

# A perspective on the juvenile justice system

*“How do you propose to deal with the case, sir?”  
inquired the clerk in a low voice.*

*“Summarily,” replied Mr. Fang. “He stands committed for three months—hard labour, of course. Clear the office.”*

Charles Dickens, *Oliver Twist*, 1837

Falsely accused of a petty theft, Oliver Twist was spared the cruel consequences of Magistrate Fang’s “summary justice.” Less fortunate were Oliver’s counterparts in the crowded cities of England and America. Many of these children were tried in adult criminal courts where, according to many observers, unsympathetic judges meted out harsh punishment for trivial offenses. By the late nineteenth century, the plight of these children had so aroused the sympathies of social reformers that pressure began to mount for separate court hearings for children. In 1899 the state of Illinois passed an act establishing the nation’s first juvenile court system. The act brought together under a single jurisdiction cases of dependency, neglect, and delinquency. Hearings within the new juvenile court were private, informal, and nonadversarial; children were detained separately from adults; and a special probation service was provided.

Thus began what has been characterized by the Chicago Bar Association as a thoroughly benevolent undertaking: “The whole trend and spirit of the [1899 Illinois juvenile court] act is that the State, acting through the Juvenile Court, exercises that tender solicitude and care over its neglected, dependent wards that a wise and loving parent would exercise with reference to his own children under similar circumstances.”<sup>1</sup>

How have Oliver Twist’s twentieth-century brothers and sisters fared at the hands of their wise and loving parent, the state? Researchers do not agree on all points, but it is generally recognized that if, like Oliver, young people are poor and disadvantaged, they stand a good chance of finding out first-hand how the state will deal with them. A disproportionate number of poor children appear in the courts.

Equally disturbing are findings which seem to confirm that nonwhite youths face a far greater risk of involvement with the juvenile justice system than do white youths. One nationwide study revealed a juvenile court referral rate of 6.7 per thousand for white youths in a juvenile court’s jurisdiction, a figure contrasting sharply with the rate of 19.1 per thousand reported for nonwhite youths. The contrast is even more striking in courts serving large (over 700,000) youth populations—6.3 per thousand white youths, 25.8 per thousand nonwhite

youths.<sup>2</sup> But what especially troubles many observers is the perception that, whatever its founders’ intentions, the modern juvenile court is “a bureaucratic nightmare in which due process and legal safeguards are virtually nonexistent.”<sup>3</sup>

## How the juvenile justice system works

Michael Sosin of the Institute for Research on Poverty has studied juvenile courts in depth as part of his larger concern with the effects that social systems exert on the individuals—especially the poor—who are brought into those systems. Much of his work at the Institute has grown out of his participation in a 1976 study by an independent research project, the National Assessment of Juvenile Corrections, funded by the U.S. Department of Justice. Crucial to a clear understanding of how juvenile courts operate, he argues, is the fact that the young person brought to court may never appear before a judge. The youth will first undergo an interview with an intake worker, who may be a social worker, a probation officer, a prosecutor, or even, in a handful of courts, a clerk. This interview takes the place of the preliminary hearing to which adults are entitled, and the interviewer determines the child’s fate on the basis of varying factors, including a youngster’s previous record if there was one, or perhaps even hearsay evidence. An informal disposition of the case may result: the intake worker may let the youth off with a warning or refer the youngster to a community treatment program. Only if the intake worker recommends a formal hearing will the youth face a judge and the accompanying possibility of commitment to an institution.

Commitment to an institution is the harshest disposition a juvenile court may impose (other possibilities include dismissal, probation, or referral to a community treatment program). Commitment can mean direct placement in either a state institution (such as a detention home or reform school) or a similar private facility. Equivalent procedure in some states is for courts to hand the child over to the state agency responsible for corrections. Few specific statutes or appellate decisions contain criteria governing when judges may commit juvenile offenders to institutions, and this absence of legal controls has generated a good deal of controversy among observers of the juvenile justice system.

