

Jurisdictionally and jurisprudentially, decriminalization of status offenders, waiver of serious offenders for adult prosecution, and increased punishment of delinquents, constitutes a criminological triage in the juvenile justice system. Some have argued that this has resulted in discrimination based on race, gender, and socioeconomic class. Discuss the structural components of this triage strategy, and its' impact on social and legal changes in the juvenile justice system. As the juvenile courts converge procedurally and substantively with the adult criminal courts, does any reason remain to maintain a separate juvenile justice system?

Currently, scholarly communities are presenting studies that appear aimed at undermining the current juvenile justice system. The impact of eliminating the juvenile justice system would be, of course, to pragmatically expunge the distinction between young offenders and adult criminals. Leading the charge for the abolition of the juvenile courts system as we know it in the academic community is University of Minnesota Law professor Barry Feld. From his philosophical perspective, as discussed in *Bad Kids, Race and the Transformation of the Juvenile Court*, Feld's (1999), postulates that ["...the flaw with the criminal justice system lies in the very idea that the juvenile court can successfully combine criminal social control and social welfare in one system" (p. 328). Feld's centers his complaint upon the contention that "a separate juvenile version of a criminal court cannot succeed or long survive, because it lacks a coherent rationale to distinguish it from the real criminal court" (p. 328). He calls for more determinate sentencing guidelines grounded in accountability and punishment. This paradigm shift Feld calls for is quite distinct from what the Progressives had envisioned. His epistemological premise presents an ethical argument that

coincides with sentencing disparities *and* the irrational nature of the current juvenile justice system, which is inherently, systematically unfair at times, and, therefore, according to Feld, irrational. He is not calling for the reconstruction of the juvenile justice system but its total abolishment. While many of Feld's observations have scholarly merit, I must, nonetheless, distance myself from his calling for the abolition of the juvenile justice court, as well as those of many of his concurring, eminent colleagues in the criminal justice program. It is my position, that is better to invest money in programs designed to prevent juvenile delinquency, than in prison building or the criminal justice system, which has as its components incarceration, incapacitation, release and the adjudication of individuals who are in this system.

Historically, the United States recognizes a distinction between the adult and the child. From its inception, of course, this hasn't always been the case. In the colonial era there was little distinction between the adult and the child; the only substantive distinction was in the nature of the crime itself. Since the Progressive era, however, when children were viewed for what they are: impressionable, vulnerable and, therefore, malleable people for whom a concept such as rehabilitation could have real, lasting meaning, the distinction between the two has been an

integral part of our cultural heritage. Notwithstanding the validity of much of Feld's argument, a separate juvenile justice system is necessary in order to protect the rights of children. Placement of children guilty of a criminal act or acts with criminal adults denies the essence of the transcending order of society, which is that children are children, and, therefore, people who can be both trained and taught to be, for lack of a better word, upstanding members of a community.

A strong link between crime, race, and poverty, exists within the adult criminal justice system, demonstrated by the recidivism rates of incarcerated adults. In *Juvenile Delinquency and Urban Areas*, Clifford R. Shaw and Henry D. McKay found that zones closest to the central business district have the highest crime and delinquency and recidivism rates. Incarcerated adults do the crime, do their time, and then return to the urban areas in which they initially broke the law. These same areas or zones are plagued by teenage pregnancy, high high-school dropout rates, mental illness and large amounts of substandard housing, along with the characteristic high concentrations of African American and immigrant populations with poor economic and social status. The authors conclude that the root cause of crime has nothing to do with structural inefficiencies found in the juvenile court system but,

rather, the social disorganization that results, almost as a given, from overcrowding and poverty (Voight, 224). In his book entitled, *Bad Kids*, Feld discusses this, showing the impact of our macro-structural transition from an industrial to an information-based economy on inner cities dwellers such as African Americans (pp. 191-197). His analysis is important, because it reveals the demographic shifts between black and whites, and the shift in policy initiatives that tended to drift away from the cities, and focus more on suburban areas—this is undoubtedly a function of economics, as well; namely, the power of the upper and middle class over the poor (p. 195) This power differential away from urban areas most in need of a kind of social reinforcement has direct relevance to the high rates of ethnic and racial minorities found incarcerated in the criminal justice system. Simply stated, due to residential segregation based on race and income, a poor and/or minority youngster is more likely to have contact with known criminals due to the concentration of persons involved in crime in underclass neighborhoods (Walker, Spohn and DeLone, 74). The answer, however, is not the evisceration of the juvenile court system, as if there is no legitimate distinction between a child and an adult, but, rather, legislative initiatives should focus more on investing financially in areas plagued

by crime, and not the less cost-effective expansion of the adult criminal justice system.

