Buffalo Law Review

Volume 12
Number 3 *Symposium: New York Family Court Act*

Article 6

6-1-1963

New Directions for Court Treatment of Youth

Louis Lauer
N.Y. Joint Committee of Court Reorganization

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

Part of the Family Law Commons, and the Legislation Commons

Recommended Citation
Louis Lauer, *New Directions for Court Treatment of Youth*, 12 Buff. L. Rev. 452 (1963).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol12/iss3/6

This Symposium Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

NEW DIRECTIONS FOR COURT TREATMENT OF YOUTH

LOUIS LAUER*

ON November 7, 1961, the voters in New York State overwhelmingly approved a constitutional amendment that for the first time in some 115 years reorganized the courts in the state. The amendment, article VI of the State Constitution, also established a Family Court for the State of New York.

Some months earlier, the Legislature had created the Joint Legislative Committee on Court Reorganization to prepare legislation to implement the broad constitutional provisions. Daniel G. Albert, then a State Senator and since elected Justice of the Supreme Court of the State of New York, was selected as Chairman. He appointed Arthur H. Goldberg, Esq., as counsel, and a staff was chosen.

By April 24, 1962, the Committee's program, consisting of 22 major bills, had been passed by the Legislature and approved by the Governor. In his Memorandum of Approval, the Governor stated that with the enactment of those bills, "court reorganization has become a reality. For the first time the high judicial officers of the State have been granted full power to administer the Courts."[1]

This grant of power and the administrative structure devised for its effective use provided the setting for the organization of the Family Court. Indeed, the Committee considered the integration of that new court into the state unified court system a matter of fundamental importance.[2] The new directions thus given the court are discussed in Part I of this article.

Other new directions are suggested by the Committee's continuing effort to define the respective functions and powers of the criminal courts and the Family Court under the new amendment. Section 13 of article VI authorizes the Legislature to confer on the new court jurisdiction over "crimes and offenses by or against minors" and over "minors who are in need of the exercise of the authority of the court because of circumstances of . . . delinquency." The amendment thus makes it constitutionally permissible to transfer from the criminal courts to the Family Court a substantial number of cases currently dealt with under the Penal Law and Code of Criminal Procedure.

The Committee explored this matter in a preliminary way in its report

---

* Member of the New York Bar. Assistant Counsel, N.Y. Joint Legislative Committee on Court Reorganization and Advisor on Family Court, Administrative Board of the Judicial Conference of the State of New York. Mr. Lauer has asked us to emphasize that this article represents his private views and not necessarily those of any governmental agency with which he is associated.

1. N.Y. Sess. Laws 1962, 3649.

2. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 1-2 (1962). This report is an indispensable part of the legislative history of the Family Court Act. Copies are still available at the Committee offices at 270 Broadway, New York 7, New York.

on the Family Court Act and in greater detail in its report, *Young Offenders and Court Reorganization.*[3] Part II of this article focuses on what I believe to be the closely related problem of "stigma."

I. The Family Court in the Unified Court System

The Family Court, it should be noted at the outset, is not a "juvenile" court. Under the constitutional amendment, it is designed "as a special agency for the care and protection of the young and the preservation of the family."[4] The implementing legislation makes this clear by giving the Family Court not only jurisdiction over neglect and delinquency proceedings, but also over support, paternity, adoption, conciliation, family offenses and permanent neglect proceedings. Indeed, the new court also has jurisdiction, on referral from the Supreme Court, over the support and custodial aspects of matrimonial actions.[5]

The statutory pattern is designed to create a forum equipped to deal with the full range of family matters, whatever the specific proceeding that occasioned the court's exercise of jurisdiction. Support proceedings may disclose problems of neglect and conciliation; family offenses may involve problems of support, neglect and conciliation; delinquency or supervision proceedings may similarly disclose problems of family disorder. By giving the Family Court jurisdiction over all of these matters and also the power on its own motion to integrate the various proceedings, the statute makes it possible for the court to deal effectively with the underlying family situation.[6]

With this conception of the Family Court in mind, the place of the new court in the unified court system may properly be explored.

