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Extend Criminal Jurisdiction to Juvenile Court!

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Extend Criminal Jurisdiction to JuvenileCourt!

by C. K. Belhasen

Editor's Note:

The letter included in the following article reporting the rape of a juvenile in the city jail is inflammatory.

I talked at length with Gordan Kamka, the Warden of the jail about the letter while we were discussing the issue of "to publish or not to publish." I felt guilty for ever having considered exposing the letter to the public: Mr. Kamka pleads his case well.

However, upon further consideration, I decided that the reasons for publishing outnumbered (and outweighed) the reasons against. Mr. Kamka agreed to be interviewed by THE FORUM. When we were talking, it occurred to me that were we to interview him, he would effectively be given equal time. Are there any volunteers for the task?

S.T.T.

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Last June a fourteen year old male, while housed in the Baltimore City Jail Infirmary for "protection", was sexually assaulted by an adult inmate. After the assault, and after exhausting all other methods of remedying the problem of inadequate facilities for children held in this manner, a probation officer called Chief Judge Foster of the Supreme Bench of Baltimore and asked for his help in securing an order so that the child could be transferred to another institution. Judge Foster advised the probation officer the Judge James A Perrott was sitting in Criminal Court Part I, and that he should seek relief for the child through him.

The probation officer talked to Judge Perrott on the same day about getting this "helpless" fourteen year old boy transferred, at which time an appointment was set up to discuss the matter. After becoming convinced that a serious problem existed, Judge Perrott started moving to have the child protected. His staff opened communications with Deputy Warden E. M. Nuth, and immediately learned that facilities for this type of child were insufficient, and that the problem had existed for a long time. Mr. Nuth indicated that for a while he had been housing some juveniles in the women's section, and the most vulnerable in the infirmary.

Judge Perrott told Mr. Nuth to protect the boy for the night and that an order would be prepared for his transfer to another institution. At this time Judge Perrott's staff was searching for a suitable institution, but were making absolutely no progress. All of the available institutions lacked the necessary security for housing such an inmate, and refused to accept responsibility for the boy's possible escape. Faced with the choice of sending the child to an institution which lacked security or keeping the boy at the infirmary, the probation officer decided that he would not take a chance on having him escape. At this point he refused to sign the order, and, since there was now no moving party, efforts to move the child came to an abrupt halt. It should be pointed out Judge Perrott was still willing to sign the order, but was powerless after the probation officer backed out. The following is the text of a memo which was sent by Medical Services Administrator, Leonard J. Fox to Deputy Warden E. M. Nuth regarding this matter:

CITY OF BALTIMORE MEMO

The Infirmary of the Baltimore City Jail has a total of forty beds to accommodate inmate patients. There are five wards: two psychiatric, two medical, and one isolation. Early in 1975 three juvenile inmates (the eldest 16 years old) were placed in one of the medical wards, for protection only — they had no medical problems. Inasmuch as there was no other section of the jail where these youngsters could be housed without being exposed to possible physical or sexual assault they were placed in the infirmary for safekeeping. Many efforts were made to have these boys transferred to another institution, but with no success. They were fortunate; nothing happened to them during their stay in the hospital.

On June 3, 1975 the jail was again faced with the same situation. This time a 14 year old, Timothy Klebe, and a 16 year old, Melvin Thomas, were incarcerated. Both boys are small, slight of build — Klebe, a white and Thomas, a black. Since there was no place other than the hospital, they were both admitted to Ward IV, the isolation ward. We, in the Medical Department, just hoped that there would be no cases among the inmates requiring isolation. I do not recall the date, but within two or three days of the boys' arrival I attempted to communicate with Judge Boergerding, Administrative Judge of the District Court, seeking his aid in having them removed from the jail — particularly Klebe, the 14 year old who, I had learned, had just recently been at Montrose. I was hoping that somehow he and perhaps Thomas could be sent there while awaiting trial. At the time of my first call to the Judge I was informed that he was in the midst of dictating — I left my name and number with the request that he call me. Later in the day, having heard nothing, I again called and was told the Judge was not available. I phoned twice the following day with no results.

