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Dan Hopson Jr.

Indiana University School of Law

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The Role of Juvenile Court Judge

By DAN HOPSON, JR.

*Professor of Law, University of Kansas, School of Law
Lawrence, Kansas*

Editor's Note — Hopson, Dan, Jr., Prof. of Law, Univ. of Kansas, Lawrence, Kan., b. 1930, A.B. 1951, LL.B. 1953 Univ. of Kan., LL.M. 1954, Yale Univ.; Attended Cambridge Univ., England, 1954-55; Admitted to practice, Kansas, 1953, Prac., Phillipsburg, Kan., summers, 1953-54-55. Asst. Prof. of Law, Univ. of Kan., 1955-59. Assoc. Prof. of Law, 1959-63. Research Assoc. Yale Law School, 1959-60. Subjects: Conflict of Laws, Family Law, Legal Process, Seminar in Juvenile Problems, Legislation, Labor Law, Jurisdiction and Judgments, Seminar in Family Law, Member Douglas County, Northwest Kansas, Kansas State and American Bar Associations. Sustaining member National Council of Juvenile Court Judges.

The judge of the Juvenile Court faces a unique problem not shared by his fellow lawyers and judges. This problem centers around the definition of his job. Just what is expected of a Juvenile Court judge? What is his role?

This unique, complex and confusing problem arises from a number of sources. The primary confusion was built into the position by some of the assumptions and limitations found in the Juvenile Code under which he operates. These assumptions and limitations existed at the time of the creation of the first Juvenile Courts and continue to exist today. Legal scholars and historians formulate these assumptions and limitations in a variety of ways,¹ but perhaps basic are the following:

a. That by the 20th century the "humanitarian" view had prevailed to such an extent that older concepts of retribution and punishment did not seem to be properly applied to children.

b. That applying the common law concept of "responsibility" to all children over seven did not seem valid. Rather an age of sixteen, seventeen or eighteen seemed to be more correct in terms of the actual abilities and behavior of children.

c. That children, as contrasted to adults, were still young enough that they could be molded and changed so that their behavior would conform to the minimum standards established by society.

d. That sufficient scientific (or at least pragmatic) knowledge about behavior existed in the various social sciences and that this knowledge could be used to effectuate a desired change of behavior in children.

e. That the most effective way for the state to implement these assumptions was to have the state act so "That the care, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents. . . ."²

Specialized Courts

Based on these assumptions, the various states felt justified in establishing specialized courts. These courts, acting under the state's power as *parens patriae* would be able to "individualize justice" on the basis of treating and hopefully

changing the behavior of the child and not on the basis of punishing the offense. The first directive then, given to the Juvenile Court judge by the statute creating his job was to treat each child on an individual basis in order to induce the child to conform to the societal minimum.³

But the state, in implementing these assumptions, chose as its vehicle the court. This choice was probably based on the assumption that it was necessary to give coercive power to the agency that was to effectuate the change. But this was not the only basis. There was the competing value of protecting society. Given that the behavior of the child could and frequently did violate other values in society, the state wanted that behavior curtailed. Therefore the second directive given by the state to the Juvenile Court judge was that he was, in fact, to act like a judge. He was to exercise the coercive power of the state to protect society.

These two basic directives, implicit in the legal structure of the Juvenile Court, obviously produce a built-in conflict for the judge in defining his role. At the same time he is to individualize justice and protect society. These two goals frequently force the judge into trying to serve two masters.

But apart from this inherent built-in conflict, the Juvenile Court judge faces other role problems arising out of the basic assumption about the court. The Juvenile Court judge, in almost all cases, was trained to be and practiced as a lawyer. This training and practice prepared him to be a decision maker in terms of the traditional legal syllogism of finding the facts, applying the proper legal rule and rendering the decision.

But this syllogism is of little help to the Juvenile Court judge. He rarely has a problem of determining what are the "facts" and what is the law to be applied. Many commentators have pointed out, and properly so,⁴ that the courts should be careful in all cases to make sure that the child has committed the delinquent act before it purports to render a decision. However, the Juvenile Court judge seldom has this fact-rule problem. In almost all cases the child has admitted the delinquency. Consequently, his job is that of a decision maker under the legal rule of "individualized justice." Under this rule the judge is a new type of decision maker and can no longer perform in the accustomed role of judge and lawyer. He no longer can apply his "legal" knowledge and training.

