docket No. 27-220-J, at 6-7 (D.C. Juvenile Court, Oct. 20, 1959). The concurring opinion in State v. Monahan states:

> "Intent would seem to be an ingredient of juvenile delinquency also; but it is not criminal intent, penal rather than correctional in its consequences when the wrongful act occurs. . .
> There being in the contemplation of the law the absence of punitive fault, the delinquent behavior and waywardness cannot entail punitive consequences. Delinquency in its statutory connotation suggest the psychological rather than the judicial attitude toward the offender. Such is plainly within the competency of the state as <u>parens patriae</u>." State v. Monahan, 15 N.J. 34, 56, 104 A.2d 21, 33 (1954).

131/ 397 U.S. 357, 368 (1970).

criminal law do not also have to be considered applicable, or possibly so, to juvenile proceedings.

In actuality, the juvenile's intent at the time the alleged offense was committed has been considered in juvenile court.[132/] For instance, if a crime is committed as a result of an accident, this factor is to be considered at the adjudicatory phase of the proceedings.[133/]

Juvenile court judges who were interviewed and attorneys practicing before different juvenile courts unanimously expressed the view that intent was actually a factor in juvenile proceedings.[134/] For instance,

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132/ "Intent is a factor in the determination of juvenile delinquency. . . In 1921 this court held that a boy was not to be found delinquent as the consequence of his having thrown a dynamite cap toward other children when 'There is nothing to indicate that Arnold <u>intended</u> to do more than frighten his schoolmates.'" Winburn v. State, 32 Wis. 2d 152, 163, 145 N.W. 2d 178, 183 (1966).

133/ "We think it would be conceded that juvenile delinquency should not lie where the child's act is purely an accident. As Holmes put it, 'Even a dog distinguishes between being stumbled over and being kicked.' Holmes, The Common Law (Belknap Press ed., 1963), p. 7. <u>Id.</u> at 163-64, 145 N.W. 2d at 184. B________But it is so demonstrable from experience that courts do not concern themselves with children who mistakenly take a friend's bicycle or who punch another in self-defense, that it is a fair enough reading of this clause [an act designated a crime] to find it to incorporate both the conduct and the guilty mind. Fox, <u>supra</u> note 127, at 214.

134/ Interview with the Honorable John Fauntleroy, Judge of the Juvenile Court of the District of Columbia, in the District of Columbia, April 30, 1970; Interview with the Honorable Bertram Polow, Judge of the Juvenile and Domestic Relations Court of the County of Morris, New Jersey, in Morristown, New Jersey, February 26, 1970; Interview with Clara Ann Bowler,

in the case of In re Gladys R., the Supreme Court of California found that a child could have violated Section 647 (a) of the Penal Code of California which applied to persons who are motivated by an unnatural or abnormal sexual interest or intent, and that in any further proceedings additional evidence of such abnormal sexual interest could be introduced.[135/]

Since the Gault decision, the supposed benefit the child receives from the juvenile justice system is not adequate justification for the juvenile court's action. The juvenile court must decide if a juvenile has committed an act or acts bringing the juvenile within its jurisdiction. The juvenile is now entitled to written notice of the exact

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Attorney with the Legal Aid Bureau of Illinois, in Chicago, Illinois, May 26. 1970; Interview with Irene Rosenberg, Attorney with the Legal Aid Agency of New York, in New York, New York, April 8, 1970.

135/ In re Gladys R., 1 Cal.3d 855, 869, 464 P.2d 127, 138, 83 Cal. Rptr. 671, 682 (1970). The court did not decide whether sufficient evidence had been introduced to support the necessary finding of abnormal interest or intent which motivated Glady's conduct because the court reversed on other grounds. This main holding of this case, that the common law presumption of infancy applied in juvenile court, was discussed at length earlier in this article. See p. 150 supra.

charges of delinquency,[136/] so that proof of intent will increasingly be a factor in juvenile proceedings. The state will be compelled to specify the degree of a burglary or a homicide which necessarily includes a statement of the juvenile's intent.[137/]

There is no reason why the juvenile court cannot consider intent which is merely another element of proof needed to show that the juvenile has violated a law, and through the concept of intent the child's capacity to form intent can be considered.[138/]

136/ Due process of law requires

> ". . . that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation." In re Gault, 387 U.S. 1, 33 (1967).

137/ In In re Tyrone J., Docket No. 69-5290-J (D.C. Juvenile Court, filed Nov. 6, 1969), the Honorable John Fauntleroy charged the jury that to hold the youth delinquent they must find that he not only did the wrongful act, but that he had the intent to do the wrongful act.

