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## The Politicalization of the Juvenile Justice System

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In discussing the manner in which our juvenile justice system is subject to manipulation by the political process, four factors will be discussed: (1) treatment, (2) administration, (3) agency interface, and (4) selection and appointment of juvenile judges. These factors were selected not only because of the inherent political manipulability within each of them but also because of their more overriding ability to influence the personnel and components of the juvenile justice system in a distinctively negative fashion. These four factors are not always negative or uncontrollable; informed and enlightened juvenile court administrators could, to a degree, minimize the politicalization process and maximize the advantages that characterize these four factors. Whether we can presuppose the existence of such a group of enlightened juvenile court administrators is another matter. In any event, the objective of this paper is to discuss how these four very important variables within the juvenile justice system manifest their dysfunctional consequences and either latently or overtly contribute to the politicalization of the juvenile court and its personnel.

### **Treatment**

The underlying rationale of most treatment programs within our juvenile justice system has traditionally operated on the premise of "saving" juveniles who have been characterized as having individual pathologies. In the process of treatment, a great deal of respect and deference has been accorded the treatment personnel of our juvenile justice system, and little attention has been focused on the abusive potential inherent within the prevailing treatment philosophy. For example, treatment personnel have been successful in avoiding responsibility for the evaluation of therapeutic programs; but more importantly, they have been successful in characterizing the juvenile who does not respond affirmatively to therapeutic techniques as having some form of individual pathology. This point of view oversimplifies the very complex cultural and community involvement in the entire phenomenon of juvenile delinquency; more tragically, it completely ignores that growing body of literature on the evaluation of treatment strategies which suggests, at best, that the effects of treatment programming are both unsatisfactory and temporary in modifying attitudes and behavior.

The other viewpoint from which one can examine the "hustle" of treatment programs and strategies is the philosophical or political aspects of treatment within the juvenile justice system.

The eminent psychiatrist Dr. Seymour Halleck notes that, in dealing with the

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individual patient, the psychiatrist usually emphasizes the person's internal problems, which I might add has certainly been the case within our juvenile justice system. Strategies of treatment that center on the internal conflict of the individual influence both the individual and the community to believe that the social environment is not contributing to the problems that have impact on the individual. So long as treatment programs do not encourage the individual to examine and confront this environment, and so long as treatment programs protect those who have adversely affected that individual from considering his behavior in this manner, the effect of that strategy of treatment will be to strengthen the status quo. More specifically, Halleck [1, p.36] states that

There is no way in which the psychiatrist can deal with behavior that is partly generated by a social system without either strengthening or altering that system. Every encounter with a psychiatrist, therefore, has political implications. There is a strange and unfortunate tendency among psychiatrists to believe that professional activities designed to change the status quo are political and activities tending to strengthen the status quo are medical or neutral. This kind of thinking is illogical. By reinforcing the position of those who hold power, the psychiatrist is committing a political act whether he intends to or not.

Szasz is even more critical than Halleck; as Szasz explores the repressive issues of psychiatry, he distinguishes between institutional and contractual psychiatry. Institutional psychiatry to Szasz is that practiced by psychiatrists who are employed by the state and whose services are for the most part unsolicited by their clients, whereas contractual psychiatry is that practiced with voluntary patients who actively seek out the therapist's help. In Szasz's opinion, institutional psychiatry is a most formidable political weapon and a practice which he believes needs total re-examination [1, p.37].

The field of psychiatry, as well as other treatment fields, is being pulled in two distinctly opposite directions. Juvenile courts are asking treatment programs to help the juvenile delinquents adjust to the existing community and its standards and social institutions, but these same treatment people and programs are being encouraged to ignore the aforementioned objective and to rededicate themselves to the modification of our community and its social institutions that oppress so many of our disadvantaged, both individually and collectively. It therefore becomes quite inescapable that treatment programming becomes tainted with politicalization in spite of efforts to resist or deny this fact.

