

Children's Aid Panels

An appraisal of the system

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Ed

Background

During 1968 and 1969 the Social Welfare Advisory Council in South Australia looked at the work of Juvenile Courts and related measures dealing with juvenile offenders and other children in trouble.

In May 1970 the Council produced a final report which recommended the establishment of a Juvenile Crime Prevention Scheme for young offenders, the proposed aims of which were described as:

- (a) to reduce the number of offences committed by juveniles;
- (b) to encourage the reporting of offences so as to ensure that juvenile offenders are detached and remedial action taken as early as possible;
- (c) to ensure that first offenders and their parents are warned about the possible consequences of the offender's behaviour without the necessity for Court action, except in the more serious cases or where it seems necessary for the protection of the child and/or the community.

The Social Welfare Advisory Council also considered that, in the interests of crime prevention, incidents of crime by juveniles reported to the Police should not necessarily result in a Court charge against the offender. Many cases could and should be dealt with under an official warning system. In their studies, the Council found that where early warning systems have been established, these have been shown to be economical to the community by the prevention of crime. The establishment of a Juvenile Crime Prevention Scheme should therefore aim to increase co-operation between the Police Depart-

ment which is responsible for the detection of crime and the Department of Social Welfare which is the official agency responsible for the supervision and control of young offenders.

Following the Council's report to the South Australian Parliament, legislation was introduced which resulted in the Juvenile Courts Act 1971. This Act established Juvenile Aid Panels as an alternative to Court for some young people. Since that time these Panels have undergone various changes but a brief discussion on the original service is appropriate here.

A Juvenile Aid Panel was made up of a Senior Police Officer or sometimes a Justice of the Peace and a Social Worker from the Department for Community Welfare — referred to as a Community Welfare Worker. The Panel convened in a local office of the Department dealt with all children between the ages of 10 and 16 who were alleged to have committed an offence or be an habitual truant. Exceptions, which were stipulated in the legislation were those children arrested, those charged with homicide or those already on an existing court order. The existing court order was interpreted as bonds as well as children made care and control of the Minister by a Court for being neglected or uncontrolled. The child and its parents were requested to attend and the Panel did not usually hear a matter unless at least one parent was present. The Panel could not deal with children who did not admit the alleged offence and had no power to adjudicate on matters of guilt or innocence. If the child pleaded not guilty to the allegations at the Juvenile Aid Panel, he would automatically be referred to Court.

The Juvenile Aid Panel would usually sit from between 20 minutes and 45 minutes and sought to involve the child and the mother and father in those discussions. The format of the Panel setting was that initially the offence could be discussed including reasons leading up to the incident and reasons why the child offended. Other, more general topics were also dis-

cussed such as the young person's school, employment, health, leisure activities and family relationships. The young person and his parents had the right to ask for the matter to be dealt with by a Juvenile Court as did the Panel and failure to appear at a Panel Meeting would result in a Court referral unless a satisfactory reason was given.

The Juvenile Aid Panel had three main course of action open to it by way of disposition:

Warn or counsel the young person and/or the parents.

Ask for a written undertaking by the young person or ask the parents to follow a programme the Panel decides is best to follow.

Refer the matter to a juvenile court if the child, or a parent or guardian of the child, refuses to make an undertaking as requested by the Panel, breaks an undertaking entered into, or if, in the opinion of the Panel, it was otherwise expedient to do so for the purpose of the rehabilitation of the child.

Although not set down specifically in the 1971 legislation, the Panel could adjourn the matter till a later date and did this when undertakings involved reporting back regarding the completion of the terms of the agreement.

At the conclusion of each Panel appearance, the Community Welfare Worker usually reiterate that if any problems were experienced in the future, the family or any individual would be encouraged to come to the District Office for help.

Royal Commission and Resultant Changes

In the 1976 Fifth Annual Report on the Administration of the Juvenile Courts Act, A.B.C. Wilson, Senior Judge in the Adelaide Juvenile Court, criticized various aspects of the administration of juvenile justice in South Australia.

Briefly the criticisms related to shortage of manpower and supportive staff and facilities, the judicial independence of the senior judge and Government's attitude to the juvenile justice system. Also in his Report the Judge detailed some aspects of the legislation which he recommended be reviewed.

Judge Wilson discussed the controversy over juvenile crime in terms of on the one hand praise for the progressive reforms in the community welfare field and on the other hand a growing feeling in some quarters that a harder line needed to be taken on juvenile crime.