138/ As to the "diminished capacity" or "partial insanity" test, courts in the United States do not generally follow it. Some have rejected the notion that there may be mental disorder of such a nature as to diminish the degree of guilt without establishing innocence. Such tribunals hold that insanity must be either a complete defense or none at all. Other courts, however, recognize the possibility of unsoundness of mind of such character as to negative guilt of a certain degree without establishing innocence. They hold that mental disorder may thus negative the element of wilfulness, deliberation, and premeditation needed to establish murder in the first degree without disproving the malice aforethought sufficient to convict one of second degree murder. Perkins, supra note 74, at 881-882. Of course, the juvenile court would gain jurisdiction of a child if he was "guilty" of murder in any degree.

Once the word "evil" is eliminated before intent, it does not even sound inconsistent with juvenile court philosophy. Pointing out that modern definitions of mens rea are in accord with modern psychological concepts, one author stated:

> There is no necessary conflict between the requirement of a mens rea and the philosophy of the juvenile court . . . . The requirement of proof of this element is a protection for the individual. At a time when there is an ever increasing emphasis upon the rights of juveniles in juvenile court proceedings, mens rea does not seem out of place in the protective atmosphere of the juvenile court.139/

In this connection it is interesting to note that the new District of Columbia Court Reform and Criminal Procedure Act of 1970 had a specific section intending to abolish the insanity defense in juvenile proceedings140/ but "evidence of mental shortcomings" would be admissible to prove, for example, that the child was incapable of formulating a particular scheme alleged in the petition.141/ The need to prove intent becomes a useful tool in weeding out certain cases where the jurisdiction

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139/ Westbrook, Mens Rea in the Juvenile Court, 5 J. Fam. L. 121, 132 (1965).

140/ Pub. L. No. 91-358, 84 Stat. 533, §16-2315 (d) (July 29, 1970).

141/ Lawton, supra note 20, at 364.

of the juvenile court should not be invoked.142/

As one attorney noted, "although no Juvenile Court will believe it, a 10 year old run-away who spends the night in a department store may not have primarily intended to commit theft or felony."143/ Here the combination of mental incapacity and environmental standards may well combine to produce a lack of intent to commit a delinquent act in a particular juvenile. If the juvenile did not intend to commit the unlawful act, not only should he not be found delinquent, but he may not need rehabilitation.

The Insanity Defense

When an adult, by virture of his mental condition can not form the intent requisite to the crime with which he is charged, he is entitled to a verdict of not guilty by reason of insanity. The insanity defense defines which defendants in a criminal trial may not be held criminally responsible due to mental illness.144/

142/ Westbrook, supra note 139, at 133-134.

143/ Attorneys' Survey, supra note 29, Questionnaire 96.

144/ The insanity defense raises the issue of whether the accused was so mentally disordered at the time of the commission of the alleged offense as not to be criminally responsible. In the great majority of jurisdictions this defense is raised upon the trial and presented to the jury along with all the other issues determining guilt or innocence. For a discussion on the pleading and procedure of the insanity defense see H. Weihofen, Mental Disorder as a Criminal Defense 353-427 (1954).

When the defendant is acquitted by reason of insanity, in most instances commitment to a mental institution follows. Mandatory commitment to a mental institution is required in twelve states

The insanity defense grew up centuries ago within the criminal law as a way of preventing the mentally disordered from being held responsible for a crime at a time when the criminal law was punitive and retributive. The insanity defense, based originally on a knowledge of right and wrong, had a strong moral base in the theory that no one could be punished for a crime unless he was morally blameworthy.[145/] This defense theoretically provides the criteria for deciding between dealing with an anti-social act as a crime or a symptom of mental illness. It may be unnecessary, to deal with this issue because the juvenile court "should not be an evaluator of criminal responsibility"[146/] but rather should consider mental illness at disposition.

In the nineteenth century, prior to the founding of the juvenile court, there do not appear to have been many times when the insanity de-

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when the defendant is found not guilty by reason of insanity. Practically all other states have the jury or the trial judge decide whether the defendant acquitted by reasons of insanity. Practically all other states have the jury or the trial judge decide whether the defendant acquitted by reason of insanity needs commitment and may, if necessary, commit the defendant for a period of observation in order to make this determination. In the remaining few states which have no specific provision on commitment following acquittal, the prosecution considers whether to commence civil commitment proceedings. A. Goldstein, The Insanity Defense 143 (1967).

145/ The insanity defense was firmly established in the United States at the time of the constitution and continues to the present day as part of a tradition which makes blame central to criminal responsibility and attempts to define a group of men who could not be blamed because of their mental condition. A. Goldstein, supra note 144, at 9-11.

146/ Attorneys' Survey, supra note 29, Questionnaire 48.

fense was raised on behalf of children accused of crime.[147/] Moreover, the nineteenth century reformers who helped create the juvenile court tended to view crime as something which could be "cured" by education and the proper environment.[148/]

The founders of the juvenile court did not have a clear idea of mental illness, much less its relationship to delinquency. There was no particular reason to make special reference to the insanity defense because the juvenile court was expected to consider the child's mental condition in providing for his individualized treatment at disposition.