A. *The Administrative Pattern*[7]

New York State has long been divided for appellate purposes into four judicial departments, each headed by an Appellate Division of the Supreme Court. Appeals are taken from the Appellate Divisions to the New York State Court of Appeals.

This appellate structure, instinct with tradition and authority, was borrowed by the constitutional amendment as the framework for the administrative unification of the courts. Under section 28 of article VI, the Chief

3. N.Y. Joint Legis. Committee on Court Reorganization, Rep. VII (Young Offenders and Court Reorganization) (1963). This report may also be obtained at the Committee's offices. Dated February 8, 1963, it represents what has been called the first comprehensive statistical analysis of juvenile offenses and court treatment of juvenile offenders.

4. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 2 (1962).

5. N.Y. Family Ct. Act § 115(b).

6. N.Y. Family Ct. Act §§ 411, 511, 716, 815, 913.

7. The following description of the administrative pattern is based on Report I (*Judicial Administration: Organization of the Unified Court System of the State of New York*) of the Joint Legislative Committee on Court Reorganization. The report was issued on January 30, 1962 and laid the foundation for the enactment of the new article 7-A of the Judiciary Law.

Judge of the Court of Appeals and the four Presiding Justices of the Appellate Divisions constitute the Administrative Board of the Judicial Conference of the State of New York. This Board, in consultation with the Judicial Conference, is charged with the responsibility for setting standards and administrative policies for the courts throughout the state. The Appellate Divisions in turn are commanded to "supervise the administration and operation of the courts in their respective departments"[8] in accord with those standards and policies.

Within this framework, the constitution and implementing legislation confer on the Appellate Divisions important administrative powers. The most important are the powers to transfer cases from one court to another, to assign judges of one court to another, and to assign non-judicial personnel of the courts from one court to another. These are instruments of administrative unification, making it possible to produce an effective state court system. So that they may be fully used, the Appellate Divisions are empowered to designate an administrative judge to supervise such court or grouping of courts as may be appropriate and delegate to him those administrative powers.

To complete this brief description of the basic administrative pattern established by article 7-A of the Judiciary Law, only two other items need to be mentioned here. First, consultative bodies are created on each of the two principal levels of administration: the Judicial Conference serves that function for the Administrative Board and a Departmental Committee (which includes lawyers) does so for each Appellate Division. Second, professional staffing is provided to the Administrative Board through a State Administrator and to each Appellate Division through a Director of Administration. Ultimately, suitable professional assistance should also be given the administrative judges.

The place of the Family Court Act in the unified court system is made clear by section 211 of the Family Court Act. That section—the basic administrative provisions of the statute—is entitled "administration and operation of the family court." Consisting of one declaratory sentence, it provides that "the administration and operation of the family court shall accord with article 7-A of the judiciary law." Thus was the Family Court made an integral part of the unified court system.

Though only six months have passed since the effective date of the statute, the Chairman of the Joint Legislative Committee on Court Reorganization was able to report on March 1, 1963 (at the commencement of public hearings) that the "Family Court has already grown enormously in stature."[9]

8. N.Y. Const. art. VI, § 28.
9. Transcript, Proceedings of a Public Hearing of the Joint Legislative Committee on Court Reorganization 8 (March 1, 1963). A transcript of the Committee's hearings have been filed in the Legislative Library of the State Department of Education in Albany. A copy of the transcript is also available at the Library of the Association of the Bar of the City of New York, 42 West 44th Street.

There is good reason to believe that this growth is in some measure due to making the Family Court, unlike the former Children's Courts and Domestic Relations Court, clearly and unequivocally part of the state unified court system.

This happy result has been produced in a variety of ways. The Appellate Divisions for the Third and Fourth Judicial Departments designated senior Supreme Court Justices as the administrative judges of their respective districts (the units into which the departments have been subdivided). By reason of their personal standing and their symbolizing the prestige of the unified court system, these administrative judges have had a major impact. Some have arranged for the Family Court to be given new and larger quarters; others have persuaded Boards of Supervisors to increase the Family Court's appropriation for needed services; and all have (according to informal reports) used their powers of assignment to bring judges from one county to another or from one court to another so that the judicial business is done.