The Report maintained that some of the points echoed community misgivings about the treatment of young offenders. It also stated that the police were disenchanted with the situation whereby they worked hard to catch the law breakers and the juveniles receive a "pat on the head and a bag of lollies". This feeling in some sections of the community was reported by the press and perhaps magnified by them, in part, because the Juvenile Court had been strictly closed to the press since 1971.

Judge Wilson's comments and criticisms brought into question the philosophy of the 1971 Act as well as its administration.

They were viewed as extremely serious and the Government appointed a Royal Commission to enquire into the report on these matters.

The third term of reference is the one which is of relevance in the present discussion and is as follows:

"3. Whether having regard to the policy of the Government as enacted in Section 3 of the Juvenile Courts Act, 1971-1974, namely:

'3. In any proceedings under this Act, a juvenile court or juvenile aid panel shall treat the interests of the child in respect of whom the proceedings are

brought as the paramount consideration and, with the object of protecting or promoting those interests, shall in exercising the powers conferred by this Act adopt a court calculated to —

(a) secure for the child such care, guidance and correction as will conduce to the welfare of the child and the public interest;

(b) conserve or promote, as far as may be possible, a satisfactory relationship between the child and other member of, or persons within, his family or domestic environment.

and the child shall not be removed from the care of his parents or guardians except where his own welfare, or the public interest, cannot, in the opinion of the court be adequately safeguarded otherwise than by such removal'

any, and if so, what changes by legislation or otherwise are necessary or desirable for the proper implementation of that policy".

Judge R.F. Mohr, the Royal Commissioner, first sat in December of 1976 and presented his final report to the Government in July 1977. In the section of the Royal Commission Report devoted to the Children's Aid Panels, his Honour stated that:

"The overwhelming weight of evidence was that these had been a success in dealing with the great majority of juvenile offenders who came before them."

However there were ideas canvassed that are interesting to document preceding the discussion on changes which actually occurred.

- That an ethnic or community representative also be on the Panel was initially put forward, although after hearing other evidence the Commissioner was not in favour of such an inclusion. The Judge decided that such an inclusion may inhibit the frank and informal discussions with the child and its parents and that any local knowledge could be adequately contributed by the existing Panelists.
- A proposal was made that a Panel be chaired by a Special Magistrate or legal practitioner, but this was not favoured by the Commissioner.
- There was also a proposal that legal representation be allowed at Panel hearings but this was not accepted by Judge Mohr. This proposal and the preceding ones were not favoured by the Royal Commissioner because of the risk of the Panels becoming "Mini-courts". He felt that the essence of the Panel system is its informality and the voluntary nature of its disposal and these benefits were worthy of retention.
- Concern was expressed at the procedure at Panels where the child, at the onset, did not admit the police facts alleged. What followed was "in the nature of an inquisition by the police officer member into the circumstances which had led to the allegations being made." Whilst the Judge admired the concern of the Panel members and was impressed by their conduct, he felt this kind of discussion was not intended to take place in a Panel and was a danger inherent in the Panel system.
- As a result of this concern, a proposal was put that the Attorney General appoint a Panel of Justices of the Peace, whose signature would be necessary on a form affirming his guilt, presented by each child before the Children's Aid Panel could consider the matter.
- There was some suggestion that Children's Aid Panels should have the power to request that parents enter into a recognizance to guarantee their child's or their own compliance with an undertaking.

- It was suggested that Panels had dealt successfully with a large number of under 16 year olds and that they be extended to encompass up to 18 year old offenders.
- In truancy matters unconnected with any offence, it was suggested that an Education Department representative replace the police on the Children's Aid Panel.

