1975

THE CHILDREN'S COURT HEARING

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CONTENTS

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Mr Fulvio Pastrello undertook the bulk of the observing reported in this study. His enthusiasm, despite various setbacks, enabled this report to be compiled. Many thanks are due to him for his diligence.

D.C.

NOTE

This report describes an observational study undertaken in Victorian Children's Courts during 1975. A preliminary paper outlining the results of this study was presented at the 8th Biennial Conference of the Australian Crime Prevention Council in August 1975. The theme for that Conference was "Kids and Crime," the paper concerned was titled "The Formal Consequence: Young Offenders in Court".

THE CHILDREN'S COURT HEARING

INTRODUCTION

Examination of official records relating to young offenders appearing before the Children's Court can reveal much information about the operation of such courts. For instance, consideration of the 1526 young offenders who were taken before the Victorian Children's Court in 1972 on a major charge of larceny reveals that 663 or 43% of them had their cases adjourned. This seems to indicate that many larceny cases brought before the Court are perceived by the Magistrates to be fairly minor. Alternatively while the offence itself may not be minor it may well be that the Magistrate assesses that the offence was to a great extent, adolescent mischief which will not recur whatever action the court takes.

The adjournment rate for those primarily charged with ' breaking and entering ' offences in the same year is only 28% (453 in 1616). This suggests that perhaps the Magistrates view this offence more seriously than a simple larceny. Or, could it be that those offenders charged with breaking offences are more threatening to the community in the eyes of the court, and therefore merit more attention?

The temptation to suggest explanations for situations isolated by objective data collection, is indeed strong. However while generalisations such as the above may well be true, an appreciation of the actual functioning of the court must exist in order to state them confidently. Obviously then the best way to gain this insight into the court is by observing it in action. This study set out to do just that. Tappan undertook an observation study in a juvenile court some thirty years ago. His comments about the limitations on courtroom observation are reproduced here.

> The accuracy of observation is coloured by the subjective reactions of the observer, the adequacy and balance in the samples of process observed are so much less easily checked than in statistical samples; the importance to the 'law in action' of much that goes on behind the scenes is neither measured by any precise scientific device nor observable with any degree of nicety in the courtroom and one must reckon with the presence of other imponderables of considerable importance, such as the influence of 'politics' of traditions of the bench, of instrumental and ultimate values at work,and of personality factors. (26:4)

Additionally there are problems brought about through the confidentiality of the proceedings. In Victoria as in many other places the records relating to children's court cases are highly confidential. One Victorian Parliamentarian showed his fear of abuse of court information when he said in the Legislative Assembly,

> I ask the Attorney General whether ... he will ensure that ... these records shall remain within the privacy of the(law) department and not be used even in the pursuit of social studies, because obviously they could still be used for nefarious purposes by unscrupulous individuals. (28:1496)

The strong reaction to academic research is unfortunate since only by objective and educated study can components of the criminal justice system be assessed. Nevertheless controls over access to the Victorian Children's Court and its records are obviously necessary.

As it is the only readily available information relating to the actual operation of the Victorian Children's Court is found in the popular press. The most recent such article describes the arrival of the Magistrate at the Melbourne court building with

> anguished parents waitng in the antiseptic corridor of the children's court search(ing) this man's face desperately hoping, willing leniency and pardons for their errant offspring. (10)

With journalistic effort such as this forming the bulk of material available about the Court, the time appears ripe to subject the court and its procedure to serious study.

THE LEGISLATION AND ITS RESTRICTIONS

The Children's Court currently operates under the provisions of Act No. 8477 of the Victorian Parliament. Section 18 of the Act requires that members of the public shall be excluded from any Children's Court hearing unless they have a formal authority to attend under the provisions of Section 54. This latter section allows

> "any person who in the opinion of the magistrate has a special interest in the administration of children's courts" (27)

to be allowed to be present during certain hearings of the court. This section is usually used to allow certain tertiary students and others to observe the court in action. During such visits, and because of the confidential nature of the proceedings espoused in the Act, such visitors are required to sit passively and not allowed to take notes.

In a study of juveniles' reactions to their appearance in court, Scott remarks that "several (boys) noticed and some were worried by people writing" (20:204) Note-takers sitting in the body of the Melbourne Court, as visitors do, could be perceived as press reporters. In one case, long ago, a visiting student was taking notes and the parents of the child appearing were angry that there was a reporter present. Their anxiety was however

soon put to rest, and the notes concerned were destroyed.

Those parents were probably not aware of Section 48 of the Act, but by their actions were certainly in agreement with it. That Section prohibits the publication.

> in any newspaper or broadcast by means of wireless telegraphy or television a report of any proceedings in a chidren's court ... containing ... any particulars calculated to lead to the identification of the particular children's court or the names address or school or any particulars calculated to lead to the identification of any child. (27)

In Britain, the press may and do report juvenile court cases by using christian names of the offenders only, and avoiding any details which might allow identification of them. The objection to this practice is that any glorification of the offender may well be damaging to his future conduct. Some of the rationale for publicising the work and decisions of the court is that it might have some deterrent effect on potential offenders.

In Victoria it is the police who are reported in local papers making statements about youthful offending which are calculated to deter. For instance, one police sergeant stationed in a developing area states in a local paper that

> children obviously don't seem to realise the repercussions involved in committing these types of offences (burglaries and vandalism) (18)

Yet because of the restrictions of the Act he is unable to pinpoin these repercussions. All this statement may do is indicate to children in the area that the police are active and some offenders are being detected.

The Victorian Act does not prohibit absolutely the reporting of court hearings, but it is the practice that these are not reported in the news columns of the press. It seems that if the Magistrates and the Press were to get together, some stringent guidelines could be drawn up to allow 'repercussions' to be made known. All too often Magistrates make comments to offenders about their behaviour which, had such sentiments been more widely known, might have saved the youth appearing before the court at all.

To undertake a comprehensive study of the court in action it was then necessary to overcome these restrictions on attending continuously and recording details at the time. The Senior Magistrate agreed to assist the observers in this regard when it was explained that the study hoped to gather material on the court's practice to aid comprehension of the official statistics.

Permission was then obtained to attend the Court daily for an eight week period. Additionally observers were allowed to sit in a corner of the courtroom facing the same direction as the Magistrate. This allowed observers to see the faces of participants in the hearing, but more importantly conveyed the impression that the observer was an official party to the hearing. This allowed the observers to make notes without raising the anxiety of participants. It also allowed observers immediate access to official documents that the Magistrate had used to reach his decision when they were passed down to the Clerk after the case. Without this much appreciated co-operation, this study could not have proceeded.

THE MELBOURNE CHILDREN'S COURT

The central Melbourne Children's Court sits daily, for which reason most of the observing in this study took place there. Special Stipendiary Magistrates from this central court attend metropolitan courts on a roster system, mostly sitting alone; although some Honorary Magistrates do exist and may sit with the Stipendiary Magistrate in some courts. As the cases heard in these metropolitan courts generally involve youngsters living in the locality there is some value in a local person also sitting on the Bench, although this is more valuable where the locality has a particular character or strong community support for its wayward youth.

It is worthwhile considering the physical layout of the court, because here, as in Britain "a persistent criticism of juvenile courts has revolved around the nature of the premises in which hearings are held" (1:49)

In the Melbourne Children's Court building there are two formal courtrooms, each traditionally arranged with the Magistrate sitting on a raised platform beneath the Royal Coat of Arms. The room itself is not large and the Magistrate speaking in his normal voice can easily be heard by the offenders who sit facing him, the parents involved who sit on one side of the courtroom, and the police prosecutor and lawyer (if any) who sit at a small table on the other side of the room. The clerk of courts sits to one side of the Magistrate, and accredited visitors sit along the back wall, as do police and character witnesses who have finished giving evidence from the witness stand at the front of the court.

