

1969

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Richard B. Stuart
University of Michigan

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Recommended Citation

Richard B. Stuart, *Aftermath of Apprehension: Social Scientist's Response*, 3 U. MICH. J. L. REFORM 13 (1969).
Available at: <https://repository.law.umich.edu/mjlr/vol3/iss1/4>

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AFTERMATH OF APPREHENSION: SOCIAL SCIENTIST'S RESPONSE

*Richard B. Stuart**

I. Introduction

Gold and Williams suggest that "It appears, unfortunately, that what legal authorities commonly do upon apprehending a juvenile for his delinquent behavior is worse than not apprehending him at all." If this conclusion is correct, and it is the result of two interrelated studies,¹ then it should influence sweeping programmatic reforms in the social institutions concerned with promoting and safeguarding the development of youth. The intent of this article is to suggest avenues available for this reform both within and beyond the juvenile justice system. Before addressing the implications of the research, however, attention is given to the methodological considerations inherent in the study itself.

II. The National Survey of Youth: A Critique

A. A Review of the Study

This research is the product of a team, headed by Gold and Williams, working at the Institute for Social Research of the University of Michigan. The major design of the study called for the random selection of 847 teenagers residing in the forty-eight contiguous states. All of the teenagers were interviewed by trained personnel seeking to identify, among other things, the rate, nature and consequences of delinquent acts which both did and did not eventuate in apprehension by law enforcement

* Professor, School of Social Work, University of Michigan, and Director, Family and School Consultation Project, Ann Arbor, Michigan. A.B. 1955, New York University; M.S. 1960, Columbia University; D.S.W. 1965, Columbia University.

¹ The present study is a replication of earlier results published in: M. GOLD, *DELINQUENT BEHAVIOR IN AN AMERICAN CITY* (1969).

officials. (It has been estimated, based upon prior research,² that the reports of "unofficial delinquencies" are between seventy and eighty-five percent accurate.) Seventy-four apprehended delinquents were identified. They were matched with thirty-five delinquents who: (a) were of the same sex; (b) were within six months of the same age; (c) were of the same race; (d) committed an undetected delinquent act within six months of the cohort's detected delinquent act; and (e) had committed approximately the same number of delinquent acts as had the cohort prior to the latter's apprehension. Data are then presented on the rates of delinquent acts, presumably including both detected and undetected offenses, committed by both groups subsequent to the apprehension of one member of each pair. It is shown that: in twenty of the pairs, the official delinquent had a greater number of post-apprehension delinquent acts than his matched peer; in ten of the pairs the unofficial delinquent exceeded his cohort in the number of offenses; and in five pairs the offense rates were equal. This result reached a $p < .10$ level of statistical significance using the Wilcoxon Signed-Ranks Test.³

B. Qualifications for Interpreting the Results

Three qualifications must be raised in interpreting the results. The first qualification pertains to the nature of the controls employed. The authors selected criteria for cohort matching which they considered to be of prime importance. A series of other investigations, however, have suggested three additional areas which might have been major sources of variance in the results as obtained. The first of these factors is socioeconomic class. While it has been demonstrated in some studies that the rates of unreported delinquent acts are uniformly distributed across social classes,⁴ other studies have shown that the rate of reported

² Gold, *Undetected Delinquent Behavior*, 3 J. RESEARCH ON CRIME AND DELINQUENCY 27-46 (1966).

³ "Statistical analysis demonstrates that the more frequent subsequent delinquent behavior of the apprehended respondents as compared to their unapprehended matches is so large that it could have occurred by chance only once in ten times." Gold & Williams, *National Study of the Aftermath of Apprehension*, 3 PROSPECTUS: A JOURNAL OF LAW REFORM 3-12 (1969).