Two or three days later, a patient was admitted to the hospital suffering from hepatitis — he *had* to be placed in isolation. The boys were taken from Ward IV and placed in Ward III, a medical ward housing from 3 to 5 other inmates (adults). There was nothing else we could do and every effort was made to observe them as closely as possible.

About noon on Tuesday, June 17, 1975 I learned that one of the boys, Timothy Klebe (the 14 year old) had been raped twice the preceeding weekend; about 10:30 P.M. on Satur-

day, June 14th and about 4:30 P.M. on Sunday, June 15th. He named another inmate, Larry Mark (I.D.#222-472) as the one who had assaulted him. Officer J. Baze, the correctional officer in the infirmary first learned of this from another inmate on the ward. He questioned the boy who stated what had occurred and who expressed a desire to press charges against Mr. Mark. Officer Baze then notified the Baltimore City Police Department and a police officer was sent to the Jail Infirmary to obtain a full report (Officer Barnhoff CC # 3F38848).

When I learned what had happened, I sent for Klebe and he related the events. He told me he had been threatened that if he did not submit Mr. Mark would take him by force — out of fear he agreed to submit and was taken into the shower room where the assault took place (the shower room is not visible from the main corridor of the hospital). The following evening Klebe was again assaulted by Mr. Mark.

This is a terrible experience, especially for one so young. Yet the boy gave me the impression that he had been around the streets enough that he was not as upset as one less hardened might be (he is being held on a charge of rape, $50,000 bail). But this could happen again — it does prove that even the hospital officers no protection to the very young. Boys of this age group cannot be housed and protected in the Baltimore City Jail — other institutions with better facilities must be given this responsibility.

Leonard J. Fox
Medical Services Administrator

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Since the beginning of our separate treatment of juvenile offenders in the latter part of the nineteenth century, the system of juvenile courts and corrections has been failing. This fact is more striking today than ever before. The problem has been one of treating the symptom rather than the disease. In fact, there is evidence that what is presently being done may be counter-productive. When one approaches a problem of this size there is a tendency to look back to what has been done in the past as a base for building new programs. This problem is so immense, and growing so rapidly that it is mandatory that society move on to innovative answers to the questions that confront it. The cost of failure in this endeavor is failure for society as we know it.

While it is true that those in the system of juvenile courts and corrections are motivated by good intentions and are trying to cope with a very grave situation, it is becoming more and more evident that they have failed, are failing and will continue to fail in their task of effectively dealing with and reducing the incidence of juvenile deliquency. It follows, therefore, that the next question is simply, what now?

When the pre-*Gault* system of juvenile courts and corrections was established, the following seemed to be its main concerns:

1. Exparte, rather than adversary, proceedings under the Parens Patriae Doctrine in the best interest of the child;
2. Prevention of stigmatization by keeping the proceeding private;
3. Dispositional alternatives separate from those available for adult offenders so that commingling of juvenile and adult offenders in the same institution would be unnecessary.

Let's take a look into how many of these lofty goals are left intact by the Constitution of the United States as interpreted by the U. S. Supreme Court.

In *Gault,* 387 U. S. 1, (1967) the U. S. Supreme Court reversed the Supreme Court of Arizona by holding that a juvenile must be afforded due process of law during the adjudicatory stage of the proceeding. Justice Fortas spoke for the Court:

> "Ultimately, however, we confront the reality of that portion of the juvenile process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. It is of no constitutional consequence — and of limited practical meaning — that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional hours". Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape or homicide.
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> "In view of this, it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase due process. Under our Constitution, the condition of being a boy does not justify a kangaroo court..."

The *Gault* decision granted constitutional safeguards to juveniles on a large scale, and completely destroyed Parens Patriae for all practical purposes. Moreover, the proceeding is now clearly adversary and formal. The child is given the right to counsel, the right to be confronted by and to cross-examine his accusers, the right to adequate notice of the charges against him, and the privilege against self incrimination. In short, the court has extended to the juvenile most of the major constitutional safeguards that are afforded to adult criminal offenders.

