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Recidivism and Juvenile Offenders: The Role of the Counselor

WILLIAM C. GORDON*

INTRODUCTION

This paper rests on three fundamental assumptions: (1) that the repeat offender constitutes one of our most serious social problems; (2) that this pattern of criminal behavior often begins as a juvenile; and (3) that counselors and classification personnel, who are part of the criminal justice system, would be more effective in breaking this pattern if the system permitted them to enter early in the process and follow a unified course.

A high degree of effort on the part of the criminal justice system is justifiable in order to break the progression of juvenile offenders into a pattern of serious criminal behavior. Such individuals typically engage in multiple and serious offenses, bloating the criminal justice apparatus and tearing at the quality of life with immeasurable harm.

While organizational and political factors may present obstacles

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to establishing a more unified approach to counseling and classification, these problems can be overcome.

To design a unified approach requires an answer to two basic questions: first, how will we identify the potential recidivists who will be subject to this approach; and second, when and in what ways will it operate?

RELATIVELY RELIABLE INDICATORS EXIST TO IDENTIFY POTENTIAL RECIDIVISTS

The need for special intervention is most reliably indicated by the nature of the charge against the juvenile or by the existence of earlier serious offenses. These clearly represent a prologue to a predictable pattern of later criminal behavior. This author, therefore, suggests the mandatory assignment of a member of a special counseling unit to a juvenile who is charged with a serious offense, or who is charged with one or more other offenses which, if proved, would constitute a pattern of delinquency.

Within the resource limits of the special counseling unit, there should also be methods by which court or law enforcement officials can call upon the counseling unit to intervene. For example, an arresting officer may recognize apparent drug use or seriously antisocial behavior, or other circumstances which indicate that special and immediate intervention of the unit is desirable.

INTERVENTION OF THE SPECIAL COUNSELOR SHOULD OCCUR IN ADVANCE OF TRIAL

Normally, the intervention of counseling or other staff personnel generally awaits the specific assignment by a judge following a trial. However, this approach has serious drawbacks.

The ideal time for a counselor to become involved is as soon as possible after the incident occurs. This enables the system to "strike while the iron is hot," rather than wait for it to fall on cold steel.

Early assignment must be carried out with this precaution: the counselor must not take or recommend action with respect to the juvenile that would conflict with due process and other procedural rights. Assignment of the special counselor must not prejudice adjudication of the act for which the juvenile is charged or otherwise strip away rights to full legal protection. On the other hand, early assignment does not result in any more legal problems than a system of intake, or of crisis intervention in advance of trial. As long as proper standards are established and known, assignment of the special counselor should not be delayed for long periods of time.

The counselor's role varies with the stage of the proceedings and because of due process and fairness considerations. However, listed below are some of the things that the trained counselor can do following early assignment.

1. Assuming the magistrate who conducts a preliminary hearing after arrest and before trial finds adequate basis for the charge, he often lacks the background information from which he can determine whether the juvenile should be detained or released while awaiting trial, or whether any conditions should be imposed on such release or detention. The magistrate may not even know whether a juvenile has previously committed a serious act, or he may be similarly unaware of some other fact critical to the question of detention or release of a juvenile awaiting trial. However, a counselor would be able to find out all that was readily available about the juvenile (*i.e.*, prior court history, family information, school attendance, special resources that might have been involved or should now be utilized) functioning in this regard as a skilled "intake counselor." Following the preliminary factual hearing, the counselor would see that this information reaches the court, along with any recommendations for detention or for special conditions to apply to any release (*i.e.*, regular attendance at school, curfew, and a system of supervision under which the counselor is at least kept informed).

2. From the outset, the juvenile knows that the counselor will remain active for the duration of the legal process. This will enable the counselor to establish from the start a "no-nonsense" relationship based on attention to facts, fairness and consistency.

3. If the magistrate finds probable cause and either releases or detains the juvenile, the counselor would follow the juvenile throughout the remaining steps. If the juvenile is released, the counselor's pretrial activity would center on the conditions prescribed by the release. Availability of the counselor for this purpose would encourage magistrates to use this kind of supervision before trial in appropriate cases.

4. If the juvenile is detained, the counselor still assumes responsibilities and takes the opportunity to demonstrate to the juvenile appropriate firmness and concern. For example, if the juvenile is enrolled in a school that will have examinations in several weeks, a study program at the place of detention and possible arrangements for taking the test would be considered. The coun-

selor would also take responsibility to see that a trial on the merits is expedited, particularly if the juvenile is detained.

5. The special counselor would observe the trial so that he or she is aware of the facts.

Assuming the trial court finds that the juvenile committed an offense, the counselor would, if possible, be ready with recommendations to the judge in order to avoid the delay that so often accompanies the time span between the adjudication and dispositional phases of the court proceeding.

