

# THE LIMITS OF ADVOCACY: OCCUPATIONAL HAZARDS IN JUVENILE COURT \*

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## INTRODUCTION

This study in legal sociology examines the role played by private attorneys defending youthful offenders in Chicago's juvenile court. Until recent legislative and judicial reforms were implemented, juvenile courts were administered like welfare tribunals: due process was virtually ignored and defense lawyers were discouraged from participating in the proceedings. Attempts are currently under way to "legalize" juvenile court by requiring the presence of counsel and the observance of due process requirements.<sup>1</sup> This article presents a qualitative analysis of defense work in juvenile court from the perspective of lawyers who recently represented juvenile clients in an urban jurisdiction.

Studies of delinquency have for the most part focused on its psychological and environmental origins. There is a considerable amount of information concerning the social context of delinquency, the economic inequalities in American life which purportedly motivate illegal behavior, and the subcultural organization of youth gangs.<sup>2</sup> But there are few reported studies on the social and judicial processes by which young people are formally denominated criminals or delinquents.<sup>3</sup> Social scientists interested in crime and delinquency have for the most part focused on criminal actors and neglected the relevant criminal law and its administration.<sup>4</sup> During this century, there have been only sporadic efforts in criminological research on the socio-legal

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<sup>1</sup> *E.g.*, *In re Gault*, 387 U.S. 1 (1967).

<sup>2</sup> *See, e.g.*, R. CLOWARD & L. OHLIN, *DELINQUENCY & OPPORTUNITY* (1960); A. COHEN, *DELINQUENT BOYS* (1955); C. SHAW & H. MCKAY, *JUVENILE DELINQUENCY AND URBAN AREAS* (1942); *THE SOCIOLOGY OF CRIME AND DELINQUENCY* (M. Wolfgang, L. Savitz & N. Johnston ed. 1962); Miller, *Lower Class Culture as a Generating Milieu of Gang Delinquency*, 14 *J. SOCIAL ISSUES* 5-19 (1958).

<sup>3</sup> One of the few such studies is H. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* (1966).

<sup>4</sup> Jeffrey, *The Historical Development of Criminology*, in *PIONEERS IN CRIMINOLOGY* 364 (H. Mannheim ed. 1960).

problems involved in governmental invasion of personal liberty. Francis Allen suggests that the historical development and positivistic bias of academic criminology account for this trend:

It is not too much to say that a great part of the criminological labors of the last half-century proceeded with little consideration of the political and ethical values which are inevitably involved. . . . Mistaken or malevolent uses of state power have rarely been considered as possibilities demanding measures or concern. Unfortunately, the history of recent years has demonstrated all too clearly that the criminal law and its sanctions are capable of use as instruments for the destruction of basic political values and, in the world as a whole, the malevolent use of state power has become rather the rule than the exception. Accordingly, the realization has grown steadily that the values of legality and equality at the hands of the state are the essence of a free community and that the substantive criminal law has a major contribution to make in their preservation.<sup>5</sup>

The rehabilitative ideal has so dominated American criminology that research is usually undertaken in order to fix the origins of criminal and delinquent behavior within particular individuals or environments rather than in the officially constituted agencies of the criminal law. But as Allen has observed, "[e]ven if one's interests lie primarily in the problems of treatment of offenders, it should be recognized that the existence of the criminal presupposes a crime and that problems of treatment are derivative in the sense that they depend upon the determination by law-giving agencies that certain sorts of behavior are crimes."<sup>6</sup>

If one cares why young persons become delinquents, it is important to understand the conditions under which juveniles are formally declared delinquent. It is a well-documented fact that violation of the law does not necessarily lead to arrest, prosecution and conviction.<sup>7</sup> Large numbers of persons engage in criminal activity but do not come to the attention of law enforcement authorities. Moreover, committing a crime in the view of the police does not necessarily

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<sup>5</sup> Allen, *Criminal Law and the Future*, in *THE BORDERLAND OF CRIMINAL JUSTICE* 123, 126 (1964).

<sup>6</sup> *Id.* at 125.

<sup>7</sup> See, e.g., J. SKOLNICK, *JUSTICE WITHOUT TRIAL* (1966); Goldstein, *Police Discretion Not to Invoke the Criminal Process*, 69 *YALE L.J.* 543 (1960); LaFave, *The Police and the Non-Enforcement of the Law*, 1962 *WIS. L. REV.* 104 (1962).

<sup>8</sup> According to a recent study of police behavior on skid row, "[p]olicemen often do not arrest persons who have committed minor offenses in circumstances in which the arrest is technically possible. . . . [P]olicemen often not only refrain from invoking the law formally but also employ alternative sanctions. For example, it is standard practice that violators are warned not to repeat the offense. This often leads to patrolmen's 'keeping an eye' on certain persons." Bittner, *The Police on Skid Row: A Study of Peace Keeping*, 32 *AM. SOC. REV.* 699, 702 (1967).

make arrest an inevitable consequence.<sup>8</sup> Variables such as age, race, demeanor, class, and economic status play a crucial part in determining whether a law violator is brought to trial.<sup>9</sup>

Recent decisions of the United States Supreme Court<sup>10</sup> have pointed to the lack of criminal defense work in juvenile court and called for greater access to legal representation for young persons charged with crimes and delinquent acts. These decisions have pointed out that the quality of representation may be an important element in determining guilt or innocence. This article examines how the ideal of advocacy works in practice in juvenile court and discusses the ways in which lawyers handle their juvenile clients.

#### BACKGROUND AND RELEVANCE OF THE STUDY

The first juvenile court was established in 1899 in Chicago, under the influence of social reformers like Jane Addams and Julia Lathrop, who enjoyed a national reputation and were instrumental in liberalizing child welfare policies in other states. There is some dispute about whether Illinois was the first state to create a special tribunal for children. It is generally accepted, however, that the Juvenile Court Act, passed by the Illinois legislature in 1899, was the first official enactment of its type. It was acknowledged as a model statute by other states and countries.<sup>11</sup> By 1917, juvenile court legislation had been passed in all but three states, and by 1932 there were over 600 independent juvenile courts throughout the United States.<sup>12</sup>

The juvenile court system was part of a general movement to take adolescents out of the criminal law process and to improve programs for delinquent, dependent, and neglected children. The juvenile court was described as "one of the greatest advances in child welfare that has ever occurred,"<sup>13</sup> and its services were recommended for consideration as "an integral part of total welfare planning."<sup>14</sup> The juvenile court may be defined broadly as a special tribunal created by statute to determine the legal status of children and adolescents. Underlying the juvenile court movement was the concept of *parens patriae* under which the courts were given wide discretion by the state

<sup>8</sup> See Pilliavin & Briar, *Police Encounters with Juveniles*, 70 AM. J. Soc. 206 (1964).

<sup>10</sup> *In re Gault*, 387 U.S. 1 (1967); see *Miranda v. Arizona*, 384 U.S. 436 (1966); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>11</sup> Bates, *Digest of Statutes Relating to Juvenile Courts and Probation Systems*, 13 CHARITIES 329 (1905).

<sup>12</sup> Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7 (1965).

<sup>13</sup> Chute, *The Juvenile Court in Retrospect*, 13 FED. PROBATION, Sept. 1949, at 3, 7.

<sup>14</sup> Dobbs, *In Defense of Juvenile Courts*, 13 FED. PROBATION, Sept. 1949, at 24, 29.

to handle the problems of "its least fortunate junior citizens."<sup>15</sup> The administration of juvenile justice differs in many formal respects from criminal court processes. Technically, a child is not accused of a crime but is offered care and guidance; judicial intervention in a child's life supposedly does not carry the stigma of criminal guilt. Juvenile court records generally are not available to the press or to the public, and hearings are conducted in relative privacy. Until recently, the specific safeguards of due process were not applicable in juvenile court.<sup>16</sup>

The juvenile court was perceived by its supporters not as a revolutionary experiment, but rather as the culmination of traditionally valued practices.<sup>17</sup> The child welfare movement was anti-legal in the sense that it minimized the importance of civil rights and procedural formality, while relying extensively on extra-legal resources. Juvenile court judges were empowered to investigate the character and social life of pre-delinquent as well as delinquent children. The judges examined motivation rather than intent in order to determine the criminality of youthful conduct. They were concerned not simply with specific criminal acts but with the criminal tendencies of defendants.<sup>18</sup> The tenets of preventive penology justified the court's intervention in cases where no offense had actually been committed but where, for example, a child was posing problems for some person in authority such as a policeman, a teacher, or a social worker.<sup>19</sup> The unique character of the juvenile court movement was its concern for pre-delinquent youth—"children who occupy the debatable ground between criminality and innocence"—and its claim that it could transform likely criminals into respectable citizens by training them in "habits of industry, self-control and obedience to the law."<sup>20</sup>

The juvenile court movement embodied more than a concern for special treatment of adolescent offenders. It brought within the ambit of governmental control a set of youthful activities that previously had been ignored or dealt with on an informal basis.<sup>21</sup> In recent years, the welfare character of the juvenile court system has come under attack from lawyers and academics who propose constitutionalist

<sup>15</sup> Schramm, *The Juvenile Court Idea*, 13 FED. PROBATION, Sept. 1949, at 19, 21.

