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Juvenile Justice: A Study of Juvenile Appeals to the Suffolk Superior Court, Boston, 1930-1935

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JUVENILE JUSTICE

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A. *Introduction—Method*

Appeals were allowed in the first juvenile court set up in Chicago in 1899, and were incorporated in the juvenile court laws which followed all over the country in the first years of this century. As the appreciation of the philosophy underlying juvenile court procedure grew, however, resort to a higher court was gradually curtailed until in recent years juvenile court laws in eight jurisdictions make no provision for appeal or re-hearing.[1] The reason for this development, as has been well set forth in several key cases,[2] is that the juvenile process exists for the guidance of children, and their treatment by a tribunal which represents the State as *parens patriae*. There is no desire or authority to visit punishment or vengeance as upon one who has violated the criminal law, but rather an interest inherent in the children's code to protect, at the same time, society and the future of the minor by his proper treatment. Where a juvenile hearing is not a trial for an offense, but an ascertainment of the statutory ground for action by the State, failure to provide for appeal is no denial of any civil liberty nor violation of any constitutional right.[3]

Since 1906, Massachusetts has held to the view that a juvenile is as much entitled to an appeal from either adjudication or disposition as an adult is from his sentence in a lower court.[4] While the probate courts of Massachusetts have always been of superior

* Massachusetts Child Council, Boston.

1 Hiller, Francis H., Juvenile Court Laws of the United States, New York National Probation Association, 1933.

2 The right of appeal is unknown at common law, and is merely a creation of statute. It is not a constitutional right and is wholly within the power of the legislature to grant or deny. 17 St. Louis L. R. 89; 27 Columbia L. R. 968; *ex parte* Januszewski, 196 Fed. 123, 1911; *Wissenburg* v. *Bradley*, 209 Iowa 813, 229 N. W. 205, 1929; *Marlowe* v. *Commonwealth*, 142 Ky. 106, 133 S. W. 1137; Wharton's Criminal Law, 12th ed., 1932, Vol. I, Sec. 373.

3 *Cinque* v. *Boyd*, 99 Conn. 70. *Cf. Bryant* v. *Brown* (1928) 151 Miss. 398, 118 So. 184, 60 A. L. R. 1325; *In re* Broughton (1916) 192 Mich. 418, 158 N. W. 884; 27 Col. L. R. 968; 86 A. L. R. 1009, 1932.

4 Mass. General Laws, Chapter 119, Section 56.

jurisdiction, and the juvenile courts stand next to them in the guidance of minors for the welfare of society, nevertheless the juvenile courts have never been granted the same superior status. In fact, the law clearly gives to the child the right of appeal at the time of adjudication and upon disposition, and enjoins the court to inform him of this right at both of these steps in the proceedings.

The preamble to the Massachusetts juvenile court law is one of the finest in the literature of children's codes—". . . the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance."[5] It is difficult to reconcile so fine a purpose with the limiting proviso, three sections later, which hamstrings the court in its attempt to deal with children as the preamble would allow, by setting out with great care the manner in which a juvenile may resist such treatment.

The law of 1916 which came out of an investigation into the results of ten years' operation of the juvenile court law,[6] attempted to remedy some of the defects in the juvenile appeal procedure by requiring for juveniles in the Superior Court a separate session, trial list and docket. It abolished the extensive use of the *nol pros* by requiring that all juvenile appeals be tried, unless otherwise disposed of by direct order of the court, and, to provide a certain continuity, specified that the lower court supply the Superior Court with a copy of its investigation.

The Children's Commission in 1931 attempted still further to scale down the adult criminalistic manner in which juvenile appeals were handled by urging that appeals be allowed solely from adjudication; if the adjudication of delinquency were affirmed in the Superior Court, the child would be returned to the juvenile court for treatment or disposition.[7]

This proposed law was not enacted, and so there stand now upon the statute books of the Commonwealth two conflicting sections—one which states the purpose of the juvenile court to be paternal and benevolent, wherein the proceedings shall not be

[5] *Ibid.*, Section 53.

[6] Acts of 1916, Chapter 243, Section 1. *Cf.* Report of the Commission on Probation Relative to the Juvenile Law, 1916, Mass. Senate No. 330, pp. 7-8, 29-32, 40-1.

[7] Report of the Special Commission to Investigate the Laws Relative to Dependent, Delinquent and Neglected Children, 1931, Mass. House No. 1200 esp. pp. 45-6, 190-1.

deemed criminal, and another which insists on giving the child ("in like manner as appeals in criminal cases") two means of escape from this kindly treatment—at the time of adjudication and when disposition is made.[8] While a juvenile case originates on the equity side of the lower court, these provisions for appeal result in throwing the case over on to the criminal side of the upper court. This is a distortion of the underlying basis of juvenile court jurisdiction.[9]

In view of the conflict in the laws governing juvenile appeal, this study was undertaken to discover the actual operation of the appeal procedure in Massachusetts. The literature gives scant attention to this phase of the juvenile court problem. Those jurisdictions which may be contemplating an examination or revision of their juvenile appeal process, may be encouraged to do so by the findings of this study.

The method, briefly, was as follows: Suffolk County, comprising the cities of Boston, Revere and Chelsea and the town of Winthrop, was chosen for an examination of the juveniles who appealed to the Superior Court between April 15, 1930, and April 15, 1935. The dates were set by taking the last appeal case disposed of by the Suffolk Superior Court, and then working back over a five-year period. The cases entered in the juvenile docket of the Suffolk Superior Court were taken down on preliminary work sheets, with sufficient identifying data to allow them to be run through the records of the Board of Probation for such information as age and residence. From these records, eighteen appeal cases were discovered which had not been entered in the juvenile docket, as the law requires. A statistical code sheet was then drawn off for each case, and filled out from the court papers on file in the clerk's office. The records of the Sheriff's office at the Suffolk County Jail supplied data on jail detention. The records in the Superior Court probation office were consulted in an attempt to learn how much information was forwarded by the lower court.

The offense code was taken, with some necessary modifications, from the classification in use by the Board of Probation. The

[8] Adjudication is comparable to a finding of guilt or innocence in the criminal court; an adjudication of delinquency or waywardness must precede any disposition by the juvenile court.

[9] "The courts of equity in their capacity of agencies through which the sovereign, as *parens patriae*, exercised his supervision over infants, idiots, lunatics, and other incapables, originally had immediate jurisdiction over these abnormal persons also. In modern practice, this jurisdiction is generally lodged in probate courts, and other minor tribunals having special equity powers, with an appellate jurisdiction in the higher equity courts." (Robinson, William C., Elementary Law, Boston, 1910, p. 406.)

principles which S. B. Warner advances,[10] governed the choice of the offense to be tabulated in those cases where more than one violation was charged against the appellant. After this process had been completed for each case, and the code sheets filled in, individual statistical cards were then punched and tabulated.

B. Characteristics—Age—Court—Residence

During the five year period covered by this study, 415 juveniles appealed to the Suffolk Superior Court from the Boston Juvenile Court, the juvenile sessions of the Municipal Courts of Roxbury, South Boston, Charlestown, West Roxbury, Dorchester, Brighton, and the juvenile sessions of the District Courts of East Boston and Chelsea. Of these 415 appeals, 167 (40.2%) were from adjudication and 248 (59.8%) were from disposition. Of the total group of appeals, 38 (9.2%) were girls and 377 (90.8%) were boys. The average age of the group was fourteen years eight months.