This traditional setting is emphasised by the placement of the Magistrate on a platform and behind a large desk. The deployment of participants in the hearing could not be condemned in that were a square table separating them all, it would sensibly have the magistrate sitting opposite the offender, with the parents and police at the other sides. This very conference-type setting has in fact been suggested for juvenile court hearings.

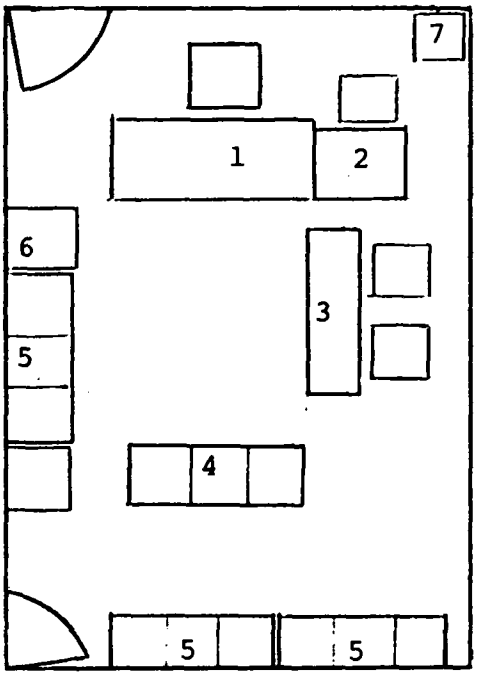
Criticism of the Magistrate's platform also extends to its creating an artificial barrier between him and the offender. In fact, as the offender often stands sometime during the hearing, he then finds himself at roughly the same eye-level as the Magistrate. For this reason the raised dais has a quite useful function.

The New Adelaide (South Australia) Juvenile Court which opened in August 1975 is also fairly traditional in layout, although it differs greatly from the Melbourne situation in size. Actual floor space of the former is far greater than that of Melbourne's and its fourteen foot ceilings help give an impression of a large hall, as distinct from a room.

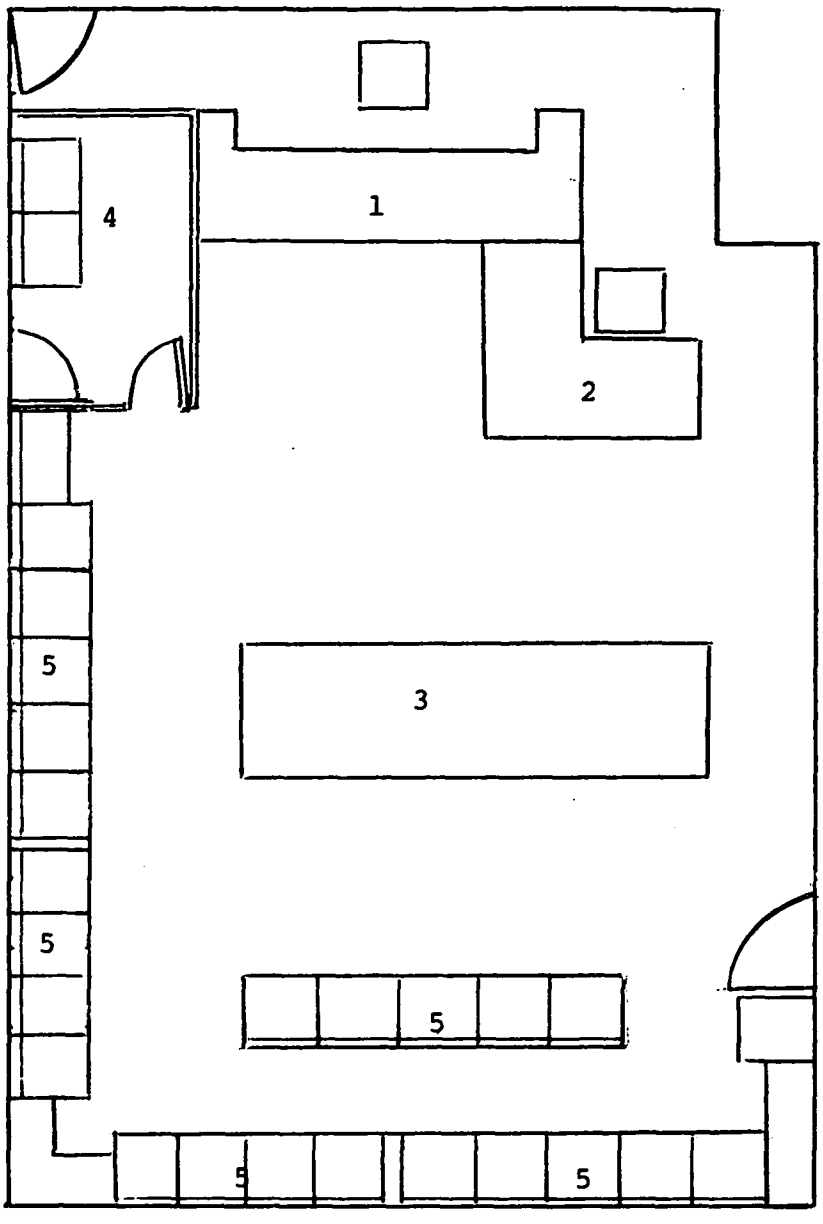
FIGURE 1

FLOOR PLANS OF CHILDREN'S COURTS

AT MELBOURNE AND ADELAIDE



Court Room No. 2
Melbourne Childrens Court
Batman Avenue
Melbourne.



Court Room No. 2
Adelaide Juvenile Court
75 Wright Street
Adelaide.

KEY

1. Magistrate
2. Clerk of Courts
3. 'Bar Table'
4. Offenders
5. Seating for parents and others
6. Witness
7. Observer's position for this study.

Note These plans are drawn to the same scale

6 feet

Describing further, the Adelaide courtroom has seating available around its perimeter for twenty-four persons. Two seats are provided in a dock to the side of the Judge's raised bench. Access to the dock can be gained from a bare concrete underground tunnel which leads to the security reception area and its cells.

Additionally the courtroom itself is lavishly furnished, carpeted and has full length windows overlooking trendy courtyards. Generally speaking it has an air of opulence which might well humble a child and his parents from ordinary circumstances, despite the reassurance of the presiding Judge.

The Melbourne courtoom can only comfortably accommodate twelve persons, apart from offenders,in the body of the court. The obvious crush that occurs when a large number of offenders, their parents, witnesses and lawyers are all called for one case in Melbourne, is inconvenient. Yet such infrequent difficulties are of little consequence when it is realised that most hearings can be conducted confidentially and intimately in the smaller area.

Reifen, an experienced Israeli Juvenile Court Judge thinks not only that"the fewer people there are in the courtroom the more likelihood there is of making direct contact... and consequently an impression on (the offender)" (16:96) but also that close proximity to him is of importance with respect to establishing this direct contact.

While these conditions are generally met in Melbourne, the Adelaide situation seems to be encouraging crowds, and distancing the offender if not physically, certainly psychologically.

Renovations in Melbourne will culminate in a third courtroom before the end of 1975. It will be the same size and layout as those existing. The elaborate Adelaide development provides an interesting contrast.

While the Victorian Act requires that the Court "shall proceed without regard to legal forms and ceremonies"(27), it is still important for the court to have a fairly fixed way of proceeding. Cavenagh believes that

> "as long as the juvenile court remains a court of law administering justice it ought to act and appear like one." (4:217)

The procedure followed in Victoria with hearings of offences against young persons is that first they (or their parents if appropriate) have to agree to a summary hearing. Next the charges are read to the youth and he is asked how he pleads to them - though this phase is often executed in non-legal jargon. The police informant is then sworn and gives his evidence about the charges, after which he may be asked questions by the youth or his counsel. Finally the youth has his chance of giving evidence, making a statement or calling witnesses at the discretion of the Magistrate.

