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JUVENILE COURT: THE LEGAL PROCESS AS A REHABILITATIVE TOOL

Juvenile courts in Washington are required to provide for the "care, custody and discipline of a dependent or delinquent child"¹ under the age of eighteen.² Although the courts are attempting to carry out this statutory mandate in order to reach the legislative goal of juvenile rehabilitation,³ there is growing dissatisfaction with their effectiveness

1. The basic sources of juvenile court law in the State of Washington are WASH. REV. CODE tit. 13 (1974) and WASH. JUV. CT. R. (1968) (effective Jan. 10, 1969). WASH. REV. CODE § 13.04.140 (1974) states the underlying purpose of the juvenile correctional system:

This chapter shall be liberally construed to the end that its purpose may be carried out, to wit: that the care, custody and discipline of a dependent or delinquent child as defined in this chapter shall approximate as nearly as may be that which should be given by its parents

A delinquent child is defined as a minor child under the age of eighteen years who is found to have violated either federal, state, or local law and who has been referred to the juvenile court. *Id.* § 13.04.010. A dependent child, on the other hand, may be any child under eighteen who is found to be neglected (*e.g.*, abandoned, living in a home where injurious living conditions exist, in need of protective custody or shelter, or in need of medical care necessary for his well-being), rebellious (*e.g.*, one who is truant, who has no settled place of abode, who uses intoxicating liquors or drugs, who frequents the company of reputed criminals, vagrants, or prostitutes, or who is otherwise in danger of leading an immoral or dissolute life), or incorrigible (*i.e.*, beyond the control and power of his parents, guardian, or custodian by reason of his conduct or nature). *Id.* § 13.04.010. All children who have been adjudicated delinquent or dependent are considered wards of the state "and their persons shall be subject to the custody, care, guardianship and control of the court . . ." *Id.* Once a minor is found to be dependent or delinquent and thus made a ward of the state, he is subject to the continuing jurisdiction of juvenile court until his condition of dependency or delinquency ends. *In re Boatman*, 73 Wn. 2d 364, 438 P.2d 600 (1968).

The study on which this comment is based was concerned only with those children adjudged to be delinquent or dependent-incorrigible, *i.e.*, those classifications of juvenile offense for which, at the time of this study, the ultimate sanction that could be imposed was commitment to a state juvenile institution. *See* note 46 *infra*, and accompanying text. It was to this category of children that the due process guarantees first enunciated in *In re Gault*, 387 U.S. 1 (1967), *see* note 52 and accompanying text *infra*, were directed.

2. *See* WASH. REV. CODE § 13.04.010 (1974). In January 1975, the Supreme Court of Washington, in *In re Carson*, 84 Wn. 2d 969, 530 P.2d 331 (1975), held that juvenile court jurisdiction ends when a person turns eighteen years of age since the thrust of the majority statute, WASH. REV. CODE § 26.28.010 (1974), is that "all persons shall be deemed *and taken to be of full age for all purposes* at the age of eighteen years," and that "the better reasoning and result would be that the juvenile court may exercise jurisdiction over only *minors* . . ." 84 Wn. 2d at 971, 530 P.2d at 332 (emphasis in original).

3. WASH. REV. CODE § 13.06.010 (1974) indicates this rehabilitative goal: It is the intention of the legislature in enacting this chapter . . . to rehabilitate juvenile offenders, and to reduce the necessity for commitment of juveniles to state juveniles correctional institutions by strengthening and improving the super-

in reaching this rehabilitative goal.⁴ As a result, there is also an increasing disenchantment with the traditional view concerning the proper role of the juvenile court process.

Two contradictory models of the juvenile process have developed. Advocates of the first, a traditional sociological-paternalistic view,⁵ believe that the best manner in which to rehabilitate youngsters is

vision of juveniles placed on probation by the juvenile courts of this state. This statute is a portion of a chapter authorizing special supervised probation programs in the various counties to be jointly funded from state and local sources.

4. One Philadelphia juvenile court judge expressed this dissatisfaction by stating: A contact with the Juvenile Court not only is unlikely to assist a youngster to become a better citizen but, according to respectable theory today, it is likely to lead him into further "delinquency."

L. FORER, "NO ONE WILL LISSEN" 105 (1970). See also U.S. TASK FORCE ON JUVENILE DELINQUENCY, THE PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME I (1967) [hereinafter cited as TASK FORCE REPORT]. As Oran Ketcham, a long-time observer of juvenile courts, has noted:

The way to measure success or failure is by the number of reappearances of the same youngster. Each reappearance represents a defeat for the judge and a serious challenge to the efficacy of the juvenile court philosophy. Statistics on recidivism indicate that many juveniles are coming out of the first skirmish with the courts unhelped and unrehabilitated.

Ketcham, *The Juvenile Court for 1975*, 40 SOCIAL SERVICE REV. 285 (1966). The results of this author's study presented in this comment challenge the assumption that formal processing through the juvenile court is necessarily deleterious.

5. The development of this view has been traced to the *parens patriae* jurisdiction of English chancery courts. See, e.g., H. LOU, JUVENILE COURTS IN THE UNITED STATES 2-5 (1927); Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970). The concept of *parens patriae* was used to describe the power of the state to act in the place of the parent in the best interests of the child. See Mennel, *Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents*, 18 CRIME & DELINQUENCY 68 (1972). This doctrine became an integral part of juvenile proceedings in the United States with *Ex parte Crouse*, 4 Whart. 9 (Sup. Ct. Pa. 1839).

The function of the traditional juvenile court proceeding was to diagnose the child's condition and to prescribe for his needs—not to judge his acts or to decide his rights. A non-legal social setting was to be provided to treat the child in his own best interests. Hearings were to be informal and confidential; the court process as a whole was paternalistic rather than adversary. See generally TASK FORCE REPORT, *supra* note 4, at 2-4. Although the sociological model of juvenile court proceedings that grew out of *parens patriae* was applied to delinquency and dependency cases alike, it is interesting to note that the origins of juvenile court *delinquency* jurisdiction lie primarily in English criminal law, rather than in chancery, where minors were punished as adults. See H. LOU, *supra* at 7; R. POUND, INTERPRETATIONS OF LEGAL HISTORY 134-35 (1923).

One commentator has remarked on the ease with which the sociological model took root in the United States. See A. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY (1969). Platt concludes that the juvenile court did not create a new system of justice when it was introduced to the United States but rather reinforced the middle class bias of 19th century reformers who set high standards for the conduct of family affairs and sought to inject those standards into the lives of lower class working families. *Id.* at 134-36. "[The reformers] implicitly assumed the 'natural' dependence of adolescents and created a special court to impose sanctions on

through an informal court process with a minimum of formal procedures. Supporters of the legal-due process view,⁶ on the other hand, feel that the juvenile offender can best be rehabilitated through a more formalized judicial procedure which is similar to an adult criminal proceeding.

The author's study, reported in this comment, had two objectives. First, it attempted to determine whether a juvenile's experience with

premature independence and behavior unbecoming to youth." *Id.* at 176. The imposition of control was total:

Historical idiosyncracies gave us a doubtful assumption of power over children.

With the quasi-legal concept of *parens patriae* to brace it, this assumption of power blended well with the earlier humanitarian traditions in the churches and other charitable organizations regarding child care and child-saving. The juvenile court is thus the product of paternal error and maternal generosity, which is a not unusual genesis of illegitimacy.

N. MORRIS & G. HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* 157 (1970). See generally Schultz, *The Cycle of Juvenile Court History*, 19 *CRIME & DELINQUENCY* 457 (1973).

6. Proponents of the due process model challenged the presumption that an informal sociological orientation was beneficial to the youthful offender. An early advocate of the introduction of constitutional due process guarantees into the juvenile court process and former dean of the University of Michigan Law School, Francis Allen, observed:

Even if one's interests lie primarily in the problems of treatment of offenders and related matters, it should be recognized that the existence of the criminal presupposes a crime and that the problems of treatment are derivative in the sense that they depend upon the determination by the law-giving agencies that certain sorts of behavior are crimes.

F. ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE* 125 (1964). The notion of a fact-finding procedure which would insure as nearly as possible that the offense was in fact committed by the person over whom state control is exercised was lacking from the sociological model:

The juvenile court movement was "anti-legal" in the sense that it encouraged minimum procedural formality and maximum dependency on extra-legal resources. The judges were authorized to investigate the character and social background of both "pre-delinquent" and "delinquent" children. They examined personal motivation as well as criminal intent, seeking to identify the moral reputation of the problematic children.

A. PLATT, *supra* note 5, at 141 (footnote omitted).

This shift to the due process model was justified in that "the punitive aspects of the treatment model were becoming increasingly apparent. As the Court in *In re Gault* concluded: "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." 387 U.S. at 36. The Court also added: "[The term 'delinquent'] has come to involve only slightly less stigma than the term 'criminal' applied to adults." *Id.* at 24. In *In re Winship*, 397 U.S. 358 (1970), where the Court held that allegations of delinquency must be proven beyond a reasonable doubt, Justice Harlan in his concurring opinion stated:

Although there are no doubt costs to society (and possibly even to the youth himself) in letting a guilty youth go free, I think here, as in a criminal case, it is far worse to declare an innocent youth a delinquent.

Id. at 374. See also F. ALLEN, *BORDERLAND OF CRIMINAL JUSTICE* 16 (1964). See generally B. GEORGE, *GAULT AND THE JUVENILE COURT REVOLUTION* (1968).

the traditional sociological model or with the legal due process model is more likely to motivate him to feel positively toward the legal system. Second, this study attempted to measure the attitudes of the professionals in the juvenile system (judges, attorneys, and case-workers) toward the two models. The results of the study, although not all were statistically significant,⁷ indicated that although the professionals favored the traditional sociological model, the use of the

An additional rationale for the introduction of adult criminal due process guarantees into the juvenile process where loss of liberty is possible, is that minors typically serve longer terms whether on probation or incarcerated than if they had been sentenced by an adult criminal court for the same offense. See S. RUBIN, *PSYCHIATRY AND CRIMINAL LAW* 157 (1965); Chase, *Schemes and Visions: A Suggested Revision of Juvenile Sentencing*, 51 TEXAS L. REV. 673 (1973). See also *In re Gault*, 387 U.S. at 29, where the Court explains that the youthful offender charged therein with delinquency by reason of his participation in an obscene phone call (a misdemeanor under Arizona law) would have been subject to a maximum fine of five to fifty dollars, or imprisonment in jail for not more than two months, had he been an adult. As a juvenile, Gerald Gault faced possible commitment to a state juvenile institution for an indefinite period of up to six years.

Even those who favored the provision of adult criminal due process guarantees generally in the juvenile court process, however, were reluctant to eradicate completely the notion that delinquencies be handled in a forum separate from that in which adult criminal behavior would be tried. See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1971) (juvenile not entitled to trial by jury), where the Court stated:

The imposition of the jury trial on the juvenile court system would not strengthen greatly, if at all, the factfinding function, and would, contrarily, provide an attrition of the juvenile court's assumed ability to function in a unique manner. . . . The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say . . . that the system cannot accomplish its rehabilitative goals.

Cf. Estes v. Hopp, 73 Wn. 2d 263, 438 P.2d 205 (1968) (juvenile denied right to bail). *But see In re Winship*, 397 U.S. 358 (1970):

Gault decided that although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment."

397 U.S. at 359 (citations omitted); *Breed v. Jones*, 421 U.S. 519 (1975) (prosecution as adult after adjudication of delinquency for same crime and subsequent finding of unfitness for treatment as juvenile violates constitutional proscription against double jeopardy). See generally Popkin, Flippert & Keiter, *Another Look at the Role of Due Process in Juvenile Court*, 6 FAMILY L.Q. 233 (1972).

7. A statistical test known as the chi square test (with Yale's correction for continuity) was used to analyze the data collected in this study. See G. FERGUSON, *STATISTICAL ANALYSIS IN PSYCHOLOGY & EDUCATION* 188-89 (3d ed. 1971). When the results of the chi square test are "significant," it is meant that the probability that a difference between the two samples would be detected when there was actually no difference is less than .05. Five per cent is a generally accepted threshold level of statistical significance. *Id.* at 149. When the difference between the two samples is labeled "not significant," the chance is greater than .05 that a difference would be detected when there actually is none. Subsequent footnotes indicate in which instances the difference between the two samples is significant.

legal-due process model was more likely to result in the offender's feeling that the legal system was fair. If, as a result of these positive feelings toward the legal system, the offender is more likely to become rehabilitated because of his perception of the legitimacy of the rule of law,⁸ then the legal due process model possesses more promise as a rehabilitative device than does the traditional sociological model.

I. RESEARCH INTO JUVENILE AND PROFESSIONAL ATTITUDES: THE NEED AND THE METHOD

Although there is disagreement as to the effectiveness of the traditional approach between the advocates of the sociological viewpoint and those who would supplant it with a procedure more closely resembling that afforded an adult criminal defendant,⁹ there is little empirical data¹⁰ which would indicate that one approach is superior to the

8. Although the present study is limited to perceptions of a juvenile's contact with the court, it is recognized that significant impressions of the legal process are obtained by interaction with police, detention authorities, training school personnel, and others in the legal process. See generally K. DAVIS, *DISCRETIONARY JUSTICE* (1969); R. EMERSON, *JUDGING DELINQUENTS* (1969); Lefstein, Stapleton, & Teitelbaum, *In Search of Juvenile Justice: Gault and Its Implementation*, 3 *LAW & SOC'Y REV.* 491 (1969).

