THE JUVENILE COURT: THE MAKING OF A DELINQUENT

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INTRODUCTION

The rhetoric of the Juvenile Court Movement has emphasized the individualized, non-criminal handling of youths who commit delinquent acts. While the procedures for handling youth in the juvenile court were decriminalized (which basically means that constitutional guidelines applicable to criminal trials were disregarded), the alleged delinquent acts have remained, for the most part criminalized. That is, delinquent acts are defined by the law as basically criminal acts committed by youth. A partial exception to this perspective is the juvenile status offenses. For the most part these acts (truancy, curfew violation, ungovernable, etc.) are viewed as "pre-delinquent," *i.e.,* pre-criminal kinds of behavior.

Over the past seven years the Supreme Court has focused attention on the legality of some of the procedures used by juvenile courts for handling youths alleged to be delinquent. As a consequence of judicial review, portions of the juvenile court procedures are being criminalized, *i.e.,* these procedures are being brought into conformity with the due process guidelines of the Constitution. But virtually unexamined are the criminalizing consequences that result from using the term "delinquent" to categorize youth behavior. The basis for these consequences is legislative, not judicial. In judging youths delinquent the juvenile court is merely implementing the juvenile court act of its state as that act was developed by the state legislature.

Historically, part of the process of decriminalizing the handling of allegedly delinquent youths has involved the use of individualized treatment. In order to understand the juvenile court as a youth-serving organization, it is necessary to view it from two perspectives. One perspective presents the juvenile court as a model for youth rehabilitation and development. This

model recognizes the laudable objectives for the court held by adherents of the Juvenile Court Movement. This model emphasizes "the child saver" bias of the juvenile court. Child treatment philosophy and rehabilitative court service goals tend to be the rhetorical focus of the spokesmen for this model of the juvenile court.

Another perspective of the juvenile court is that of a model for the social control of youths. This model recognizes the coercive-treatment procedures required to change the faulty attitudes and illegal behavior of youths appearing before the court. In addition, this model places a high priority on protecting social interests threatened by illegal and socially non-conforming youth behavior. It should be fairly clear that a juvenile court which attempts to serve both of these models (youth rehabilitation and social control) must at every decision-making point establish value priorities concerning which objectives to place first. While the growth needs of youth and the social control needs of society are not always in conflict, their relationship is always problematical. Whether such a relationship remains problematical or is ossified (through administrative fiat or organizational tradition) depends almost totally on the judicial and administrative policies of a particular juvenile court and the actual resources and services provided to youth by that court.

Intensifying the potential conflict of priorities within the juvenile court are the legislative definitions contained in the state juvenile court laws under which juvenile courts must operate. State legislatures in all fifty states have defined delinquent behavior as essentially youth crime. Yet these same political bodies have mandated juvenile courts to treat youths as persons needing care and rehabilitation. Under the *parens patriae* doctrine of the juvenile court, this treatment (with the court serving *in loco parentis*) is to approximate that given by natural parents. Hence, through judicial decision the juvenile court criminalizes youth behavior by labeling such behavior as delinquent. But then the court must treat the youth as a non-criminal for the purposes of rehabilitation and control. Labeling behavior as criminal is one of the few justifications under our system of law for the state's assuming direct control over the lives of its citizens. Individualized treatment is the means by which the juvenile court exerts direct control over the lives of youths judged delinquent.

While the doctrine of *parens patriae* seems logical enough

when applied to children that the juvenile court labels as dependent or neglected, it seems inappropriate when applied to youths that the court has judged delinquent as a result of the commission of a crime or some socially disruptive act. In such instances the juvenile court becomes both the transgressed and the arbiter with these youths. The potential for a conflict of interest on the part of the court in dealing with youths so charged is all too apparent. While the intent and rhetoric of the juvenile court seems in favor of youth rehabilitation, the actions of many juvenile courts suggest that the political interests in which juvenile courts function often distort, if not neutralize, the court's individualized treatment of youths (Langley, *et al.,* 1972).

The incongruity between legislatively defining delinquent behavior as criminal and the juvenile courts intended judicial-therapeutic response of individualized treatment is heightened when one realizes that typically the judicial response of the state toward law violators is premised upon the principle of restitution (if we accept Durkheim's [1947: 85-88] statement on the development of law). The *parens patriae* principle in juvenile court law does not consider the redress of grievances to the state as the primary judicial objective. Under this principle the primary judicial objective is to provide youths with individualized treatment designed to produce conforming legal and social behavior. The rhetoric of "save the child," coupled with the myopia of an individual casework approach to youth in trouble, obscures the quality of individualized treatment provided in many juvenile courts until such services are considered in the aggregate for youths brought before the court.

Depending on the model of operation (youth rehabilitation or social control) to which a juvenile court adheres, different judicial and administrative procedures within these courts should characterize the handling of youths. One, the court might be providing the rhetoric, but not the services of individualized treatment. Instead of individualized treatment there is a type of mass assembly justice operating in which youths are dealt with not on the basis of individual considerations, but on the basis of readily available resources and prevailing public opinion. Two, the behavior of the youth might be judged by the court as not requiring individualized treatment. The latter option which involves the state's either turning its hypothetical head to law violations (unless it also judged that the alleged delinquent behavior had not occurred in which case there would

be no basis for any court action) or asserting that it has no constructive services to offer this youth, despite his/her apparent need for such. While this decision might seem to be an example of individualized treatment, such is not the case within the context of the juvenile court. Before individualized treatment can occur, the court must act formally or informally to invoke the *parens patriae* doctrine. Three, despite the rhetoric emphasizing casework with children, the juvenile court actually might be operating procedurally very much like a court of criminal law. If this is so, individualized treatment might refer to a careful and systematic effort by the juvenile court to establish the truth of the allegations against the youth. In those cases where the verity of the delinquent charge is established, the judicial procedures in this phase would be characterized by individualized legal treatment. Notably, these youths would have access to the services of a lawyer. Subsequently, these youths would receive individualized social treatment by a probation officer or his equivalent.