The Appellate Divisions for the First and Second Departments appointed the Honorable Florence M. Kelley, herself a Family Court judge, as the administrative judge for the court in the five counties within the City of New York. They have also delegated to her wide administrative powers of assignment and have generally shown a continuing interest in the court, as evidenced by their request that they receive monthly reports on the population of Youth House (the detention facility used by the court in New York City).

The Appellate Division for the Second Department also has supervisory responsibility for counties outside the City of New York. It has used a variety of techniques in discharging that responsibility, including a personal visit by the Presiding Justice to the Family Court in one county to arrange for the movement of "intake" from the basement to the first floor, the appointment of a Supreme Court Justice as the administrative judge for all the courts in one district, and a conference of Family Court judges to explore common problems.

These specific instances of concern are only illustrative of the many benefits the Family Court has realized in practice, here and now, from being made part of a unified court system. There is good reason to believe that other benefits will accrue in the near future. Suffice it to say at this point that the Family Court is no longer an orphan of the judicial system. It has become a respected member of the family.

B. *Administration and Judicial Traditions*

The Appellate Divisions, as we have seen, must exercise their powers in accord with the standards and administrative policies of the Administrative Board. As a result, the Board is involved in a general way with the administration and operation of the Family Court.

Under the Family Court Act, it is more deeply involved in the court's

working in other ways. The Board is responsible for promulgating rules of court—rules that involve preliminary procedures, permissible terms and conditions of suspended judgment and probation, and other matters that touch on the purposes, powers, and functions of the new court.[10] It is responsible for prescribing basic court forms (such as petitions and orders) and statistical reporting forms dealing with individual cases as well as with the flow of judicial business.[11] It is also required to render annual reports on the workings of the Family Court to the Legislature and the Governor.[12]

This involvement of the Administrative Board in the workings of the Family Court is designed to serve a variety of purposes. It makes available to the new court the good judgment and general experience of the highest judges of the state. It assures a suitable uniformity of practice and policy throughout the state in a court that generally functions on a county basis. It also establishes machinery for encouraging a court that deals with personal and family difficulties to make use of the traditional ideals and craftsmanship of the common law judges.

Of the three purposes, the first two are readily apparent on any examination of the rules. The rules apply to the Family Court in all counties, thus assuring some uniformity of practice and policy. Though not prepared by the Board in the first instance, they were reviewed and to some extent modified by the Board before being promulgated. The considered judgment of the members of the Board was thus made available to the new court.

How, we may nevertheless ask, is the statutory pattern designed to encourage the Family Court to make use of traditional legal skills and perspectives?

To answer that question, we must recognize at the outset that the members of the Administrative Board are active appellate judges and, in addition, have a collective responsibility for setting standards and administrative policies for the entire state court system. They could not under those circumstances personally draft rules of court, prepare basic forms, and devise statistical reports for the Family Court. As section 212 of the Family Court Act anticipated, they would have to delegate to others the task of initial preparation of these matters for review by the Administrative Board.

This is precisely what has happened. The Board designated (in the language of section 212) "a committee of judges of the family court and of such consultants as it [deemed] appropriate to draft rules for approval by the administrative board." The Committee, which has since properly evolved into an agency concerned with all aspects of the Family Court and with

10. N.Y. Family Ct. Act § 212 is the basic directive; the specific sections are §§ 161(a), 213(b), 252(a), 252(b), 221, 222, 223, 325(a), 326, 337, 353(a), 354, 424, 425, 452, 469(a), 526, 633(a), 653(a), 662, 727, 734, 738, 755, 757, 758(c), 823, 827(d), and 843. This listing evidences the central role of the Board in the workings of the Family Court.
11. N.Y. Family Ct. Act §§ 213, 214.
12. N.Y. Family Ct. Act § 213.

matters of legislative policy, drafted the rules and submitted them to the Board for its approval.

At this point, interested agencies were given an opportunity to review the draft and comment on it. They made use of the opportunity and, by means of written briefs, in effect "appealed" to the Board from the initial determinations of the Committee. As a result, the Board (all of whose members are appellate judges) was in the familiar position of reviewing the decisions of others; the judges of the Family Court serving on the Committee were in the position, familiar to judges of other courts, of having their decisions reviewed by higher authority.

