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AFTERMATH OF APPREHENSION: JUVENILE COURT JUDGE'S RESPONSE

by John P. Steketee*

I. Introduction

I have acquired a healthy, but skeptical, respect for social scientists in my tenure on the juvenile court bench. When I became a judge, I brought most of the layman's simplistic solutions to the problem of juvenile delinquency. Fortunately, I also brought a basic flexibility which permitted me to listen.

Therefore, when Gold and Williams tell me they have concluded, after interviewing several hundred juveniles, that apprehending delinquent juveniles does not help, but rather hinders the reduction of delinquency, I hear them – but not very clearly.

The study indicates that apprehending delinquent juveniles is likely to result in increased, rather than lessened, delinquent behavior. Juveniles involved in various kinds of delinquent activity who were not apprehended apparently shunned such activity as time passed.

It would appear that juveniles find apprehension to be a reinforcement of their delinquent behavior. Being apprehended and questioned by the police, referred to juvenile court, meeting a probation officer, and going before a judge, not to mention the status one gains in one's group from police and/or court contact, can be a very significant chain of events for many adolescents who have never known the excitement of personal recognition by parents, school officials or even friends. For the first time, they are recognized and listened to, albeit for the wrong reasons. The attention need not be positive; shouting, scolding, and lecturing apparently will suffice. *This attention, in whatever form, is contingent on delinquent behavior.*

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II. The Study's Hypothesis

Gold and Williams' hypothesis seems to be that a self-fulfilling prophecy is at work. Once a juvenile is officially labeled a delinquent by the act of arrest and, in many cases, referral to juvenile court as deviant, then continuing deviant behavior is more likely to be provoked. Stated another way, a peripheral role conception, that is, perceiving one's self as "delinquent," is raised to a greater prominence, leading to a more pervasive view of one's self as deviant.

Gold and Williams' study is one of the very few which has attempted to test the above stated hypothesis. While not conclusive, it certainly lends credence to the theory. Replication of the study is in order.

It is highly unlikely, however, that our society would follow the thesis to the conclusion that society should simply stop apprehending youthful offenders. The authors themselves fully realize the unlikelihood of society doing that. Kai T. Erikson suggests that deviant behavior serves the social purpose of reminding people where the line is drawn defining the outer limits of acceptable behavior.¹ If society needs its deviants, juvenile courts' handling of juvenile offenders plays an integral part in that process of drawing the line between deviant and non-deviant behavior. To that extent, the juvenile court has a primary social control purpose.

This purpose is confused, however, by the vague definitions, legal and otherwise, applied to what is and is not deviant behavior for juveniles, both in degree and in kind.

III. The Rehabilitative Ideal Questioned

The "chargeable offenses" mentioned in the study usually fall into the category of those activities which many persons, especially juveniles, are likely to engage in at some time in their development: trespassing on another's land, entering a building out of curiosity or to play, a fight, destroying property of the family because of anger from a slight. Indeed, almost any adult could easily reflect on his own actions of the past several days: a

¹ Erikson, *Notes on the Sociology of Deviance*, 9 SOCIAL PROBLEMS 307-314 (1962).

driving offense, jay-walking, or any number of technical misdemeanors on the books of any municipality. I am sure that if I were included in a study of adults similar to this study of juveniles, I could be a statistic supporting a similar conclusion.

The authors in their illustrations combine, under the rubric of delinquency, very minor offenses with more serious deviant behavior; for example, playing about in an unlocked school as compared with assaultive gang behavior. But the authors do point out some disturbing facts by their study. My concern, as a juvenile court judge, is with the question of how these findings relate to the juvenile courts. An appropriate starting point is the language of *Kent v. United States*.²

There is evidence . . . that there may be ground for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.³

This language has usually been cited regarding due process. However, emphasis upon the care and treatment which seems to be missing is appropriate in relation to the authors' theses. Thus, Gold and Williams' statistics and conclusions underscore the fact that the community and the court are not living up to the responsibility imposed by the juvenile process.

Their article suggests that conventional thinking about screening by police and the juvenile court at the intake level should be re-examined in light of its effect upon offenders. My view has been that the intake process is beneficial for juvenile offenders who are screened out. Statistics show that of those juveniles who are screened out (twenty-five percent of the total number of referrals), only eight to twelve percent reappear before my juvenile court. What is not known is the kind of activity these juveniles engage in after the fleeting contact; do they engage in other forms of anti-social behavior not sufficient to be referred to the court again; are they failing to adjust as citizens? *Could we safely screen out many more children?*

² 383 U.S. 541 (1966).

³ *Id.* at 566.

Three propositions have been discussed:

1. A public purpose is served by the apprehension of offenders to the extent that it provides the public with a continuing reminder of the tolerable limits of behavior.