This may require a number of preparatory steps on the counselor's part prior to the adjudicative hearing. For example, if evaluation by others is called for, an effort would be made to arrange for this evaluation in a manner that is legally acceptable. This might involve a voluntary arrangement, or possibly intervention by a judge other than the one who is to conduct the trial.

6. During the entire pretrial phase, the counselor has an opportunity to develop a relationship with the juvenile and to demonstrate an awareness and continued interest that is rare in the justice system. For example, suppose that during the pretrial phase a released juvenile with a history of truancy and inattention shows a serious desire to attend school regularly and to do his schoolwork. Early knowledge of this desire would enable the counselor to assess whether and under what conditions this positive pattern could be enhanced, so that if the juvenile is found to have committed the act charged, the counselor could offer some input to the court faced with determining the sentence. In making this assessment and any recommendations to the sentencing judge, the counselor would be very much aware of the seriousness of the offense and the risks involved in following the recommendations since the counselor would have a much greater accountability for ultimate results.

Before examining, in greater detail, the counselor's role during and after trial, some mechanical problems involved with the early assignment of the counselor should be mentioned. One situation in which early intervention would take place is where the juvenile has a prior record of the type of act triggering assignment of the special counselor. In many jurisdictions, the necessary information can be obtained from a computer data bank. When this source is not available, the juvenile court filing system and routine questioning of the juvenile and his or her parents should be adequate to indicate past offenses. If a magistrate releases the juvenile following the preliminary hearing without knowledge of whether past offenses have occurred, it is recommended that the release be conditioned upon a further file and background check.

Should such a check result in assignment of the special counselor, the juvenile would return for a subsequent bail hearing at which the counselor's recommendation would be considered.

Early intervention also requires that the assigned counselor is not already overburdened with existing cases. Regardless of time, whether day or night, the counselor selected should be immediately available and should remain assigned throughout the process. It further requires a system in which the counselor has an important voice even though the counselor may not be a part of either the judicial or correctional components of the system. A model for the special counseling unit will be discussed later.

THE ASSIGNED COUNSELOR CAN HELP TO UNIFY THE APPROACH TO THE JUVENILE

In most systems, a new counselor is assigned to work with the juvenile following adjudication, even if other counselors were involved earlier in the process.

Usually, the counseling staff is initially involved following the trial. Sometimes, a long period of evaluation occurs. The juvenile may be placed on probation with a court-related counseling staff; he may be placed in a juvenile training school or other institution, where he is often reevaluated for classification purposes, and when the juvenile leaves the institution, he or she often is assigned to "after-care" counselors who rarely would have been involved at earlier stages.

When intervention does occur through court assignment after trial, details and insights that earlier assignment would have revealed may go unnoticed or may be lost or obscured in the communication process. The greater the number of juvenile matters in a jurisdiction, the more inarticulate the system of communication tends to become. It often must be limited to written reports and they may be stilted, full of opinion, or ignored by other "busy" people to whom the juvenile is assigned.

As a juvenile moves from hand-to-hand through the process, this weakness in communication shatters the integrity of the system in his eyes. Often, threats or promises are voiced that are never carried out because the communication linkage between the various segments is weak, or because the latest segment does not feel constrained by those preceding it. The reason for this is partly organizational, and partly due to the nature of our legal

system. Counseling units and classification personnel are often attached to courts, to the correctional system or to public social service agencies, and each body may have its own "classification" or evaluation system. The counseling and classification functions of each may begin and end within the confines of their particular jurisdiction.

The nature of our legal system tends to cause compartmentalization. In deciding the facts of a particular offense—that is, whether the past alleged conduct did or did not occur—these jurisdictional limits are necessary and desirable. From the standpoint of working with a juvenile in trying to influence future conduct, the same compartmentalization is not desirable. It should be retained for the adjudicative steps; it should not be retained for those counseling and evaluative steps that deal with prevention of recidivism.

A juvenile "going through" the justice system should progress along a definite course and not become entangled in a maze of different approaches, with little linkage between them. Nor should the juvenile face a system that ignores opportunity to accomplish the ultimate aim, which is to fairly adjudicate a juvenile charged with an offense and, if he is found to have committed it, to help prevent a reoccurrence.

MULTIPLE AND DUPLICATIVE APPROACHES ARE COSTLY AND OFTEN INCONSISTENT AND INEFFECTIVE

We have already discussed how the early intervention of the special counselor fills a void in the usual process, and how it can provide valuable assistance to the magistrate determining bail terms at a preliminary hearing or to a judge determining sentencing after adjudication of delinquency.