It would be too much to say that this experience, which resembles the experience of an appeal, by itself would be sufficient to invoke in a general way the common law traditions of judging. The theory of the legislation, however, is that that experience, the general awareness of the interest of the Administrative Board and Appellate Divisions in the workings of the court, the increased possibility of appellate review resulting from the law guardian program, and the statutory emphasis in sections 311 and 711 of the Act on a due process of law *cumulatively* would have that result. In any event, they form a consistent pattern, reflecting a change from the earlier theory that children's courts were essentially social agencies to be freed from the normal requirements of the law.

Though this change is discussed in connection with the stigma of an adjudication, it may be appropriately considered here in terms of its impact on the judges of the Family Court.

Unlike its many students, the judges of the court are responsible for making decisions *now* under circumstances that limit their functioning and their choices. The sheer number of cases coming before them by itself limits the time for meditation. It taxes inner resources, energy, and the capacity to deal with each child, each mother, each father individually. Perhaps no problem in the children's court in large counties is as pervasive and as fundamental as this.

Other limitations are also present. There are not enough community organizations to rely on as an alternative to official action. There are not enough trained psychiatrists and doctors servicing the court so that reports may be rendered promptly and usefully. There are not enough trained and talented probation officers to make case work in the community a practical alternative, in appropriate cases, to institutional care. There are not enough varied and programmed institutions so that ideal decisions may be made. At each point, practical limitations press on the judges and their staffs.

Given the constant pressure of numbers and the practical limitations on choice, the judges are put in a situation instinct with frustration. The court policy is to individualize treatment; the court reality makes this extremely difficult. The judges' personal inclinations are to help the young children before

them; their official position recurringly makes clear how difficult it is to do so here and now. Under such circumstances, there must be moments of despair and a temptation to give up, that is, to resolve the frustration by simply going to work each morning, ratifying the orders prepared by others, and leaving as early as possible.

These private feelings of frustration, which are matters of concern to anyone who has come to like and admire the judges individually, are also matters of public moment. Under our traditions, the judges have the power of decision. The staff looks to them for guidance and inspiration. The children and parents turn to them as the symbols of authority. "The manner in which they use this power is thus the crux of the entire matter."[13] For the manner to be right, the frustrations must be tolerable and the personal satisfactions sufficient to engage tact, sympathy, and continuing interest.

Though these matters are difficult to discuss in general terms, we may begin by noting that the intake service authorized by the Family Court Act has already changed the equation. The service, by reducing the number of cases the judges must decide, has reduced some of the frustrations. The law guardian program established by the statute also provides the judges with assistance—the traditional assistance of lawyers, as officers of the court, making independent judgments that clarify issues. The law guardians also assist by proposing different courses of action for the court to consider.

Though these innovations ease the situation somewhat, they do not really solve the problem. Given the competing demands for governmental services, not all of the personnel and institutional needs of the court will be satisfied in the foreseeable future. And so we must assume that frustration will continue to be felt by the judges of the court, a badge of their office.

Under those circumstances, the question of satisfaction remains. Though there are a variety of ways for different judges to experience it, the theory here is that there is one indispensable feeling, if a judge's manner is to be right: namely, the feeling of competence to do a good job. Without that feeling, men charged with the responsibility for decision cannot enjoy themselves while at work. Without enjoyment (in a situation instinct with frustration), it is most unlikely that anyone can genuinely feel a warm interest and concern for the boys, girls, and parents who carry into the courtroom the problems making for discomfort. Thus are we led to consider what produces a sense of competence.

The point of beginning is the judge. He was an active lawyer or a governmental administrator, legislator, or member of a public board before mounting the bench. As law student and practitioner, he became familiar with the practices and traditions of the law alive in the profession. He also became accustomed, as a lawyer and as a public servant, to making important

13. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 21 (1962).

decisions within a legal framework that defined both the possibilities and limits of action.

These habits of a professional lifetime are not discarded when robes are added. They are familiar; they have been tried and tested; they have worked; they are reliable. Under these circumstances, the normal tendency is to call on them again in a new setting that presents new problems.

