9/19/60

Memorandum No. 82 (1960)

Subject: Study No. 48 and Study No. 54 - Juvenile Court Proceedings.

Studies No. 48 and 54 were combined in one recommendation. This recommendation and the proposed legislation relating thereto is presented to the Commission for final approval prior to printing the Recommendation and Study. A copy of the Recommendation (including the proposed legislation) is attached.

The Commission received comments from the Southern Section of the State Bar Committee on Criminal Law and Procedure, the Northern Section of the State Bar Committee, the Research Director of the Governor's Special Study Commission on Juvenile Justice and Arthur H. Sherry, our consultant on this study. These comments are attached to this memorandum.

The Southern Section of the State Bar Committee concurs with the Commission's tentative recommendations. The Northern Section of the Committee believes that the Commission's proposals are "mere patches on the entire law dealing with this subject." The Northern Section agreed with the proposal that juveniles, their parents or guardians should have the right to be represented by counsel in all juvenile court proceedings.

The Northern Section also agreed that the delinquent should be separated from the non-delinquent minor, but it does not believe that changing the designation of the non-delinquent minor to "dependent child" accomplishes the purpose. The Northern Section doesn't believe that the

change in name will result in the removal of any stigma. The Northern Section's comment does not seem to recognize that the Commission's recommendation goes somewhat further than changing the name of "ward". The Commission also recommended that a "dependent child" may not be placed on probation, detained in the County Jail or committed to the Youth Authority or other local detention facilities without a further determination that the child has exhibited delinquent behavior. Of course, it is true that the Commission's recommendations are "mere patches"; however, the Commission has proposed as much as it was authorized to propose under the legislative authorization.

I. J. Shain, Research Director of the Special Study Commission, indicates that he believes a new labeling for children within the Juvenile Court's jurisdiction is not necessary. He believes the basic problem is the public misinterpretation and misunderstanding concerning juvenile court procedure, and new labels are not going to solve this basic problem. It is difficult to see, however, how misunderstanding is going to be eliminated when the same word, "ward", is used to designate two fundamentally different types of juveniles.

Arthur H. Sherry states that he has but one disagreement with the Commission's recommendations. He believes that the proposal to appoint counsel is meaningful only if the counsel is appointed at public expense. He points out that the Public Defender of Alameda County believes that the representation of juvenile offenders could be assumed by his office without taxing the present resources of his office. Mr. Sherry also asserts that Penal Code Section 987a provides for the appointment of counsel at public expense in misdemeanor cases and that this section should be extended to

juvenile matters to afford juveniles as much protection as is given to adults.

Although the extension of representation at public expense to juveniles may not impose a serious burden on those counties with public defenders, most counties do not have such offices. In counties without such offices, there would have to be additional funds provided for each attorney appointed. Moreover, it is not true that Penal Code Section 987a provides for the representation of misdemeanor defendants at public expense. The section provides for compensation for appointed counsel only in matters triable in superior court. Unless the county has a public defender, there is no authority for the payment from public funds of the attorney appointed in a misdemeanor case. (25 Ops. Cal. Atty. Gen. 221 (1955).)

We also received a preliminary draft of the recommendations of the Special Study Commission appointed by the Governor. The Special Study Commission recommends a total revision of the Juvenile Court Law. So far as the right to counsel is concerned, the Special Study Commission believes that juveniles and their parents should be advised of this right both by a notice prior to hearing and by instruction at the hearing. Although the preliminary draft of the Special Study Commission provides for the separation of the delinquent from the non-delinquent minor, no distinction is drawn between the two so far as the appointment of counsel is concerned. Both are entitled to the appointment of counsel at public expense. This recommendation goes much further than the recommendation of the Law Revision Commission. The Law Revision Commission recommended the appointment of counsel only in delinquency cases. The dependent child is not being accused of anything and, therefore, does not seem to need counsel

to defend him. In dependency proceedings, it is usually the parents who are being accused, not the child.

The Special Commission also recommends the appointment of counsel for the parent or guardian at public expense. This, too, goes beyond the Law Revision Commission's recommendation. Our recommendation merely provides that parents and guardians should be advised of their rights, it does not provide for the appointment of counsel for such persons.