A comparison of the courts in Suffolk County handling juvenile cases reveals that the lowest percentage of appeals—1.2%—is taken from the dispositions of the Boston Juvenile Court, the only court of the nine under consideration which devotes full and specialized attention to juvenile business. The Boston Juvenile Court disposed of 39.2% of the juvenile cases in the county with only 12.2% of the total appeals; the other eight courts handled 60.8% of the juvenile cases in the county, yet they were responsible for 87.8% of the total appeals. The court which devotes full time and attention to juvenile business has fewest exceptions taken to its decisions. The other courts report nearly three times as high a percentage of appeals, and one court, Chelsea, records 12.4% appealed from all its juvenile dispositions.

Table 1 shows the distribution of the 415 appeals discovered by this study, for the court and year in which they originated, and the percentage each court had of the total number of appeals.

Viewed here, without regard to the number of dispositions, there is little uniformity in the percentage of the total appeals contributed by each of the eight juvenile sessions and the Boston Juvenile Court. The Chelsea Court is again highest, with 76 cases (18.3% of the total) and the Brighton Court is lowest with 9 cases

[10] "1. Where any person is prosecuted . . . for several offenses, select for tabulation the offense for which proceedings were carried furthest. 2. If the defendant was convicted of several offenses, select the one for which the heaviest punishment was awarded." Crime and Criminal Statistics in Boston, Harvard Law School Survey of Crime in Boston, Vol. II, Cambridge, 1934, p. 103.

TABLE 1

COURT IN WHICH JUVENILE APPEALS WERE ENTERED, 1931-1935, INCLUSIVE

Court	Year						
	1931	1932	1933	1934	1935	*Total*	*Per Cent*
Boston Juvenile	18	16	3	3	9	49	11.8
Roxbury	11	9	9	4	12	45	10.8
South Boston	4	7	11	10	13	45	10.8
Charlestown	7	7	—	6	13	33	8.0
East Boston	8	15	10	7	6	46	11.1
West Roxbury	9	16	8	6	7	46	11.1
Dorchester	23	10	9	14	10	66	15.9
Brighton	—	5	—	2	2	9	2.2
Chelsea	16	14	18	14	14	76	18.3
TOTAL	96	99	68	66	86	415	100.0
PER CENT	23.1	23.9	16.4	15.9	20.7		100.0

(2.2%). While it has been stated above that the only specialized court for dealing with juveniles returns the lowest percentage of appeals from dispositions, it is not possible, without reference to descriptive or subjective ratings, to appraise the other courts in the order of their adherence to the best juvenile court standards.

The Department of Correction reports a total of 628 juvenile commitment orders made in the county over the five year period; this study found that appeals from such orders totalled 216 (34.4%). Despite the different sources for these two figures, it may be assumed as representative that fully one-third of the juvenile commitment orders are thus appealed. This casts a serious light on the institution of appeals, because commitment is the most drastic order of the court; any attempt on the part of a lower court judge to deal adequately with a case before him must be hindered by the realization that a commitment order, made in the best interest of the child, will be appealed in one case out of three. This fact takes on increased significance when the commitment rate of the Superior Court is examined in a later section.[11]

Boston is the only city of its size in the United States which divides its juvenile court work among a group of district courts. Eighteen other large cities[12] have long since established county-wide

[11] *Cf.* Section F, *infra.*

[12] New York, Chicago, Philadelphia, Detroit, Los Angeles, Cleveland, St. Louis, Baltimore, Pittsburgh, San Francisco, Milwaukee, Buffalo, Washington, Minneapolis, New Orleans, Cincinnati, Newark, and Kansas City. Directory of Probation Officers, New York, National Probation Association, 1934.

juvenile courts with sole jurisdiction over children's cases. Opposition to such centralization in Boston is based usually on the argument that localization of court facilities allows the judge and his staff to act on their intimate acquaintance with the families and conditions in a particular neighborhood. Such acquaintance, it is urged, cannot be had in any way other than by locating the court in the district. This argument is more than answered by the superior facilities for investigation, study, and treatment afforded by the larger single court unit, and the uniformity in treatment which is thus assured all cases coming to the attention of the court. Further evidence is also adduced by Table 2 which compares the residence of the child who appealed his case, with the location of the court which heard his case. Fuller figures are unfortunately lacking to make possible similar comparisons of all cases heard in the juvenile sessions, but this sampling of appealed cases will throw some light on similar conditions which undoubtedly exist in all juvenile cases, whether appealed or not.

TABLE 2

COURT IN WHICH APPEAL WAS ENTERED RELATED TO RESIDENCE OF THE JUVENILE*

	Residence											
Court	*Boston*	*Roxbury*	*South Boston*	*Charlestown*	*East Boston*	*West Roxbury*	*Dorchester*	*Brighton*	*Chelsea***	*Outside the County*†	*Outside of State*	TOTAL
Boston Juvenile...	24	3	8	3	2	1	2	—	1	4	1	49
Roxbury	1	29	3	—	1	1	8	2	—	—	—	45
South Boston	1	1	30	—	—	—	3	—	—	1	—	45
Charlestown	1	—	—	28	—	—	1	—	2	1	—	33
East Boston	—	—	—	—	44	—	—	—	1	—	1	46
West Roxbury	—	6	2	—	—	32	5	—	—	1	—	46
Dorchester	—	8	5	—	—	1	51	—	—	1	—	66
Brighton	—	—	—	—	—	—	1	6	—	2	—	9
Chelsea	—	—	—	1	5	—	—	—	62	8	—	76
TOTAL	27	47	57	32	52	35	71	8	66	18	2	415
PER CENT	6.5	11.3	13.8	7.7	12.5	8.4	17.2	1.9	15.9	4.3	.5	100.0

* Residence was taken from the records of the Board of Probation. Where the district was not given, it was determined by reference to the Boston Directory.

** Includes Revere, as Revere is within the jurisdiction of the Chelsea Court.

† Includes Brookline, Somerville, Lynn, Cambridge, Medfield, Arlington and Everett.

The most conspicuous fact here revealed is that by no means do all the children coming before any one of the nine courts reside exclusively within the district over which the court has jurisdiction. The Boston Juvenile Court, for example, heard only 24 cases resident in Boston proper out of a total of 49 cases (49.0%) appealed; the Roxbury Court heard only 29 cases resident in Roxbury out of a total of 45 cases appealed (64.4%). The other courts confined their attention more exclusively to children resident within the area of their jurisdiction, but for the total of 415 cases, 100 exactly were heard in courts which, presumably, were not familiar with the environment in which their children resided. There is no reason to allow a court to proceed on a parochial residential basis when in one-quarter of the cases here studied the very basis on which they claim their right is lacking. The residential argument is not upheld if examination is made of the domicile of the judges who are supposed to temper their administration with a knowledge gained from living within the jurisdiction of their court. Ten of the thirty justices and special justices of the nine courts under consideration live outside their judicial districts.[13]

Nor does this argument hold when we consider that 20 cases (4.8%) were those of children who lived entirely beyond Suffolk—18 outside the county and 2 outside the State. Determination of the jurisdiction of the court on the basis of the place of occurrence of the offense rather than on the basis of the residence of the offender, is borrowed, along with the right of appeal and other features of the present administration of juvenile cases, from the adult criminal code. Offense is of importance in understanding or treating a child, only as a symptom or index of a need. Place of occurrence of offense is comparatively unimportant as an aid in understanding the child, whereas his residence, which includes his home and environment, must be taken into consideration in any plan of study or treatment, and should therefore be the basis of the jurisdiction of the court.

