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Birthing Out Delinquents: Alternative Treatment Options For Juvenile Delinquents

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By: Jerome R. Price

The juvenile court docket is overloaded with interesting, but unfortunate, life chronicles of juveniles who have engaged in delinquent behavior resulting in institutionalized punishment. Seventeen year old Tee¹ is one of the individuals that fall into this category. On January 7, 1988, Tee was born into a dysfunctional family. He was greeted at the hospital by his mother who had a drug and alcohol problem, two additional children from two different men, and a father who wanted to give his son the best possible life. Unfortunately, Tee's father only played a limited part in his upbringing. Throughout his elementary and middle school years, Tee was an average student who allowed others to pressure him into doing things contrary to what children his age should have been doing, such as using vulgarity, skipping school, smoking, drinking, etc. At the age of fourteen, Tee's behavior began to spiral out of control when he was arrested for habitual truancy during high school. Tee saw his arrest as a joke and, as a result, he continued to live a delinquent lifestyle, dropping out of high school at the age of fifteen. To help combat Tee's behavior, the juvenile court sent him to a boot camp in another city away from his family and troubled friends for approximately two years.

Upon completion of boot camp, Tee returned home to live with his mother. The change in his behavior looked promising, but was short lived. By the age of sixteen, Tee had been arrested for possession of both crack cocaine and marijuana, driving without a license, and driving stolen vehicles. Now, the question is: what should the juvenile justice system do with Tee? Should there be a continued attempt to rehabilitate him in the juvenile system or should he be transferred to the adult criminal system? This question about Tee's disposition and others like him has caused an uproar in various communities, prompting community members to wonder if the juvenile justice system is too lenient and should be reformed to handle serious repeat offenders.

Tee's life resembles that of many juveniles housed and penalized by the juvenile justice system. To resolve the issue of how to treat serious repeat offenders, many legislatures believe these juveniles should lose their juvenile status and be waived into the adult criminal system.² Waiving juveniles into the adult system means they stand trial as criminal defendants and receive sentences comparable to those of adults tried for the same crime,³ but this does "little to rehabilitate juvenile offenders."⁴

This article challenges the notion that children cannot be rehabilitated. It focuses on the fact that there are numerous programs and alternatives available for states to implement. In addition to identifying various alternatives, this article infers key factors to rectifying this problem: accepting the fact that there is a problem, getting to the root of the problem, finding a reasonable and efficient mechanism to deal with the problem, and attacking the problem from the outset. By accepting these fundamental elements as a guide, legislatures, community activists and political leaders are able to realize the dangers of transferring juveniles into the adult system. Being aware of these elements can prevent the decision-makers from suddenly changing the face of the juvenile justice system forever. The reformers took a stance for rehabilitation over punishment, but now the juvenile system is well on its way to becoming a punitive system aimed at punishing juveniles more harshly

than the progressive reformers intended.⁵

Part I of this article gives a historical framework as to how the juvenile justice system emerged, and how it has changed over the years. Part II examines various alternatives that states can employ to curtail juvenile delinquency from the outset. Part III uses *The Warrior Lawyer: Powerful Strategies for Winning Legal Battles* as a guide to analyzing the issue of juvenile delinquency in conjunction with the available alternatives.

The Evolution of the Juvenile Justice System: An English Backdrop for the Establishment of the Juvenile Justice System

From the outset, "society has treated children differently than adults."⁶ Prior to the nineteenth century, children under the age of seven in England were not considered responsible for their criminal acts. However, at the age of seven children were not only considered responsible for their criminal actions, but were tried as adults "suffering the same consequences for their behavior."⁷ This ideology was harsh for any child to endure; however, depending upon the crime committed, the child could escape the adult penalty if the particular crime were so reprehensible that the child could not appreciate the ramifications of his or her actions, as with murder.⁸ This limitation recognized that young children have not developed enough cognitively to understand that not everything they see, whether within or outside of their community, is legal. However, the English emphasized that at a certain age a child is responsible for his or her actions, including showing disobedience or disrespect to one's parents.⁹

By the early 1800s, Sir John Eardley-Wilmot, an Englishman, concluded that it was time to change the way children under English law were punished.¹⁰ His proposal separated the children and the adults into two distinct tribunals.¹¹ The purpose was to avoid attaching the "stigma and contamination" of prison to children prosecuted under the current criminal justice system, "the publicity of trial, and all the evils which infallibly result from early imprisonment."¹² Like many supporters of the original juvenile justice system, Sir Eardley-Wilmont believed "that if children were placed in prisons with hardened adult criminals, they would have little chance to become productive law abiding citizens."¹³

Reform Schools and "Houses of Refuge"

To remove and rehabilitate juveniles involved in a delinquent lifestyle from the community before they committed any serious or violent offenses, institutions called "Houses of Refuge" were erected.¹⁴ These houses were created for juveniles who lived in an environment that produced bad habits. These habits were considered a setback for juveniles trying to escape the pressures of committing serious offenses.¹⁵ The first House of Refuge was built in 1825 in New York City, followed by two additional facilities in Boston in 1826 and Philadelphia in 1829.¹⁶

In 1892, Elbridge T. Gerry, president of the New York Society for the Prevention of Cruelty to Children asserted that "poverty, inadequate housing and neglectful parents" were the causes of juvenile delinquency.¹⁷ The idea that poverty, inadequate housing and neglectful parents caused juvenile delinquency gave reformers the necessary ammunition to create "alternatives to incar-

cerating children” with adult criminals, like Houses of Refuge.¹⁸ While some reformers supported the creation of Houses of Refuge, others believed that it was simply a political move “to repress the impoverished in general and immigrants in particular.”¹⁹ Though the reasons for creating Houses of Refuge may be debatable, the main objective of removing juveniles from the streets before they engaged in serious crime was accomplished; thus, the reformers achieved their desired outcome.