⁴ Dentler & Monroe, *Early Adolescent Theft*, 26 AM. SOCIOLOGICAL REV. 733-743 (1961); Nye, Short & Olson, *Socioeconomic Status and Delinquent Behavior*, 63 AM. J. SOC. 381-389 (1958); and Murphy, Shirley & Witmer, *The Incidence of Hidden Delinquency*, 16 AM. J. ORTHOPSYCHIATRY 686-696 (1946).

offenses is significantly greater among lower class persons⁵ and particularly among lower class persons living in class-uniform areas.⁶ In addition, it has been shown that members of lower class groups are more likely to commit more serious unreported actions.⁷ The second of these factors is family composition. It has been shown, for example, that adolescents residing in one-parent homes are significantly more likely to engage in higher rates of delinquent activities than are adolescents in intact families.⁸ Finally, area of residence, whether urban versus semiurban or rural⁹ or whether characterized by high or low concentrations of delinquent peers,¹⁰ correlates heavily with the rates of reported and unreported delinquencies. Because these factors were uncontrolled in the matching of subjects, it is not possible to determine the proportion of variance between groups which each might have contributed.

The second qualification pertains to the absence of data concerning the seriousness of offenses by adolescents in both groups. If it is true that unreported delinquent acts tend to be less serious than those acts which come to public attention,¹¹ then one may wonder whether the two groups can be equated on this dimension. Furthermore, evaluations of the seriousness of those delinquent acts which follow apprehension is of great value, for if the acts of one group consist of minor self-as-victim offenses while those of another are of a socially aggressive nature, the results would merit very different action alternatives than would be true if the offenses were comparable across groups. Treatment of the offenses as equal, however, could lead to incorrect inappropriate action.

The third qualification, and this is a minor one, pertains to the selection of a .10 level of acceptance for statistical results. Con-

⁵ Short & Nye, *Extent of Unrecorded Delinquency, Tentative Conclusions*, 49 J. CRIM. L. C. & P. S. 296-302 (1958).

⁶ Clark & Weninger, *Socio-Economic Class and Area as Correlates of Illegal Behavior Among Juveniles*, 27 AM. SOC. REV. 826-834 (1962).

⁷ Erickson & Empey, *Court Records, Undetected Delinquency and Decision Making*, 54 J. CRIM. L. C. & P. S. 456-469 (1963).

⁸ Monahan, *Family Status and the Delinquent Child: A Reappraisal and Some New Findings*, 35 SOCIAL FORCES 251-258 (1957).

⁹ Clark & Weninger, *supra* note 6.

¹⁰ Erickson & Empey, *Class Position, Peers and Delinquency*, 49 Soc. & Soc. Research 268-282 (1965); E. SUTHERLAND, *PRINCIPLES OF CRIMINOLOGY* (5th ed 1955).

¹¹ Erickson & Empey, *supra* note 7.

servative practice would suggest the adoption of the more stringent .05 level.

In summary, it can be said that the work of Gold and Williams represents an interesting and provocative study, but one which warrants interpretive caution.

C. An Unanswered Question

With the assumption that the three foregoing qualifications will be removed through further explication of the results of the present research and subsequent studies, one important, unanswered question remains. How can the differences between the two groups be explained?

There are at least three possible explanations for why the apprehended group might be expected to engage in acts of a more serious nature. First, it is possible that primarily "high risk" teenagers are apprehended. Piliavin and Briar,¹² for example, have shown that police disposition of those suspected of crimes, ranging from outright release through detention in juvenile halls, is highly contingent upon the demeanor and dress of suspects and these, in turn, are correlated with socio-demographic factors. Furthermore, Cohn¹³ has shown that dispositions following arrest are also more heavily contingent upon these social factors than they are upon the nature of severity of the offense. This would suggest a strong influence for factors essentially irrelevant to the local character of the offense. Secondly, it is possible that the differential processing of offenders may have influenced the probability that subsequent offense rates might be high. For example, some of those apprehended undoubtedly were released immediately with or without parental notification while others were undoubtedly confined in correctional institutions. Data presented by Eysenck¹⁴ suggest that the offense rate of individuals varies as a function of the severity of their "correctional" experiences. One must therefore wonder about the relative contribution of experiences ranging from police interrogation about

¹² Piliavin & Briar, *Police Encounters with Juveniles*, 70 AM. J. SOC. 206-214 (1964).

¹³ Cohn, *Criteria for the Probation Officer's Recommendations to the Juvenile Court Judge*, 9 CRIME & DELINQUENCY 262-275 (1963).

