March 2019

In Search of Juvenile Justice: From Star Chamber to Criminal Court

Hon. Patrick R. Tamilia

IN SEARCH OF JUVENILE JUSTICE: FROM STAR CHAMBER TO CRIMINAL COURT

by

HON. PATRICK R. TAMILIA[1]

In the time period marked by the present century, the juvenile court has seen itself evolve from a benevolent, child-centered concept, based on the 17th century doctrine of *parens patriae*, to a virtual return to the system it supplanted, the criminal court. At the extremes, the worst of both worlds has been inflicted upon the child, who has few advocates and is incapable of speaking for him or herself in the only manner that counts, through the political process based upon the power to vote.

One of the earliest advocates of the juvenile court, Dean Roscoe Pound, wrote the following:

> Since the first setting up of the juvenile court great progress has been made in building upon it toward integration of the activities of law enforcement, of extralegal social control, of government and church and school and civic societies, of social workers, and of philanthropic individuals in anticipating delinquency, in reaching for its causes, and in rational treatment of its beginnings.
>
> In particular, out of the juvenile court and experience of its possibilities there has grown awareness of the futility of dealing with the troubles of a household in detached fragments after damage has been done. We have been learning better methods than to have four separate courts in eight separate and unrelated proceedings trying unsystematically and not infrequently at cross purposes to adjust the relations and order the conduct of a family which has ceased to function as such and is bringing or threatening to bring up delinquent instead of upright citizens contributing to the productive work of the people.
>
> * * *
>
> You who sit in American juvenile courts and their outgrowths are called to do a great work. You are called to carry on an outstanding forward step in the development of human powers to their highest unfolding—in the maintaining, furthering and transmitting of civilization.[2]

---

1. Judge, Superior Court of Pennsylvania, and Professor of Law, Duquense University School of Law. J.D. Duquense University School of Law; B.A., Duquense University. Judge Tamilia served for eleven years as a judge in the Court of Common Pleas of Allegheny County, Pennsylvania - Family Division, before being elected to the Superior Court of Pennsylvania in 1984. As a judge in the court of common pleas, Judge Tamilia assisted in the creation of more than forty programs for families, delinquent children, unwed mothers, drug rehabilitation, mentally ill and disturbed children and child abuse/sexual abuse victims.

2. Roscoe Pound, *The Challenge of the Juvenile Court*, 3 JUV. FAM. CT. J., No. 1, 18 (1952).

Dean Pound also recognized the extraordinary power vested in the juvenile court when he made the classic remark that "the powers of the Star Chamber were a trifle in comparison with those of our juvenile courts and courts of domestic relations."[3]

The unbridled discretion of the juvenile court has been both the blessing and the curse of the juvenile justice system, and too frequently the achievements thereby produced are overshadowed by the more broadly advertised failures. The opportunity to actually implement a system of individualized justice, coupled with rehabilitation, prevention, and in appropriate cases, deterrence (which is the corollary to punishment) is unique to the juvenile court. The response to media pressure and to periodic surges of violence and drug use, and a public perception of rampant juvenile crime, is to attack the purveyors of juvenile justice and to return to a discredited model of incarceration, as used in the adult system, which is far more costly and unproductive.

My personal journey through the juvenile justice system began, after graduation from Duquense University with a psychology degree, as a part-time, later full-time, child supervisor in the Allegheny County Detention Home in Pittsburgh, Pennsylvania. My basic training in the field of juvenile justice, and two years of daily contacts with the entire juvenile detention population of a large urban community of 2 million, gave me insight into the juveniles' attitudes, values and personalities that serves me to this day. Following my detention home experience, I became a juvenile probation officer, and during the next six years, I covered virtually every district in Allegheny County and worked as both an intake officer and hearing officer in dealing with school truancy, discipline and family problems. At the same time I pursued a master's program in sociology and attended law school at night, receiving my law degree in 1959.

In 1960, I became a law clerk for six judges; in 1962, I was appointed Director of the Domestic Relations Division of Allegheny County; and in 1969, I was elected to the Court of Common Pleas of Allegheny County and assigned to the Juvenile Court, where I labored for eleven years. In 1981, I transferred to Criminal Court, and in 1984, I took office as an appellate judge on the Superior Court of Pennsylvania. Also, in 1970, I became an adjunct professor of Family Law at Duquense University School of Law, where I continue to teach.

Over those many years, totally involved in the judicial system and facing monumental swings and changes in law and policy, I believe I acquired

3. ROSCOE POUND, FOREWORD TO PAULINE V. YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY xxvii (1937). For a concise discussion of the Star Chamber and the nature of the proceedings that came before it, see CORA L. SCOFIELD, A STUDY OF THE COURT OF STAR CHAMBER (1900).

a base line understanding and philosophy relating to the problems and needs of the juvenile and family court systems. This has served as my guide to the future, helping me avoid serious mistakes or the Siren call of false solutions, which have a devastating effect on society and future generations. As an appellate judge, the resolution of policy matters can have a more profound influence and effect on the juvenile justice system and the treatment of children than can the numerous dispositions made in the course of delinquency proceedings at the trial level.

The juvenile justice system is rarely in equilibrium and suffers from trends of overkill, either in the direction of leniency or punishment. A brief exposition of the movements which dominated the system in the past 30 years serves to illustrate this condition.

