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## Book Review

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## BOOK REVIEW

*Kids and Cops.* By Mason P. Thomas, Jr. and L. Lynn Hoque. Chapel Hill: Institute of Government, 1974. Pp. 124.

The sharpening contradiction between delinquent youth and their adult watchdogs presents an increasing challenge to society in general, but to law enforcement officers in particular since it is upon them that the lot to apply the embattled and still unresolved concept of *pare patriae*<sup>1</sup> has devolved.<sup>2</sup> *Kids and Cops*, a recently published monograph, is a response to that challenge in North Carolina. Admittedly designed as an instruction manual for the "law enforcement officer working with children,"<sup>3</sup> it could easily double as a source book for community workers or a reference manual for some potential jailhouse lawyers!

Thomas and Hogue obviously believe that the education of the law enforcement officer as to his post-*Gault* responsibilities can best resolve the conflict between that which may be regarded as delinquent behavior and that which is normal. (For example, they frequently stress the critical nature of an officer's decision that a child should enter the juvenile justice system;<sup>4</sup> indeed, they quite candidly attribute the failure of line officers to assuage the clearly excessive rate of juvenile detention in North Carolina to the officer's lack of understanding of the law and procedure applicable to juveniles.)<sup>5</sup> Consequently, they

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1. Originally an altruistic notion by which juvenile courts were mysteriously guided to act in the best interests of the offending juvenile, the concept is often no more than either (a) a jurisdictional bootstrap by which the court takes cognizance of a juvenile's non-criminal activity (e.g. when his parents fail to ". . . assure [his] development and growth toward maturity . . .") Cf. Paul Hahn, *The Juvenile Offender and the Law*, 5 Police Test Series 266 (1971); or (b) an *ad hoc* justification for the denial of procedural due process at a delinquency hearing. Viewed historically, it is a concept which has defied practical application by even the most well-intentioned judges. The philosophy of unbridled discretion to act in the best interest of the juvenile conflicts with the reality of growing juvenile "delinquency" and legislative inertia toward rehabilitative programs.

2. The result of *In Re Gault*, 387 U.S. 1 (1967) and its progeny; *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Burrus*, 275 N.C. 517, 169 S.E.2d 879 (1969); *aff'd* 403 U.S. 528 (1971); *Gonzalez v. Maillard*, No. 50424 (N.D. Cal. Feb. 9, 1971) *appeal docketed*, 39 U.S.L.W. 3000 (U.S. Apr. 9, 1971) (No. 1565, 1970-71 Term; renumbered No. 70-120, (1971 72 term).

3. *Id.* See Preface.

4. See, *Id.* at 11, where the authors maintain that the manner in which an arrest is made will affect a juvenile's adjustment to "court, probation and juvenile institutions" and that even where no arrest is made the child's image of the justice system is affected.

5. *Accord*, NATIONAL JUVENILE DETENTION ASSOCIATION, JUVENILE DETENTION IN NORTH CAROLINA: A STUDY REPORT 24 (1973) [hereinafter cited as *Detention*].

devote the book to a synthesis of all the relevant juvenile statutes in North Carolina. The result is not only a succinct, forthright and comprehensible presentation, but a thoroughly commendable job, done with genuine sensitivity for the needs of children in trouble.<sup>6</sup> The authors' sanction of the separation, for jurisdictional purposes, of status offenses<sup>7</sup> from criminal juvenile conduct cognizable by the juvenile court deserves special commendation. It evidences their attempt to achieve in community life an equilibrium comparable to that found in nature.

*Kids and Cops* can not be judged, however, solely by its internal coherence nor in isolation from the socio-economic conditions which spawned its publication. It is no accident that someone had to promulgate general guidelines governing police conduct in the area, for the North Carolina statutory scheme does not.<sup>8</sup> The failure to achieve some degree of statutory clarity, or the continued application of a broadly drawn juvenile court statute which lacks such clarity, would otherwise render meaningless the very rights accorded to juveniles in *Gault*. The question then (subsuming the question of their right to) is whether Thomas and Hogue have enunciated adequate standards by which law enforcement officers can avoid arbitrary action in the application of juvenile laws in North Carolina.

The answer would be a resounding yes if we lived in an ideal society which only had to "enlighten" its law enforcers to eliminate social injustice. Unfortunately we don't. Therefore, the failure to include a sound theoretical discussion in *Kids and Cops* on the causes of delinquency represents a major shortcoming of the book. Merely characterizing it as an instruction manual can only justify, not excuse, such a failure.

The reasons are obvious. The well-known illusion that the rights of juveniles already exceed the citizen's entitlement to law and order speaks for itself.<sup>9</sup> The shocking record of past juvenile detention practices in North Carolina<sup>10</sup> makes it similarly difficult to believe that the

6. That the sensitivity is genuine may be observed from a comparison of similar treatment accorded mentally ill children in N.C. See, M. THOMAS, LAWS AFFECTING MENTALLY ILL CHILDREN IN N.C. (1968).

7. A status offense consists of behavior which would not be criminal if committed by an adult, e.g., Truancy.

8. In *Re Walker*, 14 N.C. App. 356, 188 S.E.2d 731 (1972), the N.C. Court of Appeals upheld the validity of G.S. § 7A278(5) on the grounds that the definition of "undisciplined child" was not unconstitutionally vague or overbroad despite the fact the section does not indicate what kinds of acts constitute disobedience, how many times these acts may be committed without sanction, nor upon whose sensitivity a violation depends. Statutes regulating similar adult conduct (e.g. vagrancy statutes), without such fair notice or adequate standards, would be unconstitutional.

9. *Accord*, as to adults. Kamisar, 18 *Am. Bar News* 5, August 1973.

10. Detention at 24.

mere enunciation of a new role for law enforcement officers will effect it in fact. The philosophy which asserts, without more, that "it is important that the law enforcement officer help lay a positive foundation in the child's attitude . . . toward the system"<sup>11</sup> glosses over precisely those value judgments a law enforcement officer makes when he decides whether a child is delinquent or merely undisciplined or neither. It encourages ascription to the psychoanalytic view that the child's superego is defective rather than that he may be suffering real material deprivations,<sup>12</sup> the gratification of which might eliminate his problem. It also obscures the fact that conspicuous consumption in United States society tends indirectly to set goals impossible of legitimate achievement by people in the lower strata of society. Most significantly, it assumes that, because Cops *might* not, Kids *do* not perceive that problems of poor housing, poor health care, poor nutrition, inadequate educational system, and inadequate recreational facilities are part of the very system they both are urged to accept.

Although after reading *Kids and Cops* one is left in no doubt that the authors recognize the need for family stability, relevant education, rehabilitation services and social agencies, etc., one nevertheless must wish that those who seek to balance personal freedom with society's tolerance for deviance would do this in relationship to the validity of societal norms.

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11. KIDS AND COPS at 23.

12. This is known as the "demon theory" based on the old assumption that a delinquent child is "full of the devil." See generally HASKELL AND YABLONSKI, CRIME AND DELINQUENCY (1970).