Following the success of the Houses of Refuge, the reformers believed that it was time to not only rehabilitate the juveniles, but to educate them and teach them life skills that would put them in a position to compete for the occupational and trade positions available in their community.²⁰ This innovative idea was the launching ground for state reform schools in Massachusetts in 1847, New York in 1849, and Maine in 1853.²¹ These schools were founded on strong principles:

- (1) Young offenders must be segregated from the corrupting influences of adult criminals, (2) Delinquents need to be removed from their environment and imprisoned for their own good and protection; reformatories should be guarded sanctuaries, (3) Delinquents should be assigned to reformatories without trial and with minimal legal requirements . . . (4) Sentences should be indeterminate, so that inmates are encouraged to cooperate in their own reform and recalcitrant delinquents are not allowed to resume their criminal careers, and (5) Reformation should not be confused with sentimentality.”²²

Reform schools remained in existence until the inception of the first juvenile justice system.

America’s First Juvenile Justice System

By the close the nineteenth century, America was well on its way to transforming the way juveniles were tried in its court system. In 1899, the state of Illinois changed the face of juvenile law by instituting the first juvenile justice system in America.²³ The nation increasingly accepted the idea of having a separate institute to adjudicate juveniles, and “by 1925, all but two states had established juvenile courts.”²⁴ The concept behind the initial juvenile justice system was to focus on the juvenile instead of the offense.²⁵ By making the juvenile delinquent the focal point, the progressive reformers addressed the childrens’ needs individually as opposed to collectively, thereby allowing the state to “act in the best interest of the child.”²⁶ The progressive reformers believed that children should be treated differently than adults due to their physical, mental and emotional immaturity, which placed them in a position requiring parental nurturing.²⁷

Parental nurturing in the juvenile justice system took root in a doctrine called *parens patriae*, which meant “the responsibility of the state to care for persons who are unable to care for themselves or whose families are unable to care for them.”²⁸ Under the doctrine of *parens patriae*, the progressive reformers followed the conclusions of Elbridge Gerry²⁹ that delinquency resulted from social circumstances such as poverty, parental neglect and urban plight.³⁰ The court assumed jurisdiction over them in three different situations:

- first, where there has been child abuse and neglect which endangers the child (the “Abuse Jurisdiction”); second, when a child has violated a criminal law (the “Delinquency Jurisdiction”); and third, when a child commits some type of behavior that is “inappropriate,” although would not be considered criminal if committed

by an adult, such as school truancy (the “Children in Need of Supervision” (CHINS) Jurisdiction).³¹

Changes in the Juvenile Justice System

By the 1930s, the juvenile justice system’s old philosophy of treating children like adult criminals had been abolished, and its new philosophy of rehabilitation was now the governing principle of the juvenile justice systems in the United States.³² At first, this was achieved primarily by the states, with the federal government having only a minuscule function in developing policy.³³ However, in 1938, the federal government made its imprint on the juvenile justice system by enacting the Federal Juvenile Delinquency Act, which granted the government jurisdiction to prosecute juveniles in federal court.³⁴ Congress granted federal jurisdiction over juveniles who committed certain crimes, thereby giving “the Attorney General unlimited discretion in deciding whether to offer prosecution as a juvenile to any defendant under the age of eighteen not surrendered to state officials or charged with offenses punishable by life imprisonment or death.”³⁵

Changes in the 1960s

Up until the 1960s, the juvenile justice system had managed to escape criticism from the government and the public, but that era came to a close at the beginning of the 1960s.³⁶ Criticism during this decade “focused largely on the procedural infirmities of the juvenile justice court.”³⁷ In 1965, the President’s Commission on Law Enforcement and the Administration of Justice was established to analyze the structure and implementation of procedures in the juvenile justice system.³⁸ This Commission felt that arresting children and referring them to treatment programs was not helping to rehabilitate delinquents, and that the focus should be on preventing juvenile delinquency.³⁹ The President’s Commission believed that a new approach to rehabilitate juveniles was in order.⁴⁰ To assist the juvenile justice system in promoting its philosophy of rehabilitation, the commission offered seven recommendations:

- (1) The formal system should be used only as a last resort, (2) Efforts to narrow the juvenile court’s jurisdiction should be continued, (3) Procedural justice for the child should be instituted, (4) ...expanded use of non-judicial community agencies, (5) For children for whom detention is made necessary only by the unavailability of adequate parental supervision, there should be low security community residential centers and similar shelters, (6) Legislation should be enacted restricting both authority to detain and the circumstances under which detention is permitted, and (7) Correctional authorities should develop more extensive community programs providing special, intensive treatment as an alternative to institutionalization for both juvenile and adult offenders.⁴¹

After making its recommendations, the President’s Commission contacted the National Council on Crime and Delinquency to run a study on various state and local juvenile correctional facilities to determine who was being placed in those institutions.⁴² The survey unveiled a startling demographic: the juveniles incarcerated in these facilities were nonviolent delinquents “accused of non-criminal conduct.”⁴³ This discovery prompted a recommendation from the National Council: “[N]o child should be placed in any detention facility unless he is a delinquent or alleged delinquent and that there is a substantial probability that he will commit an offense dangerous to himself or to the community or will run away pending court

disposition.”⁴⁴

Following the recommendations from the President’s Commission and the National Council on Crime and Delinquency, the juvenile justice system underwent strict scrutiny regarding juvenile punishment. By the mid-1960s the Supreme Court had made decisions that would alter the way children in the United States could be tried in the court system. In *Kent v. United States*, a sixteen year old boy charged with “housebreaking, robbery, and rape” was waived to the adult court by a juvenile court judge without justification.⁴⁵ This transfer was deemed invalid by the Supreme Court.⁴⁶ Justice Fortas, writing the opinion of the Court, held “that the waiver hearing is an extremely important proceeding and, accordingly, the juvenile must be given an opportunity for hearing and reasons for granting a waiver order.”⁴⁷

After extending the due process clause of the constitution to juveniles in *Kent*, the Supreme Court extended it even further in another landmark case one year later, *In re Gault*.⁴⁸ A fifteen-year-old boy was arrested for making lewd remarks to a neighbor while on probation, and sentenced to a state industrial school until the age of twenty-one.⁴⁹ The court’s holding in this case “granted additional due process rights to juveniles facing incarceration, including notice of the charges, right to counsel, right to confrontation and cross-examination, and the privilege against self-incrimination.”⁵⁰

Changes in the 1970s

After the Supreme Court established constitutional due process rights for juveniles, Congress enacted the Juvenile Justice and Delinquency Prevention Act of 1974.⁵¹ The purpose of the Act was to amend the Federal Juvenile Delinquency Act by:

- (1) Changing the definition of juvenile, (2) Requiring judicial approval before prosecuting a juvenile as an adult, (3) Restricting the number of offenses for which a juvenile could be tried as an adult, and (4) Providing for federal prosecution of juveniles when no state would exercise jurisdiction over the offender.⁵²

These amendments gave federal prosecutors three situations in which they could invoke jurisdiction over a juvenile under the Federal Juvenile Delinquency Act: “(1) [I]f a state lacks, or refuses to assert jurisdiction over a particular juvenile offender, (2) if the state’s programs do not adequately meet the needs of the juvenile, or (3) If there is a substantial federal interest in prosecuting the particular defendant.”⁵³ Once jurisdiction is established by the prosecutor, a juvenile may stand trial as an adult three different ways. First, the juvenile may consent to stand trial as an adult; second, if the child is over a certain age, charged with a felony or drug offense, the Attorney General may request jurisdiction; and lastly, if a juvenile offender is at least sixteen, charged with a serious offense, the prosecutor may invoke a “mandatory transfer provision,” establishing jurisdiction.⁵⁴

Waivers

By the close of the 1970s, the juvenile justice system transformed from a rehabilitating system into one that punished juveniles to the full extent of the law, stripping the court of its juvenile safeguards and allowing for transfers to the adult court.⁵⁵

The ability to transfer juveniles into the adult court was achieved by decreasing the minimum age required to give the adult criminal system jurisdiction over the juvenile.⁵⁶ The adult court can invoke jurisdiction over a juvenile by either a judicial waiver, legislative waiver, or prosecutorial waiver.⁵⁷

A judicial waiver is a method of transfer that gives a juvenile

court judge the authority to transfer a juvenile delinquent to the adult court for adjudication; however, the judge’s discretion is guided by statutes which “limit the judge’s decision to juveniles of a minimum age who have been charged with specific offenses.”⁵⁸ Legislative waivers, on the other hand, are state statutes that automatically remove certain offenses from the juvenile court to the adult court without interference from the judge or the prosecutor.⁵⁹ By contrast, prosecutorial waivers give the prosecutor the discretion to proceed with formal criminal charges in the adult system.⁶⁰

The problem with waivers in today’s society, where the media reports a surge of juveniles committing serious crimes,⁶¹ is that it places a burden upon court officials to determine which juveniles are really dangerous and capable of committing serious acts of violence. Placing this type of discretion in the hands of officials could cause additional problems within the system, such as discriminatory dispositions. The current literature seems to find “little evidence that use of waivers deter juvenile crime.”⁶² This indicates that waivers fail to address the root of the problem, and therefore are incapable of effectively addressing juvenile delinquency.

Alternative Programs for Juvenile Delinquents Integrated Serious and Habitual Juvenile Offender (SHJO) Programs

Finding effective programs to rehabilitate juvenile delinquents has not been an easy task for state legislatures, political leaders, judges, or even parents. As a result, many states have developed juvenile justice systems aimed at balancing the traditional philosophy of rehabilitation with the current philosophy of punishment.⁶³ The argument for rehabilitation is that children who commit criminal acts have the propensity to be rehabilitated through appropriate interventions targeted at meeting their needs, as opposed to threats of punishment by the state’s penal system.⁶⁴ Proponents of a punitive system, on the other hand, argue that children must be deterred from committing future criminal acts and that by punishing them through incapacitation they become individuals who will take responsibility for their actions. In an effort to blend the rehabilitation and punishment aspects of the juvenile justice system, states have developed what are called Integrated Serious and Habitual Juvenile Offender programs (SHJO).⁶⁵

SHJO programs were designed to treat chronic offenders; treatment for these juveniles meant a punishment severe enough to compensate for the wrong done, but not so harsh that it would stifle the potential for rehabilitation.⁶⁶ These programs share five key characteristics: “(1) An initial period of incarceration or detention, (2) The use of small facilities, (3) An emphasis on accountability, (4) Intensive supervision throughout the program, and (5) A substantial offering of rehabilitation services.”⁶⁷ When all five components are connected, society’s probability of having a rehabilitated individual re-enter the community increases drastically because each of the five components serves a distinct purpose in the process.⁶⁸ The initial period of incarceration is used to satisfy the goals of punishment and deterrence and to emphasize that the juvenile is accountable for his actions.⁶⁹ The use of small spaces may help to create an atmosphere that is open and friendly for the juvenile, giving him or her an opportunity to have time alone or in a small group to think and/or talk about the act committed. Lastly, the intensive supervision element works in conjunction with the accountability component of the program because it serves as a continued punishment for the juvenile, and ensures “a continued contact with the offender so that rehabilitative services may be delivered effectively.”⁷⁰

Therefore, the opportunities available to juveniles through SHJO programs far outweigh the get tough mantra that is so popu-

lar in today's society.⁷¹ These programs offer delinquent children "counseling, job training, job placement, drug abuse rehabilitation, education, and other services," none of which the adult criminal system offers to juveniles waived into its court.⁷² If we want to change the recidivism rates of juveniles, it will take programs like this, which couple intellectual empowerment and punishment.

Pretrial Diversionary Programs

Pretrial diversionary programs subscribe to the same concept employed by SHJO programs in that they focus on blending rehabilitation with punishment.⁷³ This blend of rehabilitation and punishment imposes responsibility upon the juvenile for his or her own actions, while addressing "the state and federal legislative requirements of restitution, community service, and parental responsibility with counseling and continued education."⁷⁴ These programs offer juveniles charged with criminal offenses the option of having their cases "referred to community agencies while their criminal complaints are held in abeyance."⁷⁵ The benefits to states who implement this program are twofold: the program is cheaper than traditional incarceration and it addresses the main objective of the juvenile justice system, which is to "remove as many juveniles as possible from the 'revolving door' syndrome, thus reducing recidivism."⁷⁶

Before a juvenile can participate in this program, a probation officer makes an initial decision as to whether any action should be taken against the juvenile and, if so, whether that action should be formal or informal.⁷⁷ Formal proceedings place the delinquent under the jurisdiction of the juvenile court, where he or she could be incarcerated, placed on probation, or assigned to participate in a court-ordered program.⁷⁸ Informal proceedings, such as pretrial diversionary programs, are special programs instituted by the court and, if completed successfully, can erase the juvenile's criminal record.⁷⁹ There are two types of diversionary programs offered: Statutory Pretrial Programs⁸⁰ and Community Volunteer Pretrial Programs.⁸¹