1960s Trends:

- Removal of dependent-neglected children — creation of child welfare services;
- Creation of new categories — CHINS (children in need of supervision), PINS (persons in need of supervision) — separating status offenders from delinquents;
- Through Supreme Court rulings — *Kent v. United States*;[4] *In re Gault*;[5] *In re Winship*[6] — restricting the court's *parens patriae* role and requiring procedural due process;
- Turning away from the medical model to a legalistic one;
- Deinstitutionalization of mental institutions flowing into child care and delinquency programming, diversion and community programs became the vogue;
- Attempts to rationalize and implement many of the faddish studies publicized by the Presidents's Commission on Crime and Delinquency.

In the 1970s there was:

- Acceleration of deinstitutionalization;
- Move to remove CHINS into dependent category and to eliminate court jurisdiction entirely;

4. 383 U.S. 541, 557 (1966) (holding that as a condition precedent to a valid waiver order, the juvenile is entitled to a hearing, access to the social and probation records considered by the court, and a statement of reasons for the juvenile court's decision).

5. 387 U.S. 1 (1967) (providing child with notice, statement of charges and right to counsel).

6. 397 U.S. 358 (1970) (proof of guilt beyond a reasonable doubt required in juvenile delinquency proceedings).

• Passage of the Juvenile Justice and Delinquency Prevention Act of 1974, legalizing limited deinstitutionalization and creating a strong financial thrust toward community programming;

• Standards groups begin to push for total revision of juvenile justice. For example, the Institute of Judicial Administration/American Bar Association Standards proposed the following:

1. Flat sentences, but extremely lenient ones;

2. Strong curb over certification to criminal court;

3. Severely restricting intervention by the state in all family cases, particularly neglect and abuse;

4. Detailed oversight and legalization of parents' and children's rights vis-a-vis schools;

5. Virtual elimination of state, court or agency control over status offenders;

6. Eliminate all authority over truants. School becomes matter of choice, not compulsion;

7. Imposition of the same rules of court over juveniles as in adult proceedings, including jury trial and plea bargaining;

8. Reject rehabilitation as desirable or workable and opt for a very limited punishment concept;

9. Eliminate the concepts of *parens patriae* and in *loco parentis*, as inapplicable to the modern era;

10. Reduce foster placement to a temporary measure and calling for termination of parental rights and adoption within three months to one year of placement.[7]

In 1980, I was fortunate to write and have published an article addressing the underlying causes of the juvenile justice system's continual struggle. In that article I wrote:

> The juvenile justice system in this country is floundering because the messages being received from so many writers, researchers, and advocates are conflicting, self-serving, and in some cases willing to write off large numbers of children and programs, as well as long established concepts of child development.
>
> The underlying thesis behind the dismantling of the juvenile justice system is that the theories of child development, parenting, and conditioning of healthy emotionally stable children are in error. The nurture-nature

7. Patrick R. Tamilia, *The Recriminalization of the Juvenile Justice System--The Demise of the Socialized Court*, 31 JUV. FAM. CT. J., No. 2, 16 (1980).

> debate has been won by nature and the little that nurture can provide is insufficient to justify a vast system of preventive and rehabilitative programs, or court intervention in the lives of children and their parents. *This has vital significance for the juvenile justice system as child development and the child welfare movement are the linchpins of the juvenile justice system.*[8]

In the late seventies and early eighties, there were three thrusts to what I termed the "new wave" in juvenile justice. Although these three theories were in some respect contradictory, they each nonetheless had there proponents. The three approaches were termed "legalistic," "diversionary," and "anti-structure."[9]

The legalistic approach is one which would "introduce the full panolopy of criminal and civil procedures into the juvenile process, both in the delinquency and dependency-child abuse proceedings."[10] This model would require jury trials, pleadings, motions, plea bargaining, continuances, delays, extended appeals, post conviction hearings, and all other forms of legal procedures required by due process; including legal representation for the juvenile, which would be available in both civil and criminal courts. These legalistic formalities would also extend to the child's school and station house, and would control all relationships between the child and authority, the child and school, and the child and parent. Finally, under this approach:

> The child, if at all possible, would be an active participant in any proceeding involving him, and the lawyer would represent the child's *legal* interests rather than his *best* interests. The adversary relationship would prevail and the duty of counsel would be to do as the child wishes, and if at all possible to get him off even though it results in a total loss of control by the parent or the state. It also means that when the child is adjudicated delinquent and confined, a modified version of the adult "just dessert" system would apply. Rehabilitation has no place in this scheme except as something the child would avail himself of because it was there — he would have a flat sentence and no parole thereafter.[11]

The second thrust is termed the diversionary approach, which has equally strong advocates. The diversionary theory would reduce the court to a brokerage agent to insulate the child from any consequence for his actions or the parents from any real accountability for their children. Voluntaryism is the underlying credo of this approach, and makes the presumption that any fam-

8. The foregoing textual quotation has been adapted from Tamilia, *supra* note 7, at 16-19.

9. *Id.* The following explanation of the "new wave" of juvenile justice, and the three theories associated with it, is adapted from Tamilia, *supra* note 7.