The finding and disposition conclude the hearing. In considering the disposition, the Magistrate has all reports that are available about the offender. As distinct from neighbouring states where staff prepare social background reports for all cases, Victorian Magistrates often only have the Police Prosecution Sheet, known within the Force as Form 276. This sheet includes basic information about the offender, his home and family, but may at the discretion of the police informant include much more. Nevertheless it is basically a collection of objective data rather than an insightful document.

This procedure is certainly a modification of an adult criminal trial but many children appear to have an expectation that by going to court they will find themselves in a formal situation. Indeed one lad whose case was observed had expected even more formality. After his case he was heard to observe to his mother that "the Judge didn't have a wig".

It is interesting to note that Judge Muir in his recent report to the NSW Minister for Youth and Community Services suggests that "the present atmosphere of the Children's Courts at least in the metropolitan area, is too informal". (14) He suggests that

without some formality the court appearance may not "make an impression" upon the offender. In Cavenagh's words "formality is in itself neither an advantage or disadvantage, but its value is to be assessed in relation to the purpose of the occasion".(4:141) The formal procedure followed in Victoria appears, from observation to be efficient and workable.

But not only should the procedure be efficent and workable but it should also be clear to the offender who plays what part in that procedure. A recent NSW committee thought not only that court should be reasonably formal, but that an important requirement is that it is "clear to children...who the various people are". (17:22) The confusion as to who is who in the courtroom can and does arise, and in some cases offenders and their parents who have entered the courtroom in response to hearing their name called mill around not quite knowing what to do.

In some cases parties to the hearing obviously know both the procedure and the identity of the courtpersonnel. In some cases it is the police informant who has explained to these persons how the hearing will proceed. Obviously the provision of some documentation describing the court personnel, their positions in court and their role would immediately resolve this situation in most part. Indeed it is the practice of the South Australian Juvenile Court to make parents aware of this procedure. Placement of similar documents in the waiting areas at the Melbourne Children's Court would seem a worthwhile move.

Scott's essays on "What Happened to Me in Court" from a group of 112 boys on remand, found that as far as the court procedure was concerned there were

> a small proportion who understand quite clearly what is going on... a small proportion whose outlook is entirely coloured by their strong emotions, and a majority who just accept the procedure without understanding it...and having pleaded guilty,are really only interested in what the 'sentence' will be (20:203)

This statement may reflect the current local situation too but the observers have no hard facts to verify it. While it appeared that most offenders understood

the court procedure, it is conceivable that many may not have, but been unwilling to openly reveal their confusion.

The number of cases coming through the Melbourne Court sometimes occasions three Magistrates sitting in a building which only houses two formal courtrooms. This occasions one Magistrate sitting in his Chambers - a modest room not unlike a Headmaster's office. Cases were observed in such a setting and while the atmosphere was less formal the procedure of the case was little different. The Magistrate and the Clerk sit facing all other parties who sit roughly in a circle. Those involved who are familiar with court procedure quickly assimilate the situation, however for the defendant and his parents there is often an obvious and immediate bewilderment when they enter the room. It is salutary to bear in mind the comment of one youth whose case was heard in such a way. On leaving the court building he was heard to say to a friend "no I didn't go to Court, they did me in the back room".

Certain alternatives to court appearances for some young Australian offenders take place in informal office-type settings and it is wondered how many offenders dealt with in such settings are of similar mind to the boy instanced above. The argument for the informal discussion-type procedure for dealing with young offenders finds much of its support from persons like the Victorian Parliamentarian who, having studied the South Australian Juvenile Aid Panel System, made the following comment in the House.

> (T)he discussion type of approach may have better results than the more institutionalised court atmosphere where the person concerned may tend to 'clam' up completely, be unable to appreciate the seriousness of the situation he is in and take little or no heed of the advice given by the Court although that advice could be well-intentioned. (28:1488)

In point of fact the Magistrate despite the formal court setting and procedure can establish rapport with the young offenders in cases where he thinks it of value. He can and does take offenders and/or parents into his Chambers to discuss various aspects of their situation with them. This usually occurs when the Magistrate feels there is some difficulty in communication.

Thus lengthy and candid interchange can occur in the courtroom situation. The use of an informal type setting may achieve the same result but in many cases the authority of the court needs to b e observed by the offender.

PROBLEMS OF DATA COLLECTION

Initially it was aimed to collect a great deal of subjective information about the cases observed. However the naive assumption made about the ease of collecting certain information was quickly destroyed after some preliminary observations. Most damaging to the ordered collection of subjective data was the procedure followed by the particular Magistrate. No fixed procedure is laid down for the Magistrate to follow and it depended on his attitude how the case progressed and how lengthy an interchange he had with the offender and his parents. This problem was particularly aggravated by the senior Magistrate's reaching his retirement during the period of observation and a new Magistrate being sworn in. The former had through his 20 years in the position acquired a panache and dexterity in his role, whereas the latter adopted a meticulous manner while settling into his new job. Observations showed that the final results of like cases heard by these two Magistrates were not dissimilar, but the paths leading to those findings and the time spent reaching them, were quite different. Many factors thought relevant to this study were then deleted from it on the grounds that they could not be assessed for each court appearance observed. Such factors included the sentiment and length of Magistrate-offender interchanges and the style of the offenders' plea to the Bench.

Additionally other factors that were originally to be noted were soon found to be impossible to be consistently or reliably rated by observers. It is salutary to describe some of the intuitive factors which fell into this abandoned group.

It was thought that the appearance of the young offender before the Court might be worthy of note. In fact there is some literature that suggests appearance by way of dress is of some importance in the Criminal Justice System. Steffensmeier & Terry for instance, showed that members of the public were far more

likely to report the shop-lifting activities of a hippie-type rather than his conventional counterpart (24). Their definitions of each of those persons was quite specific. A hippie shoplifter

> wore soiled patched blue jeans, blue workman's shirt, and blue denim jacket; well-worn scuffed shoes with no socks. He had long and unruly hair with a ribbon tied around his forehead. He was unshaven and had a small beard...(The straight shoplifter) wore neatly pressed dress slacks, sport shirt and tie, sport jacket, shined shoes. He had short primly cut hair and was clean-shaven (24:422)

Emerson in his study of the Juvenile Court refers to a case where a young girl appeared before the court wearing

> a blue and white striped sweater and a tight skirt that exposed three or four inches of flesh above her knees. She carried a coat over one arm. Just before she entered the courtroom a probation officer directed her: 'pull it (skirt) down and put your coat over your knees (when sitting in the courtroom)' (7:176)

Obviously in that instance the probation officer thought that the offender's appearance might count against her.

Without specific definitions like those above, it was thought that some categorisation of dress on a casual or formal, tidy or untidy basis might be possible in this study. It was quickly apparent however that the observers were beaten. How does a school uniform with a torn jumper and unshined shoes rate against a pair of pressed jeans and a striped windcheater? Not longer than five years ago it was the exception that an offender would appear without a suit and tie - it is now obviously the rule. While most parents in attendance were conservatively dressed in this traditional manner their children did not feel constrained to so dress. Similar comments with respect to formal dress could be made about other social institutions such as church or the theatre. It appears that dressing up for what used to constitute formal occasions has fallen into some disuse in today's community.

Similar observations about parents clothes were also dropped from the study. Father's slipping away from his job in his working clothes for just the duration of his son's court appearance is surely a positive point in his favour. Non-coordinated

clothing worn by a mother may indicate a restricted wardrobe rather than disrespect of the court.

