I. INTRODUCTION

THE UNNECESSARY DETENTION OF CHILDREN IN THE DISTRICT OF COLUMBIA

Bart Lubow & Joseph B. Tulman

A DESCRIPTION OF UNNECESSARY DETENTION

Secure detention of youths charged with delinquent acts is the temporary, out-of-home confinement of children in locked facilities characterized by security hardware, custodial personnel, and related procedures. As a pre-adjudicatory intervention, secure detention’s two mandated purposes are to ensure that youngsters keep their court appointments and to protect the community through the prevention of additional delinquent acts. Generally accepted juvenile justice standards limit the use of detention to those two purposes.¹

Despite the promise of juvenile justice reform occasioned by the passage of the federal Juvenile Justice and Delinquency Prevention Act of 1974,² national data on juvenile detention depict a system that is overcrowded, expensive, inconsistent,

¹  Senior Associate, The Annie E. Casey Foundation. Portions of this Introduction are excerpted from the Casey Foundation’s Framework Paper on Juvenile Detention. The author wishes to acknowledge Jane Heidt and Richard Too, who authored earlier versions of the Framework Paper, as well as participants in several focus groups (organized by the Center for the Study of Youth Policy) whose input helped shape its contents. The Casey Foundation is conducting a major initiative in five sites to demonstrate that jurisdictions can reform their detention systems to eliminate unnecessary and/or inappropriate use of secure confinement without sacrificing public safety or court appearance rates.
²  Professor Tulman’s biography, as well as the biographies of the other Symposium contributors and participants, can be found in Appendix A to this Volume.


and discriminatory. Since the early 1980s, the use of secure juvenile detention has significantly increased. The rate per 100,000 youths detained on a single day increased from 37 in 1979 to 70 in 1989, an increase of 89%. During the same period, detention admission rates rose from 1,574 per 100,000 to 1,959 per 100,000, an increase of 24%. The annual number of admissions is now approximately one-half million, an increase of 31% since 1982. A one-day census in 1979 showed 10,683 youths in secure detention facilities compared to 18,014 in 1989, an increase of 69%. These increases occurred despite the removal of many status offenders from juvenile detention and, significantly, at a time when juvenile arrests were decreasing.

Increases in the number of admissions and the average length of stay have produced overcrowding. In 1988, a one-day census of publicly operated juvenile detention centers found that more than half of detained youths are housed in overcrowded facilities. A predictable consequence of this overcrowding is deteriorating conditions resulting in costly litigation and the likelihood of court intervention in detention center operations. Many localities are planning to increase secure detention capacity at enormous cost.

Secure juvenile detention is an expensive system; its 1988 cost was almost $514 million compared to an inflation-adjusted $373 million in 1979, a 38% increase.


4. Reliance on detention also contributes to high rates of confinement and lengthy terms of post-adjudicatory training school placements.

5. Nationwide, juvenile arrest rates for all offenses declined from 6,938 per 100,000 in 1979 to 6,434 per 100,000 in 1989. Perhaps more significantly, during the same 10-year period, total arrests for Part I crimes (serious felonies) declined from 811,352 to 594,391, a decrease of 27%. Juvenile arrest rates for Part I crimes decreased by 17% during this decade. The increase in juvenile detention populations during the 1980s, therefore, does not reflect an increase either in the overall juvenile arrest rate, or in the rates or numbers of juvenile arrests for the most serious crimes. In 1989, fewer than half (41.5%) of the youths in detention at the time of a one-day census were detained for Part I offenses.

Recently published data indicate significant increases in youth arrests for violent offenses in 1990. See Howard N. Snyder, Ph.D., U.S. Department of Justice, Arrests of Youth 1990 (1992). These data, however, do not account for increased detention rates during the period examined in this Symposium.

6. The average length of stay in secure detention has risen significantly from 9 days in 1979 to 16 days in 1988, an increase of 78%. Because most youths are detained for only a few days, these averages mask a distressing trend of selected cases remaining in detention for extremely long periods, in many instances for several months.

7. More than 25% of a total of 422 facilities were over capacity. This is a dramatic change from 1979 when, even though there were fewer facilities (393), only 6.4% were over capacity, affecting only 9% of the detention population. Between 1985 and 1988, the number of overcrowded secure detention centers more than doubled from 55 to 116.