Experience with the Insanity Defense

The insanity defense has been raised in juvenile court from time to time. A leading case on the applicability of the insanity defense

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147/ Fox, supra note 9, at 674.

148/ See Id. at 674-75 for a discussion of the insanity defense in the 1800's in America.

One problem may have been the difficulty in distinguishing the insanity defense from the common law presumption of infancy as a defense, although a juvenile below 14 was apparently entitled to both defenses in criminal court. Both defenses refer to the child's ability to distinguish right from wrong. But, the insanity defense requires proof of a mental illness from which inability of the juvenile to distinguish right or wrong is derived while in the infancy defense this inability is based only on the immaturity of the child. Moreover, the state has to introduce proof in infancy defense overcoming the presumption of incapacity in a child and with the insanity defense the child is assumed sane until some evidence is brought forth to raise a question as to his sanity. A successful infancy defense cleared the child completely while the insanity defense raised the possibility of commitment to a mental institution.

to juvenile proceedings is Winburn v. State,[149/] in which a juvenile was charged with murder. This 1966 Wis. case was decided before the Supreme Court's Gault decision. The juvenile court in Winburn applied the insanity defense at adjudication and dismissed the delinquency charges against the juvenile. The state appealed the dismissal of the charges with the final outcome being that the Supreme Court of Wisconsin affirmed the juvenile court's decision and held that the juvenile had a due process right to present the insanity defense.

By contrast, a more recent New Jersey case, In re State in the Interest of H. C.,[150/] decided after Gault, involving a juvenile charged with homicide, held that the defense of insanity did not bar an adjudication of delinquency. Even though the murder had been committed while H. C. was insane within the adult definition, the juvenile had to be adjudged delinquent in order to obtain treatment. The insanity defense was applied at the dispositional phase of the juvenile proceeding to prohibit penal sanctions for H. C.

149/ 32 Wis. 2d, 52, 145 N.W. 2d 178 (1966). See also Model Rules, supra note 28, rule 41, at 86 which provides for a mental examination for the insanity defense and for this requirement the comment relies on the Winburn case.

150/ 106 N.J. Sup. 583, 256 A.2d 322 (1969).

The insanity defense has been reported in cases in California[151/] and Michigan.[152/] In addition, in a New York case, the judge rejected the not guilty by reason of insanity plea on the ground that the juvenile was not sufficiently mentally ill to meet the insanity test.[153/] In a recent Maryland case, In re V. L. T.,[154/] a juvenile was found not guilty by reason of insanity on two counts of armed robbery.

Juvenile court statutes do not usually give guidance on the applicability of the insanity defense to juvenile proceedings, so that the

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151/ See In re M.G.S., 267 Cal. App.2d 329, 72 Cal. Rptr. 808 (Ct. App. 1968).

152/ A Michigan juvenile court also found insanity to be a defense to a charge of delinquency. In the case of John Alfred Turner, the court held that due to temporary insanity which resulted from glue-sniffing, a 14 year old boy charged with the murder of two young girls could not be found delinquent. Statement by the Honorable James H. Lincoln, Judge of Probate, Juvenile Division, Wayne County, Michigan (June 13, 1967).

153/ In re Turner, 56 Misc.2d 638, 289 N.Y.S.2d 652 (Family Ct., 1968).

154/ Juvenile Docket No. 3256-70 (People's Court for Juvenile causes of Montgomery County, filed July 6, 1970).

decisions on the insanity defense are based on analogy to adult statutes.[155] An exception is Section 16-2315 (d) of the D.C. Court Reform Act of 1970,[156] which provides that the results of a mental examination are admissible in a dispositional hearing and at a factfinding hearing to aid the court". . . in determining a material allegation of the petition relating to the child's mental. . . condition, but not for the purpose of establishing a defense of insanity." This section was intended to prevent a juvenile from pleading the insanity defense according to the statement on the purpose of this section by the Department of Justice as follows:

> Not only should the insanity defense not be permitted in juvenile cases where the goal is to rehabilitate the child if at all possible but allowing the defense would involve the Family Division in technical arguments unrelated to the questions whether or not the child did the act and what should be done in his best interest.[157]

The goal to rehabilitate the child referred to by the Justice Department Statement,[158] no longer justifies denial of the adult right to plead the insanity defense.

155/ Winburn and V. L. T. applied the adult insanity statutes. In H. C., Judge Polow found that the section of the New Jersey Statutes, 2A: 163-3, which authorizes commitment of an adult by reason of insanity applies only to indictable offenses and is not applicable to juvenile cases. In re State in Interest of H. C., 106 N.J. Super. 583, 595 & N.5, 256 A.2d 322, 328 & N.5 (1969).