If the juvenile is released on probation, it often happens that counseling and supervision are delayed by the formality of assignment and the need to become familiar with the facts, and that an overworked counselor has to fit each case, no matter how serious, into an overcrowded schedule. In the special unit case, probation begins without delay and the counselor has no excuse for not knowing what is "going on" with the juvenile.

If the juvenile is placed in an institution, the same benefits are available. For example, normally if a court commits a juvenile to a "training school," the institution will make its own classification. A court intake or probation counselor seldom has a direct voice in that classification or in the kind of "contract" established with the juvenile which may set the pace of the juvenile's progression through the institution.

A member of the special counseling unit would have duties far broader than direct counseling, helping to make sure that the linkage between the different parts of the system were secure and functioned with integrity. One duty, for example, would be to assist in expediting the requisite hearing. The saying that "justice delayed is justice denied" applies not only for the individual charged with an offense but for all of us, since delay impairs the certainty with which the system appears to operate in the eyes of the juvenile and the general public.

Additionally, the classification process frequently requires a substantial period of time in which juveniles are mixed together, regardless of the nature of their offense or their potential interaction with one another. The direct input of a counselor assigned to the juvenile from the beginning can speed the classification process and provide suggestions as to any special conditions that should be imposed. Within practical limits, the institution's classification unit should be available upon request of the special counselor at earlier stages in an effort to limit duplication.

The prevalence of compartmentalization often leads to the correctional institution's giving little weight to the act which the juvenile has committed, or the details of what occurred between arrest and trial. This leads to great inconsistency in the actual sentence imposed on a juvenile, particularly if the juvenile justice system utilizes indeterminate sentencing. The counselor familiar with the juvenile's background and his performance to date would have a meaningful voice in the classification at the institution and his later progress.

The counselor would be aware of the programs established for other juveniles within the institution, and would make recommendations that would not create fundamental inconsistencies with others in the institution. Within such broad institutional limits (which the special staff and the juvenile must realize will have to be observed), the counselor should have a significant voice in the program established for the juvenile.

For the period of institutionalization, "cottage supervisor" and other staff personnel must keep the special counselor informed about the juvenile's progress. The special counselor should be consulted about special passes or any significant matter pertaining to the juvenile, and must retain contact with the juvenile to demonstrate the system's continuing awareness and interest. The

terms under which the juvenile is released on "after care" would also be coordinated closely with the special counselor.

SUMMARY

A juvenile is arrested by one part of the system; brought before a magistrate, and released or placed on detention. He or she is tried by a third party, and if found delinquent, placed on probation or committed to a training school or other institution. Finally, upon release, placed under the jurisdiction of after-care counselors.

In such a system, it is rare that each segment will pass along all the important signals to each other and that each will act in a consistent manner. These defects are most glaring in jurisdictions with the most pressing problems. Administrative paraphernalia must gear up at each phase with much repetition. Sound ideas are presently delayed beyond the point of time when they are of the most benefit to the system and to the juvenile.

Such diffusion of responsibility makes it difficult to establish accountability for results or to measure effectiveness of the system itself. So many segments interact that it is difficult to assess failure, and records on recidivism are not only difficult to obtain, but fraught with the difficulty of assessing responsibility for failure.

There is no substitute for someone with personal knowledge of the facts interfacing with the system at each stage, helping to assure coordination and speed, and having some accountability for the results.

Instead of a multiple approach, in which much duplication and slippage results, a single counselor can be made responsible for following the juvenile through the system and for making sure the system itself "fulfills its contract" to society and to the individual juvenile. This requires that the counselor be in a position to draw upon other parts of the criminal justice system in order to avoid duplication and delays. The assignment of this amount of responsibility suggests that a special counseling unit be established, and that there are some advantages in having it separated from both the court system and from the correctional system (but with obvious need to coordinate its activities with them and to recognize their special requirements and functions).

The unit must be chartered for a long enough period of time that its effectiveness can be measured. It should consist of skilled persons, who are familiar with sound counseling techniques and legal procedures and limitations. The counselors should not be limited by educational qualifications. (For example, the unit may include specially trained persons of proven effectiveness in work-

ing with drug problems, who may not have degree qualifications.) A counselor should have sufficient time to handle each assigned case with appropriate intensity. There must be skilled supervisory personnel within the unit, with appreciation for the need to keep in close touch with each case and to keep adequate records for accounting and evaluative purposes.

The unit may require changes in existing structures and should be organized in a way that allows it to make use of correctional and court personnel while at the same time retaining its independent status.

If counselors are assigned from other agencies to the special unit and the unit is established for only a limited time, the assigned staff should receive appropriate protection against job loss if it later terminates. Some federal funding might be obtained for a multi-year trial period during which the unit would cement the relationships with other parts of the system.

Above all, while the special unit is meant to work with the rest of the system, it must have sufficient power to act effectively and to be accountable for results.