C. *Lower Court Disposition—Offense—Age*

The offenses which are here recorded are probably not the first which members of this group have committed, nor the first on which they have been brought into court and appealed.[14] While no attempt

[13] As listed in the Manual for the General Court, 1935-36, Boston, 1935, and the Boston Directory.

[14] One instance discovered in the course of this study was that of a girl who in September, 1924, at the age of eight years, appealed from an adjudication of

was made in this study to uncover the previous conduct of these children, or to trace their subsequent careers, it is undoubtedly true that they are a selected group in that they have carried their cases to the upper court. It is not possible to compare the offenses of the appeal group with those committed by all juveniles coming before the Suffolk courts because, with the exception of the Boston Juvenile Court, juvenile offenses are not tabulated. Table 3 considers the relationship between the offense with which the child was charged and the disposition made by the lower court from which appeal was taken.

First for consideration is the fact that two-fifths (40.7%) appealed from adjudication, somewhat over one-half from commitment (52.1%) and less than one-tenth (7.2%) from fine. It is impossible to state what disposition might have followed the adjudication of delinquency if it had not been appealed. Adjudication by itself was evidently sufficiently disturbing to cause the child to appeal the finding without waiting for the disposition which might be imposed.

It is not clear why the juvenile court rather than a domestic relations session should be called on to adjudicate a case of illegitimacy. In ten jurisdictions throughout the country juvenile courts are charged with the responsibility for determination of paternity and the support of children born out of wedlock.[15] But their interest in the offender relates to the life of the child which has been born. Here, however, it is the offense which led to illegitimacy that activates the court's interest in the juvenile. Included in these three appeals from adjudication of paternity was one labeled "Adjudged the father of a child and Shirley." The appeal in this case is considered as from adjudication rather than from disposition because the Massachusetts illegitimacy laws provide that adjudication of paternity only may be appealed; if appeal is not thus taken, no protest may lie against the order which the court may then or later make.[16]

The group of 30 appeals (7.2%) from fines in the lower court

delinquency which was "placed on file without plea" by the Superior Court. In August, 1931, age fifteen years, her case was *"nol prossed"* by the Superior Court. Ten months after this appearance in Suffolk Superior Court she was sentenced to Sherborn Reformatory on a charge of being idle and disorderly.

[15] Illinois, New York (County Children's Courts and City of Syracuse), New Jersey, North Carolina (Mecklemburg County), Ohio, South Carolina (counties 85,000 to 100,000), Tennessee (Union County), Wisconsin (Milwaukee County), District of Columbia, and Hawaii. Hiller, Francis H., *op. cit.*, page 36.

[16] Mass. General Laws, Chapter 273, Section 12.

TABLE 3

ORIGINAL DISPOSITION IN THE LOWER COURT, RELATED TO THE OFFENSE CHARGED

	Lower Court Disposition															
	Adjudication		*Commitment*								*Fine*			*Total*	*Per Cent*	
Offense	*Delinquency*	*Paternity*	*Lyman*	*Shirley*	*Lancaster*	*Mid. Cty. Tr. School*	*House of Correction*	*Mass. Ref.*	*Boston Ch. Welfare Dept.*	*St. Div. Child Grdnshp.*	$5-25	$26-50	$51-200	*Number*	*Per Cent*	
Breaking and Entering	41		28	35				2						106	25.6	
Motor Vehicle Law	22		14	37				1			5	3	2	84	20.3	
Larceny	40		6	21	1						1			69	16.6	
Disorderly Conduct	23		5	10				1			5		1	45	10.8	
Sex Offenses ..	5	3	1	2	12									23	5.5	
Assault and Battery	14		4	1			1				2			22	5.3	
Larceny of Auto	3		1	12							1			17	4.1	
Violation of City Ordinance ..	8										4	1		13	3.1	
School Offender						6			1	2				9	2.2	
Gaming	4			1							1			6	1.5	
Stubborn Child	1				5									6	1.5	
Trespassing ...	2										3			5	1.2	
Drunkenness ..	1			1	1									3	.7	
Violation of Drug and Liq. Law.	1			1								1		3	.7	
Runaway			1		2									3	.7	
Waywardness .	1													1	.2	
Total	166	3	60	121	21	6	1	4	1	2	22	5	3	415		
Per Cent 40.0	.7	14.4	29.2	5.1	1.5	.2	1.0	.2	.5	5.3	1.2	.7		100.0		
Total 40.7%					52.1%						7.2%					
					100.0%											

represents a protest against a total sum of $860.00 imposed, an average fine of somewhat less than twenty-nine dollars. While the Massachusetts law allows juveniles to be fined or to make restitu-

tion,[17] this practice is not favored by leading juvenile court authorities, because, except where there is some assurance that the child may profit from the discipline of being deprived, the burden falls rather upon his parent than upon him.[18] How deterrent such treatment is may be judged from the case of one juvenile who, despite frequent previous fines, was in court for his thirty-second consecutive peddling offense.

It is natural that order of commitment should be the largest single group of dispositions from which appeal was taken. Appeals from commitment to Shirley are the most numerous in the institutions group; this is largely explained by the finding that the modal age of this group is the first half of the sixteenth year. Orders of commitment are chiefly for those offenses which may be considered more serious.[19] The property crimes, breaking and entering, larceny, violation of the motor vehicle laws (chiefly using an auto without authority) are in the main punished by commitment to the reform schools. We note, further, one commitment to the House of Correction for an offense of abduction and four commitments to the Massachusetts Reformatory, two for breaking and entering, one for disorderly conduct and one for operating an auto without authority.

All six commitments to the Middlesex County Training School were for some violation of the school law, chiefly truancy, despite the present commonly held opinion that truancy is frequently symptomatic of a maladjustment expressed in, but not necessarily originating in the school classroom.[20] The fact that truancy is not so treated by the Suffolk courts is further borne out by this same table—the other three school offenders were ordered committed to the state or city child placing divisions.

These latter three placement commitments were all of girls. While the number of girls in this sample is low, and conclusions regarding them should therefore be carefully drawn, a comparison

[17] *Ibid.*, Chapter 119, Sections 59, 62.

[18] Lou, H. H., Juvenile Courts in the United States, Chapel Hill, 1927, pp. 146-7.

[19] Glueck, Sheldon and Eleanor T., 500 Criminal Careers, New York, 1930, pp. 141, 354-357.

[20] *Cf.*, among others: Bowler, A. C. and Bloodgood, R. S., Institutional Treatment of Delinquent Boys, Part 2—A Study of 751 Boys, Washington, Children's Bureau Publication No. 230, 1936, pp. 28 and 29; Howard, F. E. and Patry, F. L., Mental Health, New York, 1935, p. 309; White House Conference on Child Health and Protection, New York, 1933, Section IV, The Delinquent Child, pp. 38-41, Section III, The Child and the School, pp. 108-112; Shaw, C. R., Delinquency Area, Chicago, 1929, p. 33, *et seq.*; Abbott, J. and Breckenridge, S. P., Truancy and Non-Attendance in the Chicago Schools, Chicago, 1917, p. 227.

of the dispositions from which the 377 boys and 38 girls appealed shows that the former were fined more often than were the girls (7.4% to 2.6%) while the commitment rate of the girls is, as usual,[21] higher than for the boys (63.2% to 41.4%). The reason for this is probably found in the fact that boys commit a larger proportion of property than sex offenses, while the very opposite is true for the girls.[22] Of 377 boys who appealed, 8 (2.1%) were charged with sex offenses; of 38 girls who appealed, 15 (39.5%) were similarly charged. The need is evident for a more varied and individualized dealing with the problems presented by girls than that expressed here by a high commitment rate.

