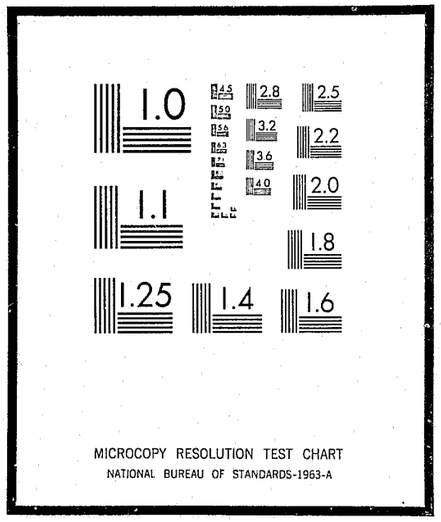




# PROSECUTION IN THE JUVENILE COURTS:
## GUIDELINES FOR THE FUTURE

By

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# FOREWORD

The juvenile justice system in the United States is in the process of transformation. Recent court decisions have impacted strongly on many traditional methods for processing juvenile cases at the various levels of the judicial system.

The winds of change have been particularly strong in the area of procedural safeguards and the juvenile's right to legal counsel. Largely overlooked in the rethinking of juvenile justice, however, is the role of the juvenile prosecutor. And yet the prosecutor bears a double responsibility: protecting society against criminal behavior while at the same time preserving the juvenile's rights.

This study analyzes the functions of the prosecutor in the juvenile system. The researchers examined in detail the existing prosecution system in the Boston Juvenile Court and surveyed procedures in a number of other cities. Their findings show a wide disparity in practice and, the authors believe, in the quality of justice dispensed.

In Boston, for example, the arresting police officer is solely responsible for presenting evidence. Equipped with only such legal training as his law enforcement career may have given him, he frequently must confront either a public defender or a private attorney. In such cases, the report notes, the odds would appear to be weighted against the law enforcement interests of the community.

To develop a judicial framework which serves both the rights of the accused juvenile and the safety of the community, the study recommends that juvenile courts adopt a modified version of the prosecutor-defender structure which has long served the adult criminal justice system. Included in this report are guidelines for such a juvenile prosecution system.

LEAA publishes this report in the belief that the issues it raises can contribute to current efforts to develop a fair, effective system of juvenile justice.

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# SUMMARY


## I.

With the Supreme Court decisions in *Gault* and other recent cases, there has been a perceptible trend away from the very informal, paternalistic models of the past in favor of greater formality in the adjudicative process. Although the future shape of the juvenile justice system remains in flux, recently-imposed requirements have already created serious stresses in the administration of juvenile justice, and have raised many new questions concerning the future of juvenile justice in the United States.

Within this developing controversy, the matter of juvenile prosecution assumes new importance. Virtually ignored in the literature, the juvenile prosecutor has, in the past, occupied a status of little consequence. However, with the growth of defense counsel participation in juvenile court proceedings and the increasing number of legal issues which are now being raised at all stages of the process, the effects of inadequate prosecutorial services take on significant new dimensions. Certainly, whatever the future course of juvenile law, the role of prosecution will, of necessity, have to be rethought.

Accordingly, our effort was directed toward a comprehensive examination of the need for attorney-prosecutors in juvenile delinquency proceedings and a consideration of the appropriate scope of their responsibility. Although much of our empirical research was focused on the Boston Juvenile Court, where prosecution is conducted by police officers, considerable attention was given to placing our findings in a national context. In addition to a review of statutory and other legal materials from many states, on-site visits were made to three jurisdictions and a survey of juvenile court judges in the one hundred largest cities in the country was conducted.

Throughout the course of our work, we were guided by certain preliminary assumptions which, in turn, were tested throughout the project and which now follow. As an advocate of the state's interests, the juvenile court prosecutor must balance considerations of community protection with an equal duty to promote the best interests of juveniles. His responsibilities to prepare and present the state's case must be tempered by his role as *parens patriae* and by a commitment to the child welfare concerns of the juvenile court. Accordingly, the prosecutor must assume a major role in protecting the legal rights of juveniles by proceeding only on legally sufficient petitions or complaints, by insisting that police field practices are consistent with legal requirements, and by encouraging fair and lawful procedures in the court. Similarly, he should participate in efforts to adjust and divert all appropriate cases prior to adjudication and to strive to obtain the least restrictive alternatives which may be warranted for those juveniles who are referred to the court. While the establishment of a balanced adversary system in juvenile courts is an essential element in their future development, the cause of juvenile justice will not be served if the traditional ideals of the juvenile court movement are lost as a consequence. It is, therefore, imperative that the design and implementation of new programs of juvenile prosecution be aimed toward sustaining and enhancing the court's original high purpose.

The findings of this research form the basis for the recommended guidelines for juvenile prosecution which conclude the report. It is hoped that these guidelines will have useful application to juvenile courts throughout the country as they seek to formulate new directions for juvenile prosecution.

## II.

In spirit, the juvenile court was designed to function as a "non-legal" social agency, providing needed care to endangered children, and resorting to coercion only as necessary to serve the best interests of the child. Hearings were to be conducted informally and in private, legal "technicalities" were to be put aside, and records were to be kept confidential. Because the judge and probation staff were to act as *"parens patriae,"* in the child's best interest, claims that the child needed representation by counsel or other protection of his "rights" were viewed as misconceived. The court's process was to be paternalistic rather than adversary. The function of the proceedings was to diagnose the child's *condition* and the prescribe for his *needs*—not to judge his *acts* and decide his *rights*.

However, the essential thrust of the recommendations of the President's Task Force on Juvenile Delinquency and the Supreme Court's decision in *Gault* was that greater procedural formality in juvenile courts was needed in order to safeguard the constitutional rights of juveniles. Developments which have taken place since 1967 have, for the most part, continued this trend.

However, for juvenile courts to survive as distinct institutions dedicated to non-punitive treatment and rehabilitation of offenders, they will have to continue to absorb the impact of judicial and legislative actions which "legalize" and "formalize" their processes, without surrendering their distinctive goals. Valid criticisms of existing procedures, whether on grounds of unfairness or inefficiency, should be anticipated, and solutions should be tailored which will interfere as little as possible with the substantive goals of the system.

## III.

The traditional juvenile court process did not include a "prosecutor" in the sense of a legally trained person with responsibility to represent the state in court proceedings. For several reasons, the inclusion of such a role would not only have been seen as unnecessary, but as positively harmful to the proper functioning of the court. Juvenile court proceedings were designed to diagnose and treat the problems of children appearing before the court. The proceeding was conceived to be one instituted "on behalf" of the child, rather than against him. In this proceeding the state was represented by the judge, who had the dual role of deciding whether the court had jurisdiction over the child and, if so, of prescribing that disposition which would best further the state's interest, as *parens patriae,* in promoting the child's welfare. Proceedings "on behalf of the child" could often be instituted by "any reputable person," but it generally fell to the probation officer to investigate and actually prosecute the petition in court.

The participation of a state prosecutor would have implied the existence of some particular state interest which required advocacy, an interest distinct by definition from those of both the child and the judge (court). But such a conception was considered contrary to the traditionally prevailing notion that only one interest—the child's—was at stake in juvenile court proceedings.

Aside from the impact of defense counsel in juvenile delinquency cases, according to the post-*Gault,* "due process" view of the juvenile court, it is no longer possible to conceive of juvenile court proceedings as involving a single interest—the child's. Until, at least, the adjudicatory stage has ended, the Constitution requires procedures which recognize that distinct and possibly conflicting interests are involved. The *State* has an interest in taking jurisdiction over appropriate juvenile subjects on two grounds: to protect society from threatening conduct and, as *parens patriae,* to promote the juvenile's welfare. The *child,* on the other hand, has an interest in avoiding inappro-

priate or unnecessary juvenile court proceedings, stigmatic adjudications, and other consequent deprivations. This recognition of potential adversariness in juvenile court proceedings was expressed in the Supreme Court's application of various procedural protections drawn from the Constitutional requirements in criminal proceedings.

Aggressive defense of the child's interest in avoiding adjudication is now taking such "technical" forms as suppression of illegally seized evidence or defective witness identifications, demands for probable cause hearings, and objections to the sufficiency of proof. Without any legally trained prosecutor available in the juvenile court to present the state's response to such objections, the state's interest may not be represented adequately, unless the judge compensates by acting as prosecutor. When the latter occurs, as it has in many instances, other problems arise.

A review of juvenile court legislation currently in force across the nation discloses considerable variation among the jurisdictions on the question of prosecution. About half of the state's laws still reflect the traditional, pre-*Gault* conception of the juvenile court by their silence on the subject of prosecution, although they will assign particular prosecutorial roles, such as preparation of the petition, or presentation of the evidence, to the probation officer or judge. In at least nine jurisdictions, the participation of professional prosecutors, at least in certain kinds of cases, is mandatory. In eleven jurisdictions, such participation depends upon the juvenile court's discretionary request or consent. In some states, authority for professional prosecution is found not in statutes, but in court rules, or in the "inherent power" of juvenile court judges to procure needed assistance..

Statutes which do provide for mandatory or discretionary participation by prosecutors in juvenile court proceedings typically offer few details on the nature or scope of such participation. While a statute may restrict the categories of cases in which the judge is authorized to request prosecutorial participation (*e.g.,* in delinquency cases, contested cases, cases where the juvenile is represented by counsel, etc.), no criteria for guiding the court's discretion, such as the complexity of the case, are given.

There is recent evidence, however, based upon newly enacted and proposed rules and statutes, that there may be a decided trend in the direction of increased utilization of prosecutors in juvenile court. At the same time, it is clear that there is little agreement on the precise nature and definition of his role.

In an effort to obtain information concerning the current status of juvenile court prosecution as well as the views of juvenile court judges on the role of juvenile prosecution, a survey was conducted of juvenile judges serving in the one hundred largest cities in the United States.

The survey data revealed that the representation of juveniles by attorneys has increased dramatically since the *Gault* decision in 1967. Although full representation of juveniles is not yet a reality, attorneys are playing a far more prominent role in juvenile proceedings than ever before and, in delinquency proceedings based upon serious offenses, are representing more than 75% of juveniles in the majority of the surveyed cities. The increase in defense counsel participation in juvenile proceedings has been accompanied by a sharp rise in the use of professional prosecutors. Almost 95% of the responding cities reported that attorney-prosecutors regularly appear in their juvenile courts. In almost half of these cities, the regular use of professional prosecutors began since the *Gault* decision.

Although they appear regularly, the *frequency* with which attorney-prosecutors participate in juvenile proceedings varies, but is greatest in cases involving serious delinquencies. Almost 60% of the cities reported that professional prosecutors appear for the state in more than three-quarters of all felony-based delinquencies. Only about 30% of the cities reported that professional prosecutors are used in more than three-quarters of their PINS cases. Although levels of defense and prosecutor involvement show similar variation by case type, overall, attorney representation of the juvenile appears to exceed that of the state.

An examination of the attorney-prosecutor's participation in specific court functions reveals that, by and large, his role is a restricted one. He rarely participates in initial detention decisions or their review nor is his lawyer's expertise often utilized in the preparation or review of petitons. He represents the state in pretrial motions, probable cause hearings, consent decrees (where they are used) and, of course, at adjudication hearings. However, the attorney-prosecutor's presence is diminished at the disposition stage and only rarely is he responsible for recommending dispositions to the judge.

Almost two-thirds of the 137 responding judges were satisfied with the extent of attorney-prosecution in their courts while one-third favored a more extensive role for professional prosecutors. In and of itself, the present frequency of professional prosecutorial involvement appears to be unrelated to judges' attitudes toward extending the role of attorney-prosecutors. However, judges in courts with unbalanced adversary systems were far more likely to approve an increase in the role of professional prosecutors than were judges in courts displaying a balance in the amount of prosecutorial and defense counsel involvement.

A majority of judges favored the use of attorney-prosecutors in all juvenile cases. Support for broad participation by professional prosecutors was most often found among judges from jurisdictions where prosecutors already participate heavily. Resistance to a broadly inclusive role for professional prosecutors was most apparent in jurisdictions where prosecution is relatively inactive.

The judges surveyed were encouraged to include extended comments concerning the use of attorney-prosecutors in the juvenile court. The judges who returned narrative comments were unanmious in their support of the use of attorney-prosecutors. In the vast majority of responses, this support could be related to the increase in attorney representation of juveniles since *Gault*. While a number of judges raised specific needs for professional prosecution such as in preparing or screening petitions, most cited the need to maintain adversary balance in their courts. Although there were philosophical differences among judges with reference to *Gault*, the recognitions of the need for attorney-prosecutors in the juvenile court setting seemed to override any basic differences in judicial philosophy.

## IV.

As one of the oldest independent juvenile courts in the country, the Boston Juvenile Court has achieved considerable respect as a court with high commitment to the treatment and rehabilitation of juveniles and to the protection of juveniles' legal rights. In recent years, the court has moved increasingly toward the adoption of a full adversary model for the adjudication of juvenile offenses and, through the efforts of its presiding justice, has encouraged the active participation of legal counsel for juveniles. With almost 90% of all juveniles represented by counsel, defense attorney representation in the Boston Juvenile Court equals or exceeds that of any juvenile court in the country. Yet, in spite of the very widespread involvement of lawyers to represent juveniles, there has been no corresponding increase in the use of attorneys to represent the state. Like Massachusetts' district courts, which have always made extensive use of police prosecution, the Boston Juvenile Court uses police officers, exclusively, in the prosecution of its cases. In this regard, the Boston Juvenile Court is among the small minority of big-city juvenile courts which still do not utilize professional prosecution. The tremendous gap between attorney representation which is available to the state and that which is available to the juvenile makes the Boston Juvenile Court unique.

The Boston Juvenile Court also lacks any intake screening mechanism for the informal adjustment or diversion of cases. The absence of in-court adjustment procedures places greater power in the hands of the police in controlling the flow of cases than they might otherwise have. In examing the oppor-

tunities and needs for adjustment and diversion procedures in the Boston Juvenile Court, the limitations of police prosecution assume critical importance.

Nine police officers are used to provide most prosecutorial services in the Boston Juvenile Court. Eight are juvenile officers assigned to the three district police stations which cover the area in Boston falling within the jurisdiction of the Boston Juvenile Court. They generally spend the mornings in court prosecuting cases which arise out of their respective districts and the latter portion of the day in performing their regular responsibilities as juvenile officers in their districts. A police sergeant, attached to headquarters, has overall supervisory responsibility for police prosecution in the court. None of the juvenile officers is an attorney or has had any formal legal training.

In theory at least, all arrests of juveniles in a particular police district are screened and processed at the stationhouse by a juvenile officer who, if the case is not adjusted at the police station, will subsequently prosecute the case in court. In fact, about 30% of all cases are prosecuted by persons other than the regular police prosecutors (the juvenile officers). In most instances, these cases are presented by the police officers who made the arrests. The regular police prosecutors may also present cases in which they were the arresting officers.

The Massachusetts Defenders Committee provides state-wide public defender services to indigents in criminal and juvenile proceedings. Since July 1965, the Massachusetts Defenders has assigned at least one lawyer to represent juveniles in the Boston Juvenile Court and, in each year since it began its work in the court, has represented an increasing number of juveniles. Although privately retained counsel occasionally appears in the court and some cases are still assigned to members of the private bar, the Massachusetts Defenders has clearly emerged as the court's dominant defense counsel resource, representing over three-quarters of those juvenile who do receive defense counsel assistance.

However, until very recently, the increasing caseload carried by the Massachusetts Defenders was not matched by a corresponding increase in the number of attorneys assigned to the Boston Juvenile Court and the annual average number of cases per defender swelled from 40 in 1966 to 649 in 1971.

In mid-1972, prior to the commencement of our court observations, the Massachusetts Defenders increased in manpower in the Boston Juvenile Court to five or six attorneys—by far the largest number of public defenders ever to serve in the court. With this number of defenders available to provide representation, the caseload for each defender since July 1972 would probably be well under 300 cases a year, a considerable improvement over previous years. It should also be mentioned that the Defenders came under new leadership in the summer of 1972 with the appointment of a new chief counsel.

The exclusive use of police prosecutors in the Boston Juvenile Court, while effective in certain limited areas, has not only hampered the proper administration of juvenile justice in the court as it is presently constituted, but has also created barriers to the introduction of needed new procedures and services. In general, the prosecutorial activities of the juvenile officers are carried out most successfully in areas which relate most closely to conventional police work. For example, the juvenile officers presently do an effective job, within the scope of their discretionary authority, of screening out many inconsequential cases without court referral. The court's caseload, therefore, does not reflect a high proportion of trivial complaints which are indiscriminantly referred for judicial attention. Also, the police prosecutors, together with the court clerk, have been quite effective in minimizing the number of legally insufficient complaints which are approved. Excessive charging is the rare exception and while errors do occur in applying the proper legal charges to particular fact situations, they are not frequent. Complaints are well drafted by the clerk.



The commendable work of the juvenile officers at the complaint stage is undoubtedly strengthened by their work as prosecutors and their daily contact with the court. Their responsibilities for presenting the government's evidence at adjudicatory hearings on referrals and complaints which they have approved provide them with firsthand exposure to the court's standards and requirements. Their continuing relationship with the court and the forceful criticism of its presiding justice have produced police screening criteria which closely approximate those of the court itself. However, no amount of court contact is likely to overcome the natural limitations of police prosecution. As the adversary demands on juvenile prosecution have grown, the police prosecutors have been increasingly handicapped by their lack of legal training. In addition, because they view prosecution as an appendage to their primary responsibilities as police officers, the juvenile prosecutors are properly governed by an awareness that their post-complaint discretionary authority is and should be limited. They neither seek nor desire the broad discretionary and advisory responsiblities which prosecuting officials normally assume and which are needed in the juvenile court. It is clear that whatever their competence as juvenile officers, police prosecutors are not now able to fully meet the prosecutorial needs of the court. Moreover, it is important to note that police effectiveness at the complaint stage may be dependent upon their participation in other phases of juvenile court prosecution, and may be severely reduced as they are replaced by professional prosecutors at other stages in the process. Accordingly, the guidelines for juvenile court prosecution, as set forth below, envisage an important role for professional prosecution at the complaint stage notwithstanding the fact that many of the duties which attended that stage are now capably performed.

The police prosecutors' lack of legal training has placed severe stresses on the court's adjudicatory process and has impeded the development of a properly balanced adversary system. Pretrial motions, infrequent in the past, are increasing with the recent expansion in the number of public defenders assigned to the court. Even with the assistance of law students, the police are not able to provide adequate representation of the State in this area.

At the adjudcatory stage, the government operates under a severe handicap in presenting all but the most simple cases in the Boston Juvenile Court. Although the best of the regular police prosecutors have little difficulty in representing the State in simple cases which do not involve complicated fact situations or issues of law, they are wholly unable to respond effectively to most objections and motions. Unable to argue points of law and often failing to elicit testimony which is necessary to establish all the essential elements of an offense, police prosecutors would seriously jeopardize a large proportion of their cases were it not for the reluctant allowances which the court makes for the untrained police prosecutors and the active assistance which it provides. The judges themselves routinely "argue" the government's side when a legal issue is raised by an objection or motion. On occasion, judges examine prosecution witnesses to ensure that the prosecutor does not neglect to establish all the essential elements of government's case.

With no competent State's representative the court is placed in the difficult position of dismissing a large percentage of otherwise viable cases or intervening to assist the prosecution. The interests of the community in the fair and efficient adjudication of juvenile cases are not furthered in either event. Judicial intervention on behalf of the prosecution raises significant doubt concerning the fairness of the proceeding and is not likely to leave a juvenile or his parents convinced that "justice is blind" in the juvenile courts.

A substantial percentage of cases are prosecuted by the arresting officers, many of whom are entirely unfamiliar with the basic requirements of presenting the evidence at a trial. Moreover, in appearing as a witness, the police prosecutor can

no longer be regarded as the objective State's representative. An unfavorable finding by the court may be tantamount to an attack on the witness-prosecutor's truthfulness. Because of the prosecutor's personal involvement in the case, all the ordinary elements of an adversary proceeding—cross-examination, objections to evidence—may take on the coloration of personal conflict. Under these circumstances, it is extremely difficult to maintain an appearance of fairness and propriety in the courtroom.

Prosecutorial weaknesses have not previously been fully exploited by the public defenders. Public defenders are often inadequately prepared and their "success rate" does not compare favorably with that of private counsel who appear in the court. Although efforts to vitalize defender services in the Boston Juvenile Court are under way, it is doubtful whether a high standard of public defender representation can be achieved as long as the present system of prosecution exists in the court. Ironically, the absence of qualified prosecutors may do more to inhibit effective defense representation than it does to advance it. When judges feel compelled to intervene in support of lay prosecutors, normal adversary relationships break down. Objections, if they are made, must be directed against the judge's own questions and he, in turn must rule on their validity. Arguments on motions may result in an adversary contest between the defender and the judge. This distorted adversary climate is not conducive to aggressive advocacy by public defenders who must appear before the same judges on a daily basis.

The need for an attorney-prosecutor in the Boston Juvenile Court is also essential to the implementation of more flexible approaches to the treatment of juveniles who are referred to the court. Many cases are referred to the court which cannot be screened out by the juvenile officers but which do not require full adjudication. Stubborn children, runaways and other offenses which are unique to juveniles are among the kinds of cases which many courts are successful in diverting or adjusting at the intake stage. The guidelines, at the end of the report, therefore, recommend the establishment of an intake screening process which would seek to identify and divert appropriate cases not requiring full judicial action. The participation of a juvenile court prosecutor is deemed essential to the proper operation of an intake diversion process.

Also, far more cases are "contested" by defenders than appear to be warranted. The nominal, perfunctory defense which defenders provide in many of these cases is rarely of any assistance to the juvenile and diverts greatly needed time and resources from the investigation and preparation of other, more promising cases. Many of these "contested" cases could better be resolved through the development of negotiated consent decrees or a diversionary program prior to the adjudicatory hearing. However, with no attorney-prosecutor present with authority to engage in such joint recommendations and to approve them in behalf of the community, these opportunities are not generally available.

Police prosecutors play virtually no role at disposition and frequently are not present at the hearing. They almost never recommend dispositions to the court. The public defender, when he does make a recommendation, only infrequently will provide the court with useful supporting information. In this setting, the judge assumes almost total responsibility for obtaining information, proposing alternative treatment plans, recommending diagnostic procedures, evaluating the clinic's findings and examining the probation officer or others who may appear at disposition. Although the judges frequently invite suggestions from those present, they are rarely forthcoming. There is almost no cross-discussion among defense counsel, the police prosecutor, and probation staff.

The problem of providing effective services to juveniles who are in need of help goes well beyond the scope of the juvenile court's powers and the nature of its dispositional process. However, even within the court's resource limitations, opportunities do exist for strengthening the dispositional process so as to advance the court's efforts in meeting the rehabilitative needs of juveniles through thoughtful, informed and responsive dispositional programs. It is believed that the creation of a role for an attorney-prosecutor at the disposition stage can be an important first step in that direction.

First, there is no vehicle for the development of joint dispositional recommendations involving the participaton of prosecution, defense and probation. Although defenders often do consult with probation officers prior to the disposition hearing and read the clinic reports and social histories, there is little evidence that their role is more than passive. Suggestions by defense attorneys concerning proposed dispositions are not always welcomed by probation officers. The active participation of an attorney-prosecutor at disposition would provide a natural focal point for the participation of defense counsel in the exploration of suitable dispositional alternatives and would encourage a broader cooperative effort in securing responsive dispositional recommendations.

Second, probation officers should not be cast in the role of adversaries to defense counsel. However, at the disposition hearing, it is very difficult for the defenders to contest the information, findings or recommendations submitted to the court by probation or clinic staff without provoking this very consequence. As one defender put it: "With the police, we know we are in an adversary role. We can handle that and be amicable afterward. With probation officers, especially the older ones, the situation is different. They are not used to being cast as an adversary." Because the public defenders are dependent upon the probation staff for considerable information, they are not apt to endanger their relationship by challenging the probation officer at the disposition hearing. The presence of a prosecutor at the disposition hearing is designed to encourage a more vigorous examination of dispositional alternatives while at the same time providing a protective "buffer" for non-legal probation and clinic staff whose recommendations are in dispute.

Lastly, the community's interests in protecting its security do not cease at the adjudication stage and neither should its representation. In the small number of cases where confinement is deemed vital to the rehabilitation of the juvenile or to protect the community from a substantial threat to its safety, it should be the prosecutor's responsibility to argue for commitment. In the vast majority of cases, however, the prosecutor would be expected to encourage the least restrictive dispositional alternatives which are consistant with the treatment and disciplinary needs of the juvenile.

## V.

Juvenile prosecution in six other jurisdictions was also reviewed. Informaton for three courts, Atlanta, Salt Lake City and Seattle, was derived primarily from *Three Juvenile Courts, A Comparative Analysis,* prepared by the Institute for Court Management, University of Denver Law Center, in 1972. On-site visits were made to the other three jurisdictions: Hartford, Providence and "Metropolis" (a large eastern city).

In both Atlanta and Salt Lake City, full-time professional prosecutors are used. However, in neither city does the prosecutor play a major role in screening court referrals or preparing and reviewing delinquency petitions. Also, because investigative work, selection and interviewing of witnesses, designation of charges and pre-trial screening, generally, are conducted outside of the prosecutors' supervisory authority, their role is very limited. This has resulted in inadequate preparation for trial, inadequate screening and preparation of petitions, and insufficient guidance to police and probation regarding legal requirements. The prosecutors play little, if any, role at the disposition stage.

In response to concern over the broad discretionary authority wielded by probation in the King County Juvenile Court (Seattle), the function of prosecution has been expanded to include determining whether sufficient evidence exists to warrant the filing of a delinquency petition, supervision of the preparation of delinquency petitions

and the prosecution of contested cases. The prosecutor's office is also expected to represent the state at preliminary hearings, at disposition, and probation revocation hearings. In addition, the prosecutor is required to provide broad assistance to the police in the development of operational guidelines and training of personnel.

The juvenile prosecutor in Seattle now has considerable administrative control over the presentation and prosecution of juvenile cases. The scope of his responsibility and participation in the juvenile justice process far exceeds that which is found in most jurisdictions. While this degree of authority is responsive to the legitimate needs of the juvenile justice system, there may be a danger in the tendency to use the prosecutor's office as legal advisor to the court beyond the context of any court proceeding. This use, as legal advisor to the court, may conflict with the prosecutor's role as adversary litigant before the court. Moreover, the recommendation of court practices and procedures should not become the province of the prosecutor's office to the exclusion of juvenile defenders and others whose views, as advocates of juveniles' rights, are essential to a balanced consideration of proposed changes.

Juvenile prosecution in the Rhode Island Family Court is conducted by city and town solicitors from throughout the state. They prosecute those cases arising out of action taken by their local police agencies. As in Atlanta and Salt Lake City, the solicitors do not review petitions before they are filed, resulting in an excess of legally insufficient petitions and a lack of uniform standards for court referrals. Moreover, because many of state's solicitors regard juvenile prosecution as a matter of low priority, they are frequently unprepared for trial and repeated continuances are common.

A committee of judges, appointed in 1969 to study the question of juvenile court prosecution, concluded that an independent juvenile court prosecutor's office having broad authority for the prosecution of petitions against juveniles should be established. No action has been taken on the proposal and the decentralized, incomplete prosecutorial services which are now provided continue to cause serious problems in the court.

In Metropolis, police prosecution in juvenile courts was replaced by an experimental prosecutor program operated by the City Attorney. Emphasis was to be given to post-intake petition screening and drafting, participating in efforts to resolve appropriate cases prior to hearing and representing the petitioner at adjudicatory and probation revocation hearings.

For a variety of reasons, including manpower limitations, little effort has been made to achieve the first two objectives. As a consequence, it is estimated that twenty to thirty percent of all petitions are defective and must be amended, withdrawn, or dismissed. In addition, an already overburdened court system is further taxed by having to hear a great many cases in which there is no real dispute over the facts or which do not belong in court. Prosecutors are impeded in achieving the third objective by a lack of investigatory and clerical staff. Cases are poorly prepared and presented and judges are highly critical of the performance of the juvenile prosecutors.

Notwithstanding their present deficiencies, juvenile court judges regard the use of attorney-prosecutors as a substantial improvement over the use of police prosecutors. However, it is clear that without substantial changes in staff, program content and commitment to the child welfare responsibilities of juvenile court prosecution, the Metropolis program is likely to remain vastly inadequate.

The Hartford (Connecticut) Juvenile Court uses the services of private attorneys to prosecute. They are appointed on a case-by-case basis from an approved list to prosecute the small percentage of cases (contested) which are not adjusted at the intake stage. Prosecutors perform no intake screening functions but must approve cases referred to them for prosecution. Until recently, these transactions were conducted by mail and lengthy delays were encountered in completing the screening process. Now, one prosecutor comes to the court



each week to screen all cases collected for his review, but delays still occur in the rural areas which fall within the court's jurisdiction. The court is also confronted with serious delays as a result of inadequate investigative staff. Furthermore, there is criticism concerning the quality of petitions in uncontested cases which are not reviewed by the prosecutor and for the need to have probation staff represent the government at detention hearings.

Given the relatively small number of contested cases, the need for a full-time prosecutor has been questioned. However, in view of the need to expand the role of prosecution in such areas as petition drafting and review, court intake, pretrial hearings, investigation, etc., it is doubtful that exclusive reliance on part-time prosecutors appointed from the private bar will be feasible or desirable in the future.

## VI.

The proposed guidelines for juvenile prosecution which are set forth below in summary seek to meet the growing needs for competent adversary representation of the state in juvenile delinquency proceedings, while also advancing the child welfare orientation of our juvenile justice system. Although designed for application to the Boston Juvenile Court, the guidelines address the range of issues which are now being considered in jurisdictions throughout the country. Because the problems of creating new roles for juvenile prosecution are only now beginning to emerge, few jurisdictions have thus far developed satisfactory responses. The kinds of difficulties which confront the Boston Juvenile Court in providing qualified prosecutorial services have been noted, in greater or lesser degree, in almost all jurisdictions. We are, therefore, confident that the guidelines will provide an important foundation for all jurisdictions seeking ways to meet the many new challenges which have come about since *Gault*.

Seven general principles for juvenile court prosecution are advanced in the guidelines. In summary, they are: 1) advocacy of the state's interest in juvenile court includes concern for community protection together with promotion of the best interests of the juvenile; 2) in balancing the demands of community protection with his responsibilities as *parens patriae*, the juvenile prosecutor should consider the circumstances of each particular case; 3) as advocate, the juvenile prosecutor should act to ensure proper preparation and presentation of the state's case at all stages and should also participate in efforts to advance legitimate law enforcement and child welfare goals; 4) certain punitive objectives (*e.g.*, retribution), are inappropriate elements of juvenile prosecution; 5) the juvenile prosecutor should seek to encourage early diversion of appropriate cases and to impose the least restrictive alternatives possible; the prosecutor should proceed only on legally sufficient complaints or petitions even where a need for treatment is indicated; 6) the juvenile prosecutor shares responsibility for ensuring that pre- and post-disposition rehabilitative programs are carried out and that services and facilities for treatment and detention meet proper standards; and 7) the juvenile prosecutor has a duty to promote justice by insisting on fair and lawful procedures.

Pursuant to the foregoing general principles, the guidelines for prosecution in the Boston Juvenile Court recommend the establishment of an independent Office of Prosecution with broad responsibility for the preparation and prosecution of all cases involving juveniles. The prosecutor's area of prehearing responsibility include consultation with police administrators regarding enforcement policies and methods in juvenile cases, and instruction and assistance to police officers to assure effective law enforcement procedures consistent with applicable legal requirements. He is urged to represent the State at detention and probable cause hearings (where they are held) and to approve police requests for arrest and search warrants.

The prosecutor has functions at intake in relation to three objectives: 1) screening of prosecutions for legal sufficiency, to ensure that any coercive treatment, whether administered on a formal or

"informal" basis, rests on an adequate legal basis; 2) prosecuting or diverting legally sufficient cases according to "public policy" considerations regarding the nature of the conduct alleged; and 3) prosecuting or diverting legally sufficient cases on the basis of the juvenile's individual needs or propensities. The prosecutor is also urged to encourage diversion of juveniles after the complaint or petition is filed, but prior to adjudication through the recommendation of consent decrees or continuances without a finding.

The prosecutor's responsibilities for preparing cases for hearing include selecting and interviewing witnesses, and supervision of investigative activities. The prosecutor should represent the state at hearings on pre-trial motions and should ensure that liberal discovery is available to the defense. It is also important that the prosecutor establish cooperative relationships with defense attorneys in arriving at prosecutorial decisions which fairly reflect the needs of the juvenile and the community. The prosecutor is also required to represent the State at all adjudicatory hearings. In exceptional circumstances, this responsibility may be delegated to non-professionals (*e.g.*, police prosecutors or law students), but only in a limited range of cases and under the close supervision of the prosecutor.

The guidelines impose a continuing role for the juvenile prosecutor at the disposition stage. He is obliged to ensure that only reliable evidence is introduced on the question of disposition and to promote the availability of adequate dispositional recommendations through consultation with defense and probation. His presence at disposition serves the further purpose of freeing probation and clinic staff from the burden of advocacy and of providing a more orderly forum in which expert recommendations may be contested.

It is also deemed desirable for the juvenile prosecutor to represent the State at appeals and collateral proceedings in the juvenile court or other court. He should represent the State in such post-dispositional matters as probation revocation proceedings. Juvenile prosecutors should be attorneys with special training in juvenile law and in the child welfare goals of the juvenile court. In addition to lawyers, the prosecutors staff should include adequate numbers of trained social workers, criminal investigators and paraprofessionals. Finally, he should maintain close, cooperative relationships with social service agencies and community groups who are involved in the advancement of childrens' rights and welfare.



CHAPTER I

# INTRODUCTION

As noted in the 1967 report of President's Crime Commission, youth is responsible for a substantial and disproportionate part of the national crime problem.[1] According to the recent study of the Committee for Economic Development, *Reducing Crime and Assuring Justice,* "Nationwide, over half of all those arrested for the seven Index crimes[2] are under 19 years of age; one fifth are 14 or younger."[3] Even more specifically, the *Uniform Crime Reports* for 1971 reflect that of all the arrests made during 1971 for Index crimes, persons under 18 were involved in 32 percent of the arrest for robbery;[4] 35 percent of the arrests for burglary;[5] 50 percent of the arrests for larcenies over $50;[6] 53 percent of the arrests for auto thefts;[7] and 10 percent of the arrests for homicides.[8] Although similar figures were not available for forcible rapes and aggravated assaults, the *Uniform Crime Reports* indicated an increasing percent of the arrests made for these offenses are for persons under 18 as well.[9] Most of these cases, as well as those for other criminal conduct, become the responsibility of our Nation's juvenile court system.[10]

In 1970, over one million juvenile delinquency cases, excluding traffic offenses, were handled by juvenile courts in the United States and a significant upward trend in cases has occurred annually for over 10 years.[11] The juvenile justice system that is responsible for responding to the criminal acts of young people, as well as to a range of other matters (such as truancy, neglect, dependency, etc.), has been under severe attack in recent years. Much of this criticism, as will be discussed below, has been leveled, and rightly so, at the lack of procedural safeguards for juveniles in the juvenile justice process and the failures of traditional correctional programs and institutions to deal with the problems and needs of delinquents. In response to the former, the Supreme Court (although in somewhat ambivalent fashion) has expanded the procedural rights of juveniles and has extended the right of counsel to juveniles in juvenile delinquency proceedings. In response to the growing attack on juvenile correctional programs, active movements are underway nationally to close down large scale institutions, to direct juveniles away from the juvenile justice system if at all possible, and to create a range of community "treatment" programs.

In all of this development, virtually no attention has been paid to the question of who represents the State in juvenile delinquency matters or

[1] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* 55 (1967) at 55.

[2] Index offenses include murder and non-negligent manslaughter, forcible rape, robbery, aggrevated assault, burglary, larceny $50 and over, and motor vehicle theft.

[3] Committee for Economic Development, *Reducing Crime and Assuring Justice* 11 (1971).

[4] Federal Bureau of Investigation, Crime in the United States, *Uniform Crime Reports—1971* at 18 (1972).

[5] *Id.*, at 21.

[6] *Id.*, at 25.

[7] *Id.*, at 29.

[8] *Id.*, at 10.

[9] *Id.*, at 12, 14.

[10] The upper age range jurisdiction of juvenile courts normally varies from 16–18. Further, in many jurisdictions, certain offenses can be tried either in a juvenile court or in a criminal court.

[11] U.S. Department of Health, Education, and Welfare, *Juvenile Court Statistics 1970,* at 2 (1972).

his role in protecting society against criminal behavior while, at the same time, trying to meet the supposed priority objective of the juvenile justice system—responding compassionately and effectively to the needs of juveniles.

The accepted notion that adversary conflict was best kept out of juvenile court was responsible for the general absence of juvenile court prosecutors from the law, practice and literature of the juvenile courts in the pre-*Gault* era. This was consistent with other implications of the prevailing "social service" view of the juvenile court, according to which proceedings were to be informal and non-criminal. Although it is not yet clear how far and to what extent the Supreme Court will extend constitutional guarantees to juvenile court proceedings, it is clear that the traditionally conceived juvenile court has been changed irrevocably. Because the changes that have occurred are fundamental, they require serious reconsideration of the proper role of prosecution in the juvenile justice system.

As the results of the Center's National Survey will indicate, prosecutors from offices such as a district attorney's office have increasingly been utilized in juvenile courts since *Gault*, particularly in the handling of delinquency cases. This means that the era of having police officers or probation officers "present" a case in juvenile court (or simply of having a judge elicit information from the juvenile and the witnesses) may well be over. This transition could be an essential one, but it should not be made without careful consideration of the appropriate role of prosecution in a juvenile justice context and the implication of this role to others working within the process. The importance of having careful development in this area led to the creation of this project.