Data are presented in this article which pertain to the first and third possible procedures mentioned in the previous paragraph. The second possible procedure mentioned does not involve the use of individualized treatment. Hence, it must be considered in this paper as a situation which contains no elements of conflict with the objectives of individualized treatment since interventive court behavior does not occur. The present analysis is concerned with the extent to which one metropolitan juvenile court implemented the concept of individualized treatment in decisions it made relative to: (1) the pre-hearing detention of youth, (2) the use of lawyers by the court in the adjudicatory hearing, and (3) the use of a probation officer's recommendation regarding the best treatment disposition for a youth judged delinquent. Two treatment dispositions were considered — probation and institutionalization. In addition, data are presented which allow assessment of the variable of race as it is related to different decisions by this juvenile court. Prior to discussing these data a brief analysis will be made of the concept "juvenile delinquent" (which is how youths judged delinquent are categorized by the court) and the concept of "individualized treatment" (which is how the court's behavior toward delinquent youths is categorized). Following a discussion of the results some policy implications for the juvenile court are discussed.

A Redefinition of the Juvenile Delinquent

"Juvenile delinquent" is one of those pitfall concepts which has not been carefully defined because everybody seems to know what it means. Perhaps the only arena where there has been some dialogue concerning the meaning of the concept is within the psychological and sociological research literature on delinquent youths, and even here the dialogue has been quite limited. Yet describing youth as delinquent and theorizing how they got to be "that way" has dominated the theoretical, research and service focus of social workers, psychologists and sociologists. Virtually no theoretical work has been produced by sociologists in which the legal-social origins and functions of the delinquency labeling process have been analyzed. Contemporary sociology seems exclusively concerned with understanding the motivation, social status and behavior of juvenile delinquents. A conception of delinquency as a potential labeling and social control process whereby those youths who threaten different exclusive political, economic and social interests in the adult-oriented society are controlled by and for that adult society has been minimally developed by sociology.

Traditionally, we have seen delinquent behavior as simply a behavioral symptom of psychological and social psychological needs of youth. What most social science theories of delinquent behavior are concerned with is the explanation of what needs are met through such behavior and how these needs, and the subsequent delinquent behavior, develop.

Given this psychological conception of what delinquent behavior is (illegal youth behavior) and what it means (an expression of learned, conscious and unconscious, unmet needs), it follows rather logically that psychological change and psychological change techniques would be emphasized to reduce the occurrence of such behavior. It would appear that we have been so intent upon curbing and preventing delinquent behavior and "treating" delinquent youths that we have overlooked the fact that we do not have a substantive definition of just what is a juvenile delinquent. Agreeing that delinquent behavior is symptomatic, professionals have rushed to treat, research, prevent and suppress such behavior by youth without ever establishing a definitional base — as opposed to a symptom base — of what is a juvenile delinquent. It is this youth-oriented definitional frame of reference for the term "juvenile delinquent" that has given rise to state penal (treatment) institutions for youths, probation (supervision) of youths and psychotherapy for youths

who violate the laws (or are presumed to have violated the law) and who need individualized treatment by the state.[1] The extent to which this psychological model for defining the delinquent youth has been used is reflected in the definition of a juvenile delinquent contained in the revised Tennessee Juvenile Court Law (1970).[2] This law defines a delinquent child as "a child who has committed a delinquent act *and* is in need of treatment or rehabiltation." Two aspects of this definition are pertinent to this discussion. First, there is an unqualified assumption that a delinquent youth needs treatment or rehabilitation. Second, the juvenile court is conspicuous by its absence from the definition of who is a delinquent. This paper is premised on the assumption that defining what juvenile delinquency is and who juvenile delinquents are comprise two different (and not totally related) intellectual enterprises.

The definition offered in this paper suggests that we look at the juvenile delinquent as a youth judged by the juvenile court as having committed an illegal act and who, as a direct consequence, is judged to need some coercive treatment. In other words, a juvenile delinquent is a youth (as defined by a particular state) who has received a "judicial label by the juvenile court due to behavior judged beyond a reasonable doubt to have occurred and to be in violation of the law or of the social order of the community to such an extent that direct control of the youth — through labeling and coercive treatment — by the political state is required." Consequently, the delinquent youth is seen less as a youth committing illegal behavior which is symptomatic of some psychological maladjustment and more as a youth whose behavior has resulted in the authority of the state being used in order to establish direct political control over that youth. Intervention by the court may occur because a youth has violated (or is thought to have) the law of a political unit, or disrupted the current social and economic order or adult political interests within the existing society. The use of the delinquent label to categorize youth behavior is the sole prerogative and duty of the juvenile court. A significant characteristic of this prerogative is the breadth of judicial discretion granted juvenile courts by the state legislatures. In this conception of a juvenile delinquent a necessary condition for categorizing a youth as delinquent is the judicial labeling of a youth as delinquent by a juvenile court. It is contended that there is no other factor, condition or process which allows for a reliable distinction between delinquent youths and non-delinquent youths. Part of the definitional

quagmire surrounding who are delinquent youths arises from the absence of reliable and valid conceptual properties identifying such youths that can be generalized beyond a particular research setting or political unit.

Prior to discussing some implications of this political definition of the juvenile delinquent it may be desirable to recall a few things about the official crime and delinquency statistics. Given the current interest in crime, several factors must be kept in mind concerning the known facts of youth-related illegal behavior:

(1) As much as 70% of known criminal law violations are never attributed to a perpetrator. That is, the FBI statistics, which provide us with most of our national figures on crime and delinquency, represent the arrests for only 30% of the crimes known to the police.

(2) A national study indicates that only about half the victims of law violations make reports to the police (Ennis, 1967). Hence, our fears about the amount of crime in our society appear to be based on only *half* of all the allegedly criminal acts which occur.

(3) The indices of delinquent behavior occurrence are typically based upon police arrest figures and not on court dispositional figures. These indices are a more accurate reflection of police enforcement behavior than they are of youths' illegal behavior.

(4) Because, in part, of the wording of state juvenile court laws, youths are more susceptible to being arrested, taken into custody, and judged delinquent (found guilty) than are adults.