This normal tendency makes for a feeling of competence, and the Family Court Act encourages it in a variety of ways. The presence of law guardians recalls the familiar presence of lawyers in a courtroom, exercising an independent judgment and, in that way, assisting the judge. The provisions for an adjudicatory hearing, where findings of fact must be made as to whether the child requires "supervision, treatment or confinement," similarly give guides to decision of the sort lawyers and public servants are familiar with. The increased possibilities of appeal and the interest of the Appellate Divisions and Administrative Board point in the same direction.

So much for the theory. If it has any merit, one may expect the following developments:

1. Judges elected or appointed to the court since the effective date of the Family Court Act should find it easier to function as Family Court judges than their predecessors did on becoming Children's Court or Domestic Relations Court judges. That is, they should become productive earlier, enjoy their work sooner, and establish proper working relations with the staff faster.
2. After the initial period of transition, most judges who served on the predecessor courts before becoming Family Court judges should find they are enjoying their work more than they had in 1961 and should believe that they are getting better results.
3. After the initial period of transition, probation officers should similarly enjoy their work more and have a sense of greater productivity than before September 1, 1962. This already appears to be true of those assigned to intake. Those who work more closely with the judges will share the judges' sense of greater enjoyment and productivity.

We shall have some indication of the extent to which these predictions are right in September, 1963. It is important to emphasize at this time, however, that this temporary focus on the judge presupposes continued advice of probation officers, doctors, psychiatrists and others specially trained to understand the dynamics of personality and of family relations. The underlying expectation is that if the judge begins with his experience and training, he will more readily appreciate and accept the advice of others who begin with their professional experience and training.

II. The Family Court and the Stigma of Delinquency

It must be clear from the discussion of administration and judicial traditions that the Family Court Act does not establish a social agency. It confers official powers on a court to intervene in the lives of others or to authorize others to do so. In accord with our traditions, it also prescribes substantive and procedural standards for the exercise of those delegated powers. Thus the statute "expresses a legislative determination to provide a due process of law" and "affirms the traditional role of the court in reviewing under the constitution the application of the law."[14]

Under the statute, however, the Administrative Board has been empowered to authorize the probation service "to attempt to adjust suitable cases before a petition is filed. . . ."[15] This provision, which is authority for the establishment of an intake service, creates a special area of the court's operations that closely resembles the functioning of a social agency.

The resemblance is clear in the statutory pattern. Intake may not prevent any person wishing to file a petition "from having access to the court for that purpose."[16] It may not "compel any person to appear at any conference, produce any papers, or visit any place."[17] Like a social agency, intake offers service, but may not compel anyone to accept it. It stands ready to help, but (in the language of the market place) the consumer is free to take it or leave it. The indispensable condition for intake, as for social agencies, is the consent of their respective "clients."

By way of contrast, consent is not indispensable to the processes of the Family Court. It is entrusted with official power to intervene or to authorize others to intervene in the lives of children and their families. The consumer is not free to accept or reject its services. Indeed, the court may compel others to appear by means of a warrant; it may order others to accept its case work (probation) on penalty of being removed from the community; it may enforce its mandates; it may insist on institutional care over the protests of parents and to the dismay of the child; it may even permanently terminate parental rights.[18]

To be sure, the Family Court is designed to help children and families and in this sense shares a common purpose with religious, charitable and community organizations. It is, however, "a *special* agency for the care and protection of the young" by reason of the authoritative setting given its

14. N.Y. Joint Legis. Committee on Court Reorganization, Rep. II (The Family Court Act) 9 (1962); see also comments to §§ 311 and 711, at 47 and 110, respectively.
15. N.Y. Family Ct. Act §§ 333(a), 424(a), 734(a), 823(a).
16. N.Y. Family Ct. Act §§ 333(b), 424(b), 734(b), 823(b).
17. N.Y. Family Ct. Act §§ 333(d), 424(d), 734(d), 823(d).
18. N.Y. Family Ct. Act § 738 (warrant); § 757 (probation) and § 779 (failure to comply with terms of probation); §§ 776-79 (enforcement of mandates); § 355 (placement of neglected child); § 756 (placement of adjudicated delinquent or person in need of supervision); § 758 (commitment of adjudicated delinquent); § 631 and § 634 (permanent termination of rights).

proceedings under law. This setting, produced by the delegation to the court of extensive powers, in turn produces the legislative determination to prescribe a due process of law.