Funded by the National Institute of Law Enforcement and Criminal Justice, this report represents the first phase of a two-phase research and development project centered upon the role of the prosecutor in juvenile delinquency proceedings. The purpose of the two-phased project is to: (1) examine the existing system of prosecution in an urban juvenile court—the Boston Juvenile Court; (2) based upon such examination and other research, establish appropriate objectives for juvenile prosecution; and (3) develop, implement, and evaluate a model juvenile prosecutor project within the Boston Juvenile Court as a guide to all interested jurisdictions.

Up to now, there has been little empirical research directly concerned with the juvenile prosecutor's role. The possibility that his can be a key role, involving a variety of significant discretionary judgments and presenting a major avenue for the introduction of constructive changes, has certainly not received the detailed study and examination it deserves. Indeed, concepts of juvenile court reform have focused more often on development of probation staff, the juvenile court judge, or defense counsel than on the potential of an improved prosecutorial function. There is an obvious need, therefore, to give attention to the prosecution role both because of the impact it can ultimately have on juvenile cases and because of the growing attention of the courts to procedural requirements in the juvenile court setting.

The report that follows contains the findings and conclusions of the comprehensive research that was undertaken of the prosecution role in the Boston Juvenile Court. The report also assesses the relevancy of those findings and conclusions to other juvenile courts based upon both literature and field research. Finally, after setting forth desirable objectives for prosecution at the juvenile level, this report establishes guidelines and standards for an experimental prosecution program which might implement its recommendations. It is anticipated that the model proposed in this section of the report will serve as the basis for the experimental prosecution program which will be implemented and evaluated as part of phase two of this project.

The research undertaken during phase one within the Boston Juvenile Court included: legal and literature research, extensive observations, interviews, and analysis of statistics and case files. Research within the court focused upon all parts of the juvenile justice process to which prosecution might relate from initial handling by police through dispositional stages.



Founded in 1906, the Boston Juvenile Court is the second oldest juvenile court in the United States. It has the largest juvenile caseload of any first-instance court in Massachusetts; in 1971, over 2,000 such cases were recorded. The Court exercises jurisdiction over alleged delinquents and "wayward" children between the ages of seven and seventeen and over neglected children under sixteen.

One full-time Justice and two Special Justices sit on the Court. Police officers from the Boston Police Department represent the State in almost all cases. (This practice makes a study and new model of the prosecutorial role important.) In neglect cases, a representative of a social welfare agency often assists in the presentation of the case. In addition, the Court has a full-time probation staff of sixteen (the staff operates some of its own community-based services), a juvenile court clinic, and an affiliation with a guidance center to which it sends special cases.

Besides the research within the Boston Juvenile Court, a national survey was conducted to ascertain the state of the art in juvenile prosecution, recent comprehensive studies of selected courts were reviewed, brief field visits were made to four other juvenile courts, and all other literature relevant to our areas of concern was analyzed.

Throughout phase one we raised and tried to formulate answers to the questions: "What should the juvenile prosecutor be"; "How can he best serve the individual child, the public, and the juvenile justice system"; "Does the traditional role of the prosecutor require redefinition"; "Are broader discretionary powers at intake and disposition necessary or valuable"; "What will the manpower and financial requirements of an improved role be"; "How should the prosecutor relate to other agencies within the process?" Both the research phase and the later demonstration phase attempt to deal directly with such questions within the context of a specific court—The Boston Juvenile Court. The findings and recommendations, however, hopefully should have a wide effect in many specific contexts and in the philosophy of juvenile justice systems as a whole.

With reference to the proposed model for juvenile prosecution, an effort has been made to relate answers to the above questions and findings and recommendations of this report to: 1) concrete objectives and priorities for juvenile prosecution; 2) specified responsibilities of prosecution at various stages of the juvenile justice process; 3) recommended relationships between prosecution and other juvenile justice agencies and personnel; and 4) recommended criteria for a juvenile prosecutor's office in areas such as personnel requirements, training, and supporting services. Although it is important to address the role of prosecution or government representation in other types of juvenile proceedings, this project has been confined to juvenile delinquency matters. It is recommended that studies of representation in these other areas be undertaken as well at the earliest possible opportunity.

The report that follows examines: 1) the growth and development of the juvenile court system; 2) the growth and development of the role of prosecution in the juvenile court; 3) a preliminary assessment of appropriate objectives and functions for prosecution in the juvenile court; 4) an examination of the nature and character of the Boston Juvenile Court; 5) an analysis of the role of prosecution in this court; 6) an assessment of the relevancy of the findings and recommendations for the Boston Juvenile Court to other representative courts; and 7) suggested guidelines for an experimental juvenile prosecution project.

CHAPTER II

# THE DEVELOPMENT OF THE JUVENILE COURT SYSTEM IN THE UNITED STATES

## A. EARLY DEVELOPMENT

Legal institutions concerned with juvenile neglect and delinquency were in existence long before the establishment of the first "modern" juvenile court in Chicago in 1899. A brief review of these early developments offers a useful perspective on the shaping of the role of prosecution in juvenile courts.[1]

A major influence on the development of American juvenile law can be traced to the *"parens patriae"* jurisdiction of English chancery courts. These courts were primarily concerned with the protection of juveniles' property rights, although their authority extended to cover the welfare of children generally. Their mandate was founded on the notion that children and other incompetents were subject to protective guardianship in the name of the *pater patriae,* the King.[2] Chancery courts in this country took on the same obligations and authority regarding child welfare, including responsibility for neglected and dependent children.[3] It is noteworthy, however, that chancery courts never had jurisdiction over children charged with criminal conduct. Until the creation of separate juvenile courts in the late nineteenth century, criminal jurisdiction over juveniles lay with the regular criminal courts.

[1] The following historical discussion borrows heavily from President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1967), especially pp. 2–4; and Fox, *Juvenile Justice Reform: An Historical Perspective,* 22 Stan. L. Rev. 1187 (1970).

[2] *E. g., Eyre v. Shaftbury,* 2 Peere Williams 103 (1772); see generally Lou, *Juvenile Courts in the United States* (1929).

[3] Lou, *Supra* note 2, at 4–5.

The basic structure and dimensions of our current legal approaches to juvenile neglect and delinquency were formed by developments which occurred in the nineteenth century. In response to a number of factors, important among which were increased urbanization, industrialization and immigration, concern about crime prevention led to various reform activities in the field of child welfare. According to prevailing environmental theories about the etiology and treatment of crime, certain segments of the population—notably the urban, immigrant poor—were seen as particularly prone to excesses of immorality and criminal deviance. The children of these "deprived classes" constituted an "endangered" group, some of whom might be "saved" by prompt intervention at the earliest signs of corruption. Such intervention, primarily activated by voluntary organizations of middle-class "child-savers," required removal of the child from his corrupting environment to a different setting, where salvation might be achieved through a program of discipline and moral enlightenment.

The programs of intervention which were established in various states gave rise to significant legal developments of three sorts. The first was an expansion of state jurisdiction to intervene coercively in the lives of children. Since such characteristics as "poverty", "ignorance" and "vice" were seen as precursors of future criminality, and therefore as reliable indicators of the need for "reformation," it made no sense to restrict the state's power to commit children to those found guilty of criminal conduct. Accordingly, ordinances and legislation were enacted giving courts power to commit for reformation children "who are destitute of proper parental care, wandering about the streets, committing mischief, and growing up in mendicancy, ignorance, idleness and vice."[4] An important consequence of this expansion of jurisdiction was to shift the focus of judicial attention from facts establishing the child's commission of particular acts, to those establishing a general condition or status.

The second important development was the creation of specialized residential "treatment" facilities for the reformation of pre-delinquent children, in physical segregation both from adult convicts and from other juveniles who were already corrupted beyond salvation. The first of these was the New York House of Refuge, established in 1825, and was followed shortly by similar state institutions established in Pennsylvania and Massachusetts. To these "reform schools" the courts committed children found guilty of criminal violations, as well as those subject to jurisdiction for acts of potential delinquency.

The third development consisted of extending the notion of separate, specialized treatment of juveniles into court and even pre-court procedures. In 1861, the Mayor of Chicago was authorized to appoint a commissioner to hear minor charges against children and determine the proper disposition. Six years later, the responsibility was entrusted to a judge. In Massachusetts in 1869, an agent for the state was required to be present at any proceeding where a juvenile could be confined in a reformatory, and was also responsible for locating foster homes if any were needed. In 1870, separate hearings for juveniles, were required in Boston, a practice extended to the entire state in 1872. And by 1898, Rhode Island, New York and Massachusetts had all enacted provisions for separate sessions, dockets and records in juvenile cases. Rhode Island also required separate detention of children awaiting trial.[5]

[4] City of Chicago Ordinance, 1855, *quoted* in Fox, *Juvenile Justice Reform: An Historical Perspective,* 22 Stan. L. Rev. 1187, 1208 (1970); *see also* the 1835 Pennsylvania Statute *quoted* on p. 1205 at n. 95.

Against the background of these earlier developments, the well-known Illinois Juvenile Court Act followed in 1899, and directly inspired the passage of similar legislation throughout the country. Briefly summarized, the fundamental purposes of the Act, which were consistent with the trends established by developments earlier in the century, created a state-wide *"special court"* before which pre-delinquent juveniles could be brought; authorized that court to assume jurisdiction over such children on the basis of "pre-delinquent" statuses, such as ignorance, poverty, or exposure to vice, as well as on the basis of criminal activity; *segregated* pre-delinquents from adult criminals, both physically and (by avoiding stigmatic labeling) psychologically; and utilized individual treatment to prevent future delinquency. This treatment was to be administered by the judge and other staff within or available to the court, using both medical and social science techniques. In spirit, the juvenile court was designed to function as a "non-legal" social agency, providing needed care to endangered children, and resorting to coercion only as necessary to serve the best interests of the child. Hearings were to be conducted informally and in private, legal "technicalities" were to be put aside, and records were to be kept confidential. Because the judge and probation staff were to act as *"parens patriae,"* in the child's best interest, claims that the child needed representation by counsel or other protection of his "rights" were viewed as misconceived. The court's process was to be paternalistic rather than adversary. The function of the proceedings was to diagnose the child's *condition* and to prescribe for his *needs*—not to judge his *acts* and decide his rights. In such a proceeding, it was less necessary to conduct a scrupulous inquiry into the facts establishing a boy's particular misconduct than to arrive at a benign assessment of his essential "character."

[5] Lou, *supra* note 2, at 15–19.

## B. CHALLENGE AND REFORM

Notwithstanding several early constitutional challenges to the "informality" of juvenile court procedures, the Illinois system spread rapidly throughout the United States, and for the first half of this century operated without serious challenge on legal grounds. Gradually, however, there arose a sense of skepticism and disillusionment with the juvenile court "reform." This growing criticism was reflected in legal developments during the 1950's and 1960's, reaching a crescendo in the influential President's Commission's Task Force on Juvenile Delinquency and Youth Crime in 1967, and in the Supreme Court's decision of the same year *In re Gault*.[6] The essential thrust of *Gault* (and of the Commission's recommendations) was that greater procedural formality in juvenile courts was needed in order to safeguard the constitutional rights of juvenile litigants. Developments which have taken place since 1967 have, for the most part, continued this trend.

There is no need in this report to undertake a detailed review on the basic "failures" of juvenile court system which have precipitated the recent and continuing changes in its legal structure. It is sufficient for our purposes to mention some of the reasons for this "legal revolution" and to present our view of its likely outcome. In this discussion, we shall focus, as by and large have the courts and commentators, on the juvenile court's delinquency jurisdiction founded on commission of criminal acts.

The "traditional" juvenile court was conceived as part of a system of justice which expressed considerable leniency and tolerance toward juveniles who engaged in anti-social conduct. Instead of processing such children through the criminal justice system, where they might be traumatized by formal, accusatory procedures, stigmatized as criminals and subjected to punishment, the state would deal with their transgressions in an *ex parte* civil process, which was benign and paternalistic. In the juvenile justice system, children would be screened by specialized police and court intake personnel devoted to the goal of avoiding judicial procedures altogether. If in "the best interests of the child" the latter proved unavoidable, hearings would be conducted before judges specially trained to view the child's offense as a symptom of underlying personal maladjustment. Courtroom procedures were to be therapeutically informal, and the judge's disposition designed to provide the child with an effective rehabilitative program. Eventually, the child would return to the community neither stigmatized nor punished, but instead restored to the paths of responsible and productive citizenship.

Over the years, this conception of the juvenile court as a kind of "social service agency" was undermined by an increasing recognition of the reality it masked. That reality was remarkably similar to the ordinary criminal courts. The major differences between them, it emerged, were two: first, the punishment administered in juvenile proceedings was disguised in a sincere but unrealistic cloak of good intentions; second, the procedural safeguards under the Federal and State Constitutions required in criminal cases did not apply in juvenile delinquency cases because the juvenile court ostensibly dispensed "help" and not punishment.

Official recognition that a punitive reality existed behind the rhetoric of sole concern for "rehabilitation" of juvenile offenders emerged in two Supreme Court cases: *Kent v. United States*,[7] and *in re Gault*.[8] The change in attitude came for at least three reasons. First, it was recognized that any process by which an individual is incarcerated in a state institution on the basis of his "misconduct" is punitive in the perceptions both of the individual youth and of society at large. The stigma attached to juvenile justice euphemisms such as "delinquent" support this view. Labeling proceedings as "civil" instead of "criminal," and incarceration as "treatment" instead of "punishment" does not alter the punitive nature of applying state power to sanction deviant conduct. Second, the State's proven failure to provide adequate resources of manpower and facilities to ensure the availability of reasonably effective rehabilitative processes at all stages of the juvenile justice system reinforced a view of the system as basically punitive. Residential detention and treatment facilities for juveniles were notorious inadequate. Finally, even assuming society's willingness to fund a rehabilitative treatment process for juveniles, our present ignorance of non-punitive rehabilitative techniques cast doubt on our ability to respond benignly and effectively to threatening misconduct by juveniles.

The revisionist view of the juvenile justice system presented in the *Kent* and *Gault* cases necessarily required a new definition of the constitutional framework within which the juvenile court had to function. To the extent that juvenile court treatment of offenders resembled the operation of criminal courts, it became necessary to consider the application of constitutional criminal procedure protections to juveniles. The legal "revolution" in juvenile justice consisted in applying constitutional doctrines of "fundamental fairness" under the due process clause of the Fourteenth Amendment to require that certain procedural guarantees must be respected in juvenile delinquency proceedings. The Supreme Court's decisions to this effect were based on the view that under traditional informal process, injustices might occur or be perceived to occur. In *Gault* and succeeding cases, the Court attempted to inject minimal fairness by holding various rights applicable to the trial of delinquency cases: the right to notice of charges, to the assistance of counsel, to confront and cross-examine opposing witnesses, to the privilege against self-incrimination and the right to have the state's case proved beyond a reasonable doubt. Although these holdings were technically limited to the adjudicatory stage of the proceedings, they spurred extension of these and certain other rights previously available only in *criminal* prosecutions, to various pre and post-trial stages of juvenile proceedings. The adoption and extension of these rights, involving such diverse issues as the presence of counsel at police identification line-ups and the right to humane conditions in detention and correctional facilities, have proceeded rapidly in a multiplicity of forms including State and Federal court decisions, legislative enactments, administrative enactments, and court rules.

But this trend toward increased formality in the juvenile justice system has provoked great controversy and uncertainty. Many fear that rejection of the traditional model of "benign informality" will result in application of so many criminal procedures to the juvenile court system that it will lose its unique potential for responding to juvenile misconduct rehabilitatively. The right to counsel, the privilege against self-incrimination, suppression of illegally seized (but material) evidence—these and other features of adversary proceedings are hardly conducive, it is argued, to the maintenance of an atmosphere of mutual concern and cooperation in which the best interests of a troubled juvenile can be promoted. In its most recent case in the field, *McKeiver v. Pennsylvania*,[9] the Supreme Court expressed these very concerns. In refusing to extend the Sixth Amendment jury right to the juvenile justice system, the Court reiterated its faith in the unique rehabilitative aims of that system, and its reluctance to impose further formalities now existing in the criminal process. The Court's method of analysis appeared to be that of weighing the juvenile's need for any particular procedural protection against the detrimental impact thereof on the State's chosen process for informal, non-criminal adjudication and rehabilitative treatment of juvenile offenders.

For the time being, then, we are left with a hybrid system of juvenile justice. The courts have neither repudiated the rehabilitative goals of the system, nor subjected it to the same procedural restraints as the criminal justice system. At the same time, the law has sought to ensure that deprivations of juvenile liberty, even if kindly motivated, take place under sufficiently formal procedures to minimize the risk of arbitrary or unwarranted action. The juvenile court's procedural framework should not assume the identical retributive and deterrent aims which remain elements of the crim-

[6] 387 U.S. 1 (1967).

[7] 383 U.S. 541 (1966).

[8] 387 U.S. 1 (1967).

[9] 402 U.S. 528 (1971).

inal law (in fact, the aims of the criminal law require reassessment), but neither should it be forgotten that the court does have responsibility to protect society from juvenile misconduct. Formal, procedural guarantees appear to be most appropriate to those stages and functions of the system in which anti-social conduct by the juvenile is defined and sanctioned; greater informality and fewer "rights" are justified in those aspects of the juvenile justice system where pursuit of the child's best interest does not conflict with any higher obligations to the community at large. As the President's Commission on Law Enforcement and Administration of Justice state in its 1967 report:

> Rehabilitation of offenders through individualized handling is one way of providing protection, and appropriately the primary way in dealing with children. But the guiding consideration for a court of law that deals with threatening conduct is nevertheless protection of the community. The juvenile court, like other courts, is therefore obliged to employ all the means at hand, not excluding incapacitation, for achieving that protection. What should distinguish the juvenile from the criminal courts is their greater emphasis on rehabilitation, not their exclusive preoccupation with it.[10]

For juvenile courts to survive as distinct institutions dedicated to non-punitive treatment and rehabilitation of offenders, they will have to continue to absorb the impact of judicial and legislative actions which "legalize" and "formalize" their processes, without surrendering their distinctive goals. Valid criticisms of existing procedures, whether on grounds of unfairness or inefficiency, should be anticipated, and solutions tailored which will interfere as little as possible with the substantive goals of the system. Given this background, it is now important to examine the traditional role of prosecution in the juvenile court and the impact, both real and potential, upon this role.

[10] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967) at 81.





# THE PROSECUTOR'S ROLE IN THE JUVENILE COURT: FORMER STATUS AND CURRENT TRENDS

## A. THE PROSECUTOR'S ROLE HISTORICALLY

The traditional juvenile court process did not include a "prosecutor" in the sense of a legally trained person with responsibility to represent the state in court proceedings. For several reasons, the inclusion of such a role would not only have been seen as unnecessary, but as positively harmful to the proper functioning of the court. Juvenile court proceedings were designed to diagnose and treat the problems of children appearing before the court. The proceeding was conceived to be one instituted "on behalf" of the child, rather than against him. In this proceeding the State was represented by the judge, who had the dual role of deciding whether the court had jurisdiction over the child and, if so, of prescribing that disposition which would best further the state's interest, as *parens patriae,* in promoting the child's welfare. Proceedings "on behalf of the child" could often be instituted by "any reputable person," but it generally fell to the probation officer to investigate and actually "prosecute" the petition in court.[1] The probation officer, too, had a dual role: to "represent the interests of the child" before the court, and to "furnish to the court such information and assistance as the judge may require."[2] Because the proceedings were conceived to be in the child's interest, no conflict was apparent between these duties of representing the child and helping the State (court). The probation officer (like, occasionally, the judge), was not legally trained. Nor, as a general rule, did legal counsel represent the child.

Not only was there no need in such a system for a "state's attorney," but the introduction of such a figure would have been seen as highly inconsistant with the philosophy of juvenile court. The participation of a State prosecutor would have implied the existence of some particular state interest which required advocacy, an interest distinct by definition from those of both the child and the judge (court). But such a conception was considered contrary to the traditionally-prevailing notion that only one interest—the child's—was at stake in juvenile court proceedings.

The accepted notion that adversariness (and therefore lawyer-advocates, whether for the child or the state) was best kept out of juvenile court was responsible for the general absence of juvenile court prosecutors from the law, practice and literature[3] of juvenile courts in the pre-*Gault* era. This was consistent with other implications of the prevailing "social-service" view of the juvenile court, according to which proceedings were to be informal and noncriminal. But these views and practices were severely undermined by three decisions—*Kent v. United States,*[4] *In re Gault*[5] and *In re Winship*[6] —in which for the first time the Supreme Court considered the constitutional validity of juvenile court proceedings. Athough in a fourth and most recent decision—*McKeiver v. Pennsylvania*[7]

[1] *See, e. g.,* Illinois Juvenile Court Act of 1899, §§ 4 and 6. In many courts, however, police prosecutors, who are not lawyers, perform the prosecution function.

[2] Ibid.

[3] See Feldman, *The Prosecutor's Special Tasks in Juvenile Delinquency Proceedings,* 59 Ill. B.J. 146 (1970).

[4] 363 U.S. 541 (1966).

[5] 387 U.S. 1 (1967).

[6] 397 U.S. 358 (1970).

[7] 402 U.S. 528 (1971).

(1971)—a changed Court declined to expand the "constitutional domestication" of juvenile courts, and indeed cast some doubt upon the reasoning of the three prior decisions, it is clear that the traditionally-conceived juvenile court has been changed irrevocably.

## B. THE POTENTIAL IMPACT OF *GAULT* ON THE PROSECUTOR'S ROLE

Although it has not been possible to judge the precise impact of *Gault* upon the role of prosecution in juvenile court, our study indicates that the following propositions are true: 1) There has been a growing recognition, and appropriately so, that some legally-trained person must be available to represent the state in many juvenile court proceedings; 2) in part, this stems from recognition that the assumption of prosecutorial roles by the probation staff or the juvenile court judge creates undesirable role conflicts; 3) increasing requirements for prosecutors in juvenile courts is reflected in trends in both proposed and recent legislation; and 4) there is now a substantial and increasing use of professional prosecutors in juvenile court.

1. *Recognition of the need for legally trained state representatives.* Even before *Gault* was decided, a judge of the New York Family Court pleaded in an opinion that the absence of a prosecutor resulted in an imbalance which favored respondents over petitioners, and placed an undue burden on the court to assist the latter:

> [T]he present law results in a paradoxical situation. The criminal courts are increasingly required to secure counsel for defendants so that their rights will be protected in actions brought by prosecuting officers representing the people. The Family Court, on the other hand, provides counsel for defendants and no personnel or machinery to assure the adequate representation of cases against minors even when they are charged with acts which would constitute a felony if committed by an adult.[8]

Similar feelings were echoed in 1967 by the President's Commission Task Force on Juvenile Delinquency and Youth Crime:

> A related problem concerns the presence of counsel for the State. To the extent that the presence of counsel for the child (or the parent) in contested adjudicatory proceedings is based upon or would result in a closer approximation of the adversary system, the presence of counsel on the other side may be necessary to achieve the virtues of that system. Using the public prosecutor may be too great a departure from the spirit of the juvenile court. But experience may show some legal representative of the public, perhaps the corporation counsel or a lawyer from the welfare department, to be desirable in many cases.[9]

Aside from the impact of defense counsel in juvenile delinquency cases, according to the post-*Gault*, "due process" view of the juvenile court, it is no longer possible to conceive of juvenile court proceedings as involving a single interest—the child's. Until, at least, the adjudicatory stage has ended, the Constitution requires procedures which recognize that distinct and possibly conflicting interests are involved. The *State* has an interest in taking jurisdiction over appropriate juvenile subjects, on two grounds: to protect society from threatening conduct and, as *parens patriae*, to promote the juvenile's welfare. The *child*, on the other hand, has an interest in avoiding inappropriate or unnecessary juvenile court proceedings, stigmatic adjudications, and other consequent deprivations. This recognition of potential adversariness in juvenile court proceedings was expressed in the Court's application of various procedural protections drawn from the Constitutional requirements in criminal proceedings: rights to counsel notice, cross-examination, confrontation, a high standard of proof, and to the privilege against self-incrimination.

Further, and possibly of even greater importance, many lower court decisions since *Gault* have expanded the *Gault* rationale by requiring expanded procedural safeguards for other aspects of the juvenile justice process as well, such as in the investigative phase and in prehearing and post-hearing proceedings and actions. Legislation in the post-*Gault* era has also frequently expanded such procedural requirements. As a result, large blocks of intricate rules developed originally in the field of criminal procedure, and rooted in notions of adversariness have come to be applied in some form to the conduct of juvenile court proceedings from investigation to parole. For example, in many jurisdictions, the often essential but extremely complicated requirements of the Fourth, Fifth, and Sixth Amendments, regarding arrest, search and seizure, stop and frisk, detention, non-testimonial identifications, and interrogations have been fully applied to juvenile delinquency cases.[10] Further, the technical requirements for criminal complaints, informations, and indictments are typically now being applied to juvenile complaints or petitions. Finally, adult requirements on standard of proof and quality of evidence are also increasingly being applied and more liberal discovery of evidence, being ordered.[11] The implications of these developments for the prosecution function in juvenile court have been substantial, and will be even more substantial in the future.

Aggressive defense of the child's interest in avoiding adjudication is now taking such "technical" forms as suppression of illegally seized evidence or defective witness identifications, demands for probable cause hearings, and objections to the sufficiency of proof. Without any legally trained prosecutor available in the juvenile court to present the State's response to such objections, the State's interest may not be represented adequately, unless the judge compensates by acting as prosecutor. When the latter occurs, as it has in many instances, other problems arise.

2. *Impact of no prosecutor upon probation officer and judicial roles.* Commentators have pointed out that because of the absence of prosecutors the juvenile court judge is "forced" to assume prosecutorial functions which may conflict with the judge's fact-finding role of impartiality and neutrality. Thus, an Ohio juvenile court judge noted with reference to cases in which defense counsel participates:

> In such contentious hearings the Judge is in an impossible role and reluctant as some of us are to abandon our traditional hearing practices it is becoming increasingly evident that this is necessary in many cases and we will be required to call upon the prosecutor for assistance in more cases than we have in the past.[12]

The mixing of prosecutorial with judicial roles has given rise to several court attacks upon the practice. For example, in Rhode Island, an attack upon the system under which the judge performed the "prosecutorial" function of screening cases at intake, and then proceeded as judge to hear "a charge which he has approved" resulted in invalidation of that procedure on grounds of due process.[13] Recent cases in California have established the invalidity of a procedure whereby the hearing referee was permitted to conduct the petitioner's case (examining and cross-examining witness, entering objections, etc.), while simultaneously acting as an "impartial" fact-finder, in which role he ruled upon motions and objections made by himself and by opposing counsel.[14] In other jurisdictions, attacks on such procedures have not been successful,[15] but they may well be in the future

[8] *In re Lang*, 44 Misc. 2d 900, 905, 255 N.Y.S.2d 987, 992–93 (Fam. Ct. 1965).

[9] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1967) at 34.

[10] *See generally* Fox, *The Law of Juvenile Courts in a Nutshell* (1971).

[11] *Ibid.*

[12] Whitlatch, *The Gault Decision: Its Effect on the Office of the Prosecuting Attorney*, 41 Ohio Bar J. 41, 44 (Jan. 8, 1968). See also comment to Rule 24, NCCD, *Model Rules for Juvenile Courts* (1969); Children's Bureau, *Standards for Juvenile and Family Courts* (1969) at 73; Skoler, *Counsel in Juvenile Court Proceedings—A Total Criminal Justice Perspective*, 8 J.Fam.L. 243 (1968).

[13] *Matter of Reis*, R.I. Fam. Ct., (decided April 14, 1970), in 7 Crim. L. Rptr. 2152, (May 20, 1970).

[14] *R. v. Superior Court*, App., 97 Cal. Reptr. 158, 19 Cal. App. 3d 895 (1971); *Gloria M. v. Superior Court*, App., 98 Cal. Rptr. 604, 21 Cal. App. 3d 525 (1971).

[15] See *In re Potts*, 14 N.C. App. 387, 188 S.E. 2d 643 (N.C. Ct. App., 1972) (rejecting argument that absence of prosecutor forced judge to serve as prosecutor since judge acted in fair manner) and; *State v. Rush*, 13 N.C. App. 539 186 S.E. 2d 595 (N.C. Ct. App., 1972) upholding active but "fair" questioning of witnesses by judge.

if a judge's action reflect a clear conflict of interest.

There has also been adverse comment upon the assumption of prosecutorial roles by probation officers, upon the ground that this conflicts with their duty to assist the juvenile and his family at various stages of the proceeding.[16] In a recent California case the court rejected an attack on statutory grounds upon the court's discretion to permit the probation officer to act as prosecutor. In doing so, the court adopted the view that even as "prosecutor" the probation officer was acting in the "best interests" of the minor.[17]

3. *Trends in proposed and recent legislation.* A review of juvenile court legislation currently in force across the nation discloses considerable variation among the jurisdictions on the question of prosecution. About half of the states' laws still reflect the traditional, pre-*Gault* conception of the juvenile court by their silence on the subject of prosecution, although they will assign particular prosecutorial roles, such as preparation of the petition, or presentation of the evidence, to the probation officer or judge.[18] In at least nine jurisdictions, the participation of professional prosecutors, at least in certain kinds of cases,[19] is mandatory.[20] And in eleven jurisdictions, such participation depends upon the juvenile court's discretionary request or consent.[21] In some states, authority for professional prosecution is found not in statutes, but in court rules,[22] or in the "inherent power" of juvenile court judges to procure needed assistance.[23]

Statutes which do provide for mandatory or discretionary participation by prosecutors in juvenile court proceedings typically offer few details on the nature or scope of such participation. While a statute may restrict the categories of cases in which the judge is authorized to request prosecutorial participation (*e.g.,* to delinquency cases, to contested cases, to cases where the juvenile is represented by counsel, etc.), no criteria for guiding the court's discretion, such as the complexity of the case, for example, are given.[24]

There is recent evidence, however, based upon newly enacted and proposed rules and statutes, that there may be a decided trend in the direction of increased utilization of prosecutors in juvenile court. At the same time, it is clear there is little agreement on the precise nature and definition of his role.

The major legislative models which have been proposed from time to time over the past decade show significant movement toward a system incorporating a professional representative of the state's interest. Thus, while the 1959 *Standard Juvenile Court Act* made no mention of a prosecutor,[25] the Children's Bureau *Standards for Juvenile and Family Courts,* promulgated in 1966, recommend giving the court discretion to use an attorney for the state in order to avoid the adoption of conflicting roles for the judge.[26] The *Uniform Juvenile Court Act of 1968* also provides for a prosecuting attorney's participation at the adjudicatory stage at the court's discretion,[27] and so do the 1969 N.C.C.D. *Model Rules for Juvenile Courts,* in "complex cases."[28] In all three model laws cited above, the prosecutor's participation: a) is discretionary with the court, and b) apparently commences only at the trial stage. By contrast, the 1969 Children's Bureau *Legislative Guide for Drafting Family and Juvenile Court Acts* prescribes a prosecuting attorney whose role is mandatory, and whose participation in the process begins at court intake.[29] Although the probation officer conducts the "first level" screening of complaints and recommends to the prosecutor that petitions be filed or not filed, the latter has final, unreviewable discretion on the matter. All petitions must be prepared and countersigned by the prosecutor, who may take into account both the legal sufficiency and the desirability of such action. The prosecutor is required to represent the petitioner "in all proceedings where the petition alleges delinquency, neglect or in need of supervision,"[30] implying his appearance at all pre- and post-trial hearings. He is given the power to make motions for transfer of cases to criminal court,[31] as well as motions for medical examinations,[32] for continuances,[33] and to amend the petition.[34] He may also move for the entry of consent decrees, and for the reinstatement of a petition if such a decree is violated.[35] He also represents the state at the adjudicatory and dispositional hearings, and upon appeals.

Other recent model legislation, proposed by Professor Sanford Fox, also envisions a prosecutor who is fully integrated into the court process from the time of intake through disposition.[36]

Recent legislation in such jurisdictions as the District of Columbia, Vermont, Minnesota and Wyoming has also provided for a mandatory, active and fully integrated attorney for the State.[37] Much of this legislation has been influenced by the above-described Children's Bureau *Legislative Guide,* but some, like the District of Columbia statute and court rules, carry the notion of prosecutorial participation and control to new lengths. The District of Columbia's juvenile court rules, which were substantially modeled upon the Federal Rules of Criminal Procedure, articulate the prosecutor's role with great precision and detail. Thus, not only does the law expressly assign to the prosecutor all the duties and prerogatives outlined in the Children's Bureau *Legislative Guide,* but in addition, he controls or influences such matters as police applications for arrest ("custody") warrants,[38] the court's decision whether to proceed by arrest or summons,[39]

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16 Children's Bureau, *Standards for Juvenile and Family Courts* (1969) at 73; NCCD, *Model Rules for Juvenile Courts,* Comment to Rule 24 (1969).

17 *In re Steven C.*, App., 88 Cal. Rptr. 97, 9 Cal. App. 3d 255 (1970).

18 Conclusions based upon a general review of juvenile court statutes in effect on July 1, 1972.

19 In New Jersey, for example, the prosecutor's participation is mandatory "where the complaint charges the juvenile with causing death." *New Jersey Juvenile and Domestic Relations Court Rules,* Rule 5:9–1(d) (1972).

20 Besides New Jersey *Rules, ibid., see:* D.C. Code Ann., § 16–2301 *et. seq.* and the *Rules Governing Juvenile Court Proceedings* (1972); Ill. Ann. Stats. ch. 37, § 701–21 (1972); Minn. *Rules of Procedure for Juvenile Court Proceedings,* Rule 5–2 (1973); N.M. Stats. Ann. §§ 13–8–23, –24, & –30 (1968); Tenn. Code Ann. § 37–224 (Supp. 1972); Tex. Civ. Stats. Ann., Tit. 43, Art. 2338–1, § 7 (Vernon's 1971); Vt. Stats. Ann., Tit. 33, § 645 *et. seq.* (Supp. 1972); Wyo. Stats. Ann § 14–115.12 (Supp. 1971).

21 In at least one jurisdiction, Arkansas, the chief probation officer is also empowered to request prosecution by the prosecutor. Ark. Stats. Ann., Tit. 45, § 45–217 (1968). In four jurisdictions, the county or prosecuting attorney is merely listed as one of the "persons" entitled to file, or authorize the filing of, petitions. Idaho Code Ann., §16–1807 (Supp. 1971); Iowa Code Ann., § 232.3 (1969); Neb. Rev. Stats., § 43–205 (1968); N.H. Rev. Stats. Ann., § 169.3 (1964). For other states with discretionary use of professional prosecutors, *see* n. 24, *infra.*

22 This is true in New Jersey—*see* n. 19, *supra.* In Minnesota, although the statute provides for the prosecutor's participation at the court's discretion, Minn. Stats. Ann. §§ 260–155(3), the court rules make his participation mandatory. *Rules Governing Juvenile Court Proceedings in Minnesota Probate-Juvenile Courts,* Rule 5–2 (1973).

23 *See In re Lewis,* 316 P. 2d 907 (Sup. Ct. Washington, 1957).

24 *See, e.g.,* Calif. Welf. & Inst. Code, § 681 (1972); Colo. Rev. Stats., §22–8–4 (1964); Kans. Stats. Ann., § 38–815(e) (Supp. 1972); N.Y. Fam. Ct. Act., § 254 (McKinney's Consol. Laws, Bk. 29A, Part 1, Supp. 1972); Okla. Stats. Ann., § 10–1109(c) (Supp. 1972); S. Dak. Laws, § 26–8–22.4 (Supp. 1972).

25 NCCD, *Standard Juvenile Court Act* (1959).

26 *Id.,* at 73.

27 National Commission on Uniform State Laws, *Uniform Juvenile Court Act,* § 24(b) (1968).

28 NCCD, *Model Rules for Juvenile Courts,* Rule 24 (1969).

29 Children's Bureau, *Legislative Guide for Drafting Family and Juvenile Court Acts,* §§ 13 and 14 (1969).

30 *Id.,* at § 14(c).

31 *Id.,* at § 31.

32 *Id.,* at §§ 30 and 40.

33 *Id.,* at § 49.

34 *Id.,* at § 52.

35 *Id.,* at § 33.

36 Fox, *Prosecutors in the Juvenile Court: A Statutory Proposal,* 8 Harv. J. Leg. 33, 37 (1970).

37 See D.C. Code, Tit. 16 c. 23, §§ 16–2301 *et. seq.,* and D.C. *Rules Governing Juvenile Proceedings;* Vermont Stats. Ann., Tit. 33, §§ 645 *et. seq.* (Supp. 1972); Minnesota legislation and rules cited *supra,* n. 22; and Wyo. Stats. Ann., §§ 14–115.12 (Supp. 1972).

38 The juvenile prosecutor in the District of Columbia, who is the Corporation Counsel, must approve police applications to the court for arrest warrants (District of Columbia Code § 16–2306 and *District of Columbia Superior Court Rules, Rules Governing Juvenile Proceedings* (hereinafter cited as D.C. Rules) Rule 4 (1972).