Another factor that was found to be quite impossible to rate was the demeanour of the offender. The factor was included firstly because intuitively it seems of importance and secondly because Emerson in his searching sociological appraisal of the juvenile court also thought it so. He says emphatically that

> it is clear that demeanour is a crucial factor in the courtroom proceeding...as it is in most encounters between delinquents (and other wrongdoers) and those official agents controlling them. (7:201)

In practice, even with a modest categorisation of behaviour, it was found impossible to rate the demeanour of most offenders. Despite being positioned near the Magistrate, the restrained and submissive attitude of most offenders prohibited any rating in most cases. Only the most extroverted reactions to the court could confidently be classified.

One such case involved the young boy who had himself reported his plight to the police because of his father's ill-treatment towards him. He was so delighted with the court's decision to make him a ward of the state that he insisted on shaking hands and thanking all those present in the court at the ti his case was heard. Trying to classify that sort of reaction is obviously very difficult.

Reifen states that a child's "defiant attitude (in court) is frequently nothing else but fear, insecurity and sometimes even remorse." (16:124) Whilst a few obviously defiant youngsters were observed in the course of this study it was not possible to say whether the above statement holds in Australia. In some instances the Magistrate asked such offenders questions to try and understand their attitude, but it was clear that only a longer and more intensive interchange would really reveal the child's true feelings.

Studt claims "that older delinquents feel bored and irritated perceiving the court and its representatives as inept and essentially unable to deal with realities". (25:209) There were a couple of occasions when older boys with substantial records were observed in court as seeing the procedure as a formality that had to be gone through. To this extent perhaps they meet Studt's description although in each case observed, their animation increased when their sentences at youth training centres were announced to them.

These few cases mentioned above constituted those where some attitude could at least be assessed certainly. As with the bulk of offenders appearing, in most cases parent's attitudes were also frequently unable to be rated in any way.

A large number of factors which were of interest to the observers were simply not able to be rated because in the majority of cases no information about them was forthcoming during the court hearing. Without giving the Magistrates a list of standard questions, the answers to which would provide the information, there was no way of confidently collecting it. And of course, providing the questions in which the observers were interested would disturb the natural conduct of the case which the observers had set out to watch.

One such factor dealt with the police informant's previous dealings with, or knowledge, of the offender and his family. In most cases where information of this sort did come about, the informant volunteered favourable comments following his evidence-in-chief. In most such cases the informant had obviously had a great deal to do with the offender and his family at some time.

However the infrequency of such cases caused the collection of details of this sort to be dropped from the study.

Also factors relating to positive progress or otherwise at school or work were frequently not canvassed. While mention of these employment-type factors was made on the official police document all too often no solid assessment of the child's progress in that regard was used by the court. While normal relationships seemed to prevail in most families attending the court only rarely was the child's relationship with his parents strenuously inspected. And this only when there was obviously some breakdown in communication between the child and parents. All such factors which might have been of value in this study but were so infrequently revealed during the hearing, were consequently not analysed.

THE OFFENDERS AND THEIR DISPOSITIONS

Observers were granted permission by the Melbourne Childrens Court to sit in the Court during June, July and August 1975 to note the passage of cases through that Court. During the period of observation close to 400 cases were observed. However because the focus of this study was centred on juvenile offending some number of the cases observed were excluded from the following analyses. These excluded cases comprise those in which no criminal behaviour could be attributed to the child's appearing before the court, for example, care and protection applications where the young girls concerned were shown not to have committed any offences which could otherwise have brought them to court. Notable in this group were interstate runaways whose return to their home state was

facilitated by their parent's provision of airfares.

Only cases where the actual disposition of the child was formalised were included in the sample. Thus where an adjournment for a psychiatric report (from the Children's Court Clinic) or a pre-sentence report (from the Probation Service) was called, the child concerned was only included if he was also observed in court when those reports were used to dispose of his case. This procedure was followed because the relevant court paper work used in this study was not made available to observers until the actual finalization of the case.

As mentioned earlier, the bulk of the observations were made at the Melbourne Children's Court. Apart from children resident in that court's 'catchment area' children remanded to institutions generally have their cases heard at that court. Thus serious offenders and those resident in inner city areas introduce some bias into the sample observed.

Two hundred and eighty six young offenders were observed during the eight-week observation period. These offenders fit the stereotype of the Victorian young offender in that 88% of them were male their average age was 15.1 years they came from families with an average 4.4 children and 80% were Australian born. Thirteen percent of them came from families where other children were known to the police as being of bad character.

Over half (152) were still attending school at the time of their court appearance, with the third form being the most common level reached. Of those students 31% had proven truancy records while of those who had left school 51 (or 36% of the non-student group) were unemployed, while 49 were employed in

unskilled or semi-skilled occupations. Amongst parents, 39% of fathers were similarly employed in low status occupations while 46% of mothers were housewives.

Ninety (32%) of the group had committed their offences alone and larcenies, breaking and motor vehicle offences constituted 63% of all offences. The consumption of alcohol on the offender's part had contributed to 7% of these. Over half (157) had not previously appeared before the Children's Court according to the information given by the police. However of that number, 21 had previously come to police attention and been officially warned for some offence.

The immediacy of justice is most important when dealing with juvenile offenders. A child's special sense of time where months can seem an eternity makes rapid dealing with his case even more important.

Notwithstanding the fact that some offences may not be discovered by the police until quite some time after their commission, it was revealed in this study that the average delay between the offenders' committing their (first) offence and their appearing in court was of the order of 11 - 12 weeks. While slightly more difficult to ascertain from records and evidence the average delay between the police's original involvement in the case and the court appearance is between 7 - 8 weeks.

When it is considered that 30% of the cases were heard within two weeks of the police involvement, it is plain that a large number of offenders are awaiting court hearings for a lengthy period of time. In fact with this sample of young offenders

only half of them appeared in court before the expiration of six weeks after their apprehension. It appears that most serious offences are heard fairly quickly and that it is often the more trivial ones that are not heard for some time.

This is borne out by the fact that those offences which had occurred almost a year before they were brought to court included a minor shoplifting, two driving offences and a charge involving an air-rifle. It seems that minor offences such as these are worthy of immediate attention to the extent that such action may convince the youths concerned that their behaviour is of concern to the community. Some delays in cases reaching the court are easily explained. For example, the boy who had stolen his father's car came to court only after an insurance company had required him to admit the offence to the police, before they would settle the claim. Or the case where the victim of an assault happened to sight the youth he thought responsible some months after the event.

It appears that the delay in some instances is caused through certain (undoubtedly rigorous) police procedures. However, such delays are to some extent frowned upon by the court. The Melbourne Magistrates were seen to exhibit a certain testiness when some aged cases were brought before them. An English Children's Court Magistrate has stated that

> delays are not tolerated by us lay magistrates unless there is a really good reason. For children, delay is perhaps one of the main reasons why they can rightly shout 'it is not fair'. Events soon fade in the minds of the young and justice must be speedy if it is to be fair. (29:158)

Despite the bureaucratic problems that might be encountered it seems important that young people likely to suffer formal police action as a result of their behaviour, should be dealt with quickly. Some amendment to the police Standing Orders requiring action in juvenile cases within say a month might be the way to achieve this end. At very least some attention should be paid to this problem.

Delays in being brought to Court are not the only ones that affect the young offender. He also suffers what can be considerable delay when he actually gets to court . All summons require the offenders and their party to attend at the court at 10 am, however on a busy day it can be over three hours later that the hearing in fact takes place.

This problem is not by any means unique to children's courts but this does not mean it is acceptable. Scott's study of offenders' recollections of their court appearances revealed that "what goes on outside the actual courtroom is for them an important part of the procedure" (20:206) In many instances it was observed that the police informant concerned often spent at least some of his own waiting time in conversation with the offender he was to give evidence about. This interchange could be of some ultimate benefit to the child. In some cases, the benefit is immediate in that the policeman explains the court procedure to the child.