The process of law "due" in a neglect or delinquency proceeding is not necessarily the same process as is "due" in an administrative proceeding or in a criminal proceeding. Much depends on the context and possible consequences of the specific proceeding.[19] Suffice it to say here that the practical consequences of a delinquency proceeding are grave enough—as the stigma produced by an adjudication shows—that the traditional concerns with fair procedure are not to be disregarded. These concerns include the familiar insistence on adequate standards and the equally familiar prohibition against "unduly vague" legislation.

In this perspective, there is room to reconsider whether the "informal" proceedings that are constitutionally permissible actually are as desirable in neglect and delinquency proceedings as has sometimes been claimed.

Consider, for example, a fifteen-year-old boy alleged to be a juvenile delinquent by reason of his setting fire to a school. He sees a man or woman (the judge) sitting behind a table in an ordinary suit or dress. Nothing in this setting prepares him psychologically for a possible consequence of the "informal" proceeding: that is, being removed from his home and friends and being placed in a special school to be changed so that he will not continue to set fires to schools, homes, or other buildings. A raised table and robes may, in such a case, serve a useful purpose.

To take another example, consider an uneducated woman twenty-seven years of age who is the respondent in a neglect proceeding on the ground that she has not adequately fed, clothed and schooled her children, though financially able to do so. Absent the formality of bench and robe, it is unlikely that she will appreciate the gravity of the proceedings—that it may result in her children being taken away from her (as an order placing them elsewhere, for their welfare, will be experienced by her). Here, also, a raised table and robes may serve a useful purpose in symbolizing the gravity of the proceedings.

Though there is room for reconsidering the desirability of "informality" in *all* Family Court proceedings involving neglect and delinquency, there are undoubtedly some in which the presence of bench and robes would, as in the case of a nine-year-old child, be damaging. Moreover, it is also possible for a sensitive judge by other means to make clear the gravity of an "informal" proceeding. The point here is that a sense of the Family Court as a "special agency" by reason of its authoritative setting raises new questions for consideration.

The delegation of power to the Family Court and not to any private

19. Illustrative cases are collected in Gellhorn and Byse, Administrative Law ch. VI (4th ed. 1960).

agency, then, distinguishes the two. It follows from this recognized difference that agency practice should not be taken, without qualification, as a model for the organization or functioning of the court. Any doubts about this are resolved when we consider the stigma associated with an official adjudication, but not with an agency decision to accept a client.

The stigmatizing effect of official action has been a matter of continuing concern to all who have invested their energy and time in an effort to have the children's court realize its high purposes. Separated by a continent, California's Special Study Commission and New York's Joint Legislative Committee on Court Reorganization recently expressed renewed concern about the stigmatizing effect of an official adjudication.[20]

We are thus confronted with the dreadful knowledge, so familiar to the judges of the court, that an official adjudication designed to help the child may ultimately do him harm of the gravest sort. It may prevent him from getting a desired job and possibly result in his not having legitimate means to support himself.

The rest of this article explores the stigma of delinquency and its bearing on the workings of the Family Court.

A. *Causes of Stigma*

"Stigma" literally means the mark produced by the prick of a pointed instrument. At least, that was the sense in which the Greeks, from whom we borrowed the word, used it. For our immediate purposes, however, this definition is not enough. We must add that the mark is treated by the community as a sign that the youngster adjudicated a delinquent is different (in ways we must explore) from youngsters who have not been so adjudicated.

In exploring the "stigma of an adjudication" in this sense, we may note at the outset that most people are not familiar with the courts or their work except in the most general way. Of the 17 million people living in New York State, relatively few have ever read the Family Court Act, the Children's Court Act or the Domestic Relations Court Act. Fewer have ever had occasion to study the history or purposes of the juvenile court movement. Most people simply have too many other concerns, ranging from earning a living and bringing up a family to worrying about problems of war and peace, to pay much attention to the *specifics* of the children's court. We all tend to be satisfied (outside our particular areas of concern) with a general understanding that is more or less accurate.