39 The prosecutor may request arrest ("custody") instead of summons procedure (D.C. Rule 9; 1972).

juvenile detention,[40] bail hearings,[41] probable cause hearings,[42] and pre-trial conferences,[43] dispositions,[44] subpoenas[45] and discovery,[46] He expressly controls initial decisions to join and sever offenses and offenders for trial,[47] and, unlike his counterpart under the Children's Bureau *Legislative Guide,* he has power to veto adjustment by consent decree.[48]

4. Current utilization of prosecutors in juvenile courts.

The statutory and rules development just described does not begin to reflect the rapidly increasing use of prosecutors in the juvenile courts. In 1964, Daniel Skoler and Charles Tenney, reporting the results of a national survey conducted a year earlier, stated:

> Responses indicated that a state's attorney, county attorney, or local prosecutor appeared regularly in about 15% of the reporting courts and occasionally in over 60% of the reporting courts . . .[49]

These percentages began to increase even more shortly after *Gault.* For example, in 1968, Judge W. G. Whitlatch reported that 23 out of 48 Ohio juvenile courts surveyed used prosecutors in delinquency cases where the charges were denied.[50] In 1970, Professor Fox cited a 1969 survey of 53 jurisdictions, in which responses were received from 46. In 36 of the responding jurisdictions, it was indicated that an attorney appears on behalf of the state "in some cases." [51] In these surveys, it was not often clear what criteria governed when prosecutors would appear, but the reasons given in the 1963 Skoler and Tenney survey were as follows:

> Among judges reporting occasional appearances by states attorneys or prosecutor personnel, the circumstances or types of cases most frequently cited were contested matters (15 responses), adult cases such as contributing to delinquency (8 responses), 'serious matters' (9 responses, including specific identification of homicide or capital cases in 3 instances), and cases involving possible waiver or transfer to adult court (4 responses).[52]

## C. THE CENTER'S 1972 NATIONAL SURVEY

In an effort to obtain both a more current and comprehensive picture of the state of juvenile prosecution in the United States, as well as the views of juvenile judges towards the role of juvenile prosecution, the Boston University Center for Criminal Justice conducted a survey of juvenile court judges in the Nation's 100 largest cities during 1972.

The sample was drawn from the most recent edition of the *Juvenile Court Judges Directory.*[53] All judges listed as serving in the 100 largest cities were included in the sample. The 100 cities were derived from the 1970 census figures.[54] The largest city, New York, had a population of over 7.8 million and the smallest in the sample, Newport News, Virginia, was listed at 138,000. The *Directory* yielded the names of 417 juvenile court judges serving in those 100 cities.

[40] The prosecutor gets "prompt notice" of notice and the reasons therefore (D.C. Code § 16–2311; 1970 West's Supp. Vol., implemented by D.C. Rule 105; 1972). He appears at detention hearings to represent the interests of the District (D.C. Code, § 16–2312; 1970 West's Supp. Vol., implemented by D.C. Rule 107; 1972).

[41] By implication from his role in detention proceedings, the prosecutor is similarly involved in bail proceedings. This role can also be inferred from the juvenile's right to interlocutory appeal in these matters (D.C. Code, § 16–2327; 1970 West's Supp. Vol.).

[42] The prosecutor must show probable cause if the court decides to detain the juvenile (D.C. Code, § 16–2312(e); 1970 West's Supp. Vol.); however there is no need to show probable cause at arraignment (D.C. Code, § 16–2308; 1970 West's Supp. Vol.).

[43] D.C. Rule 17.1 (1972).

[44] D.C. Rule 15 (1972).

[45] D.C. Rule 17 (1972).

[46] D.C. Rule 16(c) (1972).

[47] D.C. Rules 8, 13, and 14 (1972).

[48] D.C. Code, § 2314; D.C. Rules 10, 104 (1972). Compare Children's Bureau, *supra,* n. 29, at § 33.

[49] Skoler and Tenney, *Attorney Representation in Juvenile Court,* 4 J. Fam. L. 77, 83–84 (1964). This survey questionnaire was sent to judges in courts serving the 75 largest cities of the nation, and received responses, apparently, of nearly one hundred per cent.

[50] Whitlatch, *The Gault Decision: Its Effect on the Office of the Prosecuting Attorney,* 41 Ohio Bar J. 41, 43 (Jan. 8, 1968).

[51] Fox, *Prosecutors in the Juvenile Court: A Statutory Proposal,* 8 Harv. J. Leg. 33, 37 (1970).

[52] Skoler and Tenney, *supra* note 49, at 83.

[53] National Council of Juvenile Court Judges, *Juvenile Court Judges Directory* (1972–73).

[54] *The World Almanac* (1972 edition).



The initial sample to whom the survey was sent consisted of 417 judges. A portion of these questionnaires (50 or 12% of the mailing) were returned undelivered or could not be completed by the addressee judge (some judges indicated that they no longer sit in juvenile proceedings, some only occasionally heard juvenile cases, and several were deceased) thereby resulting in an adjusted sample of 367 juvenile court judges.

The survey was conducted through the use of a five-page questionnaire organized to facilitate electronic data processing of the responses. The questionnaire requested basic demographic information about the court, information about the nature of prosecution and the use of lawyer-prosecutors, and the judges' views of the lawyer-prosecutor's role and the adversary quality of juvenile court proceedings.[55]

Responses were received from 137 judges or 37.3% of the revised sample, representing 68 of the original 100 cities (68%).[56] Two samples were drawn from the respondents for purposes of analysis. Attitudinal data were analyzed and reported for all 137 respondents. Data concerning the present state of juvenile court prosecution were analyzed in terms of the 68 cities covered in the returns. Where multiple responses were received for a city, a single, averaged response was developed for analysis. These two samples (of 137 and 68 respectively) are reflected in the tables and analyses that follow.

In the 1963 survey of juvenile courts in the 75 largest cities in the United States conducted by Daniel Skoler and Charles Tenney, which was described earlier, the authors concluded that "First, and perhaps most significant, the attorney remains a stranger to the juvenile court." [57] Their survey revealed that while judicial attitudes toward attorney involvement in juvenile court proceedings had become far more positive than in previous years,[58] large urban courts continued to reflect traditional practices with lawyers playing a minimal role.

The present survey was conducted with the intention of obtaining data in the following areas: 1) the amount of defense counsel involvement in juvenile proceedings; 2) the nature and scope of attorney repesentation for the state in juvenile proceedings; 3) the division of court functions and the prosecutor's role; and 4) the views of juvenile court judges concerning the expanded use of lawyer-prosecutors in juvenile courts.

1. *Defense counsel involvement in juvenile proceedings.* As recently as 1963, 89% of big-city juvenile courts reported that juveniles were represented by counsel in fewer than 25% of all delinquency proceedings. In almost 60% of these courts, juveniles were represented in less than 5% of delinquency cases. Of equal interest was the finding that in only 4% of these urban courts were juveniles represented in more than 5% of delinquency cases.[59]

A similar survey, conducted in 1966 in cooperation with the President's Commission on Law Enforcement and Administration of Justice, provided a picture of juvenile court defense counsel participation which was virtually unchanged.[60] Taken together these two surveys suggested that not only was the frequency of defense counsel involvement dismally low in most big-city courts in the years immediately prior to the *Gault* decision, but that this condition was uniform throughout our major cities and was not improving.

The information submitted in response to our survey reveals, however, that in the years since *Gault,* there has been a marked increase in the frequency of juvenile defense counsel representation.

Judges were asked to estimate the frequency with which juveniles in their courts are currently represented by counsel. They were requested to make separate estimates for neglect and dependency cases, cases involving misconduct of a non-criminal

[55] A copy of the questionnaire is included in Appendix A.

[56] See Appendix A for a list of cities included in the survey.

[57] Skoler and Tenney, *supra* note 49, at 96.

[58] *Id.,* at 88–89.

[59] *Id.* at 81.

[60] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Deliquency and Youth Crime* (1967) Appendix B, Table 16, at 82.

TABLE 1.—Percent of Cases in Which Juvenile is Represented by Attorney at Adjudication (68 Cities)

| Case type | None | | Under 25 percent | | 25 percent–50 percent | | 50 percent–75 percent | | Over 75 percent | | 100 percent | | Number response | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Neglect and dependency | 0 | (0.0) | 25 | (36.8) | 9 | (13.2) | 3 | (4.4) | 25 | (36.8) | 5 | (7.4) | 1 | (1.5) | 68 | (100.0) |
| Non-criminal (PINS) | 0 | (0.0) | 25 | (36.8) | 7 | (10.3) | 3 | (4.4) | 26 | (38.2) | 7 | (10.3) | 0 | (0.0) | 68 | (100.0) |
| Delinquency (felony) | 0 | (0.0) | 3 | (4.4) | 16 | (23.5) | 7 | (10.3) | 34 | (50.0) | 8 | (11.8) | 0 | (0.0) | 68 | (100.0) |
| Delinquency (non-felony) | 0 | (0.0) | 15 | (22.1) | 16 | (23.5) | 5 | (7.4) | 25 | (36.8) | 7 | (10.3) | 0 | (0.0) | 68 | (100.0) |

nature (PINS cases), delinquency based upon a felony or serious crime. In sharp contrast to the pre-*Gault* data, our survey reveals that counsel representation of juveniles has increased dramatically. Before *Gault* only 4% of our major cities indicated that more than 50% of juveniles were represented in delinquency cases. The results of our survey reflect that in 61.8% of the responding cities, more than 75% of juveniles in delinquency cases based upon a felony or serious crime are represented by counsel and that in 47.1% of these cities, over 75% of juveniles are represented by counsel in delinquency cases based upon non-felonies or less serious crimes. In PINS and neglect cases, 48.5% and 44.2% of responding cities, respectively, report representation at a rate greater than 75% (Table 1). Of these categories, the greatest representation occurs, not surprisingly, in serious delinquency matters.

It should be noted, however, that full representation of juveniles is still not a reality in many of our large cities. More than one-third of the cities report that fewer than 25% of juveniles in neglect and PINS cases are represented. Even in delinquency cases, the rate of attorney representation in many cities is very low. In 27.9% of the cities, less than half the juveniles are represented in serious delinquency cases. In 45.6% of the cities, less than half of the juveniles are represented in less serious delinquencies.

Nevertheless, in spite of serious inadequacies which continue to exist in many courts, attorneys are clearly playing a far more prominent role in juvenile proceedings than they did just a few years ago.[61] As subsequent data reveal, this expansion of defense counsel presence has had a significant effect on the growth of attorney representation for the state.

2. *Scope and nature of attorney-prosecution.* The 1963 survey by Skoler and Tenney showed that the state was represented by an attorney-prosecutor on a regular basis in only about 15% of the Nation's metropolitan courts,[62] The 1967 Task Force Report concluded that prosecutors do not appear in most juvenile courts.[63]

Our data indicate that in most large city juvenile courts, lawyer-prosecutors are now regularly utilized. Of 68 responding cities, 64 (94.1%) replied that a lawyer as prosecutor or state's representative makes regular appearances in juvenile court. Of the responding cities, 19 (27.9%) stated that the use of lawyer-prosecutors began prior to 1960, 16 (23.5%) stated that lawyer-prosecutors were introduced between 1960 and 1967, and 29 (42.6%) indicated that the regular use of lawyer-

[61] A recent nationwide survey identified almost 350 legal services offices and private attorneys who have substantial juvenile law practices or are engaged in juvenile law test case litigation. Juvenile Justice Standards Project, Institute of Judicial Administration, New York University School of Law, *Juvenile Law Litigation Directory* (October, 1972).

[62] Skoler and Tenney, *supra* note 49, at 83.

[63] *Task Force Report: Juvenile Delinquency and Youth Crime, supra* note 60, at 5.



TABLE 2.—Years During Which Regular Use of Attorney-Prosecutor Began (68 Cities)

| Years | Number | Percent |
|---|---|---|
| Before 1960 | 19 | (27.9) |
| 1969–1967 | 16 | (23.5) |
| 1967–1972 | 29 | (42.6) |
| No attorney-prosecutor | 4 | (5.9) |
| Total | 68 | (99.9) |

prosecutors did not begin until after the Supreme Court decision in *Gault* (Table 2.)

Although six cities (8.8%) draw their juvenile court prosecutors from the staffs of the city solicitor or corporation counsel and thirteen cities (19.1%) utilize a special juvenile court prosecutor, the vast majority of cities (44 or 64.7%) employ the services of prosecutors from the office of local district or county attorneys (Table 3).

TABLE 3.—Type of Attorney-Prosecutor Used (68 Cities)

| Type | Number | Percent |
|---|---|---|
| District or county attorney | 44 | (64.7) |
| Corporation counsel | 3 | (4.4) |
| Special Juvenile Court prosecutor | 13 | (19.1) |
| City solicitor | 3 | (4.4) |
| Law student | 1 | (1.5) |
| No attorney-prosecutor | 4 | (5.9) |
| Total | 68 | (100.0) |

The foregoing data reveal a continuing movement during the past decade toward the regular use of legally trained prosecutors in juvenile court and that, spurred perhaps by developments since *Gault,* this process is nearly complete insofar as our large metropolitan courts are concerned. Of course, these data, alone, do not suggest the *extent* to which lawyer-prosecutors are involved in juvenile proceedings in the various cities. For example, in approximately one-third of the cities, appearances by lawyer-prosecutors are not automatic but rather upon the court's request (Table 4). The use of prosecutors in this group of cities, although characterized as "regular," may be relatively infrequent. Even when prosecutors "automatically" appear for the State, their involvement may well be limited to particular categories of proceedings and their role may well be circumscribed. However, the fact that

TABLE 4.—Appearances of Attorney-Prosecutor (68 Cities)

| Appears | Number | Percent |
|---|---|---|
| Automatically | 44 | (64.7) |
| At court's request | 19 | (27.9) |
| At discretion of prosecutor | 1 | (1.5) |
| No attorney-prosecutor | 4 | (5.9) |
| Total | 68 | (100.0) |

almost 95% of these courts regularly use prosecutors in some capacity represents an important shift in juvenile court practices.

Judges from jurisdictions where prosecutors do not automatically appear in juvenile court proceedings stated their criteria for requesting his participation. As shown in Table 5, the judges' responses tended to fall into three somewhat related categories. Most often cited are cases which are of an adversary nature—that is, those which are contested and/or where the juvenile is represented by counsel (37.2%). Cases which involve serious misconduct and include the possibility of severe court action are mentioned next (30.0%). Finally, cases involving complex issues of fact or law are seen as warranting the presence of a professional prosecutor (17.1%).

Judges were asked to estimate the percentage of cases where the state is represented at th adjudication hearing by a lawyer-prosecutor. As for defense counsel participation, judges were asked to make separate estimates for each of four major categories of cases. The results are contained in Table 6.

In delinquency matters based on felonies or serious crimes, 57.3% of the cities reported that attorney-prosecutors appear for the state in more than 75% of adjudication hearings. For less serious

TABLE 5.—Criteria for Appearance (20 Cities, 39 Judges) [a]

| Criteria | Number | Percent |
|---|---|---|
| Serious offense | 19 | (27.1) |
| Contested cases | 13 | (18.6) |
| Juvenile is represented | 13 | (18.6) |
| Complex issues | 12 | (17.1) |
| At prosecutor's request | 11 | (15.7) |
| Commitment possibility | 2 | (2.9) |
| Total | 70 [b] | (100.0) |

[a] Responses are reported from 39 judges in 20 jurisdictions where prosecutor does not automatically appear.

[b] Multiple criteria were indicated by some judges.

TABLE 6.—Percent of Cases in Which State is Represented by Attorney-Prosecutor at Adjudication (68 Cities)

| Case type | None | | Under 25 percent | | 50 percent–25 percent | | 50 percent–75 percent | | Over 75 percent | | 100 percent | | No Response | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Neglect and dependency | 5 | (7.4) | 24 | (35.3) | 5 | (7.4) | 1 | (1.5) | 29 | (42.6) | 3 | (4.4) | 1 | (1.5) | 68 | (100.0) |
| Non-criminal (PINS) | 5 | (7.4) | 36 | (52.9) | 4 | (5.9) | 2 | (2.9) | 18 | (26.5) | 3 | (4.4) | 0 | (0.0) | 68 | (100.0) |
| Delinquency (felony) | 4 | (5.9) | 13 | (19.1) | 7 | (10.3) | 5 | (7.4) | 36 | (52.9) | 3 | (4.4) | 0 | (0.0) | 68 | (100.0) |
| Delinquency (non-felony) | 4 | (5.9) | 21 | (30.9) | 12 | (17.6) | 3 | (4.4) | 25 | (36.8) | 3 | (4.4) | 0 | (0.0) | 68 | (100.0) |

delinquencies (non-felonies), only 41.2% of the cities report prosecutorial participation at a frequency greater than 75%. In PINS cases and those involving neglect and dependency, attorney-prosecutors appear in more than 75% of cases heard in 30.9% and 47%, respectively, of the 68 responding cities.

It should further be noted that with the exception of serious delinquencies, almost as many or more cities utilize prosecution in less than 25% of their cases as those who utilize it in more than 75%. Percentages of cities in which attorney-prosecutors appear in less than 25% of juvenile cases are as follows: serious delinquencies: 25.0%; less serious delinquencies: 36.8%; PINS cases: 60.3%; and neglect and dependency: 44.2%.

Comparing the data for defense counsel and prosecutorial participation, several conclusions emerge. First, attorney participation in urban juvenile courts, as both defense counsel and prosecutor, occurs most frequently in serious delinquencies, declines in less serious delinquencies, and is least prominent in PINS and neglect—the latter cases being least "adversary" in traditional juvenile law thinking. Second, in almost all case categories, more courts report a higher frequency of attorney representation of the juvenile than attorney representation of the State.[64] Similarly, fewer courts report less than 25% involvement of defense counsel than they do for prosecution. So, although levels of defense and prosecution involvement show similar variations according to case categories, overall, attorney representation of juveniles appears to exceed that of attorney representation of the State.

3. *The division of court functions and the prosecutor's role.* One section of the questionnaire mailed to juvenile court judges dealt with specific tasks within the court (*i.e.*, who reviews a petition for legal sufficiency, or who represents the state at detention hearings). The purpose of these questions was to help define the functions currently assumed by the lawyer-prosecutor. In addition to defining the "state of the art" at present, the data resulting from these questions are useful in suggesting possible alterations and expansion in the attorney-prosecutor's role.

The full set of tables (1–23) is presented in Appendix B. In the following section, the discussion will be confined to those questions which bear most heavily upon the prosecutor's role.

a. *The initial detention decision (Appendix B, Tables 2, 3).* The lawyer-prosecutor plays a very limited role, at present, in the detention decision. In none of the responding jurisdictions does the prosecutor review the detention decision. That review is carried out primarily by the judge (57.4%), the probation officer (23.5%), or is shared between the two (10.3%).[65] When detention hearings are held, the prosecutor represents the state in less than half of the hearings. In one-third of all jurisdictions, respondents indicated that "no one" represented the state at detention hearings.

b. *Preparation and review of the petition (Appendix B, Tables 5, 6).* The lawyer-prosecutor also currently plays a small role in the preparation of petitions in the cities responding to the survey. In only 15 of the 68 jurisdictions (22.1%) is this part of his responsibility. More frequently, the court clerk (27.9%) or the probation officer (33.8%) performs this task.

The prosecutor's expertise in the preparation of legally sufficient petitions could be utilized at one of two stages. Either he could draft the petition itself, or he could review it at a later stage. Approximately one-third of the jurisdictions (36.8%) specify that the lawyer-prosecutor reviews petitions for legal sufficiency (slightly higher when jurisdictions using non-attorney prosecutors, or dividing this task between prosecutor and probation officer are included). A large number of jurisdictions either failed to answer the question (8.8%) or indicated that "no one" reviews petitions (10.3%). In many jurisdictions, the review is carried out by the judge (16.2%), the probation officer (11.8%), or the clerk (10.3%). This suggests that frequently the person drafting the petition, *i.e.*, the clerk or probation officer, is also charged with examining it for legal sufficiency. A situation may exist in which these people have the legal expertise to make such an evaluation, but it is not an expertise normally required in those roles.

c. *Pretrial motions, probable cause hearings and consent decrees (Appendix B, Tables 8, 9, 14).* As might be expected, the lawyer-prosecutor plays an important role in the area of pre-trial motions, probable cause hearings, and consent decrees. In 76.5% of the surveyed cities, attorney-prosecutors argue motions and, in 73.5% and 42.6% of the cities, they also represent the state at probable cause hearings and in the arrangement of consent decrees.

In each of these areas, however, a substantial number of jurisdictions either failed to respond to the question or indicated that "no one" performed the function. Approximately 14% of the jurisdictions queried about motions and 16% of those queried about probable cause hearings indicated "no one", or more frequently, made no response. It may be assumed, therefore, that in at least some of these jurisdictions, pre-trial motions and probable cause hearings occur seldom or not at all. Indeed, the high percentage of jurisdictions indicating representation of the state at motions and probable cause hearings by lawyer-prosecutors is no evidence of the frequency with which those actually occur. Empirical study of the Boston Juvenile Court revealed that few pre-trial motions were made during 1971.

In the area of consent decrees, almost one-half of the sample (44.2%) failed to respond to the question or indicated that "no one" represented the petitioner in such actions. It may be that consent decrees, or negotiated settlements, are not yet commonly employed.

d. *Adjudication and disposition (Appendix B, Tables 17, 18, 20).* Questions concerning the adjudicatory and disposition stages of juvenile proceedings revealed a diminishing involvement on the part of the prosecutor as the case develops. As we have seen above, in the vast majority of cities surveyed, a lawyer-prosecutor represents the petitioner at the adjudicatory hearing. The lawyer-prosecutor's presence at the disposition stage decreases markedly (in 48.5% of the cities he represents the petitioner and in another 13.2% he shares this function with the probation officer). In fact, in almost one-fifth of the jurisdictions (19.1%) no one represents the petitioner at the disposition stage. The lawyer-prosecutor's role diminishes even further when it comes to recommending dispositions to the judge. In a small number of jurisdictions (8.8%), the prosecutor, alone, recommends disposition. In another one-quarter, the prosecutor and probation officer share the function; however, in the vast majority of jurisdictions

[64] The only exception is in the category of neglect cases where 44.2% of the cities report 75%–100% representation of juveniles but 47% report 75%–100% representation of the state.

[65] The discussion in this section will touch upon certain aspects of the responses only. For a complete breakdown of the responses, the reader is directed to Appendix B.

TABLE 7.—Should Attorney-Prosecutors Play a More Extensive Role in Your Court Than They Do Now? (137 Judges)

| Response | Number | Percent |
|---|---|---|
| More | 46 | (33.5) |
| Less | 2 | (1.5) |
| Same | 87 | (63.5) |
| No response | 2 | (1.5) |
| Total | 137 | (100.0) |

(60.3%), it is the probation officer alone who recommends dispositions to the judge.

4. *The views of juvenile court judges towards an expanded role for prosecutor.* Juvenile court judges were asked two attitudinal questions. Responses to the first of these ("In your opinion, should lawyer-prosecutors play a more extensive role than they presently do in your court?") are reported in Table 7.

As indicated, almost two-thirds of the judges were satisfied with the extent of lawyer-prosecution in their courts while the remaining one-third expressed a preference for more extensive participation. Only two judges in the entire sample felt that the role of professional prosecution should be reduced.

The judges' responses were further examined according to the existing amount of professional prosecution in their various cities and in terms of the current balance between defense counsel participation and lawyer-prosecutor participation. These analyses were performed in order to determine whether judges' attitudes concerning the need for greater prosecutorial participation in their courts are associated with current levels of prosecutorial participation, as an independent factor, and/or by the current amount of professional prosecution viewed in relation to existing levels of defense attorney participation. In other words, are judges inclined to view the expanded use of attorney-prosecutors in juvenile court proceedings in terms of a unilateral need or in terms of the establishment or maintenance of adversary balance.

The 68 survey cities were divided in two groups according to whether attorney-prosecutors appear for the state in less or more than one-half of those cases heard. As reported in Table 8, in 33 cities, attorney-prosecutors participate in fewer than 50% of cases for which an adjudication hearing is held, while in 35 cities the frequency of participation exceeds 50%.

As shown in Table 8, the amount of professional prosecutorial involvement in the various cities appears to have little or no bearing on judges' views concerning the expansion of the attorney-prosecutor's role. Judges who serve in cities having a "low" frequency of attorney representation of the state (less than 50% of cases heard) are no more likely to favor a more extensive role for the attorney-prosecutor than judges in cities with a "high" level of prosecutorial participation. In fact, the existing level of prosecution in the various cities, by itself, appears to have little bearing on whether judges in those cities favor a change in the role of prosecution in their courts (Table 8).

Cities were also divided in terms of the relationship between the frequency of defense counsel

TABLE 8.—Should Attorney-Prosecutor Play a More Extensive Role? (137 Judges)

| Response | Judges in courts where prosecutor appears in 50 percent or more of all cases heard (33, or 48.5 percent, of 68 cities) [a] | | Judges in courts where prosecutor appears in less than 50 percent of all cases heard (35, or 51.5 percent, of 68 cities) [a] | | Total | |
|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent |
| More | 27 | (32.5) | 19 | (35.2) | 46 | (33.5) |
| Less | 1 | (1.2) | 1 | (1.9) | 2 | (1.5) |
| Same | 54 | (65.1) | 33 | (61.0) | 87 | (63.5) |
| No response | 1 | (1.2) | 1 | (1.9) | 2 | (1.5) |
| Total | 83 | (100.0) | 54 | (100.0) | 137 | (100.0) |

[a] Based upon estimates provided by 137 juvenile court judges in 68 cities of frequency of appearance by attorney-prosecutors in four case categories: serious delinquency (felony), less serious delinquency (non-felony), PINS, and neglect/dependency. Case categories were accorded equal value and averaged for each city.



TABLE 9.—Should Attorney-Prosecutor Play a More Extensive Role? (137 Judges)

| Response | Judges in courts with balanced defense and prosecution (31 or 45.6 percent, of 68 cities) [a] | | Judges in courts with greater participation by prosecutor than by defense (12, or 17.6 percent, of 68 cities) [a] | | Judges in courts with greater participation by defense than by prosecutor (25, or 36.8 percent, of 68 cities) [a] | | Total | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| More | 16 | (22.5) | 8 | (42.1) | 22 | (46.8) | 46 | (33.5) |
| Less | 1 | (1.4) | 0 | (0.0) | 1 | (2.1) | 2 | (1.5) |
| Same | 53 | (74.7) | 11 | (57.9) | 23 | (48.9) | 87 | (63.5) |
| No response | 1 | (1.4) | 0 | (0.0) | 1 | (2.1) | 2 | (1.5) |
| Total | 71 | (100.0) | 19 | (100.0) | 47 | (99.9) | 137 | (100.0) |

[a] Based upon estimates provided by 137 juvenile court judges in 68 cities of frequency of appearance by attorney-prosecutors and defense attorneys in four case categories: serious delinquency (felony), less serious delinquency (non-felony), PINS, and neglect/dependency. Case categories were accorded equal value and averaged for attorney-prosecutors and defense counsel in each city. Where the average frequency of appearance for both prosecutors and defense counsel in a particular city fell within the same quadrant (for example, 0% to 25% or 50% to 75%), that city's juvenile courts were regarded as "balanced."

appearances at adjudication and that of a professional prosecutor. Cities in which both defense counsel and professional prosecutors appeared in the same frequency categories (*e.g.*, under 25%, 25%-50%, 50%-75% and over 75%) are, for the purposes of this analysis, characterized as having adversary balance.

As reported in Table 9, 31 (45.6%) of the 68 survey cities reveal a general balance between the frequency of attorney representation of the child and the state at adjudication hearings. Twelve cities (17.6%) show an imbalance in participation in favor of the prosecution, while in 25 cities (36.8%) attorney representation of the juvenile exceeds that of the state.

Whereas judges' attitudes toward extending the role of prosecution were not materially affected by the current amount of professional prosecution in their courts, alone, Table 9 shows substantial differences in judges' responses based upon whether or not there is a balance in the participation levels of prosecution and defense. Judges whose courts exhibited balanced participation by defense and prosecution were content to maintain present levels of prosecution regardless of the proportion of cases in which prosecution participated in their courts. Only 22.5% of judges in balanced systems indicated a preference for increased prosecution, whereas 42.1% and 46.8% of judges in courts balanced in favor of prosecution and defense, respectively, favored greater prosecutorial participation.

These data suggest that judges were far more likely to view the role of prosecution in relation to the amount of existing defense counsel participation than they are to view the broadened participation of professional prosecution as a worthwhile end in itself.

The second attitudinal question read as follows: "Are you in favor of having lawyer-prosecutors represent the state in *all* juvenile cases?" A majority of the judges (55.5%) felt that lawyer-prosecutors *should* represent the state in all juvenile cases (Table 10).

Those who dissented from that view (43.1%) most frequently cited minor offenses, admitted offenses, truancy, dependency, incorrigibility, and traffic offenses as case types *not* requiring the services of a lawyer-prosecutor.

A strong relationship appears to be present between the existing degree of professional prosecutorial participation in the juvenile court caseload

TABLE 10.—Should Attorney-Prosecutor Represent the State in ALL Juvenile Cases? (137 Judges)

| Response | Number | Percent |
|---|---|---|
| Yes | 76 | (55.5) |
| No | 59 | (43.1) |
| No response | 2 | (1.4) |
| Total | 137 | (100.0) |

TABLE 11.—Should Attorney-Prosecutor Represent the State in ALL Juvenile Cases? (137 Judges)

| Response | Judges in courts where prosecutor appears in 50 percent or more of all cases heard (33, or 48.5 percent, of 68 cities) [a] | | Judges in courts where prosecutor appears in less than 50 percent of all cases heard (35, or 51.5 percent, of 68 cities) [a] | | Total | |
|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent |
| Yes | 66 | (79.5) | 10 | (18.5) | 76 | (55.5) |
| No | 16 | (19.3) | 43 | (79.6) | 59 | (43.1) |
| No response | 1 | (1.2) | 1 | (1.9) | 2 | (1.4) |
| Total | 83 | (100.0) | 54 | (100.0) | 137 | (100.0) |

[a] Based upon estimates provided by 137 juvenile court judges in 68 cities of frequency of appearance by attorney-prosecutors in four case categories: serious delinquency (felony), less serious delinquency (non-felony), PINS, and neglect/dependency. Case categories were accorded equal value and averaged for each city.

of a city and the views of juvenile court judges in those cities regarding the desirability of having attorney representation of the state in all juvenile cases. Judges in jurisdictions where prosecution is very active approve its use in all cases at a rate of 79.5%. On the other hand, only 18.5% of judges in jurisdictions which have relatively inactive prosecution (less than 50% of the court's caseload) favor the use of professional prosecutors in all cases (Table 11).

It would appear, therefore, that where prosecutors already participate heavily in a jurisdiction's juvenile caseload, there is substantial support among judges for the most inclusive role for professional prosecution. Resistance to a broadly inclusive role for professional prosecution is most apparent in jurisdictions which, presumably, have the least experience with professional prosecution in their juvenile courts.

Support for broad participation by prosecutors is also found among judges whose jurisdictions display a relative balance between defense and prosecution. Of these judges, more than two-thirds (67.6%) approve the use of an attorney-prosecutor in all cases which are heard in their courts. Judges from jurisdictions which do not now have a balanced adversary system tend to be more resistant to the notion of extending professional prosecution to all cases which are heard (Table 12).

The data elicited from judges in response to the two previous questions (Should attorney-prosecutors play a more extensive role in your court than they do now?; Should attorney-prosecutors represent the state in all juvenile cases?) show differences requiring some additional analysis. For example, whereas only about one-third of the sample favored extending the role of prosecution, more than one-half approved the use of attorney-prosecutors in all juvenile cases. Further, whereas under one-quarter of the judges in courts having an adversary balance recommended an extension of the prosecutor's role, two-thirds of these same judges approved his participation in all cases.

TABLE 12.—Should Attorney-Prosecutor Represent the State in ALL Juvenile Cases? (137 Judges)

| Response | Judges in courts with balanced defense and prosecution (31, or 45.6 percent, of 68 cities) [a] | | Judges in courts with greater participation by prosecutors than by defense (12 or 17.6 percent, of 68 cities) [a] | | Judges in courts with greater participation by prosecutors than by defense (25, or 36.8 percent, of 68 cities) [a] | | Total | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Yes | 48 | (67.6) | 9 | (47.4) | 19 | (40.4) | 76 | (55.5) |
| No | 22 | (31.0) | 10 | (52.6) | 27 | (57.4) | 59 | (43.1) |
| No response | 1 | (1.4) | 0 | (0.0) | 1 | (2.2) | 2 | (1.4) |
| Total | 71 | (100.0) | 19 | (100.0) | 47 | (100.0) | 137 | (100.0) |

[a] Based upon estimates provided by 137 juvenile court judges in 68 cities of frequency of appearance by attorney-prosecutors and defense attorneys in four case categories: serious delinquency (felony), less serious delinquency (non-felony), PINS, and neglect/dependency. Case categories were accorded equal value and averaged for attorney-prosecutors and defense counsel in each city. Where the average frequency of appearance for both prosecutors and defense counsel in a particular city fell within the same quarter (for example, 0% to 25% or 50% to 75%), that city's juvenile courts were regarded as "balanced."



In considering this possible disparity in judicial attitude, two considerations must be kept in mind. First of all, many judges, otherwise favorably disposed towards prosecution, may have responded that the role need not be expanded in their court because prosecutors already appear in all types of cases (*e.g.*, delinquency, neglect, dependency). Secondly, although many judges may prefer having prosecutors appear in all types of cases, they may also feel that prosecutors should not become more actively involved in certain phases of the process, such as the dispositional phase. Therefore, they may approve a prosecutor's participation in all cases, but not an "extension of the prosecutor's role" into other phases.

5. *Narrative comments of judges responding to survey.* The judges surveyed were requested to include their comments concerning the use of lawyer-prosecutors in juvenile proceedings and to note the observed or anticipated consequences of their use. Of the judges who returned completed questionnaires, 48 submitted narrative answers to this question. Five of these were not responsive to the question and have been excluded from the sample. It should be further noted that the 43 judges, covering 32 cities, may not be wholly representative of the 137 judges who returned completed questionnaires.

Of primary interest is that the 43 judges were unanimous in their support of the use of lawyer-prosecutors in juvenile court proceedings. Although seven judges expressed some reservations, not a single judge could be classified as opposed. Moreover, while a number of judges referred to specific needs for professional prosecution such as in preparing and screening petitions, the vast majority of responding judges cited the general need to establish and maintain adversary balance in their courts. This large group of respondents was particularly mindful of the increased burdens that increased defense counsel participation have placed on them and other court personnel. Their support for professional prosecution derived from an often expressed recognition that the very nature of juvenile proceedings has changed since *Gault*. Whereas in previous years, the absence of professional prosecution could be viewed as a prominent indicator of the juvenile courts "non-punitive" approach and its presence as an unwarranted intrusion on the court's informal social service orientation, these judges are now concerned that they can not properly fulfill their responsibilities in today's juvenile court *without* the services of an attorney representative for the state. Finally, support for professional prosecution appears to cross philosophical divisions and is found among traditionalists and modernists.

Those responding judges who favor the trend toward increased formality in the adjudication of juvenile offenses tend to regard professional prosecution as an important element in carrying forward the goals of the *Gault* decision. The statement of a southern city judge is typical of this view:

> The *Gault* decision to me was like a breath of fresh air blowing through the stale odor of a courtroom. If taken in its proper light, the spirit of justice can be enhanced. . . . However, the lawyer-prosecutor is a must to carry out the necessary constitutional safeguards the juvenile is entitled to under current Supreme Court decisions.

Another, much smaller group of judges who view recent developments in juvenile law as diminishing the court's capacity to address itself to the best interests of its client population nevertheless concede the need for professional prosecutors as a necessary complement to expanded defense counsel participation. Although they decry the perceived demise of the traditional juvenile court model, there is a practical recognition by these judges that, for better or worse, the juvenile justice process has taken on many of the characteristics of the criminal courts and that such a system requires professional prosecution. This view is reflected in the comment of a midwestern judge:

> The *Gault* and *Kent* decisions have created a junior criminal court. The old juvenile court philosophy

has been killed. Prosecutors are needed as in all adult criminal cases.

That the widely shared acceptance of professional prosecution in juvenile courts may override basic differences in judicial philosophy is further highlighted by the examples of two California judges who indicate their approval of attorney-prosecutors for quite divergent reasons. One judge favors strong prosecution as an important ingredient in the evolvement of a non-permissive criminal court model which he favors for the adjudication of juvenile matters. He stated:

> I personally think of my court as a criminal court for the trial of persons under 18. . . . While I personally favor complete adversary proceedings with all constitutional safeguards for minors just as for adults, I disapprove of the philosophic rhetoric used to justify wrist-slapping type punishment. I say punishment advisedly because I don't believe in what is now laughingly called "rehabilitation."

On the other hand, another California judge supported the heavy use of attorney-prosecutors on the theory that "many prosecutors are less punitive or more realistic than some probation officers."

More than half of the judges who returned comments related their support of lawyer-prosecutors to the need to maintain a balanced adversary setting at adjudication. There is a prevading sentiment among this group that *Gault*-related defense counsel requirements have generated pressures on the adjudicatory process which can only be met successfully by a qualified state's representative. In the opinion of many of the responding judges, the absence of such a figure has resulted in a distortion of the roles of other juvenile court personnel and has placed in question the very fairness of juvenile court proceedings. Primary among their concerns is the harmful effect of an unbalanced forum which may compel the judge to assume the responsibilities of prosecution. As one judge put it:

> I find that lawyer-prosecutors are unequivocally essential to a juvenile proceeding. Only recently when there were none, the judge was required to be the prosecutor as well as the judge. This untenable position violated the rights of all the parties.

Another New York judge remarked as follows:

> It is unthinkable that the complainant's case should not be presented by an attorney—This was the case in most delinquency proceedings up to a few years ago. It caused the judge to act as prosecutor.[66]

A judge in a court which seldom utilizes prosecutors and who feels that more are needed conceded that "otherwise the judge conducts the hearing from the standpoint of the prosecution." Another judge, in urging the assignment of a full-time prosecutor to his court, stated:

> With a lawyer-prosecutor presenting the evidence at the adjudication hearing we have found that justice is not only done, but it appears to be done, in that the judge does not have to be the prosecutor nor does the probation officer who is supposed to be the friend of the child.