156/ Pub.L. No. 91-358, 84 Stat. 533, §16-2315 (d) (July 29, 1970).

157/ Hearings on S.2981 Before the Senate Comm. on the Dist. of Col., 91st. Cong., 1st. Sess. 1808 (1969) (hereinafter cited as Hearings on S.2981). See Darling, supra note 21, at 418.

158/ Hearings on S.2981, supra note 157, at 1808.

As one commentator stated:

> the constitutionality of this abolition will certainly be subject to challenge on the theory that a juvenile is entitled not to be adjudicated a delinquent unless he possessed sufficient mental capacity at the time he committed the act charged. 159/

The consitutional requirement for dismissing the delinquency petition on its merits due to insanity was stated in Winburn as follows:

> This concept, that it is unjust to "punish" the insane is rooted deep in our law . . .
>
> It would seem incongruous that this great outpouring of concern should be lavished only upon adults who may be criminals while the children whom we profess to be particular objects of solicitude are bypassed. We conclude that the defense of insanity must be permitted in a juvenile delinquency procedure if those proceedings are to conform to the minimum Kent standards of due process and fair treatment. 160/

The opposite position, a modern version of the original parens patriae assumptions behind the juvenile court, is stated in H. C., as follows:

> To hold insanity applicable as a defense to adjudication would handcuff the court, run contrary to the basic theory of juvenile proceedings and not be in the best interests of the juvenile himself. 161/

159/ Darling, supra note 21, at 418 & n. 321.

160/ Winburn v. State, 32 Wis.2d 152, 164, 145 N.W.2d 178, 184(1966). For the proposition that Winburn represents an "illogical extention of the principles of Gault" see Welch, Kent v. United States and In re Gault: Two Decisions in Search of a Theory, 19 Hastings L.J. 29, 39-45 (1967-68).

161/ In re State in Interest of H. C., 106 N.J. Super. 583, 595, 256 A.2d 322, 328(1969). See Fox, supra note 9, at 675-79, for a comparison of H. C. and Winburn. For a discussion of Winburn, H. C., and implications for West Virginia juvenile law see Case Comment, 72 W. Va. L.Rev. 307(1970).

Today, it is so well known as not to need documentation that treatment rarely results from juvenile court dispositions.[162/] There is an increasing concern, that if a mentally ill juvenile is adjudicated delinquent, he is being denied protection afforded an adult by the insanity defense. As one attorney in the survey conducted by this project observed:

> The insanity defense must be applicable to juvenile proceedings. Juveniles are accused of crimes. Many times the crimes are the result of mental illness and mental illness, if recognized as a defense to adult crime necessarily must be recognized as a defense to juvenile crime.[163/]

The extent of the recognition of the child's right to present the insanity defense is shown by the lawyers answers to the question "Do you think the insanity defense is applicable to juvenile proceedings?" Seventy-three lawyers out of 87, or 84 percent, believed that the defense is applicable.[164/] Not only is the insanity defense theoretically accepted

162/ President's Comm'n on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 8 (1967).

163/ Attorney's Survey, supra note 29, Questionnaire 41.

164/ Attorney's Survey, supra note 29, Table XXIII of Appendix B.

in juvenile court, but the actual experience of the judges[165/] and attorneys[166/] surveyed indicates that it is being raised more often than might be expected.

The centuries old tradition against adjudicating as guilty any person who is mentally ill is the strongest argument for holding that there is a due process right, protected by the 14th Amendment of the Constitution, to the defense of insanity in a juvenile proceeding.[167] The fundamental

165/ Seven juvenile courts in this survey indicated that the insanity defense had been presented in court. Sixteen juvenile courts would allow the insanity defense if presented. Two juvenile courts specifically would not allow the insanity defense but a number of others indicated that the question of the application of the insanity defense would never arise in juvenile court because the court would handle mental illness in another way. Judges' Survey, supra note 31.

166/ Thirteen out of 83, or 16 percent, of the attorneys surveyed had raised the insanity defense in juvenile court. Attorney's Survey, supra note 29, Table XXII of Appendix B.

167/ For a detailed analysis of the constitutional right to present the insanity defense in juvenile court see Popkin & Lippert, Is There a Constitutional Right to the Insanity Defense in Juvenile Court?, 10 J. Fam. L. 421 (1971).

The argument that there is a constitutional right to present the insanity defense in juvenile proceedings is strong and need only be summarized here. In Gault, the Supreme Court rejected the juvenile court theory that the child's rehabilitation justified the lack of procedural due process. But, the Court emphasized that the absence of procedural and substantive standards in juvenile court had not resulted in compassionate individualized treatment or fair procedures. In re Gault, 387 U.S. 1, 19-20 (1967). The Court concluded that whatever the label of the proceeding, the term "delinquent" only involved slightly less stigma than the term "criminal" applied to adults. Id. at 24. The Supreme Court found that a delinquency adjudication resulting in commitment of a juve-

reasons for the use of the insanity defense in adult cases apply as well to juvenile cases and are not diminished by the existence of the juvenile court rehabilitation goal. The Supreme Court has abandoned the notion that the jurisdiction of the juvenile court can be justified on the ground that it is for the juvenile's own good.

