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Robert F. Drinan S.J.
Boston College

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AFTERMATH OF APPREHENSION: FAMILY LAWYER'S RESPONSE

By Robert F. Drinan, S.J.,*

I. Introduction

One of the intriguing factors requiring further investigation in Gold and Williams' study is the attitudes of the parents of those youths apprehended and charged as delinquents. The only indication which Gold gives of his inquiries into this subject is his statement that Respondent 554, a thirteen year old white male from Michigan, who, despite his having been "caught by the police, taken to the station and fingerprinted, warned by them and *grounded by his parents*" [Emphasis added], was not deterred "from further delinquencies."

Clearly the experience of "apprehension," on which the authors' research places much emphasis, is a very small part of the "chain of events" which begins when authorities apprehend a youngster. At least as compared to being "grounded" by one's parents, it seems small.

It is contended here that Gold and Williams' statement of their thesis that "apprehension itself encourages rather than deters further delinquency" is not what their research proves. The research proves rather that the *revelation* of the apprehension to the delinquent's parents without the consent of the youth apprehended is the real cause of the youth's further delinquency. Stated more precisely, it is the attitude of the parents towards the youth who has been apprehended by the police which is the critical factor in encouraging or deterring the youth from further delinquency.

* Dean and Professor of Law, Boston College. A.B., 1942, M.A., 1947, Boston College; S.T.L., 1954, Weston College; L.L.B., 1949, L.L.M., 1950, Georgetown; former Chairman of the Section of Family Law of the American Bar Association, former Editor-in-Chief of the Family Law Quarterly, former Chairman of the Family Law Committee of the Massachusetts Bar Association and of the Association of American Law Schools. Dean Drinan is Professor of Family Law at Boston College Law School, and is one of the eight representatives of the American Bar Association on the National Conference of Lawyers and Social Workers.

On the assumption, therefore, that a youth once apprehended by the police is more likely to engage in further delinquent conduct, it is impossible to conclude from Gold's research that the process of apprehension *in and of itself* incites a juvenile to further delinquency. If Gold and Williams desire to sustain the burden of that contention, they would have to prove it from another series of cases in which youths, whose apprehensions were concealed from their families, became more delinquent than similarly situated non-apprehended delinquents.

Gold and Williams' remarkable findings suggest at least the following three conclusions:

1. A youth aged thirteen through sixteen (the study's sample) should have a right to insist that the police not inform his parents and his siblings of his apprehension.
2. In cases where a youth's apprehension is revealed to his parents and/or siblings, all the members of that family should receive information and counselling about the attitude which they should adopt with respect to such a youth in the family.
3. Since the impact of apprehension by the police has such lasting effects, the types of conduct which justify such apprehension and the permissible limits of such apprehension should be set forth in the law more clearly than they are at the present time.

II. A Youth's Right to Conceal the Fact of Apprehension

Gold and Williams report that Respondent 306, a white male almost fourteen years old, entered the Elks Club through an open window. He and his four companions were surprised by the police who took the five boys to "police headquarters, fingerprinted them, then called their parents to take them home."

If respondent 306 had been seventeen instead of almost fourteen, the policeman would have no right under the juvenile act to phone the youth's parents. What reason can justify a police officer giving his version of the facts on the phone to the parents of an apprehended juvenile? The proclivity of Respondent 306 to further delinquency began in all probability with the unilateral action on the part of the arresting officer who, without the consent and possibly even without the knowledge of the apprehended youth, phoned his parents and practically ordered them to come and pick up their child.

The very suggestion that youths in the thirteen to sixteen age

group may have a right to conceal their delinquent conduct from their parents collides with the seldom challenged legal doctrine and the universally accepted belief that young people are not "emancipated" from their families until they are eighteen, or even twenty-one. The wide acceptance of this belief means that teenagers in the thirteen to sixteen age group do what they are told by their parents or by the police.