TABLE 4

AGE AT THE TIME OF DISPOSITION BY THE LOWER COURT

	Disposition	Age in Years 8	9	10	11	12	13	14	15	16	Totals		Per Cent
Adjudication	Delinquency	4	5	6	13	16	18	36	34	34	166	169	40.7
	Paternity							1	1	1	3		
Commitment	Lyman	1	2	6	4	6	7	23	11		60		
	Shirley							6	46	69	121		
	Lancaster			2		1	2	3	5	8	21		
	Mid. Cty. Tr. School*				1		1	2	1	1	6	216	52.1
	House of Correction								1		1		
	Mass. Reformatory								1	3	4		
	C. W. D.-C. B.**								1		1		
	Div. Ch. Guard†							2			2		
Fine	$5-25							1	8	13	22		
	$26-50								1	4	5	30	7.2
	$51-200								1	2	3		
	TOTAL	5	7	14	18	23	28	74	111	135	415		100.0

* Middlesex County Training School, a truant school for boys.
** Child Welfare Department—City of Boston—city child placing division.
† State Division of Child Guardianship—State child placing division.

An examination of the dispositions from which this group appealed as related to their ages, reveals that a larger proportion in the lower brackets appeal from the finding of delinquency, while the upper ages appeal more often from an order of commitment. Of the 67 appeals of those between ages eight and twelve, 44 (65.7%) appealed from adjudication; of the 102 appeals of those aged thirteen and fourteen, 54 (52.9%) appealed from adjudication; of the

[21] *Cf.* Alper, Benedict S., and Lodgen, George E., The Delinquent Child in Pennsylvania Courts, XX Mental Hygiene No. 4, October, 1936, pp. 603, 604.
[22] *Ibid.*, p. 600.

246 aged fifteen and sixteen who appealed, 68 (27.6%) took exception to an adjudication of delinquency. The adjudications of paternity were found one each in years fourteen, fifteen and sixteen. Fines, also, were limited to these three upper years.

The whole system of juvenile appeals appears absurd when we confront the picture of eight, nine, ten, and eleven year old children appealing the action of a court that is supposed to be dealing with them in a manner bespeaking parental understanding. Yet there is some justification for these protests to an upper court when the lower courts are allowed to commit children eight, nine, and ten years old to Lyman and Lancaster; boys of fourteen to Shirley, though the law specifies they shall be over fifteen; and boys of fifteen to the Reformatory at Concord and the House of Correction at Deer Island.

D. The Detention Process—Jail—Bail

Juvenile sessions for appeals are held in the Superior Court at the discretion and call of the District Attorney for the County. They are held, usually, four times a year—in September, December, April and June. As much as four months may therefore elapse before a juvenile may know the outcome of his case. The shortest period of time that any of the cases under study had to wait was seven days, two children waited well over a year; the average was just under one hundred days (99.9).

Three months is a long time for a juvenile who has been found delinquent or been ordered committed to an institution, to await the final decree of the court. The law specifies no further supervision by the lower court during this period, except by commitment to the recognizance of a probation officer. It is not surprising, as will be found in a later section,[23] that 44 children (10.6%) got into further trouble and were committed to an institution on a new offense while their appeal was still pending.

A comparison of the length of time between appeal and disposition with the nature of the offense, reveals no apparent relationship. Obviously the date when children's cases shall be heard is determined by the District Attorney's custom of calling periodic juvenile sessions rather than by the gravity of the offense or the need of the child for attention or treatment.

The lower court decides how it shall guarantee the appearance

[23] *Cf.* Section F, *infra.*

of the child at the appeal hearing. Several methods are available[24] —recognizance of the child or a probation officer; temporary placement in care of a private agency or temporary commitment to a public child caring agency, or jail in the case of children fourteen or over;[25] imposition of bail.[26] Table 5 shows how these various methods are used, as related to the age of the child whose case awaits disposition.

TABLE 5

FORM OF DETENTION PENDING APPEAL, RELATED TO AGE AT TIME OF APPEAL

	Age in Years										
Form of Detention	8	9	10	11	12	13	14	15	16	*Total*	%
Own Recognizance ..				1			2	1	1	5	1.2
Recog. of Parents* ..			1	1	2		1	1	2	8	1.9
Recog. of Prob. Officer					1				2	3	0.7
Hse. of Gd. Shepard**								1	1	2	0.5
Dept. Public Welfare			3	1			1			5	1.2
County Jail				1		4	19	36	47	107	25.8
% Jail				5.6		14.3	25.7	32.4	34.8		
Bail	5	7	10	14	20	24	51	72	82	285	68.7
% Bail	100	100	71.4	77.8	87.0	85.7	68.9	64.9	60.7		
TOTAL	5	7	14	18	23	28	74	111	135	415	100.0

* One recognizance of counsel is included.
** Private institution for Catholic girls.

Over two-thirds (68.6%) were required to post bail to insure their appearance and fully one-quarter (25.8%) were detained in Charles Street Jail. There is revealed in this whole study no more glaring example of the disregard of the philosophy underlying the juvenile court law than this finding that 95% of the appeal cases were forced to post a bond or go to jail. Only 23 cases (5.6%) were held for hearing in any other way; 13 were allowed to go home with no further official surveillance; the court supervised 3 cases; the facilities of social agencies were used in only 7 cases. The remainder were compelled either to post a bond or else surrender their liberty and be locked up in the county jail, as if they were felons whose disappearance would endanger the security of the city.

A consideration of the method of detention employed for the

[24] Mass. General Laws, Chapter 276, Section 35; Chapter 278, Section 18.

[25] *Ibid.*, Chapter 119, Section 67.

[26] The child is expected to put up the bail; there is no provision for commitment of the child to the care of his parent in case of the child's inability to furnish bail. (*Robinson* v. *Commonwealth*, 242 Mass. 401.)

various age groups reveals a greater use of bail in the younger ages, with a decrease in the upper years, and the very opposite tendency in the temporary commitment to jail. While there were no jail commitments in ages 8, 9, 10, or 12, we find that one eleven year old boy was so held; this number climbs rapidly until in years fifteen and sixteen fully one-third of the cases which are awaiting final action are first committed to Charles Street Jail.

The offense with which a juvenile is charged in the lower court determines not only the disposition which he shall receive, as was seen in the preceding section, but also the form of detention by which he shall await his appeal to the upper court. The 299 more serious offenders were held in jail in 88 instances (29.4%), 19 of the 116 less serious offenders (16.4%) were so detained; bail was met in only 65.6% of the first group and 76.7% of the latter. As offense influences the lower court disposition, it is to be expected, in turn, that disposition will also affect determination of the method of detention. Of 169 appeals from adjudication, 136 (80.5%) were held on bail; of 216 appeals from commitment, 122 (56.5%) were so held. Those who appealed from commitment were held in jail in 38.4% of their number; those who appealed from adjudication were temporarily committed to jail in one-third as large a proportion—12.4%.