Since so many treatment personnel are either unaware or partially aware of their impact on the social order, they fail to grasp the political implications of their work. The effect of treatment programs based on the illusion of political neutrality is to either ignore or conceal the existence of social conflict and to preserve the status quo. As Halleck [1, p. 38] describes it, in the terms of psychiatry, which is but one of our treatment components out of the several which are equally vulnerable to his observation:

American psychiatry presently deters social change; it is much more of a repressive social force than it has to be. I do not mean that psychiatrists as a group are conservative or socially insensitive. Rather, I am convinced that their failure to understand the political impact of their work has frequently led them to further the cause of repressiveness. Psychiatrists will do little to bring about social change and will, in fact, fail to provide the most effective treatment for their patients until they realize that all psychiatric intervention is political.

In addition to the abusive potential of treatment programming emphasizing the preservation of the status quo and stressing the individual psychopathology of the juvenile delinquent, there are other elegant examples of the politicalization of the therapeutic process within the juvenile justice system. For example, under the aegis of group therapy or group treatment approaches, whether they are based on psychotherapeutic, psychoanalytic, social work, guidance and counselling, or other psychological concepts, the political nature of these therapeutic approaches can be manifested in a most dysfunctional manner. More specifically, because of its power to

enforce conformity, the group process approach can inculcate in its participants almost any political viewpoint that the institution desires to convey. Within the juvenile justice field, group processes have been used frequently to advocate the necessity for individuals to conform to the regulations of the particular institution and ultimately to the dictates of society. One can, therefore, very legitimately question whether many of the group programs that exist within our juvenile justice system are designed solely for their therapeutic effect or for the discipline that the group process inculcates on the individuals.

Behavior modification is also a treatment approach that can be used as a powerful instrument of social control. In fact, a number of critics have questioned the morality of behavior therapy with respect to its power to control and even coerce the patient, on the basis that there is a dehumanizing effect implicit within these approaches.

Frequently, the individual who receives behavior therapy is a relatively powerless individual who is confined or institutionalized in circumstances where he is under considerable pressure to tell those in authority that he desires to alter or change those behavior patterns that the authorities define as noxious. Thus, the individual may easily be persuaded to request treatments he would not have sought under other circumstances [1, p. 81]. In fact, it may well be quite enlightening to see how successful behavioral modification would be under the normal contractual therapy situations. For if behavioral modification approaches are only, or dominantly, used within a practice of institutional therapy, one could certainly propose many interesting hypotheses relative to the politicalization of this therapeutic approach.

In any event, the most serious political dangers of behavior modification programs, within both the juvenile and criminal justice systems, are that these techniques are more easily implemented in involuntary situations than are the traditional therapeutic approaches. Moreover, these behavioral modification programs are designed to change the behavior of offenders to conform to the expectations of society. Not only does this presuppose that the expectations of our society are correct in terms of values, but it also fails to appreciate and distinguish between the behavior of social dissenters and the behavior of juvenile delinquents or criminals.

Perhaps the ultimate political danger of behavioral modification is that the power and impersonality of these techniques appeal to individuals who desire to control others. Therefore, one of the grave dangers of behavioral modification within our juvenile justice system is that these techniques appeal to people who do not want to examine the complexities of both human behavior and our communities' social institutions. In other words, the behavioral therapies have all the potential of the future drug therapies; they either will liberate or enslave man [1, p.82-83].

Treatment personnel within both our criminal and juvenile justice systems must begin to contemplate more seriously the notion that they are involved in therapeutic programming, which in many instances is postulated more on political motivations than on altruistic and humane motivations. Also, treatment personnel within both systems should become more intimately and progressively informed on the nature of institutional environments and less preoccupied with focusing on the individual pathology of offenders, so that they are in a position to more fully appreciate the stultifying dynamics of the institutional subculture of both our prisons and delinquent institutions. This, in turn, will precipitate the question of whether treatment personnel should accept the status quo of the institutional environment or whether a more progressive position should be taken in which greater emphasis is placed on the reformation and elimination of these aspects of the institutional environment which are cruel, inhumane, and completely antagonistic to the emotional well-being of the offender.