The study clearly suggests that there is need for a re-thinking of the somewhat feudalistic idea that children "belong" to their parents until they are arrested or reach majority. Some persons may think it fanciful to suggest that young people in the thirteen to sixteen year age group be given some way to exercise rights to do what their parents forbid them to do. To the suggestion that a significant number of young people in this age group are being gravely hurt, there will be the reply that parents should not be defied or reversed by some children's tribunal or by some social welfare agency.

Whatever law exists concerning the rights of the thirteen to sixteen age group centers on the point of whether a parent is legally obliged to pay the bills of a child who emancipates himself by leaving home. In some states, the parents may have such a child apprehended and incarcerated as a "stubborn child". The almost non-existent law concerning the control of the thirteen to sixteen age group makes it clear that the parents and not the governed have all the rights.

It is this almost totally unchallenged type of thinking which prompts well-intentioned policemen to phone the parents of teenagers who have been apprehended. In such a call, the policeman naturally presents a version of the facts so favorable to the police that whatever defense the boy may later present seems lacking in candor or credibility to his parents.

What would happen if juveniles had a right to insist that their apprehension not be revealed to their parents? In some states, the juvenile has a right to a hearing or trial from which the public and the press can be excluded. The question to be asked is whether this principle of privacy should be extended to grant a right to the juvenile to withhold information about his apprehension from his parents. Gold and Williams' research would seem to support the wisdom of such a right.

If the believers in family solidarity and the sovereignty of

parents over their minor offspring reject as unthinkable any right on the part of a teenager to confidentiality about his court record, at least these persons should concede some such right with regard to a juvenile's brothers and sisters. Anyone familiar with the tensions caused in a family by the discovery that one member has a police record cannot help but be sympathetic with the suggestion that a delinquent is not necessarily helped by having his daily companions know that the police arrested him for some chargeable offense.

Once again the argument advanced for the full disclosure to the entire family of a youth's apprehension is based on the unity and solidarity of the family which the law should presumably foster. There is, of course, a powerful argument that children who are twelve or younger are in a sense so totally dependent on their parents that their position is analogous to what a married woman's position used to be—a *feme covert*. There is little reason to suggest that the status of persons under twelve (sometimes called "infants" by the law) will undergo any radical change. But the earlier maturation of the thirteen to sixteen group, as well as several other factors, suggest that the "emancipation" of teenagers from the hitherto absolute dominance and hegemony of their parents and their siblings may be less unthinkable than many believe.

III. Society's Obligations to the Parents and Families of Delinquents

There is no information in Gold and Williams' data whether the delinquent's conduct was made known to anyone beyond the immediate family of the accused. Assuming therefore that school officials and others outside the family who have contact with the juvenile were unaware of his apprehension, the clear inference of Gold and Williams' study is that the families to which the apprehended delinquents were returned unwittingly contributed to the recidivism of the juveniles.

It is easy to speculate that some families so "typed" the delinquent that he felt almost compelled to act according to the "casting." No doubt siblings added to the shame, anger or humiliation of some delinquents and, in the process, added to their determination to be good at least at criminal activities.

Such speculation, however, merely confirms the undeniable fact that each instance of the revelation of delinquency by the police and the return of the juvenile to his family creates a unique, complex and unpredictable situation. Almost nothing is known about the factors involved except the discouraging finding by Gold and Williams that such situations usually result in more delinquency than would occur if the arrest and disclosure had never happened.

If, therefore, the law is to follow the unproven yet unchallengeable assumption that the love and the discipline of parents is the best possible deterrent to further juvenile delinquency, then at least the law should make available to these parents some information about the probable consequences to their child of the various attitudes which they, as the parents of a delinquent, may adopt.

I have used the term "make available" because I am not certain that parents should be *required* to accept help. If a juvenile should have a right to withhold the fact of his arrest from his family, the family in turn should not be compelled to discuss their problem with experts on the psychology of youth.

However, if Gold and Williams' findings could be supplemented by further information to the effect that the rate of recidivism among apprehended juvenile delinquents is less among families who receive help in dealing with the delinquent, then a strong case could be made for compulsory counselling of the entire family.

Such counselling was and is, of course, the basic rationale for the family court. The noble ideals behind the idea of the family court have not, however, really been realized. Gold and Williams' conclusions cannot help but provide an empirical base to the reasoning which would place all matters affecting all members of the family within one unified counselling center and family court.