Hence, despite the proliferation of information surrounding crime and criminals (delinquents), it is good to keep in mind that citizens and the police apparently know of less than half of the crimes committed. In addition, we may know the characteristics of less than one-third of the people who commit crimes known to the police. To generalize too far, then, from the visible portion of the crime and criminal (delinquent) statistical icebergs can be done only with an unknown probability of being right or wrong. So the concern about youth crime may reflect issues other than just an increase in the number of youths being judged delinquent because of committing law violations. It may reflect simply the increased quantitative and qualitative monitoring of youthful behavior by govern-

mental and organizational authorities. Because the delinquent behavior statistics compound adult administrative behavior with illegal youth behavior, it is not possible to establish a baseline of illegal youth behavior uncontaminated by police or juvenile court intervention nor, from the perspective of maintaining legally free citizens, is it desirable to identify all allegedly illegal behavior committed by youths.

Several interesting implications arise from viewing the juvenile delinquent as primarily a youth labeled by a judicial decision made in a juvenile court. Such a decision occurs presumably because of the occurrence and seriousness of the youth's illegal behavior. However, a major purpose of the decision is to make legal the state's assuming direct control over the life of that youth. In this perspective the juvenile delinquent can be seen as arising out of the state's need for the social and political conformity of youth rather than arising out of the unmet, neurotic needs of adolescents. Broadly written juvenile court laws provide maximum ease for such political-legal control or juvenile court intervention. But recent Supreme Court decisions are requiring greater discretion in such matters on the part of juvenile justice officials. Still the actions of juvenile courts help clarify the relationship between the different special, adult, interest groups within society and the categories of youths experiencing the courts' delinquency process. The possible implications of forced psychological change (via individualized treatment) within a totalitarian environment (state training school for delinquent youths) or semi-totalitarian environment (probation) seems significant for a democratic society inhabited by legally free citizens. This political definition of mine if alleged behavior is a delinquent) or the particular facts who is the delinquent also brings into focus the socially conservative philosophy of the juvenile judicial and correctional systems.

Instead of emphasizing psychological adjustment and social conformity by youths, juvenile corrections — given a political-legal definition of delinquency — would emphasize, logically, political and social change for youth and an improvement in the *effective* operation of the institutions for basic socialization — family, school and church. Instead of having psychiatric social workers trying to help youths, political social workers would seem more germane in protecting youths from the delinquency process. A political social worker could be equated with a child advocate or a member of a youth's interest group

— the interest being to preserve legal freedom as a felt characteristic of a youth's ecological orientation. Such an interest, of course, is violated in the process of establishing the basis for and implementing the juvenile court's individualized treatment of a youth. Given both the letter and the spirit of juvenile court laws, coercive, individualized treatment should make a greater contribution to the youth's welfare than would a nonresponse by the state towards the youth who is alleged to have committed an act definable as delinquent in nature.

It is important to realize that a political definition of who is a delinquent does not negate the fact that a violation of the law by a youth may have occurred. But the critical question is: "Can the political state, through the juvenile court, orient the labeling of youths and the subsequent individualized treatment to meet the growth needs of individual youths or will it be oriented more toward the security needs of existing political and social arrangements?"

The data to be reported suggest that there are numerous social and political consequences of juvenile court intervention. These consequences may be intended as well as unintended. Perhaps the loss of freedom for individual youths, along with the stimulation of more illegal behavior, which seems to cooccur with the political intervention of the state, simply adds to the problem of youth conformity at the same time that it creates a far more serious problem — the criminalization of youth and youth behavior.

Individualized Treatment

The entire operation of the juvenile court rests on the practices of individualized treatment. Such practices arise out of the *parens patriae* doctrine which seems to have as its objectives:

(1) legitimizing the political state's intervention into the lives of youths and their families, and

(2) avoiding the criminal stigmatization of youthful law offenders under the aegis of protecting, caring for and treating such youths.

Historically, the juvenile court has been seen less as a forum for establishing the facts of a delinquent behavior charge against a youth and more as a source for treating youths presumed to have committed the alleged behavior. Typically the court's individualized treatment of youths has taken two forms — probation and institutionalization. These two modes of treat-

ment are a combination of control and treatment devices. The control devices used in probation include: (1) assignment of a youth to a probation officer, (2) periodic reporting to that officer by the youth, and (3) a checking by a probation officer on the youth's school attendance and performance, home adjustment, and behavior in places outside of school and home. The treatment devices usually have involved: (1) counseling, (2) being in contact with an adult who is supposed to listen to and help the youth, or (3) helping some youths find part time or full time employment. The control devices tend to merge with the treatment devices (more so, even, than in probation) when individualized treatment takes the form of institutionalization. In such instances treatment includes: (1) removal from home, school, peers, and a heterosexual environment, (2) possibly some type of testing and classifying of the youth for correctional treatment purposes, and (3) conformity to regimented, one-sex, group living. Actually, it is unclear just how these experiences constitute individualized treatment in the context of institutional living.

Clearly, the focus of both of these forms of individualized treatment are concerned with changing attitudes and behavior of youths. The *parens patriae* doctrine ostensibly substitutes for the principle of restitution (or, if you prefer, retribution) the principle of benevolent paternalism in guiding the state's response to law violators. Far too much has been made of this latter principle in the writings about delinquent youth treatment projects. Far too little has been made of the coercive use of the monopoly on authority and power which characterizes the state's response to a youthful law violator. While individualized treatment is premised upon psychological needs and change techniques, the political state with its resources of total authority and power seems ill-equipped to provide or even to champion such treatment. The political doctrine of *parens patriae* has been seen as a vehicle for youth rehabilitation. But, in fact, it may be little more than a method for the totalitarian control of youths who transgress the state's laws or disrupt the social order of the community.

In considering the quality of decisions made by a juvenile court, a central measure of quality could be the extent to which the judge's decisions toward a youth are individualized. One way judicial decisions are individualized is for the judge to examine as much relevant information as can be obtained about the particular allegations on a petition (in decisions to deter-

mine if alleged behavior is delinquent) or the particular facts in a social history (in decisions determining the form of individualized treatment).