The socialization of political attitudes in children has been the source of extended research. See, e.g., D. EASTON & J. DENNIS, *CHILDREN IN THE POLITICAL SYSTEM* (1969); Adelson & O'Neil, *Growth of Political Ideas in Adolescence: The Sense of Community*, in *THE SEEDS OF POLITICS: YOUTH AND POLITICS IN AMERICA* 53 (A. Orum ed. 1972); Easton & Dennis, *The Child's Acquisition of Regime Norms: Political Efficacy*, 61 *AM. POL. SCI. REV.* 25 (1967); Koeppen, *Children and Compliance*, 4 *LAW & SOC'Y REV.* 545 (1970). See generally F. GREENSTEIN, *CHILDREN AND POLITICS* (rev. ed. 1972); H. HYMAN, *POLITICAL SOCIALIZATION* (rev. ed. 1969); *THE POLITICS OF FUTURE CITIZENS* (R. Niemi Associates ed. 1974). In this context, at least one author has suggested that children are able to cope more easily with brutality than with manipulation on the part of authority figures. E. FRIEDENBERG, *THE VANISHING ADOLESCENT* 8-10 (1964).

9. Prior to the *Gault* decision, there were many commentaries on the need for the adoption of due process guarantees in juvenile proceedings. See generally A. PLATT, *supra* note 5; F. ALLEN, *supra* note 6, at 19; *JUSTICE FOR THE CHILD* (M. Rosenheim ed. 1962); Ketcham, *The Unfulfilled Promise of the Juvenile Court*, 7 *CRIME & DELINQUENCY* 93 (1961); Paulsen, *Juvenile Courts, Family Courts, and the Poor Man*, 54 *CALIF. L. REV.* 694 (1966); Note, *Juvenile Delinquents: The Police, State Courts and Individualized Justice*, 79 *HARV. L. REV.* 775 (1966).

10. When the United States Supreme Court first dealt with the issue of the constitutional rights of those juveniles subject to juvenile court jurisdiction there was little evidence upon which to support their conclusion that the treatment model of juvenile proceedings was likely to have a negative impact upon the attitudes of the juveniles who were its subject. As one author has noted:

There seems to be very little published on the nature of the impact of the [court] process on the adolescent, but what little there is indicates that the impact is precisely opposite to that intended. Instead of producing attitudes of rapport and trust (considered necessary for rehabilitation), the high degree of informality leads to confusion and lack of perception or understanding of roles and standards.

other in its ability to rehabilitate the young offender. Therefore, this research was undertaken to determine which approach is more successful in imbuing the offender with a positive feeling about the juvenile court system. The basic assumption of this study was that a youngster's perception of the juvenile legal process will have a significant influence on his attitude toward the entire legal framework of his society.¹¹ If he perceives the juvenile system as one that is "fundamen-

G. NEWMAN, CHILDREN IN THE COURT—THE QUESTION OF REPRESENTATION 245 (1967). See also M. MIDONIK, CHILDREN, PARENTS AND THE COURTS: JUVENILE DELINQUENCY, UNGOVERNABILITY AND NEGLECT (1972).

Since 1967, a number of studies have been conducted to ascertain the impact of the *Gault* decision upon state procedures. See, e.g., Canon & Kolson, *Rural Compliance with Gault: Kentucky, A Case Study*, 10 J. FAMILY L. 300 (1970); Chused, *The Juvenile Court Process: A Study of Three New Jersey Counties*, 26 RUTGERS L. REV. 488 (1973); Frey, *The Effect of the Gault Decision on the Iowa Juvenile Justice System*, 17 DRAKE L. REV. 53 (1976); Gardner, *Gault and California*, 19 HASTINGS L. REV. 527 (1968); Comment, 26 BAYLOR L. REV. 366 (1974); Comment, *Juvenile Court Proceedings Beyond Gault*, 32 ALBANY L. REV. 126 (1967); Comment, *The Juvenile Court Revolution in Washington*, 44 WASH. L. REV. 421 (1969); Comment, *Wisconsin Juvenile Rights After Gault*, 1968 WIS. L. REV. 1219; *Special Project—Juvenile Justice in Arizona*, 16 ARIZ. L. REV. 235 (1974). None of these studies has addressed itself to the perceptions of the juvenile offender.

One study has focused upon some of the areas of concern described in this comment. Reflecting a growing interest among social scientists with the stigmatization of young people during the court process, Snyder studied the impact of the juvenile court hearing on 43 boys, ranging in age from 10 to 16 years, who had been placed on probation by the court. Snyder found that the most frequently mentioned feeling about court appearance was fear, that almost all of the boys remembered that they had been placed on probation, and that most denied responsibility for their actions. Snyder, *The Impact of the Juvenile Court Hearing on the Child*, 17 CRIME & DELINQUENCY 180 (1971). See also R. EMERSON, JUDGING DELINQUENTS (1969).

The stigma that attaches to an adjudication of delinquency, see note 11 *infra*, has been formalized under the term "labeling theory" to justify minimal intervention into the lives of children by means of *formal* court proceeding:

But, in spite of such general usage, there has been little systematic explication of the applicability of the theory to the juvenile justice system, and little examination of its empirical support. It has been described as "our most widely accepted, untested formulation."

Mahoney, *The Effect of Labeling Upon Youths in the Juvenile Justice System: A Review of the Evidence*, 8 LAW & SOC'Y REV. 583 (1974), quoting Klein, *On The Front End of the Juvenile Justice System*, in LOS ANGELES REGIONAL CRIMINAL JUSTICE PLANNING BOARD, JUVENILE SYSTEM RATES: DIVERSION App. I, at 7 (1972).

11. See note 8 *supra*. Recent research in support of the labeling hypothesis indicates that official action for delinquent conduct may stimulate further illegal behavior.

The thrust of the concept is that being identified as a [juvenile delinquent] results in a "spoiled" public identity. The label results in a degree of public liability through exclusion from participation in groups and events which would not occur without the prior attachment of the label. The social liability has the further effect of reinforcing the deviance.

Orlando & Black, *Classification in Juvenile Court: The Delinquent Child and the Child in Need of Supervision*, 25 JUVENILE JUSTICE, May 1974, at 13, 20 citing Foster, Dinitz, & Reckless, *Perceptions of Stigma Following Public Intervention for Delinquent Behavior*, 20 SOCIAL PROBLEMS 202 (1972).

Empirical data is inconclusive, Orlando & Black, *supra* at 22, but some data sug-

tally fair" (*i.e.*, guarantees his constitutional rights and treats all offenders equally), he will be more likely to gain a respect for the law that will lead to his abandoning undesirable behavior in favor of law-abiding behavior.¹²

In this study the author compared the attitudes of juvenile offenders toward the juvenile courts in Walla Walla County, a system which clings to the traditional sociological view to a great extent,¹³

gest that rates of recidivism may be higher when there is any kind of official intervention than if nothing is done at all. *See, e.g.*, Gold & Williams, *National Study of the Aftermath of Apprehension*, 3 PROSPECTUS 3, 8-9 (1969).

As to the impact of court appearance upon the attitudes of the young offender toward the legal process, the present study is unique in affording an opportunity for expression of generalized feelings about the law as well as particularized responses to a single court hearing and for comparison of the responses in light of the operating philosophy of the court in which each young person appeared.

Paul D. Lipsitt has conducted an exploratory study of 256 Minnesota boys on the limited topic of the juvenile's perception of the judge in court. Lipsitt, *An Exploratory Study of Judge-Boy Communications in the Juvenile Court*, in NATIONAL COUNCIL OF JUVENILE COURT JUDGES, NATIONAL JUVENILE COURT JUDGES INSTITUTE AND CONFERENCE PROGRAM (1963); Lipsitt, *The Juvenile Offender's Perceptions*, 14 CRIME & DELINQUENCY 49 (1968). Youth attitudes toward law and the legal experience have also been surveyed by Brendan Maher and Ella Stein, *see* Maher & Stein, *The Delinquent's Perception of the Law and the Community*, in CONTROLLING DELINQUENTS 187 (S. Wheeler ed. 1968); Baum & Wheeler, *Becoming An Inmate*, in *id.* 153. Both limited their studies to perceptions of police and judge behavior by boys awaiting commitment to juvenile institutions. Their findings were restricted to the generation of psychological data on hostility and the assessment of blame. Wheeler, Cottrell, and Romasco concluded that "unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel." Wheeler, Cottrell, & Romasco, *Juvenile Delinquency—Its Prevention and Control*, in TASK FORCE REPORT, *supra* note 4, at 409, 421 (app. "T").

12. The presumed effects of the juvenile court hearing were expressed by the United States Supreme Court in *In re Gault*, 387 U.S. 1 (1967), where the Court noted that adding the essentials of due process to the proceeding would have an "impressive" and "therapeutic" effect upon the child in and of itself. *Id.* at 21-27. By contrast, the procedural laxness of the *parens patriae* attitude when accompanied by a harshly punitive disposition may have an adverse effect upon the child who feels that he has been deceived or enticed. *Id.* at 26.

Despite the Court's sanguine review of the sociological literature in *Gault*, the Court had little empirical evidence upon which to base its judgment that the constitutional due process method would be more likely to help in the rehabilitation of the individual than the sociological model. *See* Lefstein, *In the Wake of Gault*, in COURSE ON LAW AND POVERTY: THE MINOR 8.01-12 (Ohio State Legal Services Ass'n. ed. 1968). *See also* notes 10-11 *supra*.

13. Interview with Roger B. Wilson, Director of the Walla Walla-Columbia Counties Juvenile Department, in Walla Walla, Washington, Jan. 18, 1972. Stapleton and Teitelbaum have proposed three variables for determining whether a court is predominantly traditional or legalistic in approach: (1) the type of prosecution; (2) the form of hearing; (3) the availability of a transcript. W. STAPLETON & L. TEITELBAUM, IN DEFENSE OF YOUTH 56-58, 107 (1972). Using this criteria, the Walla Walla County court is almost purely traditional, *i.e.*, prosecution in most instances (other than fact finding) is by the caseworker, the hearing is informal and conducted in the judge's chambers, and a transcript is made only on request (unless the hearing is for adjudicatory purposes). *See* note 18 and accompanying text *supra*.

with the attitudes of offenders toward the system in King County, which has more fully adopted the constitutional-due process model.¹⁴ Between the two counties, a total of 31 juveniles were extensively interviewed before and after their juvenile court hearings.¹⁵ In addition, nine judges, 14 attorneys, and 19 caseworkers were interviewed in depth in order to ascertain their philosophies concerning juvenile corrections.¹⁶

14. For a description of the types of hearings held in King County see 1974 KING COUNTY JUV. DEP'T ANN. REP. See also Part II *infra*.

15. The method used to obtain data of the type required for a study of the perception of juvenile court proceedings was empirical—both interview and observation techniques were employed. The general survey was conducted in King and Walla Walla counties over an extended period beginning in 1972 and ending in 1974, and included interviews with the juveniles both before and after court hearings. In addition, 101 juveniles were interviewed informally and over 150 hearings were attended by the author. During the later portions of study, juveniles who had been incarcerated were also interviewed.

Two-thirds of the sample were alleged delinquents while the remaining one-third consisted of incorrigible youths. For a definition of terms see note 1 *supra*. Of the 31 juveniles whose interviews were sufficiently complete so as to be useful for the analysis, the median age was 16 and 83% had prior contact with juvenile court. Approximately two-thirds of this sample were Caucasian; slightly more than one-half were males. Eleven of the 31 had been brought to the court as dependent-incorrigibles. The remainder most frequently were charged with burglary, larceny, and auto theft.

Each interview lasted a minimum of one and one-half hours, pre-hearing and post-hearing questionnaires combined. The design of the interview schedules was intended to tap attitudes and expectations about juvenile court, law, and the political authority system in general. In an effort to substantiate the validity of the juvenile report, independent observation of the hearings of these juveniles was made by the investigator. In all cases, a good deal of attention was devoted to procedures of the court, knowledge and understanding of constitutional rights, perceptions of legitimacy in the authority structure, and the varying expectations in court proceedings. Cases were selected at random in both jurisdictions.

Funding for the study was provided through a graduate research fellowship from the Law Enforcement Assistance Administration, Grant No. 72-NI-99-1024.

16. The nine judges interviewed included all but one member of the regular juvenile court committee in King County, the commissioner (who at the time of the study was sitting full-time in juvenile court—the position is now rotated among the three commissioners), the presiding judge (*i.e.*, the Chairman of the Juvenile Court Committee), and the judge sitting as juvenile court judge in Walla Walla during the observation period there. Interviews ranged from 45 minutes to one and one-half hours in length.

