IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

TOMMY P., et al,

Plaintiff,

-vs-

SPOKANE COUNTY, et al,

Defendant.

NO. 224 974

MEMORANDUM OPINION

This is a class action brought on behalf of children detained at the Spokane County Juvenile Detention Facility. Juveniles are kept at the facility, mainly prior to adjudication, although sometimes after adjudication and prior to completion of disposition arrangements. The periods of detention vary from just a few hours to in excess of 30 days, although the bulk of them are detained less than 2 weeks. The average is less than 5 days. The action joined as defendants the County of Spokane, Spokane School District #81, and the Superintendent of Public Instruction. Originally the emphasis was on a cause of action based upon a statutory program for the education of handicapped children. Through 1974 funds from this program were made available by the Superintendent of Public Instruction to Spokane School District #81 which operated a "school" at the Spokane County Juvenile Detention Facility. This activity was entirely maintained by one full time public school teacher at the facility. State funds were withdrawn in 1975 and no school has been since operated at the detention facility. The statutory theory was abandoned by counsel for the plaintiff class for reasons which appear satisfactory to the Court.

The alternative theories presented by plaintiff are that the detained juveniles have constitutional rights to education or educationally oriented treatment which are not being observed by the defendants.

It is the finding of the Court that the Superintendent of Public Instruction and School District #81 have complied with their constitutionally and legislatively mandated obligations by providing an adequate general education system. The need for education for juveniles temporarily being detained by the local police authorities, under the police power, is of a temporary nature and is so inextricably inter-mixed with treatment, that it cannot, under present statutes, be considered the responsibility of the Superintendent of Public Instruction nor of the local school district. The state legislature has anticipated this problem by providing that the Juvenile Court and the county shall "provide necessary....facilities and services" for juveniles being detained prior to disposition.

The Juvenile Court and the county have the primary duty for temporarily detained juveniles; such juveniles are not the responsibility of the Superintendent of Public Instruction nor the school district, each of which have established programs fulfilling their obligations. They are not required to provide a program which follows each child and its custodian wherever they may choose to go. The legal custodian of a child may plan all sorts of activities which result in the child being unable to attend public school; when that occurs the custodian must provide a substitute which complies with the laws of the state. When juveniles are being detained by law enforcement agencies it is the obligation of the Juvenile Court and the county to be certain that the needs of the child are fulfilled. It may be that the parents can be required to make a contribution, depending upon the factual background, but while in the detention facility the child is the primary responsibility of the Juvenile Court and the county. See In re Carson, 84 Wn 2d 969, at 974; State ex rel Rickey v. Superior Court, 59 Wn 2d 872, at 876.

In State ex rel Du Pont v. Bruno, 62 Wash. 2d 790, the Washington State Supreme Court, after a thorough review of the statutes and constitutional provision regarding education in this state, said "..It is apparent that, in keeping with the state's constitutional obligations to provide an educational

program, the legislature has promulgated an integrated system of agencies for the....operation of public schools....(which are) correlated and interdependent upon one another.

"The system is infused with a public interest, not only from the standpoint of providing adequate and effective academic training....but from the standpoint of (efficiency and economy)."

The uncontradicted evidence in this case shows a need at the Juvenile Detention Center which is not being met at this time, and which can properly be denominated educational or education-treatment, in nature. The lack is so evident that, if the county has refused to meet the need, the Court would have no alternative but to enter an appropriate order. A program along the lines of that included in the Court's temporary restraining order would appear to be one acceptable solution to the need established.

It is premature, however, for the Court to exercise its power to require that minimum standards of care for detained juveniles be met by the county. Just as the Courts will recognize that custodial parents may make certain decisions affecting the care and education of their children, so must the Courts recognize that the county, acting in loco parentis, has certain discretion. This action was commenced primarily seeking an order requiring the state, through the Superintendent of Public Instruction or the school district, to render certain services. As above indicated the Court finds that that relief is not available. Now the county and the Juvenile Court should be given an opportunity to meet the obligations existing. No showing has been made that the county does not recognize the existence of a need. Although the Juvenile Court is not a party to this litigation, the record discloses that the action was initiated as the result of recognition by the Juvenile Court of an unfulfilled need. Every county is faced with an unending parade of demands and requests that various needs be met; the decision of how these needs are met and which needs have priority must necessarily be, in the original instance, a political decision. Political decisions are to be made by the legislative branch or the executive branch.

On the county level the legislative and the executive branches are merged in the Board of County Commissioners. Courts must necessarily exercise restraint in injecting themselves into political questions. The separation of powers between the three branches is basic to our system. Only when it is shown that one of the other branches has abrogated its duty should the Court undertake to enter into such questions.