Having considered a political definition of the juvenile delinquent and some of the more obvious implications of such a definition, data are presented which lend support to the view that individualized treatment is a form of political control over youths. At the same time, the data refute the idea that this one juvenile court is implementing the principle of "individualized treatment" in the youth rehabilitative sense. Because the data presented are population data and because it is very difficult to generalize from one metropolitan juvenile court to another, the present study bears repeating in other juvenile court settings.

Methodology

Two different populations of juvenile delinquents are defined and identified. Both populations are similar in that they are males, between the ages of 15 and 17, and have been officially judged delinquent by the Juvenile Court of Hamilton County, Tennessee, during the years of 1966 through 1970. The variable used to differentiate these two populations of officially delinquent youths is the type of juvenile court disposition received. One population consists of all youths committed to a Tennessee state training school between the dates of April 15, 1966, and April 15, 1970, from the aforementioned juvenile court. The second population consists of a comparison group of youths selected from the same time frame from the same juvenile court. All of these youths in the second population were judged delinquent and placed on probation. This second population of youths was identified by locating at the juvenile court the file of each youth in the institutional treatment population. Using each youth from the institutional treatment population as a reference point a youth for the probation treatment population was selected from the court's files (which are arranged in roughly chronological order as to the date of the hearing) who met the following criteria: (1) male, (2) between the ages of 15-17 years, (3) adjudged delinquent in Hamilton County, Tennessee Juvenile Court, (4) court disposition of probation, and (5) case heard as near to the time framework of 1966-70 as possible. In that this procedure did not produce a population of 229 youths (which is the size of the institutional treatment population) twenty youths were selected whose files were located directly in front of a youth contained in the in-

stitutional population. The two populations of 229 youths each provide the data for this study.

RESULTS AND INTERPRETATION

TABLE I: YOUTHS JUDGED DELINQUENT AND PLACED ON PROBATION

	Pre-trial Detention			
	Yes	No	No info	Total
Felony	110	5	4	119
Misdemeanor	63	5	0	68
Juvenile Violation	19	23	0	42
Total	192	33	4	229

TABLE Ia: YOUTHS JUDGED DELINQUENT AND COMMITTED TO A STATE TRAINING SCHOOL

	Pre-trial Detention			
	Yes	No	No info	Total
Felony	140	3	2	145
Misdemeanor	22	0	0	22
Juvenile violation	29	30	3	62
Total	191	33	5	229

Tables I and Ia reflect the relationship between the use of pre-trial detention and the seriousness of youths' alleged delinquent act(s). Excluding juvenile violations (which also result in inordinately high detention rates), the decision to detain youngsters seems to be highly unindividualized when considered from the perspectives of the seriousness of the alleged delinquent act or the subsequent disposition made by the court. The type of individualized treatment a youth receives — probation or institutionalization — is unrelated to the prehearing detention decision.[3] Eighty-four percent of all youths placed on probation in the community were deprived of their freedom prior to their adjudicatory hearing. Yet their individualized treatment by the court included release in the community.

TABLE II: RACE OF YOUTH HELD IN PRE-HEARING DETENTION AND THEN PLACED ON PROBATION

	Pre-trial Detention			
	Yes	No	No info	Total
Black	63	10	4	77
White	129	23	0	152
Total	192	33	4	229

TABLE IIa: RACE OF YOUTH HELD IN PRE-HEARING DETENTION AND THEN COMMITTED TO A STATE TRAINING SCHOOL

	Pre-trial Detention			
	Yes	No	No info	Total
Black	110	20	2	132
White	81	13	3	97
Total	191	33	5	229

As Tables II and IIa indicate, the race of the youth plays no apparent role in the pre-hearing detention decision. The practices of this court do not involve individualizing the pre-hearing detention decision in favor of either race. (While such data support a conclusion of racial nondiscrimination by this court, they do not support the conclusion of individualized handling of youths brought before this court.)

TABLE III: USE OF LAWYERS FOR YOUTHS JUDGED DELINQUENT AND PLACED ON PROBATION

	Lawyer Present			
	Yes	No	No info	Total
Felony	18	101	0	119
Misdemeanor	5	63	0	68
Juvenile Violation	1	41	0	42
Total	24	205	0	229

TABLE IIIa: USE OF LAWYERS FOR YOUTHS JUDGED DELINQUENT AND COMMITTED TO A STATE TRAINING SCHOOL

	Lawyer Present			
	Yes	No	No info	Total
Felony	31	108	6	145
Misdemeanor	1	20	1	22
Juvenile Violation	0	54	8	62
Total	32	182	15	229

Tables III and IIIa demonstrate the extent to which youths judged delinquent had the services of a lawyer. The fact that less than 15% of these youths had such legal services is probably not atypical in juvenile courts. These tables offer a type of base-line concerning the frequency with which this juvenile court utilizes lawyers for youths judged delinquent. Despite the seriousness of the delinquency charge this juvenile court makes minimal use of legal services for youths adjudged delinquent. Later tables will consider the relationship between the use of lawyers and other processes in the decision-making structure of this juvenile court.

TABLE IV: RELATIONSHIP BETWEEN RACE AND THE USE OF LAWYERS BY YOUTHS PLACED ON PROBATION

	Lawyer Present			
	Yes	No	No info	Total
Black	7	70	0	77
White	17	135	0	152
Total	24	205	0	229

Tables IV and IVa reflect the relationship between a youth's race and the use of a lawyer at his court hearing. As with the pretrial detention decision and race there is no overt relationship between race and the use of lawyers in this court's hear-

ings. Whatever his race a youth is highly unlikely to have the services of a lawyer at his adjudicatory hearing.