<sup>16</sup> Paulsen, *Fairness to the Juvenile Offender*, 41 MINN. L. REV. 547 (1957); Note, *Rights and Rehabilitation in the Juvenile Courts*, 67 COLUM. L. REV. 281 (1967).

<sup>17</sup> "The primary function of the reform movement is probably not so much the bringing about of social change, as it is to reaffirm the ideal values in a given society." Blumer, *Collective Behavior*, in PRINCIPLES OF SOCIOLOGY 212-13 (A. Lee ed. 1963).

<sup>18</sup> P. YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY 53 (1962).

<sup>19</sup> See ILL. ANN. STAT. ch. 37, § 702-3 (Smith-Hurd Supp. 1967), quoted in note 55 *infra*.

<sup>20</sup> ILL. BD. OF STATE COMM'RS OF PUBLIC CHARITIES, SIXTH BIENNIAL REPORT 104 (1880).

<sup>21</sup> See A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1968).

or revisionist reforms. Advocates of constitutionalist reforms are skeptical of the courts' humanitarian goals and are particularly concerned about the invasion of personal rights under the pretexts of "welfare" and "rehabilitation."<sup>22</sup> It is argued that "[t]he court . . . is not simply a laboratory or a clinic and the tendency to conceive of it in these terms, largely to the exclusion of the other function it is called upon to perform, contributes neither to a sound understanding of the institution nor to its proper use in serving the public interest."<sup>23</sup>

In support of their criticism of the administration of juvenile justice, the constitutionalists have drawn upon a variety of studies in social science. The evidence from these studies suggests that the publicized goals of the juvenile court are rarely achieved. Informal procedures and confidentiality in juvenile court do not necessarily guard juveniles against "degradation ceremonies."<sup>24</sup> The juvenile court, despite any intention to understand and adjust juvenile problems, is structurally organized to make judgments about social behavior. Juvenile justice is administered by a politically constituted authority which deals with juvenile conduct through the threat of coercion. Judicial sanctions can be imposed in the case of either contrary conduct or contrary attitudes, for the juvenile court is empowered to demand certain forms of moral propriety and attitudinal responses, even without a social victim who is visible and suffering.<sup>25</sup>

Despite attempts to purge the term "juvenile delinquent" of pejorative implications, it has come to have as much dramatic significance for community disapproval as the label—"criminal"—which it replaced. The informal system of communication between school, social agency and parents operates to disseminate the stigma throughout the adolescent's social world, thus identifying him as a "delinquent," "troublemaker" and "problem child." The benevolent philosophy of

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<sup>22</sup> The constitutionalist literature is too vast to be completely cited, but the most significant contributions include *THE BORDERLAND OF CRIMINAL JUSTICE* 43-61 (F. Allen ed. 1964); *INSTITUTE OF CONTINUING LEGAL EDUCATION, CHILDREN IN THE COURTS: THE QUESTION OF REPRESENTATION* (G. Newman ed. 1957); P. TAPPAN, *DELINQUENT GIRLS IN COURT* (1947); Beemsterboer, *The Juvenile Court—Benevolence in the Star Chamber*, 50 J. CRIM. L.C.&P.S. 464 (1960); Caldwell, *The Juvenile Court: Its Development and Some Major Problems*, 51 J. CRIM. L.C.&P.S. 493 (1961); Diana, *The Rights of Juvenile Delinquents: An Appraisal of Court Procedures*, 47 J. CRIM. L.C.&P.S. 561 (1957); Handler, *supra* note 12; Nunberg, *Problems in the Structure of the Juvenile Court*, 48 J. CRIM. L.C.&P.S. 500 (1958); Paulsen, *supra* note 16; Rubin, *Protecting the Child in the Juvenile Court*, 43 J. CRIM. L.C.&P.S. 425 (1952); Yablonsky, *The Role of Law and Social Science in the Juvenile Court*, 53 J. CRIM. L.C.&P.S. 426 (1962); Comment, *Juvenile Justice in Transition*, 14 U.C.L.A. L. REV. 1144 (1967); Note, *Rights and Rehabilitation in the Juvenile Courts*, *supra* note 16.

<sup>23</sup> F. Allen, *The Juvenile Court and the Limits of Juvenile Justice*, in *THE BORDERLAND OF CRIMINAL JUSTICE* 61 (F. Allen ed. 1964).

<sup>24</sup> Garfinkel, *Successful Degradation Ceremonies*, 61 AM. J. SOC. 420 (1956).

<sup>25</sup> For the theoretical and policy implications of victimless crime, see E. SCHUR, *CRIMES WITHOUT VICTIMS* (1965).

the juvenile court often disguises the fact that the offender is regarded as a "non-person" who is immature, unworldly, and incapable of making effective decisions about his own welfare and future. Genuine attention is rarely paid to how the offender feels and experiences his predicament; according to Elliot Studt, the present structural arrangement of the juvenile court is likely to invite regression and diminish self-respect in its youthful charges.<sup>26</sup> David Matza points to the "sense of injustice" which is experienced by many adolescents when they are treated with condescension, inconsistency, hypocrisy, favoritism or whimsy.<sup>27</sup> Other writers have confirmed that authoritarian professionalism and pious intimacy in a court room setting are not conducive to trusting and cooperative relationships.<sup>28</sup> Finally, the constitutionalists argue that juvenile corrective institutions are no better, and in some cases worse, than adult prisons. On utilitarian grounds alone, reformatories are a dismal failure in deterring future criminal behavior.<sup>29</sup>

The essence of the constitutionalist argument is that the juvenile court system violates constitutional guarantees of due process and stigmatizes adolescents as "delinquents," thereby performing functions similar to those of the criminal courts. The United States Supreme Court recognized the elements of this argument for the first time in 1967 when it delivered an opinion on the constitutionality of juvenile courts.<sup>30</sup> The Court added clear procedural guidelines to its earlier statement that the "admonition to function in a 'parental' relationship is not an invitation to procedural arbitrariness."<sup>31</sup> Speaking for the majority in *Gault*, Justice Fortas said that juveniles are entitled to (1) timely notice of the specific charges against them, (2) notification of the right to be represented by counsel in proceedings which "may result in commitment to an institution in which the juvenile's freedom is curtailed,"<sup>32</sup> (3) the right to confront and cross-

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<sup>26</sup> Studt, *The Client's Image of the Juvenile Court*, in JUSTICE FOR THE CHILD 200 (M. Rosenheim ed. 1962).

<sup>27</sup> D. MATZA, DELINQUENCY AND DRIFT 136 (1964).

<sup>28</sup> Handler, *supra* note 12, at 20-21.

<sup>29</sup> McKay, *Report on the Criminal Careers of Male Delinquents in Chicago*, in PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE REPORT, JUVENILE DELINQUENCY AND YOUTH CRIME 107 (1967) [hereinafter cited as TASK FORCE REPORT].

<sup>30</sup> See *In re Gault*, 387 U.S. 1 (1967).

<sup>31</sup> *Kent v. United States*, 383 U.S. 541, 555 (1966).

There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

*Id.* at 556.

<sup>32</sup> *In re Gault*, 387 U.S. 1, 41 (1967).

examine complainants and other witnesses, and (4) adequate warning of the privilege against self-incrimination and the right to remain silent. Justice Fortas reflected the constitutionalist argument in stating that "however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated . . . . Under our Constitution, the condition of being a boy does not justify a kangaroo court."<sup>33</sup>

The right to counsel was the fundamental issue in *Gault* because exercise of the right assures procedural regularity and the implementation of related principles:

A proceeding where the issue is whether the child will be found to be "delinquent" and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it.<sup>34</sup>

The *Gault* decision came shortly after the President's Commission on Law Enforcement and Administration of Justice had made strong recommendations concerning the right to counsel:

[C]ounsel must be appointed where it can be shown that failure to do so would prejudice the rights of the person involved . . . .<sup>35</sup>

Nor does reason appear for the argument that counsel should be provided in some situations but not in others; in delinquency proceedings, for example, but not in neglect. *Wherever coercive action is a possibility, the presence of counsel is imperative.* . . .<sup>36</sup>

*Counsel should be appointed . . . without requiring any affirmative choice by child or parent.*<sup>37</sup>

Although the *New York Times* greeted *Gault* as a landmark decision requiring "radical changes,"<sup>38</sup> it seems unlikely that the decision will generate anything more than a few modest alterations in the total juvenile court system. Important structural changes will depend ultimately on major legislative reform which is not as yet

<sup>33</sup> *Id.* at 27-28.