With the *Gault* decision, one can easily see that many aspects of the juvenile courts have been radically changed. Mr. Justice Stewart, in his dissenting opinion, made the following observation:

> "The Court today uses an obscure Arizona case as a vehicle to impose upon thousands of juvenile courts throughout the Nation restrictions that the Constitution made applicable to adversary criminal trials."

The performance of juvenile courts was miserable during pre-*Gault* years, but somehow a way has been found by those involved in juvenile courts and corrections to do an even poorer job in the post *Gault* era. Should today's system of juvenile courts and corrections be allowed to continue? This writer does not think so, but let's consider how much is left of what was the system of juvenile courts before *Gault*.

1. The proceeding, in reality if not in name, has become adversary rather than ex-parte;
2. The doctrine of Parens Patriae is destroyed, or at least relegated to a position of unimportance and is applicable only where the Parens Patriae tendency of the judge is compatible with due process;
3. The range of latitude afforded juvenile courts is restricted by the

due process requirements of *Gault,* as well as other constitutional safeguards such as the right to counsel, the right to confront accusers, etc.

The situation leaves us with only two of the original protections which were originally afforded juvenile offenders: the prevention of stigmatization by keeping juvenile proceedings and records private, and dispositional alternatives to prevent juvenile and adult offenders from committment to the same institutions.

Is there really no stigma attached to being brought into juvenile court? Juvenile court proceedings were originally intended to be confidential, and to be concluded without creation of a record. Events have proved them to be punitive, correctional, and stigmatizing in effect if not intent. The location of juvenile courts within the regular system of courts, their close relations with police departments, use of jails for detention, and dispositions depriving children of their freedom all sustain the punitive and stigmatizing features of juvenile court proceedings. Probably the only features of juvenile court which do contribute to privacy for the juvenile are the closed nature of the hearing and the lack of a public record.

In *Kent v. United States,* 383 U. S. 541 (1966) the court held that a juvenile's file issued by the judge in deciding whether to waive jurisdiction to a criminal court, must be made available for examination by the juvenile's attorney to challenge its reliability, additionally, in most jurisdictions the news media is not permitted to name the juvenile in news reports. These protections do alleviate the problem of stigmatization to some extent, but the overall problem is still a factor which should be dealt with, since in the opinion of many, stigmatization is a major factor contributing to the rate of recidivism in juvenile ex-offenders.

The other aspect of juvenile court which has not been seriously affected by recent court decisions is that of dispositional alternatives separate from those available to adult offenders. One of the most important objectives of the juvenile court movement was the removal of juveniles from the criminal justice system. Their physical separation from adults during pre-trial detention and also the provision of separate correctional institutions was contemplated. The concern involved protecting juveniles from physical assault by adults and from the attitudes of hardened criminals as well as providing them with facilities and programs especially adapted to their needs. The contemplated total separation of juveniles from criminals has not been realized. In less populous areas the juvenile detention center is likely to be simply a wing or series of cells in the country jail. Even in metropolitan areas, juveniles may not be separated from adults during police processing prior to referral to the juvenile detention center. Furthermore, although separate juvenile correctional institutions have generally been provided, in a number of states juveniles in training schools may be transferred to adult correctional institutions. In a few states juveniles can be directly committed to adult institutions.

Despite obvious and important differences between the adult and juvenile correctional processes, there are a number of similarities in the types of decisions made. To some extent, these similarities are obscured by terminology employed by juvenile system personnel to underscore the differences. For example, an adult is sentenced to prison, while a juvenile is committed to training school; an adult is paroled, a juvenile is released from training school on aftercare status; adult probation is revoked, juvenile court probation is modified; adult parole is revoked, a juvenile on aftercare is simply returned to the training school.

Through no real fault of their own, juvenile authorities have, in a great many situations, never had dispositional alternatives in juvenile cases. The truth is that the only real dispositional alternative is often between sending a juvenile to a penitentiary for kids instead of a penitentiary for adults. Though this is probably preferable to commingling juveniles with adults, it is by no means the "protection" which was one of the original promises of juvenile corrections.