Of the 114 cases which were detained for trial, 107 were held in Charles Street Jail for a total of 775 days. The mean average was a little over a week (7.2 days), the median at 3 days and the mode at one day.[27] Fourteen children were detained in jail over twenty days each,[28] three of them for five weeks or more. The other seven children who were otherwise detained averaged almost nine weeks each (61.6 days). Of all those detained, the

[27] The importance of appeals in the detention problem may be realized from the fact that in the calendar year 1934, of 139 cases of children 16 years or younger detained in Charles Street Jail, 31 (22.3%) were held for appeal. The average length of time spent in jail by those held on appeal was double the average for those otherwise detained. (From an unpublished study on file at the Massachusetts Child Council, Boston.)

[28] Mass. General Laws, Chapter 119, Section 67, paragraph 3, requires that in the case of "a child so committed to jail to await examination or trial . . . not more than twenty days shall elapse after the original commitment before disposition of such case by the court . . . ." The first paragraph of this section refers to children "under fourteen held for examination or trial, or to prosecute an appeal to the superior court." The second paragraph of this same section refers to children "fourteen years of age or over so held." Neither the second nor the third paragraph refers to cases "held to prosecute an appeal," so that it is debatable whether the twenty day limit set for the jail detention of children includes appeal cases.

average was 10.6 days. It was the lot of twenty-three children to spend the entire time between their appeal and the Superior Court hearing in a place of detention, twenty of them in the Charles Street Jail—the time this group was detained averaged four weeks (28.5 days).

The factor of age seems to enter strongly into the determination of how long a child shall be detained in jail. While the thirteen year olders were detained an average of 2 days, those fourteen were held 3.8 days, those fifteen for 8.6 days, and the sixteen year olds an average of 8.1 days. Of the 38 girls who appealed, 27 were required to put up bail for their appearance, 5 were held in Charles Street Jail an average of 6 days each. One girl was held in jail for 13 days.

All those who were temporarily committed to jail pending hearing were compelled to be so because they lacked the influence or money or property to enable them to meet the bail requirements. It was shown above that of this group 20 spent the entire time in jail pending appeal, because they were unable to post a bond. The security demanded of this group totalled $49,200, an average of $2,589.47 each. In one instance, $6,000 bail was asked, in two others, $10,000.

Of the total of 107 who were held in jail, it was shown that 20 were not released during the entire time that they awaited trial. The remaining 87 cases were released at some time before the hearing, 68 of them upon the posting of security, 9 on their personal recognizance, 10 on the recognizance of a Superior Court Probation Officer. An average bail of $511.93 was secured from this group.

Adding the 285 cases which were held on bail after appeal had been taken, to the 87 who were released from jail upon the posting of a bail bond, personal recognizance or the recognizance of a probation officer, there results a total of 372 cases (89.7%) who were required at some time in the detention period to guarantee their appearance by a security. While no such exorbitant sums were posted by this group as were demanded of the cases which were held in jail for the total period in default, it was nevertheless found that two cases put up $2,500, three put up $2,000, and 22 put up sums ranging from $1,000 to $2,000. A total of $125,184 bail was secured from this group, an average of $335.61 each.[29]

[29] The amount stated here would of course be much higher if it were to include the bail demanded instead of what was finally posted.

A consideration of the amount of bail posted as related to the age of the child, reveals that those from ages 8 to 10 averaged $126.23; those aged 11 to 13 averaged $209.97; those from years 13 to 16 averaged $377.78. Offense is also an important criterion in the determination of the size of the bond to be posted—sex offenders average a bond of $506.58; those who have committed the more serious property offenses average a bail of $459.42; whereas those accused of assault and battery put up an average of $113.73, and violators of city and town ordinances were asked an average of $120.83. Seriousness of offense as a determinant of how the juvenile proceeds to defend himself is shown in the fact that those represented by counsel average a bail bond one hundred dollars higher than those not so represented. The courts which set the amount to be posted vary also in the amounts they ask—while the East Boston Court averages the lowest with $182.13, the Brighton Court sets an average figure almost three times as great—$522.22.

E. Hearing in the Superior Court—The District Attorney—Plea—Jury

The law requires the lower court to supply to the Superior Court a report of its investigation of the appellant.[30] A search of the Superior Court files revealed that the Boston Juvenile Court was the only one of the nine which heeded this provision. The Superior Court is furnished with a brief investigation made by its probation office, but this is not the equivalent of a complete record of the lower court's experience.[31] The case may thus properly be said to be considered *de novo* by the Superior Court, with no reliance on the results of the treatment by the original court.

The preceding section described the District Attorney's tradition of setting the four dates a year on which juvenile sessions shall be called. On the day that the juvenile session is held, the juveniles, with their parents, counsel, and such witnesses for both sides as have been called, wait outside in the corridors and mingle with the crowds that are always in attendance at the daily criminal sessions of the Superior Court. One by one the cases are called before the District Attorney, and he there goes over them before

[30] Mass. General Laws, Chapter 119, Section 56.

[31] "There is also no reason why Superior Court judges should not rely on the reports of the district court probation officers instead of sending out their own probation officers to duplicate work already done." Warner, S. B. and Cabot, H. B., Judges and Law Reform, Harvard Law School Survey of Crime in Boston, Vol. IV, Cambridge, 1936, p. 58.

they go in to the Judge. There is no attempt on the part of any court officer to give the child an idea of what step in his hearing this appearance represents. There is evident throughout the review of the case an attempt to secure an admission of culpability from the child, and the District Attorney makes the first offer in this bargaining process by assuring greater leniency in final disposition by the Judge if such an admission is forthcoming. All the cases called for that day are thus reviewed, with the exception of those which have been *nol prossed.* Since 1922 the District Attorneys of Massachusetts have been required to file with their *nol pros* orders a memorandum stating their reasons for not continuing the case.[32] Of 29 juveniles *nol prossed,* such memoranda were found in 25 cases.

In three instances where the *nol pros* memorandum carried the statement "This defendant has a good record," or "The defendant has a probation record, but only a slight one," serious prior records were obtained from the Board of Probation.

The exercise of the *nol pros* power has steadily diminished over the five year period here studied,[33] so that there is hope that the law compelling dispositions of juvenile appeal cases by direct order of the court only,[34] is finally being heeded. Since juvenile cases should, by their nature, be heard on the civil rather than on the criminal side of the court, it seems unnecessary that the function of prosecutor be exercised through *nolle prosequi* or in any other manner.

The District Attorney influences the disposition of cases not only by his exercise of the *nol pros* power, but also through the recommendations which he makes and the memoranda he passes to the Judge or to his own assistant in the course of the hearing.[35] Several such written notes were found in an examination of the court papers. These tell in the crisp staccato language of the court and criminal process the part which the District Attorney plays, and the attitude which motivates his decisions.

It is obvious from these memoranda that the district attorney acts as representative of both the defense and the prosecution—he does not choose to offer evidence through his office when such

[32] Mass. General Laws, Chapter 277, Section 70A.