¹⁴ H. EYSENCK, *FACT AND FICTION IN PSYCHOLOGY* 257-294 (1965).

offenses through court appearance and removal from the community to subsequent delinquency.¹⁵ Finally, it is possible that many subsequent offenses may have resulted from the mere fact of stigmatization of the teenager by the police, members of the court staff or others in the community. This process has been termed "secondary deviance determination"¹⁶ and refers to the predictable subsequent arrest of a suspect previously known to law enforcement officials and the closing of school and employment options for those identified as offenders.

Any or all of these three factors might explain the observation that teenagers apprehended for offenses may be more likely to engage in subsequent delinquent acts than nonapprehended counterparts. The remainder of this article will deal with an exploration of the possible consequences of one aspect of the second set of explanations: the nature and efforts of juvenile court processing of individual cases.

II. The Need for Reform of Juvenile Courts

A. Philosophical and Organizational Redefinition

It is well known¹⁷ that juvenile courts are faced with two rather paradoxical objectives. On one hand, courts are charged with the necessity to protect the community from the anti-social activities of teenagers identified as "delinquent." Communities commonly clamor for punitive dispositions of offenders, achieving at least the removal of an anti-social adolescent from the community for a time, and at most, discouragement of delinquent acts by others as a result of the example set by punitive court action. This demands a strict set of court procedures to assure fair treatment for both the defendant and the community. On the other hand, courts are charged with the necessity to protect the adolescent offender from the unfortunate consequences of his own misguided actions and

¹⁵ Stuart, *Critical Reappraisal and Reformulation of Selected 'Mental Health' Programs*, PROCEEDINGS OF THE FIRST BANFF INTERNATIONAL CONFERENCE ON BEHAVIOR MODIFICATION, (H. Hamerlynck & L. Acker eds.) in press.

¹⁶ Lemert, *The Concept of Secondary Deviation*, HUMAN DEVIANCE, SOCIAL PROBLEMS AND SOCIAL CONTROL at 40-64 (1967).

¹⁷ Dunham, *The Juvenile Court: Contradictory Orientations in Processing Offenders*, 23 LAW & CONTEMP. PROB. 508-527 (1958).

mismanagement at the hands of parents and others in the community. This procedure demands the use of rehabilitative strategies and flexible court rules, requirements in direct contradiction to the demands of the first goal.

Without discussing the merits of retribution as a legal philosophy, adherents of the first position are troubled by a realization that there is a growing body of evidence which suggests that punitive strategies may actually increase rather than decrease the offense rates of punished individuals.¹⁸ Furthermore, growing evidence suggests that broader sociological considerations, such as the effects of race, class and opportunity structure,¹⁹ impinge upon the behavior of offenders rendering obsolete the social Darwinist conception of individual responsibility. Yet, the persistent failures of rehabilitative programs,²⁰ the frequent abuse of the defendant's civil rights in therapeutically oriented courts,²¹ and a general regard for community safety would dissuade proponents of the second goal from seriously limiting the court's community protective role. As a result, a stalemate persists with courts pursuing bifurcated and often self-defeating objectives.

There are at least three responses available to this dilemma. The first is to do nothing and to accept a malfunctioning system as the best alternative. This would appear to be an indefensible position, however, in the face of mounting evidence such as that presented by Gold and Williams. The second is to establish semi-autonomous subdivisions within courts, one concerned with purely legal determinations, the other concerned with social and preventive functions. If such an approach were adopted, the legalistic orientation of the first unit would not necessarily proscribe the sociological jurisprudence suggested by Roscoe Pound,²² but it would stress legal guarantees of the rights of the accused. The second unit, however, would have freedom to intervene in a wide variety of situations believed likely to eventuate in offenses. While punitive strategies might be available to the first unit,

¹⁸ Stuart, *supra* note 15.

¹⁹ R. CLOWARD & L. OHLIN, *DELINQUENCY AND OPPORTUNITY* at 145-159, (1961).

²⁰ R. STUART, *TRICK OR TREATMENT: HOW AND WHEN PSYCHOTHERAPY FAILS* (1969).

²¹ Tappan, *Treatment Without Trial*, 24 *SOCIAL FORCES* 306-311 (1946).