Multitude of Roles

As a dispenser of "individualized justice," he is forced into a multitude of roles based on "working with people." In this position he is handed a whole new set of problems in trying to define his job and in determining how to handle it. The new factors fall into three categories. (1) The problem of the new "facts"; (2) The problem of the judge's own value system and (3) The problem of the value system of others.

The Problem of the New Facts

For the traditional judge, the rules of law pretty well

solve the problem of the facts. These rules not only limit for him what facts may be presented to him as judge, but they also define for him what are the legally relevant facts. The evidence is presented in the court room and it normally concerns objective and universally knowable behavior.

But the "new facts" are of a different sort. The judge, if he is to "individualize justice" must obtain an almost unlimited range of rather strange data. He wants information concerning the personality and abilities of the child. He must have a valid picture of the child's environment, which requires a wealth of information on the child's home, his friends, his school and his neighborhood.

All of this data is crucial to the problem of causation. Causation is crucial since the final "new fact," and probably the most difficult to obtain, is how this particular child will respond to the various "treatments" available to the judge.

Under the new system, then, the "facts" are not those obtainable from witnesses in the court room, but must be obtained from "experts." These experts, be they from the courts own staff or from outside agencies, are not under any real control of the court and, since they are experts, the judge has no effective way to cross-examine their statement as to the facts. In other words when trying to evaluate the "needs" of the child and the efficacy of the "treatment" the judge must rely on other people—other people who, as a practical matter, cannot be checked.

Although many judges, not having experts available, are often forced to try, it is no answer for the judge to attempt to gather these facts for himself. What facts he obtains are probably not the facts or at least not sufficient facts to make a proper determination. The judge then, is forced out of his traditional role as a legal decision maker into the role of a decision maker whose decisions are, in any real sense, determined for him by the "facts" presented by an uncheckable expert. How, then, does the judge properly define his role in this, at least for a judge, unique situation?

The Problem of the Judge's Values

When the legal system imposes the duty of "individualizing justice" on the judge, it is, in fact, allowing him the widest type of judicial discretion. At best, "individualizing justice" or even "obtaining a change of behavior to the minimum societal standard," is but a vague guideline to the exercise of discretion. Certainly giving the child the "care . . . and discipline . . . given by its parents" is an open invitation to invoke the judge's own sense of values.

This open invitation presents many problems to the judge. His own personal convictions on such non-legal issues as the need for personal morality, the importance of compassion, the fear of *malvete*, all influence his attempt to find the proper treatment for the child. His legal convictions on such matters as the need for a formalized hearing in order to obtain a "fair" hearing, the efficacy of punishment, the legal concept of responsibility, and the obligation to protect society will also influence his decision.

Compounding the problem is the fact that most people, including most judges, have not consciously and rationally examined their own set of values and how these values influence their decisions. And, even for those who have, many values are held on an unconscious level where rational thought does not reach. The judge himself is the product of his environment. How much must he unconsciously be influenced by the way his parents treated him when he, in turn, is acting as the "parent" to the delinquent child?

Not only do these values consciously or unconsciously influence the judge when exercising discretion, but they also may, in those areas where the juvenile code has established a criteria for judgment, present a sharp dilemma to him. For instance, most judges would agree that there should not be "responsibility" in an eight year old. But what of a seventeen year old hood? The fact that someone in the legislature down at the state capitol decided that

responsibility starts at eighteen probably has but little influence on the judge who feels that for most children, responsibility starts at sixteen. Or what of the code's contention that the "crime" is irrelevant. Can the judge escape his abhorrence of a brutal rape in determining "what's best for the child," particularly when, as in some states, he can transfer the case to the criminal court and when, in all states, he has the duty of "protecting society?"

The point is not that the judge does "wrong" in letting his personal sense of values effect the exercise of his discretion, but that these values are one more influence on the judge and add a complicating factor to determining his role.

The Problem of the Value System of Others

In much the same manner, the value system of many other people attempts to force the judge into a wide variety of different roles. Due to the unique position of the Juvenile Court judge, he is forced into working with a large variety of other people. Their value system leads them into putting pressure on the court to induce the judge to play the role that conforms to their value system. Consequently, how the judge handles his job will continually be influenced by the value system of these other people.