The suffering experienced by individuals in both prisons and delinquent institutions is not peculiar to only a select few, for all must survive in a vicious environment which has stripped them of dignity and has enforced life conditions upon them which are

completely antagonistic to the values of mental health [I, p. 30]. These are conditions we can no longer afford to ignore, for their very presence is indicative of the political and repressive nature of our treatment programming. Perhaps Halleck [I] best summarizes the issue of credibility that treatment personnel within our criminal and juvenile justice systems must address in his following observation:

By participating in the punishment process, even as a healer, I loaned a certain credibility to the existing correctional system. Prison administrators frequently boast about progress in correctional programs by pointing to the number of therapeutic personnel available. Yet, if such personnel are merely available but do nothing to change the dehumanizing aspects of the system, their very presence makes it easier to rationalize oppression within that system. In my work in prisons I did little to change an oppressive status quo. In retrospect I am inclined to believe that, although I helped a number of individuals, my presence as a non-militant, cooperative psychiatrist tended to strengthen the status quo.

In essence, treatment personnel are going to have to address the question of whether their therapeutic efforts designed to correct the offenders' behavioral problems and attitudes really sustain the offender to the point that he can tolerate the process of daily punishment. For the most part, treatment personnel have neutralized both their efforts and programs by their failure to come to terms with their sanctioning and lending of credibility to this entire institutional process. Moreover, most offenders view treatment personnel as being either a willing participant or at best an uninformed naive participant in the politicalization of treatment programming.

### **Administration**

The role that administration plays in the politicalization of our juvenile justice system is both subtle and quite pervasive. For the most part, this role is set by the philosophical beliefs and judgments of administrative personnel. Central to the politicalization process may be the administrative belief that decision making within the juvenile justice system is premised on what is good for the system, not necessarily the system's client. Thus, the plan on which monies are appropriated and used has little to do with the needs of the individuals being processed through the system and much more to do with the issue of system maintenance. Budgetary matters and the appointment of personnel to key managerial positions are resolved in this manner.

Therefore, with institutional programming, decision making, budgetary priorities, and personnel staffing all made within the framework of system maintenance, it does not take a great deal of time for both offenders and sensitive observers of our juvenile justice system to learn not only that decisions are made on the basis of the best interests of the system as compared to the needs of the juveniles, but also that little room has been left for the individuality of the juveniles whom the system theoretically was designed to service and help. Moreover, the preoccupation with individual juveniles conforming to the expectations of our society has generated an entire system of sanctions in which we coerce juveniles to virtue, irrespective of the emotional cost that is personally involved for each juvenile.

Enlightened managerial strategies and practices are rarely, if ever, found within our juvenile justice system, simply because most juvenile court judges and chief probation officers are more preoccupied with such matters as staff loyalty than with genuine program innovation. For an administrator to demand loyalty of his personnel is nothing more than a polite but euphemistic way of demanding conformity to the administration's points of view. This erodes the possibility of any innovative thinking and programming; but more importantly, it becomes an administrative formula for defeat and frustration, as the only beneficiaries of loyalty mandates are the people in power, or in this case, the program administrators of juvenile justice institutions, not the clients for whom the system is theoretically designed to serve.

Another related explanation for the high administrative priority of "loyalty man-

dates," outside of the conformity phenomenon, is that loyalty provides a translatable concept for maintaining the myth of organizational effectiveness. Since most organizations, and particularly those within the juvenile justice system, are interested in maintaining and continuing the myth of their own effectiveness, they must have some leverage over their own personnel; loyalty provides this leverage. Moreover, what better and more palatable way could an administrator politicalize a system than by insisting on his subordinates' loyalty. There is also an instrumental purpose for the administrator insisting on loyalty—it facilitates the managerial levels of the organization in the concealment of their own inadequacies and inefficiencies. The administrators of many organizations live in a perpetual state of crisis, fearing that the inadequacies or derelictions of their organizations may become known and result in their own disenfranchisement by the larger political system. Because of their fears, loyalty becomes the mechanism to control the personnel within the system while representing the great unwritten laws of bureaucracy, one of which is, "Do nothing to embarrass the organization."