²² Masotti & Weinstein, *Theory and Application of Roscoe Pound's Sociological Jurisprudence: Crime Prevention or Control?* 2 *PROSPECTUS: A JOURNAL OF LAW REFORM* 431-449 (1969).

intervention technologies adopted by the second unit would have to be positive or "incremental" in nature as they could only be offered on the basis of voluntary participation. Ideally, the two such units would be of unequal size, the smaller unit coping legally with the failures of the therapeutic larger unit.

The third alternative might be the transfer of preventive functions from the court to the other community agencies, with juvenile courts retaining only legal functions. Indeed, the earliest evaluation of juvenile court activities, assessing the first fifteen years of the Illinois experience, suggested that the court structure was ill-suited to the task of early detection and prevention which, it was believed, could more properly be lodged in the schools.²³ Modern reformulation of this alternative might call for the establishment of composite agencies consisting of educational, social welfare, public health and community mental health activities sharing this preventive responsibility through a *single organization*. In this manner, the courts would be freed from the responsibility for community change for which they are not well equipped.²⁴

B. Organizational Change

Vinter²⁵ has clearly identified a second paradox in the position of the juvenile court. While the court is an agency of the state, it is structurally dependent upon the dictates of local communities. Judges are usually popularly elected and must yield to at least some of the dictates of their constituencies regardless of the merits of their demands. Courts are dependent upon county governmental bodies for funds giving these units control over crucial personnel and program matters, while also reducing the likelihood of evaluative research and staff development activities. These factors combine to yield wide variation in the practices of county

²³ Eliot (1914) cited by: Waite, *The Outlook for the Juvenile Court*, 105 ANNALS 229-242 (1923).

²⁴ Tappan, *supra* note 20 wisely observed that prevention must take place before delinquent actions occur, not after. In addition, Allen, *The Juvenile Court and the limits of Juvenile Justice*, JUVENILE DELINQUENCY: A BOOK OF READINGS 389-398 (1966) wisely observed that the courts are not equipped to solve broad social problems.

²⁵ Vinter, *The Juvenile Court as an Institution*, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME 84-90 (1967).

courts despite their application of uniform procedural rules. Finally, the division of courts into local units means variegated organizational structures with short chains of command. Movement of personnel laterally or upward is unlikely in such units and therefore talented key middle and upper management personnel commonly leave juvenile court employment in search of more promising opportunities elsewhere.

A means of solving this problem is to centralize the juvenile courts in a state organization with uniform funding policies and personnel procedures. Local control of courts would be lost to a degree. While centralized adult courts preserve a measure of local control through the jury system, this check is rarely found in juvenile justice systems. However, local control will still be possible through the popular election of judges and through the shaping of court activities by interaction with the agencies which both provide referrals for the court and receive youngsters on disposition from the court.

C. Procedural Change

Current juvenile court practice calls for two complex investigation procedures before a case comes to trial. The first investigation is a court intake function and involves a *pro forma* screening of cases to determine whether sufficient grounds exist for the instigation of subsequent court action. The second investigation calls for a collection of a complex array of information about the adolescent's personal characteristics, his family history, his current behavior in varied social settings and the details of the presenting complaint. These activities typically call upon the skills of varied professionals, such as social workers, psychologists, psychiatrists, lawyers and law enforcement officials, and their end products are often detailed dossiers which are very broad in scope.

This detailed information is collected in the service of the "case attribute" theory of assessment.²⁶ This approach is premised upon the assumption that the facts of each case are unique and must be assembled in full ideographic detail in order to facilitate sound decisions. There are three serious limitations

²⁶ *Id.* at 87.

which are apparently overlooked in the general acceptance of this approach. First, a study currently being conducted in Los Angeles has indicated that huge amounts of court time are consumed by these investigations. In point of fact, it will probably be shown that investigation consumes more time than all other court activities combined. Second, the approach assumes that a vast array of detail is at least useful in decision making. For this to be true, there must be at least a wide range of dispositional alternatives available to the judge. Judges in juvenile courts, however, are generally limited to dismissal, release with no formal action, or adjudication with probation or institutionalization. When the probation or institutionalization alternatives are chosen, discretion as to techniques used or the duration of treatment typically reside with the custodial agency. Therefore, much of the extensive detail in social histories can at best make a small contribution to the decision-making process. Finally, the collection of case attribute information creates the opportunity for lower echelon personnel to introduce or withhold vast amounts of information which distorts rather than facilitates the appropriateness of decisions.²⁷