CHILDREN'S AID PANELS

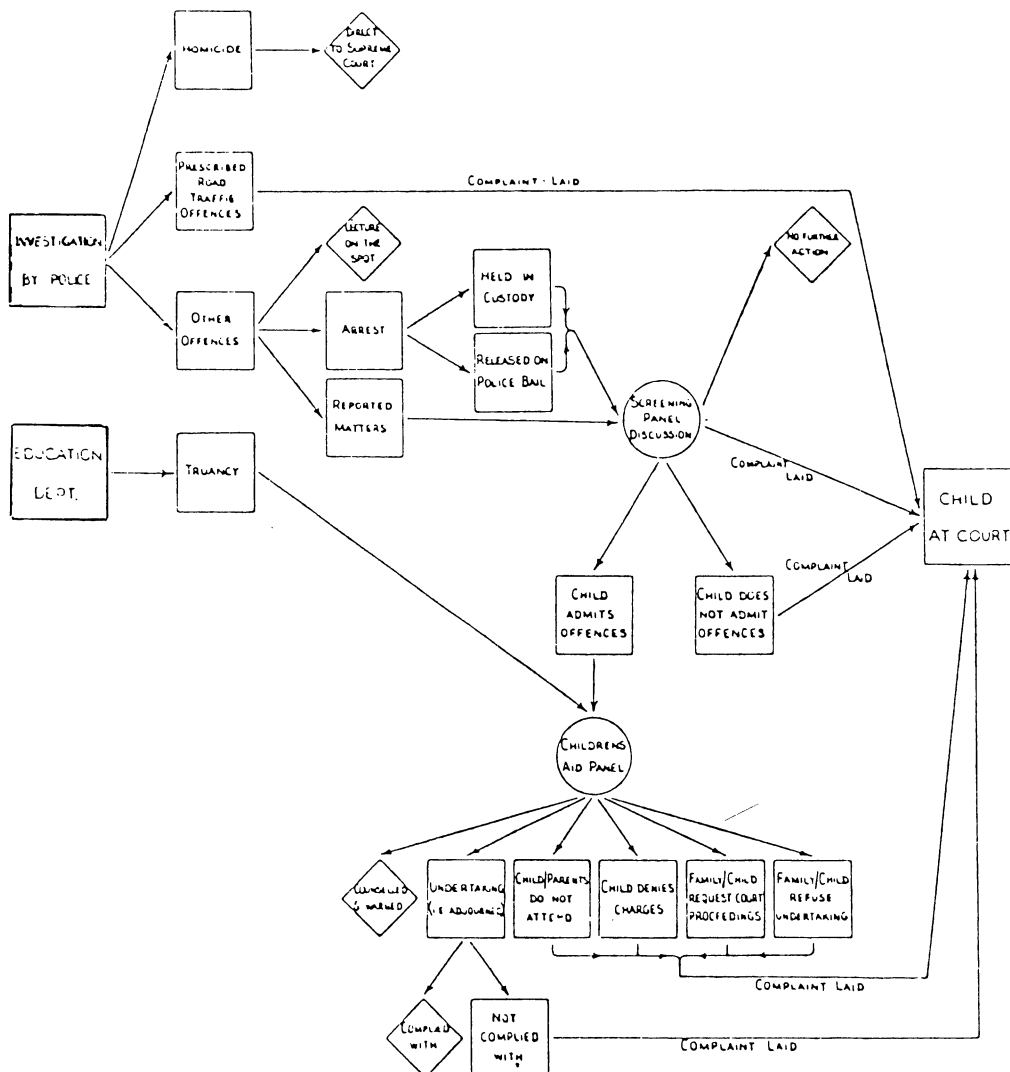
A Working Part was subsequently formed to develop legislation based on that Report and the new Children's Protection and Young Offenders Act was proclaimed on 1 July 1979.

There were many significant changes to the juvenile justice system in that legislation, and those pertaining to Juvenile Aid Panels will be discussed here.

1. The scope of these Panels, now called Children's Aid Panels, was extended to cover young offenders 10-18 years. Exceptions spelt out in the legislation are children charged with homicide and traffic offences for over 16 year olds, other than illegal use.
2. Screening Panels were established, consisting of a Police Officer and a Community Welfare Worker. This Panel sits and considers the allegations in the light of the present offence, the past record of the individual child and any Social Background information made available by an involved Social Worker. No representations are possible from the child or family at this Screening Panel, they simply consider the documents before them and decide

whether the child should be dealt with by a court or a Children's Aid Panel.