Over the last ten years, the current debate regarding building additional facilities to warehouse violent juvenile offenders has been both highlighted and sensationalized by the media. This has resulted in increasing pressure upon legislatures throughout the nation to "get tough on juvenile crime." Yet, according to all statistics regarding violent juvenile crime, while certain categories of crime have, true, increased, violent crime among this population has decreased. According to Dr. Federie, in the *Journal of Annals of the American Academy of Political & Social Science*, between 1994 and 1996, the violent crime arrest rate for juveniles declined by 12 %. That is not insignificant. Murder arrest rates have also shown a decline, dropping 14 percent alone between 1995 and 1996. The arrest rate for property crimes also reached its lowest point in a decade when, in 1996, there were approximately 2400 arrests for every 100,000 youths in the United States. Less than one-half of 1 percent of all youths between the ages of 10 and 17 were arrested for violent crimes (p. 1). This evidence suggests that crime rates among juvenile offenders is falling steadily. So why are legislators quick to advocate for building more adult prisons to house juveniles?

Most of the current policy addressing the adjudication of juvenile offenders comes as a direct result of pressure exerted on policy makers from constituents who get their perspective on crime from stories presented through the media. From this perspective, "the average person thinks the criminal justice system is soft on crime and that most criminals beat the system" (Walker, 3). For example, in 1990, 80 percent of people felt that courts were not harsh enough on criminals (Ibid 3). This has resulted in the passing of criminal justice policies designed as a means to get tough on crime. Since crime, as depicted through television reports, is increasing, while, in fact, it's decreasing, legislators still feel pressure to get even "tougher" on crime.

Such "criminal justice" has resulted in the decreasing juvenile offenders caught within this vice between what is and what appears to be to, in fact, be more severely impacted as a group (Finley 1). And this severity impacts those more likely to be vulnerable to being caught in the web of crime itself; namely, those in the inner city. For example, although African American youth aged 10-17 constitute 15 percent of the U.S. juvenile population, they account for 26 percent of juvenile arrests, 30 percent of delinquency referrals to juvenile court, 45 percent of juveniles detained in delinquency cases—or three times their

population—40 percent of juveniles in correctional facilities, and 46 percent of juveniles transferred to adult criminal court after judicial hearings (Ibid, 1). The disproportionate justice meted out to people of color becomes even greater as youths go deeper into the criminal justice system (ibid, 2). Feld uses this information to argue that due to macro-structural problems endemic to inner city dwellers that crime would continue to be highest among minorities who choose to remain in the inner cities after the post-industrial shift (p. 196). From here, he reaches his conclusion that the additional costs of a separate, distinct juvenile court system are, when all is said and done, unnecessary. The old adage of throwing the baby out with the bathwater becomes, if anything, an understatement, when one simply steps back and considers Felds' proposition in the light of reason.

Edwin H. Sutherland coined the term "differential association" to reflect the understanding that human behaviors are learned in interaction with others, especially in primary relationships. The idea becomes insightful in any discussion of crime and crime rates with respect to children. Differential association centers on attitudes, values and definitions that correlate directly to criminal role models and types of behavior over neutral or proactive, socially responsible ones (Voight, 228). This theory has

direct relevance to Felds' findings of high rates of ethnic and racial minorities found in the criminal justice system due to structural changes that "decreased the demands for unskilled and semi-skilled labor in the manufacturing sectors that previously had provided African Americans who had little formal education with access to higher wage jobs" (p. 195).