<sup>34</sup> *Id.* at 36.

<sup>35</sup> TASK FORCE REPORT 31.

<sup>36</sup> *Id.* at 33 (emphasis added).

<sup>37</sup> PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 87 (1967).

<sup>38</sup> N.Y. Times, May 16, 1967, at 1, col. 1.

forthcoming. In the early 1960's, New York, California, and Illinois passed new juvenile court acts which, according to juvenile court administrators from these states, anticipated the Supreme Court decision. Commenting on *Gault*, judges in New York said that the "ruling would not affect juvenile cases, since it already is the law."<sup>39</sup> Similar pronouncements were made in San Francisco and Chicago. New York introduced legal counsel to family court through the "law guardians" system in 1962, and the Public Defender's Office in Chicago assigned a full-time lawyer to juvenile court early in 1966. The *Gault* opinion was no surprise to juvenile court administrators in these cities.

Not much is yet known about how the new "legalized" juvenile courts are working, but some information is available concerning the role of the lawyer in juvenile court. Because much of the constitutionalist argument relies on the effectiveness of legal representation,<sup>40</sup> it is worthwhile to examine the probable impact of counsel in juvenile court. Before the enactment of the New York Family Court Act in 1962, a study discovered that 92 per cent of juvenile respondents in New York were not represented by counsel.<sup>41</sup> A similar inquiry in California found that "in most counties attorneys are present in 1% or less of the juvenile court cases."<sup>42</sup> Another study, based on a national survey of juvenile court judges in 1964, found that "in most courts lawyers represent children in less than 5% of the cases which go to hearing."<sup>43</sup>

Edwin Lemert recently studied the effects of the 1961 California Juvenile Court Act and found that the percentage of cases in which counsel appeared more than trebled in four years, the median rising from three to ten per cent.<sup>44</sup> "The evidence is impressive," writes Lemert, "that representation by counsel more often secures a favorable outcome of the case than where there is no counsel. Proportionally, dismissals were ordered nearly three times as frequently in attorney as in nonattorney cases."<sup>45</sup> Closer analysis of the data, however, shows that attorneys were most successful in neglect cases and had almost no impact on delinquency cases. In fact, in one of the counties studied,

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<sup>39</sup> *Id.*

<sup>40</sup> See Skoler & Tenney, *Attorney Representation in Juvenile Court*, 4 J. FAM. L. 77 (1964).

<sup>41</sup> Schinitsky, *The Role of the Lawyer in Children's Court*, 17 RECORD OF N.Y.C.B.A. 10, 15 (1962).

<sup>42</sup> TASK FORCE REPORT 32.

<sup>43</sup> Skoler & Tenney, *supra* note 40, at 81.

<sup>44</sup> Lemert, *Legislating Change in the Juvenile Court*, 1967 WIS. L. REV. 421, 425-26 (1967).

<sup>45</sup> *Id.* at 442.



juveniles without attorneys were less likely to be detained while awaiting trial.<sup>46</sup>

### CHICAGO'S JUVENILE COURT

Following the New York and California juvenile court reforms, the Illinois legislature approved a Juvenile Court Act (1965) which authorized various procedural and jurisdictional changes.<sup>47</sup> Although proceedings under that act were "not intended to be adversary in character,"<sup>48</sup> practical considerations virtually guaranteed that juvenile court would assume many of the characteristics of a minor criminal court. The state of Illinois is represented in juvenile court by the state attorney's office. Correspondingly, juveniles have the right to be represented by either private or court-appointed counsel. About a year before the *Gault* case was decided, the Cook County Public Defender assigned a full-time lawyer to juvenile court, and the Legal Aid Bureau established a special office, staffed by two full-time attorneys and a social worker, across the street from juvenile court.

The Cook County Juvenile Court building is located on Chicago's west side, about a fifteen-minute drive from downtown. The building contains seven courtrooms which function every weekday from 9:30 a.m. until the middle of the afternoon. Six judges and magistrates, plus the presiding judge, who acts mostly in the capacity of administrative director, handle over 50,000 hearings annually.

In 1966, nearly 17,000 juveniles were referred to this court for alleged delinquency and related offenses.<sup>49</sup> Almost 25 per cent of these cases were adjusted by administrative officers in the complaint department and were not referred to the courts, either because there was insufficient evidence or because the charges were considered trivial.<sup>50</sup> Lawyers have the right to represent clients at any administrative or judicial hearing—complaint hearing, detention hearing,<sup>51</sup> adjudication

<sup>46</sup> *Id.* at 443.

<sup>47</sup> ILL. ANN. STAT. ch. 37, §§ 701-1 to 708-4 (Smith-Hurd Supp. 1967).

<sup>48</sup> *Id.* ch. 37, § 701-20(1).

<sup>49</sup> 1966 COOK COUNTY JUV. CT. STATISTICAL REPORT.

<sup>50</sup> The statutory authority for this adjustment procedure is ILL. ANN. STAT. ch. 37, § 703-8 (Smith-Hurd Supp. 1967) :

The Court may authorize the probation officer to confer in a preliminary conference with any person seeking to file a petition . . . , the prospective respondents and other interested persons concerning the advisability of filing the petition, with a view to adjusting suitable cases without the filing of a petition.

Adjustment may take the form of referral to the Youth Division of the Police Department or a local social agency. A case can be adjusted at the police station without any contact whatsoever with juvenile court. An adjustment becomes part of a juvenile's police record and is used in court as an indicator of delinquent character.

<sup>51</sup> "Unless sooner released, a minor taken into temporary custody must be brought before a judicial officer within 24 hours, exclusive of Sundays and legal holidays, for a detention hearing to determine whether he shall be further detained" pending the adjudication hearing. ILL. ANN. STAT. ch. 37, § 703-5 (Smith-Hurd Supp. 1967).

hearing,<sup>52</sup> or disposition hearing<sup>53</sup>—but are most likely to appear at an adjudication hearing, where guilt or innocence is judged. In 1966, the Cook County juvenile court officially disposed of nearly 9,000 delinquency cases, of which 22 per cent were dismissed, 15 per cent resulted in commitment to penal institutions, and 33 per cent received probation.<sup>54</sup>

#### METHODOLOGICAL NOTE

We shall restrict our observations to the role played by attorneys representing juveniles charged with delinquency or related offenses such as incorrigibility or truancy.<sup>55</sup> Interviewing and participant observation were the main research techniques used. The interview sample was derived from questionnaires and letters mailed to every attorney who, during 1966, filed an appearance for a delinquency proceeding in Cook County's juvenile court in Chicago.<sup>56</sup> This is the latest full year for which these records are available, and also the first full year in which the 1965 Illinois Juvenile Court Act was implemented. Addresses were found for 236 attorneys; questionnaires were mailed to 180 attorneys in the downtown Loop area and to fifty-six with offices in the suburbs or outlying areas of the city. A total of sixty-two questionnaires were returned, of which forty indicated that the respondent had represented a client in juvenile court.<sup>57</sup> Of the fifty-one

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<sup>52</sup> "At the adjudicatory hearing, the court shall first consider only the question whether the minor is [a delinquent]. . . . For this purpose the rules of evidence in the nature of civil proceedings . . . are applicable. No finding [that the minor is a delinquent] may be made . . . unless supported by a preponderance of the evidence nor may such finding be based solely upon the uncorroborated extra-judicial admission or extra-judicial confession of the minor." *Id.* § 704-6.

<sup>53</sup> "After adjudging the minor a ward of the court, the court shall hear evidence on the question of the proper disposition best serving the interests of the minor and the public." *Id.* § 703-5.

<sup>54</sup> The remaining 30% of the cases were continued until the next year or disposed of through unaccounted official action. 1966 COOK COUNTY JUV. CT. STATISTICAL REP.