So far as I have been able to determine, the general notion of the way

20. California Governor's Special Study Commission on Juvenile Justice, Report, Pt. I, 19 (1960): "The public primarily identifies juvenile courts with delinquency and, consequently, assumes that all juvenile court wards are delinquents"; N.Y. Joints Legis. Committee on Court Reorganization Rep. II (The Family Court Act) 6 (1962): An adjudication "as a practical matter may have a damaging effect on a child and on his career as a citizen. Indeed, the common understanding is that such an adjudication involves a youth who commits crimes and requires supervision, treatment or confinement."

a children's court functions seems to amount to this: Police officers bring children they have "arrested" to the court. The court recognizes that children are entitled to special considerations and will give them a "break" or "a second chance." But if things are serious enough, the court will "convict" the youngster of juvenile delinquency and either put him on probation or send him to a special school until he learns to stay out of trouble.

Given this general notion, most people assume that an adjudication "is a sign that the youngster involved was in serious enough trouble to lead a judge to mark him as different from others."[21] It is this assumption that produces the difficulties adjudicated youngsters experience in school and in seeking employment.

Though a variety of feelings join in producing these effects, we may note the normal tendency of most people to ask about a person's past performances in making a judgment about his future activities. Colleges ask for an applicant's high school transcript and record of extracurricular activities to estimate whether the applicant would do well in college. Employers ask young men and women (who do not have a substantial employment record) about their academic record and other matters in deciding whether to employ them. Judges, lawyers, probation officers and clerks can add personal illustrations of this general tendency.

The reason for this practice is a working belief that a history of past accomplishment holds promise of future success and that, conversely, a history of past difficulties suggests risks of future difficulties. As most people recognize, not all promises are fulfilled and not all risks materialize. In a world full of uncertainty, the evidences of past conduct are nevertheless used as guides to decision.

With this in mind, we need not assume that teachers, for example, are cruelly vindictive when they tend to discriminate against a youngster whose record shows that he had been adjudicated a juvenile delinquent and has just returned from a training school. The adjudication and the training school experience are treated as marks of past trouble and thus as signs of the risks of future trouble.

Teachers who feel they are overworked and underpaid, who have had their fill of disciplinary problems, are not likely to accept warmly a new student who bears those marks. And so they grant him less leeway, *at first,* than his classmates. They are predisposed to treat the slightest infraction of the rules in *his* case as boding a major disciplinary problem. Only with the passage of time and an intervening record of good conduct does the mark of past delinquency fade in significance.

Unfortunately, the first weeks of the youngster's return to the community

21. N.Y. Joint Legis. Committee on Court Reorganization, Rep. VII (Young Offenders and Court Reorganization) 38 (1963).

and regular school are the most difficult for him. He has become familiar with the routines of what is euphemistically called a "structured environment," with its regularities and its supervision, with its planned activities. During his first weeks at home, he must again learn to be comfortable with his increased freedom of action and his increased personal responsibilities. It is precisely at that time, when most teachers make their greatest demands on him, that he requires the support of others and their warm acceptance. Under those circumstances, it is not surprising that recidivism rates are high.

Though the processes are similar, the results are somewhat different when the youngster applies for a job—particularly in time of high teen-age unemployment. Employers, including the military services in passing on applications to Officers Candidate School, ask about past performances. They particularly ask whether the applicant has ever been "arrested" and, keeping pace with changes in the law, whether he has ever been "apprehended" or "taken into custody" or "held in protective custody." They also ask whether the applicant has ever been adjudicated a juvenile delinquent or convicted of a crime. If the youngster answers that he has, employers insist on the details in the absence of which they flatly refuse to employ the youngster.

These employment practices accord with the theory that past misconduct, symbolized by an adjudication, suggest *risks* of future misconduct. The insistence on details is a sign, one might say, of a certain open-mindedness. That is, it shows a willingness to assess the risks on the individual's record and thus contrasts with a hard rule against employing any youngsters who bear the mark of an adjudication.

But these are times of high teen-age unemployment, and employers have an abundant supply of young men and women to choose from. Under those circumstances, they are not likely to prefer (in the absence of some overriding consideration) a youngster who bears the mark of past trouble (and thus the risks of future trouble) to one who does not. To be sure, the recommendation of a friend, an intervening record of good performance in school or in another job, or the immediate impression the young man makes on the interviewer may be enough to overcome this preference for others. In some cases, a strong feeling of sympathy may prompt the employer to give the youngster a chance to prove himself. But the stigma of delinquency cuts deeply.