The judicial sample here differed substantially from that represented by earlier studies. See note 7 *infra*. See also Smith, *A Profile of Juvenile Court Judges in the United States*, 25 JUVENILE JUSTICE, August 1974, at 27, 38 (a follow-up study using the same questionnaire procedures as in the 1965 study and indicating an increase in salary and education). The average age in this sample was younger (49) and all were attorneys. The average time spent in the practice of law (including time as a judge) was 24 years. Prior to becoming judges, five of the nine were deputy prosecuting attorneys; one had served as King County Prosecuting Attorney. In their experience prior to serving as juvenile court judges, most had at least a passing acquaintance with juvenile proceedings as lawyers (one was a detention worker during his law school years). The judges spent three months of every two years at juvenile court (somewhat less time than the national survey); those who sat in other departments

II. THE JUVENILE PROCESS IN THE SURVEYED COUNTIES

The juvenile court is a unique judicial form not only because of its philosophy of therapeutic rehabilitation, but also because of the special function it performs in building the juvenile's attitude toward authority. In Washington, although the basic procedures of the juvenile system are outlined by statute and court rule,¹⁷ much is left to the discretion of the local authorities. The two counties studied, King County and Walla Walla County, not only varied in the size and complexity of their juvenile processes,¹⁸ but varied significantly in their degrees of acceptance of the traditional sociological model.

of the superior court could expect to be in juvenile court only about 2-4 weeks in the same two-year period. In Walla Walla, juvenile court duty was rotated annually between the two superior court judges in the county.

A total of 14 attorneys were interviewed for periods ranging from one to three hours. This number included all of the prosecuting attorneys assigned to the King County Juvenile Court and all of the public defenders. Since there is no public defender staff in Walla Walla, the sample there consisted of the prosecuting attorney for the county and several private attorneys who had a considerable number of contacts with the juvenile court. The majority of the attorneys interviewed had no more than three years of experience in the juvenile process. A few indicated that they had spent some time in non-legal tasks for the court such as volunteer counseling or other community service projects.

Nineteen caseworkers were interviewed for a period ranging from 45 minutes to three hours. Throughout the course of the study they were open, friendly, and willing to cooperate in securing access to staff meetings and in calling attention to useful sources of information. As with the attorneys, a great deal of insight into the operational goals and attitudes was provided through informal discussions. Despite the personal relationships that developed, once the formal interview commenced, there appeared to be no attempt to conceal "real feelings" or to otherwise adapt responses to any preconceived notion of what the interviewer might desire to hear. In fact, it is generally true that there were almost as many opinions of precisely what the researcher's bias might be as there were caseworkers.

The caseworkers in both counties were generally new to the court—most had been there two years or less and only three had more than six years experience. More than half of those interviewed, however, indicated some contact with the juvenile court system prior to the time when they became caseworkers and therefore felt able to render an opinion on major recent changes in the system.

17. See notes 1-2 *supra*. See also Part II(A)-(C) *infra*. See generally Comment, *The Juvenile Court Revolution in Washington*, 44 WASH. L. REV. 421 (1969).

18. The juvenile department of the King County Superior Court is composed of five basic units, four of which are operating divisions staffed primarily by social work personnel (probation services, investigative services, child care services, and operational services), with the fifth unit being an administrative component that includes the offices of the Director and Administrator of Court Services, volunteer coordination, courtroom management, and training activities. See 1974 KING COUNTY JUV. CT. ANN. REP. 2-3. See also KING COUNTY JUV. CT. TRAINING MANUAL 3-7 (rev. ed. 1975). The total organization is the largest in the state and numbers more than 250 staff members. ANN. REP., *supra* at 9. A panel of nine superior court judges serves as a juvenile court committee with one judge sitting as juvenile court for a three-month

A. *The Intake*¹⁹

Juveniles under the age of 18 may be referred to the juvenile court by police, school officials, parents, counselors, or by the juveniles themselves.²⁰ Once the child has been referred to the court, he ap-

period. The chairperson of the juvenile court board of managers (a judge of the superior court) is available to sit as the caseload requires. In addition, court commissioners serve the court on a regular basis.

By contrast, the juvenile court staff in Walla Walla consists of fewer than six caseworkers each of whom share in probation counseling and the presentation of cases in court. The court administrator, a caseworker, shares responsibility for intake interviews with one other staff member. A single judge serves the court each year.

19. See generally WASH. JUV. CT. R. 2.1-5 (1968). See also note 21 *infra*. Precise figures for the number of delinquent and dependent-incorrigible referrals that are screened out at intake are unavailable, but individuals interviewed in both King and Walla Walla counties indicated that the number is in excess of 50% of the total referred. Interview with Ron Clark, Chief Deputy Prosecuting Attorney, Juvenile Division, King County, in Seattle, Washington, May 14, 1976; telephone interview with Margaret Wheeler, Assistant Director, Court Services, Walla Walla Juvenile Court, in Seattle, Washington, May 17, 1976. Nationally the proportion of cases informally adjusted varies widely among jurisdictions. See Ferster & Courtless, *The Intake Process in the Affluent County Juvenile Court*, 22 HASTINGS L.J. 1127, 1128 (1971). It was reported by the Law Enforcement Assistance Administration in 1967 that approximately 52% of the cases referred to juvenile court were disposed of at intake. See TASK FORCE REPORT, *supra* note 4, at 14.

In deciding whether to screen out the referral by informal adjustment or diversion to community resources, or to process the case formally through the court, the caseworker considers the jurisdictional requirements, the attitude of the juvenile, public interest, previous case history, neighborhood background, and family environment. See Sheridan, *Juvenile Court Intake*, 2 J. FAMILY L. 139, 148-54 (1962). There are, however, no firm standards and few limits on the discretion of the caseworker at this stage:

The standard by which the intake officer is guided is whether the best interests of the child *and* the public will be served by detaining or prosecuting the child.

Such a standard if applied by a court would be held void for vagueness. Its two criteria present conflicting interests.

L. FORER, "NO ONE WILL LISSEN" 77 (1970). But see note 21 *infra*, detailing the process of review by the deputy prosecuting attorney in King County. Guidelines for the intake decision have been devised in the UNIFORM JUVENILE COURT ACT § 19. See M. PAULSEN & C. WHITEBREAD, *JUVENILE LAW AND PROCEDURE* 126-27 (1974).

A recent study has found that considerations in the referral decision vary widely and are inconsistent. See, e.g., Williams & Gold, *From Delinquent Behavior to Official Delinquency*, 20 SOCIAL PROBLEMS 209 (1972). Statistically significant predictors of referral are primarily non-legal, *i.e.*, variables bearing on the personal characteristics and social background of the alleged delinquent, rather than legal factors, *i.e.*, variables bearing on the nature of the alleged offense. See Thomas & Sieverdes, *Juvenile Court Intake: An Analysis of Discretionary Decision-Making*, 12 CRIMINOLOGY 413, 414 (1975).

20. WASH. REV. CODE § 13.04.060 (1974) provides in pertinent part:

Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent or delinquent child and praying that the superior court deal with such child as provided in this chapter

Under WASH. JUV. CT. R. 2.1 (1968), a petition alleging delinquency must contain the identification of the child, his parent or custodian, and a statement of the facts which give the court jurisdiction over the child and over the subject matter of the proceedings "with reasonable definiteness and particularity." *Id.* See *In re Cleere*,

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pears for an intake interview with his parents and an intake officer of the court.²¹ Most juveniles are screened out at this stage by informal

13 Wn. App. 611, 536 P.2d 182 (1975) (petition is sufficient for notice requirement when it is specific and definite enough to fairly apprise juvenile and his parents of particular acts of alleged misconduct that will be inquired into at adjudicatory hearing). See also *In re Jackson*, 6 Wn. App. 962, 497 P.2d 259 (1972), where the court stated:

Children of ordinary understanding know that they must obey their parents or those persons lawfully standing in a parent's place. Therefore, the phrase "beyond the control and power of his parents" gives fundamentally fair notice to the child of a pattern of behavior that might cause him or her to be considered incorrigible.

Id. at 965, 497 P.2d at 261 (footnote omitted). A child may file an incorrigibility petition in his own behalf. See *In re Snyder*, 85 Wn. 2d 182, 532 P.2d 278 (1975) (testimony of child admissible for determination of breakdown of parent-child relationship in support of child's own petition of incorrigibility).

A petition may be amended at any time. WASH. JUV. CT. R. 2.1(c) (1968). The petition or complaint is first referred to the probation officer who will advise the person making the complaint as to whether or not a petition is "reasonably justifiable." *Id.* 2.2. Further, the discretion to prosecute under either the statutory section relating to dependent neglected, WASH. REV. CODE § 13.04.010(2) (1974), or dependent incorrigible, *id.* § 13.04.010(7), is not arbitrary since each requires a different element of proof. *In re Jackson*, 6 Wn. App. 962, 497 P.2d 259 (1972).

21. WASH. REV. CODE § 13.04.056 (1974). See also WASH. JUV. CT. R. 2.3 (1968). When a child is in detention, the probation officer is required to interview the child and to request that the child's parent or guardian be present for the interview. *Id.* 2.3(b). Where the child is not in detention the probation officer may contact the child and his parent or interested parties to appear for an intake interview. *Id.* 2.3(a). An intake interview is voluntary. *Id.* 2.3(c).

At the intake interview, the officer is to inform the child and his parents of the nature of the complaint and, if a petition is to be filed, to present the parties with a copy of the petition. Upon filing of a petition or admission of a child to detention, the probation officer must deliver to the child and parent a written statement giving notice of the right to remain silent, *id.* 7.1, the right to be represented by counsel and to have one appointed, *id.* 7.2, and the right to have a fact-finding hearing on any allegations in dispute, *id.* 2.4(3).

See also KING COUNTY JUV. CT. P. & PRAC. II(D) (1976) providing that waiver of presence of counsel at the intake interview will not be permitted unless the referral is to be informally adjusted or the child has consulted with counsel about the waiver. Counsel is to be available during the interview to answer questions about legal rights, to consult with the juvenile concerning the advisability of waiver of counsel, and to accept appointment in cases where appointment is to be made. The prosecuting attorney is not present during the interview. No intake interview is to be held in King County unless the referral is found to be legally sufficient by the prosecuting attorney. Cases may, however, be diverted, see notes 67-70 *infra*, without an intake interview and without notice to the prosecuting attorney. Under these rules, an intake interview must be held prior to the 72 hour detention review. The purposes of the interview are to determine the facts which are to be contested in the petition and to "discuss the respondent's social situation and possible dispositions of the referral." KING COUNTY JUV. CT. P. & PRAC. II(D) (1976). Where the referral is not informally adjusted, see note 22 *infra*, the probation officer is to set a court hearing date (within 15 days if the child is in detention; within 30 days if the child is not detained). The petition must be filed within three court days of the interview or denial of a proposed adjustment. See also *State v. Owen*, 8 Wn. App. 395, 506 P.2d 900 (1973) (statutory authorization for participation by the probation officer in the investigation, accusation, and adjudication process is not an unlawful delegation of executive authority to the judiciary nor a denial of due process).

adjustment,²² *i.e.*, the caseworker determines that no formal action by the court is necessary at that time and will often return the youngster to his home, perhaps subject to certain conditions. In the case of felony allegations, a King County deputy prosecuting attorney reviews the caseworker's decision;²³ no such review occurs in Walla Walla. In both counties the goal is to handle the greatest number of cases at the lowest possible administrative level with the least amount of formal procedure. Although this may mean that many are released after going through only a few of the preliminary stages of the procedure, it also means that if those released are required to keep in contact with the juvenile court system, the influence of the juvenile court is being extended into individuals' lives without the benefit of a formal proceeding.²⁴

22. WASH. REV. CODE § 13.04.056 (1974) provides:

Whenever any child is brought to their attention the probation officers in each county may with the consent of the parent, parents, or legal guardian make whatever informal adjustment or disposition of the case as is practical without the filing of a petition

See also WASH. JUV. CT. R. 2.5 (1968), permitting the probation officer or a judge to make an informal adjustment or disposition of any complaint or referral pursuant to WASH. REV. CODE § 13.04.056 (1974).

Statistics indicating the total number of informal adjustments in any given year are unavailable but caseworkers interviewed in each county stated that the percentage of misdemeanor adjustments is high. For felony allegations, however, at least in King County, the number of informal adjustments has been decreasing in recent years, though no precise numbers are available. Interview with Ron Clark, *supra* note 19.

Some notion of the frequency with which delinquency complaints are informally adjusted in King County is provided by comparing the number of delinquency referrals in 1974 (3,304), 1974 KING COUNTY JUV. DEP'T ANN. REP. 24, with the number of petitions filed (1,723). Interview with Ron Clark, *supra* note 19. These figures suggest that over half the number of total referrals are subject to formal proceedings. See also note 13 *infra*.

Under the new King County rules, see note 21 *supra*, an informal adjustment may be proposed by the probation officer where he "believes that formal court intervention would not serve any beneficial purpose for the child or the community." KING COUNTY JUV. CT. P. & PRAC. II(D) (1976). The prosecuting attorney is to be "promptly advised" of an informal adjustment proposal. Where the prosecuting attorney objects to informal adjustment, a determination is made in chambers by the judge. A referral may be informally adjusted whether or not the juvenile admits to the allegations in the complaint so long as he consents to the conditions of the adjustment. *Id.*

23. The system under which the caseworker's decision is reviewed by the prosecuting attorneys to facilitate early screening of serious referrals is called Rapid Referral and Monitoring (RAM) and was established by the court in April, 1974. King County Juv. Ct. Admin. Memo. No. 12050 JA (1974-76). It provides for the testing of the legal sufficiency of a serious complaint (including serious misdemeanors beginning in the latter part of 1975), diversion of those which are non-petitionable, and adjustment or filing within twenty days on the remainder. See 1974 KING COUNTY JUV. DEP'T ANN. REP. 15. In 1975 approximately 5,000 cases were processed through the RAM system. Interview with Ron Clark, *supra* note 19.