## Issues and assumptions

Debates over the juvenile justice system frequently focus on the issue of commitment: Would greater certainty of commitment deter juvenile crime? On the other hand,

should some juveniles (habitual runaways, for example) be incarcerated at all?

Most people who address these questions base their arguments, both pro and con, on shared assumptions about the nature of the juvenile justice system. The standard view holds that the system is characterized by arbitrary and idiosyncratic decisionmaking. Many proponents of reform charge juvenile court judges with too much exercise of judicial discretion. Rates of commitment, these critics charge, vary dramatically across the country, reflecting, among other factors, community sentiments toward juvenile crime. In a community outraged over stories of helpless old people terrorized by young toughs, the argument goes, judges will respond to local pressures by committing a high percentage of youthful offenders. If, on the other hand, people in a community express little alarm over juvenile crime or indicate that they favor community treatment programs for young lawbreakers, judges will be less inclined to commit youths to institutions.

So goes the conventional wisdom about how the juvenile justice system operates. But do the facts bear out the truth of these conjectures?

### National patterns of commitment

In 1974 the National Assessment of Juvenile Corrections mailed questionnaires to juvenile court judges and administrators in 600 courts across the United States. Researchers supplemented the statistical information provided by the administrators (whose response rate averaged 50 percent) with data from state and local reports on juvenile courts. Their effort boosted to 80 percent the proportion of courts in the sample for which statistical information was available. The administrators' responses

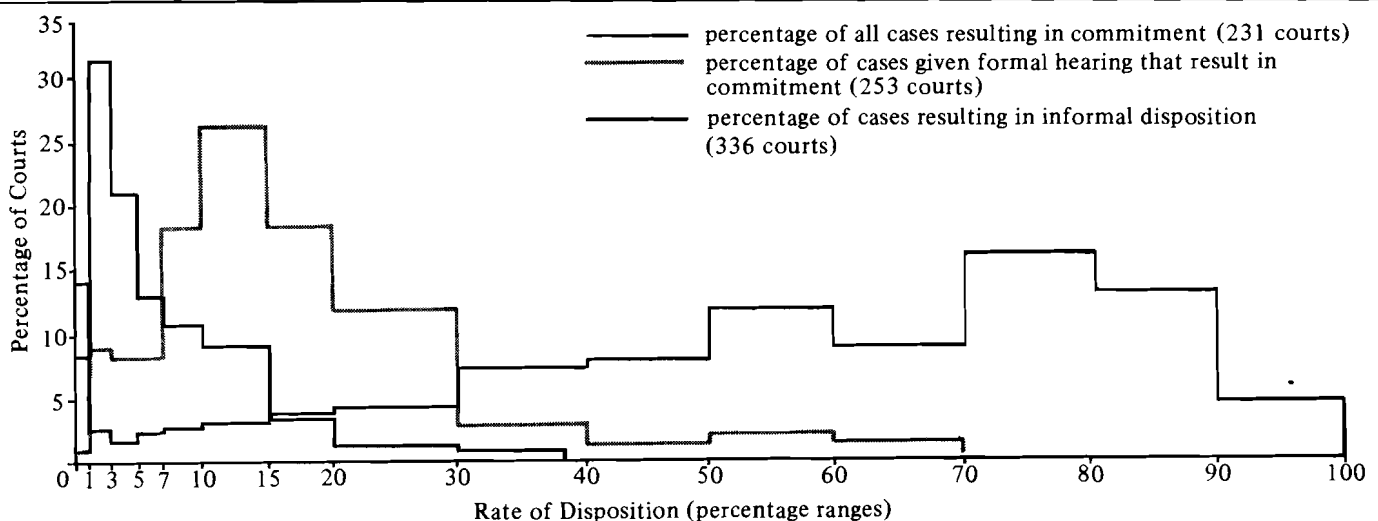
revealed surprising information about commitment rates, and Sosin's analysis of the data challenges some common assertions, chief among them the notion that commitment rates across the country vary tremendously.