TABLE IVa: RELATIONSHIP BETWEEN RACE AND THE USE OF LAWYERS BY YOUTHS COMMITTED TO A STATE TRAINING SCHOOL

	Lawyer Present			
	Yes	**No**	**No info**	**Total**
Black	18	111	3	132
White	14	71	12	97
Total	32	182	15	229

Tables V and Va contain data which demonstrate the impact of the Supreme Court Gault decision upon this court's decision-making processes as they relate to the use of lawyers. Regardless of the type of individualized treatment decided upon by the court, more than 80% of the youths so treated failed to receive the individualized attention of a lawyer after the Gault decision had been delivered (*In re Gault,* 1967). Despite a Supreme Court decision and recommendations by the President's Commission on Law Enforcement and Administration of Justice (1967), this court continued, virtually unaffected, rendering its version of individualized treatment on youth.

TABLE V: IMPACT OF THE GAULT DECISION ON THE USE OF LAWYERS FOR YOUTHS PLACED ON PROBATION

		Pre-Gault period 4-66 thru 5-67 (14 mos.)	**Post-Gault period 6-67 thru 4-70 (35 mos.)**	**Total**
Lawyer Present	Yes	5	19	24
	No	85	120	205
	Total	90	139	229

TABLE Va: IMPACT OF THE GAULT DECISION ON THE USE OF LAWYERS FOR YOUTHS COMMITTED TO A STATE TRAINING SCHOOL

		Pre-Gault period 4-66 thru 5-67 (14 mos.)	**Post-Gault period 6-67 thru 4-70 (35 mos.)**	**Total**
Lawyer Present	Yes	7	25	32
	No	70	112	182
	No info	6	9	15
	Total	83	146	229

Part of the rationale in the juvenile court's operation concerns the use of social data about the youth (gathered by a probation officer of the court) to individualize the treatment which is decreed by the juvenile court judge in the dispositional phase of the juvenile court process. Tables VI and VIa indicate the extent to which the court's decisions on youths' individualized treatment were made *after* having access to a

probation officer's report containing treatment recommendations. For youth placed on probation (Table VI), 69 percent did not receive the individualized treatment of a probation officer's social study and recommendation. For youths committed to a state training school (Table VIa), 60 percent did not have the individualized services of a probation officer's recommendation as to the best type of individualized treatment for them. These percentages (60-69%) hold or increase regardless of the seriousness of the act for which youths are judged delinquent. It should be noted that, of the youths who received treatment recommendations from their probation officers, more were committed to a state training institution than were placed on probation.

TABLE VI: SERIOUSNESS OF YOUTHS' DELINQUENCY AND THE AVAILABILITY OF A PROBATION OFFICER'S RECOMMENDATION FOR TREATMENT FOR YOUTHS PLACED ON PROBATION

	Probation Officer's Recommendation Available			
	Yes	No	No info	Total
Felony	48	71	0	119
Misdemeanor	11	57	0	68
Juvenile Violation	13	29	0	42
Total	72	157	0	229

TABLE VIa: SERIOUSNESS OF YOUTHS' DELINQUENCY AND THE AVAILABILITY OF A PROBATION OFFICER'S RECOMMENDATION FOR TREATMENT FOR YOUTHS COMMITTED TO A TRAINING SCHOOL

	Probation Officer's Recommendation Available			
	Yes	No	No info	Total
Felony	58	87	0	145
Misdemeanor	6	16	0	22
Juvenile Violation	26	36	0	62
Total	90	139	0	229

TABLE VII: USE OF LAWYERS AND PROBATION OFFICER'S RECOMMENDATIONS FOR YOUTHS PLACED ON PROBATION

		Probation Officer's Recommendation Available Lawyer Present				No Probation Officer's Recommendation Available Lawyer Present			
		Yes	No	No Info	Total	Yes	No	No Info	Total
Date of Trial	1966	1	24	0	25	1	31	0	32
	1967	5	11	0	16	3	50	0	53
	1968	2	10	0	12	5	29	0	34
	1969	4	11	0	15	1	29	0	30
	1970	0	4	0	4	2	6	0	8
	Total	12	60	0	72	12	145	0	157

TABLE VIIa: USE OF LAWYERS AND PROBATION OFFICER'S RECOMMENDATIONS FOR YOUTHS COMMITTED TO A STATE TRAINING SCHOOL

		Probation Officer's Recommendation Available Lawyer Present				No Probation Officer's Recommendation Available Lawyer Present			
		Yes	No	No Info	Total	Yes	No	No Info	Total
Date of Trial	1966	2	19	3	24	4	30	2	36
	1967	5	20	0	25	1	22	2	25
	1968	0	10	0	10	5	18	3	26
	1969	4	23	0	27	8	26	2	36
	1970	0	4	0	4	3	10	3	16
	Total	11	76	3	90	21	106	12	139

Tables VII and VIIa combine legal services (the use of lawyers by the juvenile court) and social services (probation officers' recommendations for individualized treatment) to provide a better composite of the quality of services provided youths in the process of the court's application of the *parens patriae* doctrine. These two variables are considered over a four-year time period. The findings in these two tables would seem to support unequivocally the conclusion that this court is not providing rehabilitative individualized treatment — either social or legal — for youths that it judges delinquent. Of the 229 youths placed on probation (Table VII) by the court, 63% were so placed without the services of a lawyer or the benefit of a probation officer's report recommending a specific kind of treatment. Only 5% of these youths received both of the aforementioned services.

Table VIIa describes the services provided by the court to youths incarcerated in a state training school. Forty-six percent of these youths were committed to a state training school without either the services of a lawyer or a treatment recommendation from their probation officer. Only 5% of the youths committed received both types of services. To reiterate, the majority of these youths were treated in this manner by the court after the Gault (1967) decision by the Supreme Court.

TABLE VIII: RELATIONSHIP BETWEEN NUMBER OF PREVIOUS COURT REFERRALS AND THE SERIOUSNESS OF THE DELINQUENT ACTS FOR YOUTHS PLACED ON PROBATION

	No. of Previous Court Referrals								
	0	1	2	3	4	5	6	7+	Total
Felony	59	27	12	13	2	3	0	3	119
Misdemeanor	31	14	7	9	3	2	1	1	68
Juvenile Violation	23	7	7	1	2	2	0	0	42
Total	113	48	26	23	7	7	1	4	229

Tables VIII and VIIIa consider the relationship between

the number of previous referrals of a youth to this juvenile court and the seriousness of his alleged delinquent act.