[33] *Cf.* Section F, *infra.*

[34] Mass. General Laws, Chap. 119, Sec. 56. *Cf.* Section A, *supra.*

[35] *Ibid.,* Chapter 277, Section 70B, requires the District Attorney or his assistant to accompany all motions for filing cases with a written statement of the reasons for such disposition.

evidence is lacking or likely to be insufficient; he suggests who shall go on trial; he sums up the condition or offense of the child on simple superficial grounds and recommends action by the court on the basis of his elementary findings. One memorandum displays one of the greatest weaknesses in the present juvenile procedure—the overlapping jurisdiction of the nine courts in the county, which makes possible the absurd condition of a boy's being on probation for three different offenses in three separate courts in the county at the same time.[36]

If his case is not *nol prossed,* the juvenile makes his plea when he enters the Superior Court. In so far as can be discovered, there is little difference between the handling of a juvenile and an adult in this respect. It was found that 270 cases (65.1%) pleaded guilty,[37] 55 (13.3%) pleaded not guilty, 89 (21.4%) had no plea recorded, 1 pleaded "nolo contendere." An opportunity is allowed the juvenile, however, to change his plea, as may be seen from the following entry in one court record: "Defendant's oral motion to retract plea of guilty allowed. Defendant pleads not guilty"; and he is allowed to be selective in his pleading, as in the case where it is seen that a child "Pleads guilty to so much as charges larceny."

Before the juvenile is asked to plead, he is given an opportunity to decide whether he shall be tried by jury or whether he shall take his case directly before the judge.[38] Thirty cases (7.2%) stood by their right to a jury trial, the remaining 385 were disposed of by a direct hearing before the judge or by a *nol pros* from the district attorney. Signed waivers of the right to a jury trial were found in 59 cases (14.2%), and there is one record which reads "Jury trial waived by father." One juvenile stood trial before a jury at the age of 11 years 5 months, another at 12 years 1 month; the average age of the thirty who appeared before a jury was

[36] "In an appreciable proportion of the cases . . . the delinquent was on sentence from some other tribunal at the time of appearance of his case in the Boston Juvenile Court. . . . This is one of the major obstacles to adequate action." Glueck, Sheldon and Eleanor T., One Thousand Juvenile Delinquents, Harvard Law School Survey of Crime in Boston. Vol. I, Cambridge, 1934, p. 134.

[37] "The basic reason in law for allowing an appeal in any case is to meet the constitutional requirement of trial by jury. In so far as an appeal is taken for that purpose, there can be no criticism. But the exceedingly small number of re-trials and the fact that in 60% of appealed cases guilt is admitted, force the conclusion, which accords with the actual experience of all district judges, that in the vast majority of cases the appeal is not to get a jury trial, but to escape a sentence." Bolster, Wilfred, Criminal Appeals, 7 Mass. L. Q. (August, 1922), p. 21.

[38] Mass. General Laws, Chapter 263, Section 6 allows any defendant in the Superior Court in a criminal case to elect to waive a jury trial.

15 years 2 months, just 6 months older than the average age of the total group.

In addition to these thirty cases which were presented before a jury, there were six instances discovered where the juvenile decided to throw himself upon the court for disposition upon a change of plea. To quote from one case, "Court is declared a juvenile session. Trial. After jury impanelled and sworn and part of testimony introduced, defendant pleaded guilty and issue was withdrawn from the jury." No greater travesty on the procedure which should properly govern a juvenile hearing can be imagined. Here in one brief court entry are expressed the contradictions and absurdities which are supposed to make possible the transformation of an adult court into a juvenile session simply by the pronouncement of the magical words. The court is left to go on with an adult criminal procedure, jury trial and all, serene in the conviction that it is adhering to the law because a formula has been pronounced.

Cases which are not tried before a jury are disposed of by the Superior Court Judge sitting in the regular Criminal Session. This final step in the juvenile appeal process takes place in a small chamber off the main court room. Children waiting for the Judge take seats among the spectators during the criminal trial that is going on, or mix with crowds outside. During one session the Judge called a recess during the criminal trial at which he was presiding, and adjourned to a side room where, in forty minutes, he disposed of the cases of ten juvenile appellants. This done, he mounted his bench and the criminal trial resumed.

F. Final Disposition—Offense—Sex—Age—Court—Counsel—Judge

Section C inquired into the action of the lower court and showed how offense, age and sex were related to the appealed disposition. It will be interesting to examine the action of the upper court in the light of these same criteria, but first comparison should be made of the upper and lower court dispositions. This is the purpose of Table 6.

Following the diagonal through the table from left to right, there results a total of only 16 cases (3.9%) where the disposition in the Superior Court is precisely the same as the disposition in the lower court. Deducting from the total dispositions the 44 cases which were committed to an institution pending appeal and would

TABLE 6

COMPARISON OF DISPOSITIONS IN THE SUPERIOR AND LOWER COURT

Superior Court Disposition	Lower Court Disposition: Adjudication: Delinquency	Adjudication: Paternity	Commitment: Lyman	Commitment: Shirley	Commitment: Lancaster	Commitment: Mid. Cty. Tr. School	Commitment: Hse. of Correction	Commitment: Mass. Reformatory	Commitment: C. W. D.-C. of B.	Commitment: Div. Child Guard.	Fine: $5-25	Fine: $26-50	Fine: $51-200	Total	Per Cent
Delinquency..	—													—	—
Paternity		—												—	—
Lyman			3	1										4	1.0
Shirley	3		1	9				1						14	3.4
Lancaster					1									1	0.2
Mid Cty Tr Sch.						1								1	0.2
Hse Correction.							—							—	—
Mass Reform...								—						—	—
C W D—C of B.									—					—	—
Div Child Guard										—				—	—
Fine $5—25.....											2	1		3	0.7
Fine $26—50....												—		—	—
Fine $51—200...													—	—	—
Nol Pros			1	9	1						16	1	1	29	7.0
Filed	47		9	8	1	2		1		1		1		70	16.9
Filed Already Comtd.	19		6	12	3	1		2			1			44	10.6
Not Delinquent	46	1	5	15	1		1				1	2		72	17.4
Probation	40	2	34	61	14	2			1	1	2		2	159	38.3
Sus Sent to Inst	11		1	6										18	4.3
Total	166	3	60	121	21	6	1	4	1	2	22	5	3	415	100.0
Per Cent	40.0	0.7	14.5	29.2	5.1	1.4	0.2	1.0	0.2	0.5	5.3	1.2	0.7	100.0	

therefore not again be adjudicated[39] the percentage of identical dispositions rises to 4.3%. The Superior Court reversed the judgment of the lower court in 95.7% of the cases under examination.[40]

A present Justice of the Massachusetts Supreme Judicial Court once said "The system of appeals reminds one of the habit of small

[39] These 44 cases will for this reason be omitted from further consideration in the remainder of this section. *Cf.* Section C, *supra.*

[40] "If the sentencing habits of the superior court have been right, the district courts have been habitually over-sentencing. If the district courts have been right, the superior court has been habitually under-sentencing. Only public opinion can solve the dilemma." Bolster, op. cit., pp. 20, 21.

boys, who, after trying some dispute by the toss of a coin, and losing the toss, cry 'Twice out of three!'-"[41] When these same "small boys" find that they stand to profit from an appeal, their refusal to abide by the decision of the lower court takes on increased significance. The fact is that they do so stand to profit—349 of 371 (94.1%) gained by appeal, 6 (1.6%) lost by appeal, and 16 (4.3%) neither gained nor lost. This compares with the result of 709 adult criminal appeals to the Suffolk Superior Court in certain months of 1929, as follows: 86.7% gained by appeal, 3.2% lost by appeal and 10.1% neither gained nor lost.[42]

While the Superior Court made its own investigation of the appeal cases before the hearing, it is difficult to believe, from a reading of them, that sufficient information was thus revealed to account for the overwhelming number of judgments which were not affirmed. A reading of these investigations shows them to be too brief to supply the court with any strikingly new data on the child. If the lower courts had followed the legal requirement of sending up the results of their own experience with the case, perhaps so large a number of their dispositions would not have been set aside.[43] It is likely that during the hearing, the Court may have been apprised of a change in circumstances which warranted a policy of greater leniency than that displayed by the lower court. It is more likely that the Judges of the Superior Court, accustomed to dealing with adults and the more serious criminal charges, looked lightly upon the offenses committed by these juveniles. The lower courts cannot help but suffer from such a reversal of their decisions; they certainly would not tolerate so wasteful and unnecessary a duplication in the conduct of their civil cases.[44]

Section C revealed that in the lower court two-fifths (40.7%) of the appeals were from adjudication, over one-half (52.1%) from commitment, and less than one-tenth (7.2%) from fine. The Superior Court filed, *nol prossed* or discharged (not delinquent) almost one-half (46.1%); committed only 20 cases (5.4%) and fined 3 (0.8%). They placed on probation 177 cases (47.7%); 159 on straight probation and 18 with suspended sentences. The leniency and

[41] Lummus, Henry T., The Failure of the Appeal System, Boston, Massachusetts Prison Association, 1909, p. 14.