Statutory Pretrial Diversionary Programs are considered informal probation, which place juveniles under the supervision of a probation officer.⁸² This program requires the juvenile and his parents to sign a contract, with terms not to exceed six months, describing the behavior the juvenile will be expected to adhere to while on probation; this list includes but is not limited to restitution, gang association, continued education, and curfews.⁸³ At the completion of the contract, the juvenile cannot be tried again for that particular criminal act, but his or her record will show the arrest and informal probation. The benefit is that it will not affect the delinquent's chances of being admitted into college or serving in the military.⁸⁴ On the other hand, should the delinquent fail to complete the program successfully, he or she will face the probability of formal court proceedings.⁸⁵

By contrast, the Community Volunteer Pretrial Program places the juvenile back within the community in which he or she committed the offense as a form of accountability and rehabilitation.⁸⁶ The underlying theme of this program is to "hold the juvenile responsible and accountable for his actions, involve the juvenile's parent(s) in the program, stress community involvement, provide supervision and counseling if needed, and stress the importance of education."⁸⁷ The benefit to participating in this particular program over the other pretrial program is quite simple: if successfully completed there is no indication on the juvenile's record that he or she has been under any type of informal or formal court sanctions.⁸⁸ However, like the Statutory Pretrial Program, if the juvenile fails to successfully complete the program, he or she faces the probability

of enduring a formal court proceeding.⁸⁹

Pretrial diversionary programs offer the state another option to address the issue of juvenile delinquency. Both pretrial programs avoid the mistake of labeling a child a juvenile delinquent at a young age, a label which can subject the child to a self-fulfilling prophecy.⁹⁰ These programs are not the final answer to this problem, but they do help to reduce the recidivism rates of juveniles by blending rehabilitation with punishment.⁹¹

Boot Camps

Juvenile boot camps originated in 1985 in New Orleans, Louisiana.⁹² The concept for developing juvenile boot camps stemmed from the objectives of adult boot camps: deterrence, incapacitation, rehabilitation, and cost-control.⁹³ To achieve those goals, the juvenile boot camps had to adopt the elements of traditional boot camps, such as: "a military-style environment, separation of boot camp participants from regular prison inmates when they are housed at collocated facilities, the participant's perception that boot camp is an alternative to a longer term of confinement," and "some hard labor."⁹⁴ These goals appeared to have the potential to change the lives of troubled youth. After analyzing the elements associated with boot camps, the Office of Juvenile Programs developed the criteria for the program dealing specifically with the philosophy of rehabilitation: enhancing the juvenile's perspective on life through education and life skill initiatives.⁹⁵

Boot camps were founded to help individuals by placing them under military type conditions,⁹⁶ but the effectiveness of these boot camps in improving the lives of juveniles and reducing recidivism rates is not supported by empirical evidence.⁹⁷ Their success can only be measured by analyzing the behavior of the juveniles released from these facilities, and not by assumptions made by supporters of juvenile boot camps.

Family-Based Initiatives

The family is the foundation on which a child builds morals and a system of values. It is also the unit that orchestrates social harmony, discipline, self-esteem, and a host of other valuable assets that one needs to become prominent and socially acceptable members of society, but without the family, one is easily led astray. To assist in helping families cope with juvenile delinquency, two types of programs have been developed: "those that focus on training parents in family management techniques and those that provide an array of supportive services such as child care and/or medical and social services to socially disadvantaged families."⁹⁸

Parental training programs emerged in the 1960s as a result of child therapists recognizing that disciplining children and managing their behavior began at home.⁹⁹ Not correcting delinquent behavior can give a child the indication that his or her behavior is appropriate. Although parental training programs may seem like the answer to solving the problem of juvenile delinquency, there is "scant evidence concerning its effectiveness as a primary prevention strategy."¹⁰⁰ On the other hand, research does support the notion that "siblings of behavior-disordered youths were less likely to exhibit problem behaviors and delinquency following intervention than siblings of comparison youth."¹⁰¹

In addition to teaching parents how to deal with behaviorally challenged children at home, family support programs have also been implemented to assist families with obtaining the necessities needed to run the family, such as day care, counseling and medical necessities.¹⁰² Offering these services to families who could not otherwise afford them gives those familial units the strength and courage to excel beyond their current position.¹⁰³

Research shows that by supporting at risk families, children born under weight are able to overcome the “cognitive and parenting problems” associated with low birth weight.¹⁰⁴

Developing programs to build the family is a start to changing the direction of juvenile delinquency. If the home is the place where behaviors are formed and nurtured then the family must do more to curtail delinquent behavior.¹⁰⁵ The family is an integral part of a person’s life and it should be given the credit it deserves.

School-Based Initiatives

Schools are considered an important socializing experience in a child’s early childhood and adolescent years.¹⁰⁶ Although steps have been taken to make schools a safe haven for children, there is only so much that principals, teachers, and teaching assistants can do. Research confirms this by indicating that “children with a low IQ, disability, poor attitudes toward school and school failure are all related to and often precede official and self-reports of delinquent behavior; however, this behavior can be minimized if not eliminated if the child’s environment and mind can be manipulated to focus on academics.”¹⁰⁷

To help children focus on academics as opposed to delinquency at an early age, preschool programs such as Project Head Start have been developed to give children a solid foundation for preventative intervention.¹⁰⁸ Head Start programs were created as part of former United States President Lyndon Johnson’s war on poverty.¹⁰⁹ The objective of this program was to reach the impoverished neighborhoods of the United States in hopes of educating high risk children while providing them with invaluable services.¹¹⁰ Research in this area suggests that Head Start has made significant changes in the lives of high risk children; participants have shown a “short-term improvement” in IQ levels “and academic performance and long-term improvements in school functioning.”¹¹¹

Educating juveniles is imperative if our goal in society is to stop the cycle of delinquency. Education gives an individual the ability to make rational choices, critically analyze situations, and decipher between right and wrong.¹¹² Children who participated in Head Start had a higher graduation rate and lower grade retention rate, indicating that if children can be reached early, the doorway to success remains open.¹¹³