When Sosin looked at the percentage of all cases referred to juvenile court that result in an informal disposition by an intake worker, he did discover a good deal of variation. In most of the courts surveyed (85 percent), intake workers have the authority to make informal dispositions of cases. Within this group, the use of informal dispositions ranges from 1 to 95 percent. But when Sosin examined the remaining cases, those resulting in a formal hearing before a judge, a different picture emerged. Although a handful of judges committed as few as 1 percent of these cases and a few committed as many as 69 percent, many courts clustered near the average: 13.5 percent. The majority of courts are within 2 percent of this figure, and courts near the extremes tend to be unusually small. The wide variation in rates of informal handling did not appear to set a pattern for commitment rates.

This finding, surprising to those who assume that rates of commitment vary dramatically, is mirrored when one takes a look at what Sosin terms the overall commitment rate—the percentage of *all* cases referred to juvenile court that result in commitment. (Figure 1 compares the three types of dispositions.) The average overall commitment rate is about 5 percent, and two-thirds of the courts commit between 1 and 6 percent of cases. This range, although not trivial, is less than most observers seem to imply.

Sosin's research also indicates that a person's chances of being committed to an institution hinge to a great extent upon the decision made by the intake worker who con-

*(continued on p. 17)*



**Figure 1. How Juvenile Courts Treat Their Cases: Procedural Variations**  
 Source: Responses to a 1974 survey of juvenile courts in counties with populations over 50,000.  
 Based on Figure 1 in Institute Discussion Paper No. 550-79.

## Juvenile justice

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ducts the interview. Analysis of the link between the rate of informal disposition and the overall commitment rate in juvenile courts discloses that judges apparently do not counteract decisions made at the intake level. Although one might expect judges to commit higher proportions of youths when pretrial screening eliminates the less serious offenders, this is true only to a restricted degree, according to Sosin. Judges show only a limited tendency to commit a smaller percentage of youths when intake workers send before them a large number of youngsters, accused of a variety of offenses. Instead, regardless of the actions of intake workers, judges appear to commit nearly a standard percentage of youths who come before them. In a court which makes little use of informal dispositions, a greater number of youths will be sent before the judge and that court's overall commitment rate is therefore likely to be higher.

### A new definition of discretion

Thus it appears that the image of the juvenile justice system as both arbitrary and inconsistent may be correct. The focus of attention, however, is misplaced. The decisions of intake workers play a more significant role than many analysts have assumed, and it is at this level that the critical discretionary judgments are likely to be made.

What influences decisions made by these workers? Local crime rates? Community attitudes toward juvenile crime? Sosin discounts the importance of either factor. Instead he finds that an important influence is the court context. To a large degree it seems that juvenile court workers handle cases in ways that mirror the practices of other courts in the same building. Small civil courts, for example, handle most cases formally; juvenile courts attached to them do likewise. Misdemeanor courts handle many cases without a trial; so do adjacent juvenile courts. Other factors that play a role include the influence of the police, whether judges are elected or appointed, and whether they specialize in juvenile cases. Sosin believes that the findings exemplify "social discretion"—that is, in the absence of strong laws and controls, treatment reflects the social environment within which the decisionmakers operate. Social discretion, he claims, must be distinguished from rational discretion, which is exercised by decisionmakers who vary their judgments according to personal goals or community sentiments.

Sosin regards the discretion exercised by judges as social, in a somewhat different sense: regardless of the range of cases they confront, judges across the country apparently have a similar standard for what percentage of youths should be committed. A judge may regularly face youngsters who mug old people for their Social Security checks, or he may see youths guilty of a wide range of offenses. He

may see a dozen youngsters a week; he may see a hundred. It depends largely on intake decisions. Regardless, and even though there are some factors that influence judges to a small degree, a judge is likely to commit a percentage very close to the national average of 13.5.