The cases of detention with which we are involved here are primarily instances of predisposition detention and of limited duration. FF Certainly, the evidence establishes that prompt, educationally oriented treatment, is indicated, but for the Court to say that this is the point at which the Court will order "educationally oriented treatment: and to set the details thereof, requires some logical basis; when these needs should be met, how they should be met, and by whom they should be met are essentially policy decisions. It may well be that some earlier stage in the child's life is the appropriate stage to meet these specific needs. All of the interested agencies, the legislature, the Superintendent of Public Instruction, school districts and county law enforcement agencies have a stake in how these needs are met. If those agencies determine, as a matter of policy, that the needs will be met by providing this educationally oriented treatment to detainees when they are detained, then the policy setting branches of government are fulfilling their duties. It is certainly possible that, while considering this problem, the specific needs about which this action deals will be fulfilled at a different time or at a different place or by a different agency. It may certainly be argued that providing this treatment at the point when a child has become a juvenile in detention is relatively ineffective, since at that point the problem has become major and well developed; whereas some other agencies of the state may have recognized the problem and commenced dealing with it at an earlier stage in the child's life, when the problem may not be so difficult of solution. It is inappropriate for the Court to make this decision unless and until the other branches of government have totally refused to act.

A recent decision of our Supreme Court, In re Juvenile Director, 87 Wash. 2d 232, although dealing specifically with inherent powers of the Court, does discuss the separation of powers between the branches of state government. In that case the Court points out that the political allocation of available monetary resources should be made by representatives of the people elected in a carefully monitored process and suggests that the Courts should not make such political allocations because "the judiciary is isolated from the opinion gathering techniques of public hearings as well as being removed from politically sensitive proportionally elected representatives." Although in that case the Court was an actual party, the same principles apply here. In the instant case no witnesses were called by the defendants. This is not intended as a criticism of counsel, all of whom exhibited great skill and diligence. Many of the witnesses were employees of the defendant. By agreement the trial was bifurcated and the State and school district were dismissed prior to the final evidentiary hearings. The county was able to develop its factual theories through plaintiff's witnesses. Certainly public hearings before the Board of County Commissioners, where the subject is not limited by the technicalities of a lawsuit, would produce statements relevant to the political decision of where, when and by whom should be met the needs discussed in this case.

DATED this 13th day of December, 1976.

Philip H. Fasio
JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SPOKANE

TOMMY P. by GORDON BOVEY, his guardian ad Litem, and on behalf of all others similarly situated, Plaintiffs, vs. BOARD OF COUNTY COMMISSIONERS, Spokane County, Defendants.	NO. 224974 DECLARATORY JUDGEMENT

This matter having come to trial before the Court, plaintiff appearing through counsel, GARY B. WIGGS of the SPOKANE LEGAL SERVICES CENTER, defendant BOARD OF COUNTY COMMISSIONERS, Spokane County appearing through its attorney, Spokane County Prosecuting Attorney and GARALD GESINGER, and the Court having before it the evidence and testimony of the parties and witnesses, having heard argument of counsel, and at the conclusion of the hearing having rendered its oral decision and having entered Findings of Fact and Conclusions of Law, now therefore, it is hereby,

DECLARED, ADJUDGED and DECREED that the plaintiff has the right of treatment in the nature of education pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause of the Washington Constitution, Article I, Section 3, and as a statutory right pursuant to the Washington Juvenile Court Act;

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R.C.W. 13.04,

IT IS FURTHER DECLARED, ADJUDGED, AND DECREED that Plaintiff's right to treatment in the nature of education is presently not being met in the Spokane County Juvenile Detention Center. Judicial restraint is appropriate in ordering the exact nature of the educational treatment to be implemented by the defendant Spokane County. The local legislative body of Spokane County should have the opportunity to provide the educational treatment with a plan of its own design. In this regard, this action has been premature, there having been no showing that the County Commissioners were requested to provide the necessary remedy sought. If the defendant fails to initiate in a reasonable time an appropriate program of educational treatment for detainee's of the Spokane Juvenile Detention Center, then the Court will have the duty to order a program of educational treatment which complies with the Findings of Fact, Conclusions of Law and Declaratory Judgment.

Each party shall bear its own costs.

DONE IN OPEN COURT THIS _____DAY OF JANUARY, 1977.

/s/ Philip H. Faris

J U D G E

Presented by:

SPOKANE LEGAL SERVICES CENTER

BY: /s/ GARY B. WIGGS

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