<sup>55</sup> "Those who are delinquent include (a) any boy who prior to his 17th birthday or a girl who prior to her 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or state law or municipal ordinance; and (b) any minor who has violated a lawful court order made under this act." ILL. ANN. STAT. ch. 37, § 702-2 (Smith-Hurd Supp. 1967). "Those otherwise in need of supervision include (a) any minor under 18 years of age who is beyond the control of his parents, guardian or other custodian; and (b) any minor subject to compulsory school attendance who is habitually truant from school. . . ." *Id.* § 702-03.

<sup>56</sup> We found the names of these attorneys in a ledger in the clerk's office at juvenile court. It has been pointed out to us, however, that lawyers do not always sign this ledger when they file an appearance. It is estimated that between 5% and 10% of the total number of appearances by private attorneys are not accounted for in our sample.

<sup>57</sup> A follow-up of errant questionnaires showed that some never reached their destination because they were wrongly addressed (ledger signatures were misread) or because attorneys had changed their address and could not be traced.

attorneys who were personally contacted and interviewed, sixteen had not responded to the questionnaire, but they did not differ in any significant respect from the thirty-five who did respond.<sup>58</sup>

In addition to the time spent interviewing attorneys, hundreds of hours were spent in observing juvenile court practices over a period of twelve months. Informal discussions were held with personnel of Cook County's juvenile court—the chief judge, the director of social services, judges, magistrates, and probation officers. Considerable time was spent in observing the juvenile court's Public Defender at work. Lawyers from other service organizations in Chicago were interviewed and observed on the job.

Of the 13,605 attorneys listed in 1966 as practicing in Cook County, 333 (2.5 per cent) filed appearances in juvenile court. These 333 attorneys appeared at over 570 hearings on behalf of clients charged with being a delinquent or a minor in need of supervision (MINS). Of the fifty-one lawyers interviewed for this study, forty-one have offices in the downtown business district and ten are Negroes who practice on Chicago's southside. Twenty of the forty-one are in practice on their own, thirteen are in small firms (two to four partners), five belong to medium-sized firms (five to fourteen partners), and three are members of large firms (fourteen to seventeen partners).<sup>59</sup>

Lawyers in the upper echelons of their profession come into contact with juvenile court by accident only. Corporate lawyers and influential trial lawyers have little interest in the minor criminal courts. One lawyer from a large firm handled a case as a favor to a relative and never expected to see juvenile court again: "I don't care for this type of law. I don't have the energy or facilities to handle it, and would always refuse unless, like this, it was a special favor." (14)<sup>60</sup> Another lawyer retained by a large department store came to juvenile court on behalf of the son of the president's chauffeur. A young member of a large LaSalle Street firm found that one appearance in juvenile court was sufficient for him:

I don't know what they are trying to do or how they are doing it. . . . If I knew what was going on there I might like it, but now it is a mystery to me. I don't understand the

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<sup>58</sup> Those who did not respond to the questionnaire were similar to those who did respond in terms of (a) size of office, (b) type of practice, and (c) level of experience with juvenile court.

<sup>59</sup> The total number of attorneys listed in Cook County is taken from 1965-66 SULLIVAN'S LAW DIRECTORY OF THE STATE OF ILLINOIS. The small firms differ from individual practices only in terms of specialization and pay arrangements. Office sharing among numerous lawyers was distinguished from true partnership arrangements in large firms.

<sup>60</sup> Each number in parentheses refers to a particular interviewee.

proceedings and I don't know what opportunities are available for disposition. (17)

Of the five members of medium-sized firms, two had handled only one juvenile case each in their careers. Both got their clients dismissed, charged a substantial fee (\$75 and \$200)—though not as much as they would have charged for an adult—and were satisfied with the way their cases were handled by juvenile court. Both said that they would not mind representing a juvenile again but doubted if they would ever work with another one. A third lawyer from a medium-sized firm had handled only dependency cases in juvenile court. The two other attorneys from such firms took juvenile cases as a favor to a relative and an important client, respectively, but would decline to represent juveniles in the future.

It is safe to conclude that the most prominent and wealthy members of the bar are not the ones representing juvenile clients. Juvenile cases are given even lower priority than traffic or misdemeanor cases. One lawyer complained to his friends at the office about the lack of clients: "The only business we turn away is juvenile business." (1) This is not to suggest that the members of prestigious firms have no contact with juvenile clients, but rather that juveniles are not part of their regular business. The members of these firms are more likely to help in handling the legal problems of the poor through voluntary and charitable arrangements on a corporate basis. Such arrangements usually do not benefit juveniles, although there are exceptions. Between 1963 and 1965, fifty members of the Woman's Bar Association pioneered a volunteer program in juvenile court by agreeing to represent any indigent juvenile who was referred to them by the chief probation officer. In actuality, fifteen lawyers carried the bulk of the work, and they were only called upon in emergency situations. With the new Juvenile Court Act of 1965 and the assignment of OEO funds to the Chicago Legal Aid Bureau, the Woman's Bar Association program was discontinued.<sup>61</sup>

Another voluntary service is provided by the Church Federation of Greater Chicago, which sponsors legal advice clinics in thirty-three centers throughout the city and suburbs. Members of large law firms have agreed to volunteer one night every month to man these neighborhood clinics. The Neighborhood Legal Assistance Center provides a full range of legal services at a location on the near north side of Chicago. Initiated by lawyers from a large firm and funded partly by the federal government, the NLAC has so far found that it rarely gets

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<sup>61</sup> Interview with Mrs. Esther Rothstein, past chairman of the Woman's Bar Association Committee on the Juvenile Court, June 23, 1967.

juvenile cases.<sup>62</sup> The burden of juvenile representation has fallen upon the Public Defender's Office and the Legal Aid Bureau, both of which rely on governmental funds (county and federal, respectively) and have close institutional ties with the court system. Prior to the recent governmental funding of legal programs for the poor, some lawyers from influential firms donated time and money on a voluntary basis. Now, however, most of these lawyers come into contact with juvenile court only as a favor to a friend or an influential client. With the expansion of public defender and legal aid programs, members of large law firms have less and less to do with the legal problems of poor people.

#### PRIVATE LAWYERS AS OUTSIDERS IN JUVENILE COURT

Over eighty per cent of the lawyers interviewed may be defined as "small-fee lawyers"—lawyers who have solo practices, are general practitioners, and do predominantly trial work.<sup>63</sup> The small-fee lawyer has a marginal status in the legal profession. He is excluded from participation in influential firms and from positions of power in established bar associations. With no money to buy a partnership and with a degree from a poorly-regarded law school,<sup>64</sup> he is forced to handle the bar's dirty work. According to Jerome Carlin's study of individual practitioner's in Chicago:

For most individual practitioners, getting started on their own was a hard, uphill struggle. Their work in the early years consisted generally of the dregs of legal practice and their income was correspondingly meager. The matters they handled were with few exceptions the least desirable from every point of view: the marginal cases, the cases no one else wanted, the cases involving the least return and the most aggravation. . . . The most distinguishing feature of such cases is their petty character—the small amount of money involved, the tenuousness of the claim (or its nonexistence)—and the inordinate amount of time required to make any

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<sup>62</sup> The thirty volunteer lawyers in NLAC are regularly employed by firms which do not handle cases in criminal law, domestic relations, or personal injury—the three fields which most directly affect poor people. All of the participating lawyers are in the upper echelons of their profession; all are in prestige firms and none is in private practice. Of the original nine founding members, six went to Harvard Law School, one to Yale and one to Chicago. In the first two years of operation, according to its director, NLAC did not handle one juvenile case.

<sup>63</sup> This typology is adapted from A. WOOD, *CRIMINAL LAWYER* 40-46 (1967). See also Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 AM. SOC. REV. 47-54 (1963).

<sup>64</sup> According to Jerome Carlin and Jan Howard, "lawyers representing lower-class persons tend to be the least competent members of the bar, and those least likely to employ a high level or wide range of technical services." Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A. L. REV. 381, 384 (1965). We cannot agree with the judgment that the "best" lawyers are the ones with the most academic training from a "top quality law school." A degree from a night law school may be more useful to a lawyer who regularly practices in criminal court.

headway at all. In short, such practice constitutes the dirty work, the "crap," the "junk" that no one else will handle, but which the younger lawyer will often have to take if he wants any business at all.<sup>65</sup>

Like most small-fee work, juvenile cases are rarely profitable, and the effort they require often seems out of proportion to the seriousness of the case, the fee, and the good that can be accomplished. In our interview sample, twelve lawyers did not receive any payment, seven were paid in full, and thirty-two received what they considered a minimal fee.<sup>66</sup> The small-fee lawyers accepted juveniles as clients in the regular course of their business, whereas the others accepted juveniles only for exceptional reasons: as part of a political obligation, as a personal favor for a friend or relative, in exchange for a promise of more lucrative business, or as part of family service for a regular client.