Few would argue that these macro-structural conditions do contribute significantly to the high rate of juvenile delinquency occurring in the inner cities. In Felds' *Readings in Juvenile Justice Administration*, (1992), the delinquency case rate of 114.2 per 100,000 for black juveniles was more than double the rate for juveniles, in general (44.4), and nearly triple the rate for juveniles of other races (40.4) (p. 42). Is the problem that black people are black, or are there factors that weigh heavily in favor of criminal activity among black inner-city youth that do not play a significant role in other communities? This question, crude though it may be to the sensibilities of those who've played the race card to the benefit of their careers, is, in a sense, *the* question.

If the abnormally high rate of juvenile delinquency among blacks is, in fact, a function of race, then Felds makes his case. If, however, it is more a function of conditions found in environments where certain races

predominate due, not because to their own predilection but, rather, because of economic forces beyond their control that essentially place them there, then the idea of abolishing the juvenile court system is, *prima fascia*, absurd, or, to be more academic and gracious, an irrational rush to judgment. It is not scintillating understanding of the human condition that leads one to use as an assumption for the evaluation of the disparity of criminal intent in differing environments and communities the premise that the unemployed in inner cities associate rather naturally with each other. One of the most telling features of a male, adult role model for young males is availability. In a culture already beset by high rates of divorce and single-parent households—dominated, as any statistic on the subject will reveal, by black mothers—the problem of young blacks associating with unemployed black men who may well have a higher proclivity toward crime underscores Dr. Felds' analysis.

In an interview with Deputy District Attorney Sherry Bravaski suggested that, with respect to juvenile offenders, "from years of experience, it is, without question, better to explore the avenue of offering social service accommodation before incarceration or punitive sanctions are imposed." (Interview, May 11, 02). The interview, as a whole, is worthy of attention here, not so much because of added insight or understanding but because of the one

telling feature that stands out; namely, in an interview marked by diplomatic non-response to direct question, the question of the abolition of the juvenile court system warranted no such diplomacy...

Interview May 13, 2002: Deputy District Attorney Sherry Bravaski:

Garfield: My interview today covers the question as to whether or not we should keep the current juvenile justice system.

Bravaski: Yes, well it's good to have some idea of what we're going to talk about ahead of time.

Garfield: I'm heading toward that question, the thesis of my paper, but, if you could, comment on the disparity in sentencing between races in America.

Bravaski: As I stated earlier, the impact of disparity in sentencing guidelines does not necessarily reflect discriminatory practices of the District Attorney's Office, but rather problems that goes back to the homes of various individuals who happen to come from low income families. Also, we (D.A.'s Office) do not keep information pertaining to race, and socioeconomic background, and its impact on sentencing outcome here at the office. In addition, it has always been our position not to assess this type of information based on race or socioeconomic status.

Garfield: Garfield: Sure, many would argue that justice is justice, and one shouldn't discriminate between people simply because of their age, particularly for a violent offense. On the other hand, children are still children, aren't they? How do you view this dilemma? In other words, which side of the debate do you fall on as it pertains to the question whether or not to maintain a separate juvenile justice system?

Bravaski: Personally, I feel that is good reasons to keep a separate juvenile justice system, because I feel that there is a much better chance for rehabilitating a juvenile offender. However, I see that there is a problem in the current system, especially state by state, but there are also much greater problems in the adult system as well. Yet, let me be even more clearly about this, you know, the question of the juvenile court system. From years of

experience, it is, without question, better to explore the avenue of offering social service accommodation before incarceration of punitive sanctions are imposed. Most juveniles don't understand the current system that they are being adjudicating in. I don't expect them to understand the adult system any better. In addition, some of the same problems noted in your line of questions plagues the adult juvenile justice system. So, I don't think that the current juvenile justice system should converge with the adult system.

Garfield: Again, if a particular offender comes to court with a private attorney, what impact does this have in sentencing outcomes?

Bravaski: I would not say that there is a difference. I think that juveniles offenders who enter a court appearance with their own attorney makes no difference in sentencing outcomes. However, what I have observed is that when an attorney is involved, the adjudicating process takes much longer because the attorney files lots of motions, but sometimes the process is shorter because the attorney knows the system and the necessary motions that have to be filed in order to expedite the case quicker from point A to point B. So to answer your question, I really don't know the answer.