Perhaps Korn [2] best describes the organization's crisis of self-knowledge by suggesting the vicious cycle which sustains the perpetual motion of loyalty and conspiracy.

Almost the first thing that the new employee learns is that higher echelons are engaged in a continuous concealment of their own inadequacies. The second thing he learns is that they are prepared to sacrifice his career at the slightest suggestion that he might betray the conspiracy. . . . The defensive efforts required to conceal inadequacies and put off the day of reckoning render the organization more and more inefficient. As inequities and injustices multiply, the knowledge of them spreads, and an inordinate amount of time and energy must be expended to extenuate or explain them away. . . . Staff members who become aware of organizational felonies must be silenced. The most effective technique is to involve them in complicity; the potential accuser must be transformed into a compliant accomplice. . . . In this manner, complicity in the bureaucracy's injustices becomes a precondition to personal advancement: one is promoted if he proves he is "reliable." In this process "trustworthiness" becomes redefined as a demonstrated readiness to betray the public trust on behalf of the organization, while defense of the public and the client is defined as organizational treason.

Another value which all too many juvenile program administrators emphasize is the institution's preoccupation with order and control. So much emphasis is placed on order and control that what few effective treatment programs exist are clearly neutralized by the incompatible environment that order and control creates. This is not to suggest that chaos should reign; however, the overemphasis on order and control precludes the juvenile offender's experimentation with areas of his development that require the greatest freedom for experimentation, qualities which are usually not associated with order and control program mentalities.

In short, one of the major problems confronting our juvenile justice system is that it is under the heel of involuted and bovine bureaucracies. More tragically, these bureaucracies are responsive only to one implacable internal incentive—the perpetuation of their own security and power [3]. Juvenile justice administrators that are representative of this bureaucratic mentality are convinced that they are on the right track and that they have a good thing going. Indeed, they do; it's called maximum ease of program development, and minimum responsibility for these same programs exists within their organizations. The bureaucratic juvenile justice administrator espouses no cause more fervently than that of maintaining the status quo. Moreover, their arsenal of weapons is impressive, including tradition, custom, the established hierarchy, public apathy, and resistance to change, all familiar deterrents to progress which have worked so well in the past [4].

If social reformers hope to neutralize the bureaucratic mentality of many of the juvenile justice administrators, more emphasis will have to be placed on sound

managerial concepts such as planning, organization, goals and standards, audit, measurement, motivation, accountability, and innovation, and most importantly, where and how these strategies are to be applied.

Vast amounts of manpower, money, and expertise have been invested in the development of sophisticated managerial strategies that range from interdisciplinary planning, goal setting, standards, and measurement to profitability accounting, value analysis, and management by objectives. These strategies are working today for thousands of well-run companies; they are not restricted to the industrial marketplace, for they are as applicable to our social institutions as they are to the commercial enterprise. Linowes [4, p.15] has observed

Government officials aren't the only ones who must cope with harrowing questions, perplexing alternatives, organizing decisions. Business executives have been facing them for years—and coming up with much better results. Not because they're smarter, more talented, more dedicated, more imaginative or more of anything else than social managers. They're coming up with successful solutions because they have no other choice. When a company invests substantial resources in a major endeavor and flops, at best it is badly crippled, at worst it goes under. Not so the average social agency. Here dubious programs are too often perpetuated. One rarely hears of a welfare agency going out of business because it's not doing well, or of a hospital administrator, university president or poverty program director losing his job due to lackluster performance.

Business executives have been obtaining better results with their organizations than the executives within the public sphere because of the "no other choice" imperative which compels business executives to focus regularly and repeatedly on the bottom line of the profit and loss statement. Social institutions and public agencies have never been concerned with this net profit figure or its equivalent. To far too many juvenile justice administrators, the net profit concept does not even exist. We must introduce the concept of profit into our juvenile justice system, not in terms of making money, but in terms of fulfilling human needs. The chief purpose for which our juvenile justice agencies have been created is to fulfill human needs. Perhaps one of the reasons these needs have so often remained unfulfilled is that our juvenile institutions have never been required to justify their existence by showing a profit in meeting the human needs of their clientele.