10. *Id.*

11. *Id.*

ily or child who has problems would be stigmatized by court intervention and when it becomes necessary, these families would recognize their need to obtain help. In 1980, I described the diversionary approach as one where:

> The role of the court or its agents would be to direct them to the appropriate agency before court action was taken or before there was an official adjudication. Diversion programs could be anything from counseling to voluntary placement out of the home. It could also mean being paid to attend ethnic dance classes under federally funded full employment programs, as occurred in the Pittsburgh area.[12]

The anti-structure approach would require that no restrictions, control, or structure could be used in treating children. Borrowing from the twenty-year movement toward deinstitutionalization in the mental health field, the anti-structurists would permit institutionalization only for extremely dangerous persons, who pose a serious threat to themselves or society. In my 1980 article, I described the anti-structure approach as one where:

> The least restrictive alternative is the battle cry, and children should be considered to be lesser adults with the capacity to decide their own fate even at the risk that harm should befall them. Moreover, this approach would eliminate educational requirements, while parental and state control would be virtually abolished. The infant would be largely at the mercy of his parent, while the teenager would have the parent at his mercy. The state could intervene in child abuse cases only when the child's life was in danger. Status offenders would be beyond the jurisdiction of the court. Parental rights would be quickly terminated if the parents showed lack of reasonable involvement with a child in placement. Placement would primarily be to foster homes or group homes, with limited small institutions (twenty beds or less) for those children who had absolutely no other alternative.[13]

To some extent elements of all these paradigms presently exist in most juvenile courts and ancillary systems throughout the country, even today. The problem lies with an attempt to have one or more the dominant factor in the system. Elevating any of these modalities to the primary process is to guarantee disaster.

Returning to my anecdotal review of the trends in the juvenile justice system since 1950, I believe my personal history of involvement helps to elucidate the theme of my article — illustrating the movement from Star Chamber to Criminal Court.

When I became a child care supervisor in the Allegheny County Detention House in 1952, the totality of juvenile court services were contained in

12. *Id.*
13. *Id.*

a building which, when constructed in 1933 with Federal Public Works Administration money, was the model for juvenile courts in the country. In the building were detention and shelter facilities for children from a few weeks old to 18 years plus. At that time, the designations were neglected children and delinquent children, with five separate departments: preschool (neglected), junior boys (neglected), junior girls (neglected), senior boys (delinquent), and senior girls (delinquent). The building contained a kitchen, dining rooms, class rooms, gymnasium, laundry, Intake Office, Probation Office, medical/dental offices, Psychological and Psychiatric Office, Collections Office (for support orders), Prothonotary (court clerk), file rooms, and the courtroom.

The Juvenile Court of Allegheny Court was a *single judge court*, legislatively created by its own statute, with a Juvenile Act separate and distinct from the Juvenile Act for the remainder of Pennsylvania.[14] This unique court, with its separate statutory jurisdictional and procedural base, remained as such from 1933 until 1968 when, by constitutional unification of the entire Pennsylvania judiciary, it became part of the Court of Common Pleas of Allegheny County as a section of the Family Division.[15]

In my years as a probation officer, the procedure for handling cases before the court would be unrecognizable to judges and court workers of today. The heart of the system was the Intake Office, the gate through which neglected and delinquent children were either admitted or denied admission to the juvenile court process. It was the intake officer who determined whether a child was admitted or denied admission to the detention home, and whether the case would be handled by an "informal adjustment," community referral or a "formal petition," and the nature of the charges to be filed. These did not need to be detailed with the particularity of a criminal complaint, but only by allegation of neglect or delinquency with supporting facts in accordance with the statute.[16]

Upon the filing of a formal petition, the case became active with a probation officer who was responsible for the conduct of the case to the point of hearing and thereafter, depending upon the court disposition. The intake officer in the first instance determined whether or not the child would be detained, thereafter, upon assignment of the case, the probation officer assumed control of that function. In those days, there were no shelter or detention hearings, bond was rarely, if ever, permitted by the court, and the hearings on the petition were scheduled at the convenience of the court. The most unique part of the process was the hearing, and it is that part which has under-

14. Act of June 3, No. 312, 1933 PA. LAWS 1449 (1933).

15. PA. CONST. Art. V, § 17.

16. PA. STAT. ANN. tit. 11, § 269-403 (repealed 1972).

gone the most change.

Pursuant to the architectural adage that form follows function, the courtroom, waiting room, tipstaff's office and sheriff's holding room were designed to accommodate the function of the juvenile court proceedings, as it was perceived in the first half of the century. The waiting room (which also served as a chapel on Sundays and religious holidays) was separated from the courtroom by the tipstaff's office. (The general waiting room had child-focused canvas wall murals painted by Depression Era artists employed by the Public Works Administration.)

When a case was called, the probation officer was responsible for gathering the parents, lawyers and witnesses, if any (which was extremely rare), in the tipstaff's office. The child either would be brought down from the detention home or taken from the waiting room and placed in the sheriff's waiting room (technically in custody), which was on the opposite end of the courtroom from the tipstaff's office.

The courtroom was a large, beautifully paneled room containing a huge desk designed to accommodate a court reporter at one end and a court clerk on the other, with the center being occupied by the judge, who sat at the same level as the parties. The judge never wore a robe and rarely a dark suit. A back door opened to the judge's chambers and to a small room between the sheriff's office and the courtroom. This room contained a round table and two chairs.

Upon call of the case, the probation officer would go alone before the court and formally present a summary of the charges, the results of his/her investigation, a social/psychological medical history and evaluation, and a recommendation of adjudication and disposition. It was customary for the judge to review all of the social histories the day before the hearing. The judge would pursue questions relating to the information presented and retire to the rear waiting room where the child would be seated at the round table (specifically selected to give a sense of informality and equality). The judge questioned the child about his actions and other matters, encouraging openness and honesty by suggesting that he, the judge, was like a doctor trying to help the child and, as with a doctor, unless the child was completely forthcoming, the proper treatment needed by the child could not be provided.