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nile to an institution must meet the requirements of the due process clause of the Fourteenth Amendment of the Constitution.

Juvenile adjudicatory hearings do not have to conform with all the requirements of a criminal trial, but must measure up to the "essentials of due process and fair treatment." Kent v. United States, 383 U.S. 541, 562 (1966); In re Gault, supra, at 30; In re Winship, 397 U.S. 358, 359 (1970).

The meaning of "essentials of due process and fair treatment" was further clarified in In re Winship, 397 U.S. 358 (1970), which held that proof beyond a reasonable doubt was required in the adjudicatory phase of a delinquency proceeding.

The insanity defense is as essential to due process as reasonable doubt because it has existed since the early days of our nation and is applied in virtually all common law jurisdictions, which reflects a judgment about the way in which the law is administered. Id. at 361-72.

Attempts to eliminate the insanity defense in adult criminal cases have been held unconstitutional in three jurisdictions. See State v. Lange, 168 La. 958, 123 So. 639 (1929); Sinclair v. State, 161 Miss. 142, 153, 132 So. 581, 582 (1931); State v. Strasburg, 60 Wash. 106, 110 P. 1020 (1910). The Gault and Winship cases and the state precedents support the view that there is a constitutional right to present the insanity defense. But see Powell v. Texas, 392 U.S. 514 (1968). Cf. Robinson v. California, 370 U.S. 660 (1962).

See McKeiver v. Pennsylvania 403US528(1971). which was decided after this section of the report was completed.

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The other objection to allowing the insanity defense to be raised in juvenile court is that the defense is both cumbersome and time-consuming. Experience in juvenile court with the insanity defense however, indicates that in the relatively small number of cases where it is ppropriate, it can be utilized with less difficulty than expected, particularly if the state, the court, and the defense are working together to use the defense as a means to rehabilitate the child.168/

Since experience with the insanity defense in juvenile court is limited, the survey asked the attorneys what would be the legal and practical consequences of the application of both incompetency and the insanity defense to juvenile court proceedings.169/ Responses of 25 attorneys indicated it would mak little or no difference, but 15 other responses stated that there would be a procedural or substantive difference. Six responses of attorneys which emphasized the negative aspects of pleading the insa ity defense, were mainly concerned about length of confinement after such a plea. But 15 responses reflected the view that these concepts would open up treatment possibilities and broader rehabilitation alternatives.170/

168/ See In re V. L. T., Juvenile Docket No. 3256-70 (People's Court for Juvenile Causes of Montgomery County, filed July 6, 1970).

169/ Attorney's Survey, supra note 29, Table XXIV of Appendix B.

170/ Id.

The Insanity Defense Standard

The seemingly endless discussions over the insanity defense standard in adult criminal courts certainly do not have to be repeated in juvenile court, but it is hoped that there will be recognition that the standard has to be applied to a child. In answering the specific question on the competency and insanity defense standard to be applied in juvenile court, 47 attorneys, or 64 percent, thought the standard should be the same.171/ Twenty-five attorneys, or 34 percent, thought that the incompetency and insanity defense standard should be different. There were a total of 38 responses on how the standard should differ although some attorneys did not explain the difference and other attorneys answers are reflected in more than one category. These varying responses reflected a desire for a broader, more inclusive standard which could take into consideration among others such factors as maturity, age and the treatment responsibility of the juvenile court. Whatever standard is used, any insanity test should and would be approached in the juvenile court in the spirit of trying to help a child with a mental disorder and not from an adversary point-of-view.

171/ Attorney's Survey, supra note 29, Table XXV of Appendix B.

The insanity defense standard most often employed is the famous M'Naghten test which reads as follows:

> To establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.172/

This rule, better known as the right-wrong test, was used in H. C. and Winburn. In H. C. the court held that". . . a juvenile who has been adjudicated delinquent based upon an anti-social act committed while insane under the M'Naghten rule cannot be subjected to penal sanctions."173/ And in Winburn the psychiatric testimony was framed in M'Naghten language" ". . . whether the boy had the capacity to distinguish between right and wrong. . ."174/

The right-wrong standard is "an extremely inept tool for measuring the mental abnormalities with which the juvenile court should be concerned".175/

172/ M'Naghten's Case, 10 Clark & F. 200, 210; 8 Eng. Rep. 718, 722 (1843).

173/ In re State in Interest of H. C., 106 N.J. Super. 583, 596, 256 A.2d 322, 329 (1969).