The small-fee lawyer, as Carlin has pointed out, "is most likely to be found at the margin of his profession, enjoying little freedom in choice of clients, type of work, or conditions of practice."<sup>67</sup> Tort suits, title searching, small claims, matrimonial and criminal law make up his routine business. Most petty criminal defense work requires minimal skills of advocacy and oratory, but demands salesmanship, adaptability, an affable demeanor and personality—in effect, all the qualities of a small-time entrepreneur. The clients of small-fee lawyers typically are from low income groups and, in criminal cases, charged with misdemeanors rather than felonies. It has been observed that middle income persons use the services of a lawyer more often than the poor and that this reflects class inequalities in the administration of justice.<sup>68</sup> But it is worthwhile to note that poor persons seek and receive legal advice from persons other than lawyers. Social workers, clergymen, precinct captains, ward committeemen, policemen, jailhouse lawyers, bondsmen, clerks and bailiffs also possess entrepreneurial competence and have access to the judicial system. The practices of these non-legal advisors determine to some extent the procedures which lawyers must follow in juvenile court.

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<sup>65</sup> J. CARLIN, *LAWYERS ON THEIR OWN* 13-14 (1962).

<sup>66</sup> The following represents a sample of the fees charged: \$500 (1), \$350 (1), \$250 (3), \$200 (1), \$100 (4), \$50 (6), \$25 (8).

<sup>67</sup> J. CARLIN, *supra* note 65, at 206.

<sup>68</sup> See J. CARLIN, *supra* note 65; NATIONAL CONFERENCE ON LAW AND POVERTY, *LAW AND POVERTY* 1965 (1965); Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 *YALE L.J.* 1317 (1964); Carlin & Howard, *supra* note 64; Carlin, Howard & Messinger, *Civil Justice and the Poor: Issues for Sociological Research*, 1 *L. & SOC'Y REV.* 9 (1966); Skolnick, *The Sociology of Law in America: Overview and Trends*, 12 *SOCIAL PROBLEMS* 4 (Summer Supp. 1965).

Most small-fee lawyers do a cash business, and it is difficult to estimate how much they make from criminal defense work. What money they do manage to earn from this type of practice appears to be extracted from clients who are officially poor.<sup>69</sup> Many persons who are marginally or even officially poor prefer to scrape together a token fee rather than accept the free services of a court-appointed lawyer.<sup>70</sup> The small-fee lawyer operates under many of the same conditions as a small businessman. He must be prepared to accept a down payment on a fee and to extend credit in the hope that a satisfied client or a relative later will pay him in full. A defendant who is capable of raising \$50 to \$100 for bail is always a good risk because his lawyer can collect his fee out of the bail money.<sup>71</sup> Pawnshops and loan companies facilitate the practice of credit payments, and it is not unusual for a lawyer to receive payment in kind (for example, a watch or piece of jewelry). Another form of "payment" is the referral of paying clients, a practice which may ultimately provide a regular income for small-fee lawyers.

Although juvenile court is like a minor criminal court in terms of the imputed criminal character of its clientele and the availability of penal sanctions, its organizational and administrative routines differ from those of criminal court in at least three pertinent respects:

(1) Bail arrangements represent a significant activity for the lawyer in criminal court. Bail money is often accepted as a down payment on a fee; the bondsman plays an important role in referring clients to lawyers, and the bonding process facilitates informal relationships within the court system. However, the Illinois Juvenile Court Act makes no provision for bail, although a defendant can be released to his parents pending the adjudication hearing if he is not an "immediate and urgent" danger to himself or others.<sup>72</sup> No bond money

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<sup>69</sup> Definitions of official poverty vary, but it may be assessed in terms of income (*e.g.*, below \$3,000 per annum), or welfare status (*e.g.*, receiving aid to dependent children funds or living in public housing).

<sup>70</sup> Even juveniles are reluctant to use public attorneys. According to one seventeen-year-old youth:

You always got to have a lawyer. I would never take one of those public defenders because they work for the city. . . . They sit down with the judge and they got this piece of paper and they talk it over and decide what this nigger's gonna get. Whether he's gonna get six months or less. The cat don't talk to you till you come in. They bring you in from the bullpen and you're standing in court in front of the judge and he kind of puts his hand over his mouth and whispers sideways to you "What happened? How do you plead?" And you tell him in three minutes and then he goes on and gets you busted. So I would never take no public defender, because those ofays down there in court just want to put you away.

<sup>71</sup> A lawyer can accompany his client to the bond office and, for a small "fee" to a bond clerk, the check is handed over (rather than mailed) to the client, who endorses it to the lawyer.

<sup>72</sup> ILL. ANN. STAT. ch. 37, §§ 703-4, 703-6(2) (Smith-Hurd Supp. 1967).

is required in this proceeding and there is no need for a lawyer to bargain for lower bond or to help his client raise the required amount. A lawyer's job at this stage of a case is to present evidence and character witnesses in order to convince the court that the defendant may be safely released to his parents' custody. There is no commercialism or profit in juvenile court bonding procedures, and the bondsman has no function there.

(2) The American system of criminal justice, as Jerome Skolnick has pointed out, is predominantly pre-trial in character; full-scale trials reflect a breakdown of negotiations between the defense and prosecuting attorneys.<sup>73</sup> Something like 90 per cent of all convictions in lower criminal courts are the result of a negotiated plea or deal.<sup>74</sup> Rules of evidence are routinely ignored or bypassed and advocacy is subordinated to what Abraham Blumberg has called "bureaucratically ordained and controlled 'work crimes,' short cuts, deviations, and outright rule violations. . . . The 'trial' becomes a perfunctory reiteration and validation of the pretrial interrogation and investigation."<sup>75</sup> The small-fee lawyer, according to Skolnick, is typically a cooperative agent of the criminal court system rather than an independent ally of defendants:

It is rare . . . for the average local defense attorney to base his strategy of defense on procedural error in the routine case, whether he is a private attorney or a [public defender]. Most private defense attorneys usually operate on a theory of defense similar to that of the public defender, and "bargain" as willingly as he. This theory presupposes the guilt of the client, as a general matter, and the fact that pleas of guilty are so common tends to reinforce the presumption of guilt throughout the system. It is a theory that stresses administrative regularity over challenge, and emphasizes decisions most likely to maximize gain and minimize loss in the negatively valued commodity of penal "time."<sup>76</sup>

There are limited opportunities for plea bargaining in juvenile court, however, because a defendant only can be found guilty of delinquency, no matter what criminal charge is proved. Nothing is gained by reducing aggravated battery to assault if the outcome is the same in both cases. Only two formal punitive dispositions are avail-

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<sup>73</sup> Skolnick, *Social Control in the Adversary System*, 11 J. CONFLICT RESOLUTION 52, 69-70 (1967).

<sup>74</sup> Blumberg, *The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession*, 1 L. & Soc'y REV. 15, 18 (1967). See also D. NEWMAN, CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL (1966).

<sup>75</sup> Blumberg, *supra* note 74, at 19, 22.

<sup>76</sup> Skolnick, *supra* note 73, at 62.



able to juvenile court judges—probation or reformatory.<sup>77</sup> The state's attorneys cannot make deals about reduced sentences in exchange for a guilty plea because the sentencing decision is not within their discretion. The Youth Commission alone, which has no relationship with the court decision-making process, has the power to release a juvenile. In theory, the Youth Commission can keep him in a reformatory until the end of his minority. Even when defense attorneys are present in juvenile court, plea bargaining is at most a limited operative factor.

(3) Effective criminal defense work depends on the lawyer's ability to cultivate and maintain informal, reciprocal relationships with court personnel. The lawyer's dependence on the decisions of government officials causes him to develop techniques of cooperation and bargaining such as political support, deference, "fixing," and general affability. Informal relationships do not, for the most part, indicate unethical practices or individual weaknesses. On the contrary, they emerge from considerations of mutual benefit and harmonious working conditions for those persons who participate in everyday court affairs.<sup>78</sup>

It is important for a small-fee lawyer in the criminal courts to be recognized and appreciated by functionaries such as police, clerks and bailiffs who can do much to expedite hearings and facilitate access to state's attorneys and judges. It is difficult to assess what proportion of cases are influenced by bribes, but it is readily admitted by experienced criminal lawyers that "fixing" is a typical practice. For those persons regularly involved in court business, "fixing" takes many forms and does not usually have immoral connotations. For example, the payment of two to five dollars to a clerk in order to have a case quickly called has become an accepted and customary event. Referrals and fee splitting, especially by policemen, have received less publicity but are nevertheless common occurrences. The scandals which occasionally expose the illegal activities on the part of judges and prosecutors suggest that "fixing" also occurs at the highest level, although it is more likely to be protected by political immunity.