24. Criticism of the imposition of state control over the lives of juveniles without benefit of formalized procedures has been widespread. See, e.g., N. KITTRIE, THE

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The caseworker has the authority to admit any child to detention²⁵ who has been referred to the court, although most youths are not detained.²⁶ A juvenile detained may be held up to 3 days (72 hours) if no petition has been filed against him. If the youngster requests, he is entitled to a preliminary detention hearing on the issue of this temporary detention.²⁷ At this hearing, the child, his parents, his attorney

RIGHT TO BE DIFFERENT 153 (1971); E. SHUR, RADICAL NON-INTERVENTION (1973). The concern is that by labeling the child as a delinquent, or otherwise as a person in need of "help," society stigmatizes that young person, *see* note 10 *supra*, and may inflict legal disabilities upon him, *see, e.g.,* Davis v. Alaska, 415 U.S. 308 (1974) (sixth amendment requires that criminal defendant be permitted to use witness' juvenile probationary status for impeachment of a prosecution witness on cross-examination for bias, state interest in preserving anonymity of juvenile offenders notwithstanding), without the traditional elements of due process of law. *Compare* State v. Matthews, 6 Wn. App. 201, 492 P.2d 1076 (1971) (adult criminal record, but not juvenile record, may be used to attack the credibility of criminal defendant). As the TASK FORCE REPORT, *supra* note 4, notes:

The punitive uses of informality are improper and dangerous. Substantial interference with parental judgment and curtailment of the juvenile's activities must be preceded by adjudication or the intervention is extra-legal. The well-known practice of informal probation is vulnerable to attack on this ground; by measuring a juvenile's conduct according to conditions informally laid down by officials of the State, it constitutes an interference with choices of parents and juveniles that is legitimate, under our legal traditions, only when the basis for intervention has been established in accordance with procedural rules.

Id. at 17.

Non-interventionists suggest that the scope of allowable enforced therapy be narrowed to include only those "serious offenses that cannot simply be defined away through a greater tolerance of diversity." *See* E. SCHUR, *supra* at 23. *See also* Langley, *The Juvenile Court: The Making of a Delinquent*, 7 LAW & SOC'Y REV. 273 (1972).

25. Pursuant to WASH. REV. CODE § 13.04.120 (1974), any child who is taken into custody and who is not, in the discretion of the caseworker, released to his parent or guardian may be placed in a detention facility under the jurisdiction of the juvenile court or into the custody of the probation officer. *See* WASH. JUV. CT. R. 3.1-2 (1968). The probation officer is to give immediate notice to the parents or guardian of the child that he has been placed in detention. *Id.* 3.3.

There is no special provision setting forth detention criteria. The UNIFORM JUVENILE COURT ACT § 14 suggests the following standards:

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required

Cited in M. PAULSEN & C. WHITEBREAD, *supra* note 19, at 115. *See generally* Jones, *Pre-Hearing Detention of Youthful Offenders: No Place to Go*, 1 YALE REV. L. & SOCIAL ACTION, Spring 1971, at 28.

26. In 1974, there were 3,304 delinquency referrals and 1,663 admissions to detention classed as delinquent. The average length of stay in detention was 10.3 days. *See* 1974 KING COUNTY JUV. DEP'T ANN. REP. 24. In comparison, in 1973 there were 3,428 delinquency referrals to juvenile court and 1,438 admissions to detention. The average length of stay in detention was 11.0 days. *See* 1973 KING COUNTY JUV. DEP'T ANN. REP. 20.

27. WASH. JUV. CT. R. 3.5 (1968) provides that the child and his parents or guardian must be notified of their right to request a preliminary detention hearing

(when retained) and the caseworker are present. The judge may appoint counsel for the child at this stage if requested.²⁸ In King County, if the juvenile temporarily detained is not released within 24 hours, a preliminary detention hearing is normally held within that time.²⁹ In Walla Walla County, the preliminary detention hearing is commonly held on the second or third day of detention if the youngster has not been released by then.³⁰

The decision to file a petition,³¹ the first step in formal proceedings against the child, or to informally adjust the case is made after investigation by the social work staff and, in King County only, an analysis

where they may be given an opportunity to present evidence and be heard on the issue of temporary detention. *Id.* 3.6. If neither the child nor his parents or guardian requests a preliminary detention hearing, the order for temporary detention may be signed without hearing. *Id.* 3.7. The court or probation officer may release a child from detention at any time. *Id.* 3.8.

28. *Id.* 7.2.

29. See WASH. REV. CODE § 13.04.070 (1974). See also *id.* § 13.04.053. WASH. JUV. CT. R. 3.4 (1968) provides that no child shall be held in detention longer than 72 hours unless a petition has been filed, nor may a child be held longer than 72 hours after a petition has been filed unless a court order has been entered for such continued detention. In King County an effort is made to move more expeditiously on the determination as to whether a petition will be filed through the RAM procedure. See note 23 *supra*.

30. Interview with Roger Wilson, *supra* note 13.

31. At the time that a decision is made to file a petition, the caseworker (or the judge) may determine that retention of jurisdiction over the juvenile by the juvenile court is "contrary to the best interest of the child or the public" and schedule a decline hearing to consider a decline of jurisdiction. See WASH. REV. CODE § 13.04.120 (1974). See also WASH. JUV. CT. R. 6.1 (1968). A copy of the petition and notice of the hearing is to be sent to the child and his parents. *Id.* 6.2.

Though a decline hearing, see *Kent v. United States*, 383 U.S. 541 (1966), must be held prior to adjudication of the merits of the petition, see *Breed v. Jones*, 421 U.S. 519 (1975), it need not "conform with all of the requirements of a criminal trial or even of the usual administrative hearing . . ." *State v. Piche*, 74 Wn. 2d 9, 13, 442 P.2d 632, 635 (1968), citing *Kent v. United States*, *supra* at 562. See also *Sheppard v. Rhay*, 73 Wn. 2d 734, 440 P.2d 422 (1968) (hearsay evidence is admissible in hearings on transfer of jurisdiction).

When decline of jurisdiction may result in criminal prosecution for a felony, a caseworker is required to prepare a decline investigation report including all social records that are to be made available to the court at the time of the hearing, an evaluation of the matter, and a recommendation for court action. See WASH. JUV. CT. R. 6.3 (1968). The court may properly consider the seriousness of the offense as a factor in the determination to decline jurisdiction. See *In re Burttts*, 12 Wn. App. 564, 530 P.2d 709 (1975) (decline of jurisdiction was not abuse of judicial discretion where the delinquency petition alleged the murder of mother and stepfather). Other factors that may be considered include prosecution of adult compatriots in the alleged offense, the sophistication and maturity of the juvenile, the juvenile's previous record, the sufficiency of evidence of the alleged offense to be considered by jury in felony prosecution, prior period of probation or commitment, availability of resources in the juvenile department, and sufficiency of evidence of the alleged offense for misdemeanor prosecution. See *Kent v. United States*, *supra* at 566-67. But see *In re Burttts*, *supra*, holding that all eight factors need not be found to justify decline.

of the legal sufficiency of the charges by a deputy prosecuting attorney.³² In most cases the juvenile is not in custody when the petition is filed. If a petition is filed while the youth is in custody, he may be detained for an additional three days, after which a court order is necessary to hold him.³³

At the time of the study in King County, after the filing of a petition, another hearing was held which was similar to an adult arraignment.³⁴ This hearing was held within 72 hours of the filing of the petition if the child was being detained. Virtually all juveniles who progressed to the stage of this arraignment-type hearing were represented either by private counsel or by an attorney from the public defender's office. At the hearing, or at a prescribed date in the future, the child was required to respond to the allegations in the petition through an answer.³⁵ When allegations were denied, an omnibus hearing³⁶ was held to determine which facts were to be contested and which could be stipulated in order to facilitate the later fact-finding hearing. Neither the preliminary nor the omnibus hearing was utilized in Walla Walla. In that county, when an attorney is requested in anticipation of

32. King County rules require that the prosecuting attorney initially determine the legal sufficiency of any felony or serious misdemeanor complaint, *see* note 23 *supra*, and review of informal adjustments, *see* note 22 *supra*. *See also* WASH. REV. CODE § 13.04.060 (1974) and WASH. JUV. CT. R. 2.2 (1968) (providing that a complaint is first referred to the probation officer who is responsible for the decision as to whether a petition will be filed).

33. *See* WASH. JUV. CT. R. 3.4 (1968); note 29 *supra*.

34. Under the new court practices and procedures, this pre-trial hearing has been eliminated. Under KING COUNTY JUV. CT. P. & PRAC. II(D) (1976), the preliminary hearing which was an automatic occurrence during the period of this study has been replaced by the intake interview. *See* note 21 *supra*. KING COUNTY JUV. CT. P. & PRAC. II(I) (1976) provides that all motions, including motions to suppress evidence, are now to be heard at the time of the fact-finding rather than at the preliminary hearing unless otherwise scheduled by the court. The state discovery material will now be made available for inspection by defense counsel prior to or at the time of the intake interview rather than at the preliminary hearing as with prior practice. Under *id.* II(H), the respondent is obligated to provide discoverable materials to the prosecution at least three days before the fact-finding hearing.

35. Pursuant to the new King County rules, the answer hearing has been eliminated. The procedure in operation during this study requiring a conference between the prosecutor and defense counsel prior to the answer hearing for the purpose of plea bargaining was likewise modified. KING COUNTY JUV. CT. P. & PRAC. II(G) (1976) provides that hereafter in multi-count petitions, if any count is admitted or found correct, the case will be noted as noncontested and will proceed immediately to disposition.

36. The omnibus hearing, which was introduced in May 1974, has been eliminated by the new King County rules. *See* KING COUNTY JUV. CT. P. & PRAC. (1976). *See also* King County Juvenile Court from the Prosecutor's Perspective 8 March 29, 1976 (unpublished memo on file with the King County Juvenile Court.)

a fact finding hearing, the caseworker requests that the judge appoint a member of the local bar.³⁷

B. *The Fact-Finding Hearing*³⁸

After the petition has been filed, a fact-finding hearing, which consists of a trial on the allegations of fact made in the petition, may be held. In both counties the youngster is represented by counsel in this proceeding and a deputy prosecuting attorney presents the case for the state. The judge must apply the rules of evidence³⁹ as in adult criminal trials and proof must be established beyond a reasonable doubt.⁴⁰ The child has the right to remain silent.⁴¹

Of nearly 700 referrals to the juvenile court in Walla Walla during

37. Interview with Roger Wilson, *supra* note 13.

38. If the allegations of a petition are contested by the child or his parent or guardian, the court is required to schedule a fact-finding hearing "with reasonable speed." WASH. JUV. CT. R. 4.1 (1968). Notice and summons are to be served upon the child including in the notice the time and place of the hearing, specific reference to the contents of the petition filed, and a statement of the rights to which the child is entitled under *id.* 7. *Id.* 4.2 See note 21 *supra*.

Though the fact-finding is an adversary proceeding under *In re Gault*, 387 U.S. 1 (requiring notice, counsel, confrontation, and cross-examination of witness and the right to remain silent), adversariness may be jeopardized by the hostility of courts and commentators to an adversary approach in juvenile court. See Wizner, *The Child and the State: Adversaries in the Juvenile Justice System*, 4 COLUM. HUMAN RIGHTS L. REV. 389, 396 (1972). In both of the Washington counties surveyed, however, the adversary stance is maintained for the fact-finding hearing with the prosecutor or his deputy presenting evidence on behalf of the state. See WASH. JUV. CT. R. 4.4(f) (1968); *In re Lewis*, 51 Wn. 2d 193, 316 P.2d 907 (1957) (the state has an interest in the welfare of juveniles).

39. WASH. JUV. CT. R. 4.4(a) (1968) provides that the rules of evidence will be followed in the conduct of the fact-finding hearing, and further, that no social file or social study will be considered by the court in connection with such hearing. See *In re Cleere*, 13 Wn. App. 611, 536 P.2d 182 (1975) (if the findings at the fact-finding hearing contain some matters of disposition the proceeding will not be prejudiced so long as the social file was not considered by the court during the adjudication).

The admission of school reports and other hearsay evidence was not unusual in the hearings observed by the author. Where this admission is challenged on appeal, however, it is subject to reversal under the rules. See, e.g., *In re Baum*, 8 Wn. App. 337, 506 P.2d 323 (1973) (admission of social investigation report at adjudicatory hearing voids hearing).

40. See *In re Winship*, 397 U.S. 358 (1970). See also WASH. JUV. CT. R. 4.4(b) (1968) which requires that in a fact-finding hearing on a petition alleging delinquency, the facts alleged must be proved beyond a reasonable doubt.