174/ Winburn v. State, 32 Wis. 2d 152, 156, 145 N.W.2d 178, 179 (1966).

175/ Fox, supra note 9, at 680.

Certainly a technically applied right-wrong insanity defense does not result in adequate consideration for children. In re Turner, a 15-1/2 year old boy was charged with intentionally causing the deaths of his mother and maternal grandmother and pleaded the insanity defense. The test of insanity in New York State is a variation of M'Naghten. The court denied the defense as follows:

> The psychiatrist for the respondent. . . diagnosed him as suffering from a psychopathic personality condition which resulted in a psychotic episode causing the deaths by shooting. Such condition has been held not to immunize a person from criminal responsibility under former section 1120 of the Penal Law. (People v. Wood, 12 N.Y.2d 69, 236 N.Y.S.2d 44, 187 N.E.2d 116). The psychiatrist further claimed that at the time respondent lacked substantial capacity to understand the nature of the acts or that they were wrong, averring that while respondent pulled the trigger and realized what he had done, he did not understand the significance of the acts. The psychiatrist called by the petitioner testified conversely that respondent did have substantial capacity to know and appreciate what he was doing, and that it was wrong; that in his opinion respondent was not suffering from a psychopathic personality, although he had certain psychopathic traits which might be the fore-runner in the future for a definite diagnosis of psycho-pathic personality, or are traits commonly seen in a pre-psychotic personality, which has not reached its full bloom, or a conduct disorder with psychopathic traits which may lead to a psychopathic personality, or a conduct disorder which respondent may just outgrow. Both psychiatrists found respondent not to be psychotic. . .176/

176/ In re Turner, 56 Misc.2d 638, 645-46, 289 N.Y.S. 2d 652, 659-60 (Fam. Ct. 1968). Cf. Silverstein, Psychology, Mental Illness, and the Law, 60 W. Va. L. Rev. 133, 160-162 (1958). In this case, a boy of 14 presented insanity as his defense and was sent to the state hospital for psychological and psychiatric examination. The psychiatric report stated in part that the boy was a constitutionally defective immature identical twin who was insane before, during and after the commission of the confessed criminal act. At the trial, this state psychiatric report was introduced for the defense, while

The Turner case emphasizes the inadequacy of an insanity defense based on a battle of psychiatrists and a fight over a child's mental condition.

The inadequacy of M'Naghten as interpreted by some authorities is demonstrated by the V. L. T. case where the judges and attorneys were in agreement that the child was able to distinguish right from wrong in the M'Naghten sense, and, therefore, could not have successfully raised the insanity defense if the M'Naghten test had been applied to the case.[177/]

V. L. T. had a successful insanity defense under the following Maryland law:

> A defendant is not responsible for criminal conduct and shall be found insane at the time of the commission of the alleged crime if, at the time of such conduct as a result of mental disorder, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. As used in this section, the terms 'mental disorder' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.[178/]

This rule, which is essentially the A. L. I. rule,[179/] in speaking of lack of ability to control conduct, has greater meaning for children because

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the prosecution presented strong testimony by a psychiatrist that the defendant was sane and his behavior stemmed from character defect rather than psychosis. Instructions based on M'Naghten were given to the jury who convicted the defendant of first degree murder and sentenced him to the penitentiary.

177/ Interview with Judges Moore and Tracey, in Rockville, Maryland, March 26, 1971. Interview with Roger W. Titus, attorney, in Rockville, Maryland, March 29, 1971.

178/ Ann. Code Md. Art. 59, §25 (a) (Cum. Supp. 1970).

179/ The American Law Institute's Model Penal Code standard is as fol-

ability to conform conduct to standards is necessarily a problem.[180/]

Another insanity standard is the Durham or "product" rule, which was first enounced in Durham v. United States, a 1954 District of Columbia decision. "The rule. . . is simply that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.[181/] While the Durham test has not been applied in any reported juvenile case, its use would allow an insanity defense in more cases involving mental illness than would M'Naghten nevertheless problems remain on the meaning of this insanity test.[182/] A broad insanity

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lows:

> (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or conform his conduct to the requirements of law.
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> (2) As used in this Article, the terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Model Penal Code §4.01 (Proposed Official Draft, May 4, 1962).

180/ British Report, supra note 116, at 40.

181/ Durham v. United States, 214 F.2d 862, 874-875 (D.C. Cir. 1954).

182/ See McDonald v. United States, 312 F.2d 847 (D.C. Cir. 1962) where the court attempted to clarify Durham by saying that, for the purpose of the insanity defense, the jury should be instructed that "a mental disease or defect includes any abnormal condition of the mind which substantially impairs behavior controls." Id. at 851. See also Washington v. United States, 390 F.2d 444 (D.C. Cir. 1967); Goldstein, supra note 144, at 212-13.

defense is tempting once there are facilities to cope with those who plead the insanity defense successfully, and providing indeterminate commitment is not involved which is less of a problem with a juvenile because juvenile court jurisdiction only continues until the age of 21.