Nevertheless the inconvenience and discomfort caused to the child and his parents can be considerable. Moreover the wastage of police manpower awaiting their cases is reprehensible. When it is considered that in only 27 of the 286 observations was the police evidence questioned at all, police attendance becomes even more wasteful). The problem of scheduling children's court hearings more conveniently is not insuperable. It is surely a matter for urgent attention.

Childrens Court legislation world-wide has as its central theme the fact that the decisions made by the court shall be in the child's best interests or be made with the child's welfare as the paramount factor. But in addition it is suggested that "the court must be fair, and that fairness must be recognised in the community". (3:276). Fairness and interest in the

child does not mean however that a magisterial rebuke is not possible. Such a rebuke would often impress on the adolescent concerned the fact that his behaviour is unacceptable.

The dispositions available to the Victorian Children's Court Magistrates have been subject to some criticism. Johnston, for instance claims that the alternative disposals "are generally rigid, pusillanimous, reactive and unprincipled in the manner of much of our sentencing legislation" (12:246)

In fact the dispositions available comprise the following. Without convicting an offender, the Magistrate can dismiss the information, adjourn the proceedings, release the offender on a probation or supervision order, order him to pay a monetary penalty or discharge him on a good behaviour bond. Such a bond can also be used when a conviction is recorded. The only other instances when a conviction is recorded is when the youth is sentenced to detainment in a youth training centre (if he is over 15 years old) or admitted to the care of the Social Welfare Department otherwise.

As some indication of the Magistrate's attitude towards children before the court 37% of the 9957 juvenile offence cases heard in 1972 in Victoria resulted in a term of probation.(5) A further 31% of these cases were adjourned. This could either indicate a generous attitude towards offenders or that the bulk of the offences heard were of a comparatively minor nature. When first offenders alone are considered for 1972, 80% of them were dealt with by the two dispositions above. In fact over 70% of the 1972 cases involved first offenders. The probation-adjournment figure for other offenders was just over 50% in comparison.

Studies of decision-making with respect to disposing of cases in juvenile courts are not rare. (See for instance, Scarpitti and Stephenson's American Study, (19), Patchett and McClean's British contribution, (15), or Kraus' Australian report (13)). Whilst in this fairly brief study no real discrepancies were noted between the dispositions meted out by individual Magistrates, uniformity is not the answer in the juvenile court.

Variation is not only apparent, it is to some extent expected. It is being

> increasingly recognised (that) strict uniformity may in fact reflect a failure by the Magistrates to take into account all relevant facts when judging cases on their individual merits . (15:700)

The 286 observed cases were categorised according to their major dispositions, that is, ranked in order of seriousness as shown in Table I (except that when fines were given in conjunction with another disposition, that latter disposition was always assumed to be the major one). The difference in disposition between the sexes of the offenders is clear from Table I where it can be observed almost half the girls involved received probation orders.

TABLE I

DISPOSITION AND SEX OF OBSERVED OFFENDERS

Disposition	SEX Male	Female	Total	
Youth Training Centre Sentence	25	0	25	(8.7%)
(Re) Admission to Social Welfare Department	28	3	31	(10.8%)
Probation	67	16	83[1]	(29.0%)
Fine[2]	29	0	29	(10.1%)
Bond	6	0	6[1]	(2.1%)
Adjournment	80	13	93[1]	(32.5%)
Dismissed	17	2	19	(6.6%)
TOTAL	252	34	286	

1. Fines were imposed in addition to the disposition shown in 13 cases, (6 where probation was the other disposition, once with a bond, and 6 times with an adjournment).

2. The average fine (including those imposed in conjunction with other offences) was $35.

For ease of analysis the dispositionsmade by the court have been re-grouped into three new categories for the analyses that follow. The 'treatment group' comprises dispositions where the offender was removed from the community either by receiving a Youth Training Centre sentence or being committed (or re-committed) to the care of the Social Welfare Department. The 'supervision group' comprises those offenders placed under supervision by being given a term on probation. The 'discharged group' comprises all other dispositions, these having no immediate effect on the life-style of the offender through his receiving an adjournment, fine, bond, or dismissal.

With this new categorisation 56 (or 20%) of the observed cases are placed in the treatment group, 83 (29%) in the supervision group and 147 (51%) in the discharged group.

DISPOSITIONS AND OTHER FACTORS

The 286 observed offenders were then categorised according to their most serious offence. The ranking of seriousness of offences is provided in Table 2. It should be borne in mind that those persons appearing before the court on protection applications could well have been distributed amongst the 'real' offences listed, since they had to meet the criterion of having offended to be included in this study. It can be seen from the Table that there is a high chance of protection applications ending in other than the discharged group when compared with the total sample.

TABLE 2

OFFENCE BY DISPOSITION TYPE

Offence	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
Assault	19	11	26	63
Robbery	4	100	0	0
Sex Offence	8	13	0	87
Breaking	58	28	41	31
Larceny	78	14	28	58
Motor Vehicle	44	23	25	52
Other Offences against property[1]	20	0	40	60
Other offences against good order [2]	20	35	15	50
Traffic offences	15	0	7	93
Protection applications	20	25	45	30
TOTAL	286	20	29	51

1 Comprising wilful damage(9), receiving stolen goods(6), unlawfully on premises(4) and unlawful possession(1).

2 Comprising hoax phone call(1), embezzlement(3), drug offences(3), escaping from legal custody(4), carry firearm(1), indecent language(2), loitering with intent(1), hinder police(1), offensive behaviour(2), carry offensive weapon(1) and accessory after the fact(1).

The high 'treatment group' figure for offences against good order is explained by the fact that four of the twenty persons in this group were escapees from Youth Training Centres. Each was given an additional term to serve for that offence.

Excluding robbery which is a small and rather special group, breaking offences are those which seem most likely to earn the offender a period away from home. The incidence of juvenile housebreaking is of constant concern to police. They may well be heartened to observe this trend in the disposition of such offenders.

The children's court is required to consider all factors relating to the child, however there are those who think the seriousness of the offence should overshadow all other considerations, even in the case of juveniles. Property offences predominate amongst juvenile offences and their seriousness can be measured by economic cost. The various dispositions for observed property offenders according to the value of property stolen or damaged, is shown in Table 3.

TABLE 3

VALUE OF PROPERTY OFFENCES[1]

Value	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
Up to $5	27	26	15	59
From $5 to $20	22	9	23	68
From $20 to $50	31	10	39	51
From $50 to $500	45	22	42	36
Over $500	11	18	46	36
TOTAL	136[2]	17	33	50

1 Excludes offences involving motor vehicles

2 Value of property was not known in 20 cases

The inconsistency apparent in the table indicates that property value alone has no great impact with respect to dispositions. By way of demonstration three boys over a period of several months were leaving their homes at dead of night without their parents' knowledge. Their nocturnal escapades resulted in their stealing almost $3,000 worth of electronic equipment. These boys all had their cases adjourned perhaps because their homes were stable, their contrition appeared genuine and the property was replaced.

Kraus (13) undertook a statistical study of dispositions made in New South Welsh children's courts and found that the presence of a Child Welfare Officer's report carried most weight in the Magistrate's decision. It has been pointed out earlier similar documents are rarely available in Victoria. While the police provide some background information on their prosecution sheet Form 276, its quality and quantity varies according to the policeman involved.

Apart from the formal information, that police document also allows the police informant to provide "additional circumstances relating to home conditions, associates, places frequented, method of committing crimes etc." In 92% of the 286 cases under consideration the police did give such information about the offender. Within this extra detail the police made subjective predictions that the child concerned would re-offend or would certainly come to police notice again in 49 cases.