Office of Juvenile Justice and Delinquency Prevention Mentoring Program

Mentoring children from a disadvantaged background is critical. It affords children an opportunity to see that there are people in their community who want to show them love and affection; it is this type of caring that has the potential to change a juvenile’s life forever.¹¹⁴ The office of Juvenile Justice and Delinquency Prevention defines mentoring as a “one-on-one relationship between a pair of unrelated individuals, one adult and one juvenile, which takes place on a regular basis over an extended period of time.”¹¹⁵ This office created the Juvenile Mentoring Program (JUMP) to promote education and discourage juvenile delinquency following amendments to the Juvenile Justice and Delinquency Act of 1974.¹¹⁶ All participants in the JUMP are volunteers from the community, with occupations ranging from police officers to college students.¹¹⁷ The mentees come from various ethnic backgrounds, range in age from five to twenty, and can be found either in a detention center, school, or at home because they have dropped out of school.¹¹⁸

JUMP and other mentoring programs, such as Big Brother/Big Sister, have experienced great success with juvenile

delinquents.¹¹⁹ Research indicates that delinquents mentored on a one-on-one basis were “less likely to initiate drug and alcohol use, resort to violence”, more competent about their schoolwork, skipped fewer classes, increased their grades, and improved relationships with their peers.¹²⁰ The Office of Juvenile Justice attributes this success to two elements: the screening and training of its volunteers and supervision of each pair of individuals by a case manager.¹²¹ One can conclude that if states really wanted to curtail juvenile delinquency within their jurisdictions, it is going to take programs, such as JUMP and Big Brother/Big Sister, that attack the problem at root while finding permanent solutions to address it.

Teen Court

Teen court is a community based initiative aimed at using peer influence to deter juvenile delinquency.¹²² It is rooted in the philosophy that teenagers are less likely to commit delinquent acts when they know their peers will judge their behavior and impose consequences.¹²³ The distinguishing characteristic is that teen court is run exclusively by teens, with the exception of the judge and bailiff.¹²⁴ To appear before this court a juvenile must admit that he or she has committed the alleged crime, which gives the “police department, sheriff’s office, school district, or juvenile court” the authority to refer the delinquent to the informal proceedings.¹²⁵ To be eligible the juvenile is typically between the ages of ten and eighteen.¹²⁶

Peer influence in the juvenile justice system has proven to be a successful initiative throughout the United States,¹²⁷ lowering recidivism rates to as low as five percent in some cities.¹²⁸

The benefits to having a teen court in each state are numerous, including but not limited to “encourag[ing] a sense of responsibility and awareness of the consequences of criminal behavior, ...impart[ing] a positive attitude and respect for the law and authority, and ...educat[ing] as well as providing an opportunity for juvenile offenders to develop and sharpen interpersonal and communication skills required of productive members of society.”¹²⁹ Teen courts are another alternative for states seeking to reduce juvenile delinquency.

The Warrior Lawyer: Power Strategies for Winning Legal Battles

Timing as the Basis of Strategy

In response to “[p]ublic fear, political capitalism, and a handful of well-publicized incidents involving violence by juvenile actors,” many jurisdictions across the United States have implemented various programs aimed at dealing with juvenile delinquency.¹³⁰ Many of these programs fail because they do not timely address what initially causes juvenile delinquents to engage in criminal acts. In *Book of Five Rings*, Musashi supports the concept addressing the root of a problem in the following statement:

From the outset you must know the applicable timing and the inapplicable timing, and from the large and small timings and the fast and slow timings find the relevant timing, first seeing the distance timing and the background timing. This is the main thing in strategy. It is especially important to know the background timing, otherwise your strategy will be uncertain.¹³¹

This thesis symbolizes exactly what jurisdictions across the United States should consider when developing programs that were supposedly able to reduce juvenile activity. A strategists should first look at the problem he or she is trying to address from a broad perspective to gain insight into the actual issue. It is not easy to develop and implement a program for a specific problem if you do not know the necessary components needed to make the program suc-

cessful. Therefore, when this statement is applied to Parts I and II of this article, it is clear where the problem lies. For example, Part II discusses juvenile boot camps, how they developed and what they were patterned after.¹³² Analyzing boot camps in conjunction with an understanding of Musashi's statement may help one make the following conclusions as to what would have made an effective boot camp.

A Strategic Plan for the Formation of an Effective Boot Camp

Boot camps throughout the United States could have been a great success had they been developed and implemented differently. Coupling military structure and order with individualized treatment would have been a great alternative to dealing with juvenile delinquency. This combination teaches discipline while treating the problem, unfortunately the boot camps that were instituted missed the element of individualized treatment. A strategic look at what was causing juvenile delinquency is the first thing that should have been done in developing an effective boot camp. The origin of the delinquent's behavior could have come from array of factors, e.g. a dysfunctional family, peer pressure, physical, mental, or sexual abuse, or lack of attention. Discovery of the causal links would have given the program advisors or developers the "background timing" to effectively develop a strategy to deal with these factors.¹³³ After identifying the causal links to delinquency, the next step would have been to determine what types of treatment were needed to address the problem and make the children whole, which would have given the program advisors the "applicable timing."¹³⁴ This particular aspect of the process is important because some children may need special attention or counseling to sort through their issues, rather than military style discipline. Finally, the program advisors should have found the "relevant timing" by looking at the needed treatments and determined when each one should have been implemented to achieve the best possible outcome.¹³⁵ Had the creators of boot camps followed a strategic plan such as this, participants would have been afforded a tailor-made institutionalized court sanction, which may have had lower recidivism rates.¹³⁶ For Musashi, "timing is the basis of all strategy."¹³⁷

Experience as the Basis of Strategy

Growing up in America is like living in a classroom; everyday of life brings a new subject area to learn. Some people's lives are a twenty-four hour lesson because of the choices they make, i.e. getting involved in criminal activity at an early age. Deterring juveniles involved in this lifestyle at an early age has not been an easy task, but as a strategic move the Office of Juvenile Justice and Delinquency Prevention decided to develop a mentoring program, JUMP, to guide troubled youth down the right path.¹³⁸ This program was built upon the philosophy of promoting education and discouraging juvenile delinquency through mentoring.¹³⁹ JUMP shows mentees that they are not the only individuals who may come from an impoverished neighborhood, or had neglectful or absent parents, or who have experienced some type of traumatic event in their lives, but that the key to surviving these setbacks is to overcome those obstacles through perseverance. Thus, the juveniles will not feel as if they are being frowned upon because of what they have faced in their lives, but rather that they can achieve what once seemed unattainable.¹⁴⁰