The issue of whether a child should be entitled to the insanity defense is really one of whether he should be blamed for what he could not help doing. As was stated in Durham:

> Our collective conscience does not allow punishment where it cannot impose blame. . .
>
> Legal and moral traditions of the western world require that those who of their own free will and with evil intent (sometimes called mens rea) commit acts which violate the law shall be criminally responsible for those acts. Our traditions also require that where such acts stem from and are the product of mental disease or defect. . . blame shall not attach, and hence there will not be criminal liability. . .183/

Why should a child who is blameless be held to a higher standard of accountability than an adult? Because the liability of a child in juvenile court in is reality based on blame, it would seem only fair and just that he have the opportunity to demonstrate his lack of blameworthiness.184/

183/ Durham v. United States 214 F.2d 862, 876 (D.C. Cir. 1954).

184/ Fox, supra note 9, at 682-84. The author favors the creation of a new petition for the child who is abnormally immature or abnormally mentally ill because the child with these conditions should not be condemned first.

When insanity defense is raised in a juvenile proceeding, one must consider both the child's ability to distinguish right from wrong, and his ability to control his conduct in accordance with this knowledge. When this limited capacity of a child is further impaired by mental disorder, the child should clearly have a chance to demonstrate his lack of legal culpability through the insanity defense.

The insanity defense is an answer for only a small proportion of the mentally ill children who appear before the court, but it opens up a treatment possibility for a mentally disordered child combined with the benefit of not being adjudicated delinquent.

Conclusion

For the youth of today, the juvenile court is the criminal court of their world. The loss of liberty to the juvenile is punishment whether we call it that or not.185/ The criminal sanction, loss of liberty, should be rarely used, that is, used only when one has been found blameworthy.186/ Not all those who committed wrongful acts are blameworthy, whether they be adult or child.

But cf. Fox, supra note 127, at 220-21, which points out that juvenile courts have not used mental illness to relieve a child of responsibility and that he expects that will continue to be the case.

185/ See In re Gault, 387 U.S. 1 (1967).

186/ Packer, Mens Rea and the Supreme Court, 1962 Sup. Ct. Rev. 107, 147.

Moral blame became an issue in juvenile court when the violation of municipal and state statutes was made one of the bases of juvenile court jurisdiction. It is no answer to say that the insanity defense or the infancy defense does not belong in the juvenile court because these ideas arose when the law was punitive and the juvenile court really is not concerned with guilt,[187/] because the stigma of being adjudicated delinquent is almost as great as the stigma attached to being found guilty of committing a crime. Both findings represent official condemnation or blame.

Criminal responsibility or blameworthiness has to be seen in the context of the rehabilitative ideal for the juvenile court which seemed to make such sense to the founders of the court and which has dominated thinking about criminal justice for the last half century.[188/] At the time of the founding of the juvenile court there was a widespread belief that social reform would eliminate the causes of crime and in the ability

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187/ See Williams, The Criminal Responsibility of Children, 1954 Crim. L. Rev. 493, 494. The author said that the common law presumption was obsolete in the case of juveniles because it was "bound up with retributive punishment and the mystical theory of moral responsibility." Id. at 494.

188/ Allen, Criminal Justice, Legal Values and the Rehabilitative Ideal, 50 J. Crim. L. 226, 226-27 (1959), in Crime, Law and Society 271-73 (A. Goldstein & J. Goldstein ed 1971).

to "cure" the individual child of criminal tendencies by placing him in a good environment. The early simplistic notions were replaced over time by more sophisticated notions based on modern psychiatry, but these developments provided further support for the view of the juvenile court as a gate to treatment. Whatever delinquency was, it could be treated.

Doubts are increasing about the rehabilitative ideal for the juvenile court stemming from many causes including lack of treatment facilities, and lack of faith in the juvenile justice system's capacity to rehabilitate any juveniles. Also the rehabilitative ideal has been debased in practice by the use of indeterminate sentences and the use of therapeutic language to justify custodial care for the juvenile.[189/]

A problem inherent in the juvenile court's insistence in looking at the child not the act is that the child who needs help the most may be the least blameworthy. Thus, the child who is not competent to stand trial, or who does not have the mental capacity to form the needed intent or the child who could take advantage of the infancy or insanity defenses is the child who probably needs help the most. That help should not be

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189/ Allen, supra note 188, at 229, Crime, Law and Society at 276-78.

provided within the juvenile correctional process. Unfortunately all too many juveniles who are sick, unwanted at home, or merely have no place to go are sent to juvenile correctional institutions. There is a need to develop a comprehensive system of rehabilitation for young people in trouble, but it should be a first principle that the correctional system should not be used for any child who has not been adjudicated delinquent and such adjudication should apply only to children who have committed an act which would be a crime if committed by an adult.