In only 62 or 22% of the cases were documents other than those provided by the police available to help the Magistrate make his decision. Thirteen had Clinic reports, 32 probation officers' reports, 14 social workers' reports and 3 had miscellaneous documents from school, employers or private medical practitioners. When all reports are taken into account, for 16 (or 5.6%) of the cases, no written comments were available to the Magistrate to assist him in his decision.

There was a tendency for cases where reports were available to conclude in probation. But as most of the reports from probation offers suggested the appropriateness of such a

disposition, this trend is not surprising.

In the absence of any social background type report Kraus states that it is the number of previous court appearances that influences the Magistrate most with respect to disposal. Table 4 shows that a similar situation appears to hold in Victoria, if the current sample is typical, in that dispositions are heavier for those who are re-appearing at court.

TABLE 4

PREVIOUS COURT APPEARANCES

Number of Previous Court Appearances	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
0	128	6	27	67
1-2	77	14	44	42
3-5	33	55	15	30
6 & over	19	58	16	26
TOTAL	257	18	30	52

Note: In 29 cases the space for antecedents was left blank on the police documents, so it was not possible to include those cases on this table.

Section 12 of the Act gives parents of every child appearing in Court the right "to be present in Court during the proceedings and to be heard in Court on the child's behalf". To this end Section 23 requires that members of the Police Force responsible for any youth appearing before Court "...shall cause the parent of the child if he can be found and is not already party to the proceedings, to be advised to attend the hearing".

Reifen (88) points out there are three main schools of thought as to why parents should be in attendance at the court hearing of their child. The first claims that parents should be held responsible for their child's misbehaviour and should realise that they must act more responsibly toward their children. The second simply states that a minor should not be tried alone and that parents should be there as they can better understand what is happening. The third thinks parents should attend for the child's security, that is, letting him know that he's not being abandoned at what is a time of some stress.

This partition is perhaps a little simplistic, for each of the ideas expressed are important. Basically it seems that while the child is still a dependent member of a family, other family members should be involved in any crisis that he may bring upon himself.

TABLE 5

FAMILY SUPPORT AT COURT

Family Present	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
No family present	37	51	16	33
One parent present[1]	158	16	30	54
Both parents present[2]	73	9	33	58
Relatives other than parents	18	22	33	45
TOTAL	286	20	29	51

1 59 Fathers alone, 2 fathers with some other family member
83 Mothers alone, 14 mothers with some other family member

2 65 pairs of parents only, 8 pairs with other family members

Cavenagh points out that in England "not all courts insist on the attendance of both parents in obviously trivial cases". (45:73) and this would appear to be the local situation too. Magistrates only proceed with a case in the absence of parents if they are sure it can proceed properly without them, or if there is no viable alternative.

Seventeen of the 37 offenders who were before the court without any family being present, were residents of institutions. A total of 25, or 68% of the unaccompanied group were not resident with either of their parents. That over half of these 37 youths fell into the treatment group, is then not surprising.

While it is apparent that cases in which parents are not present are more likely to conclude in a more potent disposition it does not follow that it is the role the parents play in the court hearing that influenced the Magistrate. In fact it appears that the simple presence of a parent in the courtroom is the important factor. Of the cases observed, only 34% of the mothers present took the chance to say something substantial to the Magistrate, other than simply make a brief comment about her sorrow, embarrassment or concern. The corresponding figure for fathers present in court was 54%. (Expressed as a percentage of the cases heard, the figures for active participation by mothers was 20%, and for fathers 25%).

The fathers more apparent readiness to respond to the Magistrate's invitation to comment, could be explained in part by the fact that if both parents are present, it is the father who is usually asked first for comments. In only seven cases did both parents make comments. However overall more mothers attended court than fathers yet said nothing when asked for comments. The "have you anything to say" question often draws shrugs or no response, which the Magistrate then often accepts. Certainly he could obtain further information if he were so minded by asking a specific question. Such a move on his part can often start a useful interchange.

When the parents have engaged legal counsel themselves, they usually attend, but sit mute and let their lawyers take their part. This does not seem of as much benefit to the child in the long run as parents themselves discussing the issues with the Magistrate.

The offender himself is also given an opportunity to make some sort of statement to the Bench. Again the Magistrate by asking particular questions can obtain much information should he wish to do so. Roughly a third of the offenders exercised their right to comment as can be seen from the following table.

TABLE 6

OFFENDER SPOKE AT HEARING

Offender Spoke	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
Yes	94	17	28	55
No	192	21	30	49
TOTAL	286	20	29	51

It should be borne in mind that many offenders obviously find it extremely difficult to address the Bench. The Magistrate's patience and helpfulness become quite vital when it is apparent that the offender is trying to make a point. Coaxing comments is a delicate art which appears to be well practised in the Victorian Children's Court.

There is a marked tendency for the offender himself to speak when he is alone in court, or when he is not legally represented. Conversely if there are two or more people accompanying him he is far less likely to speak up for himself.

Amongst other persons who accompany a child to court are relatives, family friends, neighbours, priests, teachers, social workers, probation officers, employers and interpreters. (The last usually for the parents).

The presence of teachers or school chaplains was particularly refreshing and, generally speaking the Magistrates always seemed glad of their comments. Indeed, the remarks of these persons were always pertinent and helpful which simply shows the valuable contribution that those employed in the education field can make in this area.

Apropos education, in just on a quarter of the observed cases, the police informant had made the offender's school or education the subject of an additional comment. Sadly in almost a third of those cases the comments were of a negative nature like, expelled, refuses to go, not interested, and the like.

The actual number of persons attending court with the 286 observed offenders is displayed in Table 7. It will be seen that being accompanied by a number of other persons, does not by itself increase the likelihood of the offender's finishing in the discharged group. Indeed there is a distinct tendency for him to receive a period on probation.

TABLE 7

NUMBER OF PERSONS IN COURT WITH EACH OFFENDER

Number of Persons	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
0	24	67	13	20
1	105	15	23	62
2	105	13	33	54
3 or more*	52	19	40	41
TOTAL	286	20	29	51

* Forty-two with three persons, 9 with four and 1 with 5. The latter being a shoplifter accompanied by both parents a lawyer, a probation officer and his employer.

The pleas made by the offenders appear on Table 8, Twenty six of the 39 youths who pleaded not guilty did so without being legally represented. In some cases it was apparent they simply thought it the correct thing to do, and having made such a plea were sometimes reluctant to change it, even when shown it was the sensible course of action. One such case involved a youth charged with assault. From the witness box he said he'd pleaded not guilty because the assaultee had been unable to properly identify him. In answer to the Magistrate he actually admitted hitting the victim as alleged but could not see that this should make any difference to his plea.

Nevertheless, those pleading not guilty appear to be more likely to be discharged outright than to be placed on probation, according to Table 8. Those pleading guilty, as they comprise the majority of the sample are close to the norm. It is difficult to explain why this should be so, but it should be borne in mind that only eight of those who actually pleaded not guilty were found by the court to meet that description.

TABLE 8

PLEAS OF OBSERVED OFFENDERS

Plea	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
Not guilty	39	20	18	62
Guilty	247	19	31	50
TOTAL	286	20	29	51

LAWYERS IN THE CHILDREN'S COURT

A couple of years ago it used to be a comparatively rare event for a youth to be legally represented at a Victorian Children's Court hearing. However, the advent of Legal Aid Services appears to have brought about an increase in the numbers of youths who are now formally represented. This would please many persons who have maintained that such representation is essential but the observations made in this study cause the value of such a practice to be questioned.

In 13% of the observed cases, lawyers were in attendance to represent the offenders. Reference to Table 9 shows that their effect alone with respect to disposition is minimal.

Only thirteen of the thirty eight represented juveniles were instructed by their counsel to plead not guilty. Thus twenty five lawyers were content to restrict their role to only making pleas for their clients. The alternative for the lawyer is to perform as an advocate in an adult criminal trial which is a practice not quite in sympathy with the legislation governing the Children's Court.