Garfield: Are sentences stiffer when a defendant brings legal counsel?

Bravaski: Again, I don't think so, but like I said, it could help in some cases, as well as hinder the process in other instances. However, I would like to say that it is sometimes better to have an attorney present so as to have an expert present who understands the legal maneuvering, so that the defendant does not end up testifying against himself.

Garfield: Is it true that over 60% of crime committed in Colorado Springs last year was committed by children? Why, in a culture where violent crime, overall, is decreasing, do you think that juvenile crime is increasing or decreasing?

Bravaski: I really don't know the answer to your question, but based on my personal experience, I feel that it is sort of declining.

Garfield: Citing your example of low-income families, and its relationship to an increasing number of poor people

being in the criminal justice system, does having an attorney present make difference in sentencing outcome?

Bravaski: Can you rephrase your question?

Garfield: Do you believe that meting out harsher sentences to children for, say, harsh criminal acts actually helps to reform them, that is, leads them to a lifestyle that does not depend on taking advantage of their fellow man?

Bravaski: I think that depends on the kid. And that's where we draw a distinction between past criminal record, present offense, and whether family services could be provide for such a person.

Garfield: From your experience, while I'm sure boys constitute the greater percentage of juvenile offenders, which are the more malleable, boys or girls?

Bravaski: Again, I really don't know the answer to your question, but I would like to say again, that it depends on the individual, as to whether or not that child is amenable to treatment services.

Garfield: What is your opinion about the current view that exists between the two competing concepts within the juvenile justice system today, the one which tries to offer social services to ameliorate the problem, while the other holds punishment to fit the crime as the answer to our woes?

Bravaski: Well, Garfield I feel that it is better to explore the avenue of offering social service accommodation before incarceration of punitive sanctions are imposed. Incidentally, during my last year in law school, I wrote a research paper centered on this very exact topic, but it was never published.

Garfield: My final question, a lot of minorities are currently under criminal justice control. Do you feel that their overrepresentation has to do with inherent racism in the criminal justice system?

Bravaski: No, not really, I feel a lot of this has to do with poverty, but then again, some of it is more individualized. For instance, some individuals living in poor neighborhoods may choose to enter a life of crime, while other members living in that very same community may refuse to do so. In any case, I am not fully informed on this question to provide you with a good answer.

Garfield: Well thank you for your time, it was nice visiting with you.

Bravaski: Thanks, stop in again if you have further questions.

Again, what is important in this interview, for me, and for this paper is not the controversy of D.A Bravaski's statements. Concerning questions regarding race, sentencing, boys and girls, and economic concerns regarding the defense of the accused, as well as the nature of punishment itself, Ms. Bravaski took a very even-handed approach. Only when it came to the question of whether or not to abolish the juvenile court system did she want to be clear about making a definitive statement, using the phrase, "without question" to describe her opinion on this issue. This comes not from a social scientist such as Dr. Feld but a district attorney. Defending the current juvenile justice system, she further contends that the impact of disparity in sentencing guidelines does not necessarily reflect discriminatory practices of the District Attorney's Office, but rather problems that hark back to the homes of various individuals who happen to come from low income families.

As stated, due to residential segregation based on race and income, crime has become more concentrated in the inner cities. "The disproportionate impact of the justice system on minority youth raises particular concerns in the context of the new laws increasing prosecution of juveniles as

adults" (Finley, 2). In *Sense and Nonsense about Crime and Drugs*, Samuel Walker (1994) discusses the impact of unintended criminal justice consequences which have led to massive prison overcrowding in spite of efforts to build more prisons (p. 84). Would it really be prudent to add juveniles as an ingredient in this recipe justice not for society's but justice's sake?