These comments give added substance to the view that emerging due process requirements and more aggressive defense counsel participation have caused many judges to reexamine their role in juvenile proceedings. It is certainly evident that many judges favor a broader distribution of responsibilities at adjudication and are showing increasing discomfort with the need to supplement inadequate prosecution. As one judge candidly acknowledged:

> One *cannot* be a fair and impartial judge and conduct an examination of the witnesses like a prosecutor. . . . No man can wear two hats.

Similarly, judges voiced concern that the work of other court personnel such as probation officers may be damaged if they are called upon to present the state's case against juveniles at adjudication hearings. The following comments are typical of this view:

> I also dislike having a probation officer present a case against a child who quite probably will be placed on probation. It places the officer in a conflicting position.

[66] Although New York judges greatly favored the use of lawyer-prosecutors, they were highly critical of the services currently being provided by the Corporation Counsel. Their complaints centered on inadequate staff and lack of preparation. In effect, they argued that while a step in the right direction, existing prosecutorial services have not fully achieved a balanced adversary system.



> . . . a probation officer is hardly trained to carry the burden. The court also feels that the probation officer should not wear two hats—the presenter of the evidence and the counselor to the minor.

6. *Summary of national survey.* In summary, the results of the National Survey can be divided as follows:

a. *Defense counsel involvement in juvenile proceedings.* Studies completed in the years prior to the *Gault* decision indicate that juveniles were represented by counsel in only a small percentage of cases. This low frequency of defense counsel participation was uniformly spread throughout our major cities. In marked contrast to this pre-*Gault* situation, our data reveal a dramatic increase in representation. For example, in delinquency cases based upon a felony or serious crime, juveniles are now represented from 75-100% of the time in a majority of the cities we surveyed. As might be expected, representation is most frequent in these cases and less so in non-criminal matters (PINS), neglect and dependency cases, or less serious delinquencies. There also exsits variation between the major cities. We may conclude that attorneys are playing a far more prominent role than before, although full representation is by no means a reality.

b. *Attorney representation of the State.* Responses to the survey indicate that in most of our large cities attorney-prosecutors now appear regularly. Some cities utilized attorney-prosecutors prior to 1960 and others began the practice between 1960 and 1967. A larger group of cities, stimulated perhaps by changes related to *Gault,* added attorney-prosecutors between 1967 and 1972. Most prosecutors are drawn from the office of the local district or county attorney.

In the majority of cities, the attorney-prosecutor's appearance is characterized as automatic. Where appearance is at the court's request, these involve cases of adversary nature (*i.e.,* contested cases or those in which the juvenile is represented by counsel). Other criteria included the cases of a serious nature or those involving complex issues of fact or law.

As with defense counsel, the frequency of the attorney-prosecutor's presence varies with the type of case. When serious delinquencies are considered, in a majority of cities, attorney-prosecutors appear in a high percentage of cases. The frequency is diminished in less serious delinquencies, non-criminal matters (PINS), and neglect and dependency cases. Although levels of defense and prosecutor involvement show similar variation by case type, overall, attorney representation of the juvenile appears to exceed that of the state.

An examination of the attorney-prosecutor's participation in specific court functions reveals that, by and large, his role is a restricted one. He rarely participates in initial detention decisions or their review nor is his lawyer's expertise often utilized in the preparation or review of petitions. He represents the state in pre-trial motions, probable cause hearings, consent decrees (when they occur, which may not be often) and, of course, at adjudication hearings. However, the attorney-prosecutor's presence is diminished at the disposition stage and only rarely is he responsible for recommending dispositions to the judge.

c. *Judges' views of the expanded use of attorney-prosecutors in juvenile court.* Judges were asked, "In your opinion, should lawyer-prosecutors play a more extensive role than they presently do in your court?" A majority of the judges indicated satisfaction with the current extent of attorney-prosecution in their courts. When the responses were divided by the frequency of attorney-prosecution in the various cities, this variable seemed unrelated to the judges' answers. Another variable considered was the absence or presence of adversary balance (*i.e.,* equal attorney representation of the juvenile and the state). Where balance exists, judges were more satisfied with the present extent of the prosecutor's role than in unbalanced systems. These data suggest that judges were far more likely to view the role of prosecution in relation to the amount of existing defense counsel participation than in terms of the present level of prosecution itself.

A second question asked, "Are you in favor of having lawyer-prosecutors represent the State in *all*

juvenile cases?" A majority of the judges answered affirmatively, thus endorsing the idea of full participation. Judges whose cities currently have heavy prosecutor participation favored full participation to a far greater extent than those from cities with less active prosecution. Support for broad participation was also found, to a much higher degree, among judges whose systems evidenced adversary balance. It would appear that where judges already have extensive experience with attorney-prosecution they are much more comfortable with involving the prosecutor in all juvenile cases.

On the one hand, we have a majority of judges satisfied with the current extent of the prosecutor's role, and on the other, a majority endorsing full participation by attorney-prosecutors in all juvenile cases. One possible explanation is that judges may endorse participation in all cases as an idea but feel that in their court it has already been achieved and thus requires no extension of the prosecutor's role. Another possibility is that judges favor participation in the full range of juvenile court cases but not an extension of the prosecutor's role within each case (*i.e.*, pre-trial screening or recommendations for disposition).

The judges surveyed were encouraged to include extended comments concerning the use of attorney-prosecutors in the juvenile court. The judges who returned narrative comments were unanimous in their support of the use of attorney-prosecutors. In the vast majority of responses, this support could be related to the increase in attorney representation of juveniles since *Gault*. While a number of judges raised specific needs for professional prosecution such as in preparing or screening petitions, most cited the need to maintain adversary balance in their court. And although there were philosophical differences among judges with reference to *Gault*, the recognition of the need for attorney-prosecutors in the juvenile court setting seemed to override any basic differences in judicial philosophy.





# THE IDENTIFICATION OF PRELIMINARY OBJECTIVES FOR PROSECUTION IN THE JUVENILE COURTS

While the national survey and other material which has been reviewed does reflect a trend toward the expanded use of professionally trained prosecutors in juvenile court proceedings, within the trend, there appears to be no coherent development of a role or set of functions, objectives, and priorities for juvenile prosecutors.

In the opinion of many, a juvenile court prosecutor should undoubtedly have an orientation which is different than that of a traditional prosecutor.[1] For example, Judge Whitlatch interprets Ohio law to require that the juvenile court prosecutor not really "prosecute," but rather "assist the court to obtain a disposition of the case which is in the best interest of the child."[2] And Professor Fox, in his model legislative proposal, attempted to draft a scheme based upon the notion that the juvenile court prosecutor should not be "conviction minded, "but that the child's interest should be an important consideration governing his conduct.[3]

In one state, Arkansas, an effort has been by statute to formulate objectives for juvenile court prosecutors:

> Duty of prosecuting attorneys. It shall be the duty of the prosecuting attorneys of this State and their deputies when called upon by the chief probation officer or by the juvenile court to aid and counsel in any case before the juvenile court, but,said proceedings shall at no time assume the form of an adversary suit, or a legal combat between lawyers. On the contrary, it is understood that such public officer appears in such cases as a defender on behalf of the child for its best interest and to aid in the redemption of such child from delinquency and its restoration to citizenship, as well as he appears on behalf of the State and for the welfare of the community.[4]

Also in an effort to prevent the juvenile court from turning into a carbon copy of the adult court, the President's Crime Commission in 1967 suggested the possibility that district attorneys not be given the responsibility for prosecuting in the juvenile courts:

> To the extent that the presence of counsel for the child (or the parent) in contested adjudicatory proceedings in based upon or would result in a closer approximation of the adversary system, the presence of counsel on the other side may be necessary to achieve the virtue of that system. Using the public prosecutor may be too great a departure from the spirit of the juvenile court. But experience may show some legal representative of the public, perhaps the corporation counsel or a lawyer from the welfare department, to be desirable in many cases.[5]

As the national survey indicates, however, most jurisdictions now utilizing attorney-prosecutors are using staff from district or county attorneys offices. Further, interviews by project staff with judges in one jurisdiction suggested that perhaps this should

[1] See, *e.g.*, Fox, *Prosecutors in the Juvenile Court: A Statutory Prosecutor*, 8 Harv. J. Leg. 33 (1970); NCCD *Model Rules for Juvenile Courts*, Comment to Rule 24 (1969); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1967) at 34 (hereinafter cited as *Task Force Report*). *But see* Rubin and Smith, *The Future of the Juvenile Court: Implications for Correctional Manpower and Training* (1968) at 15–16 accepting the district attorney in this role.

[2] Whitlatch, *The Gault Decision: Its Effect on the Office of the Prosecuting Attorney*, 41 Ohio Bar J. 41 (1968).

[3] Fox, *supra* note 1.

[4] Ark. Stats. Ann., Tit. 45, § 45–217 (1968).

[5] *Task Force Report, supra* note 1, at 34.

be the case for serious delinquency matters when competent counsel represents the juvenile. The judges in this jurisdiction stated that city attorneys, for example, are simply not equipped to prosecute serious criminal-type cases. They argued further that the closer the juvenile justice system moves toward an adversary due process model, the more traditional prosecutor-type skills will be needed by the government's representative in juvenile court.

Given this potential conflict in role requirements and given the lack of conceptional development of objectives for prosecution in the juvenile court, the Center found it necessary to formulate some general principles which might govern a juvenile prosecutor's role and which might serve as a basis both for assessing current efforts and for structuring improved programs in the future. These principles, which we have used as a starting point for our examination of the system of prosecution in the Boston Juvenile Court, have been drawn primarily from our review of statutes, model laws and standards, court decisions, court rules, and scholarly writings. The formulation is a tentative one, which is to be tested on a continuing basis as we learn more about prosecution within the juvenile justice process.

This preliminary formulation of general principles or objectives for juvenile prosecution is as follows:

1. The prosecutor is an *advocate* of the State's interest in juvenile court. The "State's interest" is complex and multi-valued, and may vary with the type of proceeding and the nature of the particular case. Foremost, it includes: (a) protection of the community from the danger of harmful conduct by the restraint and rehabilitation of juvenile offenders; and (b) concern, shared by all juvenile justice system personnel, as *parens patriae,* with promotion of the best interests of juveniles.

2. To the extent that the State's interest in community protection may conflict with its interest as *parens patriae* in promoting the well being of a particular child, the prosecutor will be required to balance the interests based upon the nature and facts of the particular case. For example, to the extent that interests have to be balanced in given cases, the balance should be struck in favor of community protection when the juvenile presents a substantial threat to public safety, but of promoting the well-being of a child for most other types of offenses.

3. In his role as *advocate,* the prosecutor has responsibility to ensure adequate preparation and presentation of the State's case, from the stage of police investigation through post-disposition proceedings.

4. Commitment to the rehabilitative philosophy of the juvenile court bars the use of certain penal objectives to achieve community security and protection. Retribution and general deterrence, for example, are not proper goals of juvenile court proceedings.

5. Since unnecessary exposure to juvenile court proceedings and to formal labeling and treatment in the juvenile court process is often counterproductive to many juveniles, the prosecutor's duty to promote both the community's long-term security and the best interest of particular juveniles requires him to encourage and stimulate early diversion of cases from the court and to strive for imposing the least restrictive alternative available in dealing with a juvenile throughout the juvenile justice process. It also requires that a prosecutor proceed only on legally sufficient complaints or petitions even though a juvenile may require treatment or other type of assistance. Responsibility in this area is exercised by such means as issuing enforcement guidelines to the police, screening out deficient, insufficient and trivial complaints, and actively encouraging and participating in efforts to refer juveniles to other agencies or reach agreement on other acceptable dispositions.

6. The prosecutor shares the responsibility with other juvenile court personnel to ensure that rehabilitative measures undertaken as alternatives to court handling or pursuant to court-ordered disposition are actually carried out, and that facilities and services for treatment and detention meet proper standards of quality.

7. The prosecutor has a duty to *seek justice* in juvenile court, by insisting upon fair and lawful procedures. This entails the responsibility to ensure, for example, that baseless prosecutions are not brought, that all juveniles receive fair and equal treatment, that liberal discovery of the State's case is available to defense counsel, that exculpatory evidence is made available to the defense, and that excessively harsh dispositions are not sought. It also entails the responsibility to oversee police investigative behavior to ensure its compliance with the law.

In the review and analysis of prosecution in the Boston Juvenile Court that follows, these principles were used in assessing prosecutorial functions performance at various stages of the juvenile justice process. These stages include:

1. *Pre-court stages*
   a. Relationship with police
   b. Preliminary detention or bail decisions
2. *Court stages—pre-adjudication and adjudication*
   a. Relationship with intake staff
   b. Complaints/petitions
   c. Pre-adjudication diversion or resolution of cases
   d. Investigation and preparation of cases
   e. Motions and discovery
   f. Presentation of state's case
3. *Court stages—post-adjudication*
   a. Disposition
   b. Appeals and collateral attack

CHAPTER V

# PROSECUTION IN THE BOSTON JUVENILE COURT

## A. HISTORY OF THE BOSTON JUVENILE COURT

Massachusetts first enacted comprehensive juvenile court legislation in 1906,[1] seven years after the initial juvenile court was established in Illinois in 1899.[2] Other legislation relating to the handling of juvenile cases in Massachusetts was already in effect before this time, however. For example, an 1870 law provided that in Suffolk County (Boston), cases against children were to be heard "separate from the general and ordinary criminal business" of the courts and were not to be considered criminal.[3] This was later extended to give separate trials to all children in Massachusetts[4] and to provide for a separate "session for juvenile offenders" with its own docket and court record.[5]

The 1906 Delinquent Children Act articulated the *parens patriae* concept which the Boston Juvenile Court was to follow:

> This act shall be *liberally construed* to the end that the care, custody and discipline of the children brought before the court shall *approximate as nearly as possible that which they should receive from their parents* and that, as far as practicable, *they shall be treated, not as criminals, but as children in need of aid, encouragement, and guidance.* Proceedings against children under this act shall not be deemed to be criminal proceedings.[6] [emphasis added]

In turn, the Boston Juvenile Court Act established a separate court for the handling solely of cases against children. Prior to this Act, Boston juvenile cases were heard in separate sessions of the Boston Municipal Court. The Boston Juvenile Court Act called for the appointment by the Governor of "one justice and two special justices," as well as a court clerk.[7] The court was given broad powers governing its own operation: it was to appoint two paid probation officers and "as many deputy probation officers, without salary as . . advisable" to make "investigations of cases of children against whom complaints have been made." The court could also "continue from time to time the hearing in respect to any child," thus permitting investigations to be made. It was further authorized to make its own procedural rules; to hear cases either in chambers or in special juvenile court sitting rooms; and to release a child either upon the written promise of the parents or *in loco parentis* that the child would appear in court, or on bail if otherwise eligible, "in order to avoid the incarceration of the child."[8]

The Boston Juvenile Court was to have the same jurisdiction as the Boston Municipal Court, which included the business sections of the city and the periphery.[9] A separate juvenile court was established only for Boston; in other areas, the existing municipal or district courts, the lowest level trial courts in Massachusetts, were allowed to retain their jurisdiction over juvenile cases.[10] The juvenile sessions and the Boston Juvenile Court were to have jurisdiction over:

> any boy or girl between the ages of seven and seventeen years, who violates any city ordinance or town by-law, or commits an offense not punishable by death or by life imprisonment.[11]

This was amended by statute in 1960 to give the juvenile courts jurisdiction over all juvenile cases by eliminating the exception for crimes carrying a sentence of death or life imprisonment.[12]

The degree of formality and technicality of Boston Juvenile Court operations has varied over the years. The first Justice of the Boston Juvenile Court was Harvey Humphrey Baker, an 1894 graduate of Harvard Law School. Before coming to the Boston Juvenile Court, Judge Baker worked for a year as clerk of the Police Court of Brookline, and from 1895 to 1906 he served as a special justice of that court. Concurrently, Judge Baker began a private law practice when he graduated from law school and continued such practice up to his death.[13] While early accounts of the court are vague, it is known that Judge Baker conducted his hearings in a very informal, paternal manner.[14] This was because of the prevailing *parens patriae* concept of the juvenile court, with its emphasis on individualized treatment of the particular child rather than on adjudicatory fact-finding. Throughout his tenure in the Boston Juvenile Court, Judge Baker was apparently concerned with the background and circumstances of the child and with widening the dispositional alternatives for him; correspondingly, less emphasis was placed on the legal sufficiency of facts which would lead to a legal determination of "guilt."[15]

Upon his death in 1915, Judge Baker was succeeded by Frederick Pickering Cabot as Presiding Justice. His conduct of the court, as reported in *One Thousand Delinquents,* a study by Sheldon and Eleanor Glueck of the Boston Juvenile Court's clients, was as follows:

> Generally speaking, the procedure employed by the Judge was in the beginning much more technical and legally formal than in later years. Nor was the Judge originally concerned with the personality difficulties and social background of his youthful clients as he was during the last five or six years of his service [1915–1932]. When a lawyer was present at a hearing, the court as a courtesy to the attorney "proceeded along lines of more or less cross-examination." Later in his experience, Judge Cabot would ask counsel what procedure he wished him to apply, and whether he desired to question the boy. During his last ten years the Judge stressed the informal features of the hearing. He would take the initiative in the examination and when he was through he would inquire of counsel whether he had anything to ask the juvenile.[16]

Judge Cabot was also instrumental in the establishment of a child guidance clinic for the Boston Juvenile Court, which was a goal of his predecessor, Judge Baker. In a report of the first five years of the operations of the Boston Juvenile Court, Judge Baker said that:

> A clinic for the intensive study of baffling cases which fail to respond to ordinary probationary treatment would enhance the efficiency of the court more than any other accessory.[17]

As a result, the Judge Baker Foundation, as the court clinic is known, was organized in 1917. It began operation under the direction of Dr. August Bronner and Dr. William Healey who, in 1909, had organized the Juvenile Psychopathic Institute of Chicago, this country's first juvenile court clinic.[18]

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[1] Two acts were passed in 1906: "An Act Relative to Delinquent Children," ch. 413 of the Mass. Acts of 1906, and "An Act to Establish the Boston Juvenile Court," ch. 489 of the Mass. Acts of 1906, effective September 1, 1906.

[2] Act of April 21, 1899, Ill. Laws 131–132, § 1 (1899).

[3] Mass. Acts of 1870, ch. 359, § 7.

[4] Mass. Acts of 1872, ch. 358.

[5] Mass. Acts of 1877, ch. 210, § 5.

[6] Mass. Acts of 1906, ch. 413, § 2.

[7] Mass. Acts of 1906, ch. 489.

[8] *Ibid.*

[9] That is, the West End, North End, South End, and the Back Bay areas. Jurisdiction was amended by statute in 1969 to include that of the Roxbury District Court, which covered an area inhabited primarily by low-income minority groups. (Ch. 859, § 14A, Mass. Acts of 1969).

[10] In 1969, the legislature also established separate juvenile courts in Worcester and Springfield (ch. 859, § § 1-2, Mass. Acts of 1969). Presently there are three juvenile courts and 69 juvenile sessions in Massachusetts.

[11] Ch. 413, § 1, Mass. Acts of 1906.

[12] Ch. 53, § 1, Mass. Acts of 1960. The last part of the sentence now reads: " . . . or who commits any offense against a law of the commonwealth." Mass. Gen. Laws Ann., Ch. 119, § 52 (1969).

[13] Judge Baker Foundation, *Harvey Humphrey Baker—Upbuilder of the Juvenile Court* 2–3 (1920).

[14] *Id.*, at 4–6.

[15] *Id.*, at 6–10.

[16] Glueck and Glueck, *One Thousand Delinquents* 29 (1934).

[17] Judge Baker Foundation, *supra* note 13, at 79.

[18] Glueck and Glueck, *supra* note 16, at 46–47.

It was the opinion of Doctors Healey and Bronner that:

> the innate and conditioned makeup of the offender, which contributes to his delinquency, must be studied and controlled in childhood; that anti-social attitudes and conduct may and do originate surprisingly early in the lives of those who later become delinquents and criminals.[19]

The Gluecks describe Judge Cabot's evolving criteria for Boston Juvenile Court referrals to the court clinic:

> In the earlier days of Judge Cabot's incumbency, also, he had no clearly defined notions as to which cases he should refer to the J.B.F. clinic for physical and mental examination. Only when he felt really puzzled or saw that the juvenile before him obviously had some physical or mental handicap would he refer him to the clinic for examination. . . . several years ago, the Judge appears to have crystallized the policy of sending the following types of cases to the clinic for examination: children who had prior records of delinquency; those retarded or in a special class in school; and those regarding whom some question of health had been raised during the hearing. But even this policy was not always uniformly followed. . . . During the last few years of Judge Cabot's incumbency, practically all cases of juvenile delinquency were referred by court to the clinic for examination.[20]

While the nature of the court examination has changed over the years with the developing concepts of psychological and sociological evaluations, the purpose of the clinic has remained essentially the same: to make dispositional or treatment recommendations to the Boston Juvenile Court based on clinic examination findings.[21]

John Forbes Perkins became the Presiding Justice in 1932. He further stressed the importance of "early diagnosis and an immediate program of realistic readjustment." [22] To that end, he inaugurated in 1936 a privately funded agency now known as the Citizenship Training Group, Inc. The CTG program, a special probation program, combined "recreation, crafts work, discussion periods, and similar therapeutic devices to keep the boys profitably busy." [23] The CTG still exists, although it is now partially supported by the state.

During this period, hearings were conducted in a very informal manner. Beginning with the last years of Judge Cabot's incumbency, the court would often talk to the child and/or the parents in chambers, without anyone else present. An effort was also made particularly by Judge Cabot to dissuade children and their families from appealing juvenile court decisions by stressing the *parens patriae* attitude that the court was only trying to do what was best, and that if there was an appeal, it would be to a regular criminal court where the case would be dealt with more legalistically and thus, more harshly.[24]

When Judge Perkins resigned in 1945, he was succeeded as Presiding Justice by John Joseph Connelly, a Boston College evening Law School graduate who had worked under Judge Perkins as a juvenile court probation officer since 1933. With the incumbency of Judge Connelly, the Boston Juvenile Court hearings became somewhat more formal. In 1961, Judge Connelly described his court's hearings as follows:

> [T]he Boston Juvenile Court does not have hearings outside the court, oftentimes described as "informal hearings." Our system of procedure is much like that of the English juvenile courts. We have the allegations first. The child and his parents are confronted with the witnesses. They have the opportunity to cross-examine witnesses. Generally the judge who must, under the law, hear and decide every case has no information before him except the evidence presented to prove the fact of the child's delinquency. Although hearings are somewhat formal and secret, and strict rules of evidence do not apply, the Massachusetts law does insist upon the child receiving a full hearing of all the facts. . . .
>
> After the hearing the court considers the social history, together with all other information gathered by the probation officer, and decides what disposition should be made of the case.[25]

Massachusetts is one of the few states which does not statutorily provide for an intake system for its juvenile courts. Thus, as Judge Connelly also pointed out, "Unlike many courts, the Boston Juvenile Court seldom, if ever, has pre-hearing investigations of the child, his delinquency, and his environment." [26]

When Judge Connelly died in 1964, he was succeeded by Francis G. Poitrast, who is the current Presiding Justice of the Boston Juvenile Court. Under Judge Poitrast, Boston Juvenile Court hearings have become procedurally more formal. Even prior to *Gault* and *Kent,* for example, Judge Poitrast had initiated the safeguards required in those opinions and almost all of the children who come before his court are represented by counsel. As is traditional with district courts in Massachusetts, the State has long been and still is represented in delinquency hearings by police prosecutors.[27] The case against the juvenile is presented either by a special police prosecutor or, in some cases, the arresting officer.

## B. BOSTON JUVENILE COURT PROCEDURES

1. *Jurisdiction.* By statute, the Boston Juvenile Court has territorial jurisdiction over the same areas as the Boston Municipal Court and the Roxbury District Court combined.[28] This includes the downtown business, entertainment, and government sections, and adjacent residential areas, such as Dorchester, Roxbury, the North End, the South End, and part of Back Bay.

The Boston Juvenile Court has exclusive jurisdiction "over cases of juvenile offenders under seventeen and cases of neglected wayward, or delinquent children" within its territorial limits.[29] This includes the case of an individual "who commits an offence or violation prior to his seventeenth birthday, and who is not apprehended until after after his eighteenth birthday." [30] A wayward child is defined as:

> a child between seven and seventeen years of age who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him to lead an immoral, vicious, or criminal life.[31]

A delinquent child is defined by statute as:

> a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the Commonwealth.[32]

In Massachusetts, the juvenile court's delinquency jurisdiction includes misconduct which constitutes a criminal offense only when engaged in by persons under seventeen years of age. In addi-

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[19] *Id.*, at 47–48. *See generally,* Healey, *The Individual Delinquent* (1915).

[20] *Id.*, at 29–30, 49.

[21] *Id.*, at 55.

[22] O'Leary and Haverty, *Report—Boston Juvenile Court—1960–1963,* at 6 (Report by the Research Departments of the Boston Juvenile Court and the Citizenship Training Group, Inc., 1965).

[23] *Id.*, at 7. *See also:* Judge Baker Foundation, *supra* note 1[illegible] at 31–34, for a detailed description of the workings of the Citizenship Training Group program.

[24] Glueck and Glueck, *supra* note 16, at 40–41.

[25] Connelly, *Massachusetts Statute and Case Law Relating to the Juvenile Court,* in Selected Papers Presented at the Institute for Juvenile Court Judges 33 (April 1961 in Cambridge, Mass.).

[26] *Id.*

[27] Bing and Rosenfeld, *The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston* 29–30 (A report by the Lawyers' Committee for Civil Rights Under Law 1970). The juvenile officers from the various police districts within the jurisdiction of the Boston Juvenile Court present most of the cases against children.

[28] Mass. Gen. Laws Ann. c. 218, §§ 57, 1, 2 (Supp. 1972).

[29] Mass. Gen. Laws Ann. c. 218, § 60 (Supp. 1972). *See also Joyner v. Comm.,* 260 N.E. 2d 664,—Mass.—(1970), which says that jurisdiction lies in juvenile court or session in the first instance for children aged seven to seventeen. The Boston Juvenile Court can also have jurisdiction over cases involving contributing to delinquency, child abuse, neglect, etc., but these areas are not the subject of this study and thus their handling has been omitted from this discussion.

An exception is made to juvenile court jurisdiction for traffic violations as follows:

> [I]f the child is over 16 and under 17 a criminal complaint may issue against him without first commencing delinquency proceedings if he is charged with minor violations of laws of the road or laws regulating motor vehicles not punishable by imprisonment or a fine of more than $100. The purpose of this law is to enable the courts to deal with a child in non-serious motor vehicle violations without invoking the procedures pertaining to juvenile delinquents and without placing the label "juvenile delinquent" on him or her for some minor infraction of a traffic law. Powers, *The Basic Structure of the Administration of Justice in Massachusetts* 40 (1968).

[30] Mass. Gen. Laws Ann. c. 119, § 72A (1969).

[31] Mass. Gen. Laws Ann. c. 119, § 52 (1969).

[32] *Ibid.*

tion to waywardness, such offenses include that of "stubborn child," truancy, and running away.[33] A "juvenile offender," a term which apparently has no statutory definition, refers to a "child between the ages of fourteen and seventeen, charged with a criminal offense."[34] The value of this distinction appears in the waiving of juvenile cases to criminal court, which is discussed below.

2. *Initiation of juvenile delinquency cases.* Statutes refer to the arrest of a child "with or without a warrant,"[35] but do not provide criteria. Most delinquency cases brought before the Boston Juvenile Court apparently originate with children being arrested by the police while in the process of committing offenses. However, there are statutory provisions for initiating cases by complaint to the court. In such a case, where:

> complaint is made to any court that a child between seven and seventeen years of age is a wayward or a delinquent child, said court shall examine, on oath, the complainant and the witnesses, if any, produced by him, and shall reduce the complaint to writing, and cause it to be subscribed by the complainant.[36]

This same procedure is followed by the court when a policeman brings in a child that he has arrested: there is a hearing before the court (which in practice is conducted by one of the juvenile court clerks), and the decision is made whether or not to issue a complaint. If the complaint is issued, it will be drafted by the clerk on the basis of the policeman's statements, and it is signed by the policeman. The clerk's refusal to issue a complaint may be appealed to the judge.

3. *Notice and detention.* When a child is arrested, with or without a warrant, he will be taken to a police station or "town lock-up" where the officer in charge "shall immediately notify" the probation officer of the court with jurisdiction over the child and also a parent or guardian.[37] Children can only be detained in "separate and distinct facilities."[38] The probation officer is required to "inquire" into the case and, "pending such notice and inquiry, the child shall be detained."[39] The child can be release by the officer in charge if he accepts a "written promise" by the parent, guardian, "or other reputable person" to be responsible for the child's appearance in court when scheduled; the probation officer can also request that the child be released to him.[40]

On the other hand, the child may be detained if: 1) he is between fourteen and seventeen years old, and 2) the arresting officer requests in writing that the child be detained, and 3) either the court, in its arrest warrant, or the probation officer of that court, "directs . . . that such child shall be held in safekeeping pending his appearance in court." In such a case, the child will not be released upon the written promise.[41] However, the statute specifically provides that the child will still be eligible for release on bail.[42]

In practice, the child is usually released to his parents at the stationhouse upon their written agreement to produce the child at the complaint hearing, which is generally held the following day and presided over by the Boston Juvenile Court clerk (*see* "Initiation of Juvenile Delinquency Cases," *supra*). If the child is to be detained, he is sent to a detention center, where bail is set.

4. *Bail.* It is not clear from the statutes whether juveniles have an absolute right to release on bail (or recognizance). The statute pertaining to detention following arrest states: "Nothing contained in this section shall prevent the admitting of such a child to bail in accordance with law."[43] This suggests that a child may be admitted to bail unless the offense charged is nonbailable by statute. The only crime which is designated as nonbailable by statute is "treason against the Commonwealth" (which, incidentally, is not a capital crime);[44] even first-degree murder is bailable, although at the discretion of the trial judge.[45] It would seem reasonable to assume, therefore, that anything charged against a juvenile would also be bailable.

Furthermore, the pre-trial detention section of the law provides that "A child between seven and seventeen years of age held by the court for further examination, trial or continuance, or for indictment and trial . . . if unable to furnish bail, shall be committed by the court. . . ."[46] This section can be read as saying that a child is to be admitted to bail unless he cannot raise the money or collateral; the presupposition is that, whatever his offense that provides the basis for the delinquency charge, the child should be entitled to bail.

In addition, the Bail Reform Act of 1970 essentially provides for a defendant's release on his own recognizance (ROR), unless he is charged with a capital crime or there is good reason to believe that ROR will not reasonably assure the defendant's appearance before the court.[47] A child can only be adjudged "delinquent" by the juvenile court, even if a capital crime furnishes the basis for the delinquency complaint, and the juvenile court cannot impose a death sentence as a disposition for a delinquency finding. Thus, it would seem that the Bail Reform Act provides more weight to the interpretation that a juvenile defendant can be admitted to bail, if not released on recognizance, because an adult charged with the corresponding criminal offense would be released.

Statutes do not specifically provide for the setting of bail for juveniles appearing in the Boston Juvenile Court. However, in other district courts, bail can be set by the judge, a court clerk, a "master in chancer," or a special (bail) commissioner.[48] In practice, a detained child will have his bail initially set by the bail bondsman for release prior to court appearance; bail will then be reset by the judge the next day when the child appears in court.

5. *Arraignment and issuance of process.* In the typical case, the complaint hearing is held before the clerk the day after the child is arrested by the police. If the clerk decides to issue a complaint, the child is then arraigned before the judge in a session of the juvenile court. At the arraignment, the judge informs the child and his parents of the charges against him (that is, the allegations in the complaint), and informs him of his rights, including the right to counsel. If the child is indigent and has no counsel, an attorney is appointed at this time.

After the hearing on the complaint, the court (through the clerk) makes an issuance of process in the form of either a "summons" or a "warrant." The summons is issued to the child if he is under twelve[49] and to his parent or guardian,[50] ordering them to appear before the court, with day and time specified, to "show cause why such child should not be adjudged a wayward or delinquent child."[51] If there is no known parent or guardian, "the court may appoint a suitable person to act for the child."[52] The court can also "request" the "attendance at any proceedings" by "an agent of the department of youth services" by giving reasonable notice to the commissioner of youth services.[53]

The summons is to be used in delinquency cases if the child is twelve or older, unless the child has already been summoned and failed to appear, or if "the court has reason to believe that he will not appear upon summons,"

> in which case . . . said court may issue a warrant reciting the substance of the complaint, and requiring the officer to whom it is directed forthwith to take such child and bring him before said court... and to summon the witnesses named therein to appear...[54]

[33] Mass. Gen. Laws Ann. c. 272 § 54 (1970).
[34] Keating, *Massachusetts Law Relating to the Juvenile Court*, 46 Mass. Law Q. 191 (1961).
[35] Mass. Gen. Laws Ann. c. 119 § 67 (Supp. 1972).
[36] Mass. Gen. Laws Ann. c. 119 § 54 (1969).
[37] Mass. Gen. Laws Ann. c. 119, § 67 (Supp. 1972).
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] E. Powers, *supra* note 29, at 50, and Mass. Gen. Law Ann. c. 264, § 1 (1970).
[45] *Commonwealth v. Baker*, 343 Mass. 162, 165–68, 177 N.E. 2d 783 (1961).
[46] Mass. Gen. Laws Ann. c. 119, § 68 (Supp. 1972).
[47] Mass. Gen. Laws Ann. c. 276 § 58 (Supp. 1972).
[48] Mass. Gen. Laws Ann. c. 276, § 57 (Supp. 1972).
[49] Mass. Gen. Laws Ann. c. 119, § 54 (Supp. 1972).
[50] Mass. Gen. Laws Ann. c. 119, § 55 (Supp. 1972).
[51] *Ibid.*
[52] *Ibid.*
[53] *Ibid.*
[54] Mass. Gen. Laws Ann. c. 119, § 54 (1969).

Attached to the summons issued to the child is a copy of the complaint and notice of the rights to: 1) "legal counsel at all stages of the proceedings"; 2) the appointment of counsel if indigent; 3) a hearing; 4) the privilege against self-incrimination; 5) confrontation and cross-examination of witnesses; 6) compulsory process (producing own witnesses); 7) appeal to the superior court of a decision of the juvenile court; and 8) a continuance of the hearing.[55] The summons issued to the parent or guardian and to any "other person or agency" will have a copy of the complaint attached.[56] If a parent, guardian, or agency representative fails to appear in response to a summons, the court can issue a *capias* to compel attendance.[57] It should be noted that the juvenile court can summon the parent or guardian at any time during the pendency of a delinquency case, even during probation "or after the case has been taken from the files," if the child is under 17.[58]

6. *Adjudicatory hearing—confidentiality.* Statute provides that all proceedings against juveniles are to be confidential. Hearings are to be held in separate courtrooms or in chambers. A separate docket and record must be kept for juvenile cases. Minors are not allowed to be present unless they are parties or witnesses in the proceedings; "the court shall exclude the general public from the room, admitting only such persons as may have a direct interest in the case." [59]

7. *Parties present.* As previously stated, the child and his parent or guardian are brought before the court by either a summons or a warrant.[60] Rule 79 of the Supreme Judicial Court, which applies to all district courts, requires the assignment of counsel to represent a defendant "at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel." [61] Rule 85, which applies to juvenile cases specifically and which is governed by Rule 79, requires:

> a child between seven and seventeen years of age against whom a complaint is made that he or she is a wayward or delinquent child, *shall* be represented by counsel at every stage of the proceedings if it shall appear to the court that such child *may* be committed to the custody of the Youth Service Board as the result of such complaint.[62] [emphasis added]

Arguably, since any complaint hearing may result in a child's being committed to the Youth Services Board, there must be counsel in all cases. In practice, the vast majority of the juveniles are represented by counsel. In cases where a juvenile is not represented, the judge will proceed only after he has satisfied himself that both the child and the parent or guardian have made an intelligent waiver of the right, and he decides that there is no possibility of committal.[63]

The probation officer assigned to the case must appear at the hearing and "furnish the court with such information and assistance as shall be required." [64] Prior to the complaint hearing, he is required to make an investigation and a report "regarding the character of such child, his school record, home surroundings and the previous complaints against him, if any," [65] although such investigations are rarely done until after a finding of delinquency is made. Pre-hearing investigations are normally confined to such information as age, name of parents, and financial ability to retain counsel.

8. *Conduct of the hearing.* The statutes are vague as to how the hearing shall be conducted:

> At the hearing of a complaint against a child the court shall hear the testimony of any witnesses that appear and take such evidence relative to the case as shall be produced.[66]

There is no provision for prosecution of the case or for presentation of the evidence against the child. In the Boston Juvenile Court, one of the policemen designated as juvenile officers generally serves as the prosecutor, although the arresting officer may present his own case. No provisions are made as to the degree of formality of the proceedings.