In contrast, juvenile court hearings are conducted privately in small courtrooms, and lawyers are not allowed to come and go as they please.<sup>79</sup> Lawyers are rarely given priority in the hearing of cases and

<sup>77</sup> There are some other dispositions available, such as supervision by parents or a guardian, but essentially it is a choice between reformatory and probation. See note 50 *supra*.

<sup>78</sup> A. WOOD, *supra* note 63, at 134-80.

<sup>79</sup> ILL. ANN. STAT. ch. 37, § 701-20 (Smith-Hurd Supp. 1967). The chief judge of the Cook County Juvenile Court recently found it necessary to instruct clerks and bailiffs that lawyers should be accorded more respect and privileges, consistent with their position as officers of the court.

are not accorded any special respect by court functionaries. The entrances to the juvenile courtrooms in Chicago are policed by at least two bailiffs, who regulate the flow of cases, inspect credentials, and neither are offered nor accept payment in return for small favors. The clerk in juvenile court, in contrast to his counterpart in criminal court, is not in a position of power or influence; his role is limited to organizing the court calendar and coordinating records. We have neither observed nor heard of a decision in juvenile court which was influenced by "fixing."

It is understandable why the small fee lawyer feels uncomfortable in a system which does not recognize the informal practices characteristic of his work in other courts. Since it is difficult to maintain a front of composure and expertise when faced with powerlessness and loss of status, many lawyers coming to juvenile court for the first time immediately seek out a contact who can introduce them to the court's informal practices. The following exchange between a newcomer to juvenile court (A) and an experienced Legal Aid attorney (B) is typical of the process:

A's client is a fourteen-year-old white student who was arrested for possession of marijuana. He admitted buying it from a friend at the private school from which he was subsequently expelled. He told the arresting officer that he knew what marijuana was but that he did not intend to use it. The father of the client is a corporate executive known to A through his practice.

A asked the Legal Aid lawyer what tactics would be best in juvenile court. B replied: "You have to use an informal equity approach here. I suggest that you file a motion to suppress as you've planned but you'd be better to do it informally and orally. First of all talk about how you know the family and the boy. . . . Say that he's never been in trouble before. In that way, you'll be protected in case he denies the motion and you won't seem to have taken too hard a line. If the motion doesn't work, explain that the boy didn't really know what he was doing and that he will probably go to Harvard one day. . . . It would be a shame to have a thing like this go down on his record and ruin his future career. . . . Say that he's not a criminal type. If this fails, then ask for a 4-7 [supervision] which will let him off without a record."

B then took out a copy of the juvenile court act and showed A the relevant section about supervision. In court, A stood close to his client, with his arm around the boy's shoulders even though he had not met him until he took his case. He gave his informal speech and hinted that he was

going to present a motion to suppress the policeman's evidence. Without considering the motion, the judge dismissed the case after A had guaranteed his client's future good behavior.

Most criminal lawyers, however, do not have probation officers or Legal Aid lawyers as contacts in juvenile court. They may occasionally know a judge, but rarely the state's attorneys, who usually come to juvenile court straight out of law school:

I happen to have a good connection with D [a judge] that I can use and I suppose other lawyers have gradually developed rapport with others. I sometimes can go in to see the judge and say, "I have a problem, I don't know exactly what to do in this case," and he will give me an idea what will happen. In other courts, you can almost always talk to the state's attorney first. (59)

They pay no attention to law. I know people there, so I talk to them and they help me settle my cases, but I don't act like a lawyer. In this way it is like any other criminal court. Unless you have a big case, you don't give legal services but you play the game. (7)

Rather than going for it formal like a hot shot, it's much better to approach the judge on a psychological basis, and take a fireside equity approach. Talk to him, tell him what the situation is, and if your client is guilty say so. . . . But if you proceed strictly on the rules of evidence, your client will be guilty. (50)

Without any contacts in juvenile court, lawyers are denied preferential treatment consistent with their status in other courts. Over three-quarters of the lawyers interviewed complained that they had to wait an unreasonable amount of time before their cases were called. It is quite common for a private lawyer to have to wait two or three hours, whereas a public defender is granted immediate access as a member of the court community. Lawyers who are forced to sit around the Cook County juvenile court building soon become sensitive to its depressing surroundings and the rows of poor people waiting for officialdom to intervene in their lives. The hypocrisy of private hearings becomes apparent as juveniles are led in handcuffs through the public corridors:

Juvenile court is an infested place, like an afterthought. Anyone who comes near is given bad treatment. (6)

It is depressing. . . . You are always faced with exhausting emotional arguments amidst crowds and dirt. (11)

This initial impression of juvenile court tends to reinforce a conspiratorial theory of the court's organization. Lawyers feel that they are not accorded the respect and services typically found in other courts because juvenile court is controlled by the entrenched interests of social workers and probation officers.<sup>80</sup> "I try to get on good terms with the probation officer," says one small fee lawyer, "because he is the one who will decide. I suppose other lawyers know them better and therefore do better." (13) Lawyers variously characterize the social service staff at juvenile court as naïve, powerful, arbitrary, and influential:

They don't like lawyers in juvenile court, you know. The social service department runs the place. (19)

My chief suggestion is to bring the juvenile court into the real world where men fight dirty and bargains are made on both sides. The do-gooders there are the worst. They are not in the real world . . . where the kids and cops are. (21)

This is the only court that generates its own business through probation officers. Other courts have to wait for a case to be brought by someone not an officer of the court. (23)

The social workers are young beatniks who don't inspire confidence in kids or in me either. They are too flippant. The kids need to be straightened out by people older and wiser. (3)

Lawyers are made uncomfortable by the privacy of juvenile court, where the public is not admitted to hearings. "I suppose there is good reason but I get the feeling that I am behind closed doors." (28) The consensus is that juvenile court is a dreary and discouraging place. Despite the recent emphasis on representation for juveniles, lawyers feel that their presence in juvenile court is greeted with indifference and a lack of recognition of their unique skills and status:

The court has no respect for lawyers as lawyers. I go into court like any other person. The setup is such that the lawyer is no more distinct in the proceedings than say the parent or clergyman. (32)

Juvenile court is a terrible place for a lawyer. He is emasculated by restrictions and feels like a fool. He is one of many people, all listened to equally. (56)<sup>81</sup>

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<sup>80</sup> Hartman, *Trying a Delinquency Case in Juvenile Court*, 55 ILL. B.J. 294-98 (1966).

<sup>81</sup> Some lawyers, however, feel that their presence does make a difference—as it does in traffic court:

I don't think the judge ever actually listens to what the lawyer has to say, but he will give the child a break for the sake of the lawyer. I guess the judge realizes the professional situation. (58)

## DEFENSE STRATEGIES IN JUVENILE COURT

The appropriate role of the lawyer in juvenile court has been given considerable attention in the literature. Jacob Isaacs, in a recent study of the New York Family Court, proposed that the juvenile court lawyer perform the functions of advocate, guardian, and officer of the court. As advocate, he "must stand as the ardent defender of his client's constitutional and legal rights;" as guardian, he is required to have regard for the "general welfare of the minor;" and as officer of the court, he "must assume the duty of interpreting the court and its objectives to both child and parent, of preventing misrepresentation and perjury in the presentation of facts, [and] of disclosing to the court all facts in his possession which bear upon a proper disposition of the matter . . . ." <sup>82</sup> Isaacs' tripartite characterization represents an ideal rather than current reality. Edwin Lemert, in an empirical study of California juvenile courts, found that adversary tactics are marginal in relation to "the attorney's function as a negotiator and interpreter between judge and family." <sup>83</sup> The public defender, even more than a private lawyer, is likely to become "co-opted into the organization of the court, even becoming its superficial appendage. Factors encouraging this are the low priority public defenders give to juvenile work and the growth of inter-departmental or informal reciprocity with probation officers." <sup>84</sup>

There is strong pressure from legislatures, judges and legal commentators to repress adversary tactics in juvenile court. The Florida legislature, for example, has responded to *Gault* with a provision for legal representation through the state division of youth services. <sup>85</sup> This provision reinforces the traditional policy of benign paternalism by assuming that state officials will act in the best interests of young persons charged with crimes. Most juvenile court judges deny the importance of adversary trials and "see the lawyer's chief value as lying in the areas of interpretation of the court's approach and securing cooperation in the court's disposition rather than the more traditional roles of fact elicitation and preservation of legal rights." <sup>86</sup> Thomas Welch, writing from the constitutionalist perspective, perceives the attorney as interpreter rather than advocate, because "he is better

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<sup>82</sup> Isaacs, *The Role of the Lawyer in Representing Minors in the New Family Court*, 12 BUFFALO L. REV. 501, 506-07 (1963).