Walker's study is important because it conclusively shows that even though legislative policies designed to incapacitate repeat offenders—notably violent offenders—appeared to be a step in the right direction, they were inherently flawed. Walker states that "the quadrupling of prison sentences in Florida, from about 10,000 in 1980 to almost 44,000 in 1989, led to prison overcrowding crisis that in turn led to many lawsuits on prison conditions" (p. 85). As a result, Walker contends, several steps were put into place in order to address the overcrowding prison problem. "Many states passed emergency or "safety valve" laws to deal with prison overcrowding. These laws place a cap on prison populations and mandate early release of current prisoners before new ones can be admitted" (pp. 84-85). While it is true that violent crime has decreased at the same time incarceration rates of adults has increased, this paper is interested in the "the disproportionate impact of the justice system on minority youth" (Finley, 2).

"The changes in state "transfer" laws (and the changes proposed by pending federal legislation) will allow for the continuation of a disturbingly large number of children, particularly minority youths, to be detained in adult prisons" (Ibid, 2). According to Finley, this raises a particular concern in the context of the laws increasing prosecution of juvenile as adults. The cost of housing the average adult prisoner, according to retired under-warden, Dr. Anthony Young, at the Canyon City correctional facility, is just over \$30,000/ a year per person. In contrast, it costs approximately \$65-\$250/day to care for a juvenile offender in today's juvenile detention system. This comes to under \$24,000/ year. Furthermore, a study conducted by Lipsey, also found in the *Journal of Annals of the American Academy of Political & Social Science*, addresses the question of whether intervention rehabilitates serious delinquents. The result of the study "shows that well designed rehabilitative strategies do reduce recidivism for such offenders and cannot be dismissed on the grounds that they are ineffective (p. 1).

While the structural problems that contribute markedly to juvenile crime do not make for simple solutions, money spent on such programs as Big Brothers, the Boys' Clubs of America, and other social networks designed to offset street influences faced by youth in certain communities to a far

greater degree than youth of other communities, certainly makes sense, if one grants the rather elementary assumption that children are children and, therefore, more malleable than adults. Children can be trained to emulate behavior that, importantly, not only benefits society but themselves to a degree that an adult who has known a life of crime for his or her entire adult life cannot. Furthermore, children learn by association with those they learn from. The abolition of the juvenile court system means, for children, only one thing. In adult prison systems they would have adult criminals to model and learn from. And, as anyone who has associated with what might be called "the criminal element," like me, can attest: many people who flourish in a life of "not getting caught," the adventure of crime itself while it is taking place, and the monetary gains made from such life—such a drug-dealing— which often outweigh any job a person of equal education could earn, are often charismatic, affable, even charming. (To an extent they have to be.) The very idea of eliminating the juvenile court system borders on either insanity or cruelty to such a person, a person like me who knows something about the way the world works.

While certainly not devoid of personal passion, because of how closely this issues touches my own life and life circumstances, given the environment I grew up in under a

single parent home in the Bahamas, I do believe my reasoning is strong. Rather than contemplating the abolition of the juvenile court system in the United States, contemplation should be given to strengthening the system. The system itself could be strengthened from a societal standpoint by investing more money in programs intended to prevent the problem before it occurs. While I understand that this is often the liberal response to any problem, many black, successful adults attest to the difference that such programs made to them. For Michael Jordan it was The Boy's Club. For me—not yet a successful adult, perhaps, but nonetheless... —it was the martial arts program offered to youngsters in my hometown.

Furthermore, the juvenile justice itself should be reinvented. Horror stories abound from children, now young adults, who tell of being transferred like a piece of luggage from one foster home to another during much of their childhood. Mentors and Juvenile Probation officers should be assigned personal accountability for specific individuals, individuals who remain with them throughout their childhood. If a child is young and commits a crime, that child may be assigned to Mr. X. If, even 5 or 6 years later, the child re-offends, that child is not assigned to Mr. Y, but, rather, Mr. X picks up his file and, while reading it says, "Oh, yes, I remember Johnny. He had a problem with anger,

because his biological father beat him and his stepfather just neglected him."

If children really are our future, which is true for every generation, then they're worth investing in. They're worth investing in, because there is, in fact, more hope for change, when it comes to a young, juvenile offender than there is for an adult. Statistics indicate this, as does my own personal experience.

Deputy District Attorney Sherry Bravaski (May 11, 2002).
Interview: *Assessing the efficacy of the Juvenile
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