The Special Study Commission has not recommended any change in the use of the term "ward" to designate juveniles found to be within the Juvenile Court's jurisdiction.

From the foregoing, the following questions arise:

1. Should appointed counsel be compensated by the public?

2. Should counsel be appointed for all juveniles -- both delinquent and non-delinquent?

3. Should counsel be appointed for indigent parents?

4. Should the distinctive nomenclature proposed by the Commission -- "ward" and "dependent child" -- be retained?

Note that in his letter (copy attached) Professor Sherry suggests that some member of the Law Revision Commission write an article for the State Bar Journal pointing up the desirability of the right to counsel in juvenile court proceedings.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

MINUTES OF THE MEETING OF THE SOUTHERN SECTION COMMITTEE ON CRIMINAL LAW AND PROCEDURE - STATE BAR OF CALIFORNIA

- - - - - - -

July 9, 1960

Present: Charles Hollopeter, Chairman
Francis R. Crandall
Charles H. Matthews
Ned R. Nelson

Absent: John W. Loucks
Donald A. Fareed
John F. O'Laughlin

This meeting was called to order at 10:00 a.m., in the office of the State Bar, Los Angeles, California. Chairman, Charles Hollopeter presiding.

The purpose of the meeting was to consider the study recommendations of the California Law Revision Commission re: "The right to counsel and the separation of the delinquent from the non-delinquent minor in Juvenile Court proceedings."

The Committee favored legislation that would:

a) Amend the Welfare and Institutions Code so as to differentiate between "wards" and "dependent children";

b) Amend the Welfare and Institutions Code so as to provide that in all proceedings in the Juvenile Court the minor and the parent, guardian or custodian of the minor be advised as to the right to be represented by counsel.

Mr. John W. Loucks was unable to be personally present at the meeting, but advised in writing that he favored legislation that would distinguish between wards and non-delinquent minors; and that the right to be advised as to counsel should be extended only to cases where the minor is accused of delinquent conduct.

Mr. Donald A. Fareed was unable to be personally present, but advised in writing that he favored the enactment of legislation in accordance with the recommendations of the California Law Revision Commission, both as to right to counsel and separation of the delinquent from the non-delinquent minor in Juvenile Court proceedings.

Charles Hollopeter, Chairman
Committee on Criminal Law and
Procedure - Southern Section

July 25, 1960

Board of Governors
State Bar of California
601 McAllister Street
San Francisco 2, California

Attention: Jack A. Hayes, Secretary

Re: Report of Northern Section Committee on Criminal Law and Procedure

Gentlemen:

The Northern Section of the Committee on Criminal Law and Procedure of the State Bar held a meeting on July 22nd, at the offices of the State Bar in San Francisco. The purpose of the meeting was to consider the proposals of the California Law Revision Commission to amend certain parts of our Juvenile Court Law relative to the right to counsel and the separation of the delinquent from the non-delinquent minor in Juvenile Court proceedings.

There were present the following members: Herman W. Mintz, Irving F. Reichert, Jr., Francis W. Mayer and Leo R. Friedman, the Chairman. Members Martin N. Pulich and William H. Lally were unable to attend, as each was engaged in the trial of a court case. However, Mr. Pulich sent to the Chairman a long letter expressing his views on the matter.

There was also present, Mr. John A. Pettis, Jr. of the Governor's Special Study Commission on Juvenile Justice. Mr. Pettis' remarks were most valuable. Mr. Pettis advised the committee that said Governor's Commission had made an intensive study of all the matters relating to juvenile court proceedings and had prepared a lengthy report with recommendations for the revision of the entire law relating to juvenile courts and the proceedings therein. He brought with him a copy of such report and said the same was about to be sent to the printer after which it would be submitted to Governor Brown.

After due consideration, the Committee unanimously came to the following conclusions:

(1) Approved in principle the amendment of the law to provide for the right of minors, their parents or guardians to be represented by counsel in all juvenile court proceedings, including any subsequent change or modification of prior orders.

(2) Approved in principle the segregation of delinquent juveniles from other juveniles who have not been guilty of some kind of wrong-doing. However, the Committee felt that merely changing the name of those involved in the latter class from "wards" to "dependent children", did not accomplish this purpose.