3. In truancy matters the Children's Aid Panel consists of a Community Welfare Worker and a representative from the Education Department in lieu of the Police Department.
4. When the Children's Aid Panel send the family and child the request to attend, they must also include, under this new Act, a notification that if the allegations detailed are not agreed to, the matter will be dealt with by a Children's Court. This obviates the need for an unnecessary appearance before a Children's Aid Panel, when the matter needs to be referred to Court eventually, If the child waits until the Children's Aid Panel hearing to plea not guilty, he is then referred on to a Children's Court.
5. Children's Aid Panels may warn or counsel the child and his guardian, or may request the child or his guardian to sign an undertaking. The Panel may refer a matter to Court if the guardian or child does not appear, or refuses to give an undertaking or if the child breaches an undertaking within the set period. The Children's Aid Panel shall refer to Court in cases where the offence is not admitted by the child or where he requests the matter to be heard by the Court. The Panel can no longer of itself refer a child to Court.
6. Below is a diagrammatic presentation of the procedure involved in children appearing before a Children's Aid Panel.



Panels were established as an alternative to court for some young offenders. The basic philosophy and aims of the Panels has been —

As an essential part of the process of growing up, children should learn that they have to take responsibility for their own actions, and therefore be held accountable for offences they commit.

Society must be afforded some protection from illegal actions.

Children have special needs for guidance and assistance as well as supervision and control. A range of alternative social and legal measures should be available for dealing with young offenders.

The disparity in sentencing between adult courts and Children's Courts is justified by special status and needs of children.

Children have rights and freedoms equal to those of adults and should be informed of these.

Parents have the primary responsibility for the care and supervision of their children. Children should be removed from parental control only when absolutely necessary, and they should then be dealt with as they would be dealt with by wise and conscientious parents.

Advantages and Disadvantages of the Panel System

In any discussion on the relative merits of a system, it is usual to give statistical data and it is intended to do so in this

paper. However before any figures are given, several points need to be made and the limitations acknowledged of those statistics.

Firstly, statistics for juvenile offenders prior to 1971 are incomplete so comparisons are difficult to make between the pre-Panel system and the post-Panel system.

Secondly, statistics collected on juvenile offenders can only reflect the numbers being processed within the justice system and not necessarily the level of criminal activity amongst juveniles. There are some factors which result in an inbuilt skewing of these figures.

- an increased degree of sophistication of offenders may mean less get detected,
- a change in police patrolling or detection procedures may result in a change in the level of prosecution for a given area,
- paper work thought to be excessive by the policeman on the beat, may encourage him to use his discretion to informally warn juveniles in preference to taking formal proceedings,
- the same discretion may be used if the Reporting Officer is disenchanted with the anticipated end result of the prosecution.

Given all these provisos, I think some statistics will give an idea of the numbers involved in South Australia. Firstly, a summary table :—

Statistic	1972/73	1973/74	1974/75	1975/76	1976/77	1977/78	1978/79
Number of offences (Court)	6,333	6,843	7,667	8,090	7,643	8,339	7,796
Number of appearances (Court)	3,615	3,684	4,309	4,607	4,270	4,364	4,128
Number of offenders (Court)	3,017	2,956	3,358	3,574	3,296	3,414	3,196
No. first offenders (Court)	1,744	1,744	2,236	2,377	2,157	2,365	2,162
Number of offences (Panel)	3,120	3,421	5,116	5,095	5,358	4,672	4,366
Number of appearances (Panel)	2,032	2,461	3,534	3,519	3,666	3,182	3,066
Number of offenders (Panel)	1,961	2,286	3,389	3,388	3,503	3,031	2,924
No. first offenders (Panel)	1,961	2,153	3,100	2,973	3,068	2,539	2,453
Number of offences (Total)	9,453	10,264	12,783	13,189	13,001	13,011	12,162
Number of appearances (Total)	5,647	6,145	7,843	8,126	7,936	7,546	7,194
Number of offenders (Total)	4,978	5,242	6,747	6,962	6,799	6,445	6,120
No. first offenders (Total)	3,705	3,897	5,336	5,350	5,241	4,904	4,615
Rate/1000 (offenders — Court)	13.15	14.02	15.79	17.01	15.48	16.15	15.35
Rate/1000 (offenders — Panel)	8.16	10.83	15.93	16.13	16.45	14.34	14.04
Rate/100 (total offenders — Total)	21.31	24.85	31.72	33.10	31.90	30.50	29.39

ADVANTAGES

1. Provide an alternative to Court.

Given that there has been an offence committed, society has to be seen to take some action and a Panel appearance is a legal response more fitting many situations. Recent evaluation of Panels indicates that they have essentially similar rates of reappearances as does the Court, so this more benign and less stigmatizing mechanism is at least as effective, as far as this criteria of "success" is concerned.