If all these juveniles are going to be treated anyhow, even if rehabilitation has failed, and the only question is how, it is tempting to suggest that responsibility should not be the issue in juvenile court.[190/] It is harder and harder to assess the individual blame of a particular juvenile in our society. Up to the present time the whole emphasis in looking at the juvenile court has been on procedural regularity, but there are also questions of fairness in the substantive law to be applied. The denial of the right of children to question this blameworthiness either because of immaturity or mental illness has no basis except the fact that they are children.[191/] There is no justification to hold children to

190/ See Cameron, Did He Do It? If so, How Shall He Be Managed ? 29 Fed. Prob. 3 (1965); Wooton, Book Review: The Insanity Defense, by A.S. Goldstein, 77 Yale L.J. 1019, 1028-32 (1968).

191/ See Fox, supra note 127, at 222-24.

a higher level of criminal responsibility than adults.

The false promise of treatment has swept a vast number of juveniles past the adjudicatory phase and straight to correctional institutions. Rather than helping the child, it is now demonstrable that being labelled a "delinquent" is more likely than any other factor to confirm that the juvenile will continue to be delinquent.[192/] It is not that the rehabilitative ideal has to be given up entirely, but everything the court does cannot be justified in its name. If parens patriae means anything today, it must mean that a child with mental and emotional disorders or limited mental capability should not be adjudicated delinquent.[193/]

The meaning of competency to stand trial, the infancy defense, mens rea, and the insanity defense are difficult to apply to a child who is in the process of development, but these concepts can be given meaning if the goal is to remove juveniles without the required mental capabilities from the juvenile correctional process. "The fact that a child knows right from wrong does not means that we should regard it as a personal responsibility equivalent to similar knowledge in an adult,"[194/] and this knowledge and the power and the desire to choose right are matters of development, and do not necessarily appear in a child at the same time.

192/ Wheeler, Cottrell and Romasco, Juvenile Delinquency Its Prevention and Control, Task Force Report: Juvenile Delinquency and Youth Crime 409, 417, 418 (1967), in which the harm of labelling a juvenile delinquent is discussed.

193/ See Fox, supra note 9, at 680.

194/ British Report, supra note 116, at 31.

In the search for the meaning of responsibility for delinquent acts in the juvenile court, the behavioral sciences will continue to give us relevant data on how to consider the age and understanding of a child.[195/] Considering these special factors of childhood and the age, experience and understanding of the child, each concept should be administered by the court giving the benefit of the doubt to the child.

This is a period of transition in the juvenile court. In the future, juvenile courts may improve their methods of dealing with mentally disordered and emotionally disturbed children. This may well depend on the development of a wide variety of alternatives for the disturbed delinquent before reference to court and within both the mental health and correctional processes.[196/] If the juvenile justice system actually implements these possibilities, then the need for increased recognition of competency, infancy, and capability to form intent and insanity may disappear.

Contrariwise, the juvenile court could move towards becoming a junior criminal court with emphasis on rights and a limitation of its jurisdiction to conduct which would be a crime if committed by an adult. Then, the juvenile court would be dealing with more and more serious delinquent acts and it would be important to define the meaning of delinquency responsibility in a juvenile court.

195/ See Tapp, supra note 122.

196/ See Cameron, supra note 190.

Even if there are better resources available to the juvenile court, it remains the job of the juvenile court to select which treatment route or system a particular child will enter. It is interesting in this connection that California which is supposed to have an effective variety of treatment alternatives, is the one state where competency to stand trial,[197/] the insanity defense,[198/] and the common law presumption of infancy have been recognized.[199/] For the foreseeable future, the juvenile court has an obligation to look at the mental and emotional capabilities of the child before it and apply these legal tools for assessing these capabilities to move this kind of child[200/] out of the juvenile correctional process.

197/ See In re M.G.S., 267 Cal. App. 2d 329, 336, 72 Cal. Rptr. 808-812 (Ct. App. 1968).

198/ Id. at 336, 72 Cal. Rptr. at 811.

199/ See In re Gladys R., 1 Cal. 3d 855, 862, 464 P.2d 127, 132-33, 83 Cal. Rptr. 671, 676-77 (1970).

200/ The California Supreme Court in In re Gladys R. summed up the need as follows:

> It would be particularly undesirable for a juvenile court, arbitrarily, without analysis of the child's appreciation of the 'wrongfulness' of her conduct, to hold this emotionally disturbed child of 12 years guilty of criminal conduct. To reach that result we would, in our judgment, be compelled to misread the pertinent statutes, to disregard even our presently inadequate knowledge of psychology, and to retreat to an approach which pre-dates the early common law.
> Id. at 869, 464 P.2d at 138, 83 Cal. Rptr. at 682.

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