41. WASH. JUV. CT. R. 7.1 (1968) specifically guarantees the right to remain silent to each juvenile. Under *id.* 2.4 notice of this right is given at the time the youth is referred to the court. In King County, the process has been formalized to such an extent that a mimeographed copy of the rights to which he is entitled under the United States Constitution and the statutes of the State of Washington is presented to each juvenile when he arrives at court for the intake interview or when he

each of the three years of the study, only approximately 200 per year were subject to formal proceedings; of these 200, only four progressed to the fact finding stage annually.⁴² In King County, by contrast, approximately 4,000 delinquency and dependent-incorrigible referrals were made during each of the same three years and slightly less than half were treated to some formal proceeding at court; nearly 800 annually participated in fact-finding hearings.⁴³

C. *The Disposition*⁴⁴

I. *The disposition hearing*

If in the fact-finding hearing a child is found to have committed the acts alleged in the petition, a disposition hearing generally is held

appears for detention. In Walla Walla, rights are generally given verbally at the first contact with the caseworker.

The Supreme Court recently has recognized the critical nature of the right to remain silent in the context of juvenile proceedings. In *Breed v. Jones*, 421 U.S. 519 (1975), reflecting on the potential for transfer to adult criminal court following adjudicatory proceedings in juvenile court, the Court considered the child's dilemma:

[A] juvenile, thought to be the beneficiary of special consideration, may in fact suffer substantial disadvantages. If he appears uncooperative, he runs the risk of an adverse adjudication, as well as of an unfavorable dispositional recommendation. If, on the other hand, he is cooperative, he runs the risk of prejudicing his chances in adult court if transfer is ordered.

Id. at 1791 (footnote omitted).

42. Interview with Roger Wilson, *supra* note 13.

43. See 1974 KING COUNTY JUV. DEP'T ANN. REP.; 1972 KING COUNTY JUV. DEP'T ANN. REP.

44. See generally WASH. JUV. CT. R. 5.1-4 (1968). The social study forms the basis for individualized treatment and is prepared by the caseworker for the court in consideration of the total behavioral pattern of the juvenile rather than upon the specific conduct emanating in the current charge. See M. PAULSEN & C. WHITEBREAD, *supra* note 19, at 169-72. According to a recent study in Washington, D.C., the probation officers were more successful in achieving acceptance of their recommendations than were defense attorneys. Susman, *Juvenile Justice: Even-Handed or Many-Handed?*, 19 CRIME & DELINQUENCY 493, 506 (1973). In Washington, WASH. JUV. CT. R. 5.3(b) (1968) provides that the judge is to consider evidence presented at the hearing together with the social file and social study before preparing his written findings of fact and conclusions of law in connection with an order of disposition. See *id.* 5.3(c).

That the court, at a disposition hearing, can and should be able to consider all the evidence it deems pertinent was recently reiterated in *Monroe v. Tielsch*, 84 Wn. 2d 217, 525 P.2d 250 (1974), as follows:

In short, the judge, facing one of the most difficult tasks in the judicial system, needs all the help and information possible to reach a decision as to how to best correct and aid the juvenile before him. Obviously that decision may be a literal turning point in the young offender's life.

Id. at 219, 525 P.2d at 251. See also WASH. JUV. CT. R. 4.4(a) (1968) (specifically providing that no social file or social study shall be considered by the court in connection with the fact-finding hearing).

within 30 days of the finding.⁴⁵ Such a hearing must be held whenever a court order is required for corrective treatment.⁴⁶ Prior to the hearing, the caseworker evaluates social and family factors relating to the child and submits a written report to the court containing alternative recommendations.⁴⁷

Prior to the United States Supreme Court decisions *In re Gault*⁴⁸ and *Kent v. United States*,⁴⁹ the findings of the social worker-probation officer were usually accepted by the juvenile court without challenge.⁵⁰ In *Kent*, the Court required an evidentiary hearing and find-

45. See KING COUNTY JUV. CT. R. II(B)(1)(f) (1974); 1974 KING COUNTY JUV. DEP'T ANN. REP. 16. The state juvenile court rules contain no time limit during which the dispositional hearing must be held. WASH. JUV. CT. R. 5.3(d) (1968) specifically allows the court to "enter an order which defers the entry of any findings of fact" whenever the child and his parent or guardian agree and whenever "such deferral is in the best interests of the child." *Id.* With these deferred findings, the judge may also enter an agreed order of disposition, or the court may defer entry of any order of disposition subject to conditions set by the court. When the conditions are met, the court may later dismiss the petition.

46. Whenever a juvenile is found to be delinquent or dependent, see note 1 *supra*, the court must "make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state requires." WASH. REV. CODE § 13.04.095 (1974). See also WASH. JUV. CT. R. 5.4(a) (1968) which provides that a petition may be scheduled for a combined fact-finding and disposition hearing where the caseworker determines that an intake interview, preliminary investigation or social study is inappropriate. It is unclear whether this abbreviated procedure would be permissible under the new King County rules. See note 21 *supra*.

Any order made by the court in the case of a dependent or delinquent child may at any time be changed or modified in the discretion of the judge. WASH. REV. CODE § 13.04.150 (1974). The statutory authority forms the basis for juvenile modification procedures in King County. Thus, whenever a legally sufficient referral for delinquency is made, or the caseworker believes that a modification of the court's order requiring care, custody, or commitment should be considered, or when there is reason to believe that there has been a violation of the court's order and the court has previously established jurisdiction based upon delinquency or incorrigibility a modification hearing may be held. KING COUNTY JUV. CT. P. & PRAC. I(A) (1975). The hearing date must be set within two weeks of the receipt of referral or within a reasonable time after the caseworker has received knowledge of another reason for the hearing. *Id.* I(D). Discovery is available. *Id.* I(G). At the hearing, the caseworker or prosecuting attorney summarizes the facts regarding the alleged delinquent act or other reason for review, presents evidence and examines witnesses when appropriate: both the caseworker and the prosecuting attorney make recommendations. *Id.* I(H)(1)-(4). Any evidence which is admissible at an adult probation revocation hearing may be considered as evidence in the modification hearing. See, e.g., *Monohan v. Burdman*, 84 Wn. 2d 922, 530 P.2d 334 (1975) (petitioner entitled to confrontation and cross-examination of witnesses and to present evidence in his own behalf in probation revocation hearing). The judge may revoke probation or otherwise modify the prior court order if he is reasonably satisfied that the terms of probation were violated: the burden of proof is a preponderance of the evidence. KING COUNTY JUV. CT. P. & PRAC. I(H)(4) (1975).

47. See WASH. JUV. CT. R. 5.2 (1968). See also note 44 *supra*.

48. 387 U.S. 1 (1967).

49. 383 U.S. 541 (1966). See note 31 *supra*.

50. See generally Lemert, *The Juvenile Court—Quest and Realities*, in TASK FORCE REPORT, *supra* note 4.

ings of fact prior to the transfer of jurisdiction from juvenile to adult court.⁵¹ The Court in *In re Gault* further required that the juvenile who is charged with offenses for which he risks loss of liberty must be entitled to a fact-finding hearing where he has the rights to have counsel (appointed where necessary), cross-examine and confront adverse witnesses, and to remain silent.⁵²

One of the most significant impacts of the *Gault* decision on the juvenile courts has been the shifting of emphasis away from the social investigation report as a probative force in the fact-finding hearing. In the traditional court the social report was considered to be a necessary concomitant of individualized justice.⁵³ The controversy surrounding its use was primarily concerned with the influence which it had upon the judge's decisions. Its almost uncritical acceptance by the judge gave it a weight seemingly not anticipated by legislative guidelines.⁵⁴ This rather blind acceptance of the social file was also contrary to the desired procedural regularity of the court which required an objective, albeit sympathetic, determination of the best interest of the child.

Today, however, the social report and attendant recommendations are not considered at the fact-finding stage but are considered by the judge at the disposition stage of the proceedings.⁵⁵ In King County the child is represented by counsel at the dispositional hearing and the information on which the social report is based as well as the recom-

51. 383 U.S. at 557.

52. 387 U.S. at 41, 56-57.

53. See note 5 and accompanying text *supra*. Controversy concerning the use of the social report was primarily centered around its potential influence upon the judge's decisions and what were seen as defects in its evidentiary basis. Yet even though the juvenile's attorney is now permitted to review the social study prior to disposition, see note 56 *infra*, outright attacks upon its validity are still the exception. The public defenders and private attorneys who represent juveniles find it tactically more advantageous to work with the social worker during the preparation of the recommendation in an attempt to secure a favorable outcome by persuasion and negotiation. The prosecuting attorney in King County is taking an increasingly active role in the disposition process. Interview with Ron Clark, *supra* note 19.

54. WASH. JUV. CT. R. 5.2 (1968) provides that a social study consisting of investigation and evaluation is to be completed by the probation department of the juvenile court for presentation to the judge at the disposition hearing together with all social records. *Id.* 5.3(b) states simply "[T]he court shall consider the social file and social study in addition to evidence produced at the hearing." See text accompanying notes 44-45 *supra*. WASH. JUV. CT. R. 5.2(b) (1968) gives counsel access to the report. This has been translated with varying degrees of cooperation: in King County the attorney for the juvenile is regularly given a copy prior to the dispositional hearing; in Walla Walla, the privilege is limited to inspection of the report.

55. See note 54 *supra*.

mentation itself may be subject to scrutiny⁵⁶ including, but not limited to, cross examination of the person who prepared the report. In Walla Walla an attorney rarely appears at the disposition hearing⁵⁷ and the report is presented by the caseworker in chambers with the judge, the child, and the child's parents present.

When a child has been found to be delinquent or incorrigible the statute provides a number of alternative dispositions depending upon the individual needs of that child.⁵⁸ There is no mandatory maximum or minimum period during which the juvenile court is to assert control by reason of the particular conduct. The court cannot, however, supervise the correction of an individual after he or she reaches age 18.⁵⁹ Some juveniles may first be sent to the Cascadia Diagnostic Center in order to obtain a recommendation as to their proper disposition.⁶⁰ Others may be immediately placed on probation⁶¹ in the care of parents under the supervision of a court caseworker until such time as there has been a demonstrable change in the behavior which resulted in their appearance before the court.⁶² Alternatively, the youngster

56. WASH. JUV. CT. R. 5.2(b) (1968) provides that an attorney for any interested party shall have the right to inspect the social file and social study at a "reasonable time prior to the disposition hearing, unless the court in a particular case decides that release of certain information would be detrimental to the best interests of the child."

57. Interview with Roger Wilson, *supra* note 13.

58. The child may be ordered to remain in the care of his parents or guardian while under the supervision of a probation officer; he may be placed in the custody of a probation officer; he may be placed in the care of a "reputable citizen or association" or an "appropriate private agency;" or he may be committed to the Department of Institutions (now Department of Social and Health Services). WASH. REV. CODE § 13.04.095 (1974). Effective July 1, 1977, juveniles who are found to be dependent-incorrigibles will no longer be committed to the Department of Institutions beyond a 30-day temporary diagnostic commitment where it is proven before a judge that the child's behavior is likely to lead into criminal acts and there is a good possibility that he can be successfully treated. Ch. 71, § 2(5), [1976] Wash. Laws, 2d Ex. Sess. 221. It has been predicted that 300 children now institutionalized will be released by July 1, 1977. See Jones, *New Law to Free 300 Youths Now in State Custody*, Seattle Times, May 8, 1976, § A, at 2, col. 5-6.

59. *In re Carson*, 84 Wn. 2d 969, 530 P.2d 331 (1975).

60. See WASH. REV. CODE § 13.04.190 (1974). See also note 58 *supra*.

61. See note 58 and accompanying text *supra*. Despite the variety of probationary services provided by the counties in the State of Washington, it has been held that evidence of disparities in the per capita amount spent on probation in one county as compared to another is an insufficient basis for a finding that a lower per capita amount will result in the denial of a juvenile's right to the same probationary services as residents of counties with a higher per capita amount enjoy. State v. Owen, 8 Wn. App. 395, 396-97, 506 P.2d 900, 901 (1973). See also WASH. REV. CODE § 13.06.010 *et seq.* providing, as an alternative to commitment, special supervised probation programs jointly funded by the state and by the county.

62. See note 21 and accompanying text *supra*.

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may be placed with a private agency within the community. The ultimate sanction which may be imposed is commitment to the Department of Social and Health Services.⁶³ Having fewer community resources available short of incarceration, the commitment alternative is more frequently used in Walla Walla County than in King County.⁶⁴

2. Alternatives to formal disposition

In instances in which no petition has been filed, and therefore no formal court hearing occurs, there are still sanctions that may be imposed on the juvenile offender. In Walla Walla County, the sanction is determined by the caseworker who may set an informal probationary period during which the youngster is under a certain amount of supervision by the caseworker and during which the juvenile may be liable for periods of detention.⁶⁵ In King County there are two additional methods of determining the informal disposition of juvenile offenders.⁶⁶ The disposition of juveniles who are classified as incorrigible or who commit offenses classified as "juvenile offenses,"⁶⁷ may be han-

63. See WASH. REV. CODE § 13.04.095 (1974).

64. There is some indication that the commitment alternative is now being used with greater frequency in King County. At the time of the study, the average commitments per year from King County numbered 75 whereas in 1975 that number increased to 218. Interview with Ron Clark, *supra* note 19. Recent data from Walla Walla is unavailable.