TABLE VIIIa: Relationship Between Number of Previous Court Referrals and the Seriousness of the Delinquent Acts for Youths Committed to a State Training School

	No. of Previous Court Referrals								
	0	1	2	3	4	5	6	7+	Total
Felony	22	32	19	17	22	15	6	12	145
Misdemeanor	2	5	3	8	1	1	2	0	22
Juvenile Violations	11	19	8	7	8	4	1	4	62
Total	35	56	30	32	31	20	9	16	229

TABLE IX: Relationship Between Number of Previous Court Referrals and the Use of Lawyers by Youths Placed on Probation

		No. of Previous Court Referrals								
		0	1	2	3	4	5	6	7+	Total
Lawyer Present	Yes	9	9	3	2	0	1	0	0	24
	No	104	39	23	21	7	6	1	4	205
	Total	113	48	26	23	7	7	1	4	229

TABLE IXa: Relationship Between Number of Previous Court Referrals and the Use of Lawyers by Youths Committed to a State Training School

		No. of Previous Court Referrals								
		0	1	2	3	4	5	6	7+	Total
Lawyer Present	Yes	6	6	4	7	5	2	0	2	32
	No	21	49	26	23	25	17	9	12	182
	No Info	8	1	0	2	1	1	0	2	15
	Total	35	56	30	32	31	20	9	16	229

Tables IX and IXa show the use of lawyers by the court.

TABLE X: Availability of a Probation Officer's Recommendation and the Number of Previous Court Referrals for Youths Placed on Probation

		No. of Previous Court Referrals								
Probation		0	1	2	3	4	5	6	7+	Total
Officer's Recommendation Available	Yes	34	21	5	5	4	3	0	0	72
	No	79	27	21	18	3	4	1	4	157
	Total	113	48	26	23	7	7	1	4	229

TABLE Xa: Availability of a Probation Officer's Recommendation and the Number of Previous Court Referrals for Youths Committed to a Training School

		No. of Previous Court Referrals								
Probation		0	1	2	3	4	5	6	7+	Total
Officer's Recommendation Available	Yes	7	20	14	10	13	12	6	8	90
	No	28	36	16	22	18	8	3	8	139
	Total	35	56	30	32	31	20	9	16	229

Tables X and Xa reflect the availability of a probation officer's recommendation for the youths. Over half of the youths placed on probation (Tables VIII, IX and X) had been before the court earlier in their lives. Eighty-five percent of the youths committed to the state training school had appeared earlier in this juvenile court. The frequency with which these youths reappeared in the juvenile court raises some question (if youth rehabilitation is an objective) concerning the consequences of invoking the *parens patriae* doctrine outside of the context of adequate legal and social services. Referring back, for a moment, to Tables VII and VIIa will increase the impact derived from these two tables concerning the use of probation officer's reports recommending for a youth the best individualized treatment. While 68% of the youths included in this study had been before the court on a previous occasion, the court had available to it a probation officer's treatment recommendations for only 35% of the youths in this study committed to treatment. Leaving aside, for the moment, the issue of what would constitute adequate legal and social services, the following conclusions can be drawn from the data in the last six tables:

(1) Youths reappearing before the juvenile court are most likely to be charged with a delinquent act that would be a felony for an adult.

(2) Youths reappearing before the juvenile court seldom reappear with legal counsel despite the inadequacy in the court's earlier "individualized treatment."

(3) Of the 116 youths who reappeared before the court after being placed on probation, only 33% (38 out of 116) received a written treatment recommendation from their probation officer regarding the most appropriate "treatment" for the youth.

(4) Of the 194 youths who reappeared before the court after being committed to a state training school, only 43% (83 out of 194) received treatment recommendations from their probation officer before being "treated" again by the juvenile court via incarceration in a state training school.

Discussion

Once a youth experiences this juvenile court's delinquency process, the youth and the system seem to behave in ways which foster additional contacts between the two. Such a conclusion is based on the recidivism of juvenile court appearances which these youths have experienced (Tables VIII-Xa).

What is happening in these instances and why hinges very crucially on one's definition of a juvenile delinquent. Given the rate of recidivism among some categories of youths who appear before the juvenile court, and considering the limited degree to which this study's populations of youths appeared to receive individualized treatment in their adjudicatory and dispositional hearings, the question is raised as to why these youths were brought before the court. The question looms larger when one realizes, stereotypes not withstanding: "Most juvenile delinquents outgrow their delinquencies. Relatively few become adult offenders. They grow up, come to terms with their world, find a job or enter the armed forces, get married and indulge in . . . only an occasional spree" according to McCord, McCord and Zola (Matza, 1964: 21). As McCord and McCord note: "Anywhere from 60 to 85 percent of delinquents do not apparently become adult violators. Moreover, this reform seems to occur irrespective of intervention of correctional agencies and irrespective of the quality of correctional service" (Matza, 1964: 22).

The most apparent answer to the question posed in the previous paragraph is that these youths were not brought before the court to be rehabilitated through individualized treatment. Rather, these youths were brought before the court for the purpose of establishing direct, political control over them through the juvenile court's *parens patriae* doctrine. If the juvenile court is seen as having another and more important function than the rehabilitation of youth — the political and social control of youths — then the recidivism rate, for example, is simply a measure over time of the court's fulfillment of this latter objective.

The state may be ill equipped to stimulate and to implement the rehabilitation of youthful law violators. But it is well equipped with both authority and power to direct the political control of these youths. The data just presented support the conclusion that this one metropolitan court is committed to a set of practices which emphasize the control and coercion of youths in a way that violates the rehabilitative objectives of individualized treatment. At the same time these practices violate the constitutional rights of these youths.[4]

While the questions of what psychological and social factors cause youths to behave in illegal or socially disruptive ways will continue to be important, the data just presented indicate the need for an additional set of questions. In a sense, we should

get the delinquency monkey off of the back of our youths. Questions of what causes youths to be delinquent need to be balanced with questions like:

(1) Why have we given the state the exclusive authority for handling our alleged juvenile law violators and trouble makers?