Here is where the difference in the effect of an adjudication on education and employment opportunities is clearest. Under ordinary circumstances, the youngster adjudicated a delinquent must be readmitted to school if he is still within the coverage of the Compulsory Education Law. He is thus automatically given a chance to prove himself, to establish an intervening record that diminishes the significance of the earlier adjudication. There is no such automatic opportunity in employment. The youngster must *first* get the job—and this is the greatest hurdle of all.

B. *Implications of Stigma*

We must sadly note that some youngsters, bearing the mark of an adjudication, do not overcome the hurdle of getting the first job, of being able to earn a living by legitimate means. Under such circumstances, it is no wonder that recidivism rates are high.

Some Family Court judges with whom I discussed this connection between the stigma of an adjudication and the normal workings of our society proposed a massive educational program. If an adjudication is the mark of past difficulty, they said, the subsequent work of the court, its probation staff, or the institutional facilities it uses should be the mark of reform. The educational program would persuade teachers and employers that the work following the adjudication so changes the youngster that they may safely assume he will not act in the future as he did in the past.

This is an attractive proposal. If successful, it would permit the Family Court to treat an adjudication solely as a decision that the child needs help. The painful knowledge that the adjudication may cause deep injury in school and the labor market would be removed. Freed from the restraint imposed by the knowledge of those current consequences of an adjudication, the court could truly approximate a social agency that stands ready to assist those in need of help.

Unfortunately, there are reasons for doubting that such a program will be undertaken in the foreseeable future or, if undertaken, that it would quickly succeed. The costs would be large, even if the Advertising Council contributed its services. The demands for improved probation services, institutional facilities and courtrooms would probably be given a first priority, if the funds necessary for an advertising campaign were generally appropriated for the Family Court. Moreover, other needed government services (such as educational and medical care) would in any event be given a priority.

There are other practical difficulties. Aside from costs, the program could not succeed unless the court's rehabilitative efforts proved, by the tests of experience, that they really did eliminate or substantially reduce risks of future misconduct. The risks of mistaken judgment are too immediate and too personal, and the habits of the past too strongly felt, for teachers and employers to act differently as a result of an advertising campaign. At best, (and this would be a considerable accomplishment) the program, if undertaken, might destroy stereotypes and produce a willingness to consider each boy and girl on his or her current merits.

As the Family Court judges with whom I discussed the matter recognized, those are in any event long range considerations. We are thus returned to the problem of what effect the knowledge that an adjudication is a stigma should have *now*.

The Family Court Act deals with this immediate problem in a variety of ways, including the use of an intake procedure to adjust "suitable cases"

before a petition is filed and thus before an adjudication is made. Of the remaining ways, the most important is the requirement that the court find a child "requires supervision, treatment or confinement" before it may adjudicate him a juvenile delinquent.[22] Absent such a finding, which must be made in a dispositional hearing,[23] the petition must be dismissed.[24]

The fact of stigma should have its greatest impact in the dispositional hearing. For it imposes on the court the responsibility of weighing the advantages of immediate help (under the actual limitations of staff, time, and facilities) against the possibilities of ultimate harm in school and in the labor market. The court is not free to consider only whether this child needs help now, but must also consider whether the need is sufficiently pressing to justify the risks of an adjudication.

This is not a joyful prospect. There is, however, some comfort in the knowledge that the incidence of crime sharply decreases after the 18th birthday.[25] There is also a small consolation in Dr. Johnson's reminder (quoted by George Bernard Shaw[26]):

> How small, of all that human hearts endure,
> That part that law or kings can cause or cure.

22. N.Y. Family Ct. Act § 731(c).
23. N.Y. Family Ct. Act § 743.
24. N.Y. Family Ct. Act § 751.
25. See N.Y. Joint Legis. Committee on Court Reorganization, Rep. VII (Young Offenders and Court Reorganization) 68, 70, 72 (1963).
26. Shaw, The Crime of Imprisonment 34 (1961 ed.). This remarkable book, free of jargon and statistics, is a pleasure to read, regardless of its ultimate merit.