9. *Adjudication and disposition.* Allegations must be "proved beyond a reasonable doubt" in delinquency and wayward child cases.[67] However, the fact that the allegations are so proved does not require a finding of delinquency:

> If the allegations against a child are proved beyond a reasonable doubt, he *may* be adjudged a wayward child or a delinquent child.[68] [emphasis added]

Instead, the case may be "continued without a finding" by the judge, whose authority to do so rests in his power to adjourn a hearing "from time to time." [69]

Alternatively, the court may decide to waive the child to adult criminal court (see *Waiver, infra*) or to adjudge the child delinquent. If the child is adjudged delinquent,

> the court may place the case on file, or may place the child in the care of a probation officer for such time and on such conditions as may seem proper, or may commit him to the custody of the department of youth services.[70]

If a case is filed,

> [n]o formal sentence is imposed. Nor is the defendant subjected to probation, with formal conditions dictated by statute. The judge by filing a case puts the defendant on notice that the case may be called forward at any future time for sentencing. And the possibility of a later sentence acts as a continuing incentive to avoid further involvement with the... court. If a . . . sentence is later imposed, the defendant may at that point [appeal]....[71]

If the child is adjudicated delinquent and committed to the department of youth services, he cannot be placed in a jail, house of correction, or state farm, if he is under 17.[72]

If the complaint on which the child was adjudged delinquent alleged that "a penal law of the commonwealth, a city ordinance, or a town by-law has been violated," then the child may be committed to the custody of the commissioner of youth services, instead of the department.[73] The commissioner is authorized to place the child "in the charge of any person"; the department of youth services is to provide "for the maintenance, in whole or in part, of any child so placed in the charge of any person." [74] If "at any time" after the placement the child "proves unmanageable," the commissioner can

> transfer such child to that facility or training school which in the opinion of said commissioner, after study, will best serve the needs of the child, but not for a longer period than until such child becomes twenty-one.[75]

If the child is adjudged delinquent "by reason of having violated any statute, by-law, ordinance or regulation relating to the operation of motor vehicles," there are four possible dispositions. The case can be filed, the child may be placed on some form of probation, or he may be committed to the department of youth services. These three alternatives exist under regular delinquency proceedings. The fourth alternative is simply to fine the child up to the maximum amount of the fine authorized for the particular violation.[76] The statutes are silent on the procedural requirements for dispositional hearing. In most cases, although counsel is present, dispositional hearings are very informal in character.

10. *Waiver to criminal court.* Waiver (in the form of dismissal and referral for trial as an adult) takes place after the (adjudicatory) hearing on the complaint, but before and instead of a finding by

[55] Mass. District Court Rule 83 (1972).
[56] Mass. District Court Rule 84 (1972).
[57] Mass. Gen. Laws Ann. c. 119, § 71 (1969).
[58] Mass. Gen. Laws Ann. c. 119, § 70 (1969).
[59] Mass Gen. Laws Ann. c. 119, § 65 (1969).
[60] Mass. Gen. Laws Ann. c. 119, § 55 (Supp. 1972).
[61] Mass. District Court Rule 79 (1972).
[62] Mass. District Court Rule 85 (1972).
[63] The statutes and the rules are silent as to who may waive the right to counsel for a child.
[64] Mass. Gen. Laws Ann. c. 119, § 57 (1969).
[65] *Ibid.*
[66] Mass. Gen. Laws Ann. c. 119, § 58 (1969).
[67] *Ibid.*
[68] *Ibid.*
[69] Mass. Gen. Laws Ann. c. 119, § 56 (Supp. 1972).
[70] Mass. Gen. Laws Ann. c. 119, § 58 (Supp. 1972).
[71] Bing and Rosenfeld, *supra* note 27, at 85.
[72] Mass. Gen. Laws Ann. c. 119, § 66 (1969).
[73] Mass. Gen. Laws Ann. c. 119, § 58 (Supp. 1972).
[74] *Ibid.*
[75] *Ibid.*
[76] Mass. Gen. Laws Ann. c. 119, § 58 (Supp. 1972).

the court. Waiver to criminal court requires three preconditions:

1) the complaint must allege "an offense against a law of the commonwealth," or a violation of "a city ordinance or town by-law";

2) the offense was committed "while the child was between his fourteenth and seventeenth birthday"; and

3) "the court is of the opinion that the interests of the public require that he should be tried for said offense or violation, instead of being dealt with as a delinquent child." [77]

No criminal proceedings can be brought against a person who violates a law before his seventeenth birthday "unless proceedings against him as a delinquent child have been begun and dismissed" as provided above (or unless they are for motor vehicle violations).[78]

District court rules require that:

> In every case where the court shall determine that such a child should be tried for an offense or violation [that is, in adult court], instead of being dealt with as a wayward or a delinquent child, such child *shall* be represented by counsel.[79]

It is not clear whether this requires counsel at the waiver hearing or whether it means that, as a defendant in adult court, the child must have counsel (unless he elects to proceed without an attorney as an adult defendant may do).[80]

A child who is waived to adult court is to be tried before the superior court, not the district court. The trial is to be conducted "in the same manner as any criminal proceeding," and if convicted, he can be sentenced or placed on probation, with or without a suspended sentence.[81] However, if the child has not turned 18 prior to his conviction or guilty plea,

> the superior court may, in its discretion, and in lieu of a judgment of conviction and sentence, adjudicate such person as a delinquent child, and make such disposition as may be made by . . . the Boston Juvenile Court . . . ; but no person adjudicated a delinquent child under the provisions of this section shall, after he has attained his eighteenth birthday, be committed to the department of youth services or continued on probation or under the jurisdiction of the court.[82]

11. *Appeals.* A child has the right to appeal his adjudication as either a delinquent or a wayward child to the superior court. He can appeal either at the time of adjudication or at the time of the order of commitment or sentence. At both times, the child must be notified of his right to take such an appeal.[83]

An appeal to the superior court results in a trial *de novo* with the full panoply of rights to which an adult defendant is entitled:

> [T]he appeal, if taken, shall be tried and determined in like manner as appeals in criminal cases, except that the trial of said appeals in the superior court shall not be in conjunction with the other business of that court, but shall be held in a session set apart and devoted for the time being exclusively to the trial of juvenile cases. This shall be known as the juvenile session of the superior court and shall have a separate trial list and docket. . . . In any appealed case, if the allegations with respect to such child are proven, the superior court shall not commit such child to any correctional institution, jail, or house of correction, but may adjudicate such child to be a wayward child or a delinquent child, and may make such disposition as may be made by a [juvenile] court. . . .[84]

As a result of a recent decision by the Supreme Judicial Court of Massachusetts,[85] the child on appeal to the superior court for a trial *de novo* has a right to a trial by jury.

Statute also permits the adoption of rules, in concurrence with the superior court and the Boston Juvenile Court, to provide for appeals from delinquency and wayward adjudications "in any district court in Suffolk County or in the Boston Juvenile Court" to be made to the Boston Juvenile Court. Appellants may claim a jury of twelve if they wish. If the defendant wishes to appeal from the trial by jury in the Boston Juvenile Court, statute permits the appeal to go directly to the Supreme Judicial Court by any of the usual appeal routes to the SJC from a superior court jury trial.[86]

[77] Mass. Gen. Laws Ann. c. 119, § 74 (1969).
[78] Mass. Gen. Laws Ann. c. 119, § 74 (1969).
[79] Mass. District Court Rule 85 (1972).
[80] Mass. District Court Rule 79 (1972).
[81] Mass. Gen. Laws Ann. c. 119, § 83 (Supp. 1972).
[82] *Ibid.*
[83] Mass. Gen. Laws Ann. c. 119, § 56 (Supp. 1972).
[84] *Ibid.*
[85] *Commonwealth v. Thomas,* 269 N.E. 2d 277, Mass. Adv. Sheets 721 (1971).
[86] Mass. Gen. Laws Ann. c. 119, § 56 (Supp. 1972).



## C. CASELOAD IN THE BOSTON JUVENILE COURT: 1962-1971

During the ten years from 1962 to 1971, the court's caseload has increased by approximately 110% (from 969 to 2,032) (see Table 1). One major reason for this substantial increase is that the Boston Juvenile Court in 1966 assumed jurisdiction over juvenile cases heard in the Roxbury District Court. This increased the court's caseload by over 40% between 1965 and 1966. The court's caseload over the last four years of the period (1968 through 1971) has remained fairly constant. In fact, the caseload in 1971 (2,032) actually represented a decrease from 1969 (2,099).

**TABLE 1.—Boston Juvenile Court Caseload from 1962–1971**

| Year | Caseload | Increase or decrease | | Percent change over previous year |
|---|---|---|---|---|
| | | | | (Percent) |
| 1962 | 969 | — | | — |
| 1963 | 1075 | increase | 106 | + 10.9 |
| 1964 | 680 | decrease | 395 | — 36.7 |
| 1965 | 1184 | increase | 504 | + 74.1 |
| 1966 | 1660 | increase | 476 | + 40.2 |
| 1967 | 1724 | increase | 64 | + 3.9 |
| 1968 | 2004 | increase | 280 | + 16.2 |
| 1969 | 2099 | increase | 95 | + 4.7 |
| 1970 | 2029 | decrease | 70 | — 3.3 |
| 1971 | 2032 | increase | 3 | + 0.1 |
| 1962–1971 | — | increase | 1063 | + 109.7 |

## D. INTRODUCTION AND METHODOLOGY

As one of the oldest independent juvenile courts in the country, the Boston Juvenile Court has achieved considerable respect as a court with high commitment to the treatment and rehabilitation of juveniles and to the protection of juveniles' legal rights. In recent years, the court has moved increasingly toward the adoption of a full adversary model for the adjudication of juvenile offenses and, through the efforts of its presiding justice, has encouraged the active participation of legal counsel for juveniles. Presently, defense attorney representation in the Boston Juvenile Court equals or exceeds that of any juvenile court in the country. Yet, in spite of the very widespread involvement of lawyers to represent juveniles, there has been no corresponding increase in the use of attorneys to represent the state. Like Massachusetts' district courts, which have always made extensive use of police prosecution, the Boston Juvenile Court uses police officers, exclusively, in the prosecution of its cases. In this regard, the Boston Juvenile Court stands with the small minority of big-city juvenile courts which still do not utilize professional prosecution (see national survey, reported *supra*). The tremendous gap between the amounts of attorney representation which is available to juveniles and that which is available to the state makes the Boston Juvenile Court unique in the extent of its imbalanced adversary setting. It also provides an excellent opportunity to examine the question of juvenile court prosecution from the perspective of a juvenile court which is very much inclined toward the full integration of lawyers in the adjudicatory process but which is hampered in the achievement of that end by the long established tradition of police prosecution.

One other consideration should be kept in mind. The Boston Juvenile Court lacks any intake screening mechanism for the informal adjustment or diversion of cases before a hearing on the facts. The absence of in-court adjustment procedures places greater power in the hands of the police in controlling the flow of cases than they might otherwise have. In examining the opportunities and needs for adjustment and diversion procedures in the Boston Juvenile Court, the limitations of police prosecution assume critical importance.

All docket entries and court papers relating to the court's 1971 caseload were examined and data were recorded to facilitate electronic analysis. Daily observations were conducted of Boston Juvenile Court proceedings during a six-week period in August and September of 1972. All court observations were conducted by a single individual who was permitted to take notes in the courtroom. Standardized data collection instruments were used. Observations were conducted for an average of three and one-half hours each day—the normal time which the court was in session. No attempt was made to follow individual defendants through each stage of the proceedings although this frequently happened by chance. During this period, 89 arraignments involving 99 charges, 87 adjudicatory hearings involving 102 charges and 91 disposition inquiries involving 104 charges were observed. In addition to the numerous informal conversations which were held with court personnel and others, lengthy interviews were conducted with the court's presiding justice, chief clerk and chief probation officer. In addition, interviews were conducted with other court personnel, police prosecutors and members of the Massachusetts Defenders Committee. In all, interviews, lasting between 1 and 2 hours each, were conducted with 20 individuals. Two interviewers were present at each interview and extensive verbatim notes were taken.

## E. PUBLIC DEFENDER SERVICES IN THE BOSTON JUVENILE COURT (OVERVIEW)

The Massachusetts Defenders Committee provides statewide public defender services to indigents in criminal and juvenile proceedings. Since July 1965, the Massachusetts Defenders has assigned at least one lawyer to represent juveniles in the Boston Juvenile Court and, in each year since it began its work in the court, has represented an increasing number of juveniles. During 1966, its first full year of service in the Boston Juvenile Court, the Massachusetts Defenders was assigned 511 cases. By 1969, its caseload had more than doubled to 1,164 cases and its total caseload for 1972 is believed to exceed 1,400 cases.[87] Although privately retained counsel occasionally appears in the court and some cases are still assigned to members of the private bar, the Massachusetts Defenders has clearly emerged as the court's dominant defense counsel resource, representing the overwhelming majority of juveniles who do receive defense counsel assistance.

However, until very recently, the increasing caseload carried by the Massachusetts Defenders was not matched by a corresponding increase in the number of attorneys assigned to the Boston Juvenile Court and the annual average number of cases per defender swelled from 340 in 1966 to 649 in 1971. By early 1972, caseload pressures had assumed crisis proportions, when the meager number of two defenders who were assigned to the court in 1971 was further reduced. A panel of the National Legal Aid and Defender Association, which was conducting a general evaluation of the Massachusetts Defenders Committee, found that in January 1972, only one defender was assigned to the Boston Juvenile Court.[88]

The report, which was highly critical of the Massachusetts Defenders Committee and its leadership, found that in the Boston Juvenile Court, the role of the public defender "is not generally understood or well defined." [89] The report went on to state, "The bulk of the MDC attorney's time is spent in court, representing clients at delinquency hearings. No pretrial motions are filed, no investigation of the facts is performed, no witnesses are secured unless by the client himself and interviewing takes place in a vacant courtroom or office on the day the client's case is to be heard." [90] The panel recommended, among other things, that at least two attorneys plus an investigator should be assigned to the Boston Juvenile Court (a very modest proposal); that additional training should be provided; that more extensive pretrial investigations and interviews should be conducted; and that prehearing placement alternatives and post-adjudicative dispositional alternatives be developed and pursued.[91]

In mid-1972, the Massachusetts Defenders, bowing to its untenable caseload, withdrew its services from the district courts of Massachusetts and reassigned its personnel to the remaining courts which are served by the Defenders. In so doing, the Defenders was able to increase its manpower in the Boston Juvenile Court to five or six attorneys—by far the largest number of public defenders ever to serve in the court. With this number of defenders available to provide representation, the caseload for each defender since July 1972 would probably be well under 300 cases a year, a considerable improvement over previous years. It should also be mentioned that the Defenders came under new leadership in the summer of 1972 with the appointment of a new chief counsel.

As indicated earlier, our observations in the court and our interviews with defenders took place some months after the Massachusetts Defenders increased their manpower in the Boston Juvenile Court and, therefore, reflect conditions as they currenly exist. Unfortunately, however, the criticisms which were leveled at the Defenders by the N.L.A.D.A. prior to the assignment of additional attorneys appeared to be applicable during the period of our review. Poor case preparation, lackadaisical defense efforts and an absence of effective participation at disposition continue to mark the work of the public defenders in the Boston Juvenile Court. In spite of the substantial reduction in their caseload, the presiding justice has not discerned any appreciable improvement in the quality of the defenders' performance. Even the Defenders' new general counsel suspects that a mere increase in attorneys would not, by itself, result in a significant change in the quality of representation. It is his view that changes in the attitudes of public defenders must occur before any improvement in the quality of their work will take place.

Prominent in the thinking of public defenders in the Boston Juvenile Court is the view that "nothing really bad" happens to most of the juveniles who appear before the court. To some extent, the defenders seem to have incorporated the attitudes of many of their clients, who seem to believe that any disposition short of committal to an institution is equivalent to "beating the rap." Moreover, the defenders perceive the court and its personnel as essentially benevolent and committed to the best interests of juveniles. The Boston Juvenile Court is unique among the lower courts of Massachusetts in inspiring such confidence among public defenders and undoubtedly reduces the adversary zeal which they display in the court. "There is less pressure in the juvenile court. You know a kid won't get committed on a first offense. . . . It would be dishonest to say that you don't sometimes get lazy because you know they'll just continue without a finding and you can avoid a long trial. I try to fight against getting lazy." Also, there is an overriding belief among the defenders that the vast majority of juveniles whom they represent are guilty of the charged offense and in need of some kind of treatment or supervision. "By the time he [the juvenile] gets to court he doesn't need a lawyer, his problems are so deep. I can help him beat the case, but if the kid is really in trouble, that doesn't help him." Finally, the traditional practice among public defenders in Massachusetts has been to use the lower courts as a stepping stone to trial in the Superior Court. Because a defendant can "appeal" a district court conviction and receive a full, new trial in the Superior Court—which is considered a much better forum for contesting a case—little adversary effort is "wasted" in lower court proceedings. "Our orientation is that triable cases get tried in Superior Court." However, in commenting on the very low number of cases which are appealed from the Boston Juvenile Court, one defender stated: "If you lose a case, you

[87] These figures were compiled and furnished by the Massachusetts Defenders Committee.

[88] National Legal Aid and Defender Association, *Evaluation Report on the Massachusetts Defenders Committee* 70 (1972).

[89] *Id.*, at 71.

[90] *Ibid.*

[91] *Id.*, at 76–7

don't feel quite as bad as losing an adult although you still feel very bad. . . . On the same facts, I would be less likely to think about appealing in the Boston Juvenile Court than in the district court. Maybe it's just as well that the kid be supervised; he might stay out of trouble the next time."

In truth, most defenders are uneasy in the juvenile court and would prefer to be elsewhere. While they respect the court, they have not defined a role for themselves within it. One defender has referred to his presence in the court as "irrelevant." Another defender feels that "the lawyer is less a part of what's going on [than in criminal courts], especially with regard to disposition. There is much more of a social work/probation atmosphere." Even the very small number of defenders who express a long-range interest in juvenile representation seem unable to translate that interest into effective action in the court. Although the provision of competent defender services is dependent upon a wide variety of influences and not easily achieved through any single approach, there is reason to believe that the present system of prosecution in the Boston Juvenile Court may inhibit the development of a more productive defense effort. This issue will be taken up in subsequent sections of this chapter.

## F. POLICE PROSECUTOR SERVICES IN THE BOSTON JUVENILE COURT (OVERVIEW)

Nine police officers are used to provide most prosecutorial services in the Boston Juvenile Court. Eight are juvenile officers assigned to the three district police stations which cover the area in Boston falling within the jurisdiction of the Boston Juvenile Court. They generally spend the mornings in court prosecuting cases which arise out of their respective districts and the latter portion of the day in performing their regular responsibilities as juvenile officers in their districts. A police sergeant, attached to headquarters, has overall supervisory responsibility for police prosecution in the court.

In theory at least, all arrests of juveniles in a particular police district are screened and processed at the stationhouse by a juvenile officer who, if the case is not adjusted at the police station, will subsequently prosecute the case in court. Although the juvenile officers have primary responsibility for handling juvenile cases, including their prosecution, it is not unusual to find the officer who made the arrest also conducting the prosecution. This situation most frequently occurs when the arrest is made on a late shift when the juvenile officers are not on duty, when time pressures do not permit the regular juvenile officers to prosecute all pending cases from their districts or when the arresting officer succeeds in convincing the sergeant that he should be allowed to prosecute. Juvenile officers may also prosecute cases on which they were the arresting officers.

For the most part, the juvenile officers who prosecute in the Boston Juvenile Court have considerable experience in handling juvenile matters. They tend to be seasoned veterans of the force with many years of service behind them. Unlike the public defenders, the police prosecutors display no ambivalence or discomfort concerning their work in the juvenile court. Although none of the prosecutors have had any formal legal training, they feel that they are well equipped to perform their duties as juvenile court prosecutors. While a small number of police prosecutors (including some of the best) feel that the introduction of attorney-prosecutors is inevitable as a result of the increasing complexity now found in many juvenile proceedings, as a group, the police prosecutors are confident of their ability to provide capable prosecutorial services in the court and to meet the public defenders on an equal footing. "Most young attorneys coming out of law school think the police are incompetent. Then they go into court and get their ears knocked off."

To the juvenile officers, prosecution is an extension of their work as policemen and they approach their role as prosecutor accordingly. They regard their function in the court as limited to an "objective" presentation of the government's evidence. As police officers, they do not believe that it is their responsibility to advise the court on matters of disposition or to assume any discretionary authority after the complaint has been filed. The court is viewed as a system which is composed of separate authority hierarchies and sharply defined divisions of responsibility. There is little room, inclination or authority for the assumption of a broader role in the court. In all matters calling for discretion, they express the conviction that the court and its personnel will "do the right thing" without the advice of the police prosecutor.

The juvenile officers take visible pride in their work as prosecutors and in the association with the court. They frequently cite the court's "no-nonsense" approach to the protection of juveniles' rights and its insistence upon the observance of legal formalities. They credit the trial and error training which they have received in the Boston Juvenile Court with improving their work in screening cases and preparing complaints and raising the level of their prosecutorial skills.

However, while they praise the court and its personnel, the juvenile officers show little optimism concerning the court's ability to bring about a constructive change in the lives of most of the juveniles who appear before it. On the one hand, the necessary rehabilitative services which many juveniles require are not always available to the court. On the other, they allege that the recent efforts of the Department of Youth Services to move toward a decentralized system of community based correctional facilities has diluted the court's effectiveness in dealing with hard core offenders who require confinement (or the threat thereof) in a secure institutional environment. They are, therefore, disposed to adjust as many minor cases as they can without court referral and frustrated with their inability to invoke the kind of disciplinary action which they claim is required with some juveniles.

## G. PRE-ADJUDICATION

Approximately one-half of the juveniles who are officially processed by the Boston Police Department are referred to juvenile court. The remaining half are issued warnings and released to their parents.[92] Official warnings are issued to first offenders where it appears, after an investigation by the juvenile officers, that the parents can exert whatever disciplinary action may be warranted. The Juvenile Aid Division pursues this policy in order to avoid the unnecessary stigmatization of juveniles who are not likely to engage in delinquent behavior again.[93] Of course, an additional number of juveniles are adjusted on the street without the issuance of a formal warning. Juvenile officers say that they screen and adjust juveniles "as a matter of necessity." The absence of any intake adjustment process in the Boston Juvenile Court makes court referrals inappropriate in the majority of cases. For this reason, referral to the court is treated as a last resort. In deciding which cases to refer, juvenile officers consider the type and seriousness of the offense and the degree to which the parents can be a positive influence in disciplining the juvenile. Cases involving violence are almost always referred to court. On the other hand, minor altercations between juveniles, school complaints, stubborn children and runaways are among the kinds of cases which the police routinely attempt to screen out. Police do not generally consult with probation staff in making referral decisions, although they may contact probation to determine whether there are any outstanding warrants on the juvenile.

Juvenile officers cited the frequent difficulty which they encounter in attempting to adjust cases at the police station. The police do not assume responsibility for refusing to refer a child to court if the victim insists on prosecuting. They are, therefore, powerless to adjust many cases which they may feel do not warrant court action. Among these are the large number of petty shoplifting cases which the court hears. (Retail establishments in downtown Boston have insisted on prosecuting all shoplifting cases, both as a deterrent measure

[92] Boston Police Department, *Juvenile Aid Section Annual Report* 4 (1971).
[93] *Ibid.*

and as a protection against law suits for false arrest.)

In adjusting cases, juvenile officers do not attempt to refer juveniles to treatment facilities or programs even if they appear to need help. This decision is left to the parents. Juvenile officers state they would not wish to be responsible for any harm that might come to a child as a result of an ill-advised referral.

A child's parents are contacted immediately after he is taken into custody. The police often question juveniles prior to the arrival of their parents at the police station even though their statements would not be admissible. The court will not accept a waiver of the juvenile's *Miranda* rights unless it is made in the presence of the juvenile's parents or attorney.

If the juvenile officer decides to refer a case to court, he may release the juvenile to his parents on that they ensure his presence in the court on the following day. A summons or warrant is not generally issued unless the juvenile fails to appear in court at the appointed time. If not released to his parents, the juvenile may be brought directly to court from the police station by the juvenile officer.

Pre-arraignment detention determinations are made by a probation officer who is available to the police on a twenty-four hour basis. If a juvenile is taken into custody after normal court hours, the probation officer is contacted for his decision regarding the juvenile's detention. (It is estimated by the chief probation officer that eighty to ninety percent of juveniles who are taken into custody when court is not in session are released to their parents.) If detained, juveniles are brought to court on the following day for arraignment.

Historically, judges in the Boston Juvenile Court personally approved each complaint that was filed. This not only represented a huge drain on the court's time but also placed the judges in the undesirable position of having to hear at adjudication cases founded upon complaints which they, or other judges of the court, had previously reviewed and approved. However, following the appointment of the present presiding justice, the authority to approve complaints for filing was delegated to the court's clerk. Now, all applications for complaints must be made to the clerk. If the application is approved by the clerk, the complaint is drafted by a member of his staff. The absence of any intake apparatus for screening and adjusting cases without court action leaves the clerk with considerable control over the number and type of cases which go forward for judicial action. Once a complaint is approved by the clerk, the case goes on to arraignment and the formal adjudicatory process is begun.

Applications for a complaint are prepared by a police officer either at the police station or in the clerk's office. Upon submission of the application to the clerk, he conducts an inquiry to determine whether a complaint should be issued. The clerk, who is an attorney, examines the application and questions the police officer and any other witnesses to ascertain whether there is sufficient evidence to support the requested complaint. Witnesses are required by the clerk to be present at this inquiry "unless there is good and sufficient reason" for his absence (*e.g.*, illness).

The clerk does not ordinarily issue complaints on the application of private citizens. When a private citizen comes directly to the court to complain against a juvenile, the clerk refers him to the appropriate juvenile police officer for further investigation and screening, if necessary. Generally, the clerk will not file a complaint without the prior endorsement of a juvenile officer. Although it is not strictly required by statute, the clerk guides his approach with the view that "the commonwealth is [or should be] a party to every action" and insists upon the concurrence of a juvenile officer before considering an application for a complaint. Many of the cases which the clerk refers to the juvenile officers are informally adjusted by them and no complaint is subsequently sought. Thus, the role of the police in the pre-court screening of cases in indeed extensive. In fact, as shown in Table 2, almost no complaints are filed in the



Boston Juvenile Court without approval of the police as well as the clerk. In 1971, the Boston police were on the complaint in almost ninety-five percent of all referrals resulting in complaints. Transit and housing authority police and school attendance officers were on an additional five per-

**TABLE 2.—Complainants in the Boston Juvenile Court (1971)**

| Complainant | Number | Percent |
|---|---|---|
| Police | 1160 | (57.1) |
| Private | 14 | (0.7) |
| Parent | 4 | (0.2) |
| Police/private | 442 | (21.8) |
| Police/parent | 113 | (5.6) |
| Store/police | 197 | (9.6) |
| School attendance officer | 35 | (1.7) |
| Housing police | 4 | (0.2) |
| Transit authority officer | 55 | (2.7) |
| Transit authority/private | 8 | (0.4) |
| Total | 2032 | (100.0) |

cent of complaints filed. Private persons were the sole complainants in fewer than one percent of all approved complaints.

Court screening procedures have accounted for a remarkably low number of unapproved complaint applications. In the years from 1965 to 1971, the highest percentage of unapproved applications was 6.2% in 1966. In 1971, the rate fell to 3.5% (Table 3).

Of those complaint applications which did not gain the clerk's approval in 1971, approximately half were "not approved" on the initiative of the clerk, while almost all of the others were "not approved at the request of the police" (Table 4).

Relationships between the clerk and the juvenile officers reflect expressions of mutual respect and shared values. The clerk attributes the low rate of rejected complaint applications to the experience and professionalism of the juvenile officers. The police cite the high standards which the clerk employs in screening complaints. As in their associations with other phases of the court process, the juvenile officers take pride in their ability to perform successfully under close scrutiny.

Where the evidence is flimsy or the reliability of a witness is in serious doubt, the application may be rejected by the clerk or withdrawn by the police. Disagreements between the clerk and the police regarding the merits of a requested complaint

**TABLE 3.—Complaints in the Boston Juvenile Court (1965–71)**

| Year | Not approved | Approved | Total | Not approved (percent) |
|---|---|---|---|---|
| 1965 | 65 | 1184 | 1249 | (5.2) |
| 1966 | 110 | 1660 | 1770 | (6.2) |
| 1967 | 70 | 1724 | 1794 | (3.9) |
| 1968 | 89 | 2004 | 2093 | (4.3) |
| 1969 | 82 | 2099 | 2181 | (3.8) |
| 1970 | 93 | 2029 | 2122 | (4.4) |
| 1971 | 85 | 2314 | 2399 | (3.5) |
| Total | 594 | 13,014 | 13,608 | (4.4) |

**TABLE 4.—Complaints Not Approved (1971)**

| Notation on complaint | Number | Percent |
|---|---|---|
| "Not approved" | 44 | (52.4) |
| "Not approved at request of police" | 35 | (41.6) |
| "Not approved at request of complainant" | 4 | (4.8) |
| "Lack of prosecution" | 1 | (1.2) |
| Total | 84 | (100.0) |

undoubtedly do occur from time to time. Some police officers did suggest that the clerk may be overly cautious in granting certain types of complaints: "Some things are more difficult to get across to the clerk than others. Disorderly person, for example, is a catch-all; but this kid wouldn't be charged with it if he weren't harassing someone." Disagreements over specific complaints tend to be muted and contained. Although the juvenile officers can obtain a review of a complaint rejection by petitioning the court, this is rarely, if ever, done. In the first place, it is highly unlikely that many serious offenses are screened out over the strong objection of the juvenile officer or of the victim. Second, police are extremely reluctant, in all of their functions within the court setting, to make and to argue for their own discretionary judgments. Third, their view of the court as a compartmentalized system with sharp divisions of responsibility and authority militates against circumstances which

draw them into formal conflict with court personnel. And finally, juvenile officers resist taking official positions which are in seeming conflict with their avowed "second chance" approach to juveniles. ("Yes, we can go to the judge for review, but we don't. These are juveniles; we're not out to hurt them.")

There is wide agreement among public defenders concerning the high quality of complaint drafting in the court. Defenders, who receive copies of the complaint and the application, all attest to the technical competence of complaint drafting. In our observations of the court for a six-week period, only two instances of defective complaints were observed—both involving inaccuracies in entering the name of the juvenile. Public defenders maintain that it is very rare to find a defect in a complaint.

Although the primary function of court screening procedures is to reduce or eliminate legally insufficient complaints, there is indication that it is also used as a very limited mechanism for the administrative adjustment of cases which may be legally sound but which do not appear to warrant court action. The clerk acknowledges that he considers "all factors" regarding the best interests of the child and the community. In minor, "victimless" offenses where the juvenile does not appear to pose a threat to the community and sufficient parental supervision appears to be available, an application may be withdrawn. Obviously, the cooperation of the juvenile officer is essential and, where there is a victim, his consent is crucial.

Some juvenile officers may also use the preparation of a complaint application as an extension of the stationhouse adjustment process. One officer stated that he occasionally completes a complaint application at the police station and brings the juvenile to court in order to exert additional psychological pressure. If he feels that the trip to the court has duly impressed the youngster with the possible consequences of his continued misbehavior, he will request that the application be withdrawn.

In terms of the total number of court referrals, administrative adjustments of the type described above are negligible, constituting no more than one or two percent. They are rare exceptions to the normal processing of referrals. For all intents and purposes, no significant number of juveniles are adjusted or diverted as a result of the court's screening practices.

A separate complaint is filed for each charge which is brought against a juvenile. The initial decision concerning the number of charges and the designation of charges to be brought against a juvenile when his conduct gives rise to multiple violations is made by the police officer. Upon review by the clerk, any or all of the charges may be dropped. While the charging decision in juvenile matters does not have the same level of importance as it may have in a criminal proceeding, where the judge's sentencing alternatives are related by statute to the specific charges which result in a conviction, they can have a serious bearing on the outcome of the case. First, "shot gun" charging practices—charging every conceivable offense arising out of a single act of misconduct—may be used in an effort to camouflage an essentially weak case. It may be hoped that sufficient evidence can be produced at the hearing to support a finding of delinquency on at least one of the charges. Second, "shot gun" charging may reflect an attempt to impress the court with the seriousness of the juvenile's misconduct. In "throwing the book" at a juvenile, the police officer may be seeking to elicit the most punitive disposition available. He is, in fact, informing the court that, in his view, the juvenile is beyond redemption and not worthy of a second chance. Finally, both bail and bind-over decisions may be influenced by the scope of charges which are brought against a juvenile.

During 1971, 2,314 complaints were filed against the 2,032 juveniles who appeared in the court, resulting in an average of 1.1 charges per juvenile. This very low charging rate reflects well upon the court's screening practices and is confirmed by the experience of defense counsel and other participants in the court process.[94]

There is little evidence of excessive charging in the Boston Juvenile Court. Neither the court's records nor our observations and interviews would support the conclusion that unwarranted multiple charging is a serious problem. In the vast majority of cases, juveniles are brought to court on a single complaint. Although there may be instances which suggest a punitive approach in charging by police officers (one juvenile officer reported seeing a case in which thirty-five charges were brought against a juvenile), this practice is not common. If anything, the juvenile officers tend to look down at young arresting officers who, through lack of experience in dealing with juveniles, may react emotionally to juvenile misconduct. As one of the more experienced juvenile officers put it: "What do you gain by filing multiple charges on a juvenile? We try to explain this to the arresting officers; many of the new ones don't understand it." He went on to describe an incident in which two inexperienced officers arrested a young boy and a minor scuffle resulted. "They want to charge the kid with assault and battery on a police officer. I look at the kid and I look at them and I tell them I'd be ashamed. There's no point in that."

Discussions with the public defenders support the conclusion that juvenile officers do not often refer petty cases to the court: "I think it has something to do with the fact that the Boston police are, on the average, older than in other cities. Young cops don't know how to use power; they get excited. Older cops forgive a lot. They want the kid to straighten up. They know he'll be back if he doesn't." Of greater importance, perhaps, is the fact that the juvenile officers prosecute most of the complaints which they process. The presiding justice has made it abundantly clear that he will not tolerate so-called "junk complaints" and it is doubtful if any juvenile officers would consciously risk the court's displeasure by submitting cases of that variety. The almost daily contact which the juvenile officers have with the court in their capacity as juvenile prosecutors makes them acutely aware of the court's philosophy. Their pre-court screening criteria are, therefore, a direct reflection of the court's own standards.

It is highly unusual for a juvenile to appear at arraignment accompanied by an attorney. This occurred only two times in eighty-nine arraignments which were observed. One juvenile who was charged with prostitution was represented by retained counsel and, in the other case, a juvenile appeared with a Boston Legal Assistance Project attorney who had represented him in a previous case.

At the arraignment, the juvenile is informed of the charges against him and of his right to counsel. A public defender is assigned if the juvenile requests representation and the data compiled by the probation staff indicate indigency. As a matter of practice, however, counsel is automatically assigned in serious cases and no juvenile who wishes to be represented will be denied counsel. Although juveniles had a right to counsel in the Boston Juvenile Court prior to the *Gault* decision in 1967, many juveniles waived counsel and such waivers were commonly allowed by the court except in cases involving children below the age of twelve or where the charge involved a serious felony. However, since *Gault,* the court has discouraged waiver of counsel and permits them in a very limited number of cases. Parental consent must also be obtained. In shoplifting cases, one judge routinely inquires of the probation officer whether the juvenile has a prior record. If none is evident, he requests that a public defender confer with the child and parents to advise them of the juvenile's right to be represented by counsel and to inform them that they may proceed immediately to the hearing if they chose to waive counsel. Frequently, the judge will tell the juvenile and his parents that he will continue the case without a finding if they chose to proceed at once. Virtually

[94] In their recent study of six lower criminal courts in the Boston area, Bing and Rosenfeld reported that the average defendant is charged with over 1.5 crimes. *The Quality of Justice in the Lower Criminal Courts of Metropolitan Boston* 135 (1970).

all of those who are offered this opportunity accept and sign the waiver which is treated as an admission. The public defender is requested to remain in the courtroom "so that the integrity of the court is not impugned." The police prosecutor sums up the case in two or three sentences; the judge makes a remark to the defendant about staying out of trouble, and the case is continued without a finding for three or six months. The defendant's time in the courtroom is about five minutes, on the average.

In contrast, another judge treats all cases the same, including the pettiest shoplifting. At arraignment, the right to counsel is fully explained, and both defendant and parent are asked if they want counsel. If neither indicates that they do, counsel is appointed, unless the family can afford to pay for private counsel, which is rare. The judge also requires the prosecutor at arraignment to summarize the evidence against the defendant. Although we have never seen the judge dismiss a case at arraignment, this procedure approximates an inquiry into probable cause, since he requires the prosecutor to demonstrate that he will come forth with evidence for the conclusions stated in the complaint. The case is then continued for a hearing, usually in a week's time.

In all, less than twelve percent of juveniles waive counsel (Table 6, *infra*) although, in the opinion of the presiding justice, as many as 50 percent of all juveniles would agree to waive their right to counsel if the court encouraged or allowed indiscriminant waivers. No juvenile who waived counsel was subsequently bound-over for trial as an adult (Table 7, *infra*) or was committed to the Department of Youth Services.

The question of detention is also raised at arraignment. No case was observed where a child who had been released by the police was subsequently detained by the judge. Therefore, the decision by the police and probation officer when the child is first arrested seems the primary factor in all bail/detention questions that are later raised. The great majority of juveniles who are arraigned are released in the care and custody of their parents. The bail/detention issue is most important for the minority of defendants who were detained after arrest. In the vast majority of these cases, the public defender is appointed at the arraignment, but the public defender is, of course, severely handicapped by having no knowledge of the defendant or the case. Defense counsel made an argument on the bail question in fewer than ten percent of all cases observed in which bail was set. The arguments were generally perfunctory. For example, a female charged with attempted larceny had bail set at $1,000, payable only by her parents. Defense mentioned that the juvenile had never previously failed to appear at a court hearing and requested that she be released to her mother. The judge examined her extensive prior record, and remarked that she was lucky that he hadn't set a higher figure. The defender made no reply. Juveniles have a right to bail review but that right was not exercised in any of the cases which were observed.

Approximately two-thirds of all juveniles are released in the care and custody of their parents or on their own recognizance (less than three percent) without bail. In about one-third of all cases, money bail was set. In 1971, three juveniles were detained without bail. Over one-third of all bail was in amounts of $100 or less while almost one-quarter of all bail set was in amounts in excess of $1,000 (Appendix C, Table 3).