The Committee believed that the proposed changes would not result in the removal of any stigma from a child designated as a "dependent".

(3) That the proposals of the Law Revision Commission were mere patches on the entire law dealing with the subject, and that such law should be revised in its entirety, including the revision of sec. 702 W. & I. Code defining what acts constitute the crime of contributing to the delinquency of a minor.

(4) In view of the fact that such an intensive study of the Juvenile Court Law had been made by the Governor's Special Study Commission on Juvenile Justice, and that such report was about to be submitted to Governor Brown, the Committee suggests that the Board of Governors request copies of the Commission's report and that the same be submitted to this Committee for study and report; that in the interim it would be useless to make any further comments on the Law Revision Commission's Proposals.

Respectfully submitted,

/s/ Leo R. Friedman
Chairman

LRF:ab

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
502 State Office Building No. 1
Sacramento 14

August 26, 1960

Mr. John H. DeMoully
Executive Secretary
California Law Revision Commission
School of Law
Stanford University
Palo Alto, California

Dear Mr. DeMoully:

I apologize for not having replied earlier. However, since receiving the previous letter from Mr. Harvey, I have had an extended vacation and also had a new job assignment. Nevertheless, I am still maintaining responsibility for completing the necessary staff work for the Commission on Juvenile Justice along with Mr. Pettis.

When we received your draft statute, I gave one copy to Mr. Pettis. May I suggest that you write to him directly for his views at his Oakland office. His address is 721 Central Building, 14th and Broadway, Oakland 12, California.

Our general comments on your statute concern minor differences of position taken by the Law Revision Commission and the Juvenile Justice Commission with regard to right to counsel. The Commission is of the view that a meaningful implementation of this right requires the availability of free counsel to indigent families. We understand that you have discussed this aspect and have come to the conclusion that it was outside of your scope of the directive handed to you.

The labeling of children as dependent wards of the Court in our view is not necessary. The basic problem we are dealing with is the public misinterpretation and misunderstanding regarding juvenile court procedure. We are not certain that a labeling process device will solve this basic problem.

Under separate cover, I am sending you a copy of the Commission's proposed draft statute. This represents their thinking as of this date and must be regarded as subject to change. By law the Commission is required to submit its recommendation to the State Board of Corrections. If serious problems are identified at the forthcoming meeting on September 30, 1960, with the Board of Corrections, I am certain that some changes will be made. Nevertheless, I feel that the publication will be of value to the Law Revision Commission.

We are certainly most anxious to co-ordinate our program with that of your Commission at the forthcoming session and share your hopes that the juvenile court law of California may be greatly improved in 1961.

Sincerely yours,

/s/ I. J. Shain

I. J. Shain
Assistant Chief, Research Division

IJS:sas

cc: Mr. John A. Pettis, Jr.

UNIVERSITY OF CALIFORNIA

School of Law (Boalt Hall)
Berkeley 4, California

June 20, 1960

Professor John H. DeMoully,
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Professor DeMoully:

I have only one point of disagreement with the tentative recommendation and proposed legislation of the California Law Revision Commission relating to the right to counsel and the separation of the delinquent from the non-delinquent minor in juvenile court proceedings. (Draft of June 6, 1960). That point is the conclusion expressed at the bottom of Page 4 of the Recommendation. In the last paragraph on this page, the Commission takes the position that it will not make any recommendation with respect to furnishing counsel to juveniles at public expense. The reason advanced is that this is an issue more fiscal than legal in nature.

At the same time, the draft of proposed Section 732.2, Welfare and Institutions Code, specifically authorizes the court to appoint counsel in its discretion if it believes such appointment to be in the interest of justice. This, it seems to me, is somewhat inconsistent with the basic conclusions of the Commission to the effect that the administration of justice in the juvenile courts up to the present has failed adequately to provide for the representation of juveniles. If the judges, generally, have not met their responsibilities in this regard up to now, it is not likely that leaving it with their discretion is going to change things much.