8. Seven percent of the nation's 422 facilities retaining 10% of all youngsters in 1989 were operating under consent decrees.
The average per-bed expenditure in 1988 for nearly 19,000 beds was $27,275. The cost per bed increased between 1979 and 1988 at approximately the same rate as the total cost of detention. Therefore, the overall increase in detention system expenditures over that period cannot be explained as the result of increased bed capacity.

States vary significantly in their numbers of admissions, rates of admission per thousand, average lengths of stay, and per-bed costs. The enormous variability is striking. Secure detention’s annual per-bed cost, for example, ranges from a high of nearly $63,000 in Connecticut to a low of nearly $14,000 in Mississippi and Indiana, reflecting the lack of national standards for detention staffing and services. Annual admissions vary in states with different youth populations, from California with a high of 132,528 to Vermont with 222, as well as in states with similar youth populations. For example, Arizona and New Mexico had 12,827 and 5,691 admissions respectively. Average length of stays range from 5 days in Arkansas, North Dakota, and Tennessee to more than 30 days in New Hampshire, New Jersey, and Vermont. States with similar populations often have dramatically different patterns of detention utilization. Moreover, patterns are often inconsistent even within states. These data suggest that juvenile detention is driven primarily by policy (i.e., legislative and administrative concerns), rather than by demographic issues or any demonstrable and objective “need” to detain children.

Other practices highlight additional inconsistencies that lead to the inappropriate use of juvenile detention. Some youths remain in detention centers for lengthy periods of time after their cases are adjudicated because dispositional placements or services are unavailable. Others are specifically “sentenced to detention.” These so-called “commitment admissions” rose from 13,323 in 1979 to 28,903 in 1988, an increase of 117%. In 1987, 11,320 youths were detained in training schools or other facilities intended for post-adjudicatory placements. Moreover, in 1988, 1,676 youths charged with delinquency were detained in adult jails, despite federal legislation that seeks to preclude such practices and almost universal agreement among juvenile justice professionals regarding its destructive consequences.

Disproportionate representation of minority youth in detention dramatically underscores persistent social inequality and exacerbates the risk to positive development that such youth face. Between 1979 and 1989, the percentage of

9. See generally BARRY KRISBERG ET AL., THE INCARCERATION OF MINORITY YOUTH CRIME AND DELINQUENCY (1987). The problem of pervasive minority overrepresentation permeates the criminal justice system. In a sequel to a 1990 report documenting that almost one in four African-American males between the ages of 20 and 29 were under supervision in the criminal justice system, two authors from the Sentencing Project now report that almost one in three African-American men in that age group are either in prison or jail, or on probation or parole. MARC MAUER & TRACY HULING, YOUNG BLACK AMERICANS AND THE CRIMINAL JUSTICE SYSTEM: FIVE YEARS LATER (1995).
minority youth in the overall detention population increased from 47% to 62%.10 The percentage of minority youths in detention is more than twice their presence in the general population in at least 40 states.11

Children with disabilities are also disproportionately represented in the detention population, as are children who are, or who have been, neglected. These two additional phenomena of overrepresentation are less studied and, accordingly, not as well-documented as the overrepresentation of minority children. Given the minority overrepresentation rate, there is necessarily a huge overlap such that minority children who are detained are also likely to have disabilities, to have been neglected, or both.

The picture of secure juvenile detention in the District of Columbia is an intensified composite of the problems present on the national level. Not surprisingly, as an exclusively urban jurisdiction being compared to the fifty states, the District had, as reported in 1992, the highest detention rate in the country.12 The District also, however, has a shocking 100% minority detention rate.13 Although the data are not readily available, one might venture to say that the rate of children in detention who are poor is also 100%. Conversations with educational and administrative employees at the District's Oak Hill Youth Center provide anecdotal evidence that practically every child incarcerated there is performing between two and five years below grade level and that educational disabilities—both diagnosed and not formally diagnosed—are pervasive.14 As recently as 1993, one study indicated that out of a total of 387 children in secure custody, 225 were detained. Of those 225 children, 85 had been detained for more than 45 days.15

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10. From 1983 to 1993, the one-day admission rates for black youth increased from 99 per 100,000 to 210. The rate for Hispanic youth during that period increased from 67 to 126, while the rate for white youth went from 34 in 1983 to 36 in 1993 (rising to 45 in 1985). BARRY KRISBERG, PH.D., SELECTED NATIONAL STATISTICS ON JUVENILE ARRESTS AND DETENTION (1995). Dr. Krisberg reports that the overall increase in juvenile detention is entirely attributable to the increase in minority detention. Barry Krisberg, Ph.D, National Detention Trends and Issues, Presentation to The Annie E. Casey Foundation National Meeting on Juvenile Detention (Oct. 12, 1995).