### How can we reform the system?

In the late 1960s and early 1970s the limitations of the juvenile justice system came to the attention of the Supreme Court. *Kent v. U.S.* (1966) warned against "procedural arbitrariness," and *In re Gault* (1967) recognized the rights of juveniles in such matters as notification of charges, protection against self-incrimination, the right to confront witnesses, and the right to have a written transcript of the proceedings. *In re Winship* (1971) declared that proof beyond a reasonable doubt is needed to establish delinquency.

At the time these decisions were handed down, they were expected to curtail arbitrary and unjust practices in juvenile courts by effecting procedural reforms. But, despite high hopes for a "due process revolution," evidence suggests that the Supreme Court's mandates have played a small and unspectacular role in overhauling the juvenile justice system. Sosin questions the utility of the due process strategy, pointing out that the strategy is based on the assumption that developing standards of proof or procedure will alter judges' perceptions of individual cases. This, in turn, will alter the percentage of youths who are viewed as deserving commitment. However, since it seems

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### Selected papers

Michael Sosin, "Due Process Mandates and the Operation of Juvenile Courts." Institute for Research on Poverty Reprint no. 347.

Michael Sosin, "Juvenile Court Commitment Rates: The National Picture." Institute for Research on Poverty Discussion Paper no. 550-79.

Michael Sosin, "Juvenile Court Commitments: The Role of Organizational Factors." Institute for Research on Poverty Discussion Paper no. 533-79.

Michael Sosin, "Juvenile Court Liaisons and Theories of Interorganizational Relations." Institute for Research on Poverty Discussion Paper no. 605-80.

Michael Sosin, "Parens Patriae and Dispositions in Juvenile Courts." Institute for Research on Poverty Discussion Paper no. 496-78.

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that judges actually commit a relatively standard percentage of youths, even with procedural reforms in effect, such reforms may not strongly affect the overall commitment rate. Judges may continue to view a constant percentage of the youths they face as requiring incarceration.

Sosin does not discount the importance of due process procedures. He agrees that these legal changes may be important on an individual level. But he insists that the reforms appear to be ineffective at the broad policy level represented by commitment rates. He suggests that any attempt to control the incarceration of juveniles must be based on intervention prior to the formal hearing stage. Sosin is unenthusiastic about proposals that would standardize the intake interview, even though the potential for ill-considered decisions at this level is great. Informal screening at the intake stage does provide early exit routes for some of those youths for whom formal hearings may be inappropriate (runaways, curfew violators, and the like).

One possibility for reform put forward by Sosin places a greater burden on groups (such as the police) who decide which youths are brought to juvenile court. He cites the example of black youths' overrepresentation in juvenile courts: police officers are more likely to arrest when they receive a complaint, and more citizen complaints are lodged against black people. If police officers viewed such complaints and pressures in a different light, Sosin suggests, the present imbalance might shift.

Proposals for reform must take into account the nature of existing institutions—particularly the role of the jurisdictional environment. With hopes of curtailing arbitrary and possibly unjust practices in juvenile courts, reformers have developed sophisticated techniques for controlling juvenile commitment rates—procedural reforms, rules to match an offense more closely to its penalty, even monetary formulas to increase the incentive to handle youths in the community. What they have failed to do is to take a hard look at how the juvenile justice system really operates. The standardization of commitment rates suggests that decisions affecting young offenders are not made by people who consciously follow or disregard rational guidelines. The question is: Do we want our juvenile justice system to be governed by some standard of appropriate percentages? Or do we want it to operate according to a rational consensus that balances the protection of society with equity for the individual? ■

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<sup>1</sup>Anthony Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969), p. 138.

<sup>2</sup>National Assessment of Juvenile Corrections, *Brought to Justice? Juveniles, the Courts and the Law* (Ann Arbor, Mich.: Center for Continuing Legal Education, 1976), p. 65.

<sup>3</sup>Barry Krisberg and James Austin, *The Children of Ishmael: Critical Perspectives on Juvenile Justice* (Palo Alto, Cal.: Mayfield, 1978), p. 4.

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## Recent Institute Publications

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*Class Structure and Income Determination* by Erik O. Wright. 1979. \$21.00.

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