Bail was posted in 70 percent of those cases for which bail was set. Considerably under ten percent of juveniles in the Boston Juvenile Court are detained after arraignment for failure to post bail. Curiously, the higher the amount of bail the *greater* is the likelihood that bail will be posted. For example, in cases where bail was set at $50 or less, more than 50% did not post bail: in cases where bail was set between $50 and $250, about 28% did not post bail; in cases where bail was set between $250 and $1,000, 31% did not post bail, but in cases where bail was set above $1,000, only 6% were not able to post (Appendix C, Table 4). This may be explainable by the court's use of "parent only" bail. In many instances where the court wishes to ensure that proper care will be provided to the juvenile if released from detention, it sets bail which is acceptable only if posted by a parent. In the case of runaways, which constitute a disproportionately large percentage of bail cases (Appendix C, Table5), and other juveniles, even the low bail which is generally set on a "parent only" basis may not be posted as a result of parental absence or indifference.

Juveniles for whom bail is set do not fare as well at adjudication or disposition as do juveniles who are released without bail. At adjudication, juveniles for whom bail was set were found delinquent or bound-over for trials in the criminal courts at much higher than average rates. They were continued without a finding at less than one-quarter the rate of the caseload as a whole (Appendix C, Table 6). At disposition, commitments to the Department of Youth Services were twice as frequent in bail cases as they were for the full caseload (Appendix C, Table 7).

The filing of written motions in the Boston Juvenile Court is not common. For the entire year of 1971, encompassing over 2,300 complaints, written motions were discovered in only 13 cases.[95] Motions for discovery (which were always granted) were prominent in this group, as were motions to suppress. Many of these motions were filed by attorneys from the Boston Legal Assistance Project, although this agency was involved in only a handful of cases in the court during the year. Attorneys from the Massachusetts Defenders Committee, representing the great majority of juveniles in the Boston Juvenile Court, filed only a few written motions, there was no evidence that a written reply had been filed.

The very low number of written motions in the Boston Juvenile Court can be explained, in part, by the very great caseload pressures which burdened the public defenders in 1971. Until mid-1972, when the Massachusetts Defenders Committee tripled its representation in the court, the sheer weight of each defender's caseload was such as to militate against extensive motion practices. In recognition of the defenders' lack of time to properly prepare and argue motions, the presiding justice has not required the defenders to argue motions prior to the adjudication hearing. Instead, he has permitted wide latitude to the defenders in making their motions orally during the hearing. "In many instances they don't even know they have grounds for a motion until they hear the evidence in court."

Apart from caseload volume, there is another explanation for the low frequency of written motions. Under its previous leadership, the Massachusetts Defenders Committee viewed district court (lower criminal court) trials as a means of distinguishing between cases which have legal merit and those with none. With the latter group, the emphasis was on securing the most favorable dispositions. With the former, the lower court proceedings were utilized as a discovery tool to strengthen cases for trials *de novo* in the Superior Court on appeal. In neither case was forceful advocacy a prominent feature of the defenders' work in the lower courts. Pursuant to this approach, the filing of motions in the district courts was discouraged as an unnecessary practice which was wasteful of the defenders' time and which provided the state with early notice of the legal issues which would subsequently be raised on appeal. Even under the new leadership of the Massachusetts Defenders, this issue has not been fully resolved and differences concerning the value of full advocacy at the district court level continue to exist.

These attitudes are prevalent among the attorneys who are assigned to the Boston Juvenile Court. As one defender put it in explaining the rarity of pretrial motions: "It's more than just a lack of time. If you have a worthwhile issue you don't want to give it all away to the police so they can go back and think up all the answers. You want to save something for appeal. However, on appeal,

[95] Very few motions are filed in the district courts of Massachusetts. Out of 2,000 district court cases which were examined, only ten motions could be discovered. Bing and Rosenfeld, *Id.*, at 79.

they have pretty sharp district attorneys so I don't really know." [96]

Notwithstanding the lingering reluctance to file motions in the Boston Juvenile Court, a definite increase has been noted since the summer of 1972, when the Massachusetts Defenders expanded their coverage in the Boston Juvenile Court. Both defenders and police prosecutors ("Sometimes it appears that they have nothing better to do with their time than write motions.") have indicated that more motions are now being filed than in the past and feel that this trend is likely to continue.

Although police department policy calls for obtaining the assistance of the police department legal advisor when motions are filed, in practice, the police prosecutors handle almost all motions on their own with the assistance of law students from the Suffolk Law School. Professional intervention for the state in answering motions almost never occurs in the Boston Juvenile Court. Although the police prosecutors feel that they are able to adequately respond to motions ("These motions are not difficult to deal with."), it is clear that even with the help of law students, the state is severely handicapped in its use of police officers to respond to the increasingly complex legal issues which are being raised in juvenile cases. Nowhere is this problem more apparent than when oral motions are made by defense counsel at the adjudication hearing. As the sole representative of the state at these hearings and with no opportunity to gain outside assistance, the police prosecutors are often left without the means to frame an adequate response. Under these circumstances, the judge has no alternative but to intervene in behalf of the police prosecutor and himself develop the legal arguments which an attorney-prosecutor would ordinarily be obliged to make. In the 87 adjudicatory hearings which were observed, some 23 motions were made orally by defense counsel. Of these, five were motions to strike, nine were motions for a directed verdict, three were motions to suppress, five were motions to dismiss and one was a motion to amend a complaint.

On a motion for directed verdict or a motion to dismiss, most of the prosecutors can quite adequately respond by characterizing and interpreting the evidence in such a a way as to meet defense counsel's argument. It is very rare that a prosecutor is required to say more than a few sentences reiterating the testimony given by his witnesses. However, the judges themselves routinely "argue" the government's side when a legal issue is raised by a motion or objection. This practice places defense counsel in a direct adversary relationship with the judge—an uncomfortable relationship for the public defenders who must appear in the same court on a daily basis.[97] Under these circumstances, aggressive advocacy is inhibited and the public defenders may well refrain from raising technical legal issues which risk unwanted confrontation with the judge.

The need to provide assistance to the prosecution in responding to motions is regarded as an undesirable necessity by the presiding justice as long as professional prosecutors are not available: "I can't hold the police to the strictest standards of response. They can't cite a case in support of their argument, for example." As non-lawyers, the police prosecutors may have difficulty in dealing with legal concepts. As an example, the judge recounted a case in which the police, following their reading to a young suspect of the obligatory Miranda warnings, questioned the boy persistently in spite of his reply that he wished to make no statements. After continued questioning, the boy finally broke down and provided the police with incriminating statements. At the hearing, the judge ruled that the statements were inadmissible to the complete bafflement of the police prosecutor.

It must be concluded that the juvenile officers and the court clerk presently perform an admirable job of screening for legal sufficiency and of drafting complaints. Although errors do occur in applying the proper legal charges to particular fact situations, they are not frequent and excessive charging is the rare exception. Wherever possible, police endeavor to adjust petty complaints without court referral. The court's caseload, therefore, does not reflect a high proportion of "junk" complaints which are indiscriminately referred to the court.

Notwithstanding the high level of general competence which the juvenile officers and court clerk display in the performance of these functions, the success of the juvenile officers, particularly, cannot be divorced from their regular exposure to court-imposed standards through their work as juvenile court prosecutors. However, with the use of attorney-prosecutors to represent the state at adjudicatory hearings, the direct influence of the court over the police will be somewhat diminished. It is therefore essential, as outlined in the *Guidelines*, Chapter 7, *infra*, that the juvenile court prosecutor play an important role in scrutinizing all complaints which are filed in the court.

The increasing number of pre-hearing motions which are now being filed in the Boston Juvenile Court by the public defenders points out the need for a qualified state's representative at this stage. The informal, almost casual, way in which motions are presently responded to demeans the adversary process and ensures neither the rights of the juvenile nor the community's interests in fair but effective representation. The *Guidelines* also suggest a role for the juvenile court prosecutor in advising the police on proper practices which are consistent with the rapidly emerging body of legal requirements which are now applicable to juveniles. Although the juvenile officers gradually "catch on" to such demands through this current work as prosecutors, the process is often slow and difficult. For example, juvenile officers discontinued the use of line-ups for a period of time because of confusion concerning the requirements for conducting them properly.

Finally, many cases are referred to the court which cannot be screened out by the juvenile officers but which do not require full adjudication by the court. Stubborn children, runaways and other offenses which are unique to juveniles are among the kinds of cases which many courts are successful in diverting or adjusting at the intake stage. The *Guidelines*, therefore, recommend the establishment of an intake screening process which would seek to identify and divert appropriate cases not requiring full judicial action. The participation of a juvenile court prosecutor is deemed essential to the proper operation of an intake diversion process and in the formulation of consensual diversionary plans for submission to the court for its approval.

## H. ADJUDICATION

A little less than half of the 87 adjudicatory hearings which were observed involved admissions. That is, when the case came up for hearing, the juvenile "admitted to facts sufficient for a finding." These admissions include those cases in which juveniles waived counsel at arraignment in return for an expedited adjudicatory hearing and an assurance of a light disposition.

However, most of the contested cases are only nominally contested. It is the typical pattern in a "contested" case for the public defender to cross-examine the prosecution witnesses, to present no witnesses on the defendant's behalf and then to state that the government has not proved its case. Even the cross examination is frequently perfunctory and reveals no design or rationale on the part of the defense attorney. A case involving two 15-year-olds who were charged with larceny of a bicycle is fairly typical of those nominally contested cases. The police prosecutor put on three witnesses—two campus police who had apprehended the juveniles with the bicycle in their possession, and the victim, who identified it as his property. The defense attorney's cross-examination of the campus police officers consisted of the following:

Q. Where did you apprehend these young men?
A. In the parking lot.
Q. How close were they to the bicycle?

[96] In fact, less than 8% of all delinquency adjudications in the Boston Juvenile Court were appealed in 1971. This compares with an appeals rate of 20% in the district court. Bing and Rosenfeld, *Id.* at 97.

[97] Also see *Id.*, at 80.

A. One was holding it, and the other was standing next to him.

Q. And you're sure he was holding it?

A. Yes.

Q. What time of day was it?

A. Four o'clock in the afternoon.

Defense counsel made a total of seventy objections in approximately forty contested cases which were observed. Of these seventy objections, however, fifty-five were made in only six cases—the highest total of objections in a single case being thirteen.

In this same number of adjudications, twenty-one defense witnesses took the stand. Fifteen of these were the juvenile defendants themselves. Mothers of defendants testified three times, and the other three witnesses were a store detective, a law student and a companion of the juvenile defendant. The average time for a contested adjudicatory hearing was under twenty-four minutes.

Public defenders display a range of trial styles. Most will not generally object to the form of the questions used by the police prosecutor in examining witnesses except in cases of flagrant abuse. Others object with far greater frequency but are seldom successful in keeping out damaging evidence. In one case, the defender made thirteen objections in a case involving breaking and entering and rape. Five objections were to hearsay, two were to questions asking for opinions, and six were to leading questions. Most of these were sustained, requiring the police prosecutor only to rephrase his question or to remind the witness not to testify to hearsay. The judge paused only briefly to rule on each objection. Every bit of prosecution evidence was eventually admitted with little difficulty.

In the majority of cases observed, the attorney put in no evidence at all, leaving the court only with the uncontroverted testimony of the prosecution witnesses. Defenders often do not put juveniles on the stand to testify on their own behalf. The defenders contend that the testimony of juveniles is unreliable and, if it appears to be untruthful, is likely to invoke a strong reaction from the court which could result in a much more severe disposition than if the juvenile had not taken the stand. The presiding justice, on the other hand, regards this as another indication of the defenders' own unwillingness to represent children with the same adversary forcefulness as they would use in the representation of adults.

Defenders rarely offer the court an alternate theory to the state's case. Their cross-examination of the government's witnesses, while often lengthy, does not reflect any prehearing investigation or preparation. In most cases, their examination of the government's witnesses is conducted with no apparent purpose or plan and seldom yield any advantage to the juvenile. Summations by the defenders are the exception rather than the rule.

The defenders tend to assume that almost all of the juveniles who are brought to court are guilty of the charged offense and would benefit from being under the supervision of the court. Their opinions of the juvenile police officers and the probation and clinic staff are highly complimentary. Under these circumstances, they feel little incentive to expend the time and energy necessary to truly contest the great majority of the cases which they handle. In spite of the fact that police prosecutors represent the state, they would probably agree with the assessment of one prosecutor who stated: "Once a kid gets to court, it would take a magician to spring him."

Accordingly, the defenders reserve their full adversary efforts for those cases where the prosecution has an unusually weak case or where the charges are so serious that they cannot rely on their nomal presumption of juvenile court benevolence.

The following example is one of the relatively small number of observed cases in which the prosecution's case was clearly inadequate.

The juvenile defendant, who had no prior record, was charged with attempted larceny of a cash register in a state building. The prosecutor was an officer in the State Capitol Police Force. He was also one of the policemen who had made



the arrest and gave testimony at the hearing. Both arresting officers testified that they heard an alarm go off which is triggered by tampering with the cash register, ran down the hall and into the cafeteria where the register was installed. The defendant was found standing near the cash register and was arrested. Nothing had been taken. Defense counsel put on two witnesses, the defendant and another boy who had been in the cafeteria at the time. This case was one of only six cases where a witness other than the defendant testified for the defense. The boys described the room as full of teen-agers eating lunch, most of whom ran when the alarm went off. It was also brought out that considerably over a minute passed between the sounding of the alarm and the entrance of the police. The adjudicatory hearing lasted for almost an hour, featuring extensive cross-examination of the prosecution witnesses. Two motions were made by the defender. One, to suppress statements made to the police, was one of only three such motions observed in six weeks. At the end, the defendant received a finding of not delinquent.

It should be pointed out that the arrest in this case, having been made by a state police official, was not screened by the juvenile officers nor prosecuted by one of the regular police prosecutors. It must also be noted that while most cases which are processed by the regular juvenile officers would support a finding of probable cause, the lackluster defense effort which most "contested" cases receive at the adjudicatory hearing does not inspire confidence that they would, with better defense work, necessarily meet the requirement of being "being a reasonable doubt."

An examination of findings in the Boston Juvenile Court for 1971 (Table 5) and the preceding nine years[98] indicates a substantial reduction in the ratio of delinquent to not delinquent findings. Across the ten-year period, the ratio was as high as fourteen delinquent findings for every one finding of not delinquent (1962) and as low as four-to-one in 1967. Of interest is that for the five-year period of 1962 through 1966, there were ten times as many delinquent findings as there were not delinquent findings while for the five-year period of 1967 through 1971, the ratio dropped considerably to an average of six-to-one. This decrease coincides generally with the introduction of regular public defender services in the Boston Juvenile Court and may well be attributable to their presence.

[98] Taken from the Commonwealth of Massachusetts, *Statistical Reports of the Commissioner of Correction* (1967-1970).

**TABLE 5.—Findings in the Boston Juvenile Court for 1971 (N = 1940) [a]**

| Finding | Number | Percent |
|---|---|---|
| Delinquent | 868 | (44.7) |
| Not delinquent | 132 | (6.8) |
| Dismissed without a finding | 379 | (19.5) |
| Filed without a finding | 94 | (4.8) |
| Bound over | 76 | (3.9) |
| Continued without a finding | 384 | (19.8) |
| Other | 7 | (0.4) |
| Total | 1940 | (99.9) |

[a] This table includes only those cases for which data concerning the finding were available. These 1,940 cases represent 95.5% of the court's caseload (2,032).

(As shown in Table 6), almost 90% of all juveniles are represented by counsel in the Boston Juvenile Court. As indicated earlier, the court does not encourage juveniles to waive counsel and will only accept a waiver in cases involving minor offenses where the disposition is not likely to be severe. Waivers were accepted in fewer than 12% of the court's cases. Almost three-quarters of all juveniles are represented by the public defender. In a small percentage of cases, the court will assign

**TABLE 6.—Representation of Juveniles in the Boston Juvenile Court (1971)**

| Counsel | Number [a] | Percent |
|---|---|---|
| Waived | 189 | (11.7) |
| Public defender | 1191 | (73.5) |
| Private, appointed | 56 | (3.5) |
| Private, retained | 127 | (7.8) |
| Other [b] | 57 | (3.5) |
| Total | 1620 | (100.0) |

[a] This table includes only those cases for which data on counsel type was available. These 1620 cases represent 79.6% of the court's caseload for 1971.

[b] Includes law school defender programs and Boston Legal Assistance Project.

TABLE 7.—Findings in the Boston Juvenile Court for 1971 by the Counsel Type (N = 1562) [a]

| Counsel | Delinquent | | Not delinquent | | Dismissed without a finding | | Filed without a finding | | Bound over | | Continued without a finding | | Other | | Total | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Waived | 31 | (17.0) | 2 | (1.1) | 36 | (19.8) | 4 | (2.2) | 0 | (0.0) | 104 | (57.2) | 5 | (2.7) | 182 | (100.0) |
| Public defender | 645 | (56.3) | 86 | (7.5) | 186 | (16.2) | 57 | (5.0) | 32 | (2.8) | 131 | (11.4) | 9 | (0.8) | 1,146 | (100.0) |
| Private, appointed | 17 | (31.5) | 8 | (14.8) | 6 | (11.1) | 1 | (1.9) | 2 | (3.7) | 20 | (37.0) | 0 | (0.0) | 54 | (100.0) |
| Private, retained | 42 | (33.9) | 14 | (11.3) | 25 | (20.2) | 5 | (4.0) | 7 | (5.6) | 29 | (23.4) | 2 | (1.6) | 124 | (100.0) |
| Other | 26 | (46.4) | 2 | (3.6) | 13 | (23.2) | 3 | (5.4) | 0 | (0.0) | 12 | (21.4) | 0 | (0.0) | 56 | (100.0) |

[a] This table includes only those cases within each counsel type for which data concerning the finding were available. These 1562 cases represent 96.4% of the 1620 cases for which counsel type was recorded.

private counsel. These cases usually involve Spanish-speaking juveniles who would have difficulty communicating with a public defender. Assignment of private counsel may also be made in a small number of cases in which counsel appears in fewer than 10% of all cases. Considering the fact that the court requires juveniles and their families to consult with a public defender before agreeing to waive counsel, it can be stated that some form of counsel assistance is provided to every juvenile who comes before the court.

In terms of the effectiveness of counsel, however, the data suggest that there may be marked differences between the various types of counsel who appear in the Boston Juvenile Court (Table 7). Juveniles who are represented by private counsel, both appointed and retained, are less likely to be found not delinquent than are the clients of the public defender. In fact, the clients of public defenders are almost twice as likely to be found delinquent as are those of private counsel. Moreover, even if found to be delinquent, juveniles who are represented by private counsel avoid the most severe dispositional alternatives.

Although the greater success of retained private counsel could be explained, at least in part, by the better image which their more affluent clients may project in court, this factor would not account for the equally successful performance of appointed private counsel. Furthermore, comparing cases represented by retained counsel with the distribution of offenses throughout the Boston Juvenile Court's 1971 caseload, it appears that, with only a few exceptions, retained counsel represented a fair cross-section of the distribution of offenses in the total caseload (Appendix C, Table 2). Retained counsel did appear in a disproportionately high percentage of cases involving charges of assault and battery, destruction of property and disorderly person, and a lower percentage of cases involving charges of breaking and entering and running away. Overall, however, the cases which were handled by retained counsel were representative of the court's caseload. Their somewhat higher frequency of appearance in "serious" cases such as assault and battery may explain the fact that a greater percentage of juveniles who are represented by retained counsel are bound over to the criminal courts for trial.

Although private attorneys are usually strangers to the juvenile court and are unfamiliar with its procedures and practices, court personnel agree that they are able to spend far more time in preparing their cases than the public defenders. Also, they are less likely to assume the benevolence of the juvenile court or the advantages of court supervision. The chief probation officer, in referring to the harm that is being done to juveniles who get away with their misconduct because of the intervention of counsel, stated: "There is a difference between private and public counsel. We can do a lot better with the public defender. Private counsel has no interest in court itself or the system. They are only client-oriented. The Massachusetts Defenders are community and court-oriented."



Moreover, since the private attorneys are often more familiar with the defendant and his family than the public defender, it is our impression that the judges give more credence to their remarks about the juvenile's background and character and their pleas for leniency. A private attorney may be able to say with some credibility that he has known the family and child for years, and to characterize the child's behavior as a minor aberration from his basically good nature.

Beyond that, private attorneys are often able to suggest more specific dispositions. The observer concluded that private attorneys recommended specific courses to the judge with far greater frequency than their public defender counterparts. For example, in one case the attorney, at disposition, told the judge that the defendant was associating with a specific bad companion and suggested that the conditions of his probation include an order to stay away from this named companion. The defendant had an extensive record and it was the observer's impression that this tactic was successful in avoiding a committal to the Department of Youth Services. In another case, the recommendation involved a placement in a particular private halfway house which had agreed to accept the defendant. This, too, was accepted by the judge.

Lastly, private attorneys are often shown greater consideration by court personnel than public defenders. For one thing, cases involving private counsel will sometimes be scheduled to begin at a specific time, whereas all other cases are called more or less randomly, requiring defendants and their families to wait around for hours. However, this "consideration" is also apparent in more subtle but more important ways. For example, one shoplifting case was observed in which the charges were dismissed at the judge's own suggestion. This was a situation where our observations led us to conclude that the best a public defender could have hoped for was a continuance without a finding, which the judges consider equivalent to a delinquency finding when it appears on a child's record. The juvenile was apprehended in a store with a jacket on his arm that he had removed from another department. Defense argued that intent to steal the jacket had not been shown. The judge countered by reading from the statute, which specified that the goods need not be removed from the store to constitute the offense, but just taken from the department, saying "I didn't make the law." The judge then asked defense counsel if he would be "satisfied" with a dismissal, which the attorney readily accepted.

The competence and self-assurance that the regular police prosecutors project at hearings varies considerably from man to man. However, their general style and approach to the prosecution of juvenile cases is much the same. They perform their courtroom duties in a detached and "objective" manner. Their courtroom techniques are simple, practical and direct. They are designed to present the court with the basic evidence necessary to support the allegations of the complaint. They are responsible for securing the presence of the state's witnesses, eliciting their testimony and cross-examining defense witnesses. The police prosecutors display a working knowledge of the rules against hearsay evidence and frequently admonish their witnesses to "testify only to what you saw." Occasionally, they will object to leading or irrelevant questions but generally limit themselves to the responsibility of presenting an affirmative case for the state. Their demeanor is crisp and occasionally "chilly" but they rarely adopt the harsh, punitive style which characterizes some of their counterparts in other courts. Their role at the adjudicatory hearing is narrow, serving primarily as a conduit for the state's evidence. They are not, in any real sense, advocates, and they seldom engage in arguments to the court or in any activity which could be seen as an overt effort to sway or advise the court. They rarely attempt to interpret the evidence and refrain from areas in which opinions or discretionary judgments are called for.

In spite of the claims that juvenile officers prosecute almost all cases in the Boston Juvenile Court,

our observations reveal that a substantial percentage of cases are prosecuted by police officers other than the regular police prosecutors. In approximately thirty percent of the hearings which were observed, prosecution was conducted by the arresting officer. For the most part, these officers were members of the Boston Police Department, but a transit authority officer and a member of the State Capitol police contingent also prosecuted.

While there is no "hard-and-fast" rule concerning the use of arresting officers as prosecutors, an effort is made by the ranking juvenile officer to limit the use of non-juvenile officers as prosecutors. However, when an officer asks to prosecute his own case and the sergeant determines that he is sufficiently competent, he will allow it. Nevertheless, all the juvenile officers point out the need for experience and skill in prosecuting cases in the Boston Juvenile Court and concur in the view that most non-juvenile officers are not adequate to the task. When asked whether any police officer should be permitted to prosecute, one juvenile officer stated, "No, not today. You have to learn the proper way to present a case. An officer can't just walk in off the street and expect to know what to do." The police prosecutors regard themselves as specialists with a level of expertise not found among other police officers. In this regard, their attitudes toward the use of police officers who lack their unique skills is not substantially different from that which an attorney-prosecutor might display toward the use of *any* police officer to prosecute. Juvenile officers speak disdainfully of young policemen who believe they can perform competently as prosecutors and who insist on having an opportunity to present their own cases. It is not improbable that some policemen are allowed to prosecute in order to demonstrate to them the difficulty of the job.

Juvenile officers are not, however, unanimous in the view that one should not prosecute in cases where he was the arresting officer. While some regard this as an undesirable practice no matter who is prosecuting, others are convinced that they can fairly and effectively present a case notwithstanding that they may also be their own chief witness. The simple conviction which juvenile officers express concerning their prosecutorial abilities is reflected in the following statement: "If you are involved in the arrest, you don't have to rely on others for the story. Prosecution is, in a sense, story telling. I know that if I make an arrest, it's absolutely justified. I don't need extra cases." Of course, this statement also reveals one of the principal dangers in allowing arresting officers to prosecute. In presenting his own case, the police prosecutor can no longer be regarded as the objective state's representative. His own veracity, credibility and integrity are at stake in the proceeding. An unfavorable finding by the court may be tantamount to an attack on the witness-prosecutor's truthfulness. Because of the prosecutor's personal involvement in the case, all the ordinary elements of an adversary proceeding—cross-examination, objections to evidence, etc.—may take on the coloration of personal conflict. Under those circumstances, it is extremely difficult to maintain an appearance of fairness and propriety in the courtroom. Although some juvenile officers contend that they are able to maintain an appropriate prosecutor's demeanor even when their own testimony is under challenge ("I'm not vicious. If a kid takes the stand and denies what I've said, I just continue to ask him simple questions. I don't get angry."), others recognize the inherent difficulties in performing the dual roles of prosecutor and witness. "We prefer not to do the prosecuting when we have been involved in the arrest because the lawyers on the other side can dig into you and you don't have anyone to take your side." The ranking police prosecutor concurs in the opinion that arresting officers should not prosecute and cites the problems of being one's own witness and making objections at the same time.

When a prosecution is conducted by an officer other than a regular police prosecutor, it may consist of little more than the police officer's putting himself on the stand and reading a prepared



account of the incident. The arresting officers show only a primitive understanding of the rules of evidence. They lack courtroom presence and usually seem uncomfortable with the proceedings. In some cases, of course, the issue is basically only one of credibility, so the officer's lack of familiarity with legal principals is relatively unimportant. Even so, a serious question of propriety is raised when the arresting officer cross-examines a juvenile who takes the stand in her own behalf (in cases involving soliciting for prostitution, for example) with questions about what "I said to you" and what "you said to me."

If a case requires more than just his own testimony, the arresting officer acting as prosecutor quite rapidly gets out of his depth. Several instances of embarrassing inadequacy have been observed in these cases. In one case, the arresting officer failed to elicit testimony from the victim identifying the defendant as one of a group of boys who allegedly attacked him. The judge became quite annoyed since he was clearly personally convinced of the defendant's involvement but felt that the arresting officer had failed to present the evidence properly. He granted defense counsel's motion for a directed verdict and chided the officer, saying: "The only testimony you gave is what someone told you. That isn't admissable in court." Afterward, the judge called in the chief police prosecutor, told him what had occurred, and ordered him to instruct that officer on how to present a case. This judge several times demonstrated that he does not prefer to have arresting officers act as prosecutors. Although he routinely intervenes to assist police in responding to legal issues raised by defense motions and objections, he does expect the prosecutor to present the facts in a coherent manner at the very least.

It was difficult to determine the extent to which arresting officers lost cases which would have been won by more competent prosecutors, since the observers had no knowledge of the facts of the cases other than what came out in court. However, it can be said with some certainty that at least two cases were lost because of ineffective prosecution. One was the case just discussed. The other involved a charge of use of a motor vehicle without authority. The arresting officer simply testified that he stopped a car reported as stolen and the defendant was riding in the passenger's seat. He then sat down. Defense proceeded to move successfully for a directed verdict on the ground that intent had not been shown. The judge then turned to the policeman and explained that the statute required knowledge and that he had not testified to anything tending to establish knowledge. The policeman said: "I just put in the evidence I have and that's my job." The judge seemed somewhat perturbed at that response and directed a verdict of not delinquent.

Although some of the most flagrant instances of prosecutorial inadequacy tend to occur when the regular police prosecutors are not involved in the presentation of a case at the adjudication hearing, there is ample reason to conclude that the use of juvenile officers to represent the state at adjudication is not desirable. In using police officers who are untrained in law, the state assumes an obvious handicap in all but the most uncomplicated proceedings against juveniles. Unable to argue points of law and often failing to elicit testimony which is necessary to establish all the essential elements of an offense, police prosecutors would seriously jeopardize a large proportion of their cases were it not for the reluctant allowances which the court makes for the untrained police prosecutors and the active assistance which it occasionally provides. Moreover, the generally low standard of public defender representation in the Boston Juvenile Court fails to exploit prosecutorial weakness to the degree that one would expect.

Some police prosecutors, in keeping with their selfperceptions as highly skilled advocates, refuse to acknowledge that their work is buttressed by a helpful court. They interpret the court's efforts to maintain some minimal standards for prosecution as evidence that they receive no assistance whatever from the judges. "When you walk into that court, you adhere to the rules of evidence or you will hear

about it. The judge won't intervene if defense raises a technical point and the prosecutor can't answer." "The court won't help us. They hold police prosecutors to at least as high a standard as defense attorneys. We get no favors."

Other police prosecutors, however, acknowledge that the judge will intervene when a juvenile officer has made a mistake or is unable to respond on on an issue of law. They justify this practice on the grounds that they should receive such consideration in view of the fact that police prosecution costs the taxpayers less than would a system of attorney-prosecutors. "Yes, and I think he [the judge] should [assist the police]. After all, it's America's biggest bargain—having police do prosecution. No Assistant D.A. could handle our caseload."

Public defenders generally conceded the basic competence of some police prosecutors in presenting simple fact situations in cases which are fundamentally strong. However, they generally agree that police prosecutors are vulnerable to aggressive defense tactics and cannot stand up to such challenges. One attorney claims that he seeks opportunities to take advantage of the untrained police prosecutors. "Sometimes I make a motion even if the law is not on our side, hoping that the police won't be able to respond." Our observations, however, do not indicate that public defenders, as a rule, apply heavy pressure on the police prosecutors. Although the defenders credit the Boston Juvenile Court with maintaining standards of judicial integrity which are far higher than those which are found in other lower courts of the Commonwealth, they are well aware that its judges will intervene to provide aid to a floundering police prosecutor when they feel that it is warranted. "Some of the judges will definitely do that. They start asking questions and take over." The presiding justice acknowledged that the imbalance in adversary skills that exists in the court often forces judges to discard their neutral role and actively participate in the presentation of the state's case. "It's frequent enough that you find you have saved a case by asking some questions. I go in to clarify a point and end up bringing out all kinds of things, although it wasn't intended that way. The best thing that ever happens to a judge is to have two superior lawyers trying a case. The judge doesn't have to do anything—the attorneys do it for him."

When judges intervene in support of the prosecution, normal adversary relationships break down. Objections, if they are made, must be directed against the judge's own questions and he, in turn, must rule on their validity. This distortion of the adversary process creates a climate which is inimical to good advocacy. In this sense, the absence of a qualified prosecutor probably does far more to stifle capable defense in the Boston Juvenile Court than it does to encourage it. In discussing the effect which the introduction of professional prosecutors might have, one public defender conceded that "defense would have to upgrade itself just to survive."

Boston Juvenile Court judges make an earnest effort to preserve their posture of neutrality in the face of prosecutorial deficiencies. As a rule, the judges require the prosecution to make out the basic case against the juvenile. We have seen them resist the impulse to intervene even at the cost of a dismissal or a finding of not delinquent. The ranking police prosecutor reports that the judges are not at all pleased when they are forced to throw a case out because of an inadequate prosecution by a police prosecutor. "The judges will call me in and chew me out. He'll say the officer had a good pinch but he blew it." However, the consequences of repeated dismissals under these circumstances are often greater than the judges are willing to accept. They do, therefore, assume the burdens of prosecution with considerable regularity. Several examples are reported below.

One case which was observed involved a boy charged with several offenses connected with the theft of a bicycle. The police prosecutor was having a certain amount of difficulty getting his witness to testify to facts rather than to hearsay or opinions and defense counsel was objecting repeatedly.



Finally, the judge turned to the public defender and said, "It seems we have a very technical case here. You know there are ways of getting this evidence in. I'm not going to prosecute this case but at some point I'm going to have to ask a few questions in the interests of justice." He did, and a delinquency finding resulted.

In an armed robbery case, the police prosecutor had neglected to elicit testimony from the victim tending to show that he was put in fear by the knife which one of the assailants had held by his side. After defense counsel's cross-examination, the judge asked the victim a series of questions establishing that he had seen the knife, had been afraid, and as a result, had given over his money. In this case, the judge himself established an essential element of the crime that the police prosecutor had neglected to establish.

Public defender attitudes regarding judicial intervention vary somewhat. Most feel that they are placed at a disadvantage in arguing against untrained prosecutors in that judicial intervention shifts the adversary balance against them. "There are cases when I felt we were penalized by being against the police." Another defender, however, is more sanguine in assessing the impact of such intervention. In relating an incident in which a judge brought out an element of a case which the police had forgotten, the defender said, "I didn't feel that justice was miscarried since it was only a stupid mistake. Why should I benefit from that?"

Judges take the major responsibility for answering defense counsel's motions and objections. Although they will ask the prosecutor if he has anything to say, they do not expect him to be able to make legal arguments. For example, during one case a defense motion was made to which the judge responded by raising the legal arguments on the other side. After several exchanges between the judge and defense counsel, the judge turned to the prosecutor and asked him if he had anything to add, saying, "You really don't have to argue, I've done the argument for you."

The observer noted only rare instances where there was a question about the correctness of the judges' rulings on legal points. However, it was evident that defense counsel is placed in an uncomfortable position by having to argue directly against the judge. In a court situation involving lawyer-prosecutors, the defense would make his argument, the prosecutor his, and the judge would then rule on the question and give his reasons. In the Boston Juvenile Court, there is a discussion back and forth between the judge and defense counsel. It is frequently difficult to determine the point at which the judge has ceased presenting the arguments and has made his final ruling, but defense has to stop arguing at that point or risk antagonizing the judge. It is also arguable that casting the judge as the person with responsibility for raising the prosecution's legal arguments prejudices him in favor of these arguments.

It would be inaccurate, however, to leave the impression that the judges do not also on occasion assist defense counsel. The judges tolerate quite a bit of incompetence of the part of defense. One of the judges repeatedly instructs defense counsel that they must qualify witnesses by asking them for their names and addresses. He once showed his displeasure at the performance of one of the public defenders by telling him that he had missed his chance to make an effective summation by failing to bring out obvious inconsistencies in the prosecution's case. The judge then instructed the defender generally on the purposes of summation and gave him another opportunity to do it correctly.

In juvenile courts generally, and in Massachusetts particularly, there is relatively little in the way of plea-bargaining or its equivalent. In the first place, the type or number of charges which are brought against a juvenile have no automatic relationship to sentence. Even where a finding of delinquency is made by the court and a commitment of the juvenile is ordered to the Department of Youth Services, the judge has no authority to specify the length or terms of the incarceration. Moreover, because Massachusetts has no PINS classification, the option to reduce a complaint from one alleging

delinquency to one of lesser severity is not available. Finally, with no attorney-prosecutor in the court, there is no community representative available with authority to negotiate with defense counsel for the purpose of arriving at a "bargain" which fully balances the interests of the State and the juvenile. In other jurisdictions (Rhode Island, for example), it is common for defense and prosecution, under court supervision, to agree upon a recommended disposition in return for an admission by the juvenile to the facts. However, with the exception of the previously described procedure which one judge employs at arraignment to encourage admissions in cases of a minor nature, there is no formal vehicle in the Boston Juvenile Court for the achievement of negotiated settlements of cases.

This is not to say, however, that "arrangements" are never made with police prosecutors in an effort to bring about some mutually desired outcome. Both police and defenders acknowledge that the interests of justice may require that the presentation of a case be tailored to avoid a disposition which is more severe than the circumstances warrant. Although police prosecutors are uneasy with this responsibility, the very fact that it persists in practice may be a measure of its need. One could very well argue that in the juvenile court, with its commitment to an understanding of juvenile behavior and to the goals of treatment and rehabilitation rather than punishment, such opportunities for prehearing analysis and discussion would be encouraged.

While the opportunities for negotiated dispositions are far more limited in juvenile courts than in the criminal courts, there is sufficient variety in the dispositional alternatives which are available to the juvenile court to encourage its use. Obviously, a continuance without a finding is far less serious in its implications than is an adjudication of delinquency, or a probation term versus institutionalization. However, given the police prosecutors' very strong disinclination to make formal recommendations to the court or to assume publicly any discretionary responsibilities, bargains with defense counsel, when they do occur, go to the manner in which the police prosecutor will present the state's evidence at the adjudicatory hearing. By controlling the flow of evidence which is submitted for the court's consideration, the police prosecutor can play an important role in shaping the court's perception of the offense and the juvenile. Since the "character" of the juvenile, as reflected in the description of his law-breaking conduct, is such an essential ingredient in determining disposition, the power of the police prosecutor to affect the future of the juvenile offender may be substantial. But the assumption of this responsibility by a police officer, acting outside the review of a qualified State's representative, is wholly undesirable. What it amounts to is a kind of benign deception which is calculated to deprive the court of a full account of the offense without notice, explanation or authority. Moreover, the police, themselves, are extremely uncomfortable in a role more properly placed in the hands of an attorney-prosecutor. The ranking police prosecutor expressed his view that a police officer should not exercise such discretionary authority:

> I don't buy plea-bargaining very much. It is not a police function to predetermine in the corridor how serious to make a case look. We are a reporting agency; we report the facts to the court and don't interfere with the court's job. We should allow the judges to make their own decisions. The police shouldn't be privy to any knowledge that the court doesn't have. Probation staff will give the other relevant information; that is their job. I can only be a policeman.
>
> Also, there is a regulation of the police department which is not always followed perhaps, that officers are not permitted to talk to defense counsel unless the victim is present.
>
> It is up to the court to decide whether there are extenuating circumstances that would justify going light on the sentence. That is not a proper function of the police. The function of the police is to tell it the way it is without adding or detracting, and to let the court make the decision.
>
> The D.A. stands in a different light than the police. He is more an officer of the court.