(2) Can the law be used effectively to teach legal and social conformity to youths and to control those youths who don't conform?

(3) Which group interests are being served by defining delinquent behavior as criminal?

(4) If in fact delinquent behavior arises from judicial decisions in juvenile court, shouldn't such courts be studied for understanding the trends of juvenile delinquent rates?

(5) Youths who fail to meet certain normative and legal standards of behavior may find themselves before the juvenile court. What should be done with juvenile court personnel who fail to perform at standards required to implement the state juvenile court law vis-a-vis the *parens patriae* doctrine?

(6) Do local bar associations have any responsibility for fostering judicial integrity in their community's juvenile court?

POLICY IMPLICATIONS

This paper has attempted to make a distinction between who is a juvenile delinquent (a youth with certain characteristics) and what is juvenile delinquency (a legal-political label of the state's judicial system). Considerable work seems necessary in educating citizens, social scientists and the legal profession to the different reference points of these two questions. The former question deals with the behavioral and status consequences of a specific set of legal procedures utilized for the political and social control of youth. The latter question deals with the legislative definitions and judicial criteria by which youths can be classified as law violators and in need of treatment and care by the state. In addition, this paper discusses the concept of individualized treatment as it relates both to control and to treatment of youths. The data presented clearly support the former function of individualized treatment in the particular metropolitan court studied. These data also support the conclusions arising out of the Task Force Report on Juve-

nile Delinquency from the President's Commission on Law Enforcement and Administration of Justice (1967: 19-35) concerning the quality of juvenile court services. These data also support the contention by Martin (1970: 11) that a realignment of power is needed between the juvenile court and youth. Initially, this realignment probably will have to be taken up by citizens committed to youth advocacy. Because of the ethics of professionalism, the vested interests of the involved professionals, and the reactionary stance of state legislatures, these sources can be eliminated as agents of basic social change. It falls to juvenile court judges, professional social workers, psychologists and sociologists to implement the juvenile court's individualized treatment programs while it is the province of state legislatures to write juvenile court laws in such a way (omnibus clauses and broad legal bases for intervention) as to maximize the power imbalance between youths and the court. Currently these groups of people are part of the delinquent's problem, not part of his (or her) solution. Youths cannot be expected to function effectively as their own lobbying group at first because of the political characteristics (non-voting, unemployed, mandatory school attendance) of most youths who come under the jurisdiction of the juvenile court.

But as history can document, youths have had a penchant for doing what adults thought they could not do or would not do. Consider what the legal and policy implications might be for juvenile courts if the youth cohort were to develop an effective lobby group oriented towards redressing the power imbalance between youth and the juvenile court. Underlying the following analysis is the assumption that youth will act in their own behalf and against such overwhelming odds only if the current conditions in juvenile courts are left unchanged by adults. What can adults do to infuse judicial integrity and quality social services into the juvenile court?

There seem to be two strategies of change which are now being utilized by adults to upgrade juvenile court services. One strategy concerns the greater use of individualized legal services for youths during the adjudicatory phase of the juvenile court process. The data presented here should raise questions in the minds of interested citizens concerning the real impact that the Supreme Court Gault decision has had in reaffirming juveniles' right to legal representation. While the impression given by the juvenile court literature indicates more attention is being paid to this aspect of individualized treatment, this au-

thor could find no data (other than that reported in this study which contra-indicates greater use of lawyers) to verify a trend toward such treatment.

A second change strategy, and one endorsed by many professionals, is referred to as "judicious nonintervention" (Lemert, 1967: 153). This rather officious sounding term refers to the practice of referring youths in trouble to agencies other than the juvenile court. In essence, it treats the juvenile court as a court of last resort. The juvenile court is no longer looked to as a member of the first line of defense for saving children. This strategy carries three immediate problems with it. First, the practices of judicious nonintervention are a negative policy. That is, it stresses what won't be done, but it doesn't indicate where, why and how a youth is handled (if in fact there is any agency intervention at all) outside of the juvenile court. Second, it treats as a residual category those youths who don't experience judicious nonintervention. That is, attention is deflected from the fact that even with the presence of this negative policy, many youths will continue to be processed by the court with the same inferior quality of services which led to the judicious nonintervention policy in the first place. This latter point touches on the third problem. De-emphasizing the use of the juvenile court for handling youth in trouble carries with it the potential for de-emphasizing the need for righting the travesties of justice and the abridgements of individuals' integrity which seem intricately tied to current juvenile court procedures. In addition, the strategy of judicious nonintervention has a historical precedent. It was a type of judicious nonintervention which gave birth to the juvenile court in the first place. Rather than upgrade the quality of justice and the quality of correctional and custody services provided adults (from which youths would have benefited also) a new, quasi-judicial treatment system for juveniles was developed (the juvenile court). Consequently, a case can be made for the fact that the development of Youth Service Bureaus, which is one way of implementing judicious nonintervention, is an example of the saying, "same song, second verse." Now the system to be circumvented is the juvenile justice system itself. It seems to be a tendency of complex organizations to proliferate new organizations as the old ones fall short of their mark rather than dismantling or reorganizing the old ones.

Obviously, a third policy option which adults might pursue with their juvenile courts would be "more of the same."

Such a policy might appeal to those of us who fear the apparent rise in youth crime and to those who still believe in the initial concept of the juvenile court and who really believe that more of the same resources will produce better results, *i.e.*, really aid youths in adjusting to life as they experience it.