Following this interview, the judge returned to the courtroom, the parents were brought in and seated facing the judge, and the judge would go over the case with them, asking their views as to how best to help their child. If a lawyer was present, he would be asked to state his position. Usually the lawyer could add nothing that the court did not already know, and frequently the judge provided information, unknown to the attorney, concerning the case or the needs of the child. The attorney's role was not adversarial but more akin to a friend of the court in serving the best interest of the child. Only in extraor-

dinary cases were police or witnesses required to be present, and if this was a problem (because of absolute denial by the child of the charges, which rarely occurred), the case would be continued to provide the necessary testimony.

Following the courtroom proceeding, the child would be brought to stand with his/her parent(s) and the judge would announce the adjudication or disposition. The parties would then be escorted through a side door to the hallway, and the probation officer would explain to the parent(s) and child what the disposition meant and how the court order would be implemented. If removal was ordered, the child would be taken into custody by the sheriff's department for transportation to the court designated program.

This entire concept incorporating the law, the building, and the process and staffing was crafted by one of the pre-*Gault* nationally renowned experts of the Roscoe Pound theory of juvenile court, Gustav L. Schramm. He was designated by a specially selected citizens committee to be appointed as the first Juvenile Court Judge of Allegheny County,[17] and remained uncontested in the office until his death in 1958. Judge Walter G. Whitlatch,[18] in an article titled *A Brief History of the National Council* (of Family and Juvenile Court Judges), wrote of Judge Schramm:

> Judge Schramm was also responsible for first establishing training programs for juvenile court judges. He was a past Grand Master of the Masonic Lodge of Pennsylvania and was thereby able to prevail upon the Pennsylvania Masonic Lodge to fund a training program which trained many juvenile court judges in the [fifties] at what was known as the Masonic Institute in Pittsburgh. Judge Schramm attended his first national meeting of the Council in 1939; he was always a leader and an active, contributing member of the Council.
>
> Without taking anything away from the other pioneers who gave generously of themselves in establishing this Council, I have no trouble concluding the biblical allusion to "Giants on the Earth in those days" has singular application to Judge [Harry L.] Eastman and close to him must be placed Judge Schramm, Judge Beckham and Judge Criswell.[19]

The Schramm Era epitomized the medical model spoken of by Roscoe Pound, where the law and social work/psychiatric principle melded with the best interests of the child to correct wayward or neglected development, and to habilitate or rehabilitate the child thereby turning him into a productive citizen. As such, constitutional rights did not apply and due process and the

17. PA. STAT. ANN. tit. 11, § 269-201 (repealed 1972).

18. Historian, National Council of Family and Juvenile Court Judges.

19. Walter G. Whitlach, *A Brief History of the National Council*, 38 JUV. FAM. CT. J., No. 2, 1, 7-8, (1987).

adversarial system applicable to adult criminal proceedings were deemed an impediment to the child's superior right to treatment and, if necessary, custody. The philosophy espoused in the legislation creating the Cook County Juvenile Court in Chicago, in 1899, which was the first juvenile court in the United States and the world, was that a child who broke the law was to be dealt with by the state, not as a criminal, but as a child needing care, education and protection.[20]

The juvenile court movement, within 25 years, spread to practically every state and territory. However, development of facilities and treatment modalities lagged far behind, and, as is presently occurring, legislatures were passing laws without funding or programming, expecting to produce the hoped for result. In 1934, the movement came under serious criticism when Drs. Sheldon and Eleanor T. Glueck published *One Thousand Juvenile Delinquents*, documenting the success or failure of a Boston juvenile court, which was the most exhaustive study of delinquency and its causes of its time.[21]

Dr. Richard Cabot, a Harvard professor, published a review of the works, going far beyond the Gluecks' findings, characterizing the juvenile courts and the movement as a whole as "an appallingly complete and costly failure, a stupendous waste of time, money and effort in an attempt to check delinquency."[22] The subsequent public furor, which found few defenders for the juvenile court movement, resulted in the coalition of juvenile court judges and ultimately in the creation of the National Council of Juvenile Court Judges in 1937. From this evolved the National College at Reno, in conjunction with the University of Nevada at Reno, which fosters the continuing judicial education and research for juvenile court judges. Without the creation of the National Council, it is believed the juvenile court movement would have expired or at least it would not have withstood the increasingly turbulent times it faced in the coming years

Recognizing the weakness of the *parens patriae* philosophy, which in some cases and some courts would deteriorate to resemble Star Chamber proceedings, the National Council, at the 1940 Convention in Grand Rapids, Michigan, adopted a resolution which stated in part:

> (1) The juvenile court is designed with the scope of its legal powers, for the care and protection of dependent and neglected children for safeguarding their interests and enforcing the obligations of responsible adults; and for the correction, reeducation and rehabilitation of delinquent youth.

20. *See* Illinois Juvenile Court Act, Ill. Laws 133 (1899).

21. SHELDON GLUECK & ELEANOR T. GLUECK, ONE THOUSAND JUVENILE DELINQUENTS (1934) (Survey of Crime and Criminal Justice, Harvard Law School).

22. Richard Cabot, SURVEY MAG., Feb. 1934.

(2) The juvenile court, although operating as a socialized court, must recognize and protect the rights of those brought before it as provided by the law and the Constitution.[23]

Following the solidification of the National Council under Judge Harry L. Eastman of Cleveland, Ohio, it began to impact national and state legislation, such as construction of adequate facilities for delinquent children, educational programs for juvenile police officers, and federal responsibility for return to the home state of interstate runaways. In 1949, when Judge Schramm was Council President, the *Juvenile Court Judges Journal* was founded and he was also credited with establishing the first training programs for juvenile court judges. As a probation officer, when the training sessions were held semi-annually at the juvenile court in Allegheny County, I was involved as part of the training staff. Ultimately, in 1969, through funding from the Max C. Fleischman Foundation, the training of juvenile court judges began at the University of Nevada at Reno.