Only in two of the 38 represented cases observed was the advocate's role performed. Each of those cases concluded with a dismissal. In one the alleged homosexual who had been assaulted by a youth underwent a savage character assassination. The charge against the defendant was dismissed but during the case he admitted a different act of physical violence against the complainant. The second case was dismissed after a spirited cross-examination of the police informant about police procedures and standing orders, after which a technicality was accepted by the Bench despite the defendant's admission of the particular offence.

In neither of these cases did the intervention of the lawyer seem a profitable move. In each case, the defendant admitted to an illegal act. In each case the defendant saw his lawyer achieve dismissal of the case. To at least two confessed offenders, a competent lawyer has been shown to be a way to legally avoid responsibility for your offences.

TABLE 9

LEGAL REPRESENTATION

Represented	Number	PERCENTAGE IN Treatment Group	Supervision Group	Discharged Group
Yes	38	18	32	50
No	248	20	29	51
TOTAL	286	20	29	51

The remainder of the lawyers often chose not to ask any questions of the police informant. Those who did restricted themselves to two general questions. When property was stolen, the informant was asked "was all the property recovered?" The second popular question asked was, "was my client helpful to you when apprehended?" Invariably the answer to each of these questions was in the affirmative giving the lawyer an opening to his plea in mitigation.

These pleas were apparently often based on information gleaned during a short period of discussion in the corridor outside the Court, and covered those sorts of details that would have been available in a social inquiry report. Indeed on one occasion the Magistrate interrupted a lawyer to offer him the pre-sentence report available about his client. Subsequent to his reading that document the lawyer said there was nothing further he could add and resumed his seat.

This event shows a minor conflict in that the lawyer involved was ready to provide just that information which, in this case, had been prepared by an active field-worker. This seems to resemble the social worker-lawyer conflict that appears to occur in continental America. An American study assessed the responsibilities each of these groups thought were theirs within the juvenile court. While there was some agreement between the two groups, each thought that they should have

responsibility for certain tasks like informing the juvenile in custody of his rights, and explaining to him the reasons for certain adjudicatory hearings. (2)

As much as anything this conflict seems to have come about because of a difficulty on the lawyers part in his defining his role. The majority of a group of attorneys in Canada felt that legal representation in juvenile court was important but also felt that they didn't really have to intervene as the judge would act in the best interests of the child anyway. (6)

A later study in that country asked Judges and Social Workers what they thought defence lawyers should be doing in the juvenile court. Most expected the lawyer to counsel the parents, explain the proceedings to the child and consider the child's best interest. In the case of a privately hired counsel, one group of respondents thought that "his commercial and vested interests in acquittal were ... taking precedence over his concern for the child's best interests." (8:84)

It is hoped that this last statement will never reflect the Victorian (or Australian) situation if lawyers become more involved in juvenile court work.

Sharp (21) has pointed out that "in the United States it was a generally held belief that legal representation merely hindered the workings of the Juvenile Court, and the Gault case is illustrative of the dangers which become apparent after a system with this philosophy becomes a working reality". (21:43) The Victorian courts have never had as much legal representation as they have now but the effect of this increasing legal activity has had little apparent effect on the Court's operation as far as can be gathered at this stage. The observations made indicate that Victorian lawyers in the Children's Court are only a little more active than some American lawyers. Ferster and Courtless (9) report a study where very few juvenile court cases were represented. Of those that were, "counsel did absolutely nothing" in two-thirds of the cases. That is, the lawyer, "was present but did not participate by asking questions or making any statement". (9:207) These authors also state that "some counsel

regard themselves as advocates whose primary allegiance is to the parent rather than the child". (9:209)

It can only be wondered about the closeness of this last description to the local situation. When the child's interests are not at all different from the parents' there is no problem. It is in the conflictual situation that the children's court lawyer needs insight, compassion and an empathy with the child first.

The New South Welsh committee referred to earlier suggeste there should be a legal advice centre at each court to provide legal representation for those offenders who run a high risk of being removed from their parents. If lawyers were permanently situated there they would soon be able to assess the probable decision of the Court (as the observers in this study did) and therefore restrict their appearance to cases where a treatment decision (as defined here) seemed possible, or where police evidence seemed unconvincing. (It has been suggested that the absence of lawyers can bring about children's rights being violated by inadmissible evidence being allowed) (6:144)

Asking a free legal-aid lawyer to contemplate a case and assess the likelihood of its being seen as serious enough to warrant the offenders removal from home, is well-nigh an impossible task. In itself it could damage the child's perception of the legal process if he thought his case needed representation. To suggest that he doesn't need a lawyer because he'll probably only get an adjournment, or at most probation, is quite outrageous. Yet the free legal resources available must be optimally used.

The question of deployment of free legal-aid services in the Children's Court is a difficult one, and its solution may well come about only through lawyers specialising and defining their own roles in the Children's Court hearing.

ANNOUNCING THE DISPOSITION

When the Magistrate actually anounces his disposal of the case he has the opportunity to expand on the case's features and explain what he is doing and why. He does this notwithstanding the comment made by one British juvenile court magistrate to the effect that "I am never quite certain whether the children ever take in anything that is said to them from the Bench". (11:18)

Generally speaking the Magistrate usually explains to the youth what his decision means, and, often quite positively, what will happen if that youth returns again to this Court.

> Emerson suggests that "court lecturing relies heavily on this threat (of incarceration) picturing such an eventuality as the worst imaginable fate" (6:211) On some occasions the Victorian Magistrate was observed pointing out to an offender that his behaviour could have caused him to be sent to a Youth Training Centre or a "boys' home". This was often followed by the offender's being told that this contingency could occur if he reappeared at Court. This statement could be perceived as threatening yet it might well be the best to make in view of the eventual welfare of the child. On the other hand there is a tendency for Magistrates to simply announce their finding without elaboration when they were either fining the offender, placing him in an institution or committing him to the care of the Social Welfare Department.

Lack of comment by Magistrates when admitting children to the care of the Social Welfare Department is unfortunate in two ways. Firstly the parents of the child may not be aware of what the decision entails although if they ask about is the Magistrate will explain that the child will be placed in a home where there will be experts to help the child with his problems. A frequent response by parents on hearing such a decision is to ask how long the child will be away for, indicating they do not realise that their guardianship of their child has been temporarily removed.

Secondly, the Social Welfare Department could be aided by comments from the Magistrate as to why he made the child a ward. The Department pointed out to the Statute Law Revision Committee that

> courts often fail to give reasons for decisions taken. It was stated (by Departmental representatives) that this failure often results in treatment agencies being unaware of the type of remedial action required and/or any assistance which might be afforded. (23:5)

This seeming lack of communication between the judicial and treatment or correctional components of the criminal justice system is not unique to children's courts. However it is more important for young persons to receive the maximum assistance possible from the system.

In a study conducted in certain adult courts in England, White identified seven elements of homilies made by sentencers. These were ; the warning (you are in serious trouble or will be if you do it again),the 'last chance' comment (this is your last chance), the exhortation (make use of this opportunity and don't let your friends,family down),sympathy, the explanation (of why the particular disposition is being used), the consideration factor (your case has had very careful consideration), and the condemnation. (30:6)

In the observed cases in this study each homily consisted of at least two of these elements, the most common combination being the warning and the exhortation. As most of the offenders dealt with had not been to court before, it was obvious that this combination was used in an attempt to keep them from re-appearing. As most offenders do not re-appear the fairly harsh form of homily used may be achieving its aim, and is certainly doing no grave harm. It may well be , of course, that the homily is having no great effect, the prime impact on the offender being made by his apprehension by the police.