Linowes [4] proposes a socioeconomic-management approach that may well have great applicability to our juvenile justice system. This approach would focus in on fulfillment of needs, pinpoint "profitable" programs, and reject endeavors that are economically, functionally, or humanly impractical. This approach is based on the premise that it makes little difference whether profit performance is gauged in terms of dollars earned or human needs met. The point is that the profitability of our juvenile institutions must be demonstrated, and by means of a system of guidelines, evaluation strategies, controls, and effective measurement techniques, social profit can be equated with business profit. The following managerial rules may well prove useful in achieving a new efficiency and effectiveness in juvenile justice programming.

1. Equate standards and goals to proven human needs of the juvenile justice system's client.
2. Apply funding to juvenile institutions and programs on the basis of results.
3. Implement discretionary funding within juvenile agencies as basis for personnel and executive incentive.
4. Require multidisciplinary planning throughout the juvenile justice system.
5. Establish the concept of social profitability within our juvenile justice system and require human fulfillment audits.
6. Focus more on the "products" or clients that are released from the juvenile justice system to see if they have been prepared for meaningful re-integration into the community.

7. Establish the capabilities of merger, divestiture, and restructuring.
8. Utilize a broader mixture of inputs to improve the performance and delivery service capabilities of our juvenile programming.
9. Create the concept of social competition within our juvenile institutions to promote client motivation.
10. Fix responsibility for more effective management of our juvenile programs.

In the final analysis, our juvenile justice system can no longer afford the bureaucratic administrator who is preoccupied with the maintenance of the status quo, order and control, loyalty and conformity, power and security, and the politicalization of our process of juvenile justice. The youth of our nation are entitled to a more enlightened administrative philosophy than this.

### **Agency Interface**

The processing of individuals through our juvenile justice system is in a large measure determined by the fundamental working and political relationships that exist between the juvenile court and the police, schools, and welfare departments. There are various institutional ties and obligations that each agency incurs in cooperating with another agency; usually these agency obligations are fulfilled by the agencies' amenability towards a particular type of case disposition or some other meaningful demonstration of cooperation. Theoretically, these situations are thought not to occur; however, realistically, the interagency transaction of business within our juvenile justice system is routine. Moreover, there is not the least bit of hesitancy on the part of respective administrators to invoke whatever sanctioning power they might possess to assure the desired cooperation so that their respective desires are fulfilled. [5, p. 57].

. . . the juvenile courts relations with those institutions that control access to "helping" services and facilities are distinctly discretionary and negotiated in character. Bargaining and mutual exchange implicit in the court's dealings with police and schools become explicit in relation with treatment resources. For the court such exchanges offer the strategic advantage of using existing community resources to pursue its treatment goals. But diversion of such resources to meet the court's requests may prove costly for the resource institution. Often this cost will be counted prohibitive unless offset by some service obtained from the court in exchange. Consequently, contacts between the juvenile court and the institutional system of treatment resources are funneled through those agencies that need the exchange services the court can provide.

Basic to the transactions and negotiations that occur within the juvenile justice system is the brokerage role played by the juvenile court and juvenile judge. In other words, the juvenile court judge validates the court's and other institutions' power to coerce and apply sanctions or to engage in less manipulative transactions.

Emerson [5] has observed three distinct ways in which these interagency transactions have most frequently involved the juvenile court: (1) emergency use of the court, (2) appeal to court sanctions, and (3) use of the court as a "dumping ground."

In the first case, the emergency use of the juvenile court, other agencies are bargaining for two general sets of emergency service that their clients require, namely, emergency placement service and psychiatric crises services. The second situation is when appeals are made to the juvenile court's sanctioning power. Perhaps the most clear-cut appeal to coercive sanctioning by the juvenile court occurs when another agency wants the court to invoke neglect or care and protection proceedings against the parents of "problem families." The rationale for this is that the agency seeks the juvenile court's direct and indirect support for their casework efforts with such problem families. Similarly, a threatened neglect petition may be used to deal with families where casework has failed but the agency feels strongly that the child should be removed from the home situation. In these situations, court action is being threatened

to compel the parents to “voluntarily” sign over custody of their children to the case-work agency. In the third case, where the juvenile court is used as a dumping ground, social institutions such as the school and welfare department are really interested in using the juvenile court to eliminate persistently difficult cases. The juvenile court sometimes performs this service by committing the youth to the youth correction authority. In this manner, public agencies that have little discretion in selecting and expelling their clients can ask the juvenile court to become the dumping ground for those cases viewed as being most hopeless or troublesome [5, pp.60–63].