The 1950s were good years for the juvenile court movement, but the 1960s, with the civil rights movement and the Vietnam War, brought stress to many social institutions. The juvenile justice system was not spared, and with the extension of civil liberties and constitutional rights to criminal defendants, the liberal United States Supreme Court took the opportunity to establish restrictions on the *parens patriae* doctrine by extending constitutional guarantees to juvenile delinquents in all respects similar to those rights guaranteed to adults, except for the right to jury trials.[24] Although the juvenile justice system would never be the same, it still retained the necessary flexibility for a benevolent and progressive rehabilitative approach. The Supreme Court made the point that the informality and rehabilitative underpinnings of a children's court need not be sacrificed in providing greater constitutional protection, however, the juvenile court judge must be impartial and not act as prosecutor as well as judge.[25]

On the up side, more attention and funding were provided by Congress to the states for mental health, community programming and alternatives to incarceration. During the eleven years I was a juvenile court judge (1970-

23. Whitlach, *supra* note 14, at 5.

24. *See* McKiever v. Pennsylvania, 403 U.S. 528 (1971) (holding that a jury trial is not required in juvenile court); *In re* Winship, 397 U.S. 358 (1970) (holding that the "beyond a reasonable doubt" standard of proof applicable in adult criminal cases also applies in delinquency cases where a child's liberty was at issue); *In re* Gault, 387 U.S. 1 (1967) (holding that in adjudicatory hearing to determine delinquency, a child has the right to be notified of the charges, the right to be represented by counsel, and the right to confront witnesses who testify against him); Kent v. United States, 383 U.S. 541 (1966) (holding that the transfer hearing a juvenile faces to determine whether he should be tried as an adult must comport with due process).

25. *Kent*, 383 U.S. at 555.

1981), I participated in what to me was the golden decade of this century in attacking and resolving many of the underlying problems leading to delinquency and child neglect, while at the same time providing the dispositional resources to care for those children who had crossed the line into delinquent activity and behavior. We were aggressively innovative and became the primary advocates for children's programming *and* the protection of the public. Many of the government councils, which controlled grant awards and program funding, were dominated by liberal and uninformed socialites and college professors who saw children as fallen angels who could be redeemed by providing them with more freedom, individual choice, and protection from parents, school and the court. They provided the money to implement these confused and soft programs.

The Guru for this approach at that time in Pennsylvania was Jerome Miller, a former official of Children and Youth Services in Massachusetts. Miller's philosophy of total deinstitutionalization became the goal proposed by the Pennsylvania Governor Milton Shapp, who during his eight years in office, did his utmost to close the institutional base for juvenile placement and convert all placement modalities to a single concept of community treatment. Prior to that regime, the more activist courts in Pennsylvania had already moved to expand alternatives and minimize institutional care.

In Allegheny County, we decentralized our probation staff creating nine community probation offices, supported the creation of numerous group homes for boys and girls, created day treatment programs, independent living homes, teen pregnancy shelters, foster placement for delinquents, work/restitution and guided group interaction, intensive probation programs, and a unique unit for diagnosis and treatment of violent sexual offenders in conjunction with the Western Psychiatric Institute and Clinic. We also preserved the option for institutional placement, mostly in private, open institutions, for children who could not be handled in community settings, particularly for drug abuse. The state provided last stop Youth Development Centers and Youth Forestry Camps, as well as a secure facility at Camp Hill for the most violent, out-of-control delinquents needing the long-term discipline, job training and rehabilitation not offered elsewhere.

The Shapp administration, with Miller's guidance, first set about dismantling the facility at Camp Hill, offering allegedly secure but unworkable programs for hard core delinquents (which have not worked to this day). Shapp also pursued the dismantling of other state and private institutions with a goal toward placing all delinquent children on the streets under questionable expensive and unworkable community programs situated in YMCAs, college dormitories, fraternities and vacant houses and rectories. Part of the agenda was to reduce the authority of the court to deal with these problems by removing placement power from the court and to provide ultimate authority over

disposition to a Youth Service Bureau operated by the state.

Fortunately, the Juvenile Court Judges' Commission of Pennsylvania,[26] a legislatively created commission to advance the treatment of delinquent children and the education of judges and probation officers, took strong positions against many of the Miller/Shapp proposals. More aggressively and probably more effectively, the Juvenile Court Judges' Section of the Pennsylvania Conference of State Trial Judges mobilized in a manner never seen before or since in Pennsylvania, and frontally assaulted the liberals' attempt to destroy both the juvenile justice system, and in particular the juvenile court in Pennsylvania.