Without attempting to be exhaustive, some of these "others" and some of their "values" that may influence the court might be listed as follows:

1. **The Child:** What does he expect of the judge? Does he want the judge to be his "father" and control or even "change" him? Or does he want the judge to be "fair" and give punishment in equal measure to the "crime?" Does he expect and invite the judge to prove once again that he is a failure?⁵ Do these expectations force the judge in or out of the role of *parens patriae*?

2. **The Parents:** What do they expect of the Judge? Do they identify with their child and expect the judge to act like a judge—giving just punishment for the crime committed? Or do they merely want to be relieved of the responsibility of being parents and to have the judge take over? Do they want to be exonerated for this child's behavior? "Judge, I have really tried but there is nothing I can do with Johnny." Do they, perhaps, protect the child against the alien world represented by the judge?⁷ How do these demands affect the way the judge approaches his job?

3. **The Court Staff and other "Social" Services:** What do they expect of the judge? As "experts" do they demand unquestioned acceptance of what they consider to be relevant "facts?" Do they push the court into the role of a "yes" man to the probation officer or psychiatrist who really makes the decision? Do they hope to turn the court into a full-fledged social agency—an agency which would be particularly useful since it exercises the coercive power of the state? Do they hope that the judge will strive to turn the child into a mature, responsible adult rather than merely helping the child out of trouble?⁷ To what extent do these pressures induce the court to attempt a more comprehensive approach to children and/or to abdicate decision making to his staff?

4. **The Police and other Law Enforcement Agencies:** What do they expect of the judge? Do they want him to exercise more "control" over the children in order that their responsibility to keep down "crime" and protect society is made easier? Do they conceive of "delinquency" as their prerogative, refusing, consequently, to refer cases to the Juvenile Court? How does this pressure influence the judge's perception of his job?

5. **The Other Lawyers:**⁸ What do they expect of the judge? Although lawyers seldom appear in the Juvenile Court, do they demand a more "legalistic" approach when they do appear? Since they have little contact with Juvenile Courts, do they ignore the judge leaving him isolated with his special problems? Do they show their respect and def-

erence only when the judge sits, as he frequently does, as a judge of some other court? Do they treat the judge as having deserted the "law" when he becomes a Juvenile Court judge? The values and preferences of this group are apt to have a profound effect on how the judge sees his job. Does the judge become more "lawyer-like" in order to effectively remain a member of his professional group? Does he change his Juvenile Court procedure when there are lawyers present? From a longer range view, does the judge ignore the unrewarding juvenile portion of his job in order that he might advance to a "higher" general court with more prestige?

6. **The Community as a Whole:** What do they expect of the judge? Here the values expressed to the court may range widely. Do some of the community delegate the total responsibility for delinquency to the court, expecting the judge to eliminate delinquency from the community by acting as an omniscient social agency? Do other members expect him to exercise greater control in order to protect society? How do these larger pressures affect the judge's view of his job, particularly in the situation where the right to continue in the position (and perhaps other judicial positions as well) depends upon the community's vote?

The above list of pressures illustrates some of the wide and divergent values held by those with whom the judge must work. Not only does the legal system and the judge's own values present inherent dilemmas, but various groups with which the judge, of necessity, comes into contact also push and pull the judge in several directions. These conflicting pressures point up the fact that the judge is faced with the almost impossible task of defining his "proper" role as the Juvenile Court judge.

Although many have written helpful, and sometimes conflicting, essays telling the judge what he ought and ought not to do,⁹ the "proper" answer remains elusive. This is not to say that a definition is impossible for a particular judge at a particular time and place. Many Juvenile Court judges have been remarkably successful in working out their own definition. But all judges could probably improve. Improvement could come, but it will not, from a change in the legal system or from a community consensus as to the role of the judge. Improvement can come from the judge increasing his understanding of the basic conflict of roles inherent in his job; from an increased insight into his own conscious or unconscious values; and from an increased ability to understand and work with "others."

The National Council of Juvenile Court Judges in their Regional Institutes are attempting to offer an opportunity to attending judges to improve these skills. The Council has chosen a proper avenue for improving the operation of the nation's Juvenile Courts.

FOOTNOTES

This article is based on a lecture presentation delivered by the author at the National Council of Juvenile Court Judges Institute III, held at Norman, Oklahoma, February 10-16, 1963. Institute III was one of the programs staged under the Council's 3-year demonstration training program being developed under grant of the National Institute of Mental Health.