[42] Warner and Cabot, op. cit., p. 47.

[43] Cf. Section E, *supra*.

[44] Of 428 appeals from all courts in Massachusetts on the civil side, to the full bench of the Supreme Judicial Court for the calendar year 1934, 347 decisions (81.1%) were affirmed. (From an unpublished study on file with the Lawyers' Brief and Publishing Company, Boston.)

use of a greater variety of treatment methods displayed by the upper court may be brought out more strongly by the following comparisons: of the 169 adjudications in the lower court, 94 (55.6%) were filed or discharged; of 30 fined by the lower court, 3 (10.0%) were again fined; of 216 commitments in the lower court, 20 (9.3%) only were again committed. It was noted above[45] that of all the juvenile commitment orders made by the lower courts over a five year period, one in three was appealed. Here it is seen that of these appeals, only one in ten is affirmed. A lower court judge, earnest in his desire to commit those whom study shows to require it, is bound to be discouraged by the high rate of appeals from commitment, and to be rendered more cautious in his use of commitment orders when he learns that nine-tenths of these appeals are successful. The juvenile who thus evades a period of institutionalization is bound by the same token to lose respect for the juvenile process that makes escape possible.

Table 3 pointed out a close relationship between gravity of offense and seriousness of disposition in the lower court—of 299 of the more serious offenses (breaking and entering, violation of motor vehicle laws, larceny and larceny of auto, sex offenses) 176 (58.9%) were appealed from commitment. The Superior Court committed 19 of these 299 serious offenders (6.4%) to institutions. Only 20 commitments in all were made by the Superior Court and 19 of these were for the more serious offenses. It may be deduced, then, that the Superior Court acts in accordance with the same principle as the lower court and punishes the more serious violators more seriously, though here, as in all its dispositions, it acts more leniently.

It was further noted in Table 3 that all 9 school offenders were committed by the lower court—the Superior Court committed only 1 and divided disposition of the other 8 cases evenly between filing and probation. The lower court committed 5 of the 6 "stubborn children" to Lancaster; the upper court divided its disposition of these 6 cases evenly between probation and discharge. Of the total of 100 miscellaneous offenses, all milder in their implication (disorderly conduct, violation of city ordinances, gaming, trespass, drunkenness, runaway, violation of liquor and drug laws) the lower court committed 29 and fined 17. The Superior Court discharged 77 of these minor offenses, and placed 21 on probation.

[45] *Cf.* Section B, *supra.*

Not a single one of this group of 100 was fined or committed to an institution by the upper court.

Any comparison of the upper and lower court dispositions as related to the sex of the appellant is made difficult by the paucity of cases in the sample of girls. The Superior Court committed only one girl to Lancaster to 21 such commitments in the lower court; 19 boys were committed to institutions as against 192 appeals from commitment. The lower court fined 1 girl and 29 boys; the upper court fined no girls and only 3 boys. For the 21 girls committed to Lancaster by the lower courts, the Superior Court placed an equal number of girls on probation. Probation was meted out to 156 boys, 18 of them carrying suspended sentences, while no girls were given suspended sentences. Twelve girls out of 38 (31.6%) were discharged by *nol pros*, filing or a finding of not delinquent, 158 boys out of 377 (41.9%) experienced a similar decision.

An examination of the upper court decisions by age[46] furnishes further testimony for the finding previously made that its decisions are based on the same criteria as those of the lower court except that the means employed are more varied, and the tone is, throughout, more mild. The 30 fines in the lower court were imposed only on those fourteen, fifteen and sixteen years of age; the 3 fines in the Superior Court were imposed only on those sixteen. The lower courts committed boys eight, nine and ten to Lyman; the committing age of the Superior Court started at thirteen years. Table 7 shows, in abbreviated fashion, the manner in which decisions in the Superior Court, like those in the lower courts, are related to the age of the child.

TABLE 7

DISPOSITION* IN THE SUPERIOR COURT, RELATED TO AGE

Age Group	*Disposition*									
	File or Not Delinquent		*Nol Pros*		*Commitment*		*Probation*		*Total*	
	No.	%	No.	%	No.	%	No.	%	No.	%
8 to 11.....	29	72.5	..	..	..	..	11	27.5	40	100.0
12 to 14.....	51	45.2	1	0.9	4	3.5	57	50.4	113	100.0
15 and 16.....	62	28.8	28	13.0	16	7.4	109	50.8	215	100.0
Total	142	38.6	29	7.9	20	5.4	177	48.1	368**	100.0

* This table does not include 3 fines, and 44 cases filed because commitment to an institution intervened between appeal and hearing. Cf. note 39, supra.

** Percentages in this table are computed on the basis of this total.

[46] As ages were taken as of the date of appeal, and an average of 100 days (99.9) intervened between appeal and hearing, the group was a little more than three months older at time of final disposition.

Discharges are highest in the ages 8 to 11 with 72.5%, lower in ages 12 to 14 with 45.2%, and lowest in years 15 and 16 with 28.8%. Commitments make up 3.5% of the middle age group and 7.4% in the highest. The proportion placed on probation in the two upper age groups is almost twice that of the younger years. The probation cases in ages 8 to 11 were all for a term of one year; of the probation cases in ages 12 to 14, 8 were for more than a year; of the probation cases in ages 15 and 16, 25 were for more than a year, 6 of them for terms of 4, 5, or 6 years. The adult instrument of *nol pros* is used almost exclusively in the oldest age group.

An examination of the upper court dispositions as related to the court in which the appeal originated, discloses little perceptible discrimination. The percentage of discharges runs about the same for all courts, except that no *nol prosses* are recorded for the Boston Juvenile or the Brighton Court and no commitments were ordered against any of the cases which arose in the East Boston Court.

The first element in the comparison between the dispositions in the Superior Court and the detention process is the weight given to the length of time between appeal and hearing. No relationship is discoverable, however—the various forms of dispositions are found scattered evenly across the varying periods of time which these appeal cases had to wait before the upper court hearing.

The group originally admitted to bail by the lower court was found to be committed by the Superior Court in 4.2% of its cases, those who were first temporarily consigned to jail were committed by the Superior Court in almost twice as high a proportion—7.5%. It may be argued that jail detention was the result of inability to raise a stipulated sum, but it has been shown above, in the twenty cases where the amount of bail was known, that the amount demanded of the jailed group was much higher than that demanded of those who went free.[47] No institutional commitments whatsoever were made by the upper court of those cases which had been held on recognizance, or in the custody of a public or private agency, which further strengthens the finding that the Superior Court is guided in its decisions by its conception of the potential or actual degree of anti-social conduct of the juvenile appellants who come before it.