As one of the chairpersons of that section during the period of conflict, I pursued the collective goals of the juvenile court judges throughout Pennsylvania at trial judges conference meetings, Juvenile Court Judges Commission meetings, before the legislature, on radio and television, including appearances on the David Suskind show in New York. I also presented papers to the United States Congress arguing against eliminating status offenders from court control under the Juvenile Justice and Delinquency Prevention Act of 1974, and in favor of the "valid court order amendment." It was not uncommon to have more than two hundred trial judges attending Pennsylvania trial judges section meetings to confront Miller. Ultimately, we prevailed and saved the fundamentally sound and effective juvenile justice system in Pennsylvania. Unfortunately, as a result of appellate court decisions, Camp Hill was eventually closed to juvenile delinquents because the Pennsylvania Department of Corrections began placing adults convicts in that facility, thereby presenting a mix of adults and juveniles, which was prohibited by the Juvenile Act.[27]

Those of us who fought for the preservation of Camp Hill, which had an outstanding record of rehabilitating hardened delinquents through military-like discipline and job training in over forty occupations, have the bitter satisfaction of saying "I told you so," as the present administration is in the process of replicating the same program for the current round of violent, hard-core delinquents. In conjunction with violent offender legislation effective March 18, 1996, transferring jurisdiction of a number of offenses committed by juveniles to the criminal court, the legislature has appropriated $52,000,000 to provide a prison, replicating Camp Hill, for incarceration of juveniles sentenced through the criminal courts.[28]

---

26. PA. STAT. ANN. tit. 11, § 270-1 *et seq.*

27. *In re* Scott W., 378 A.2d 909, 910 (Pa. Super. Ct. 1977) (holding the State Correctional Institution at Camp Hill, Pennsylvania, is no longer a proper facility for the commitment of delinquent children).

28. Act 19, § 5.101, 179th Pennsylvania General Assembly, 1st Spec. Sess. (1995).

While it must be acknowledged that some juvenile court judges hurt their own cause by committing to Camp Hill delinquents who could have been better served in a benign setting, just as often, other judges refused to commit hard-core delinquents to Camp Hill, and instead utilized other programs or probation that could not deal with such youngsters. Likewise, with the most egregious crimes of hard-core delinquents, wavier to criminal court was a necessary option, which some juvenile court judges refused to use. I believe, in Pennsylvania, if Camp Hill had been retained as a properly-utilized juvenile institution, and certification to criminal court had been exercised in appropriate cases, the current round of legislation reducing the power of juvenile courts to control certification, the increase in severity of treatment of some juvenile offenders, and the opening of juvenile hearings to the media and the public would not have resulted. One of my colleagues in the Allegheny County Juvenile Court, who refused to support our fight to maintain a viable multiple modality system, claimed it contrary to the wishes of his constituency, who, beginning with Governor Shapp, consisted of the ultra-liberals of the time.

The question we must ask is, "Have we gone so far as to irreversibly tip the juvenile justice system over to become a paler image of the discredited adult system?" As an eternal optimist, I must say we have not. However, if ever there was a time for expert farsighted and courageous juvenile court judge advocates, that time is now.

First, we must recognize the fact that virtually all of the breakthroughs in the adult and juvenile justice systems derived from the juvenile court experience and the innovations by enlightened juvenile court judges. Virtually nothing has been derived from the adult system — aside from dehumanizing punishment. However, Congress as well as state legislatures have increasingly turned to long periods of incarceration and mandatory sentences as the answer to the crime problem, delimiting the only aspect of the process permitting personalized, cost-effective, and rational sentencing, which is the discretion vested in well-trained, experienced and knowledgeable judges. Speaking of the reduction of judicial discretion, which has resulted from mandatory sentencing legislation, Philip K. Howard writes:

> The point of the criminal-sentencing grid was to eliminate unevenness in the sentences meted out by judges . . . . Uniformity has suffered from manipulation of the underlying criteria. Policemen and prosecutors now huddle over the complex 258-box [Federal] grid in their offices, figuring out how . . . they can maximize sentences . . . . Meanwhile, the judges' hands are tied by the sentencing grid. For those who fear abuse of government power, like the reformers who wanted to eliminate judicial discretion, there could be no worse result. Judges, at least, are impartial.[29]

29. PHILIP K. HOWARD, THE DEATH OF COMMON SENSE 44 (1994).

In pandering to the media and an uninformed public, the legislators abandon their duty and impose inordinate costs on the taxpayers for inappropriate and self-defeating laws that reduce necessary funding for schools, treatment, and preventive programs. At a session of the Pennsylvania Trial Judges Conference, titled "Crime and Punishment and Rehabilitation in Pennsylvania,"[30] leaders of the Senate, the Commissioner of Corrections, members of the Pennsylvania Sentencing Commission and judges debated mandatory sentencing, lack of programs and rehabilitation in the prisons, and the inordinate costs of creating the additional 5,000 prison slots mandated by the Legislature. In an "Alice in Wonderland" exchange, it appeared that no one representing government believed it was the proper course. They agreed judicial discretion was far superior to mandatory sentencing, but that because there was a perception this was what the public wanted, it had to be done. The ironic twist was that the legislators suggested it was up to the judges to go to the community and convince the public that a less punitive approach was better.

The truth is that the public will accept reasonable alternatives to incarceration if they are honestly informed of the facts concerning the costs and potential effectiveness of alternatives, as compared to incarceration. The Edna McConnell Clark Foundation funded such studies in Alabama, *The Public's View*,[31] and in Delaware, *Punishing Criminals, The People of Delaware Consider the Options*.[32] The results reported in the studies were almost identical. When uninformed and relying only on their instincts, the people surveyed opted for imprisonment and long sentences in most cases. After educational seminars and television presentations, the change to alternative sentencing and lower cost options was dramatic. Part of the problem appears to be that the perception of rampant crime was widespread even in areas where there was little crime; the ratings for state police and government as a whole were high and for court and corrections low. In this respect, it appears the public views the court/corrections system as the messenger who caries the blame for the government's inability to stop the crimes.