14. Conversations between Professor Tulman and Oak Hill Youth Center education and administrative staff at a special education law and advocacy training at Oak Hill (Aug. 28, 1995).

15. Unpublished Study, September-October 1993, at 3 (on file with the District of Columbia Law Review). Twenty-seven children had been detained for a period of 45 to 100 days; 34 children, 101 to 200 days; 19 children, 201 to 300 days; 2 children, 301 to 500 days; and 3 children, over 501 days. Id. at 5.

Since 1993, with the closing of two facilities, Cedar Knoll and the Receiving Home, the overall juvenile
In Section IV of this Symposium, the Honorable Arthur L. Burnett, Sr. discusses race and national origin as potential factors leading to the overrepresentation of minority children generally and in the District of Columbia; Peter Leone, Ph.D. examines the overrepresentation of children with disabilities in the juvenile justice system; and Marty Beyer, Ph.D. examines the District's incarceration of children who are neglected or who are perceived to be neglected. Each commentator suggests ways for District of Columbia decision-makers and officials to uphold community interests in the detention process without unnecessarily and prejudicially harming children.

In seeking to understand the detention problem in the District, and as additional support for this Symposium, the Robert F. Kennedy Memorial also sponsored a month-long court monitoring study of initial hearings in the District's Juvenile Court conducted by D.C. Action for Children, a public interest advocacy organization. Elizabeth Siegel of D.C. Action for Children reports the results of this monitoring study in Appendix B to this Symposium.

THE CAUSES OF UNNECESSARY DETENTION

Several discrete factors contribute to the over-reliance on detention. First and foremost, decision-makers order detention without referring to statutory criteria and without accurate information about the individual arrestee. Many, and in some jurisdictions most, detention admissions are not justified in relation to detention's legitimate purposes of ensuring appearance in court and avoiding delinquency while cases are adjudicated. For example, some officials may use detention for punitive purposes, believing that a "taste of the system" can shock youths into better behavior. Because many detained youths lack effective legal representation, they have no one to advocate for their release and systemic misuses of detention go unchallenged.

Equally important, most jurisdictions do not utilize objective risk assessment approaches capable of accurately identifying the likelihood of court appearance or renewed delinquent behavior. Absent such information, the system relies on idiosyncratic decision-making (often reinforced by racial, ethnic and socio-economic stereotyping) that results in frequent mistakes and—as discussed above—the disproportionate detention of poor and minority youth.

Another basic reason for unnecessary utilization of secure detention is the dearth of effectively implemented programmatic alternatives. Few localities offer supervised release, home detention, non-secure residential facilities, or similar options for those youths who require more than mere release to a parent to ensure future court appearances and lawful behavior. Confronted with only two

incarceration rate (commitment and detention) has significantly decreased.
choices—outright release or secure confinement—the system frequently detains youths whose cases simply demand more appropriate, less costly options. Jurisdictions that have alternative programs frequently waste these resources by assigning to them youths who do not require such interventions, while leaving the proper target populations in the secure detention facility.

Detention rates are inflated because youth service systems are not adequately linked to other services and other agencies. For example, in some jurisdictions detention is the only expeditious path for obtaining mental health evaluations. In other places, particularly at night or on weekends, detention is often the only "service" available. The absence of meaningful interagency collaboration, and the related tendency to group youth into mutually exclusive categories of service eligibility, fosters and sustains the frequent substitution of detention for other essential, often mandated, types of care.