In the event that supplemental findings revealed that *all* families, with or without counselling help, are incapable of deterring further delinquency once a juvenile has been apprehended, then several inferences are possible: (1) it may be that the juvenile wanted to be apprehended and consequently facilitated his arrest; (2) Or it may be that all families are either so harsh or so

indulgent to a juvenile in their midst that their very knowledge of the delinquency, regardless of their attitude, compels the delinquent to repeat.

These suggested possible inferences from the data in the study confirms the authors' statement that "everyone treating the problem of delinquency should recognize that we are in an experimental stage." Gold and Williams state that "It would be easy, but unfortunate, to conclude from these data that authorities should stop apprehending juvenile offenders." Having suggested this startling possible recommendation, Gold and Williams suggest the alternative approach that delinquent behavior "be viewed diagnostically."

But one of the troublesome aspects about their study is the difficulty which they—and everyone—have in defining that type of offense for which the apprehension of juveniles is legally justified.

IV. Some Reflections on the the Juvenile System

Gold and Williams report that less than three percent of chargeable offenses result in the detection and apprehension of the juveniles who commit offenses. In view of this astonishing percentage of non-apprehension of delinquents, the study's findings regarding those who managed to get caught may be open to question simply because this group constitutes such a tiny minority of the total number of juvenile delinquents.

The small total number of apprehended delinquents also suggests strongly that the police exercise the broadest possible discretion in taking into custody youths under the age of seventeen. Of the relatively small number of juveniles who are apprehended, the cases of about sixty percent, as Gold and Williams point out, are "disposed of by the police themselves without involving the courts." This conclusion means that the only information on arrested juveniles who are detained by the police comes to us from less than two percent of all existing delinquents!

These figures suggest that the police, in exercising their right both to arrest and to detain juveniles, claim and exercise a discretion in "forgiving" delinquents which is probably broader than any other type of discretion known among law enforcement officials. The conclusions of the study may suggest continued exercise of this discretion to "forgive" will reduce the number of

repeaters among delinquents. But as much as one is reluctant to suggest a path that will increase the number of delinquents, the absence of a clear and knowable standard with respect to the type of conduct which will lead to the arrest of juveniles results in serious problems.

It may be that the study's findings concerning the impact of apprehension would support the contention that the increase in delinquency among the detained juveniles arises from their bitterness over the fact that they and not others equally guilty were in fact apprehended. The unfettered discretion of the police culminates in such arbitrary results that the very few juveniles who are caught almost certainly know that they and not others have been arrested, or turned over to the courts after arrest, because of an arbitrary judgment by a police official made on such fortuitous factors as their clothes, the condition of their hair, their race, or their poverty.

It may not be realistic to hope for a legal code, a set of guidelines or a statutory pattern which would provide an entirely satisfactory method by which juveniles would know precisely what conduct will be punished. The basic theory of juvenile delinquency is, after all, the notion that those under the age of sixteen or seventeen do *not* commit a crime but an offense which is *not* a crime. Consequently, the same theory would suggest that the elements of the "offense" need not be spelled out with all of the particularity of a crime.

This theory, however, appears to be another potential casualty of Gold and Williams research. A possible, although not necessarily inevitable, conclusion of their research is that all persons, including juveniles, are not benefited by a system which penalizes only a very small number of those who indulge in anti-social conduct while at the same time the system offers no clear rules as to what offenses the police official may "forgive".

However reluctant one may be to introduce the rigidities of a very detailed code or set of guidelines into the area of juvenile delinquency, the study suggests that the paternalism which has been so much a part of the atmosphere of the juvenile court movement may not in fact be the best approach or that, if it ever was, it is now an obsolete approach.

Gold, Williams and their research associates would undoubt-

edly be the first to suggest that their empirical study does not necessarily validate some of these suggestions. Technically correct as these disclaimers may be, the study suggests, nonetheless, at least to this lawyer, the possibility that the apparatus which this generation has inherited to deal with juvenile delinquency may be living on borrowed time.