The Success of JUMP

The JUMP initiative was a successful strategic move due to the individualized attention the mentees receive.¹⁴¹ Mentoring troubled youth involves more than just spending a couple days out

of the week talking and playing games; real mentoring requires teaching the mentee how to behave like adults.¹⁴² JUMP mentors accomplished this, by following a concept similar to that of Musashi:

When I teach my way, I first teach by training in techniques which are easy for the pupil to understand, a doctrine which is easy to understand. I gradually endeavor to explain the deep principle, points which it is hardly possible to comprehend, according to the pupil's progress. The way to understanding is through experience.¹⁴³

In the context of mentoring, to make an effective program you must make strategic moves throughout the process to make interactions between the mentor and mentee easy.¹⁴⁴ First and foremost, the mentor must remove any preconceived notions that he or she may have about the area in which he or she is going to be mentoring. Secondly, the mentor should greet the mentee with open arms without passing judgments about his or her appearance or stature. This alone has the potential to remove any preexisting barriers. Thirdly, the mentor should start the mentoring process by dealing with things relevant to the mentee, e.g. family, friends, living environment, etc. Starting with a light subject matter creates an open relationship where the mentee feels free to talk; creating a level of trust. Fourthly, after a trusting relationship has been built, the mentor can then begin to move to topics that are more personal and difficult for the mentee to discuss, e.g. his or her involvement in crime, gangs, causes of delinquency, or personal family issues. Getting to the causes of juvenile delinquency is not always an easy task, especially if you want a child to discuss his or her personal circumstances. Lastly, after learning what causes the mentee to engage in delinquent behavior, the mentor must find ways to combat delinquent behavior. This will require the mentor to come up with innovative ideas. The challenge at this juncture is helping the mentee to see that they are no different than anyone else when it comes to overcoming adversity. The mentor must reinforce the message that if he or she overcame adversity, so can the mentee.

Following this type of strategic plan may be what made JUMP so successful. Sometimes it is the small things in life that can change the direction a person's life is taking, and in the case of the JUMP program, it is simply having a one-on-one mentoring session with someone who can connect with their mentee.¹⁴⁵ Each of the mentors made a difference in the lives of their mentees because they followed the principle of Sun Tzu: "The general who wins a battle makes many calculations before the battle is fought."¹⁴⁶ Conversely, "the general who loses a battle makes but a few calculations beforehand."¹⁴⁷ This is an important principle to remember when mentoring because if you make the wrong decision to do and/or say something at the wrong time due to your failure to make the necessary calculations, you have the potential of ruining your chances of reaching that particular child.¹⁴⁸ It behooves mentors and others alike to think before acting; the consequences for not doing so could be severe.

The Five Constant Factors

To understand the importance of making strategic decisions when implementing a new program to address a particular problem, one should look to Sun Tzu's five constant factors.¹⁴⁹ Sun Tzu uses these five factors to give the strategist an "account [of] the natural structure within which a conflict takes place, the considerations of time, place, terrain, and resources, as well as the characteristics of the competing leaders and their forces."¹⁵⁰ The five factors are moral law, heaven, earth, the commander, and

The Application of the Five Constant Factors

The first factor is the moral law: “the degree to which a people, relevant group, or even individuals support their leader’s decisions, goals and efforts.”¹⁵² This particular factor is important when addressing juvenile delinquency because the idea that there is an increase in violent delinquent children comes from the media, political leaders, and public figures. These are the leaders influencing and rallying for change in the juvenile justice system.¹⁵³ This notion of an increase in juveniles committing criminal acts has been accepted by many legislatures and community activists.

Today our national juvenile system is divided into states which “have chosen to reform juvenile justice by 1) making available a wide spectrum of community based residential and nonresidential programs for most of their committed youth and 2) reserving small secure facilities for the violent few”, on the one hand, and “other states [that] have largely eschewed treatment and rehabilitation in favor of more get-tough policies across the board.”¹⁵⁴ Therefore, one can assume that if the media continues to exploit the issue of the explosion of the juvenile crime rate, moral support for this get-tough initiative will continue to gain momentum.

The second and third factors Sun Tzu described, heaven and earth, work simultaneously in this context with implementing programs. Heaven deals with the intangible framework in which a strategist must operate,¹⁵⁵ whereas earth deals with the tangible framework to which the strategist must adapt.¹⁵⁶ Understanding these two factors requires a program organizer to revert back to my initial inference that in order to rectify a problem, one must accept the fact that there is a problem, get to the root of it, find a reasonable and efficient mechanism to deal with the problem, and attack the problem from the outset. Under a heaven analysis, program organizers have to realize that regardless of the type of juvenile delinquency program they are trying to implement, there will always be intangible factors that supersede their control and what they are trying to accomplish, such as the norms, values, and culture of the community.¹⁵⁷ The community will not change or stop what it is doing because a program organizer wants to change the direction that juveniles are taking in its community. Furthermore, the likelihood of changing the people of a community is even more difficult from an earth aspect because people only change when they want to change, regardless of whether the programs one tries to implement will save lives.¹⁵⁸

The last two factors, the commander and the method and discipline, also work simultaneously together but this time, through an individual. A commander in the context of juvenile delinquency is the person who has the enthusiasm, drive, wisdom, and strength to implement effective programs for delinquent juveniles.¹⁵⁹ This same person would also be the individual who would instruct others as to what their role would be to ensure smooth running of the initiative, which is considered the method and the discipline.¹⁶⁰

Conclusion

Changing the face of the juvenile justice system through harsher punishment is not the answer if the goal is lower recidivism rates and fewer serious and repeat juvenile offenders. To accomplish this, people’s mentality of juveniles must turn back to rehabilitation and away from punishment. Punishing a juvenile for the criminal act he or she has committed is not wrong, but it is wrong to send a child to the adult system because “the system” has failed to offer programs that treat the offender’s needs.¹⁶¹ Sometimes it is not always the child that needs changing; sometimes it is the sys-

tem that is governing the child that needs to be changed. This article offers numerous programs that can be implemented across the United States to treat the individual needs of juveniles. Hopefully, instead of sending juveniles to adult prisons, they will be sent to programs that work, and all will keep in mind that harsher treatment does not always mean better outcomes.