2. However, as Gold and Williams state, the customary means by which offenders are processed tend to increase the probability that offenders will repeat.

3. Therefore, a change in the selection of offenders for processing, a screening out of all except the most serious offenders, may be indicated; thereby reducing the scope of the phenomenon about which Gold and Williams write while, at the same time, preserving the social control function of the juvenile court.

These three propositions are essentially negative. They tend to deny the rehabilitative ideal of the juvenile court. An ultimate conclusion is that the realization of the ideal is so chimerical that it ought to be abandoned. Yet, the authors of the study themselves are not ready to relinquish that ideal. Instead, they call for a more effective examination and testing of the worth of rehabilitative programs and for a greater dissemination of the information gleaned from this examination. A fourth proposition may, therefore, be appropriate.

4. For those serious offenders who are processed, it is essential that the juvenile court alter its handling in order to minimize and counteract those court actions which tend to reinforce deviant behavior.

IV. Suggestions for an Improved Juvenile Court System

If it is true that the attention which juveniles receive during the course of police and court processing reinforces delinquency patterns in many of the young offenders, there are at least two possible changes which the juvenile court may implement.

First, the court can arrange its procedure and its interview content to limit the attention which is given to deviant behavior. This attention could be limited to only that information which is necessary to guarantee meeting procedural fairness requirements. Thus, lengthy and repeated discussion of all of the pецadillos, major and minor, committed by the child, with incessant demands to explain "why", would be avoided. Interrogation about offenses would be limited to the minimum necessary to establish the juve-

nile court's basis for intervention and to permit it to select a course of action which balances the public's right to protection with the juvenile's personal interests.

Second, the court can re-direct its attention away from a pre-occupation with deviant behavior to a better-balanced approach which also emphasizes the reinforcement of good behavior. After all, the juvenile court does not wish to create individuals who, while they do not misbehave, are passive, non-productive creatures. The court's objective is to stimulate an increase in desirable behavior on the part of juveniles who, by virtue of their activities, are relatively less likely to get into serious trouble.

The dilemma of delinquency rehabilitation is that one cannot deal directly with the problem for which the juvenile was apprehended, the commission of illegal acts, short of locking up the child indefinitely. The resulting indirect approach calls for the court to concentrate upon that kind of acceptable behavior which is demanded of all law-abiding citizens. Juveniles who have received insufficient reinforcement for acceptable social behavior must now be helped to develop and maintain such behavior if they are to be law-abiding citizens in the future. Fortunately, strategies are at hand which readily lend themselves to this re-focusing. In many instances, what is needed is a different pattern of interchange between child and parents, child and teachers, child and peers; an interchange which replaces a coercive, negatively-oriented pattern with one in which each juvenile receives "something for something". The juvenile commits himself to a specific, acceptable behavior which the other party desires and, in return, receives a desired reinforcement, such as praise, privileges, material goods. An objective of treatment is to change the typical response patterns of those who deal frequently and intensively with the delinquent from very negative, problem-focused exchanges to a balanced pattern in which positive behaviors are more readily seen and reinforced while also providing some feedback on deviant behaviors.

Juvenile courts deal with some offenders whose parents cannot provide the incentives for reinforcement which may be initially required if non-delinquent behavior is to become firmly established in the offender. The possibilities for provision of such reinforcement by the community itself have just begun to be

tapped. Free movie passes, bowling, skating, and merchandise can be obtained for the asking. Consider the merchant who has been victimized by shoplifting of phonograph records who now offers phonograph records as incentives to children showing decided improvement in their school report cards.

Stated another way, the juvenile court's program can be designed to open legitimate avenues for access to those reinforcers which commonly motivate people in our society, such as individual attention, approval, acceptance, material gain, privileges. In some instances, providing this access requires that the individualized exchanges with the child be altered to provide more consistent positive reinforcement for desirable behavior. In other cases, broader community avenues must be opened. However, in all instances, the courts must attempt to reinforce acceptable behavior through means other than retributive punishment.

V. Conclusion

Certainly the authors are correct in their assertion that more experimental programs based on "hard data" are needed. Future efforts should not be based on mere intuition or on what makes us feel better. We must share our successes and failures. The type of court program suggested in this response must be tested as rigorously as any other program; those ideas which are effective should be constantly improved and those which fail should be discarded.

Ours is a constantly frustrating task, but to fail means tragedy. To succeed is imperative, and, for the juvenile court judiciary, it is our sworn duty. In the words of Robert F. Kennedy, posted at the new Federal Youth Center in Morgantown, West Virginia, where exciting and imaginative trails are being blazed—

What we require is not the self-indulgence of resignation from the world, but the hard effort to work out new ways of fulfilling our personal concern and our personal responsibility.