White in a later work (31) has questioned whether the homily has any effect and suggests that first offenders may be less likely to recall the Magistrate's homily afterwards simply because of the great anxiety they feel just being in court. Cavenagh in an excellent discussion of this problem of communication between proven offender and the Bench claims that

"one thing which does seem to get across to the Child in the Bench's remarks ... is the tone of voice in which they are spoken". (4:233) In the observed cases differences in tone were certainly noticed both between Magistrates and between cases with the same Magistrate.

It can be suggested that Bench homilies are made not so much for the benefit of the offender himself but for the benefit of others, which in this case would be the parents. It is certainly true that parents are most attentive at this final stage of the hearing.

This is especially true if the Magistrate reiterates and emphasises some comments which have earlier been made by the offender's parents. For instance the parents may suggest another youth has had a bad influence on their son. If he agrees the Magistrate might suggest the youth selects new friends. Or, it may happen that the parents point out that their son may not achieve a certain career objective if in further trouble. This too, the Magistrate may re-affirm.

This support of parental wisdom by the Court is obviously well-appreciated by the parents who may sit nodding profoundly during the commentary. If there is considerable hostility between child and parents the Magistrate's support could later aggravate this situation. However, in those few cases observed where parent-child hositility was patent, the Magistrate took a careful line and his comments could not be seen to take sides.

All things considered the Magistrate's comments when finalising the case are usually advice oriented as well as disciplinary in nature. If the child is not of such a mind to absorb the comments as they are directed to him, there seems little doubt that parents in attendance will bear them in mind for the future.

DISCUSSION

The overall impressions that the observers retained after their period of observation were fairness, thoughtfulness and dedication on the part of the Magistrates. These men (there are no female Stipendiary Magistrates in this State), without exception, were always obviously mindful of Section 25 (4) of the Act which requires them to "firstly have regard to the welfare of the child" (27). Victorian magistrates are not formally trained for the Children's Court jurisdication, though most, having been Clerks of Court for many years before appointment to the Bench, have been present during Children's Court hearings, from which they would have learnt much.

Cavenagh refers to a British Government report where the qualities which are needed in every Children's Court Magistrate are described as "a love of young people, symphathy with their interests, and an imaginative insight into their difficulties. The rest is largely common sense" (4:71)

The Magistrates observed in this study certainly had great interest in, and strived hard for an insight into, children appearing before them. Specialising in this jurisdiction obviously increases each of these attributes. The utilisation of Specialist Magistrates appears necessary for the continued efficient conduct of the Victorian Children's Court. That the magistrates are conscientious is not to say that the Court is a peaceful and benevolent institution as far as those appearing before it are concerned. Snyder's study of probationers found that most of them experienced fear at court, even though they all thought their being taken there was fair (22). This feeling of fear has been established in other studies (e.g. Scott (20)). Yet fear of the same dimension is possibly felt by the errant student waiting outside the headmaster's office for some disciplinary actio

Emerson's analysis of an American juvenile court leads him to suggest that the court process plays upon the apprehension of the offender in order to impress upon him the fact that he is a wrongdoer and answerable for that which he has done (7). Emerson talks in terms of humiliation and degradation during the court hearing, but this study's oberver would not agree that such words describe the Victorian situation.

The local situation seems more in accord with Cavenagh's summary of a British court:

> however informal the atmosphere of the juvenile court the situation is one which appears essentially authoritarian to the child...In court everything seems to him to emphasise that he is in the wrong...However gently and benignly everyone concerned may have handled him...he knows he is there because he's done something wrong and so expects to be punished for it. (40:213-214)

It should be emphasised again that this study deals with offenders before the courts, and excludes from consideration what are commonly known as neglect or welfare cases. The prospect of a repentant offender awaiting disciplinary action in an authoritarian setting does not disturb the observers in this study.

The Victorian Court does have court-room interaction in common with the court that Emerson observed. He points out that the normal rules of personal interaction are not observed in the court setting and the Magistrate can behave towards the offender as no person would usually behave towards another. More specifically the Magistrate can fixedly study and openly stare at the offender without having to look away if their eyes should meet. He can express open disapproval of the offender's appearance or behaviour. And he can ask frank and searching questions of the offender without having to avoid delicate areas.

Naturally these practices do not take place in every hearing, but they are all acts which put the Magistrate in a powerful position, and the offender to some discomfort. Each

time their implementation evolved naturally from an earlier situation, rather than their being used for no purpose other than to distress the offender.

Also in common with court practice observed by Emerson were the diversions from the normal court style which occurred in the Melbourne court. The Magistrate adopts a conversational tone and expresses concern in cases where the offender is younger,mentally slow or very nervous. In cases where the offender has failed to respond to 'previous chances' and seems not to care at all, the Magistrate conducts a brief unemotional hearing and is apparently unconcerned with the impression he has made on the youth during it.

In Melbourne the former behaviour on the part of the Magistrate was a not infrequent event. The latter occurred not more than half a dozen times. Most cases were dealt with in a business-like and impartial manner.

Again Emerson states his case strongly when he suggests that the 'delinquency hearing' is structured "so as to intimidate the delinquent as a means of deterrence" (7:214). This is put too strongly for the Melbourne situation but it is true that the local Magistrates hope that they're teaching the offender that the behaviour which has brought them to court will not be condoned. That the majority of offenders do not return to court is perhaps an indication that they are being successful.

When deciding disposition, Reifen believes that "it may be in the interests of the offenders rehabilitation to delay pronouncement of the Sentence" (16:118). This is to some extent leaning towards the bifurcated hearings that occur in America where the court first decides whether the child committed the alleged act, and then at a later time, and after gathering information, decides the disposition. The Melbourne court follows this practice with some of its serious cases. Where the Magistrate is minded to commit the child to an institution he often adjourns the case for two or three weeks for a report of some sort to assist him. While it is true that

the Magistrate may not always follow the recommendation on that report, he makes sure he is familiar with its contents before he makes his final decision.

Holding back all cases for presentence material seems unnecessary for the once-only offender whose court appearance is salutary enough to cause him to keep out of trouble in the future. Additionally, at least at present, the strain on the presentence reporting facilities would be too great. Using such resources for those cases where a 'treatment' disposition is thought likely, seems a sensible move on the Magistrate's part.

The greatest weakness of this study is that it did not directly take into account the attitudes or feelings of those youths going through their court-hearings. While it is easy to refer to other studies where such sentiments are recorded, it may be that those sentiments are not those of contemporary Australian offenders. While informal and quite selective impressions have been collected by the observers both during, and after, the formal observation period, these are not able to be reproduced here with any confidence. Nevertheless the boy who "felt an idiot" because of the way his mother "carried on", may not be expressing an isolated feeling. And the boy who felt he didn't get a chance to say all he wanted, may have had a legitimate complaint. It is too easy to end a report such as this with the comment that this side of things ought to be investigated in the future, but despite its slickness it remains a reality.

Studt sees particular reason for talking to those who have been through the system. He says that those

> considering the possibility of basic reorganisation of juvenile court would do well to listen to the clients who speak of their juvenile court experiences in tones of contempt and boredom. In the eyes of these clients, adults are overlenient (or stupid, or both) and do not expect the adolescent to assume even appropriate responsibility for his own behaviour and the court is just one more adult institution to be endured and manipulated. (25:210)

Reorganisation of the Victorian Children's Court system has in fact been suggested. But all too often crusaders for such change focus their attention on the minority of children whose appearance in court is yet more evidence of their highly unsatisfactory social situation. Obviously such cases are legitimate and important candidates for family intervention, but the majority of offenders are simply wayward. To institute a system which implies that families of all those appearing before the court are in need of intensive investigation and intervention would be a wasteful and unnecessary move, especially in light of this study's finding that the Victorian Children's Court operates humanely and efficiently.

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