Thus, an attempt has been made to prevent stigmatization of juvenile offenders which is only partly successful, and the dispositional alternatives to adult facilities, though entirely unsatisfactory, still exist. Otherwise, for all intents and purposes, the pre-*Gault* juvenile court system has given way to a kind of criminal courts and corrections system for kids which is very similar to the one provided for adult offenders. There are vast differences between many aspects of the two systems; but, on the whole, this writer feels that the two systems are functioning on about the same basis. It seems to me that the cause of criminal justice would be better served if we merged the juvenile court into the criminal court system, admit that we have failed, and then work on making the system work. Many would say that this would be the same as throwing kids to the wolves, but a careful inspection of the possibilities might yield just the opposite conclusion. About all that would be changed if juveniles were tried in criminal court would be the installation of public trials and trial by jury. It is doubtful that many would ever agree on whether such proceedings would further stigmatize the child, but certain constitutional protections could flow from granting public trials by jury.

The merger of juvenile court into criminal court could take place with little displacement of present resources. For example, the original jurisdiction over kids who have reached the age of, say, fourteen or fifteen would be in criminal court. The judge could be granted discretionary power over whether, in his judgment, the child should be tried in criminal court or in a modified juvenile court similar to those of today. If the judge elected to have the child tried on criminal charges, the trial would continue just as it would for any other offender. If the child was acquitted he would go free, but if he was convicted the judge would then prescribe the penalty. At this point it should be emphasized that the judge, though in criminal court, should be obligated, except in certain statutory exceptions, to dispose of the case in the manner provided for disposition of juvenile offenders. Under only exceptional circumstances (just as today) should the child be incarcerated in an adult institution.

What would be the effect of such a

change on today's juvenile courts? The most drastic change would be a sharply reduced case load. If the cutoff was thirteen years and under, juvenile court would have a real opportunity to deal with these children on a more personal basis, and hopefully do more good for the kids who fall into juvenile court jurisdiction. The amount of revenue saved, if any, should be plowed into really meaningful institutions for all kids, including those between fourteen and eighteen or nineteen who would now be placed in the original jurisdiction of the criminal court. This would permit juvenile courts to concentrate on non-delinquent and pre-delinquent juvenile matters.

What would be the effect of such a change on the criminal courts? Basically, the effect would be a vastly increased case load. All criminal court judges would have to become knowledgeable on juvenile affairs, dispositional alternatives and youth law in general. Though it may seem unlikely to some, a criminal court judge who sees all kinds of criminal cases involving both adults and children might be better equipped to administer true justice than the lone juvenile court judge of today who faces case after case in juvenile court without exposure to other elements in the criminal justice system. The most important change in the criminal court would be the installation of a dual dispositional system; one for kids and one for adults. Of course, a system such as this would be predicated upon the legislature putting enough resources into juvenile dispositional alternatives to permit success.

What would be the effect of such a change on the juvenile offender? There is little real difference between trial in juvenile court and in criminal court, except that more procedure is followed and more constitutional protections granted in the latter. From a dispositional aspect, the impact on the child would not be affected. The court proceeding might have an important educational and indoctrinating function which could instruct the youth and instill respect for law. The biggest difference would probably be the public nature of the proceedings and the establishment of a criminal record for the child, if convicted. The problems of public trial and establishing criminal records as far as stigmatizing the youth probably cannot completely be circumvented, but they have not been effectively dealt with in today's system either. There are ways of dealing with the negative effect on the child of incurring criminal disabilities and of having a public record of the criminal proceedings against him. One method would provide for automatic expungement of the child's record after a statutory period had passed. In addition to dealing with the problem of stigmatization, a program such as this could provide real incentive to the former offender to see that his record is expunged by remaining on his best behavior during the statutory period.

Any suggestion for real change in either the juvenile courts or the criminal justice system will probably fall upon deaf ears in the legislatures around the country. This is a problem about which too few have a real concern, and unless by some miracle television reception is impaired to some large extent, it is highly unlikely that the legislative bodies will be forced by constituent pressure to bring about meaningful change. The further this problem is permitted to drift toward anarchy, the more radical will be the reaction from the public through the legislature when it comes.