[47] *Cf.* Section D, *supra.*

Those represented by counsel fare no better in the Superior Court than those without legal aid. Of the 144 cases which were represented, 64 (44.4%) were discharged, 8 (5.6%) were committed and 72 (50.0%) were placed on probation. For those not represented, the corresponding figures are 109 (48.0%) discharged, 12 (5.3%) committed, and 106 (46.7%) placed on probation.

There is evidently as much skill necessary for juveniles as for adults in the bargaining process of the plea—while only 59 of the 235 who pleaded "delinquent" (25.1%) were discharged, 39 of 52 who pleaded "not delinquent" (75.0%) were likewise discharged. The "delinquent" group is, moreover, subjected to further supervision by the court more frequently, as it is found that 162 of them (68.9%) were placed on probation compared to 6 of those who pleaded "not delinquent" (11.5%). Pleading "not delinquent" is, despite these findings, a risky venture, because the commitment rate is 11.5% for this group as against 5.1% for those who admitted their "delinquent" condition.

When a child, or his attorney, insists on a trial by jury,[48] he is not likely to come off so lightly as might be expected from the finding that of 30 who stood trial, 19 (63.3%) were found not delinquent, while of 341 who were heard without jury, 153 (44.9%) were discharged. The commitment picture shows that of 30 who stood trial, 6 (20.0%) were committed to an institution; of 341 who were not heard by a jury, only 14 (4.1%) were committed.

During the five year period covered by this study, no less than nineteen Judges sat on the cases of 384 juveniles.[49] Judge "A" heard 180 cases (46.9%), Judge "B" heard 93 cases (24.2%), Judge "C" 44 cases (11.5%), Judge "D" 18 cases (4.7%) and Judge "E" 17 cases (4.4%). The other 14 Judges handled 32 cases (8.3%) an average of slightly over 2 cases each. The procedure is certainly inefficient that allows nineteen Judges to rotate on the bench in this manner instead of assigning one of their number exclusively to juvenile cases. Where Superior Court hearings of juvenile appeals are set for only four sessions a year, this should work no hardship, especially to a Judge trained and selected for this work.

It is not surprising to find that the five Judges who heard 91.7% of the appeals differed radically in their dispositions. Table 8 shows how these dispositions are distributed.

[48] *Cf.* note 38, *supra.*

[49] This figure does not include 29 *nol prosses* and 2 cases where the name of the judge was not ascertained.

TABLE 8

VARIATIONS IN DISPOSITION PRACTICE OF SUPERIOR COURT JUDGES

Judge	Disposition: Discharge No.	Discharge %	Probation No.	Probation %	Commitment No.	Commitment %	Total No.	Total %
"A"	55	36.4	88	58.3	8	5.3	151	100.0
"B"	40	50.6	36	45.6	3	3.8	79	100.0
"C"	30	71.4	10	23.8	2	4.8	42	100.0
"D"	2	11.1	15	83.3	1	5.6	18	100.0
"E"	2	12.5	14	87.5	..	..	16	100.0
Total	129	42.2	163	53.2	14	4.6	306*	100.0

* This figure does not include 43 cases which were filed because they had already been committed to an institution and 3 cases which were fined.

The dissimilarity in disposition practice is evident without further description. It remains to point out that of the 9 cases heard by Judge "F," 3 were committed, while Judge "G" committed both of the cases over which he presided.

The most important finding revealed by an examination of the disposition policy of the Superior Court over the five year period 1931-1935, inclusive, may be described as an increasing reluctance on the part of the court to release cases from supervision. *Nol prosses* were found to number 12 in 1931, 10 in 1932, 5 in 1933, 2 in 1934, and none in 1935. The percentage of those filed or found not delinquent was 51.7% in 1931, 37.5% in 1932, 37.3% in 1933, 20.0% in 1934, and 37.2% in 1935. The use of probation shows the following percentages over the same years: 33.0%, 42.1%, 50.7%, 61.8%, 59.0%.

A final consideration makes it impossible to conclude this section on the hopeful note that the administration of the juvenile process is becoming each year more strongly conscious of the responsibility it owes toward the juveniles who come before it. The records of the Charles Street Jail show that 9 cases were detained a total of 39 days, an average of 4⅓ days each, *after* the appeal had been heard and the commitment order had been imposed. There seems to be no good reason why a juvenile who has been ordered to an institution should spend 5 or 6 or 12 days waiting in the county jail for "safe keep" before delivery to the officer who will transport him. The responsibility for failure to transport juveniles devolves properly upon the sheriff to whom the mittimus is addressed. It would seem that the court should be sufficiently

interested in the juvenile who is to go to an institution to require that he be taken there at once.

Conclusion

The net effect of this study is a revelation of complete discontinuity in what should be a coherent and unified process for dealing with errant children. The attitude of the lower courts, the detention process with its evils of jail commitment and imposition of high amounts of bail, the procedural steps in the upper court paralleling the adult criminal process, should properly have no place in the design and structure of an enlightened children's tribunal. Even if this study had discovered that the lower courts adhere to the best accepted juvenile practice, their efforts would be set at naught by the disabling process of appeal, and the unspecialized manner in which appeals are handled in the upper court.

But the lower courts are not above reproach. The juvenile sessions cannot perform their proper duty toward the juveniles who come before them when as high as one-fifth of their decisions are appealed. Such courts are bound to lose prestige in the eyes of both the child offender and his parent. The errors shown in their treatment of children should be subject to review so long as they do not devote full time and specialized attention to juvenile cases, apart from the duties of the adult criminal and civil calendar.

The Superior Court contributes toward the present discontinuity by acting as if their consideration of the case were entirely independent of the lower court's experience. Because they are neither specialized nor equipped for juvenile work, their responsibility is realized as only a part-time casual performance, instead of a continuing inclusive interest in all the features of the juvenile process. The need is evident for one children's court for Suffolk County, original, superior and final in its jurisdiction, to take the place of eight juvenile sessions and one specialized juvenile court, themselves varying and conflicting in their treatment of children. Only in this way can the evil of juvenile appeals be reduced.

Even with one juvenile court organized on a county-wide basis, operating under the best imaginable children's court procedure, allowance should be made for the occasional case where a serious error or miscarriage of justice might occur. For such an eventuality, provision should be made for appeals on a question of law or upon the ground of abuse of discretion. Such appeals

should be allowed only from adjudication, and not from disposition, providing for the return of the child to the jurisdiction of the children's court if the adjudication of delinquency or waywardness is affirmed. Such appeals from adjudication should be addressed either to the Supreme Judicial Court or, preferably, to a group of juvenile court judges not including the judge who made the original adjudication.

This study undertook to discover how juvenile appeals are handled in Suffolk County. Its results indict the present system. More important, its findings, like a prism, reveal from this single beam a multitude of concomitant and related evils. Further reform in the field of appeals alone will not be a sufficient remedy. The mechanism has been repaired too often. Regardless of minor improvements, the courts continue to err drastically in their attempt to carry out the provisions of an inconsistent set of statutes and of agencies. The only constructive effort that can possibly be successful now is one which shall first enunciate fundamental principles and then rear a structure of law and administration based firmly upon them.