Our primary avenue or reprieve from the projection of blame is to make certain our house is in order by providing the best judges and training possible, while supporting and creating proven and workable systems which both prevent and rehabilitate. This task may appear daunting and overwhelming,

30. Pa. Conf. of St. Trial Judges' Ann. Meeting (July 23-26, 1992).

31. JOHN DOBLE & JOSH KLEIN, PUNISHING CRIMINALS: THE PUBLIC'S VIEW, AN ALABAMA SURVEY (1989) (prepared by the Public Agenda Foundation for the Edna McConnell Clark Foundation).

32. JOHN DOBLE ET AL., PUNISHING CRIMINALS: THE PEOPLE OF DELAWARE CONSIDER THE OPTIONS (1991) (prepared by the Public Agenda Foundation for the Edna McConnell Clark Foundation).

but is it not impossible. As with the juvenile justice movement, once the benefits become widely known and accepted, diligent work and application will prevail. We must first recognize and accept that the juvenile court does not create the problems but rather, is the mandated institution provided by law and society to deal with them.

The juvenile justice system is intertwined with a multitude of other systems over which it has little control, but from which flows a steady stream of deviance. These systems include the Juvenile Education System, the Juvenile Welfare System (Aid to Families with Dependent Children), the Juvenile Health and Mental Health System, and the Juvenile Social Service System. Only by coordinating these systems with the court will the short and long-range impact in the court and corrections be diminished. Part of the solution is for juvenile court judges to recommend and support resolutions to problems emanating from those systems and prevent entry to the portals of juvenile courts. This may appear to be beyond the scope of juvenile court judges, but I believe judges can be instrumental in effective government and community programming, which can accomplish this purpose.

The Allegheny County Commissioners instituted a project in 1991, denominated as Allegheny County 2001. Through the work of seven resource panels which would, in the course of one year, delve deeply in each panel's assigned area, they proposed to go to the public and come back with a plan for implementing necessary changes to carry Allegheny County into the 21st century. I was designated chairperson of the Criminal Justice and Public Safety Panel.

After a year of intensive meetings, staff work consultation surveys and public forums, my panel returned to the Commissioners with two criminal justice recommendations, to wit:

> *Social Justice*
>
> Community-based support centers should be established, especially in high-risk neighborhoods, as one-stop shops for immediate, comprehensive, coordinated social and health services to individuals and families in need. Schools would be in good locations because they are already, physically and socially, part of the neighborhood. Coordination would limit coast and maximize effective delivery of programs.
>
> * * *
>
> In addition to the establishment of community-based support centers, the panel recommends:
>
> • Expansion of current programs such as drug-free zones and neighborhood crime watches.

• Establishment of a forum, similar to other cities' speakers bureau of judges, in which judges, attorneys, district attorneys, probation officers, prison officials, and treatment officials speak to youth, parents, and others on criminal justice issues.

Criminal Justice

• Build no more jails.

• Develop the data base necessary to give judges better information so that they can set sentences to protect society and, where possible, effectively treat criminals.

• Allow judges to set sentences. Eliminate mandatory sentences—except very short ones, which do deter crimes like drunk driving—for all nonviolent crimes.

• Provide more education and training in jails and require the Graduate Equivalency Diploma (GED) for early release.

• Require all prisoners to participate in a rigorous program designed to instill a work ethic.

• Provide drug and alcohol treatment on demand in jails and in the community.

• Develop and use more community-based corrections as alternatives to incarceration, such as house arrest, work release, electronic monitoring, community service.[33]

The most critical recommendation was for the one-stop community support center to prevent crime and delinquency. From this report, submitted in May, 1992, the implementation of a number of such community centers has gone forward as a local community project. Already the results are encouraging, and a strong movement is developing to quickly expand the program.

In a symposium on prevention held by the University of Pittsburgh, a report was submitted and reviewed by high ranking state and county officials, including the United States Attorney Frederick Thieman, Heather Weiss, Ed.D., of the Harvard Family Research Project, Legislator Ron Cowell and Marge Petruska of the Howard Heinz Endowment. The study, titled *Invest Now or Pay Later*, documented the efficacy in multiple reduction of problems from low birth weight babies and teen pregnancies to juvenile delinquency and criminal convictions. The symposium panel found:

33. THE ALLEGHENY COUNTY 2001 PLAN 24-25 (1992).

Family Support Centers, in Allegheny County and elsewhere, have demonstrated their capacity to:

- reach and engage hard-to-reach, socially vulnerable families;
- improve parental responsibility and ability to meet their children's needs;
- connect families to networks of support within their neighborhoods; and
- build stronger networks in the neighborhood from which all families benefit.

In addition, Family Support Centers have the potential to impact economic and public safety conditions through employment counseling and referral, reduction in delinquency and crime, and community-building. They also improve access to the institutional services by encouraging parent involvement in the schools, providing outreach and transportation to health care services, and case managing client families as they seek other needed services.[34]

Allegheny County has presently invested $6.6 million in a mix of public and private dollars for seventeen centers located in fifty-two high-risk neighborhoods. To reach forty to sixty percent of the persons who should benefit from the program, Allegheny County would need to expend a total of $18.5 million. The symposium panel also found:

From a return-on-investment perspective, the $18.5 million expenditure can be contrasted with the $416.3 million figure developed above as the overall discounted long-term preventable social costs that exist in these high-risk neighborhoods. The $18.5 million expenditure would have to contribute to reducing such preventable social costs by only 5% to be considered cost-effective.[35]

A normal evaluation of the Allegheny General Hospital center demonstrated that, compared to a similar control group, center families experienced one-fourth as many subsequent teen pregnancies, one-fourth the number of school dropouts, one-tenth the reported cases of abuse and neglect, and a high rate of college entry.

