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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

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. 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 its vehicle the court. This choice was probably based on 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, 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.

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.

It 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 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 most relevant to the problem of causation. The judge, in fact, allowing him the widest range 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 judge's discretion. Certainly giving the child the "care and discipline. . . . given by its parents" is an open invitation to invite the judge's own sense of values.

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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 pressure points 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 represent Lafayette's dilemma, 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, 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.


6. Ibid.


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.

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, 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 normal 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. Rudolf 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, they 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.