The Children's Aid Panels meet in a room, usually in the District Office of the Department for Community Welfare,

where physical surroundings are conducive to a degree of informality. Police panelists never wear a uniform and are frequently introduced as Mr. Smith from the Police Department, rather than Superintendent Smith.

In 1974 the Department for Community Welfare undertook to review the progress and development of the Juvenile Aid Panels. As part of that review, the study group interviewed parents and children who had been to a Juvenile Aid Panel and their conclusion was that most families interviewed said they were helped by a Panel and that they were extremely grateful for being able to attend a Panel

rather than a Court. In an unpublished paper by (1) Sarri-Bradley, they too commented favourably on the overall impression of the —

(1) "Juvenile Aid Panels: An alternative to Juvenile Court Processing" — Professor Rosemary Sarri, Mr. Patrick Bradley.

Panel sitting and noted the spontaneous comments of parents about how helpful the meeting had been to them. The paper also mentioned the families' relief that their child would not have a "record" and also their surprise at the positive experience with these two panelists, given that they had previous negative experiences with the way both social workers and police handled young people in trouble.

2. Convictions

No conviction can be recorded against a child appearing before a Children's Aid Panel. A conviction obtained whilst a juvenile can affect the employment prospects of young people and move with them into adulthood and continue to affect their lives. Therefore the Panels avoid the possibility of this stigmatising affect.

3. **Delays Minimized** — the rationale for minimising delays has its basis in traditional learning theory as well as common sense — that is — the sooner the effect is felt from an action, the easier it is for a child to connect the two events and learn by the experience. There are nineteen Panels throughout the State and on average these are currently sitting between 3 - 6 weeks after the offence was committed. This compares favourably with current Children's Court appearances which involve a delay of 3 - 4 months for reported or Summons matters, and six weeks in arrest matters.

4. Cost Factors.

Since their inception, Juvenile Aid Panels have dealt with 18,570 children, appearing 21,460 times for 31,148 offences. If not for the establishment of a Panel system, then a large proportion of these young people would have appeared in Court with all the implications that it involves. And one of these implications is financial cost to the community, as Courts are more costly in dollar terms.

5. An early warning.

One of the original aims of the Panel system which was stipulated by the Social Welfare Advisory Council was to ensure that first offenders and their parents are warned about possible consequences of the offender's behaviour without the necessity of a court appearance. Discussion in the Panel sitting usually involved the warning of what further offending can lead to, and both parents and the child are made aware of the possibility that "next time it may be a Court appearance."

Over the past seven years, there have not been many referrals to Courts from Panels — 2.74% expressed as an average for the total period. Over this period only 17.8% have subsequently appeared in a Juvenile Court.

Juvenile Aid Panels were never seen as dealing with children who persistently offend. If the child comes back for the second or third appearance, it indicates that the Panel has not been able to alter the offender's behaviour and that the matter should be referred to a Court. With the advent of Screening Panels, this decision can be made at this early point and obviate the inappropriate Children's Aid Panel appearance. The table below sets out what percentage of the children in the years 1972 to 1979 have had first, second, third or more appearances before a Panel.

6. Assistance for the child in his family setting.

By the use of undertakings, the Panel can provide help to the child and/or his guardians. These undertakings are contracts between the members of the Children's Aid Panel and the person giving the undertaking, and they express a voluntary agreement on a certain course of action. This is usually related to the offence or to family relationships. They are designed to be practical and constructive, and should reflect particular features of the child, the family or the offence. They should also express a personal commitment and be possible to monitor by a Community Welfare Worker. In cases where an undertaking is given, an adjournment is often necessary with a second appearance to allow the Panel to see whether the child or parent has carried out the undertaking.

	Percentage of 1978-79	Percentage of 1977-78	Percentage of 1976-77	Percentage of 1975-76	Percentage of 1974-75	Percentage of 1973-74	Percentage of 1972-73
	Total	Total	Total	Total	Total	Total	Total
Appearance —	3,342	3,412	3,758	3,605	3,654	2,455	2,032
1st	75.3	76.1	82.8	87.4	87.4	90.4	96.5
2nd	16.8	17.3	14.0	10.8	10.8	9.0	3.3
3rd	5.5	5.3	2.6	1.7	1.6	0.6	0.2
4th and subsequent	2.4	1.3	0.6	0.1	0.2	0.1	-
	100	100	100	100	100	100	100

7. Police – Welfare Co-operation.

One spinoff from the establishment and operation of these Panels has been the development of a better relationship between Police Officers and the Community Welfare Workers. The meeting of these two professionals in a joint venture like Panels has resulted in a better understanding of each other's roles, functions and difficulties. Exposure to the others' point of view has meant a level of co-operation not in evidence prior to 1971. This aspect of the value of Panels should not be overlooked, because the increase in understanding and co-operation has real implications for the children who get involved in the juvenile justice system.