Systemic inefficiencies also contribute to unnecessary detention. Petition screening often occurs after admission to detention, generating large numbers of short detention stays that end when charges are dismissed or cases are adjusted. Other youths remain confined despite speedy trial requirements. Defense lawyers are often assigned cases days after detention commences, limiting opportunities for effective advocacy. Dispositional report preparation may not be prioritized to ensure that detained cases are handled first. Waiting lists representing bureaucratic inefficiency and over-populated programs preclude timely post-adjudicatory placement. Systemic inefficiencies of various sorts are typically overlooked when detention utilization is examined, perhaps because no agency or individual is responsible for such analyses or because such findings could produce conflict between components of the system.

Section II of this Symposium comprises three student Notes written by recent graduates of the District of Columbia School of Law. These Notes present discrete legal issues that, through misapplication or non-application, contribute to the unnecessary detention of children. Although each Note analyzes the application of District law to detention issues in the District of Columbia, the issues arise either in identical or analogous fashion in every jurisdiction. In the first Note, Henry Escoto explores the failure of the police and court social services to apply the appropriate governing standards for detention when determining which children remain in custody prior to the initial hearing. In the second Note, Julia Colton-Bell and Robert Levant argue that in a delinquency matter, as in adult criminal cases and civil commitment proceedings, preventive detention requires a showing by clear and convincing evidence—rather than by a preponderance—that the child is dangerous or presents a risk of non-appearance. In the third Note, Susan Johlie exposes the District’s misuse of secure detention for children ordered into shelter care. More fundamentally, Ms. Johlie explores the misapplication of halfway house (shelter care) placement as quasi-detention for children who do not meet the statutory criteria for secure detention, but who judges deem to be somewhat
dangerous or somewhat likely not to appear.

In Section III of this Symposium, the trio of Professors Tony Lee, John Copacino, and Paul Holland tackle causes of unnecessary detention, providing a comprehensive legal analysis of the problem. The three professors also provide practical legal strategies to assist counsel representing juveniles in the District’s Juvenile Court. Professor Jeanne Asherman-Jusino considers the interaction of neglect and delinquency laws, offering a proposal for, in essence, merging the child welfare services procedures and approach of the LaShawn Plan with the provisions of the Jerry M. Consent Decree, in order to expeditiously and efficiently provide services to District children from the moment of intervention. Professor Joseph Tulman examines the role of court social services workers (intake probation officers), concluding that they are unlawfully foregoing their role as gatekeepers prior to the initial hearing in delinquency matters, and that they improperly dominate the detention decision-making process during the initial hearing. Professor Tulman also concludes that intake probation officers are not functioning in a case management role after the initial hearing to facilitate services that would enable children to extricate themselves from detention and, in some cases, from the delinquency system altogether.

Also in Section III, Professor Mary Hynes provides a companion piece to the analysis in Professor Leone’s article. Professor Hynes demonstrates that children with disabilities who are detained have a right to a free appropriate public education, and she offers suggestions to counsel representing children with disabilities regarding the use of the Individuals with Disabilities Education Act to secure their clients’ release from detention.

THE CONSEQUENCES OF UNNECESSARY DETENTION

Unnecessary detention has deplorable consequences. Detained youths have not been adjudicated; they are simply alleged to have committed delinquent acts. Therefore, unnecessary detention results in the incarceration of many children who are, in fact, not guilty of any wrongdoing.

Youths in detention are exposed to negative peer culture and violence. Rather than shocking the youths into good behavior, detention may desensitize youths who otherwise might be deterred by the prospects of confinement. In addition, youngsters are victimized and assaulted while in detention.

Detention increases the likelihood of post-adjudicatory incarceration. A detained youth is less able to contribute to the preparation of a defense, may appear more

17. Children also recognize the injustice and hypocrisy of adult decision makers misusing detention. For example, detaining a child in a violent and assaultive environment ostensibly “to protect the child” is likely to make an oppositional or deviant child feel even more alienated from adult authority figures.
dangerous or troublesome to those making adjudication and dispositional decisions, and will not have had an opportunity to demonstrate positive adjustment in the community prior to disposition.¹⁸

Detention stigmatizes children and disrupts their lives. For example, youths released from detention encounter obstacles to re-enrollment in school or renewed participation in specialized treatment. Ironically, the so-called “revolving door” of juvenile detention may result from the closed doors confronted by those whose loss of liberty was unnecessary.