¹ Tzu is a fictional name used to protect confidentiality.

² See Randie P. Ullman, *Federal Juvenile Waiver Practices: A Contextual Approach to the Consideration of Prior Delinquency Records*, 68 FORDHAM L. REV. 1329 (2000) (arguing that in order to maximize rehabilitation for juvenile offenders, a uniform federal standard must be implemented).

³ See *id.*

⁴ *Id.* at 1330 (asserting that juveniles incarcerated with adult criminals are often subject to further corruption and are taken advantage of).

⁵ Deborah L. Mills, *United States v. Johnson: Acknowledging the Shift in the Juvenile Court System From Rehabilitation to Punishment*, 45 DEPAUL L. REV. 903, 909 (1996).

⁶ See Candace Zierdt, *The Little Engine That Arrived at the Wrong Station: How To Get Juvenile Justice Back on the Right Track*, 33 U.S.F. L. REV. 401, 403 (1999) (explaining that English law increasingly expanded upon the theory that children should not be treated as adults and that rehabilitation plays a critical role in their treatment).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Zierdt, *supra* note 6, at 403 (asserting that reformers in the United States addressed similar concerns regarding treatment of juveniles).

¹¹ *Id.*

¹² *Id.* at 404.

¹³ *Id.* at 404.

¹⁴ Robert W. Sweet, Jr., *Deinstitutionalization of Status Offenders: In Perspective*, 18 PEPP. L. REV. 389, 390 (1991) (emphasizing that Houses of Refuge were established seventy years before the juvenile court system in the United States to house youth on the path to commit serious criminal offenses).

¹⁵ See *id.*

¹⁶ *Id.*

¹⁷ See Zierdt, *supra* note 6, at 405.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Sweet, *supra* note 14, at 391.

²¹ *Id.*

²² *Id.* (internal quotations omitted).

²³ Christine Chamberlin, *Not Kids Anymore: A Need For Punishment and Deterrence in the Juvenile Justice System*, 42 B.C. L. REV. 391, 395 (2001) (emphasizing that the impetus for a separate judicial system for juveniles was to provide them with necessary treatment so that they could be productive members of society).

²⁴ *Id.*

²⁵ See *id.*

²⁶ Martin Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399, 403 (1996) (stating that Progressive reformers believe that children should be protected and nurtured rather than punished for their acts).

²⁷ See *id.*

²⁸ *Id.* at 325.

²⁹ See Zierdt, *supra* note 6, at 405.

³⁰ Forst & Blomquist, *supra* note 26 at 325.

³¹ Naomi R. Cahn, *Pragmatic Questions about Parental Liability Statutes*, 1996 WIS. L. REV. 399, 403 (1996).

³² Kelly M. Angell, *The Regressive Movement: When Juvenile Offenders Are Treated as Adults, Nobody Wins*, 14 S. CAL. INTERDISC. L. J. 125, 128 (2004).

³³ Joseph F. Yeckel, *Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice*, 51 WASH. U. J. URB. & CONTEMP. L. 331, 338 (1997).

³⁴ See *id.* (pointing out that federal statutes only apply to a small number of juvenile who fall within its jurisdiction, while the remaining are tried in state courts).

³⁵ *Id.* at 338-39.

³⁶ Forst & Blomquist, *supra* note 26, at 328.

³⁷ *Id.*

³⁸ See Sweet, *supra* note 14, at 398 (noting that the President’s Commission on Law Enforcement, the National Council on Crime and Delinquency, and the Supreme Court provided the stimulus for reforms that lead to the Juvenile Justice and Delinquency Act of 1974).

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ *Id.* at 398-99.

⁴² See *id.* at 399.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Mills, *supra* note 5, at 914.

⁴⁶ See *id.*

⁴⁷ *Id.* at 915 (emphasizing the Court’s warning that juveniles lacking the constitutional protections given to adults may receive the “worst of both worlds”).

⁴⁸ See Sweet, *supra* note 14, at 400-401.

⁴⁹ See Mills, *supra* note 5, at 915 (noting that the Supreme Court continued to protect juvenile’s rights to those afforded to criminal defendants, even though juvenile cases are civil court proceedings).

⁵⁰ Sweet, *supra* note 14, at 401.

⁵¹ See Yeckel, *supra* note 33, at 339.

⁵² See *id.*

⁵³ *Id.*

⁵⁴ *Id.* at 340-41.

⁵⁵ See Forst & Blomquist, *supra* note 27, at 342 (pointing out that in eighties, at least ten states reformed their juvenile courts stressing more punitive types of punishment as opposed to rehabilitation).