65. Interview with Roger Wilson, *supra* note 13.

66. King County juvenile court has developed guidelines for the diversion of delinquency referrals to community resources or to parents. Referrals may be diverted without an intake interview and without notice to the prosecuting attorney if the referral is classified as: (1) a misdemeanor referral (except assault and carrying a concealed weapon) and there is no indication that the juvenile referred has a negative attitude, there has been no prior juvenile court felony referral within the preceding 12-month period, and there has been no juvenile court misdemeanor referral within the past 6 months; (2) a felony referral where the crime is against property in an amount less than \$250.00, or where the crime involves violation of the Uniform Controlled Substances Act and the amount is small (and no indication that the juvenile has been selling the drugs), or where the felony is a single offense, or a first felony referral to the court, or there has not been any misdemeanor or dependency referral to the court for 12 months, and there is a court-approved community resource available to take the referral.

In the case of diversion of a felony referral, the community resource is required to report to the court concerning the successful completion of restitution or rehabilitation. If the community resource has been unsuccessful in completing a restitution or rehabilitation program, the felony referral is to be returned to the court. See KING COUNTY JUV. CT. P. & PRAC., GUIDELINES FOR DIVERSION OF DELINQUENCY REFERRALS TO COMMUNITY RESOURCES OR PARENTS (1976).

67. See 1972 KING COUNTY JUV. DEP'T ANN. REP. 22. Juvenile offenses include those which would not be considered a crime if they were committed by an adult, e.g., curfew violations, truancy, liquor consumption, and the status of being beyond

dled by a Juvenile Court Conference Committee. The committees,⁶⁸ the members of which are trained volunteers, recommend courses of action to the juvenile and his family, but may not enforce their suggestion. Some form of counseling is usually recommended. The disposition of juveniles who are involved in more serious delinquencies may be determined by one of the Youth Service Bureaus.⁶⁹ Unlike the conference committees, the bureaus maintain permanent facilities. The boards serving these bureaus are made up of members of the community in which the bureau is located and of which the juvenile is a resident. The usual form of discipline suggested by the Youth Service Bureau board is a planned program of restitution. If the juvenile is not

the control of a parent or guardian. *See generally* WASH. REV. CODE § 13.04.010 (1974).

68. Juvenile court conferences committees in King County began in 1963 to handle minor juvenile problems within various communities throughout the county. *See* 1972 KING COUNTY JUV. DEP'T ANN. REP. 21-24. Their number has been steadily increasing since that time. *See* 1974 KING COUNTY JUV. DEP'T ANN. REP. 14. In 1974, the last year for which figures are available, 2,068 juvenile referrals were diverted for conference committee action; in 1973, the number referred to such committees was only 983. *Id.* at 24.

69. The Youth Service Bureau concept for diversion of juveniles from the juvenile court process has gained widespread acceptance as a desirable alternative to the formalized procedures of court intervention. *See, e.g.,* L. EMPEY, *Juvenile Justice Reform: Diversion, Due Process and Deinstitutionalization*, in PRISONERS IN AMERICA 13 (L. Ohlin ed. 1973); Q. Steinberg, *Reorganization of the Juvenile Court*, 1971 (unpublished report on file in King County Juvenile Court). The current trend stems primarily from the recommendations made in the report of the PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967). The Commission recommended:

Communities should establish neighborhood youth-serving agencies—Youth Services Bureaus—located if possible in comprehensive neighborhood community centers and receiving juveniles (delinquent and nondelinquent) referred by the police, the juvenile court, parents, schools, and other sources. These agencies would act as central coordinators of all community services for young people and would also provide services lacking in the community or neighborhood, especially ones designed for less seriously delinquent juveniles.

Id. at 83.

The King County Youth Service Bureau consists of nine agencies located throughout the county: Federal Way, Bothell, Highline, Auburn, Kent, Mercer Island, Renton, Bellevue, and Shoreline. Several other bureaus are located within the Seattle-Metropolitan area. *See* DEP'T OF COMMUNITY AND ENVIRONMENTAL DEVELOPMENT, DIVISION OF YOUTH AFFAIRS KING COUNTY YOUTH SERVICE BUREAU SYSTEM SEVEN MONTH EVALUATION AUGUST 1974—FEBRUARY 1975 (1975).

For a description of the training provided to community bureau members see Stasky, *The Training of Community Judges: Rehabilitative Adjudication*, 4 COLUM. HUMAN RIGHTS L. REV. 401 (1972). A somewhat less enthusiastic view of the youth service bureau phenomenon is presented in Cole, *Diversion and the Juvenile Court: Competition or Cooperation*, 27 JUVENILE JUSTICE, February 1976 at 33. The impact is great, however, as courts come to place increasing reliance on such diversionary mediums. For example, in 1973, no referrals were made to a youth service bureau but in 1974, 152 such referrals were made. *See* 1974 KING COUNTY JUV. DEP'T ANN. REP. 24.

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willing to cooperate with either the Juvenile Court Conference Committee or the Youth Service Bureau, a petition may be filed against him when he is returned to juvenile court for formal proceedings.⁷⁰

III. ATTITUDES OF JUDGES, CASEWORKERS, AND ATTORNEYS: THE ASSUMPTION OF A THERAPEUTIC COURT PROCESS

A. *The Judges*⁷¹

In both counties, the data collected indicate that the judges viewed the juvenile court process as one which is primarily therapeutic rather than one in which the goal is the fair and impartial administration of justice. Thus, the jurists have, for the most part, accepted the traditional sociological perspective toward juvenile corrections.⁷²

70. See note 20 and accompanying text *supra*.

71. There has been little empirical verification of the speculations concerning the philosophy and attitude formation attendant on the role of the juvenile court judge. Perhaps the major attempt of this kind was made in 1963 by Shirely McCune and Daniel Skoler for the National Council of Juvenile Court Judges (NCJ CJ). See McCune & Skoler, *Juvenile Court Judges in the United States—Part I: A National Profile*, 11 CRIME & DELINQUENCY 121 (1965). Of the 3,000 judges sent mail questionnaires, 1,560 responded (no state was represented by less than 23% of the total judicial population, most had 50% or more responding); 96% were male, the average age was 53 years; the average salary was \$12,493.15. Nearly 75% had been elected to office, one third of them after an initial interim appointment; 62% had previously been elected to another public office. Among those judges serving full-time, 72% spent a quarter or less of their time on juvenile matters. The authors surmised that population size was a key variable with respect to types and extent of court services as was the judge's professional education, experience, and remuneration. They concluded: "What emerges is a picture of the judge group having more family marital stability, more experience in the parental role, and more commitment to societal and middle class norms than the country as a whole" *Id.* at 123.

In a related follow-up study for the NCJ CJ, Walther & McCune, *Judges Compared With Other Court System Personnel*, 17 JUVENILE CT. JUDGES J. 74 (1966), 292 judges were given the Job Analysis and Interest Measurement (JAIM) test in an effort to identify common orientations and to describe some point of potential conflict in work styles within the juvenile court system—given the assumption that work styles and values influence performance. When compared with attorneys and caseworkers, it was determined that the major differences among the professions arose in their attitudes toward authority and their methods for inducing desirable behavior from those with whom they work: the judges were more likely to adhere to moral principles which they regarded as absolute, to identify with authority, and to motivate by participative leadership. Lawyers generally accepted the concept of relative morality, tended to be independent and autonomous, and preferred to motivate others either by directive leadership or through threat of punishment. The caseworkers shared the views of the lawyers with the exception that motivation for behavior was best induced by showing people the consequences of their actions.

72. Six of the nine judges felt that the hearing contributed to rehabilitation of

Most judges surveyed felt that the prevention function of the juvenile court is fundamental and that therefore undesirable behavior should be dealt with by the juvenile correctional system, even though no specific offense has been committed, in order to "impress" the child with the consequences of aberrant behavior.⁷³ The interviewed judges therefore saw their main purpose as one of helping the child overcome his problems, with the judge's duty to protect the legal rights of the juveniles as secondary. The judges felt their least important duty was to protect society and deter other juveniles from misbehavior.⁷⁴

the young offender; two indicated that it might contribute to rehabilitation depending on the judge who conducts the hearing. Only one judge felt that the effects of the hearing were minimal. This is in sharp contrast to the conclusions of a California study:

Based upon estimates furnished by juvenile court judges, the average time spent on a juvenile court case is approximately 10 to 15 minutes An appropriate question is whether the beneficent values of the juvenile court hearing implied by the philosophy expressed in the law can be achieved in the abbreviated time which most juvenile courts devote to each case. To what extent, for example, can a judge make a significant impact on the errant child and his parents in what is almost an assembly line judicial process? . . .

CAL. GOV.'S SPECIAL STUDY COMM'N ON JUV. JUSTICE A STUDY OF THE ADMIN. OF JUV. JUSTICE IN CALIF. pt. 2, at 16 (1960), cited in TASK FORCE REPORT, *supra* note 4, at 7.

Another commentary has described the hearing in terms of a "ceremony"—"a virtual trial of moral character"—the objective of which is to impose such a degree of humiliation upon the juvenile that his delinquent behavior will be curtailed. R. EMERSON, *JUDGING DELINQUENTS* 214-15 (1969). But then, as one judge in King County candidly stated: "The kids of the county are the kids of the juvenile court judge, and he does what he wants to with them and nobody messes with it." Confidential interview with a King County juvenile court judge, in Seattle, Washington, Sept. 1973.

One of the respondents who did not share this view remarked:

Theoretically, the earlier identification of anti-social behavior, the greater chance for success, but if we are to preserve a free society, there need to be restraints. "Big brother" must not move in too rapidly. Courts must not permit social workers to take over since the latter do not have the same concepts and training in the preservation of rights in a free society.

Confidential interview with a King County juvenile court judge, in Seattle, Washington, Dec. 1973.

73. Six of the judges supported the proposition that early intervention into the lives of young people was necessary even before a specific offense is committed. Certain statuses require attention or treatment, as four of the judges explained, for the welfare of the child and of the community. *See also* note 24 *supra*.

74. Only two of the judges mentioned the protection of society as a primary function of juvenile court. By contrast, six of the judges indicated that the predominant task of the court was to provide services to the juvenile with adjustment problems that he can not secure from his home, his associates, or other agencies. A representative commentary regarding the goal of juvenile court is provided by the following response from a judge in King County: "Juvenile court should effect the rehabilitation or reorientation of children whose conduct raises likelihood of inability to conform their conduct to the minimal regulations of society." Confidential interview with a King County juvenile court judge, in Seattle, Washington, Apr. 1973.

Despite the fact that most judges cling to the sociological approach to juvenile corrections, they characterized their hearings as formal.⁷⁵ They believed that the hearing itself contributes to the rehabilitation of the youth by reinforcing parental authority and by making the individual accept the responsibility for his actions.⁷⁶ Punishment, considered by the judges to be an integral part of the rehabilitation process, was also felt to be helpful in making a youngster accept responsibility for his own actions.⁷⁷

B. *The Caseworkers*⁷⁸

The overwhelming number of caseworkers felt that the hearing has therapeutic value.⁷⁹ Despite reservations about the utility of a more

75. Seven of the nine judges characterized their hearings as "formal" although one of this number expressed unhappiness with that characterization. Only two judges stated that their hearings were informal with "no strict rules of decorum or language." Confidential interviews with King County juvenile court judges, in Seattle, Washington, Mar. 1973.

76. The importance of insuring that the juvenile accepts the seriousness of the offense that has brought him to juvenile court was evident from the comments of at least five of the judges. As one respondent put it:

[C]ause I'm a do-gooder I think we should give treatment early. In certain circumstances, the criminal justice area needs to do good before someone commits a specific offense. It's harmful when kids go through the system and nothing is done. "Acting out" evidences other problems which must be acted upon by a governmental body when it comes to its attention.

Confidential interview with a King County juvenile court judge, in Seattle, Washington, Sept. 1973.

77. Six of the nine judges viewed punishment as a legitimate and even necessary tool of the rehabilitative process. One thought that punishment was statutorily prohibited. Another felt that treatment was the only legitimate function of the juvenile court process. The final respondent, amazingly, indicated that he could not advance an opinion as to the utility of punishment because he "didn't know anything about kids."

For an interesting discussion of the withdrawal from the treatment philosophy in juvenile court see Fox, *The Reform of Juvenile Justice: The Child's Right to Punishment*, 25 JUVENILE JUSTICE, August 1974, at 2.

78. For a discussion of the conflicts faced by the social worker in juvenile court after the *Gault* decision see Clayton, *The Relation of the Probation Officer and the Defense Attorney After Gault*, 34 FED. PROBATION, March, 1970, at 8; Schultz, *The Adversary Process, the Juvenile Court and the Social Worker*, 36 U. Mo. K.C.L. REV. 288 (1968). As expressed by one judge in King County, commenting on the professional antagonisms arising from the introduction of legal formalities into the juvenile court setting: "There are too many lawyers who hate social workers; too many social workers who are afraid of lawyers; and too many judges who can't stand either." Confidential interview with a King County juvenile court judge, in Seattle, Washington, Jan. 1974.