Reckless²⁸ has proposed the "categoric risk" notion as an alternative to the case attribute method. This approach assumes that the risk of past and future offenses is relatively uniformly distributed within groups exhibiting particular characteristics. Demographic characteristics might be one basis for identifying high-risk populations while another basis might be found in studies of interactional patterns within the families of delinquents. Correlational studies relating delinquency to social class, race and region illustrate the former possibility²⁹ while the latter possibility is illustrated by Gold's³⁰ finding that the parents of delinquents use disproportionate amounts of punishment and the author's³¹ related finding that both parents and their delinquent teenage children are less likely to use positive influence techniques than are parents and their non-delinquent teenagers.

²⁷ Cohn, *supra* note 14.

²⁸ W. RECKLESS, *THE CRIME PROBLEM* at 26-42, (2d ed. 1955).

²⁹ See notes 4-10 *supra*.

³⁰ M. Gold, *Punishment, Guilt and Behavior in School*, 1958 (unpublished manuscript, Ann Arbor, Michigan: Institute for Social Research).

³¹ Stuart, *Assessment and Change of the Communicational Patterns of Juvenile Delinquents and their Parents*, *ADVANCES IN BEHAVIOR THERAPY*, (1969) (R. Rubin ed.) in press.

To the extent that valid parameters of categoric risk related to intervention procedures can be identified, the present social history-taking practice may be replaced by more action-oriented evaluation procedures. For example, if it is fully established that coercive patterns generally characterize the interactions between delinquents and their parents, then it would be justifiable to offer remedial intervention based upon the assumption without detailed diagnostic study. If this intervention draws upon the currently available technology for promoting behavioral contracts between delinquents and their parents, followed by differential reinforcement of positive social approach strategies,³² there is likely to be little resistance on the part of any family member because the method is intrinsically incremental and no one is penalized.

There are at least four advantages of this procedure. First, the lengthy and tedious process of social history taking which retards the onset of treatment will be eliminated in favor of an immediate program of intervention. Second, the judge will have as data for his decisions, an assessment of the functional capabilities of each family member. He will know, for example, the readiness with which each person negotiated compromises with the others as well as ascertaining his capacity to follow through on such agreements. Thus, the judge will have functionally relevant data in place of the static information produced by the current system. Furthermore, the ground work will be laid for the development of more effective and parsimonious intervention strategies which may greatly enhance the efficiency of court operations. Finally, such a procedure would expedite achievement of the extension of the use of pre-trial dispositions as recommended by the President's Commission on Law Enforcement and Administration of Justice.³³ This will go far to reducing the logjam in juvenile courts and will permit the courts flexibility of response to emergent needs.

III. Conclusion

Gold and Williams have presented suggestive evidence in sup-

³² R. Stuart, Behavioral Contracts and the Shaping of 'Seductive' Behavior in Delinquents and Their Families, 1969 (unpublished manuscript, Ann Arbor, Michigan School of Social Work, University of Michigan).

³³ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967).

port of the notion that current practices in the official handling of those who commit delinquent acts may actually accelerate the rate such acts occur. Following a critique of this study, a series of recommendations are made as partial solutions to some of the problems in the administration of juvenile justice. First, it is suggested that resolution of the philosophical conflict between punitive and therapeutic strategies must be achieved. One way to achieve this goal is the subdivision of the present court system into two or more interrelated agencies with logically distinct legal and preventive-therapeutic functions. Second, it is suggested that changing the organization of juvenile courts from county to state-wide operations can go far to improving and making more uniform the standard procedures within the courts. Finally, it is suggested that the categoric risk notion could replace the case attribute approach to the assessment of cases now in vogue. This change would eliminate unnecessary delays due to the collection of data irrelevant to judicial decision-making while, at the same time, offering a prompt evaluation and intervention procedure.