<sup>83</sup> Lemert, *Juvenile Justice—Quest and Reality*, 4 TRANS-ACTION 30, 40 (1967).

<sup>84</sup> Lemert, *supra* note 44, at 431. This point is also documented in Sudnow, *Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office*, 12 SOCIAL PROBLEMS 255-76 (1965).

<sup>85</sup> S. 1506, Florida Legislature, June 2, 1967.

<sup>86</sup> Skoler & Tenney, *supra* note 40, at 97.

situated than anyone to explain the nature and objectives of the juvenile courts. He should explain that the juvenile is not being tried as a criminal, the court is not going to punish him, and criminal court tactics of resistance are not appropriate in juvenile court. . . . Above all, the attorney in a delinquency hearing should discard any personal interest in winning cases. Where punishment has truly been eliminated, real 'victory' is realized when a delinquent has been rehabilitated. The real 'defeat' lies in obstructing the legitimate operation of the rehabilitation mechanism."<sup>87</sup>

Lawyers in juvenile court are forced to work within a system that has always preferred informal adjustment over adversary procedures:<sup>88</sup>

I avoid being legalistic at all. The rules of evidence are out of the window. . . . They operate on an informal basis. (13)

There I don't use a technical defense but work out a plan for adjustment with the judge, social worker, and probation officer. These people attempt to work out a solution. (51)

It's informal. I wouldn't press an objection here as I would in another court. The court is willing to reason with you, to do what all parties think is best. (27)

Although most of the small-fee lawyers complain about the lack of due process in juvenile court, most admit that in this respect it is not too different from most lower criminal courts. Complaints about abuses in juvenile court tend to come from the more successful lawyers who do not typically make their living from small-fee cases:

A lawyer cannot be sure what he can do, at what point he can interrogate an investigator or caseworker or policeman who is testifying. You can't tell what the judge will let you do. (8)

It isn't a court but a summary administrative hearing. . . . In effect, everyone who comes before the court is denied counsel. (29)

I don't care for their procedure. There's not the fair and impartial trial given to an adult. It's too informal. (18)

Plea bargaining is discouraged in juvenile court, though we have witnessed several conferences between defense lawyer, state's attorney and judge where, in return for a plea of guilty, a client has been guar-

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<sup>87</sup> Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 MINN. L. REV. 681-82 (1966).

<sup>88</sup> "Normative Conflict in a Juvenile Court," paper delivered by Vaughan Stapleton at the American Sociological Association Annual Meeting, July, 1967, at 17.

anted probation or supervision instead of incarceration.<sup>89</sup> Opportunities for bargaining are formally limited, and most lawyers feel that it is not worth their effort, since a juvenile is only rarely committed to a reformatory. A conviction for delinquency, an assignment to probation, or even a temporary commitment for psychiatric evaluation, is not considered especially punitive or discrediting:

In a small case on a first offense I might refuse a case unless the party wants to pay for the half day I have to spend in court. If it's not too serious the child will just get probation, attorney or no, and I tell the people this. (3)

The parents ask me what will happen. If it is the first offense, I always tell them nothing will happen. No one is sent to the Illinois Youth Commission the first time. I tell them he will most likely only get a bawling out. (38)

In juvenile court very few boys get sent away. The judge is interested in frightening them and sending them home. So I don't really think that's an area in which there are many infringements of the individual rights of the people coming there. (50)<sup>90</sup>

About one-quarter of the lawyers who have spent some time in juvenile court think that the court is too lenient with juvenile offenders:

Right now, discipline there is a slap on the hand. The best deterrent would be to send the bad ones to County Jail. That's how they would learn. (24)

The court should be more strict on offenders. Punishment should be more of a deterrent . . . . (41)

Since there is no record, I would like to give a child a taste of being locked up for a while. (41)

The new law has made big shots out of punks, as well as jamming up the courts and the hardpressed staff. (44)

I think they should make the punishment fit the crime. A boy who commits armed robbery should be tried for armed robbery. (57)

Small-fee lawyers do not regard the juvenile court as a punitive organization. They are well aware that the court lacks the formal procedures available in other courts, but find this limitation unobjectionable in

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<sup>89</sup> Cf. text accompanying note 77 *supra*. "Supervision" means a lengthy continuance during which the client is expected to keep out of trouble. If he is judged to have done so until the trial date, the case is dismissed. This procedure is similar to the "sitting out period" used in criminal courts, except that in such cases the defendant serves "dead time" under the misconception that he is avoiding a record.

<sup>90</sup> This opinion is curiously inconsistent with the facts. Lawyers are generally unaware of the frequency of commitments to penal institutions. The St. Charles Training School for Boys is hopelessly overcrowded with more than 600 inmates. The pretrial detention home processed nearly 11,000 juveniles in 1965 and over 1300 juveniles were committed to the Youth Commission facilities in 1966.

practice. The views of small-fee lawyers about the rights of children and child-raising techniques differ quite fundamentally from those expressed by the Supreme Court, academics, and some legislators. Children get the same kind of treatment in juvenile court that they get in school, and small-fee lawyers accept this treatment as an inevitable and appropriate consequence of adolescence.<sup>91</sup>

Lawyers apply different standards to juvenile clients because they are children, not necessarily because the lawyers have been occupationally constrained to accept the court's welfare policies. A lawyer typically has conscientious reservations about helping a juvenile beat a case:

I am not as careful to avoid disclosure as I am in an adult case. I let the facts out as they are. A child must realize what he did wrong and that he is responsible for the truth. (37)

If I knew a child was innocent, I would interpose a good rigorous defense. But this has never happened. I have gotten cases where a child was not malicious, or not in the wrong, but never where a child did not participate in the act. I have no objection to having a client put on probation when he did something wrong but was not at fault. (3)

I tried to impress him with the difference between right and wrong, about church and telling the truth and all that. He denied the charges, but I think he was lying. (5)

I don't resort to the technical defense that often I know I could raise and perhaps get the child off. My interest is in whether the youngster can be rehabilitated. If he has done something wrong, I point this out to the court. The judges seem to like this approach better. (52)

If a case is won on a technicality, a lawyer feels obliged to personally warn his juvenile client against the dangers of future misconduct:

I consider it my job to scold and warn the child. I tell him that the only reason that I have agreed to take the case is that I believe in him and that he is entitled to one break and that if he commits one more offense I will drop him. (39)

I would try to put the fear of God in the kid. . . . Maybe the whole problem should be handled differently. . . . That is something that weighed heavily on my mind in a number of cases. It makes you think that you might be responsible for these boys. I don't feel the same with adults because I think the imperfection is in the law, not in the people. (50)

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<sup>91</sup> According to Bennett Berger, "adolescents are made not by nature but by being excluded from responsible participation in adult affairs, by being rewarded for dependency, penalized for precocity, and so rendered sufficiently irresponsible to confirm the prevailing teenager-stereotype." Berger, Book Review, 32 *AM. SOC. REV.* 1021 (1967), quoting F. MUSGROVE, *YOUTH AND THE SOCIAL ORDER* 16 (1965).



The following discussion was observed outside a courtroom after a private lawyer had just won a dismissal for a lower class, white client:

The lawyer told the boy that the victory was meaningless unless he started to do something with his life: "Have you thought what you're going to do now? I mean permanently. Or are you just going to sit around and see what happens?" The boy sheepishly replied that he had not thought about his future. "Don't you think it's about time then?" said the lawyer. "You could go to trade school or back to high school." The father was quick to agree with the lawyer: "He likes money, that's for sure. He ought to do some planning. He could be a lawyer like you, or a doctor, or anything." That was not what the lawyer had in mind and he mentioned the possibility of trade school: "He could be an auto mechanic or welder." Then the lawyer turned to the parents and gave some parting advice: "Remember what I told you about professional help? I still say you two could benefit from some professional help. In fact I would say it's a prerequisite to my representing you again." The parents did not respond at all, the lawyer shrugged his shoulders and walked away.