Disadvantages

1. Incentive to plead guilty.

Because the Panel cannot adjudicate on matters of guilt or innocence, if the young person denies the allegation, he/she must be referred to Court. This is a necessary limitation to be placed on the Panel which is not a judicial body, but does give rise to potential problems. Knowing what the powers of the Children's Aid Panel are (by way of a pamphlet that accompanies the request to attend), and realising that to deny the offence means a Court hearing, there is the danger of a plea of guilty as a matter of convenience – "to get it over with". The Panels do not have many obvious co-ercive powers and realizing that, a child may be tempted to plead guilty inappropriately. Given that situation, and given that the same child does offend at a later date, he will be dealt with as a second time offender and may become more involved in the system than would be the case if he had pleaded not guilty on the first occasion and his case not found proved. The inappropriate plea may arise for several reasons:

- (a) All the elements of an offence may not be present so no offence has technically been committed –

In these circumstances, the Police Department's internal adjudication process usually weeds these out, but I have witnessed in Juvenile Aid Panels (under the old Act) where the Sergeant sitting decides this to be so, withdraws the allegation and apologises to the family for any inconvenience caused. The advent of Screening Panels should obviate such occurrences in future. As an inside, though, it was an interesting role for the Police to be seen to play, that of guardian of the child's legal rights, while also being the complainant in the matter!

- (b) The child may disagree with some substantial facts relating to the charge – This set of circumstances is in fact a basic criticism of any non-judicial tribunal, including Children's Aid Panels. The inherent danger is that someone other than a judicial officer will conduct a kind of inquisition, adjudicate on the facts, make a judgement about guilt or innocence of the party alleged to have committed the offence, and proceed to make an order of some description. As mentioned earlier, this factor was of great concern to the Royal Commissioner.

- (c) The child denies the allegation totally –

Although this may happen in a Court – especially where the defendant believes that the financial penalty given by the Court may be less than cost of engaging a solicitor to defend the matter – the phenomena is also very real in Panels. Due to the extra advantage of avoiding a Court appearance altogether by pleading guilty and therefore being dealt with by a Panel, the co-ercive nature of the Panel is potentially more powerful.

2. Limited use of Undertakings

Statistics of Juvenile Aid Panels indicate that undertakings are not used in a high percentage of cases. Since 1971, the average proportion of undertakings as a result of a Panel appearance is only 8.43%. From discussions with field staff, it seems that there was initial confusion about the purpose, the legal provision to adjourn, and the administrative arrangements for undertakings, with the result that few undertakings were sought. In 1977, a series of seminars concentrated on the use of such agreements and there was a rise in the number of undertakings recorded as a result of a Panel appearance.

There are some issues concerning undertakings, which make them less attractive to Panelists as an outcome.

- Adjourning for an undertaking does protract the exercise and the relative gains of doing this have to be weighed up.
- Some undertakings tentatively designed by the Panelists involve the child in compensating the victim (often in a service capacity) and some victims are not prepared to have any contact with the offender. Thus this potentially useful activity can not be written into the agreement.
- Some preparatory work by the Community Welfare Worker Panelist is necessary if detailed undertakings are contemplated and there may not be adequate resources to complete these before the first Panel appearance.
- Given that an undertaking has been signed by the child, the Panel meets again and ascertains that some, if not all, of the points have not been complied with. The Children's Aid Panel has two courses open to it. It can refer to Court, a matter which they may feel does not really warrant a Court appearance for the sake of being seen to follow through an action and teach the child that his non-compliance has consequences OR it can admonish the child for the non-compliance of the undertaking but not refer him to Court, thereby letting a relatively minor offender escape a Court appearance, but be left with a diminished respect for the Panel and its ability to live up to its word.