Yet the view of police prosecutors that many cases are tried when there is no genuine dispute over the facts and their desire to give certain juveniles "a break" leaves them open to propositions to "plea-bargain." The lack of more formalized adjustment mechanisms leaves little alternative.

Although police prosecutors obliquely acknowledge that they make "deals" occasionally with defense counsel, they are reluctant to describe the process or to discuss the criteria which they employ. Defenders, however, freely state that they seek and obtain such cooperation from the police prosecutors. "In a case involving violence, for example, I will offer to admit if he [the police prosecutor] will 'put it in light'—keep out some of the worst facts. . . . They really go along with the juvenile court ideal." Another defender put it this way, "Very rarely is there a kid they call a 'bad kid.' They will keep out damaging evidence in exchange for an admission. They aren't out to get kids."

It is difficult to determine the frequency with which police prosecutors gear the presentation of the state's case toward the achievement of a predetermined outcome. Several contested cases were observed which suggested this practice.

For example, one boy was charged with two armed robberies, normally a crime considered most serious by the court. The police prosecutor put the victim of the first robbery on the stand as his first witness. The victim told a story of two older men and the defendant approaching him and demanding money. One of the older men held a knife at his side where the victim could see it during the encounter. The police prosecutor then asked questions specifically directed toward eliciting from the witness the statements that the defendant, while with the two others stood at the back during the whole exchange and never said a word or took any active part. Similar questions were asked of the second victim who responded in the same way. The prosecutor had clearly decided and was suggesting to the judge that the youthful defendant had been influenced by his companions and was not committed to criminal behavior. The judge found that more than mere presence had been established and that the government had proven its case. Although it appeared that the police prosecutor did believe the boy to be legally culpable, he was willing to risk a finding of not deliquent rather than overemphasize his crimminal involvement. It is interesting, however, that the police prosecutor made no open effort to alter the judge's view of the case.

In summary, it is clear that the government operates under a severe handicap in presenting cases at the adjudicatory stage in the Boston Juvenile Court. Although the best of the regular police prosecutors have little difficulty in representing the state in simple cases which do not involve complicated fact situations or issues of law, they are wholly unable to respond effectively to most objections and motions. When prosecution is conducted by the arresting officer, there is no assurance that even the most simple of cases will not have to be dismissed because of a failure to establish an essential element of the offense. Under these circumstances, the court is placed in the difficult position of dismissing a large percentage of otherwise viable cases or intervening to assist the prosecution. The interests of the community in the fair and efficient adjudication of juvenile cases are not furthered in either event. Judicial intervention in behalf of the prosecution raises significant doubt concerning the fairness of the proceeding and is not likely to leave a juvenile or his parents convinced that "justice is blind" in the juvenile courts. Moreover, a high standard of defense assistance will be impossible in the Boston Juvenile Court so long as aggressive and sophisticated representation carries with it the threat of a direct adversary contest with the judge. The increase in the number of public defenders assigned to the court and a greater interest in juvenile court representation among the new leadership of the Massachusetts Defenders is likely to exacerbate this problem in the coming months.

Far more cases are "contested" by defenders than appear to be warranted. The nominal, perfunctory defense which defenders provide in many of these

cases is rarely of any assistance to the juvenile and diverts greatly needed time and resources from the investigation and preparation of other, more promising cases. Many of these "contested" cases could better be resolved through the development of negotiated consent decrees or a diversionary program prior to the adjudicatory hearing. However, with no attorney-prosecutor present with authority to engage in such joint recommendations and to approve them in behalf of the community, these opportunities are not available.

The foregoing considerations were prominent in our recommendations concerning the establishment of an Office for Juvenile Prosecution and are particularly reflected in Standards 2.5 and 2.8 of the *Guidelines* enumerated in Chapter 7, *infra.*

## I. POST-ADJUDICATION

From its inception in 1906, juvenile delinquency legislation in the state of Massachusetts has had as its avowed purpose "that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance." [99]

Consistent with this end, Judge Harvey Humphrey Baker, the first Presiding Justice of the Boston Juvenile Court, declared that the primary objective of the court is "to put each child who comes before it in a normal relationship to society as promptly and as permanently as possible . . ." [100] In spite of the many years since Judge Baker's tenure on the court, the achievement of this goal remains as the foremost articulated concern of the court's personnel and could be regarded as an acceptable *raison de'etre* for any progressive juvenile justice system. However, it is in a court's ability to provide effective diagnostic services and to formulate and implement individualized treatment programs which are responsive to the needs of its client population that this goal can ultimately be met. In the Boston Juvenile Court, even more than in the juvenile courts of many other jurisdictions, the primary focus for this effort is at the disposition stage. As noted, earlier, Massachusetts makes no statutory provision for intake screening of juveniles or for pre-adjudication diversion. Moreover, in keeping with the court's structure as a formal court of law through adjudication, all social investigations and the preparation of social histories and treatment alternatives are deferred until adjudication has been completed. In practice, the lack of intake screening, informal adjustments and diversion mechanisms means that a very large percentage of those juveniles who are complained against will have their futures determined at disposition. In characterizing the post-adjudicative process as being the most important stage in the court's procedures, former Presiding Justice John J. Connelly stated: "It is the 'last clear chance' of the juvenile court to influence and change the attitudes and behavior of the child." [101] As a practical matter, disposition may be more accurately described as the "only clear chance" which is currently available in the Boston Juvenile Court.

As is shown in Table 8, 868 formal dispositions were made in the Boston Juvenile Court during 1971. These represent dispositions which were following a delinquency adjudication. They do not include a very large number of cases in which the allegations of the complaint may be established to the court's satisfaction but which are concluded without an official finding of delinquency. Court actions of this type might include continuances without a finding, cases which are filed without a finding and some cases which the court may dismiss without a finding. Because the court's general practice is to conclude an adjudication hearing with a brief statement that the complaint's allegations have been proven (in appropriate cases), it preserves its options to make or withold an official finding of delinquency until it has an opportunity to review available information relating to the juvenile's background and social circumstances and to determine whether a delinquency finding is warranted. Accordingly, the court frequently utilizes disposition-type hearings to arrive at case terminations made without a finding. It should also be noted that the issue of binding over a juvenile for trial in the criminal courts arises for the first time at the post-adjudicative stage upon the court's own motion without prior notice and is considered as part of the normal dispositional hearing.

**TABLE 8.—Dispositions in the Boston Juvenile Court for 1971**

| Disposition | Number | Percent |
|---|---|---|
| Probation | 302 | (34.8) |
| Suspended sentence probation | 266 | (30.6) |
| Filed | 155 | (17.9) |
| Committed to D.Y.S. | 95 | (10.9) |
| Other | 32 | (3.6) |
| No data | 18 | (2.1) |
| Total | 868 | (99.9) |

Combining disposition hearings which are conducted following a finding of delinquency and those which are conducted in cases not resulting in a delinquency finding, it can realistically be assumed that as many as 90% of the cases handled in the Boston Juvenile Court proceed through some form of dispositional inquiry. Given the absence of an intake screening or diversion mechanism in the court, the overwhelming majority of court referrals must await a judicial finding that the allegations against the juvenile have been proved before proceeding for the first time to an evaluation of the juvenile's treatment needs and a consideration of alternate court actions. Notwithstanding a finding of involvement, the juvenile judge's discretionary authority at this stage is quite broad. Depending upon the circumstances of the offense, the community's security concerns and the rehabilitative needs and prospects of the juvenile, court actions could range from relatively non-restrictive continuances without a finding through such very severe actions as committal to the Department of Youth Services for an indefinite period of time or committal for trial in the adult criminal courts. It is clear that at no stage in the juvenile court process are the dual concerns of community protection and offender rehabilitation more sharply focused than at the disposition inquiry. Certainly, it is the primary opportunity in the Boston Juvenile Court to make a reasoned judgment concerning the juvenile offender who is before the court and to provide such guidance and assistance as may be necessary.

The proper role of the State's representation at the disposition stage of juvenile proceedings is among the most unclear and unsettled questions relating to juvenile prosecution. Whereas many have come to accept the need for attorney-prosecutors through adjudication as a necessary ingredient of the trend toward greater procedural formality and as a complement to the increasing involvement of defense counsel, there remains strong resistance to the notion that the prosecuting official should be a significant factor at the disposition stage. In essence, opposition is founded upon the belief that the primary goals of the juvenile court movement—the provision of aid, encouragement and guidance to juveniles in trouble—can best be achieved in a cooperative, harmonious atmosphere, one which is free of the elements of adversary conflict. The presence of the prosecuting attorney with his identification as an agent of punishment, it is argued, would only impede the work of those whose basic concerns are with the welfare of the juvenile. It would mark, it is feared, the final corruption of the social welfare ideals of the juvenile court. It is our belief, however, that the prosecutor can play an important role in making disposition a far more vital and meaningful experience.

It can safely be said that at the present time the contributions of prosecution and defense to disposition inquiries in the Boston Juvenile Court are minimal. For a variety of reasons, neither the police prosecutors nor the public defenders appear willing or able to assist the court in the often agonizing process of making effective dispositional determinations. In the final analysis, the court must

[99] Mass. Gen. Laws, c. 119, § 53.

[100] Quoted in Connelly, *Post-adjudication Techniques in the Boston Juvenile Court,* in Selected Papers Presented at the *Institute for Juvenile Court Judges,* 32 (April 1961 in Cambridge, Mass.).

[101] *Ibid.*

rely on its own internal resources and ingenuity to find workable solutions to the very difficult problems which are presented to it. It is only in the rarest of instances that the representatives of the state or of the juvenile add anything to the hearing which might expand the body of information, perceptions or alternatives which is already available to the court.

In the Boston Juvenile Court more than half of the cases adjudicated are, for all practical purposes, disposed of on the same day as the adjudicatory hearings. This group includes many cases which are continued without a finding. Although these cases are still technically open, it is rare that any further action is taken by the court. Police prosecutors are present at disposition only when it immediately follows the adjudication hearing. In those cases which are continued for disposition, the police prosecutors play no role at all and are not even present in the courtroom. The State, therefore, is not represented in those cases which are deferred for the preparation of clinical reports and social histories—in practice, those cases which the court deems as requiring the broadest range of assistance in determining an appropriate disposition.

But even in those cases where the police prosecutor is present at disposition—where adjudication and disposition are conducted on the same day—he generally takes no active part in the hearing. Although the court commonly asks the prosecutor if he has any objection to a proposed disposition, even this opportunity to participate is rarely exercised. In fact, of a total of ninety-one dispositions which were observed in the Boston Juvenile Court, the police prosecutor voiced his disagreement on only one occasion. In that case, one which involved an incident of rape committed by a boy with a serious record of violent crime, the prosecutor objected to a defense proposal for a suspended sentence. His argument—that the juvenile was a danger to the community—was accepted by the court and the boy was committed to the Department of Youth Services. In four other cases, the prosecutor volunteered his comments at disposition. In two of these, the prosecutor described extenuating circumstances for the court's consideration. Although he suggested that a light disposition would be appropriate in these two cases, no specific dispositional recommendations were incorporated in the prosecutors comments. In fact, with the exception of the aforementioned rape case, prosecutors made no specific recommendations to the court in any of the cases observed and, with the exception of the five cases cited above, made no overt effort to influence disposition.

Of course, another way in which prosecutors in the Boston Juvenile Court may attempt to influence a dispositional determination is by their presentation of the state's case at the adjudicatory hearing. It is at this stage—in the depiction of the offense and its surrounding circumstances—that the court's perception of the juvenile's character may be shaped. However, as described earlier, this process often operates in secret and is based upon withholding evidence from the court's attention rather than providing it with such information as may be necessary to formulate a knowledgeable disposition.

The physical absence of police prosecutors during approximately one-half the disposition hearings conducted in the Boston Juvenile Court stands in sharp contrast to the very high percentage of cases in which defense counsel routinely appears at disposition. With the exception of the relatively few cases in which counsel has been waived, defense counsel representation at disposition is nearly total. However, in terms of impact, it is very doubtful that defense counsel's contribution at the disposition stage is very much greater than that of the police prosecutors. Considering the importance of this stage and the opportunities which are available to defense counsel to advance the best interests of his client in a manner which is wholly at one with the fundamental goals of the juvenile court, his apparent failure to meet even the minimal standards of juvenile court practice in unfortunate. Not only does it represent an obvious disservice to the juvenile whose future is being determined but to the juvenile court process itself.



In our observations of ninety-one disposition hearings, defense counsel offered specific recommendations to the court in only nineteen cases. These nineteen recommendations included a large percentage of requests for continuances for clinical studies. Even when specific recommendations for probation are made, no attention is given to the terms and conditions for probation. In eight additional cases, defense counsel merely made a general "pitch" for leniency.

The typical "pitch" involves a statement by the defense counsel alluding to the minor nature of the offense, the lack of prior involvement, and often, the suggestion that bad companions are the root of the problem and that the child is not himself a "bad kid." Another suggestion made several times by the defense is that, as a result of his apprehension, the juvenile has now realized the error of his ways and will not stray again. These "pitches" are almost boiler plate in their content and their delivery reflects little conviction on the part of defense counsel. They are rarely supported by information likely to convince the court that they are derived from a well-considered analysis of the juvenile's needs or that they have any substantial predictive value. On two occasions following such an appeal for leniency, the judge asked the defense counsel how he knew his statements to be true. In both instances, defense counsel remained silent.

One example will illustrate the lack of effort demonstrated by most MDC attorneys towards devising dispositional alternatives or exploring treatment resources. A thirteen year old with a substantial record in the juvenile court was found delinquent on serious charges of rape and assault. The court clinic report recommended a "structured residential setting" in light of the serious emotional problems diagnosed and the violent nature of his activities. When the judge asked defense counsel what he had to say, the attorney made a short speech in which he mentioned the age of the defendant and implied that he had been corrupted by an unfortunate choice of friends. Defense counsel's remarks clearly had no relevance to the question of the defendant's emotional problems which was obviously what the judge considered most significant in determining an appropriate disposition. The judge then asked the probation officer to inform his about the treatment possibilities that were available to the Department of Youth Services. Probation could not give an informed answer. The judge then remarked that he hated to "pin a 13 year old kid with this," but that he had no choice but to commit. The failure of defense counsel to offer any other alternative precluded there being even a meaningful exploration of the needs of the child and the resources available to meet those needs.

In only one case—a startling figure—did defense voice any objection to or controvert in any way the findings of the probation or clinic staff. In that case, defense counsel objected to the probation officer including a dismissed case as part of the juvenile's prior record.

The figures compiled by the observer show that in the large majority of disposition inquiries, defense counsel is virtually superfluous. He neither recommends a specific disposition nor even makes a general "pitch" raising the points which might be favorable to the defendant. In most cases, about 70%, defense simply "agrees" to the recommendations of the probation and clinic staff, or has nothing to say at all. This lack of activity is especially significant in light of the fact that the judges always directly inquire of defense counsel if they have anything to say at disposition.

It has previously been mentioned that the defenders play a minimal role during disposition inquiries. They normally seem willing to allow the other participants in the process—judge, probation staff and clinic staff—to decide the appropriate disposition. The difficulty of successfully countering the "experts" is compounded by the fact that disposition hearings do not resemble adversary proceedings. Police prosecutors, the natural adversaries, are either not present, or are present and silent. Probation officers do not take the stand and testify. They

converse with the judge and respond to his questions. Clinic reports are handed to the judge for his perusal. Defense counsel has generally read a copy of the report before the hearing, but the findings are not openly discussed in court. Clinic staff are only rarely present in court. Such a setting poses obvious role difficulties for the defense attorney. However, it also offers opportunities for advocacy which have largely been defaulted. A disposition hearing was observed which followed a three week continuance for full psychological and physical studies. The defendant was a 16 year old boy who had been involved in the preceeding six months in a series of wallet thefts from women's handbags. He had no record prior to these six months and no drug involvement was indicated. After reading the reports, the judge asked the probation officer for his recommendation. The probation officer said that the boy had informed him that he had an appointment to see about a place in a residential school, but that the probation staff had been unable to confirm that with the school authorities. The judge ordered a recess and instructed the probation officer to try to get in touch with the school. After fifteen minutes, the parties re-entered the court. The probation officer informed that a place was not available for this boy because they did not believe they could offer him appropriate services. The judge then ordered another recess in order to summon the Department of Youth Services liaison into court. After another five minutes, the hearing resumed again. The liaison was given the psychological report and was asked by the judge to recommend a placement. He replied that he would need time to explore the possibilities and suggested a continuance for that purpose which was granted. During all of this time, defense counsel remained silent while the court was obviously fishing for suggestions from any quarter.

The possible effect of defense counsel on court dispositions is illustrated by the data presented in Table 9. These data suggest that the differential effects of counsel type on adjudications, as noted earlier, are also present in dispositions which follow a finding of delinquency. In examining such dispositions in the Boston Juvenile Court during 1971, it appears that as a group, juveniles who were represented by the public defender received substantially harsher dispositions than those juveniles who waived counsel or were represented by other types of counsel. These differences are most evident in commitments to the Department of Youth Services—the most extreme of the available dispositional alternatives. The data indicate that while almost 14% of the delinquent juveniles who are represented by the public defender are committed, not a single instance of commitment was discovered among those juveniles who were represented by private appointed, private retained or other non-public defender counsel. While a number of variables may contribute to the greater success of private retained counsel (the ability and willingness to retain counsel may well coincide with other family characteristics which could have

**TABLE 9.—Dispositions in the Boston Juvenile Court for 1971 by Counsel Type (N = 752) [a]**

| Counsel | Disposition | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Probation | | Suspended sentence probation | | Filed | | Committed to D.Y.S. | | Other | | Total | |
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Waived | 22 | (70.9) | 5 | (16.1) | 1 | (3.2) | 0 | (0.0) | 3 | (9.8) | 31 | (100.0) |
| Public defender | 219 | (34.2) | 202 | (31.6) | 114 | (17.8) | 87 | (13.6) | 18 | (2.8) | 640 | (100.0) |
| Private, appointed | 11 | (34.4) | 16 | (50.0) | 5 | (15.6) | 0 | (0.0) | 0 | (0.0) | 32 | (100.0) |
| Private, retained | 18 | (43.9) | 14 | (34.2) | 8 | (19.5) | 0 | (0.0) | 1 | (2.4) | 41 | (100.0) |
| Other | 0 | (0.0) | 2 | (25.0) | 5 | (62.5) | 0 | (0.0) | 1 | (12.5) | 8 | (100.0) |

[a] This table includes only those cases for which both counsel type and disposition were available. These 752 cases represent 86.6% of the 868 dispositions recorded for 1971.



a positive bearing on disposition—*e.g.*, an apparent commitment to the juvenile and his problems together with the financial resources to gain access to private treatment programs), the ability of counsel to offer the court dispositional alternatives short of incarceration can be a crucial factor. To a court which treats institutional commitment as a last resort, the recommendation of effective alternatives by defense counsel is very likely to gain the court's approval.

Although police prosecutors are very negative about the effectiveness of most dispositional alternatives which are available to the court, they feel that they should not participate in the disposition inquiry or make recommendations concerning dispositions. They feel that these decisions should be made by the judge with the assistance of probation and the defense. Any broader role for the police prosecutor is seen as being in conflict with the non-advisory position which police officers should take in court. One police prosecutor declared, "Naturally, we think all the little s.o.b.'s should go away [stated in jest]. But seriously, there are other people here to make that decision. I don't feel it is our role."

Generally, the judges do not receive a great deal of help from the probation staff at disposition. The probation officer has the juvenile's "green sheet"—the list of his previous court contacts—but little or no information beyond that. Even the data on prior records are often disorganized and the probation officer is sometimes unable to answer the judge's specific questions without delaying and fumbling. It is the practice of one judge to ask the probation officer if the defendant has ever been convicted of violating any law. The judges also inquire as to whether the defendant is presently under the supervision of any court. If the probation officer is unable to efficiently extract this data from the green sheet, the judges examine the sheet themselves. Social histories are prepared by the probation staff and submitted to the court only when cases are continued for disposition. Dispositional recommendations are made only at the court's request. In many cases, no recommendation is made at the disposition hearing. Judges often rebuke probation officers for failing to carry out a recommended treatment plan or to secure a placement which they had previously suggested.

The judges demonstrate a commitment to the treatment and rehabilitation goals of the juvenile court. Even defendants with extensive prior records are often given a third or fourth chance within the community. Faced with a child with a particularly long record, one judge remarked that he was willing to give psychiatric therapy one more chance if there was any hope at all of working successfully with the youth. The judges are open to any and all suggestions at disposition, but the unfortunate fact is that defense counsel and, to a lesser degree, the probation staff, do not appear to contribute much at this stage.

It is apparent that the dispositional process in the Boston Juvenile Court has become routinized and predictable. There is widespread frustration with the lack of effective dispositional opportunities and the judges receive very little support in fashioning dispositions. Although the judges treat commitment as a last resort and apply it in a relatively small percentage of cases, the majority of juveniles who are returned to the community, whether under supervision or not, are receiving little more than "another chance" to straighten out. Even where juveniles are released on probation, there is little exploration in court of the terms and conditions of the probation.

More than any other, the disposition stage in the Boston Juvenile Court is marked by a non-adversary approach and a desire to reach a concensus of opinion. The probation officers are used primarily to provide the court with "neutral" information concerning the juvenile's past record and social history. Police prosecutors almost never recommend dispositions to the court and the public defender, when he does make a recommendation, only infrequently will provide the court with useful supporting information. In this setting, the judge assumes almost total responsibility for obtaining

information, proposing alternative treatment plans, recommending diagnostic procedures, evaluating the clinic's findings and examining the probation officer or others who may appear at disposition. Although the judges frequently invite suggestions from those present, they are rarely forthcoming. There is almost no cross-discussion among defense counsel, the police prosecutor, and probation staff.

The problem of providing effective services to juveniles who are in need of help goes well beyond the scope of the juvenile court's powers and the nature of its dispositional process. In the final analysis, no juvenile court, whatever its intentions or organization, can achieve its child welfare goals without broad public support for the allocation of desperately needed resources. However even within the court's resource limitations, opportunities do exist for strengthening the dispositional process so as to advance the court's efforts in meeting the rehabilitative needs of juveniles through thoughtful, informed and responsive dispositional programs. It is believed that the creation of a role for an attorney-prosecutor at the disposition stage can be an important first step in that direction.

First, there is no vehicle for the development of joint dispositional recommendations involving the participation of prosecution, defense and probation. Although defenders often do consult with probation officers prior to the disposition hearing and read the clinic reports and social histories, there is little evidence that their role is more than passive. Suggestions by defense attorneys concerning proposed dispositions are not always welcomed by probation officers. When asked if defenders do suggest dispositional alternatives, the chief probation officer stated: "Now we're getting into the bargaining situation. If they do it, they shouldn't. There is an exchange of information but there are very few instances where there is disagreement between the defense attorney and the probation officer. They [defense attorneys] have a right of appeal if they want to exercise it." In recommending the active participation of an attorney-prosecutor at disposition, the *Guidelines* (Chapter 7, *infra*) seek to encourage broader opportunities for the development of jointly considered dispositional proposals. In addition to playing an independent role at disposition the prosecutor is seen as a vital catalyst for the full involvement of defense counsel.

Second, probation officers should not be cast in the role of adversaries to defense counsel. However, at the disposition hearing, it is very difficult for the defenders to contest the information, findings or recommendations submitted to the court by probation or clinic staff without provoking this very consequence. As one defender put it: "With the police, we know we are in an adversary role. We can handle that and be amicable afterward. With probation, especially the older ones, the situation is different. They are not used to being cast as an adversary." Because the public defenders are dependent upon the probation staff for considerable information, they are not apt to endanger their relationship by challenging the probation officer at the disposition hearing. The presence of a prosecutor at the disposition hearing is designed to encourage a more vigorous examination of dispositional alternatives while at the same time providing a protective "buffer" for non-legal probation and clinic staff whose recommendations are in dispute.

Lastly, the *Guidelines* recognize that the community's interests in protecting its security do not cease at the adjudication stage and neither should its representation. In the small number of cases where confinement is deemed vital to the rehabilitation of the juvenile or to protect the community from a substantial threat to its safety, it should be the prosecutor's responsibility to argue for commitment. In the vast majority of cases, however, the prosecutor would be expected to encourage the least restrictive dispositional alternatives which are consistant with the service and discliplinary needs of the juvenile.



CHAPTER VI

# PROSECUTION IN OTHER REPRESENTATIVE JUVENILE COURTS

Research undertaken in one jurisdiction (and the findings and recommendations emanating from it) may have only limited applicability elsewhere if conditions or expectations of other jurisdictions are quite different from the one being studied. An effort has been made, therefore, both through literature searches and through brief on-site visits, to determine whether certain common conditions exist in a variety of juvenile courts which might suggest that the findings and recommendations made for the Boston Juvenile Court might be applicable for other courts as well.

Six courts were selected for review: Atlanta, Hartford, Metropolis,[1] Providence, Salt Lake City, and Seattle. For three of the courts—Atlanta, Salt Lake City, and Seattle—the review was made primarily through an analysis of an excellent study, *Three Juvenile Courts, A Comparative Study,* prepared by the Institute for Court Management, University of Denver Law Center in 1972. Although that study was not focused on prosecution in the three juvenile courts, it did examine prosecution issues and represented one of the few recent studies of juvenile justice which did so.

Hartford, Metropolis, and Providence were selected because they represented different types of courts (*e.g.,* statewide jurisdiction and local; large and medium caseloads; and different forms of prosecution), which were geographically convenient and were willing to cooperate fully with the on-site visits. It is important to note at the outset that the on-site reviews were brief, were largely impressionistic, and were not supported by statistical data. These reviews did provide sufficient opportunity, however, to determine whether conditions and problems were similar to those found within the Boston Juvenile Court. As will be noted in the material that follows, although there were significant differences among the courts reviewed, for the most part, the findings and recommendations made with reference to the Boston Juvenile Court were directly applicable or relevant to other courts as well.

[1] Metropolis is the fictitious name of a large eastern city. It is identified in this fashion at the request of city officials. The analysis of prosecution in the Metropolis juvenile court was initially made at the request of city officials who were attempting to evaluate the effectiveness of a federally funded experimental juvenile prosecutor project.

## A. THE FULTON COUNTY JUVENILE COURT, ATLANTA, GEORGIA[2]

Prosecution in the Fulton County Juvenile Court is handled by the equivalent of one full-time assistant district attorney.[3] Without question, as of the time of the Institute for Court Management Study, the prosecutor played an extremely limited role in the court. The prosecutor, for example, has no role in preparing court petitions in screening cases at the intake stage,[4] or in presenting evidence at probable cause hearings. Further, the investigation of juvenile cases, for the most part, is undertaken not by the prosecutor, but by the investigation unit of

[2] The Institute for Court Management, *Three Juvenile Courts, A Comparative Study* (1972) at 207–216, 233–259, 399–413 (hereinafter referred to as Institute Study).

[3] *Id.,* at 207.

[4] *Id.,* at 208, 211. This lack of review is even more significant in Atlanta than in Boston since the Atlanta Police Department does virtually no screening of cases. "Our policy has been to take everything to juvenile court." *Id.,* at 238.

the probation unit.[5] It is interesting to note that the results of any investigation undertaken are made available both to prosecution and to defense counsel.[6] The apparent result of this division of responsibility is that the prosecutor is often not prepared for the adjudication hearings:

> And yet the Fulton County juvenile prosecutor is under a severe handicap when her primary responsibility in this Court is to try the case someone else not under her supervision has prepared. And sometimes a case is calendared[7] the day before the trial date, and the prosecutor can only do a last minute preparation job: 'We're lucky regarding our trials; we're often not prepared.'[8]

In addition to the limitations just described, the prosecutor plays no role at disposition in Fulton County.[9] Thus, in summary, the prosecutor has a very minor role in the juvenile justice process, with virtually no pre- or post-adjudication responsibility and little or no opportunity to prepare for the adjudication hearing. The assistant district attorney assigned to the court seriously questions the value of having a professional prosecutor when the role is so limited.[10] She also complains about the lack of clear and regularized procedure in the court and expresses concern both about the extent and nature of the screening that takes place at intake, the poor investigations of the probation departments, and the limited effectiveness of probation services.[11] Defense counsel expressed some similar concerns; for example, defense counsel raised serious questions about the effectiveness of probation services, the quality of probation investigation, and the informality of the various hearings (*e.g.*, "referees always find probable cause at preliminary hearings even when it does not exist").[12] In addition, the defenders find that many of the petitions that are prepared are overly broad.[13]

Some changes have been made to accomodate some of the complaints of the prosecutor. To prevent probation from adjusting too many serious cases, a new policy has been established that there can be no more than two adjustments on a particular child without a formal filing.[14] Further, a child formally on probation who reoffends must go back before a judge without any possibility of adjustment.[15] It is doubtful that such rigid requirements are really responsive to the needs of improving the prosecutor's role in the court. The prosecutor has also begun the process of providing some assistance to probation investigation staff in preparing petitions and cases, but this is still done primarily on an informal basis.[16] After reviewing the prosecution role, the Institute, among other things, recommended that the investigation unit of the probation department should be reorganized under the direction of the district attorney, and the preparation of delinquency and unruly petitions should be under his direction:

> The legal role of a juvenile court, now well established, requires a stronger role for the district attorney in this court . . . It makes little sense to have the district attorney prosecute a trial when the designation of the charges and their embodiment in a petition have not been performed under district attorney direction. Similarly, it is inappropriate to the pursuit of justice when trial preparation, including witness interviewing and designation are determined by court staff rather than prosecutor staff. It is also unfair to juveniles when petitions are filed without provision for routine legal scrutiny of police reports to ascertain whether supportive evidence is at least sufficient to a probable cause standard. We are talking here of relating responsibility with authority, and further, of regularizing the procedures and practices in the interest of both the child and the public. The welfare of our youth and the protection of our society compel that the prosecutor no longer be a stepchild in the juvenile court.[17]

[5] *Id.*, at 208.
[6] *Id.*, at 211
[7] The assistant district attorney has no control over the trial calendar in Fulton County.
[8] Institute Study at 208.
[9] *Id.*, at 210
[10] *Ibid.*
[11] *Id.*, at 207.
[12] *Id.*, at 213–215.
[13] *Id.*, at 213.
[14] *Id.*, at 208.
[15] *Id.*, at 209.
[16] *Id.*, at 212.
[17] *Id.*, at 403–404.



## B. THE SECOND DISTRICT JUVENILE COURT, SALT LAKE CITY, UTAH

By statute, the county attorney (who primarily handles civil matters) and not the district attorney performs the prosecution function in the juvenile court.[18] The statute specifying a prosecuting function first went into effect in 1971. At the time of the Institute Study, two county attorneys were assigned to the juvenile court on a full-time basis, and one county attorney served the court on a half-time basis.[19] Interestingly, the county attorneys have greater responsibility for processing and preparing cases of dependent or neglected children than with delinquent youth. In dependency and neglect cases, the county attorney screens all formal cases and must concur that a case has merit before it can be filed.[20] Further, most petitions are actually prepared by secretaries who work under the direction of the county attorneys. County attorneys have no such role with reference to delinquency petitions. The decision whether or not to file such petitions is determined primarily by intake probation staff.[21] For the most part, county attorneys neither screen police referrals for legal sufficiency nor play any role in determining whether a petition should be filed.[22] The exception to this is that county attorneys may participate in intake decisions related to serious crimes. The primary intake officer for the juvenile court estimated that the county attorneys are consulted in about 5% of the cases.[23] The county attorneys do, occassionally, prepare forms for delinquency petitions, but the petitions are prepared by secretaries who work for intake staff and there is no prosecutorial supervision over their work.[24]

There is great concern expressed by the county attorneys about their role which is similar to that expressed in Atlanta:

> They prosecute contested delinquencies when they have not participated in the screening process, interviewed policemen or other witnesses, or selected the most appropriate charge or charges. Secondly, probation intake staff do not interview police or other witnesses before filing.[25]

As in Atlanta, defense counsel expressed concerns about the process which suggest the value of an expanded role for prosecution. First of all, defense counsel stated that county attorneys are needed to review referrals to court on probable cause grounds.[26] Secondly, defense counsel suggested that judges with a strong treatment orientation tended to make social work judgments (mandating treatment) even though there may not be a legal basis for an adjudication of delinquency.[27]

Juvenile police officers in Salt Lake also expressed a need for an expanded prosecutorial role, particularly in areas involving case investigation and preparation, meeting procedural requirements, and establishing criteria for diversion and referral of cases to the court.[28] The importance of guidance in this area is underscored by an admission of one officer, for example, that *Miranda* is not followed, but "our practices are rarely challenged in court."[29]

## C. THE KING COUNTY JUVENILE COURT, SEATTLE, WASHINGTON

The Institute found in its comparative study that the most advanced system of prosecution among the three cities, without question, existed in Seattle.[30] The Annual Report of the Prosecuting Attorney of King County for the year ending 31 December, 1971 contains the following section on

[18] *Id.*, at 217.
[19] *Id.*, at 217–218.
[20] *Id.*, at 218.
[21] *Ibid.*
[22] *Ibid.*
[23] *Id.*, at 219.
[24] *Ibid.*
[25] *Ibid.*
[26] *Id.*, at 221.
[27] *Id.*, at 221–222.
[28] *Id.*, at 261–267.
[29] *Id.*, at 263–264.
[30] Virtually all of the Institute findings were corroborated by one of the Center's graduate students who worked as an intern in the King's County Prosecutor's office juvenile division during the summer of 1971.

the duties of the Juvenile Court prosecutors, and the planned expansion of their duties:

> The duties of the Juvenile Court deputies in 1970 were essentially limited to preparation for, and representation of the state in, fact finding and declination hearings and in juvenile delinquency and dependency cases. . . . In 1971, after several months of discussions between representatives of the Juvenile Court and the Prosecutor, a letter of understanding was drafted by these two agencies wherein the Prosecuting Attorney agreed to perform, within the limitations of his manpower capabilities, the following additional functions:
>
> 1. Representation at disposition hearings in all juvenile delinquency and contributing to delinquency cases;
>
> 2. Participation in preliminary hearings, probation review hearings, and probation revocation hearings;
>
> 3. Preparation of legal opinions upon request of the Juvenile Department of the Superior Court in King County and the drafting of formal requests on behalf of that department for legal opinions from the State Attorney General;
>
> 4. Participation in the Juvenile Department's staff meetings for the purpose of advising and counseling the staff regarding legal questions which arise in connection with the operations of the department;
>
> 5. Reviewing on a continuing basis the Juvenile Department's field procedures and rendering legal advice with respect thereto;
>
> 6. Assisting Juvenile Department personnel in drafting and securing search warrants and warrants of apprehension;
>
> 7. Advising and counseling the Juvenile Department respecting court decisions and proposed legislation which relate to its operations, practices, and policies;
>
> 8. Participation in the Juvenile Department staff training program and in the development and planning of comprehensive in-service training programs by rendering legal advice and counsel to the staff training officer;
>
> 9. Compilation of summaries of all Washington law relating to juveniles;
>
> 10. Reviewing all proposed administrative memoranda and special orders prior to publication and providing the department with legal counsel with respect thereto;
>
> 11. Performing, in appropriate cases, liaison for the department with the State Legislature, the Attorney General, and other governmental agencies;
>
> 12. Administration and supervision of the Juvenile Department's legal support staff, which will be transferred to the Prosecutor's control on 1 January, 1972. By absorbing administrative supervision of the Legal Department of the Juvenile, that is, the handling of petitions and the setting of calendars, the Prosecutor will have assumed administrative control of the presentation and prosecution of juvenile offenses.[31]

Although the prosecutor's office may not be effectively handling all these responsibilities at the present time, it is clear from the Institute Study that it is performing the following three:

> 1. Screening police reports and interviewing police officers and witnesses to ascertain whether the evidence which could be presented at trial is legally sufficient to justify the filing of a petition;
>
> 2. Supervision of the preparation of delinquency petitions;
>
> 3. The presentation or prosecution of contested causes.[32]

The role of prosecution expanded in response to concern over the broad discretion and power of probation in the King County Juvenile Court. Prior to the reshaping of the prosecution function, probation apparently had virtually unlimited authority to screen cases at the intake stage and this authority was often utilized. For example, during 1971, of 4,111 cases referred to the juvenile court, only 1,215 were filed, while 2,986 were adjusted at the intake stage.[33] To insure some review of probation decisions at this stage, a new court rule was promulgated dictating that charges of 30 specified offenses, primarily felonies, cannot be dismissed or handled by informal supervision without the approval of the prosecuting attorney.[34]

[31] Annual Report of the Prosecuting Attorney of King County, Washington, for the year ending December 31, 1971, at 35–36.

[32] Institute Study, at 223–224.

[33] *Id.*, at 291. Further, of the 1,215 cases filed, 433 were subsequently dismissed.

[34] *Id.*, at 224. The rule did authorize probation to submit the matter to a judge, however, if it disagreed with the decision of the prosecutor.



The change in the structure of decisionmaking is now clear. Prosecutors now often consult with police officers about a case prior to the time it is submitted to probation staff.[35] When a case reaches intake, the intake officer also often reviews a file with a prosecutor to check for legal sufficiency.[36] Finally, legal screening is done by petition clerks who work under the direction of prosecutors.[37] Up to now, however, intake staff still can screen cases not on the list of 30 specified offenses without consulting prosecution staff.