Detention costs more than $500 million dollars each year; these resources could be used more appropriately and productively. The lion’s share of detention funds support short-term costs such as custodial staff and basic maintenance; youths generally receive few meaningful services, and (with most of the funding supporting expensive detention facilities) there is insufficient funding for such services.¹⁹ In addition, overcrowding creates pressure to expand capacity, thereby diverting funds to long-term, capital projects. The fiscal impact of the overuse of detention, therefore, has short and long-term consequences, both of which restrict the options of public officials seeking to address the needs of the youths. Unnecessary reliance on detention also results in costly litigation in class and individual actions. These actions impinge on government officials’ time and clog already overcrowded court dockets. These actions also waste the time of children and their families, as well as the time of lawyers on both sides.

The District of Columbia has maintained institutions that are “overcrowded, unsafe, inhumane, abusive, unresponsive to youth needs and tantamount to neglectful warehousing.”²⁰ The Jerry M. class action suit, filed in 1985, resulted in a consent decree, a 1986 expert panelists’ report, and a multitude of court orders. The court and the opposing parties charted a course for reducing the population at the institutions and developing, as an alternative, a comprehensive continuum of care.²¹

In Section V of this Symposium, Edward Loughran, an expert in designing and implementing alternatives to detention, urges those involved in the juvenile justice system to view detention as a process rather than as a place. Mr. Loughran advocates a continuum of care, implemented through aggressive case management and early intervention, in order to provide appropriate services to the youths who need them. Jerome G. Miller, Ph.D., the preeminent pioneer and spiritual voice of


¹⁹. Sadly, although children admitted to secure detention facilities are among those youths most at risk and in need of help, admission to detention rarely results in linkage with community-based service providers or assistance to struggling families.


²¹. Id. at 3.
the juvenile deinstitutionalization movement, summarizes the plight of the children and the failures of the adults, charging those attending the symposium—and, one might assume, those reading his words—to impose decency and common sense on the so-called juvenile justice system. Donna Wulkan, Esq., an advocate for class members since the inception of the Jerry M. suit, captures the history of the litigation, and issues a reinictment of the defendants for their continuing failure to comply with court orders regarding conditions and overcrowding at Oak Hill.

Reactions and Solutions

Detention population is a function of two variables: the number of admissions and the average length of stay. A jurisdiction weaning itself from unnecessary detention must cut the number of admissions and reduce the length of stay. To be successful, decision-makers in the judicial and executive branches must analyze what sub-groups of children are overrepresented in detention: who is staying, for how long, and on what charge. Similarly, detention reduction requires a clear understanding of where the process of case management is clogged or broken down.

A risk assessment instrument that is well-crafted and faithfully followed is the most effective tool for cutting the number of admissions to detention. The specific factors delineated in District of Columbia Superior Court Juvenile Rule 106 provide an appropriate outline for devising a detailed risk assessment instrument, and indeed, efforts have been made to implement a rigorous risk assessment screening process in the District. Unfortunately, these efforts have not been entirely successful. Moreover, in August 1995, the Superior Court of the District of Columbia amended Rule 106 to allow detention based upon factors other than those specifically delineated in the Rule.

22. In the District of Columbia, an executive branch agency (Youth Services Administration) operates a single facility (Oak Hill Youth Center) that is used for both detention and commitment.

23. One must challenge, however, the inclusion of the use of detention to protect property under D.C. Code Ann. § 16-2310 (1989 Repl.) and D.C. Super. Ct. Juv. R. 106. This standard leads to the unnecessary detention of alleged property offenders and is, in that regard, fundamentally unfair.

24. The amended Rule ostensibly authorizes detention based upon factors “including but . . . not limited to,” those delineated in the Rule, D.C. Super. Ct. Juv. R. 106 (as amended Aug. 1, 1995). This language is an illegal expansion of Rule 106 beyond the boundaries of the provisions of § 16-2310 that it purportedly implements. In addition, the language arguably violates due process; it is overbroad and, in essence, allows a judge or other decision-makers to construct the standard for preventive detention on a case-by-case basis. Minimally, advocates for children should be able to argue successfully that, as applied in a particular case, the language is unconstitutional.