Lawyers see it as part of their duty as adults and public officials to sit down and talk with juveniles "on their own level," to impress them with the importance of telling the truth, to frighten them away from committing similar acts in the future, and to "reinforce to the child what the judge has said." (54) The juvenile client is in turn expected to show penitence and gratitude—human qualities which are similarly appreciated by juvenile court judges. The proper response is sometimes reinforced by reference to cultural or family responsibility. "If the child is a Negro," said a white attorney, "and if he is bright and good in school, I tell him that he has an opportunity to help his race and his family which he ought to use instead of messing up."

(31)<sup>92</sup>

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<sup>92</sup> Claude Brown's autobiography captures the essence of this sinister benevolence in speaking of criminal court:

When we got to court, the lawyer was already there. He spoke to Dad, and Dad yes-sirred him all over the place, kept looking kind of scared, and tried to make the man think he knew what he was talking about. When the lawyer came over to me and said, "Hello Claude, how are you?" and shook my hand and smiled, I had the feeling that God had been kicked right out of heaven and the meek were lost. And when he started talking to me—not really talking to me, just saying the stupid things that white people say to little colored boys with a smile on their faces, and the little colored boys are supposed to smile too—nothing in the world could have made me believe that cat was on our side. We weren't even people to him, so how the hell was he going to fight our fight? I wanted to ask Dad why he went and got this guy, but I knew why. He thought all Jews were smart. I could have gotten all that shit out of his head. Anybody could see that this cat wasn't so smart. No, he was just lucky—lucky that the world had dumb niggers like Dad in it. C. BROWN, *MANCHILD IN THE PROMISED LAND* 93 (1965).

Any attempt at defense tactics is complicated by the unpredictability of juvenile clients who "have poor memories," "don't remember," "don't have the social and intellectual maturity of an adult," are likely to "blurt out and convict themselves," and easily "spill the beans." A lawyer is hesitant to put his client on the witness stand because he is likely to "crack on cross-examination" or "clam up" and convict himself through silence:

Children are hard to deal with. You talk to them, tell them not to say anything, and then you spend all your time worrying that they will blurt out the truth. What do you do with a child who steals? It isn't any good to say it's wrong. I don't know. I treat it like any other case because that's all I know. (2)

A juvenile client poses further special problems of defense because the whole family is involved in the legal proceeding. Although a lawyer appears on behalf of a juvenile, he is usually hired by and therefore responsible to the parents. A juvenile is consulted for factual and biographical information and instructed how to behave and dress in court, but others decide what should be done to him:

I am retained by the parent so that I am not only dealing with . . . my client. (41)

The child . . . reflects the parents' treatment and the parents either feel too guilty to get involved . . . or suffer in silence. I also find that parents are hesitant to fight juvenile cases. They will almost always go along with what the probation officer suggests. . . . Even when the child is going to be taken away, the parents often feel the professionals know what is best. (17)

If I am not going to take a case I talk only to the parent. I don't talk to the child at all if it sounds like he really doesn't need a lawyer. (51)

Another thing different [from other courts] is that I am hired by the parent, not by the child, and so I am bound to do what the parent wants. Once in a while there is a conflict of interests, like where the stepfather had his child arrested for possession of a weapon and the weapon belonged to [the stepfather]. (53)

#### SUMMARY AND CONCLUSIONS

The purpose of this paper was to describe the nature and constraints of defense work in juvenile court. We found that private lawyers in juvenile court are typically small-fee practitioners who make their living from minor criminal and civil matters. The small-fee lawyer finds that juvenile court has generated its own "system of

complicity"<sup>93</sup> which does not encourage the kinds of informal bargaining arrangements that are found in the criminal courts. Although many of these arrangements are formally condemned by bar association spokesmen, they are recognized in practice as a legitimate expression of a lawyer's craft. The lack of such arrangements requires the lawyer to learn and accept a new role and new techniques.

The occupation of defense lawyer has traditionally involved contractual and reciprocal obligations between client and lawyer. Ideally, the client brings a fee, trust, dependence and gratitude to the relationship, whereas the lawyer is required to predict the probable outcome of a case, to perform esoteric services competently, to reinforce the bargaining strength of a defendant, and to accomplish results which would not otherwise be achieved without his presence.<sup>94</sup> But there are a variety of novel occupational hazards in juvenile court. Juvenile clients usually bring modest and undependable fees; informal bargaining and negotiated pleas have very little significance; fringe benefits, such as accessibility to court personnel or priority over defendants without lawyers, are usually denied or erratically provided; and a lawyer may be faced with a conflict of interest between a client and his parents. Trial is avoided because the chances of victory are slight. The vagueness of delinquency laws, the unpredictability of juveniles as witnesses, and the difficulty of discrediting the testimony of adult officials make it unlikely that a case can be won on its merits:

By the time the child has reached the police station he is hooked. The youth officer types out the statement of what happened that is admissible as evidence with no other investigation. Often the policeman who wrote the report has no more admissible evidence than does the judge, but what is essentially a charge or an allegation becomes a statement of fact. (23)

The lawyer in juvenile court is faced with performing a new social role and he has so far handled this task by modifying his expectations through common-sense experience. It is significant that of the nine lawyers who said that they enjoy their work in juvenile court, not one handled a case for an inner-city or Negro youth. Lawyers from influential firms who represent children from a social background similar to their own find that juvenile court is a "reasonable place to do business" because all parties to the case share a common view about children:

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<sup>93</sup> Blumberg, *supra* note 74, at 22. The phrase was used by Blumberg to refer to criminal court.

<sup>94</sup> The "personal-service occupation" is analyzed in E. GOFFMAN, *ASYLUMS* 323-86 (1961).

I've had much success there by being able to propose a correctional program to the judge that I have worked out with the parents. For example, I had to represent a girl who had gotten into a lot of sexual trouble. She was Jewish but we had her parents send her down to a Catholic farm in West Virginia. Another time, we sent a boy to military school. I have been well treated. People down there are willing to listen. (16)

I have no objection to the policy of doing what is in the best interests of the child, but I realize that this policy can best help the kind of client I had—white, middle-class, with concerned and vigilant parents—the kind of client who will respond to a scolding. (30)

[W]ealthy children are able to buy their way out by selling a program. For example, the family of a young criminal from Winnetka that I know of was able to convince the court that the boy would be sent to a correctional school, and the court dropped what were serious charges. The boy stayed at the school for a few weeks, as long as he was under court scrutiny, and then left and went back to where he was before. (23)

Recent judicial and legislative reforms in the juvenile court have focused on the need for more legal representation and greater emphasis on the rules of due process. The Supreme Court hopes that these reforms will be implemented through the efforts of competent, partisan defense lawyers. Other writers have pointed out that lawyers most likely will be co-opted into a powerfully entrenched welfare system and pressured into abdicating their adversary functions in order to minimize conflict.<sup>95</sup> Our research supports this prediction but also suggests that small-fee lawyers readily subscribe to a policy of benign paternalism. We found that a majority of the lawyers—including half of the Negro attorneys—expressed concern over the independence and rebellious defiance of youth:

I wouldn't raise technicalities for any child. The children are uppity enough as it is, talking back to their parents . . . not respecting old folks. In the old days, the rule was whip first and explain later. It might not always have been fair but the children learned discipline. We need more discipline, not more rights. (55)

We have observed in this paper that advocacy and formal procedures play only a minor role in juvenile court. In order to understand how a lawyer behaves when handling juvenile clients, it is necessary to understand the organizational context of his craft. How

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<sup>95</sup> See Lemert, *supra* note 83, and Stapleton, *supra* note 88.

a lawyer handles a case in juvenile court will depend not so much on the objective determination of facts as on his relationship to the court and his client's family. This is not to suggest that lawyers act improperly, but rather that they find it unprofitable to take an adversary posture in juvenile court. Lawyers share with policemen, judges, probation officers, teachers and other adult officials the "peculiar occupational task of hectoring and moralizing"<sup>96</sup> juveniles. According to Erving Goffman, "the necessity of submitting to these lectures is one of the consequences of committing acts against the community's social order."<sup>97</sup> It is widely assumed that juveniles who are referred to juvenile court must necessarily carry within themselves a psychological or social impairment. Lawyers feel uneasy about getting a case dismissed because they may be contributing to a future criminal career. Lawyers are likely to relate to their clients in a parental role and to share a parental pessimism about troublesome youth. Juvenile clients are regarded even by their lawyers as subordinates and non-persons who have no competence to understand their own behavior or determine where their best interests lie.<sup>98</sup> Our findings support the conclusion that private lawyers will not enhance the bargaining power or rights of young offenders, but will rather help to consolidate their dependent status.

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<sup>96</sup> E. GOFFMAN, *ASYLUMS* 366 (1961).

<sup>97</sup> *Id.*

<sup>98</sup> E. GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE* 151-53 (1959).