79. Thirteen of the nineteen caseworkers interviewed found the hearing to be therapeutic by "making the kid stop and think what happened and why, to take responsibility for his actions." Depending upon the child and his relative level of sophistication, nine of the caseworkers noted, a lecture from the judge may serve "to frighten a sense of respect for authority into the child."

formal system, many felt that the hearing itself could have beneficial impact upon the juvenile by creating in him respect for the process, by causing him to accept the seriousness of his problems, and even by "scaring" him into modification of his antisocial behavior.⁸⁰ A number of respondents, however, consistent with their overall apprehension about the impact of attorneys in the system, felt that the hearing only served to increase the child's ability to manipulate the system without rehabilitation.⁸¹

Although most of the social workers said that they approved of the *Gault* decision generally, they specifically criticized its effects both on the juvenile court system and on the juveniles themselves. Most disapproved of the "legalities" required by *Gault* which resulted in the increased participation of attorneys and in a slower and less flexible process.⁸² The effect of the legalistic proceedings on juveniles was generally regarded as being even more deleterious. It was felt that the juvenile under the *Gault* system is more apt to adopt the arrogant stance of his attorney, *i.e.*, he will refuse to talk, will be "less responsive to law enforcement authority" and will engage in sophisticated efforts to manipulate the system in an attempt to "beat the rap." Therefore the caseworkers felt that *Gault* and its progeny resulted in the juvenile offender's lack of a sense of responsibility or accountability for his behavior. Further, it was felt that without this element of acceptance of responsibility, the rehabilitation of the juvenile is impossible.⁸³ A few juveniles, it was conceded, might feel a positive effect from *Gault* by having their say in the system, but most of these juveniles knew their rights anyway, the caseworkers surmised.

80. See note 79 *supra*. One caseworker, however, felt that threats were of little utility, stating: "Fear is rarely a promoter of constructive efforts and motivation."

81. Five caseworkers noted that many of the youths who had experienced a number of contacts with juvenile court were likely to regard the hearing as a "joke" or a "game," the object of which was to "manipulate the case-worker before he manipulates you." These same respondents felt that the parents' attitude was the critical factor influencing the perceptions of the juvenile regarding the hearing.

82. Thirteen of the nineteen caseworkers displayed a lack of enthusiasm for the *Gault* formalities. As one caseworker from King County noted:

The routine assignment of a public defender is generally good, but the attorney locks us into certain kinds of procedures . . . it's much less flexible. You can't put a kid on probation anymore without a fact-finding.

In Walla Walla, much the same opinion was expressed:

There are cases where *Gault* kids have gotten [sic] attorneys, were acquitted and were not afforded proper care. We must use discretion in its implementation but its not too much of a problem here.

83. These selected comments are indicative of this general attitude: "Attorneys will deny the charges even though the kid admits to the police—a bad attitude develops." "Multiple offenders learn to beat the rap—to manipulate the system." Most

C. *The Attorneys*⁸⁴

In contrast to the perception of the social workers, and to a more limited extent, of the judges, that the attorney brings an adversary stance to the juvenile court hearing, the attorneys themselves saw an additional function for themselves apart from advocacy. Although virtually all of the attorneys characterized themselves as advocates, more than half added to their tasks a sociological element which dictated the necessity to educate the youngsters and their parents about the system and to investigate the child's family predicament before rendering legal advice.⁸⁵ The extent to which the traditional "best-interests-of-the-child" philosophy is accepted as a concomitant of the attorney-client relationship is apparent from the responses of the attorney sample.⁸⁶ This factor does not vary significantly among private attorneys, public defenders, and deputy prosecuting attorneys.

Interestingly, there appears to be a sense in which the attorney evaluates his role in juvenile court from a personal rather than a profes-

of the caseworkers, however, felt confident of their own role authority so that the potential for reformed behavior may exist in spite of *Gault*:

[T]he kids are learning to manipulate the system (although not all understand it) but it's not a real hazard. Kids still feel that the caseworker carries a lot of weight. (Recites example of a boy picked up by the police for failure to attend a meeting with his caseworker.) If you try to be straight with the kids, no problems.

Confidential interview with King County caseworker, in Seattle, Washington, Apr. 1973.

84. The subject of the lawyer's role in juvenile court has received much attention in recent years. See, e.g., Erickson, *The Defence Lawyer's Role in Juvenile Court: An Empirical Investigation into Judges' and Socialworkers' Points of View*, 24 U. TORONTO L.J. 126 (1974); Ferster & Courtless, *Pre-Dispositional Data, Role of Counsel and Decisions in a Juvenile Court*, 7 LAW & SOC'Y REV. 195 (1972); Kay & Segal, *The Role of the Attorney in Juvenile Court Proceedings: A Non-Polar Approach*, 61 GEO. L.J. 1401 (1973); Platt, Schecter & Tiffany, *In Defense of Youth: A Case of the Public Defender in Juvenile Court*, 43 IND. L.J. 619 (1968); Wizner, *The Defense Counsel: "Neither Father, Judge, Probation Officer or Social Worker,"* 7 TRIAL, Sept.-Oct. 1971, at 30.

85. As one attorney noted:

A juvenile court proceeding is a family matter. You must understand the family situation to represent, i.e., get the picture of how kids reason. You can't take what the kids say at face value. An attorney needs to be more than a hired gun though he does not necessarily have to do what the parents want.

Confidential interview with a private attorney, in Seattle, Washington, May 1973.

86. Six of the attorneys mentioned functions that they felt would be appropriate for them to perform for a juvenile client, but not if the client were an adult. Three talked of describing and explaining the system; two referred to counseling to make the juvenile a better citizen. Another spoke of showing an interest in the child. Of the remaining respondents (eight in number) who saw themselves in an adversary role, only four were willing to characterize their function as "merely a mouthpiece for the child." The others qualified the advocacy stance with a view that the child's welfare must be as important as providing a "purely legal defense."

sional standpoint. Where a conflict between the *parens patriae* concept and the adversary tradition arises, an attorney, particularly one with children of his own, will reach from his own experience in order to determine the manner in which he will react to his young client.⁸⁷

Although the deputy prosecuting attorney was very willing to aid the caseworker, most of the deputies detected a hostility on the part of the caseworkers who see the prosecutors as interfering with the counselling relationship and as taking over the functions of filing petitions and adjusting cases at intake.⁸⁸ It was noted by a few of the deputies, however, that at least some caseworkers are grateful to be relieved of the prosecution responsibility. Only a few of the attorney respondents (all private counsel) described the caseworkers as cooperative.⁸⁹ This may be a result of the fact that appointed private counsel generally appear in instances in which the issue is whether the child is dependent. When the issue is dependency the caseworker's position is less likely to be in conflict with that of the attorney who is appearing as guardian ad litem.⁹⁰

IV. THE YOUNG OFFENDER'S PERCEPTION OF THE JUVENILE COURT SYSTEM

A. *Pre-Hearing Expectations*⁹¹

Although the majority of the sample had been in juvenile court pre-

87. This view was illustrated by one private attorney who concluded: An attorney can help in certain instances but I disagree that the attorney should primarily protect rights—that's doing away with the juvenile system then. The legislature felt that juveniles were special and not to be treated as adults, so with that principle, the juvenile should not worry about rights. I don't need an attorney to discipline my kid.

Confidential interview with a private attorney, in Walla Walla, Washington, Feb. 1972.

88. Three of the four King County deputies stated that many of the caseworkers in their court either did not understand or refused to understand the deputies' relationship to the legal process nor did they accept the prosecutor's role in it.

89. Of the seven private attorneys interviewed, four found the caseworkers to be generally cooperative and helpful in explaining the system to them.

90. See also LEAGUE OF WOMEN VOTERS OF WASHINGTON, *JUVENILE JUSTICE IN WASHINGTON STATE* 9-13 (1975). The study conducted by the League was completed in 1975 and included 19 of the 39 counties in the State of Washington in its sample. In the interviews of caseworkers, judges, and attorneys in each of these counties this author's research questionnaires were used. The findings of that study concur with those discussed in this comment.

91. One commentator has recently stated the underlying premise of the questions which were asked of the juveniles in this study:

Most youngsters . . . do understand what is at stake in juvenile delinquency

viously,⁹² and therefore knew what to expect in the process, most of the young people interviewed indicated that prior to this court appearance they had been told what to expect and how to act by friends, caseworkers, or parents. The advice most often given was "sit there and say nothing" or "do what you're told and you'll get out quicker."⁹³ Virtually all the youngsters indicated that they would listen in court and answer all questions politely. "It's best to answer or they'll think you're hiding something," said one. It therefore appears that the youths felt being cooperative was more important than asserting their privilege against self-incrimination, perhaps because there was a feeling the judge would be more lenient if the juvenile cooperated.⁹⁴

With respect to the anticipated behavior of the judges and attorneys there was less consensus and a considerable amount of hedging. Most of the youngsters refused to express an opinion about what the judge would do in court or how he would act toward them.⁹⁵ Of those who did venture to hypothesize, most expressed their beliefs in result-oriented terms, *e.g.*, the judge may "send me up," "find me dependent

proceedings. They understand that they are in trouble, why they are in trouble, and what can happen to them once they are found to be juvenile delinquents.

They are not too innocent to play the role of criminal defendant.

Wizner, *The Child and the State: Adversaries in the Juvenile Justice System*, 4 COLUM. HUMAN RIGHTS L. REV. 389, 399 (1972). See generally W. CAVENAGH, JUVENILE COURTS, THE CHILD AND THE LAW 212-17 (rev. ed. 1967).

92. Twenty-five of the 31 juveniles in the sample had appeared in juvenile court before, at least to the point of intake.

93. The following exchange occurred during an interview with a King County juvenile awaiting his first appearance in court:

Q. What you are going to do in court? What do you think will happen to you?

A. Best to act scared, sorry for doing it whether you are or not. It's bad to have to be that way but I'll do it if it keeps me from getting sent up. You gotta be really good to lie but you don't need to tell them all your beliefs. Just tell the truth about what happened when the law was broken. You can argue with police but you have to be nice to the judge. You know, he [the judge] let me out of jail once just for saying I was sorry.

Confidential interview with a King County juvenile, in Seattle, Washington, Aug. 1973.

94. In response to the question: "What do you think is the best way to act in juvenile court?" Five indicated that it was advisable to "sit there and say nothing." Five others expressed a similar feeling: "Do what you're told and you get out quicker." The juveniles in Walla Walla showed a marked tendency to mention feelings *i.e.* "act scared," or "act polite." All but two of the nine Walla Walla juveniles felt that it was best "to play it cool and not press your rights."

95. Twenty-one of the 31 juveniles refused to express an opinion as to the judge's possible reaction to them. The juveniles appeared to be more optimistic than some critics of the court. One such commentator has stated: "[T]he general presumption in juvenile court is that you're there because you're in trouble, and the problem is to figure out what to do with you—not whether you're innocent." J. STROUSE, UP AGAINST THE LAW: THE LEGAL RIGHTS OF PEOPLE UNDER TWENTY-ONE 210 (1970). See also H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968), for a discussion of the operational content of the presumption of innocence.

but not incorrigible."⁹⁶ The final disposition of the individual's case was such an overwhelming concern that even those who were awaiting an adjudicatory hearing tended to perceive it in relation to the ultimate punitive end.

The young people interviewed were equally uncertain about the role that their attorney would play in the hearing.⁹⁷ Although they indicated that a good deal of time had been spent in communication with legal counsel, a number of them indicated that the attorney had either not told them of his plans for the hearing or that the attorney would do what the caseworker told him to do. The ideal attorney was generally depicted as one who would present "your side of the case," and "work to get you out of trouble as soon as possible."

Despite a predominately medium to high rating on indicators of over-all cynicism,⁹⁸ the young respondents refused to indict the system

96. Ten of the 31 respondents were willing to venture a guess as to the probable reaction of the judge to their case. Of these, the most frequent prediction aside from speculation about the outcome, was that the judge would "do what the caseworker told him to do." Of the 22 respondents who stated an opinion on a more general question regarding the relative impact of their personal characteristics in the decision of the judge, eight thought that such personal factors weighed heavily but 22 felt that the facts of the particular case were more important to the judge.

One respondent in Walla Walla County summarized a host of factors perceived by many of the other juveniles in the sample:

[The result] all depends on what the judge thinks of you—in juvenile court facts don't matter so much. Some judges are just trying to send you up anyway. S'okay to be polite but you don't have to answer stuff that'll incriminate you. Judges like rich guys—like when your parents are outstanding in the community. They don't like poor people and long-hairs. Everybody can't afford clothes, you know; your best clothes might be grubbies to a judge.

Confidential interview with a Walla Walla County juvenile, in Walla Walla, Washington, Mar. 1973.

97. Only 5 were not represented by counsel. The most frequent reason given for the absence of an attorney was that the juvenile wished to plead "guilty." Of those juveniles with attorneys, all but three were court-appointed. It is interesting to note that almost half of the respondents (12 of the 26 represented by an attorney) perceived that the attorney had been appointed by their caseworker.

98. The cynicism scale for this study is a compilation of responses to the following questions:

Pre-Hearing: On the next group of questions, I'd like you to tell me whether you agree or disagree with the statement I read.

1. Most politicians are looking out for themselves above all else.
2. Both major political parties in this country are run for the benefit of the people.
3. Most politicians can be trusted to do what is right for the people.
4. A poor man has the same chance as anyone else in a court of law.
5. It's no use worrying my head about politics, I can't do anything about the issues anyhow.