Another program, which operates centers in three neighborhoods, documented marked improvements in measures of school readiness among

34. CHARLES BRUNER & STEPHEN SCOTT, FAM. POL'Y CENTER, AND MARTHA STEKETTE, OFF. OF CHILD DEV., U. OF PITT., INVEST NOW OR PAY LATER! THE LONG-TERM COSTS OF FAILING TO INVEST IN FAMILY AND CHILD SUPPORT: SUMMARY OF POTENTIAL RETURNS ON INVESTMENT FROM A COMPREHENSIVE FAMILY CENTER APPROACH IN HIGH-RISK ALLEGHENY COUNTY NEIGHBORHOODS 20 (1996).

35. *Id.* at 22.

> young children, one-third as many alcohol-related problems among mothers of young children, higher educational attainment, few housing problems, and less use of corporal punishment as a method of discipline.[36]

These findings presage a reduction in child welfare and delinquency cases appearing before the court.

The community-based family centers are a strong vehicle to aid juvenile courts to engage in the battle of prevention at the beginning and in the community, thereby achieving a reduction in court appearances and costs throughout the entire spectrum of juvenile court jurisdiction. Juvenile courts can be a key factor in creating a nationwide movement for such centers, which truly will improve their stature and remove pressure from constantly expanding case loads.

Another area which can be critically reviewed by juvenile courts is the success of institutional placements of delinquents. The recidivist rate of such placements is not good but there are programs which exhibit outstanding success. One of these is Glen Mills School in Chester County, Pennsylvania.

The Glen Mills program is documented fully in the book *Without Locks and Bars, Reforming Our Reform Schools.*[37] It was founded in 1826 and is the largest delinquency institution in Pennsylvania. By 1974, however, it was $700,000 in debt and down to thirty students (of a 500 bed capacity) with a per diem cost of $121. In 1974, the physical facility was crumbling and some of the buildings were condemned. When Sam Ferrainola became director, the institution was at the point of expiration. However, within five years, he established the Glen Mills culture, that used the power of group process, which in the delinquent community is antisocial, to develop pro-social norms.

Ferrainola rejected the traditional institutional approach, hired teachers with athletic skills and who were able to deal with hard-core delinquents one-on-one and in groups. He instituted sixteen vocational programs, an FM radio station and fourteen varsity sports and through the years, the Glen Mills teams have won regional and state championships in virtually every area. His per diem cost was lowered to $70, compared to $150 per day at state institutions. Over the past twenty-two years, he has enlarged the capacity of Glen Mills to nine hundred students, made possible by the funds received from the per diem fee. Its core value system of dignity and respect is demonstrated throughout the institution and reflected in the quality of its facilities, programs and staff. The range of educational programs meets the needs of all students, from special education to college preparatory.

---

36. *Id.* at 15.

37. *See* GRANT R. GRISSOM & WILLIAM L. DUBONOV, WITHOUT LOCKS AND BARS, REFORMING OUR REFORM SCHOOLS (1989).

Glen Mills accepts only court-committed delinquents, most with significant records of serious crimes, between the ages of 14 and 18 years. Most return to the community to jobs, school and frequently college. Some graduates have returned to Glen Mills as staff. My relationship with Sam Ferrainola goes back twenty-five years, and I can attest to the fact that he is able to fulfill the promise a juvenile court judge makes to a child when committed to his program.

Another program, different in nature but equally successful, is the Abraxas Foundation. I placed the first ten boys in the program in 1974, when it opened as a drug rehabilitation program (in former Civilian Conservation Corp Camp) in the Allegheny Forest of northwestern Pennsylvania. That program is now at full capacity (100 boys) and Abraxas also has a number of group homes for drug and alcohol involved children throughout Pennsylvania, a center for females dealing with drug-involved pregnant teenagers, a boot camp in central Pennsylvania, and a mental health unit in Erie, Pennsylvania, as well as an academic program at Bensalem Youth Development Center. Like Glen Mills, Abraxas has successfully rehabilitated drug involved, court-committed delinquent children, numbering in the thousands over the past twenty years. It has been invited to expand to Ohio, Washington, D.C., Maryland, and Florida.

Finally, an adult program with which I have been involved is the Program for Female Offenders. For the past ten years, this program has accepted initially female and now male and female offenders, committed by the courts as a community alternative to prison. Those committed live in various community shelters, maintain their own accommodations and are involved in work and educational programs. For the women, there is a day care component which involves their children. The significant thrust of the program is to create a work ethic, employability, educational and computer skills, withdrawal from drug and alcohol involvement, and most significantly, the development of strong parenting and family skills. It has made such significant progress that it is a model for replication throughout Pennsylvania and even in Israel.

The above are a few examples of what can be achieved with strong leadership, court and community support and an understanding of what is needed to alter human behavior. None of the programs use punishment or legislatively mandated sentences as the basis for achievements.

Finally, as I wrote is a recent Law Review article,

> From my experience of eleven years in juvenile court, I found that judicial activism is one of the most effective means of improving conditions and service as well as being an engine for social change.

* * *

> [J]udges are personally committed to the progress of each case . . . [which] leads many of them to organize the community and government resources to provide the needed service.[38]

My firm belief is that an organized and committed judiciary can turn the thrust of "three strikes and you're out," mandatory sentences and a recriminalized approach to juvenile justice into a forward reaching constructive and humane system that will reduce the flow of deviance and violence in the coming generation.

38. Patrick R. Tamilia, *A Response to Elimination of the Reasonable Efforts Required Prior to Termination of Parental Rights Status*, 54 U. PITT. L. REV. 211, 226-27 (1992).