56 Chamberlin, *supra* note 24, at 399.
57 *See id.* at 400.
58 *See* HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 1999 NATIONAL REPORT 120 (Office of Juvenile Justice and Delinquency Prevention 1999) (explaining that judicial waivers are usually requested by the prosecutor and that most State statutes also limit judicial waiver to juveniles “no longer amenable to treatment”).
59 *See* Angell, *supra* note 32, at 133.
60 *See id.*
61 Schwitzer Merrill, Getting “Tough on Crime”: Juvenile Waiver and the Criminal Court, 27 OHIO N.U.L. REV. 175, 188 (2001).
62 *Id.* (referring to Donna Bishop’s thesis that adult incarceration of juveniles has a negative effect and produces higher rates of recidivism).
63 *See* Julianne P. Sheffer, *Serious and Habitual Juvenile Offender Statutes: Reconciling Punishment and Rehabilitation Within the Juvenile Justice System*, 48 VAND. L. REV. 479, 481 (1995) (challenging the interpretation that the public rejects the ideas of rehabilitation in favor of harsher, punitive punishment for juvenile offenders).
64 *See id.* at 482.
65 *See id.* at 496-97 (highlighting that these statutes combine promote the combination of rehabilitation and punishment as a successful strategy for addressing serious habitual offenders).
66 *See id.* at 498.
67 *Id.* at 497.
68 *See id.* at 503-04 (asserting that SHJO programs’ focus on detention and continuing supervision serves to produce lower rates of recidivism compared to juveniles that go through the traditional punishment system).
69 *See id.* at 498.
70 *See id.*
71 *See id.* at 506 (emphasizing the effective balance that SHJO programs implement in balancing rehabilitative and punitive philosophies to produce higher success rates for serious and habitual juvenile offenders).
72 *See id.*
73 *See* Cheri Panzer, *Reducing Juvenile Recidivism Through Pre-Trial Diversion Programs: A Community’s Involvement*, 18 J. JUV. L. 186, 194 (1997) (stressing that these programs are both effective and reduce costs for the juvenile system with regard to first time juvenile offenders).
74 *See id.*
75 *Id.* at 186.
76 *See id.* (pointing out that recidivism rates nationally range from sixty to eighty percent).
77 *See id.* at 189 (explaining that the probation officer must conduct an investigation).
78 *See id.*
79 *See id.*
80 *See id.* at 196.
81 *See id.* at 197.
82 *See id.* at 196 (focusing on the two diversionary programs set up in California).
83 *See id.*
84 *See id.*
85 *See id.*
86 *See id.* at 197.
87 *See id.* (pointing out that community based diversionary programs focus more on the needs in the community but are successful in diverting juveniles from the formal court system).
88 *See id.* at 198.
89 *See id.*
90 *See id.* at 206.
91 *See id.* at 205.
92 Stephen A. Campbell, *Alternatives in the Treatment of Juvenile Offenders: Current Options and Trends*, 19 J. JUV. L. 318, 323 (1998) (noting that approaches to the treatment of juvenile delinquents have varied over time in the United States and the success of boot camps has varied dramatically).
93 *See id.*
94 *See id.*
95 *See id.* (stressing that to be effective, juvenile boot camps must provide encouragement and prepare youth for reintegration upon completion of the program).
96 *See id.*
97 *See id.* (pointing out that in a study of juvenile boot camps from three states, recidivism rates were the same or higher when compared to the control group placed in a traditional setting, but that aftercare was critical to the success of the graduates of boot camps).
98 Edward, Mulvey et al., *Prevention of Juvenile Delinquency: A Review of the Research*, 4:2 THE PREVENTION RESEARCHER 1- 4, 1 (1997) (concluding that prevention programs have proven effective at reducing juvenile delinquency and that parent training programs play a critical role in this process).
99 *See id.*
100 *See id.* (explaining that parent training usually accompanies community based interventions, thus it is difficult to separate out its success rates).
101 *See id.* at 2.
102 *See id.*
103 *See id.*
104 *See id.*
105 *See id.* at 1.
106 *See id.* at 2.
107 *See id.*
108 *See id.*
109 *See id.*
110 *See id.*
111 *See id.*
112 *Id.* at 3 (asserting cognitive skills can be improved through development of positive social relationships, such as those created in school environments that promote social problem solving skills).
113 *See id.*
114 Grossman, Jean Baldwin and Eileen M. Garry, *Mentoring: A Proven Delinquency Prevention Strategy*, <http://ncjrs.org/txtfiles/164834.txt> (proposing that mentoring provides children with caring adults who provide a bond of commitment, especially for at-risk youth).
115 *See id.*
116 *See id.*
117 *See id.*
118 *See id.*
119 *See id.*
120 *See id.*
121 *See id.* (highlighting that case managers have frequent contact with the parents and the juvenile, providing assistance if any problems occur).
122 Barbara Gilleran Johnson & Daniel Rosman, *Recent Developments in Nontraditional Alternatives in Juvenile Justice*, 28 LOY. U. CHI. L. J. 719, 723 (1997) (explaining that this community-based option to juvenile court has received increasing popularity and has been implemented in twenty-five states).
123 *See id.* at 724.
124 *See id.* at 723.
125 *See id.* at 728.
126 *See id.*
127 *See id.* at 724.
128 *See id.* at 727 (highlighting that teen court programs across the nation have experienced encouraging results of recidivism rates and are also successful in the rate they address cases, thus alleviating some of the case load in the juvenile courts).
129 *See id.* at 726.
130 Jill M. Ward, *Deterrence’s Difficulty Magnified: The Importance of Adolescent Development in Assessing the Deterrence Value of Transferring Juveniles to Adult Court*, 7 U.C. DAVIS J. JUV. L. & POL’Y 253 (2003).
131 *See generally* DAVID BARNHIZER, THE WARRIOR LAWYER: POWERFUL STRATEGIES FOR WINNING LEGAL BATTLES 124 (Bridge Street Books 1997) (1997) (utilizing Sun Tzu’s “On the Art of War” and Mushashi’s “The Book of Five Rings” as methodologies for winning battles; in the context of this article the methodology is used as a framework to analyze how these strategies can ensure the desired outcome in helping juvenile offenders).
132 *See* Campbell, *supra* note 92, at 323.
133 *See* BARNHIZER, *supra* note 132, at 124.
134 *See id.*
135 *See id.*
136 *See id.*
137 *See id.* at 125.
138 *See* Grossman & Garry, *supra* note 115.
139 *See id.*
140 *See id.*
141 *See id.* (noting that a mentoring relationship enriches the lives of the mentees by addressing their need for “positive adult contact” and has been recognized as a way to address problems caused by poverty).
142 *See id.*
143 *See* BARNHIZER, *supra* note 132, at 29.
144 *See id.*
145 *See* Grossman & Garry, *supra* note 115.
146 *See* BARNHIZER, *supra* note 132, at 30
147 *See id.*
148 *Cf. id.*
149 *See* BARNHIZER, *supra* note 132, at 44.
150 *See id.*
151 *See id.*
152 *See* BARNHIZER, *supra* note 137, at 46.
153 *See* Ward, *supra* note 131, at 253.
154 David M. Altschuler, *Tough and Smart Juvenile Incarceration: Reintegrating Punishment, Deterrence and Rehabilitation*, 14 ST. LOUIS U. PUB. L. REV. 217 (1994).
155 *See* BARNHIZER, *supra* note 132, at 54 (concluding that states which repeatedly enforce punishment of juvenile offenders through incarceration ignore the risk factors that put these youths in this category of offenders in the first place).
156 *See id.* at 57.
157 *See id.* at 54.
158 *See id.* at 57.
159 *See id.* at 60.
160 *See id.* at 66.
161 Forst & Blomquist, *supra* note 26, at 325.

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