Unless overturned, the amended Rule will retard detention reform. Motivated by manifestly good intentions, police, social services workers, and judges will invoke the catch-all language in the amended Rule as a neutral wrapping for discriminatory factors (e.g., truancy, ungovernability, or apparent surly attitude) and, as a consequence, will use detention for purposes other than preventing dangerous conduct by the charged child and ensuring appearance of the child in court.
Another effective technique for reducing detention involves amending police procedures. In Sacramento, California, for example, police officers are now required to issue citations for all non-serious alleged juvenile offenses. There is evidence that, since the closing of the District's Receiving Home in August 1995, D.C. Metropolitan Police Department officials have agreed to adhere to the standards for detention delineated in the statute and rules. As the principal gatekeepers to detention, intake probation officers must release children who are not dangerous and who do not present a risk of flight. Consider, for example, a case in which a parent refuses to assume custody based upon frustration with the child and a belief that pretrial detention "will teach the child a lesson." Allowing that child into a detention hearing most likely will result in the illegitimate use of detention. Even though the judge may not intend to use detention for an improper purpose, that is the effect of acceding to the parent's position. Juvenile justice personnel should not ignore parents' entreaties for help to control or to protect their children; parents are legitimately frustrated, both by the children and by the failure of programs to be effective. However, detention is not for treatment. Furthermore, it is often impossible for screeners and decision-makers to discern whether the child or the parent is more to "blame" for the child's apparent ungovernability. In the short time before deciding detention, intake personnel and judges cannot determine whether the parent has been abusive and neglectful. Furthermore, the courtroom is an ineffective and inappropriate venue for crisis-oriented family intervention. Probation officers must direct families to appropriate referrals, and communities must provide meaningful support for families that need help.

Reducing the number of admissions also requires creating effective alternatives to detention for children who do pose a danger to the community or a risk of flight. These alternatives typically include monitoring and supervision. In the District, there are now a number of privately-run programs, e.g., the Center on

The court also amended Juvenile Rule 107(c), allowing for the first time a motion to detain a child who the court, social services, or police originally released at or before the initial hearing. This amendment arguably violates the proscription in D.C. CODE ANN. § 16-2312(g) against delaying the detention decision. It is also bad policy: a child who is not dangerous should not be detained. A child who violates curfew or other conditions of pre-trial release is not necessarily dangerous. Many children—both in and out of the juvenile justice system—violate rules of conduct; such violations do not justify incarceration. If, on the other hand, a child on pretrial release engages in genuinely dangerous conduct, then the authorities should be in a position to arrest and charge the child, thus allowing for a new intake screening and initial hearing for deciding anew whether—in light of the new evidence—the child is dangerous and requires pretrial, preventive detention. Similarly, if a child released pre-trial fails to appear at a hearing, the court can issue a custody order which leads to a new initial hearing at which the court can legitimately consider detention. Hence, an amendment to Rule 107(c) was not needed for cases in which the child failed to appear.

25. See infra note 33 and accompanying text.

26. Indeed, blame is not a relevant answer if preventive detention is the question.

27. Of course, these programs must not be used for children who are not dangerous and who do not pose a risk of flight.
Juvenile and Criminal Justice, Abraxis, and Community Connections, in addition to the less intensive, publicly-run home detention program. These programmatic alternatives to detention must not be used for treatment. If the alternative spaces are used for long-term, disposition purposes, children will remain in the spaces for longer periods; thus, the alternative programs will be filled, and decision-makers will resort to detaining children coming into the system.

Reducing the length of stay requires releasing those children who have been detained improperly or who can be maintained in alternative programs. The District of Columbia has no effective process for post-detention screening. As a consequence, many children unnecessarily languish in detention. Unfortunately, in a vast number of detention cases, neither defense attorneys nor government attorneys file motions for release. For two reasons, it would be more effective to direct efforts at increasing the production of release motions from the government rather than from defense attorneys. First, reforming the behavior in the single Office of the Corporation Counsel is more efficient than attempting to change defense practices in scores of offices. Second, judges expect defense attorneys representing children to claim that release is justified; a request from the government is likely to be received more favorably. If the Youth Services Administration paid for one attorney to work in the prosecutor’s office exclusively handling motions to release, the government would save an enormous amount of money and deliver more just results for children and the community.