Assume that all or parts of these three adult strategies for changing juvenile court procedures are found wanting. Two youth-directed strategies present themselves as logical possibilities and both have historical precedents. As youths continue their relentless questioning of our social and organizational system and as they continue to suffer the consequences inevitable for those at the vanguard of social change, one of two possibilities exists. These youths may turn their attention toward the juvenile court as they come to realize the extent of youth repression practiced by this agency. Or, over time, there may develop among youths a functioning "consciousness of kind" — a type of action-oriented generational identification — in which youths examine and demand a fulfillment of intent from all youth-serving agencies. While our foreign policies have solidified youth activism into a political force, our domestic institutions (with the exception of universities and colleges) have yet to receive much concerted attention from youth. No institution of higher education whose students have been politicized can overlook them now during the processes of decision-making without running the risk of encountering significant consequences. The juvenile court, for example, might be scrutinized as to its role in creating political prisoners among selected youths for reasons related as much to adult thought patterns and expectations for youths as for reasons related to particular idiosyncratic acts by the youths affected. Clearly such a strategy is tantamount to a war among the generations, in which control over bureaucratic policies of youth-serving agencies (such as the juvenile court) is both the bullet and the victory. Hopefully, such a strategy can be seen as neither farfetched nor necessarily destructive to the common good.

The development of a generational identification among youth as a basis for social change and social reform by youths would seem to increase in likelihood as the age level continues to drop concerning youth activism. With student dissent a common phenomenon in urban junior high and senior high schools, more and more youths will become informed, either by experience or by word of mouth, as to the operations of and consequences from juvenile court intervention. The model that

students could develop to effect change in the juvenile court might range from imitating the theatrics which have so effectively disrupted adult criminal courts, to prodding their "votable" parents into requesting and then demanding at least a dollar's worth of juvenile justice for a dollar's worth of juvenile court stigma.

A second strategy which youths might adopt to effect basic change in the juvenile court might be said to be premised on the old principle of, "if you can't beat them, join them." Youths could seize the initiative vis-a-vis the implementation of the *parens patriae* doctrine. There would be a twofold objective in their actions. First, they would champion the cause among their age cohort for reducing the ineffectiveness of the juvenile court in detecting all delinquent acts. Given the spirit and letter of the *parens patriae* doctrine youths should have little to lose and much to gain by receiving the care of the juvenile court. Hence, youths would engage in a concerted effort to have all of their peers report their own acts of alleged delinquent behavior to the intake workers in their community's juvenile court. What such class action would demonstrate to the court would be the relationship between detected and proven delinquent acts which lead to labeling and treating selected youths and the previously undetected delinquent acts which lead to no youth being labeled and treated. With the knowledge of the extensiveness of illegal behavior among youths known to the court, there should be some factual basis for citizens to examine what their juvenile court is doing to (or for) youth. In such a situation it can be assumed that the court would either adjudge youths delinquent with greater frequency and apply individualized treatment with more vigor to more youths, or it would develop more selective criteria for intervening into the lives of youths and their families. Second, those youths who were exposed to the court's individualized treatment could demand services of a quality that would justify the deprivation of their freedom and the subsequent liability which seems an integral part of the court's treatment programs. Youth demands that juvenile court services approximate the care received from natural parents is clearly within the spirit and the letter of the juvenile court law. The youths might group themselves according to their frequency of treatment received (typically adults label these youths as hardcore because of their recidivism rate) and demand that if the court insists on extending individualized treatment to them that it should cease stigmatizing

them, seemingly, in direct proportion to the length and frequency of individualized treatment received. One principle involved here and a principle which has never been received with much favor by court-affiliated professionals is that it has never been verified in a juvenile court setting that doing something (individualized treatment) is better for the youth or society than doing nothing. A version of the strategy just discussed was advocated in the mid-sixties as a way to generate reform or bankruptcy in the welfare system. Doing nothing in the juvenile court to youths who violate the law should not be equated with no societal response to instances of law violations by youth. Rather, what is being suggested is that:

(1) delinquent behavior be decriminalized legislatively.

(2) the state cease to implement the *parens patriae* doctrine in instances where youths are judged delinquent.

(3) full constitutional rights be granted to youths in adjudicatory and dispositional hearings on delinquent behavior in juvenile courts.

(4) local communities develop a delinquent behavior remediation program which is not premised primarily on coercion and power.

Clearly, both of these youth-initiated change strategies upon first reading may have difficulty receiving a serious and impartial analysis and evaluation. But with juvenile courts now processing a million cases annually, hopelessly lacking in resources to implement the law that legitimates them and possibly contributing as much to the problem they are supposed to solve as they are to the solutions for these problems, bold and dramatically different action is required both on the juvenile court and by the juvenile courts.

CONCLUSIONS

One of the basic issues related to changing policy and practices within the juvenile court is the legal basis of the juvenile court and the term "juvenile delinquent." The data presented in this study provide clear evidence of the procedural laxities and prostitution of the juvenile court philosophy in this one juvenile court. According to observers of the juvenile court such laxities are more the rule than the exception. While reducing such laxities can be an immediate objective in delinquent behavior prevention, careful analysis and discussion should be devoted to considering alternative ways of defining juvenile delinquent. At issue in such an enterprise would be a complete

enumeration of the advantages and disadvantages to youth and to society in criminalizing by legislative definition the juvenile delinquent. Although much remains to be done in terms of infusing judicial integrity into the juvenile court (the recent Supreme Court decisions were restricted to the adjudicatory phase of juvenile court proceedings) there seems to be no push toward efforts to redefine the juvenile delinquent in such a way as to decriminalize the term but yet still hold such youths accountable for their own behavior where it is proven that they engaged in behavior legislated to be illegal.

FOOTNOTES

[1] Correlatively, it may be the absence of an analysis concerning the latent political, economic and social functions of these "rehabilitative" services which perpetrate their existence. On the other hand, to make conscious what was previously unrecognized at a conscious level might simply provide lines of reasoning for solidifying public support for the shortcuts to juvenile justice apparently practiced by nearly every juvenile court system in the country.

[2] Tennessee Juvenile Court Law, 1970. Public Chapter No. 600, House Bill No. 1563, Section 1.

[3] Portions of the data in this study pertaining to youths who were institutionalized have appeared in a previous article, Langley, et al. (forthcoming).

[4] During the time period covered by this study the judge of the Hamilton County, Tennessee Juvenile Court was a lawyer and a member of the Bar. As the President's Commission on Law Enforcement and Administration of Justice (1967) has indicated, about 70 percent of the juvenile court judges in metropolitan areas are lawyers.

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