The fact that our juvenile justice institutions do not hesitate to negotiate and sanction one another in the course of their daily business is one thing, but for this negotiation and sanctioning to be so intimately involved with the juvenile client is completely inexcusable. One cannot point to a juvenile justice system that transacts its difficult and time-consuming cases through the strategy and use of a dumping ground philosophy and suggest that this is a system that serves the youth of our nation. Quite the contrary; the dumping ground mentality in which far too many schools, welfare departments and juvenile courts participate is really a strategy that is designed to serve the social agency, not the client.

In short, agency interface is very important and a most necessary part of our juvenile justice system's functioning; it is, however, not necessary that the interface be developed along the coercive, manipulative, repressive, and political dimensions that presently characterize contemporary efforts in this area. Future programming must be based along more positive dimensions, not to mention the urgency and necessity of protecting our youth from their vulnerabilities under the general guise of the bureaucratic strategy, “greasing the wheels to help the many.”

### **Selection and Appointment of Juvenile Judges**

The political implications that surround the selection and appointment of juvenile court judges are potentially devastating as the consequences of this process have far-reaching effects on the function and goals of the juvenile court. The politicalization process does not end with a judicial appointment, but in many ways it only begins there. In many juvenile courts, not only does the immediate court staff provide the juvenile court judge with patronage positions, but also the position of probation officers represents another patronage resource. Also, since the juvenile court judge is permitted the latitude of determining the operating rules and procedures which will govern the functions of his court, one can quickly appreciate the dominance of the political process. Political implications may be greatest in the inherent role of the juvenile court judge as principal administrator, in court and probation matters as well. Within this administrative role, the judge either retains or very selectively delegates the powers of hiring, firing, organizing, and supervising all court staff personnel. In those few instances where these powers are delegated, more often than not the person who receives this authority is still directly accountable to the juvenile court judge. Moreover, the recipient of this delegated authority is generally a carbon copy of the juvenile court judge in terms of philosophy and administrative expectations.

Since most juvenile court judges also assume direct control of the court's budget, the development of all juvenile programming is subject to the judge's approval. Practically, this means that innovative programs are always kept within a certain permissible tolerance of both the juvenile court judge's approval and the approval of the community power structure that the judge represents. Therefore, one can be assured that radical innovation in the philosophy of juvenile court programming will most assuredly not emerge from within the juvenile court structure but will have to emanate from external sources.

Another curious and disconcerting aspect of the selection and appointment of



juvenile court judges is that for the most part it has been the political and legal contacts that have secured most aspirants their juvenile court judgeship. Very few, if any, juvenile court judges have been selected on the basis of demonstrated interest and activity in the treatment and social welfare of children. Moreover, there appears to be no foreseeable change in the selection process for the immediate future.

When any organization or system allows one individual the total power and dominance that a juvenile court judge possesses, while being so intimately tied into a selection and appointment process which is so completely predicated on the influence and approval of the controlling political power structure within that community, it does not take a great deal of time before the juvenile court becomes so completely politicalized that it becomes subservient to the best interests of our communities' youth and preoccupied with the interests that fulfill the aspirations and desires of the people in power.

Since in all of history the benevolent dictator has not emerged with any great frequency, we have no reason to hold out for a benevolent politicalization process within our juvenile court. Therefore, it would not appear as an unreasonable suggestion that future efforts direct their attention towards the neutralization of the political selection and appointment of juvenile court judges. Until we achieve this point, the standards and programming of both the juvenile court and our juvenile institutions will represent a testament to mediocrity rather than to excellence.

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