1. See e.g., Nicholas, *History, Philosophy and Procedure of Juvenile Courts*, 1 J. Fam. L. 15 (1960). Glueck, *The Problem of Delinquency* 255-259 (1959) contains a review of and citation to the early articles.
2. This quote is taken from the act establishing the first Juvenile Court in the United States in Cook County, Illinois. See, *Laws of Illinois*, 1899, p. 131.
3. For a concise and idealized statement of the philosophy of the court see, *Children's Bureau, U. S. Dept. HEW, Standards for Specialized Courts Dealing with Children 1-13* (1954).
4. See e.g., Antreau, *Constitutional Rights in Juvenile Courts*, 46 *Cornell L.Q.* 387 (1961); Paulsen, *Fairness to the Juvenile Offender*, 41 *Minn. L. Rev.* 547 (1957); Schmitsky, *The Role of the Lawyer in Children's Court*, 17 *Record of N.Y.C.B.A.* 10 (1962).
5. See e.g., Downs, *Order in the Court, Children*, July-August, 1962, p. 139; Youngusband, *The Dilemma of the Juvenile Court*, *Social Service Review*, March 1959, p. 10.

6. *Ibid.*

7. See, Eastman & Cousins, *Juvenile Court and Welfare Agency: The Division of Function*, 38 *A.B.A.J.* 575 (1952).
8. The Juvenile Court judge is still a member of a professional group and undoubtedly still identifies with this group. Their values and demands will be more influential than that of the community as a whole.
9. See e.g., Downs, *Order in the Court, Children*, July-August, 1962, p. 139; Eastman, *The Juvenile Court Judge's Job*, 5 *N.P.A.J.* 414 (1959); Eastman and Cousins, *Juvenile Court and Welfare Agency: Their Division and Function*, 38 *A.B.A.J.* 575 (1952); Newman, *Functions of the Police, Prosecutor, Court Worker, Defense Counsel, Judge, in Aiding Juvenile Justice*, 13 *Juv. Ct. Judges J.*, October 1962, p. 6; Schmitsky, *The Role of the Lawyer in Children's Court*, 17 *Record N.Y.C.B.A.* 10 (1962); Youngusband, *The Dilemma of the Juvenile Court*, *Social Service Review*, March 1959, p. 10.

Psychological and Personality Factors in Delinquency

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home-life in childhood. As yet there is no generally accepted psychological theory of the origins of this dimension, so it is difficult to go beyond these findings.

The implication of the neurological evidence is that the passage of time is a healer, and that not much can be done to hurry the treatment up. Since this type of delayed maturity passes by the age 30, the solution might be to exercise some kind of continuous supervision until people in this category reached that age. From the socialization material it appears that a firm supportive environment, probably involving continuous relationships with other people, has an effect in strengthening ego-control. Again, this condition is probably most nearly met in Approved Schools and Borstals.

The Grants found that naval delinquents weak on their "maturity" dimension, which is probably similar to our ego-control, responded less well to group therapy than higher maturity delinquents. They also report the very curious finding that these people did best with the predicted worst supervision which was in fact least successful with the high maturity subjects. Rudoff and Bennett found that group counseling had least effect for young prisoners who were high in anxiety and low on the CPI self-control scale. It seems that counseling and group therapy do not work for those low in ego-control.

Lack of Sympathy

The origin of this condition is parental cruelty and neglect. The psychometric findings suggest two possible psychological interpretations. Members of this group are definitely weak in social perception, and this may be the source of their lack of sympathy—they simply cannot perceive fully the effects of their behavior on other people, or understand the disapproval they are producing. If this is a fundamental cause of their behavior, it might be possible to devise special training methods to build up the missing skill.

A second possibility is that lack of sympathy is due to lack of basic social needs, such as the need for affiliation. This is supported by Loban's study (41) of 430 adolescents, in which scores on the Hawthorne test of cruelty-compassion were found to be related to fear of rejection—usually regarded as part of the need for affiliation. These needs are probably acquired in early infancy, and it may be impossible to learn them at a later age. However, the kind of procedures which might be useful are to arrange for satisfactory experiences with the peer group, as can be obtained in group and milieu therapy. It is worth noticing that this is precisely the opposite treatment to that recommended for those with deviant identifications.