In spite of numerous illegal applications of preventive detention law in District of Columbia Superior Court, defense attorneys seldom file interlocutory appeals to challenge illegal detention. In those instances when attorneys do appeal, the court of appeals routinely issues unpublished opinions that carry no precedential value. The case of In re M.L. DeJ. remains the only opinion purporting to interpret directly standards for the pretrial detention of children, but the brief analysis in that case is patently ambiguous. This Symposium should provide additional motivation for decision-makers to implement pre-detention risk assessment and post-detention screening and retrieval of children. This

28. D.C. Super. Ct. Juv. R. 107(c) (as amended Aug. 1, 1995) (permitting detained juvenile or Corporation Counsel to file motion for reconsideration of judicial detention determination). The emergency interlocutory appeal requires counsel to file in the court of appeals within two days of the detention order. Hence, counsel typically have no opportunity to provide the court with a comprehensive analysis of the relevant detention issues. The Rule similarly requires the court to rule expeditiously. The predictable result is that the court produces unpublished opinions that contain cursory analysis.

29. See supra note 22.

30. A private law firm might be willing to provide a visiting attorney on a rotating basis to work in the Corporation Counsel’s office to file release motions; in the alternative, District officials might seek foundation funding for this specific detention-reduction project.


Symposium, however, should also provide ammunition for defense attorneys to challenge detention, and perhaps will encourage judges at the trial and appellate levels to issue published opinions.

Within two months of attending and participating in this Symposium, the Honorable George W. Mitchell, prompted by the outrageous conditions at the Receiving Home, ordered it closed. This judicial act was both courageous and visionary. As documented in Henry Escoto's Note in Section II, the overwhelming majority of children detained overnight prior to initial hearings were being held in contravention of the governing standards. The closing of the Receiving Home should result in at least 2,000 children each year avoiding unnecessary and illegal overnight, pre-initial hearing detention.

The need to reduce lengths of stay implicates changes in case processing. As noted above, in the District of Columbia pretrial and pre-disposition detention is, on the average, extraordinarily long. Other jurisdictions have successfully legislated time limits between charging and trying an alleged juvenile offender. The District of Columbia must follow these examples and implement a speedy trial bill for detained children. In the summer of 1995, the court introduced a third juvenile calendar; thus, the system is becoming more expeditious in that way. However, processing more cases through the system does not ensure efficiency. Recidivism rates and public (including victim) disenchantment with the process remain high. The District of Columbia Court of Appeals Task Force on Families and Violence, appointed following the 1994 Judicial Conference, has endorsed in working papers the concept of diverting a significantly higher number of delinquency cases. In a parallel effort, Professor Edgar Cahn of the District of Columbia School of Law and others are promoting, to an exceptionally receptive legal and civic community, an initiative to create a Youth Court diversion program for the District of Columbia.

Ultimately, observers must ask where the middle-income and wealthy children are; they are not in the juvenile justice system. Where are the white children who violate the law? The District's juvenile detention rate is 100% minority. More

33. During the week that Judge Mitchell conducted hearings regarding whether to close the Receiving Home, Mr. Escoto distributed a draft of his Note to all of the parties to the litigation. According to Joyce Burrell, the Acting Administrator of the Youth Services Administration, Mr. Escoto's analysis "served as a wake-up call to the Metropolitan Police Department and an encouragement to the Youth Services Administration." Ms. Burrell further added:

Thank you for your effort to raise the consciousness of a City that talks about being FOR Children while they deny them very basic rights. I could not agree with you more that the solution to the dilemma of pre-trial detention is the objective and fair application of [Sections] 16-2310, 16-2311 and [Juvenile] Rule 106. Appropriate application of the statutes and rules will require training from those entities who have the authority to detain or release a youth.

Letter from Joyce L. Burrell, Acting Administrator, Youth Services Administration (Sept. 1, 1995) (on file with author).

34. See supra note 6 and accompanying text.
pointedly, what does our society do to address problems of deviancy and serious misconduct when the alleged perpetrator is "privileged"? Where would you want your child to be if your child was accused of violating the law? Answers to these central questions should prompt a transformation of the juvenile detention system and, indeed, the juvenile justice system generally.