Certainly, they have the discretion to appoint lawyers in juvenile court proceedings now and many of the juvenile court judges do so. It seems to me that this ought to be made the rule in every juvenile court and that the resulting financial burden should not be foisted off on the legal profession.

At the heart of the matter, I suspect the Commission is concerned about sponsoring legislation which may impose undue financial burdens upon local government. This is a commendable attitude, but I think the assumption that undue, or even significant additional financial burdens would result from the compulsory appointment of counsel for the indigent juvenile is open to question. During my study of the problem, this possibility occurred to me. Unfortunately, I was unable to conduct any very lengthy inquiry into the matter, and could reach a conclusion only upon the basis of my own experience and the opinion of Mr. Martin Pulich, Public Defender of Alameda County. He was in

accord with my view that the cases in which the appointment of counsel would be required would not be substantial in number. So far as Alameda County is concerned, Mr. Pulich felt that his office could carry the burden of representing indigent juveniles without taxing the present resources of his office.

The foregoing conclusions were expressed in a letter I addressed last year to Professor McDonough, your predecessor as Executive Secretary

Just last week, my views in this respect were reinforced as a result of a conversation with Mr. Ellery Cuff, Public Defender of Los Angeles County. Mr. Cuff's office is undoubtedly the largest Public Defender's office in the United States. He informed me emphatically that the representation of indigent juveniles in Los Angeles County could not only be met with ease if his office were assigned this burden, but that it actually was being met by his office at the present time. I did not have adequate time to inquire into the extent to which the Los Angeles Public Defender's office is involved in juvenile court matters, but Mr. Cuff left me with the unmistakable impression that his office was very much involved in juvenile court appearances now and this is the way it ought to be in every jurisdiction.

In these circumstances, I would urge the Commission, if still unpersuaded, to make its own inquiries in ten or fifteen of the larger counties of the state. If these bear out what to my mind seems to be the situation, then it would be very appropriate to make the provisions of Penal Code Section 987a, which provides the measure of compensation for court appointed attorneys in criminal cases, applicable to appointment of attorneys in juvenile matters. As this Section now stands, it permits the appointment of lawyers at public expense in misdemeanor actions. If the State extends this degree of assistance to an adult, there seems little excuse for withholding it from an alleged offending juvenile.

So much for criticism of the proposed legislation. For the rest of the proposals, I am in full accord. I think the Commission and its staff are to be commended particularly for setting up a single group of non-delinquents whom it designates "dependent children". This is a great improvement over my proposed three-fold classification which appears at the end of the study which I made for the Commission last year.

If I may add one more somewhat unrelated matter to an over-long letter, I would like to express my dismay at current reactions among juvenile court personnel and judges toward the tentative proposal of the Juvenile Justice Commission with respect to the appointment of counsel in the juvenile courts. The conclusions of this Commission parallel those of the Law Revision Commission, but go the whole way and make Penal Code Section 987a specifically applicable to juvenile court proceedings. (See proposed Section 634, Welfare & Institutions Code, tentative draft #1, Special Study Commission on Juvenile Justice, February, 1960.) Juvenile

court personnel in many courts have expressed open hostility to this recommendation.

They have expressed this hostility not on the ground that court appointed lawyers would be an undue financial burden on the public, but upon the ground that the presence of lawyers in the juvenile court is incompatible with juvenile justice.

Personally, I am at a loss to understand how any superior court judge appointed to his position from among the ranks of the bar can justify this viewpoint. It is understandable on the part of probation office staff members, who are largely unfamiliar with the role of the lawyer in the judicial process, but it is shocking to find it echoed by members of the bench.

This, I think, ought to be combatted and the natural force to oppose against it is the opinion of the State Bar of California. For the mobilization of the opinion of the State Bar, one good start could be made by the publication of an appropriate article in the State Bar Journal. I have urged this on the Juvenile Justice Commission, but they are far too immersed in the drafting of their final proposals to act upon it. I would like to do so myself, but have similar burdens that make it quite impossible now. Do you suppose that some member of the Law Review Commission might be induced to call this matter to the attention of the lawyers of California by such an article?

Very truly yours,

S/ Arthur H. Sherry

Arthur H. Sherry,
Professor of Law

AHS:rs