One point is given for each affirmative response to statements 2, 3, and 4. An affirmative response to statements 1 and 5, cynical pronouncements, receives no points. High cynicism on this block of questions is evidenced by a score of 0-1. Ten respondents (two from Walla Walla) were classified as highly cynical according to this

as arbitrary, for approximately 75 per cent thought that the facts of the case would weigh more heavily in the adjudication than any feelings which the judge might have about them personally. But, although most denied that the facts as stated by the complainant in the petition were true, fewer than half of the respondents were willing to predict that their story would be believed in court.⁹⁹ This pessimistic outlook may in part be a function of the prevailing notion among the juveniles that since the judge routinely follows the recommendation made by the caseworker as to disposition, he must also rely upon the caseworker's social report at the fact-finding stage.¹⁰⁰ In general, therefore, expectations of being treated favorably by the court were low. The Walla Walla data, however, indicated that a more informal juvenile court system may result in better relations between the juvenile and his caseworker and as a consequence lead to more favorable and knowledgeable expectations about the court experience. In King County a greater percentage of young people go through the formal

measurement; only 7 respondents (three of whom were part of the Walla Walla sample) were rated as low in cynicism, the rest scored in the middle ranges.

99. This seems consistent with the way in which most of these young people respond to other stressful situations in which they may be required to exercise some individual control over the outcome. A control-of-life scale was developed from the responses to the following questions contained in the post-hearing questionnaire:

1. If you think a policeman is wrong in what he tells you to do what should you do?

- a. Do what he tells you and forget about it.
- b. Do what he tells you but tell a parent or some other adult.
- c. Do what he tells you but ask him why.
- d. Do what he tells you but tell him he's wrong.
- e. Don't do what he tells you.

2. Everyone likes to decide things his own way. Which of these ways of feeling about things fits you. Just answer Yes, No, or Sometimes after I read each statement.

- a. I would rather decide things when they come up than always try to plan ahead.
- b. I have always felt that my life would work out the way I wanted it to.
- c. I seem to be the kind of person that has more bad luck than good luck.
- d. There's not much use for me to plan ahead because there's usually something that makes me change my plans.
- e. I nearly always feel pretty sure of myself even when people disagree with me.
- f. I have often had the feeling that it's no use to try to get anywhere in life.

A high score for control of life is evidenced by affirmative responses to statements (b) and (e) of question 2 (valued at two points each) in combination with either 1(c), 1(d), or 1(e). A single point is given for agreement with statement 2(a). Only three of the respondents received a score to 5-6 on this scale indicating a strong sense of control over the forces in their lives. Twelve respondents received scores between 0 and 2; the other respondents occupied the middle range.

100. One young King County respondent was adamant: "You can't win without the caseworker on your side." *But see* WASH. JUV. CT. R. 4.4 (1968) which specifically proscribes consideration of the social file in connection with the fact-finding hearing.

juvenile court process than in Walla Walla County, and therefore relatively fewer juveniles in King County have extensive pre-hearing contact with caseworkers.¹⁰¹

B. Post-Hearing Reactions

Reactions of the juveniles subsequent to their hearings support the conclusions of Justice Fortas in the *Gault* decision that a denial of "fundamental fairness"¹⁰² will give rise to a dysfunctionally negative perception of the legitimacy of the entire juvenile procedure. Thus, a higher degree of dissatisfaction with the court process was evident among the Walla Walla respondents and those in King County who had not been afforded counsel than among those appearing with an attorney.¹⁰³ There was also evidence of a media-influenced anticipation of the nature of the fact-finding hearing and of the roles that the judge and attorney would play.¹⁰⁴

A considerable number of youngsters were unwilling or unable to relate what had occurred in the courtroom.¹⁰⁵ Many of those involved

101. See note 22 and accompanying text *supra*.

102. *In re Gault*, 387 U.S. 1, 26 (1966). The opinion cites the example of a study done by Wheeler & Cottrell, *supra* note 11.

103. Satisfaction with the process was measured from a compilation of the following questions from the post-hearing questionnaire:

I'd like your opinion now on some statements I'll make. Tell me whether you think they are mostly true or mostly false.

- a. My caseworker listened to me all of the time.
- b. My court hearing took less time than it should have.
- c. In court, the judge was fair all of the time.
- d. When I saw my caseworker he did all of the talking.
- e. All of the things said in court were true.
- f. My caseworker was never fair.
- g. My caseworker understood me most of the time.
- h. Most of the judges and caseworkers try to help people.
- i. Juvenile courts almost never make the right decision.

Agreement with statements (a), (b), (e), (g), and (h) were valued at one point each and served as the basis for a determination that the juvenile was generally satisfied with his court experience. Eleven respondents (two from Walla Walla) scored between seven and nine points on this scale. Eight respondents, including three from Walla Walla and five from King County (three of whom were not represented by an attorney during their appearances in court) scored from 0 to 3 points. The rest of the respondents occupied the middle range. These results were not statistically significant.

104. When asked whether the hearing was like they had expected it to be, 12 of the 24 responding to the question replied in the negative. When asked to explain how the procedure differed from their expectations, seven referred to their experience with television programs and motion picture courtroom dramas.

105. Only 14 of the 31 juveniles responded to all of the post-hearing questions dealing with the judge's demeanor and their reaction to the outcome. By contrast,

in disposition hearings indicated that they had seen the caseworker's report which had confirmed their previous suspicions that it had influenced the judge's decision.¹⁰⁶ In response to specific questions concerning the demeanor of the judge, however, most opined that he had been interested in them.¹⁰⁷ This belief seemed to be based more on a general feeling about the judge's attitude than on what the judge actually said. In general, the judge was viewed more favorably in the more formal setting prevalent in King County than in the less formal Walla Walla system.¹⁰⁸

The attorneys received a resounding vote of confidence,¹⁰⁹ although in Walla Walla County attorneys were perceived to have been less helpful.¹¹⁰ They were generally perceived as doing a "good job" in spite of obstacles presented by the caseworker and the judge. This affirmative response remained consistently high throughout the post-

the physical description of the courtroom was given in fair detail by 21 of the respondents.

106. Ten of the 19 respondents who were involved in disposition hearings indicated that they had either seen the caseworker's report or had had it explained to them by their caseworker or attorney. Eight of those ten felt, however, that its contents were "unfair." Of those who had not seen the report, only five stated that they thought that they should have been entitled to read it prior to the time of disposition. Within both groups of respondents, 17 expressed the opinion that the social worker's report influenced the judge's decision, with eight stating that the report was more influential than the facts of their case.

107. The respondents were asked the following questions to determine their reaction to the demeanor of the judge during their hearing:

Q. Did the judge seem interested in you? Why do you say that?

Q. Did the judge threaten you?

Thirteen of the 24 responding to these questions indicated that the judge did seem interested in them, but 11 others felt that his facial expression showed disinterest or that he was not listening to what was occurring in the courtroom. The overwhelming majority of the respondents saw no threatening gestures on the part of the judge (23 of 27 total responding). This finding is contrary to the earlier study by Paul Lipsitt, *Judge-Boy Communications in Juvenile Court*, *supra* note 11.

108. Five of the nine juveniles in Walla Walla perceived that the judge was disinterested in them and their case while only seven of the 20 in King County had a similar reaction. This finding was not statistically significant. *But see* note 115 *infra*.

109. Only one of the 19 respondents stating an opinion, a King County juvenile, indicated that he felt his lawyer did not care what happened to him. All agreed that the lawyer had tried to have them sent home or to the least restrictive dispositional alternative. Slightly fewer than half of the juveniles indicated that their lawyer had been to see them often even though a check by the author determined that only three of the attorneys had seen their clients more than twice during the entire process. Fourteen of the respondents reported that their attorney had discussed the juvenile's problems with him; only five stated that their attorney had never consulted with them. *Compare* Comment, *The Lawyer-Child Relationship: A Statistical Analysis*, 9 *Duquesne L. Rev.* 627 (1971).

110. Four of the eight responding Walla Walla juveniles indicated that they would not recommend getting an attorney for a juvenile proceeding whereas none of the 23 responding King County juveniles so stated.

hearing interview, and resulted in both an overstatement of the time spent with the attorney and a shift in feelings as to the degree of personal concern which the attorney relayed to his client.¹¹¹ At this point it is evident that the caseworker has lost the allegiance of the juvenile client for it is the caseworker who is characterized as the symbol of injustice not the prosecuting attorney.¹¹² If, as is the case for a majority of the youths in juvenile court, the ultimate decision is seen as unfair, the attorney may provide a necessary element to its acceptance and may be a legitimizing factor beyond the more usual adversary function in insuring the reliability of a fact-finding procedure.

C. *Generalized Attitudes Toward the Components of the Legal Process*

The data suggest that juveniles who are participants in the juvenile legal process feel that courts in general are only fair to certain people—the tendency is only slightly more pronounced in the rural-informal setting of Walla Walla juvenile court but is almost uniform throughout the responses of the young females in both counties. Their beliefs are attributed to experience with a system they find to be arbitrary or inequitable regardless of formalisms. “People who break laws” may or may not be caught depending upon “who they are” not “what the law is.”¹¹³

111. See note 109 *supra*. In response to the question: “If one of your friends asks you what they should do if they have to come to juvenile court, what would you tell him?” 14 juveniles, the largest single category of respondents, stated that their first order of priority would be to “get a lawyer.” The next most frequent piece of advice (from six respondents) was to “tell the truth.”

Compare the findings from questionnaires administered to 500 youths residing in Pennsylvania juvenile institutions and 100 attorneys with respect to perceptions of the quality of representation in juvenile proceedings. Most of the juveniles agreed that the attorney had not tried his best and that he had not spoken enough at the hearing. Some stated that their attorneys had not even attended the hearing that resulted in their commitment. Comment, *supra* note 109, at 635.

112. The actual authority of the prosecutor in King County was almost totally unrecognized. When asked to recall the persons present at his hearing, only five juveniles, who were otherwise accurate in their recollection, listed the deputy prosecuting attorney.

113. Though the question was phrased to elicit a response to the procedural as opposed to the dispositional aspects of the process, the responses are more appropriately analyzed in terms of the latter. Yet, interestingly, when asked whether the courts should apply general rules the same way all the time, or judge each person by a different standard, 18 of the juveniles opted for the application of different standards and only 11 thought the rules should be applied the same for all (two had no response).

Juvenile Court

A comparison of juveniles in the two counties, however, indicates that although a majority of the juveniles in both counties feel that the legal system is discriminatory in general, a higher percentage of Walla Walla juveniles thought so than did King County juveniles.¹¹⁴ Moreover, as the data indicated, among those juveniles who go through the King County system, three positive attitudes are more prevalent than among those juveniles who go through the Walla Walla system. First, offenders perceive the juvenile court judge as interested and caring.¹¹⁵ Second, attorneys are perceived as helpful and supportive of the child's rights.¹¹⁶ Third, young offenders would use the courts to litigate a personal matter or to otherwise defend their rights as citizens.¹¹⁷ Thus, if as a result of positive feelings toward the legal system an offender is more likely to become reformed because of his recognition of the legitimacy of law and his duty to avoid anti-social behavior, the juvenile who is exposed to the more formal King County juvenile court system is more likely to become rehabilitated than the juvenile who is exposed to the less formal Walla Walla County system.¹¹⁸

114. Five out of eight juveniles in Walla Walla were more likely to feel that the legal system in general was discriminatory as compared with 12 out of 23 in King County. Another statistically significant indicator of the King County juveniles' more positive perception of the juvenile court process was that the Walla Walla juveniles were unanimous in feeling that "kids who have lawyers get all the breaks," whereas only two of the 17 King County respondents thought that juveniles with counsel were favored. This finding is significant to the .001 level.

115. See note 108 and accompanying text *supra*. Another indicator of positive attitude, significant to the .01 level, was that none of the nine Walla Walla respondents felt that the courts were doing a "good job," but 11 out of 16 King County respondents did.

116. See notes 109–110 and accompanying text *supra*.

117. In one instance, the juveniles were asked to respond to the following hypothetical situation:

If someone stole something that belonged to you, which of these things, if any, would you do?

- a. Go after him yourself.
- b. Call the police.
- c. Sue him in court.
- d. Nothing.
- e. None of these things (name other).

Nine of the 21 responding King County juveniles chose alternatives (b) or (c), as compared to two of the eight responding Walla Walla juveniles, thus possibly indicating greater confidence in, and reliance on, the criminal justice system. This result, however, was not statistically significant.

118. Recently one Seattle paper noted that most Seattle juvenile crimes dropped off in 1975 and that the trend had continued during the first quarter of 1976. While giving most of the credit for the drop to the Rapid Referral and Monitoring Project, see note 23 *supra*, another reason noted for the drop was the fact that prosecutors were taking more youngsters into court rather than settling matters more informally with discussions among the judge, caseworker, accused and his legal guardians. Nalder, *Juvenile Crime Drops Sharply*, Seattle Post-Intelligencer, May 6, 1976, §A, at 1, col. 1.

V. CONCLUSION

The policy-making implications of this study are numerous. Juvenile crime engenders concern for the types of agencies empowered to deal with youthful offenders. Analysis of how behavior is shaped by experience with the judicial process may also give part of the answer to questions regarding juvenile recidivism rates. Further, any evaluation of the success of reform movements in juvenile court, whether legalistic or sociologically-oriented, can only be evaluated properly with consideration given to the actual effect which they may be having upon the clientele of the court.

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