One part of the answer is clear: no one who cares for a child would want that child to be at Oak Hill or any of the large, aggregate detention facilities around the country. Another part of the answer is also clear: white children from middle-income and wealthy families are not commonly found in juvenile detention centers. They are receiving educational and mental health services from private providers, or they are not receiving services but nonetheless remain at home awaiting the day that, like almost every child who behaves in an anti-social way, they outgrow that propensity.

At the intake stage, parents and extended families that enjoy the backing of entire communities show up for children from middle-income and wealthy families. They bring private defense attorneys and utilize connections. They have an unspoken pact with their neighbors against crying "NIMBY" (not in my backyard). Seeing these resources and recognizing this political clout, decision-makers feel comfortable—if not relieved—in allowing privileged children to escape detention and juvenile justice intervention. The same approach could work uniformly for children of color and children who come from low-income families.

Children avoid detention and often succeed in life when there is a person, family, or community embracing the child. "This child is ours; we will take this child; we will vouch for this child; we will provide safety and services for this child; we will not let the system take this child away to detention." By definition, low-income families are less able than middle-income and wealthy families to provide expensive, professional services for children who are in trouble. The taxpaying public is unlikely to cover the cost of universal access to such services, even though they have been duped into paying tens of thousands of dollars for each bed in the detention center. On the other hand, professional mental health services also can lead to unnecessary hospitalizations and residential placements, the occasional rich-kid's equivalent to unnecessary detention.

The public school system is obligated to provide free and appropriate educational and related services to children with disabilities, including children who are emotionally disturbed. Thus, the schools are a fertile ground for advocates who seek supportive services for indigent children who face detention in the delinquency system. In the final analysis, the community must support families, and families must support their children. There is more than enough money to provide services in the community if we close the expensive and counter-

35. A fortiori, persons who care for a child would not want to have that child placed in an adult incarceration facility.
therapeutic incarceration institutions.

Ultimately, if a community builds detention beds, the decision makers will fill those beds with children. If a community refuses to maintain detention beds, community resources and programs will work with children and produce better results. Pulled kicking and screaming by the factual and legal findings of judges, the District of Columbia—as a community—has closed two institutions in the last couple of years. By congressional mandate, Cedar Knoll closed in 1993. In 1994, the Receiving Home closed for long-term stays, and, as noted above, Judge Mitchell closed it altogether (even for overnight stays) in 1995.

Two down and one to go: Oak Hill should close! Regular reports from the Jerry M. monitor and orders from the judge show that the institution is an abomination. Soon the new Jerry M. panel of experts will issue a report. One might predict that, like the panel in 1986, this panel of experts will recommend that the District of Columbia utilize a continuum of care for committed children and a range of alternatives to detention for children who present a danger to the community or a risk of flight.

In Section VI of this Symposium, three contributors react to the other presentations and respond with their own solutions to the detention problem. Sheryl Brissett-Chapman, Ph.D., an astute participant-observer of the juvenile justice system, is a member of the present Jerry M. panel. Dr. Chapman offers an assessment of the problems that plague the juvenile justice system and provides six recommendations which emphasize the need to focus on the continuum of care approach, the need to work together with community-based programs, and the need to be "positive and persistent." Joyce Burrell, the Acting Administrator of the Youth Services Administration, responds to the other presentations with characteristic warmth and a continuing dedication to our children. Ms. Burrell reaffirms her commitment to the word and spirit of the court's orders to deinstitutionalize children and to eradicate inhumane conditions at the institutions. The Honorable George W. Mitchell, Presiding Judge of the Family Division of the Superior Court of the District of Columbia, discusses the court's contributions to improving the juvenile justice system, including the Domestic Violence Counsel to offer assistance to troubled families, and the recently created third juvenile calendar to unclog the court's overcrowded juvenile docket.

Postscript:

The last word in this Introduction is "thanks" to all the individuals whose work and support made this Symposium happen. I want to thank Editor-in-Chief Shana Malinowski, Executive Editor George Dazzo, and the rest of Editorial Board of The District of Columbia Law Review; Michael White and his staff at the Robert F. Kennedy Memorial for funding and organizing the Symposium event and for
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I fervently hope that the ideas and feelings generated by this Symposium hasten the day when adults protect and embrace all children.

J.B.T.  
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