4. Deed VS Need Argument.

A dilemma which each Panelist must face, is the balance between the penalty appropriate for a minor offence as opposed to the degree of intervention indicated as optimal by the social factors which emerge at the Panel hearing. How much information do we as social workers have a right to gather on the whole family considering the young person has allegedly committed a relatively minor offence? By their nature, these problems have to be tackled by the individual worker on a case to case basis, but there are underlying philosophies upon which these individual decisions are based.

5. The Human Element.

Because the Children's Aid Panel only sits for between 20 - 45 minutes, any impact they wish to make needs to happen in that period. Therefore the two Panelists must work together and operate as a team if they are to maximize the opportunity they have with the family. Generally it can be said that people who sit on Children's Aid Panels are skilled people and work well together. However, there are obviously going to be differences in their perception and approach and the way these are handled affects the way that a Panel operates. The 1975 Department for Comm-

unity Welfare Review of Juvenile Aid Panels recommended some training be given to all Panelists to enhance their professional skills of interviewing and counselling. During the various seminars and workshops that have been arranged to focus on these areas, Panelists have all agreed that the skills are necessary and should be further developed. The most practical way for this to occur is that co-panelists be responsible for feeding back comments about each other's functioning. However, the reality of the situation is that people are hesitant to do this and frequently prefer to put up with what they consider is a less than optimum performance for the sake of outward harmony. It is a very understandable position to take, particularly when the Panelist is liked and appreciated as a person and if the end result of the Panel is satisfactory.

- these undertakings have the ultimate sanction of the Court behind it and therefore the multitude of penalties available under the Act may be brought to bear.

The two basic principles of natural justice are:—

- (a) "*nemo iudex in causa sua*". (A man may not be a judge in his own cause).

This principle is not confined to cases in which the person adjudicating is a party, but applies to a case in which he has a personal interest. The interest need not be pecuniary or proprietary. And more pertinent to the discussion on Panels, is that there must be no appearance of bias by the adjudicator involved in the Tribunal.

Bias may be said to exist where a member of a tribunal has an interest in the issue by virtue of his identification with one of the parties.

In the case of both the Screening Panel and Children's Aid Panel, the policeman sitting, represents the body that institutes the proceedings. So he is in substance both Judge and Party, and when asked to consider such matters the Courts have disqualified an officer if he has personally taken an active part in instituting the proceedings. (2).

The Children's Protection and Young Offenders Act, 1979, (S.A.), ss 26 (2) and ss 31 (2) (a) state that an approved member of the Police Force is qualified to sit on a Screening Panel and a Children's Aid Panel. This specific derogation from the normal principles of natural justice is arguably undesirable.

- (b) "*Audi alteram partem*". (each part must have reasonable notice of the particular case he has to meet; and he must be given an opportunity of stating his case and answering any arguments put forward against it)

This maxim does not necessarily mean that a person is entitled to be heard orally as the principles of natural justice are substantive principles and do not lay down rules of procedure. Natural justice does not require that reasons for decisions should be given, nor that legal representation is essential for decisions should be given, nor that legal representation is essential for a fair hearing. In criminal cases this elementary principle of justice is expressed in the saying that "no one ought to be condemned unheard" or as stated in an 18-century decision "even God Himself did not pass sentence upon Adam before he was called upon to make his defence". (3).

In the case of Screening Panels, there is no notification of the meeting, the child is not informed as to what information the decisions are based upon and he is not given an opportunity to put forward his case. The Act specifically prohibits anyone to appear or make representation to a Screening Panel and some would see this as a specific deviation from the principle of natural justice. The decision making power of the Screening Panel as to the place of hearing of the particular case is especially important as ss 28 (4) prescribes that there will be no appeal against its decision.

In regard to Children's Aid Panels, they are obliged to notify the child of the date, time and place at which he must appear. The Children's Aid Panel also gives notice of the specific offences alleged to have been committed and informs the child that if he does not admit the allegations he may notify the Children's Aid Panel accordingly and his case will be brought before a Children's Court.

Although legal representation is specifically forbidden, the principle of the right to be heard, is not seriously derogated

THE LEGAL STATUS OF PANELS

Further than a discussion about advantages and disadvantages of Children's Aid Panels, their status as a legal entity bears some thought.

We must first decide what, conceptually, these Panels are. They are creatures of statute and have their origins in legislation. Clearly they are not Courts. Are they then some kind of tribunal where certain principles of "natural justice" apply? The term "natural justice" expresses the close relationships between common law and moral principles. It has been described as "sadly lacking in precision" (1) but despite this criticism it is worth of preservation and has an impressive ancestry dating back to a maxim of the Greeks, embodied in Germanic proverbs and enshrined in the Scriptures.

These principles were originally applied to the process by which Courts themselves made their decisions and over the years became applied to administrative tribunals and authorities, wherever they act judicially.

The next central question to ask is, whether the Screening Panel and the Children's Aid Panel act in a judicial fashion and thereby attract the principles of natural justice. The basic criterion to satisfy is whether or not the officials in this tribunal have power to make decisions affecting the rights of others; the duty to act "judicially" being inferred from the nature of the decision. It is arguable that Screening Panels and Children's Aid Panels do act in a judicial fashion and therefore should be expected to observe the principles of natural justice.

In the case of Screening Panels those rights affected are:

- whether the subject of the proceedings will be eligible for a Children's Aid Panel appearance or be obliged to attend a Court;
- given that the Screening Panel has this power, the child has no authority to make representations to this body, which affects his rights to know on what basis the decision is being made and therefore has no right of counteracting any erroneous information;
- this Panel has the power to release from detention or discharge from any recognizance entered into by the child who has been apprehended and therefore has an effect on that child's rights.

In the case of the Children's Aid Panels:—

- that the child and family must attend a Children's Aid Panel or risk a referral to Court;
- an undertaking given at the Children's Aid Panel may curtail liberty in the broadest sense, by limiting the child's association with some of his peer group or requiring him to be home by certain times and therefore it may be seen to affect his rights;

from since Section 38 expressly states that the Panel shall hear submissions from the child or guardian or any person aiding the child.

Having pointed out the criticisms on a legal basis of the Screening Panels, one must comment finally — if not Screening Panels — then what?

Under the 1971 legislation, the prescription was embodied, in the Act, as to which children were eligible for Panels and this was found to be inadequately defined and to be somewhat arbitrary.

The Police have always had the discretion to proceed or not with the prosecution of Offenders. The Screening Panel enables a social work perspective to be added at this decision making point and although there are faults, on balance the Screening Panels do provide the authorities with the opportunity for responding to the needs of each individual case within some general guidelines.

CONCLUSION

This paper has attempted to look at the establishment of Juvenile Aid Panels, the changes to them over the years, the philosophy behind the Panel system as well as discussing their advantages and disadvantages. In the course of these discussions, criticisms have been levelled at certain aspects of their administration. However, on balance, it is believed that Children's Aid Panels occupy an important place in the juvenile justice system. Given that the vast majority of juveniles report breaking the law at some time in their adolescence, and given that society will not ignore such misbehaviour, even though to do so might be demonstrated to be as effective as any type of intervention, Children's Aid Panels are a more benign mechanism by which to process these young people.

The figures quoted earlier demonstrate that these Panels have been used for first and spasmodic offenders and have resulted in the handling of a large number of young people who can be appropriately dealt with in a tribunal of this nature.

The relative informality of a Children's Aid Panel appearance and the emphasis on involving the parents and child in the discussion mean that the experience is a personal one for the young offender and his family. Problems may be brought up in a reasonably unthreatening situation and the local resource knowledge of the Panelists can put the family in touch with community service relevant to their needs.

By way of placing Panels in perspective, they must be a part of a broad and varied network of services if they are to be of maximum benefit to juvenile offenders and the community. Expert assessment facilities for children in trouble, a proliferation of community based programmes and the development of youth project services as well as the more traditional supervisory work on a one to one basis, are all vital components in the network of services necessary. Residential care, in all its many shades, from the newly started Intensive Neighbourhood Care Scheme through to the secure care facilities, are also a part of the network.

Children's Aid Panels should not be viewed in isolation, but as a part of an integrated system for dealing with young offenders. As such, it is believed they have provided an important facility and have been a part of the innovative measures that are necessary for the community to respond effectively to the problem of juvenile offenders.

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- (1) S.A. de Smith "Judicial Review of Administrative Action" — page 134.
- (2) S.A. de Smith, *op cit*, page 437.
- (3) S.A. de Smith, *op cit*, page

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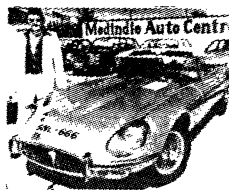
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