The direct involvement of prosecution in these areas is consistent with the recommendations of this report. So is the fact that the court now has (four) full-time juvenile prosecutors.[38] It is not clear, however, from the Institute Study, whether the prosecutor's office is assuming a traditional prosecutorial orientation now that it has new responsibility, or whether it is shaping its role to meet the broader objectives of the juvenile court. At one point in the Institute Study, though, prosecutors were asked to state their philosophy:

> Prosecuting attorneys in the court state a broad philosophy: Assistance in the protection of the community, obtaining court adherence to regularized procedures to ensure that justice is done in each case and that the system works, and to assist police detention and probation comprehension of legal procedures and their regularized application in this juvenile justice system.[39]

It is not clear from this statement whether prosecutors are motivated strictly by legal concern or are motivated as well by the desire to do what may be best for the juveniles involved if this would be consistent with the public safety.

Aside from this issue, there is another concern about the role of prosecutor in the King County Court which was expressed both in the Institute Study and by the Center's graduate student who worked as an intern for the prosecutor's office. This concern relates to the fact that the prosecutor's office, aside from representing the state in individual cases, is also counsel to the Juvenile Department of the Superior Court.

[35] *Id.*, at 226. A retired police officer now works for the prosecutor and coordinates the efforts of the 20 law enforcement agencies in the county. Further, prosecutors also notify police agencies of the reasons police reports are rejected and also direct additional investigations when they are needed.

[36] *Ibid.*

[37] *Ibid.*

[38] *Id.*, at 227. Defender Services have seven.

[39] *Id.*, at 228.

The legal basis for the role of the prosecutor as legal counsel to the court is not apparent from any authority describing the juvenile court. A Commissioner of the juvenile court describes the legal basis of this rule as follows:

> Under the constitution and laws of the State of Washington and Rules of the Juvenile Court, the Prosecuting Attorney is legal advisor to the Court and legal officer primarily responsible for law enforcement in the county.

From this description of authority and from direct observations of prosecutor functions, it appears that the prosecutor has a close relation to the judiciary branch of Washington government. A chart used at the briefing shows the prosecutor's office as part of the judiciary rather than as part of the executive, which is where the public defenders are shown.

The section of the Annual Report of the Prosecutor cited earlier indicates that legal advice is being given to the Juvenile Department on a wide range of subjects. From the agreement reached, the court receives legal opinions of the prosecutor on Juvenile Department staff operations, field procedures, staff training programs, policies, administrative memoranda, and special orders. As a related function, the prosecutor is to serve as liaison for the Juvenile Department to the Attorney General, the legislature, and other agencies.

A quick review of the authority cited by the Commissioner failed to support the proposition that the prosecutor has a legal duty to advise the court on any of the subjects. Concerning the role of the prosecutor as legal advisor, the statute section cited, RCW 36.27.020, gives no indication that the prosecutor should act as legal advisor to the Juvenile Department or any other Department of the Superior Court. Only the board of county

commissioners, county and precinct officers, and school directors are mentioned as intended recipients of legal advice from the Prosecuting Attorney's office.

Despite this apparent lack of authority, the prosecutor's office regularly gives legal advice to the court on a wide range of topics. The Chief of the Domestic and Juvenile Division of the Prosecutor's office receives requests for legal opinion from the Administrator of Court Services, who serves under the Juvenile Judge in the Juvenile Department. Topics include such subjects as the use of detoxification centers by police for intoxicated juvenile without prior court approval, and the advisibility of the court giving the police blanket permission to fingerprint and photograph juveniles. When such a request is received, it will be assigned to a deputy prosecutor or legal intern as a research project. Memoranda based on this research will be returned to the court after some revision as a prosecutor's opinion. Most of the requests appear to come from the office of the Court Administrator, but it is possible that information is also given to other court personnel.

In the absence of any authority supporting the role of the prosecutor as legal counsel to the Juvenile Department, some questions arise as to the wisdom of this practice. It is clear that the members of the Juvenile Division of the Prosecuting Attorney's office are as experienced with the body of juvenile law in Washington as any other lawyers and the competency of the advice given the court is not questioned here. The issue is whether the advice should be given at all. Potential conflicts of function seem apparent when the role of the prosecutor as advisor to the court is placed in the context of his role as administrator over case preparation and presentation, and his role as adversary litigant before the court. The prosecutor is in a position to give legal advice to the court on administrative memoranda, which, if adopted, may operate to increase his power and function. Such has already been the case in court rules, discussed above.

The multifaceted role of the prosecutor may create conflicts for the court as well. On the one hand, the court seeks legal advice from the prosecutor on questions of law; on the other, the court is supposed to judge impartially the performance of the prosecutor in fact-finding and other hearings.

An issue of separation of powers may arise when a Department of the Superior Court asks for and receives legal advice from the prosecutor on questions of law, including interpretations of statutes and case law, outside the context of any court proceedings and justiciable controversies. The problem is compounded when the Juvenile Department creates Administrative Memoranda on the basis of such advice which may operate to modify legislative provisions.

Aside from the problems raised above, the imbalance of function which appears to exist between the prosecutor's office and the public defender's office indicates that half of the Juvenile Court bar which would be properly consulted by the legislature in considering statutory revision, or perhaps by the Juvenile Department in drafting court rules, is not being consulted. Public defenders have at least as much to say as deputy prosecutors about court practice and procedures; they are probably better advocates for juveniles whose rights could be impaired by procedural changes.

In view of what has been stated, it appears that the prosecutor's office may not have authority for its role as legal advisor to the court, and that even if it does, this role, as presently being filled, may be harmful to the overall balance of the juvenile justice system in King County.

## D. THE RHODE ISLAND FAMILY COURT, PROVIDENCE

Three considerations were prominent in our choice of making a brief on-site visit of Providence, Rhode Island for further exploration of prosecution in juvenile cases. First, unlike Boston, the Family Court of Rhode Island has state-wide jurisdiction over juvenile matters, and referrals to the court are made from cities and towns located throughout the state. The court's broad jurisdictional base has provided the court with experience in handling a caseload which emanates not only from densely populated urban areas but from non-urban areas as well and with an opportunity to gain a broad perspective of the problems of juvenile court prosecution as they may be affected by varying local conditions. Second, the overall juvenile caseload of the Rhode Island Family Court is substantially larger than that of the Boston Juvenile Court. In terms of organizational, administrative, and personnel needs, the problems presented by heavy caseload pressures are comparable to those which exist in the largest big-city juvenile courts. Third, the Rhode Island Family Court differs from the Boston Juvenile Court in its regular use of attorney-prosecutors. However, in spite of this, the problems of developing adequate prosecutorial services are not regarded as being resolved. In fact, some of the problems which have been noted in the Boston Juvenile Court and associated with the absence of professional prosecutors also seem prevalent in the Rhode Island Family Court. A growing concern among the court's judges regarding the court's prosecutorial needs resulted in the development of a proposal designed to establish a wholly new system for the prosecution of juvenile cases—one which has not yet been successful in gaining legislative approval.

Rhode Island is a small State located in the Northeastern portion of the country. It has a population of under one million people and its largest city has a population of less than 200,000 people. The court has state-wide jurisdiction over all offenses committed by persons under the age of eighteen. In 1971, the court received over 5,000 juvenile referrals involving waywardness or delinquency. In addition, the court recorded well over 2,000 referrals involving motor vehicle infractions. Since 1961, the court has also had jurisdiction over domestic relations, child marriages and adoptions.

Changes in the court's practices during the last fifteen years have reflected the growing formality and adversary nature of juvenile courts throughout the United States. From the very informal "round table" hearings which were utilized prior to 1961, the court has taken on an air of procedural formality not unlike that which characterizes the criminal courts. Judicial robes are worn by the judges and hearings are conducted in a traditional courtroom setting. Although for many years, the public defender's office has represented juveniles in the court when assigned, in the years following the *Gault* decision there has been a marked increase in the legal representation of juveniles and in the number of contested cases before the court. This trend was sharply accelerated when the state's O.E.O.—sponsored legal services agency began representing juveniles late in 1969. Their aggressive assertion of technical defenses, extensive use of not guilty pleas, and readiness to go to trial in a high percentage of their cases raised new fears that the court was becoming a forum for adversary strife to the detriment of the court's ability to fulfil its child welfare responsibilities in an atmosphere marked by cooperation rather than hostility. These concerns reached crisis proportions when, in late 1969, the solicitor of the state's largest city announced that his office could no longer continue to provide prosecutorial services in the court. With the imminent withdrawal of the city's prosecutor, the court was faced with the prospect of having the state go without professional representation in a very large percentage of its juvenile caseload. This, coupled with the dramatic increase in contested cases, resulted in the appointment of a committee of judges to study the problems of juvenile court prosecution and to recommend solutions. In April 1970, the committee issued its report to the Governor.

It is important to note that in attempting to formulate its proposals, the committee's primary concern was to create an adversary climate which provides for the juvenile the full range of legal rights which are now available to him while preserving the court's child welfare orientation and capabilities. The committee, in rejecting any solution which would dilute the full application of juvenile's legal rights in the court or which would

fetter defense counsel in his responsibility to provide vigorous advocacy, concluded that the survival of the juvenile courts' "special quality" would depend in large measure on the creation of suitable prosecutorial services. In this regard, the committee viewed the issue of juvenile prosecution as "a truly basic question that was ripe for evaluation for reasons entirely extraneous" to the proposed withdrawal of the state's largest city prosecutor.

Briefly summarized, the committee recommended that an independent juvenile court prosecutor's office be established which would conduct all prosecutions in the court, that it would receive all court referrals and have primary responsibility for determining whether a petition should be filed and for drafting petitions which are filed; that in reaching this decision, it should take into account both the legal sufficiency of the evidence and alternative opportunities for discipline and treatment; that the office should utilize all available diagnostic resources to guide it in its determinations; that it should seek early meetings with the juvenile and his counsel to encourage cooperative recommendations for the disposition of the case; that, where necessary, it would represent the state and seek to prove the allegations of the petition; and that at the disposition stage, it would consult with probation and defense and would make recommendations which are based upon the rehabilitative needs of the child.

The committee's proposal for an independent juvenile court prosecutor has not been implemented and an alternative recommendation for the establishment of these functions within the attorney general's office has also failed to gain the approval of the legislature. Observations and interviews which were recently conducted in the court confirm that the current manner and scope of prosecution in the court has been a major impediment to the achievement of the goals set forth by the committee in its report. Notwithstanding that professional prosecutors are involved in the court (the city solicitor of the State's largest city did not withdraw from the court), it is clear that the broad issues of juvenile court prosecution have not been resolved.

City and town solicitors appear in court in cases arising out of action taken by their local police agencies. In cases involving the state police, a representatve of the attorney general's office conducts the prosecution. However, referrals to the court are made by the various police agencies without benefit of participation by the local solicitor. All investigative work, the designation of witnesses and charges, and pre-trial preparation in general is handled solely by the police. The solicitors do not ordinarily appear at arraignments and, as a practical matter, do not enter a case until a plea of not guilty is entered by the child and a trial date is set. Where a plea of guilty or *nolo contendere* is entered at the arraignment, the solicitor would play no role at all.

The absence of any significant prosecutorial role through arraignment has been particularly troublesome with regard to the screening of petitions. Prior to 1971, all requests for petitions were directed to the judges who would make the determination as to whether a petition should be filed. Not only did this create an enormous drain on the judges' time but was widely regarded by the judges as an unnecessary practice which would be remedied by the appointment of a juvenile court prosecutor with authority to review all court referrals and to determine whether or not to file petitions. Following a ruling by a State Appellate Court that it was constitutionally impermissible for a judge to hear a case on a petition which he had previously approved, all responsibility for filing petitions was removed from the judges in 1971 and placed with the court's intake unit. This unit receives all requests for petitions which are made to the court and may, under guidelines established by the court, informally dispose of certain types of cases without filing petitions. At present, the bulk of cases which are handled administratively without petition are motor vehicle offenses. Although efforts are being made to expand the role of the intake unit in screening out other kinds of minor infractions



which do not require court action (the Chief Judge estimates that 50% of the court's caseload could eventually be handled in this manner), at the present time, such adjustments are very much the exception. In most non-motor vehicle cases, in the absence of special circumstances, the petitions are granted by the intake unit.

The intake unit plays no part in reviewing petition requests for legal sufficiency nor in drafting petitions. Accordingly, since 1971, there is no legal screening of any court petitions prior to the time they are filed. When, in 1970, the committee of judges proposed that petitions should be drafted by a prosecutor, they urged that this be done "to ensure that proceedings are not invalidated or needless delays caused because this legal document is drafted by lay persons." Now, because of the lack of any review of the petition filing process, the Chief Judge expressed great concern that far too many legally deficient petitions are being filed. Although the solicitor may subsequently move for dismissal of inadequate petitions, there is a clear need for prosecutorial review before the petition is filed. The lack of a prosecutor to draft and approve petitions is regarded by the Chief Judge as a serious weakness in the court.

This view is shared by the Chief Intake Supervisor who also complained of the lack of uniform criteria among the various police departments for making court referrals. While some police departments successfully screen most trivial or frivolous complaints, others appear to exercise little discretion and refer large numbers of insignificant cases to the court. Also, there is a tendency among some police departments to use a shotgun approach in bringing charges against juveniles in the apparent belief that excessive charging will strengthen the possibility of a delinquent or wayward finding. Because the intake unit has no authority to intervene in most such circumstances, many of these petitions are filed as a matter of course. Informal efforts to encourage an increase in stationhouse adjustments have been made by the Court with only sporadic success. The presence of a prosecutor at the intake stage is seen as essential to the enforcement of uniform standards for court referrals and for the evenhanded treatment of juveniles throughout the state.

Although prosecutors play a very limited role in the early stages of juvenile proceedings, their availability prior to adjudication does offer several distinct advantages. In contrast to the Boston Juvenile Court which lacks lawyer-prosecutors, the initiative in Rhode Island to request transfers of serious cases for trial in the criminal courts rest with the city or town solicitor. Where such action is deemed warranted by the solicitor, he will proceed by a motion to transfer the proceeding for trial in the criminal courts. These motions are usually made at the arraignment and result in a hearing on the waiver issue. In Boston, with no prosecutor to raise the issue early in the proceeding, it does not arise until the disposition stage and only upon the motion of the court. The lack of early notice that a transfer may be sought is regarded by some as a procedural flaw in the Boston Juvenile Court and is, in part, related to the fact that no attorney-prosecutor is present to raise this issue earlier in the proceedings.

Second, whereas it is estimated that thirty to forty percent of juveniles in the Family Court enter pleas of not guilty at the arrignment, only a small fraction of those cases go on to a full hearing on the facts. In most of the cases, pre-trial negotiations between defense counsel and the solicitor, conducted under the supervision of the court, conclude with a dispositional proposal which is agreeable to all the parties. If such an agreement is reached, the not guilty plea is withdrawn and the recommended disposition is imposed. Not only does this process of negotiation substantially reduce the number of trials which must be held but it encourages an early consideration of the rehabilitative needs of the juvenile in an atmosphere less likely to be marked by conflict than a formal adversary hearing. Although most such negotiations are initiated by defense counsel, the availability of a prosecuting official, if only to provide his consent, is an

essential ingredient in reaching negotiated dispositional proposals. It is doubtful whether this desired procedure would be possible in the absence of an attorney-prosecutor to represent the interests of the community.

In addition to asserting the specific need for greater prosecutorial participation in screening and drafting petitions, the Chief Judge expressed general criticism concerning both the quality and quantity of prosecutorial services currently being provided by the town and city solicitors. In essence, his remarks were not so much an indictment of the ability of the various solicitors who appear in the court but rather of an outdated system which is no longer in tune with the evolving needs of the juvenile court. As a rule, town and city solicitors are said to possess neither the manpower nor the will to provide more than the most minimal services in the court. Juvenile prosecution is treated by most as a matter of low priority—one which diverts the solicitors limited manpower from other, more serious cases. As a consequence, solicitors are often poorly prepared at adjudication hearings —in some cases appearing to read the petition for the first time just moments before the trial. Trials are often delayed by continuances which are granted at the request of the prosecution and in many instances, cases are dismissed after three continuances when prosecution is still not prepared to present the state's case. Over twenty such dismissals occurred in one year in cases from a single small town. Although this problem varies in degree among the State's towns and cities (it occurs less frequently in the State's major city which has a full-time solicitor assigned to juvenile cases and a capable juvenile officer who acts as liaison to the court), there is little prospect of overcoming it without the creation of a central juvenile court prosecutor's office. In part because of the caseload pressures which confront the solicitors and their general inability to provide effective community representation at trials, the court has felt it necessary in the past to use its authority to restrain certain defense counsel from filing too many motions or contesting too many cases. In other words, given the limited capability of prosecution, the court has put some restraints on defense counsel to avoid upsetting the adversary balance of the court.

Merely increasing the number of solicitors, alone, will not provide the best long range solution to the Court's prosecutorial needs, however. At the foundation of the concerns expressed by court personnel is the recognition that prosecution in juvenile courts is best performed by a specialist —one who has an active commitment to the court's child welfare goals and who gives high priority to juvenile court prosecution as an agent for the protection of juveniles' legal rights and the expansion of opportunities for individualized treatment. This, in turn, would require the establishment of an independent prosecutor's office which operates in concert with intake and probation staff and is fully integrated into all important stages of the juvenile court process. There is little optimism that this goal can be achieved so long as prosecution continues to be conducted by the various town and city solicitors.

Although the problems observed in the Rhode Island Family Court are compounded by the broad decentralization of prosecution services which arises from the court's statewide jurisdiction, they are not unique to that jurisdiction. They are typical of the growing pains which have been experienced by juvenile courts throughout the country in the past decade. What is noteworthy is that the juvenile court judges in this State have long concluded that a key to the preservation of the most cherished traditional values of the juvenile justice system lies in the creation of a new and extended role for prosecution. Expanded prosecution services, it is believed, would not only provide better community representation in meeting the growing number of adversary challenges, but would reduce the worst excesses of adversary conflict by emphasizing diversion, negotiation and rehabilitation. In the experience of this court, providing "more of the same" is not the answer.

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## E. METROPOLIS

As noted earlier, Metropolis is the ficticious name of a large eastern city. It is named this way at the request of city officials.[40] Changes have also been made in the names of the various agencies involved to prevent identification of the city.

The evaluation that follows is noteworthy not only because it reflects conditions and problems that are common to Boston and other juvenile courts, but also because it illustrates that laudable objectives for new juvenile prosecutor programs are meaningless unless a firm commitment is made to implement them.

Until recently, prosecution in the Metropolis Juvenile Court had been provided by police prosecutors. After determining that the effect of *Gault* and defense counsel had been to create an imbalance in the court, a special committee urged that an experimental prosecutor project be developed. Under the initial design, the project was to avoid the creation of a "full-scale" prosecutor's office.

> The juvenile delinquency proceeding is not intended to be entirely like a criminal proceeding. While it is in some respects adversarial it has as a major goal to assure the most constructive treatment program for children identified as needing attention, rather than bring about the punishment of the guilty. It is recognized by persons involved in the Juvenile Court that its processes do not in all cases reach this goal. But it is also believed that this goal should continue to be sought, and that wholesale adoption of the criminal process is not compatible with this effort. This in turn requires that the advocate for the petitioner, whether . . . a public official or a private citizen, have a different function from that of the prosecutor.[41]

In line with this view, it was recommended that the juvenile prosecutor (who would operate with the Office of City Attorney—the agency with essentially civil duties) undertake the following functions, primarily in juvenile delinquency-type cases: [42]

1. *Post-Intake screening.*

The juvenile prosecutor should develop legal guidelines for the use of intake officers in considering recommendations to file petitions, and the juvenile prosecutor should be empowered to review cases of alleged juvenile delinquency which are referred to court by the intake officer. If the juvenile prosecutor determines that there were insufficient facts to support a petition, he should order the case to be dropped.

2. *Preparation of the petition.*

If the juvenile prosecutor determines that the facts are sufficient to give the court jurisdiction, he should authorize the preparation of a petition. The juvenile prosecutor should control the form and content of the petition; the role of the petition clerk should be limited to typing the document itself.

3. *Litigative functions*

a. *Fact-finding hearings.*

The juvenile prosecutor would represent all petitioners in fact-finding hearings where the petition alleges juvenile delinquency and would perform traditional activities — interviewing witnesses, marshalling and presenting the direct case, cross-examining witnesses and presenting briefs and oral arguments on legal issues. He should avoid cases which originate as PINS or, as a rule, neglect cases to assure an experiment of manageable proportions.

b. *Hearings on remand.*

Advising the Court with respect to remand of the child to a detention facility pending the disposition of his case can best be performed by a probation officer.

c. *Dispositional hearings.*

Preceding paragraph applies here as well.

[40] The information for this section was originally obtained by a member of the Center Staff who was evaluating the effectiveness of the experimental juvenile prosecutor project which had been funded by LEAA. After it was completed in the fall of 1972, some alterations were made in the project and it was continued. A new evaluation of the project is now underway.

[41] Taken from Metropolis Juvenile Prosecutor Planning Committee Report.

[42] *Ibid.*

d. *Hearings on revocation of probation and parole.*

The juvenile prosecutor should screen allegations of supervising probation officers to determine whether facts are sufficient to constitute a violation of the terms of the child's release. If the facts are deemed to be sufficient, the juvenile prosecutor should be responsible for presenting case at the revocation hearing.

e. *Out-of-court resolution of issues.*

The juvenile prosecutor should be empowered to play a role in the resolution of cases prior to the actual court hearing. Given the civil nature of the hearing, it should be possible to experiment with the use of pretrial discovery procedures which would point toward disclosure by both parties.

f. *Calendar management.*

The juvenile prosecutor should be responsible for the production of witnesses and records as well as for working out with the child's lawyer necessary adjournments or other administrative matters.

4. *Advisory functions.*

The juvenile prosecutor should be available to judges of the juvenile court to conduct investigations and studies which would assist the court in performing its functions.

This statement of functions was followed closely in the project proposal itself except that the case responsibility of the juvenile prosecutor's was expanded.

In summary, under the proposal, the office of the City Attorney was to allocate its resources to juvenile cases (as opposed to family offenses, support, paternity, etc.), was to adopt the treatment orientation of the Juvenile Court rather than a "prosecutorial" orientation, and was to play a vital role in the following areas: 1) screening cases for legal sufficiency and drafting petitions; 2) participating in efforts to resolve appropriate cases prior to hearing (and experimenting with liberal pretrial discovery to encourage pretrial resolution of cases); and, 3) responding to motions and preparing and presenting the government's case in all fact-finding hearings. On the other hand, the juvenile prosecutors were not to interfere with probation functions at intake and at disposition. Consideration will now be given to the project's response to the stated objectives, design and scope during its first year.

1. *Screening cases for legal sufficiency and drafting petitions.* Prior to the commencement of the experimental project, the intake officer sent all cases not disposed of at intake to a petition clerk who prepared the petition. The danger of this system was noted by the Metropolis Planning Committee in 1969:

> [A]t present the preparation of the petition is left entirely to the petition clerk. Like the intake officer, the petition clerk is not an attorney, and yet under the present system he is given the complex legal task of relating fact to law. The result is that many petitions are legally defective, and must either be redone or dismissed by the court.

The City Attorney, therefore, stated that under this project, the juvenile prosecutor would assume responsibility for screening juvenile delinquency cases for legal sufficiency and drafting necessary petitions.

This important objective has yet to be achieved even after 14 months have elapsed. As pointed out by the project's own final report, except in child abuse and sex crime cases,[43] project attorneys are not involved until after the petition is drawn. City Attorneys, therefore, normally do not become involved in a case until after they receive an onion-skin copy of the petition.

The City Attorney is not happy with this arrangement. According to his final report, juvenile prosecutors are often required to dismiss, amend, or withdraw petitions since 20–30% of the petitions drawn by the court clerks, who lack legal training, require amendment or withdrawal.

[43] The project director stated that project attorneys are also involved in petition drafting in homicides and other serious crimes.



It is not clear from the final report why the Office of the City Attorney did not assume the responsibility in this area as it specified it would do in the proposal. The director of the project suggested two reasons: 1) the responsibility for drafting petitions is currently built into the union contracts of petition clerks and it will be difficult to take the job away from them; and 2) the staff does not have enough time available to screen all cases for legal sufficiency and to draft petitions. The project director did say, however, that he was in the process of attempting to adapt district attorney complaint forms into juvenile delinquency petition forms as a guide for police officers and court personnel.

Interestingly, the City Attorney in his final report, although he does not explain his failure to assume responsibility in this area during the first year, gives high priority to pre-petition screening of cases for legal sufficiency and to assumption of petition drafting responsibilities during the second year. Although without question there is a need for screening and for juvenile prosecutors to assume responsibility for pre-petition screening and for petition drafting, it must be assumed with some seriousness of purpose. During our observations in the juvenile court, we had occasion to review numerous petitions that had been subjected to post-petition screening by juvenile prosecutors. Many of these petitions were defective and steps were not taken to correct the defects unless objections were raised by the public defender. Furthermore, several juvenile court judges specifically commented that the overall quality of petitions was horrendous. In other words, if the City Attorney assumes this new responsibility, it will be necessary to direct more staff and attention to this effort than is evident in the post-petition screening of petitions for legal sufficiency.

2. *Participation in efforts to resolve appropriate cases prior to hearing (and experimenting with liberal pretrial discovery to encourage pretrial resolution of cases).* As noted earlier, one of the major differences that was to exist between the Juvenile Prosecutor Program and the traditional prosecutor's office was the goal of having the juvenile prosecutor participate in the Juvenile Court's objective of "assuring the most constructive treatment program for children identified as needing attention, rather than bringing about the punishment of the guilty." Based upon the project proposal, juvenile prosecutors could assist the court in achieving this goal in several ways, the most important of which include: 1) developing guidelines for the use of intake officers in considering recommendations to file petitions; 2) encouraging pretrial resolution of cases; and specifically, 3) stimulating settlement of cases through liberal use of pretrial discovery procedures. Although juvenile prosecutors potentially could have played an even broader role in achieving this goal through direct participation with intake and probation personnel, lack of expertise by law officers with treatment alternatives, and limitations of resources within the project resulted in restricting the juvenile prosecutors' role in diversion of cases and treatment concerns to the three objectives described above.

As far as can be seen from interviews and observations, no real effort has been made in Metropolis to achieve any of these objectives. In fact, in some instances, concerted efforts have been made to prevent these objectives from being achieved. For example, there is currently a rather firm office policy within the project against pretrial discovery in juvenile cases.[44] We were informed that although juvenile cases have the characteristics both of civil and criminal cases, in the area of pretrial discovery it is "our position that rules of criminal procedure [which are far stricter in the area of pretrial discovery] should apply."[45] The project director acknowledged that there has been disagreement over this issue within the Office of the City Attorney, but that the inconvenience of responding to requests for discovery,

[44] Interview with project director of the juvenile prosecutors project in one juvenile court.

[45] *Ibid.*

among other things, has turned the tide against pretrial discovery. The project director also noted that the judges are aware of the fact that juvenile prosecutors have virtually no clerical help, and therefore, are generally supportive of their resistance to pretrial discovery.

Of possibly even greater significance is the fact that the juvenile prosecutors, with few exceptions, do not attempt to resolve cases prior to hearing. The project director states that "plea bargaining" type negotiations make no sense in the Juvenile Court as "we have nothing to offer." [46] He did modify this later to say that some drug-related cases are resolved prior to hearing. Several reasons were given for the project's resistance to prehearing resolution of cases, prehearing stipulation of facts, or prehearing diversion of cases. These reasons appeared to be as follows: 1) staff does not have the time to deal with cases in this fashion; 2) juvenile prosecutors are not equipped to divert cases intelligently; and 3) public defenders are unwilling to settle cases in advance and will put the government to its proof. Regardless what the reasons may be, it is generally acknowledged by judges and others that the lack of prehearing contact between public defenders and juvenile prosecutors has had several harmful effects. The most significant of these is that full hearings are required in far too many cases. Many of these cases should be resolved and diverted without an adjudicative hearing; others should be resolved through prehearing stipulation of facts and the possible use of suggested consent decrees. The lack of pretrial contact also has meant that opposing counsel are too often not familiar with the facts of a case or with the child involved.

Juvenile Court judges are now in session an inordinate length of time every day, wrapped up with hearings, many of which would not be necessary if priority were given to attempting to resolve cases or at least to determine what factual disputes or dispositional alternatives really exist prior to hearing. It is recognized that this would require a different orientation by the juvenile prosecutors (and probably different personnel and training as well) and a change of attitude by the public defenders. This change of attitude would undoubtedly come, however, if it were demonstrated that a substantial effort was being made prior to hearings to resolve those cases which do not belong in court or those cases in which the facts or possible dispositions are not really in dispute.

If priority were given to this area, the Juvenile Court judges could devote their attention to cases in which hearings are really essential. Since juvenile prosecutors have taken no real steps to get involved in case resolution at a prehearing stage and they have systematically resisted pretrial discovery to date, it is doubtful that the Office of City Attorney would voluntarily change its current method of using juvenile prosecutors.

3. *Preparing and presenting the government's case in fact-finding hearings.* According to the project director, the basic objective of the Juvenile Prosecutor Project is to prepare and present cases in a professional manner. The project director pointed out that given resource limitations at the present time, this is what his office is striving to achieve. Although he feels that the project is beginning to achieve this objective, the project director is concerned about several problems he constantly faces.

First of all, the project has virtually no clerical staff and this has been a constant annoyance. Secondly, no funds are available to hire an in-house investigative staff. The project director noted that once the police department makes an arrest, it considers the case closed and is typically unwilling to allow its detectives to continue an investigation. Only when pressure is applied are detectives made available. What this means is that juvenile prosecutors either are forced to undertake their own inquiry or to forego necessary investigations. The latter course is often selected. The project director said that, like district attorneys' offices, his office must have its own investigative staff, particularly to investigate serious juvenile crimes and child abuse and sexual abuse cases. Furthermore, an agreement must be reached with the police department to allow detectives to continue their investigations in certain cases.

After receiving this overview of the project, two and one-half days were spent in two different courtrooms. During this period, we observed a range of cases, at least four juvenile prosecutors, and had discussions with several of the judges.

In virtually all cases that were observed, the juvenile prosecutors were poorly prepared and presented cases in a sloppy fashion. In many cases, the juvenile prosecutor restricted his role to asking the police witness for his name and shield number and then asking him what happened. If points were not clear, or if objections were made, it was normally the judge and not the juvenile prosecutor who intervened.

One particular case dramatically illustrates this point. A juvenile was charged with possession of stolen property and loitering. (This, incidentally, was one of many cases where the petition was improperly drafted.) A police officer testified that he observed, from a distance of 5 feet, one youth show a glassine envelope to another youth and then return it to his pocket. When the officer approached the two youths, one fled. The officer then testified that he reached into the pocket of the youth who had the envelope and removed it. The juvenile prosecutor then attempted to introduce a laboratory report establishing that the envelope contained a small quantity of heroin. The public defender objected to the introduction of the report since the heroin had not been brought into court. He also strongly suggested that he would oppose the introduction of the heroin on the basis of an unlawful search and seizure. At this point, the juvenile prosecutor essentially withdrew from the proceedings. He remained seated quietly while the judge, in effect, had to play the government's role to resolve the objection. The judge finally decided to continue the case and order the witness to bring the evidence into court on the next hearing date.

After the case was continued, the judge turned to the observers and said, "Isn't this awful." He also stated that the juvenile prosecutor's presentation (or lack of it) was painfully typical.

In the other courtroom which was observed, the judge became angry on several occasions because juvenile prosecutors (and public defenders as well) were late or were totally unprepared to present their cases. The judge was particularly angry about one case in which the juvenile prosecutor was unprepared to deal with a neglect case which was 1½ years old (he did not even know how it had gotten on the calendar).

The judges, in general, are highly critical of juvenile prosecutors. One judge said that it was ridiculous to have the City Attorney's Office present serious cases such as homicides since they are not equipped to handle them. He said that assistant district attorneys should be brought in to try serious cases. He then asked, "Would a district attorney assign a new lawyer or an older reject to try a complicated case?" He finally commented that the Juvenile Court is a garbage bin of the system and all agencies seem to assign their worst personnel. Other judges suggested that the City Attorney did not have any idea what the Juvenile Court is all about and this was reflected by the performance of the juvenile prosecutors. Still other judges commented that since most juvenile prosecutors were disorganized and generally unprepared, they simply ignored them most of the time.

Surprisingly, even with all this being said, the judges all wanted to retain the program. Most of the judges said that they had expressed support for the program in a recent survey that had been conducted because the juvenile prosecutors, for all of their faults, are a substantial improvement over what existed before. They also indicated that a small number of the juvenile prosecutors were quite good.

In summary, our own observations and interviews give a bleak picture of the area now being given priority by the project—the preparation and presentation of cases. Cases, in general, are poorly prepared and little skill in advocacy is shown. Personnel seem, for the most part, to be of questionable quality. When this is combined with the facts

[46] *Ibid.*

that the City Attorney has provided no investigative and virtually no clerical staff, that staff have not yet even begun to become involved in other critical areas such as petition drafting, that staff time is being increasingly committed to nonjuvenile cases, and that the planned training program for the project has not yet even begun, the picture becomes even more dismal.

We asked a lay official in the City Attorney's Office why the quality of personnel was so low in the Juvenile Prosecutor Project. He first denied that this was true. He then acknowledged that there was a personnel problem, but that this problem was widespread within the Office of City Attorney. "It is hard to find places for older lawyers of marginal quality, and it is hard to find good young lawyers who are interested in the Juvenile Court. There is an inherent unattractiveness about the Juvenile Court. Skilled advocates would want to become assistant district attorneys and not juvenile prosecutors."

He insisted, however, that the project had made great strides in one year and that the Office of City Attorney was committed to continuing the program on an ongoing basis. Another official, however, suggested that the City Attorney will continue to give the project low status.

Thus, the current assessment of the Metropolis Juvenile Prosecutor Project is that it is not meeting any of the objectives set out for it very well for a variety of reasons, some of which are clearly political. It would also appear that there is little hope for improvement unless substantial changes are made in personnel and program content and a stronger commitment to the juvenile prosecutor concept is made by the City Attorney.

4. *Needs for government representation within the family court and possible short- and longer-range approaches for meeting needs.* It is extremely difficult to assign a role for government representation in the Metropolis Juvenile Court, since cases involving juveniles alone range from minor mischief to homicide. Without question, there is a substantial need emerging for government representation in a narrow legal sense since procedural safeguards for juveniles are expanding substantially: there must now be a valid basis for taking a juvenile into custody; petitions must meet the requirements of criminal informations; illegally-obtained evidence cannot be used in a delinquency hearing; juveniles cannot be detained prior to hearing without cause for such detention being shown, etc. Therefore, government representation is needed to ensure that all legal and constitutional requirements are met in each case and also that all cases are prepared and presented in a skillful, lawyer-like fashion. This function will undoubtedly continue to expand as requirements may soon emerge for preliminary hearings, for more liberal pretrial discovery, and for more disclosure at dispositional hearings. Arguably, this function is no different than that played by a district attorney in criminal cases.

But there is a strong sense that the role of a government lawyer in the Juvenile Court must go beyond this traditional legal role since the overall goal of the Juvenile Court is to assure the most constructive treatment program for children identified as needing attention. In order for government lawyers actually to participate in the achievement of this goal, it may well be necessary for them to become knowledgeable in treatment alternatives and to work actively with police, with probation officers, and with public defenders to make all vital information readily available to necessary parties to facilitate resolving these cases in advance of hearings when it may be in the best interests of the child to do so. It may also mean opening up dispositional hearings to probe more deeply into treatment alternatives when there may be valid objections to dispositional recommendations. In other words, government lawyers can best assist in achieving the Juvenile Court goal by developing a concern for disposition. We are not suggesting that juvenile prosecutors should become or replace probation officers or social workers. We are hopeful, however, that they will use their position and influence to: 1) ensure that only legally-sufficient cases are adjudicated; and 2) to ensure that cases



are resolved in the best interests of the treatment of the child consistent with appropriate concerns for public safety. These objectives cannot be met as long as juvenile prosecutors fail to:

- Provide direct guidance to police on law enforcement policy toward juveniles, on legal requirements, and on stationhouse diversion of cases;
- Prepare guidelines for intake officers;
- Encourage prehearing resolution of cases either through diversion of cases or through proposed consent decrees through liberal discovery and interaction with law guardian and probation staff;
- Effectively investigate and present cases for all fact-finding hearings (including taking steps to ensure that statutory presumptions against detention, etc., are followed) and attempt to agree with law guardians in advance of hearing what facts remain in dispute; and,
- Participate in dispositional hearings when underlying facts used to justify disposition are in dispute or dispositional alternatives are not clearly defined.

## F. CONNECTICUT JUVENILE COURT, THIRD DISTRICT, HARTFORD

The Juvenile Court in Connecticut is an independent statewide court system. The Hartford Juvenile Court has jurisdiction over the Third District, one of three districts into which the Juvenile Court jurisdiction is divided. Each Juvenile Court District has two judges; one of the judges in the Third District is also Chief Judge of the entire State system.

Under the present system in the Hartford Juvenile Court, the prosecution function is allocated among three different levels of personnel: probation officers perform the great bulk of prosecution functions; lawyers from private practice are assigned to serve as prosecutors ("advocates") at certain stages of the very small number of cases which are contested, and sometimes consult on intake screening in uncontested cases on an *ad hoc* basis; judges set certain prosecution policies, and sometimes make screening decisions in particular cases. The scope of the role of lawyer-prosecutors under the Hartford system can generally be characterized as narrow. They are given functions which require technical legal expertise but are usually cut off from decisions requiring the exercise of policy-laden "prosecutorial discretion." The professional prosecutor is used, one might say, almost as a "hired gun," closely confined by policies made by the judges and probation staff.

Initial screening decisions are made by the probation casework supervisor, who receives all referrals by mail. He screens out cases on the basis both of legal sufficiency (whether the referral, by police, school, or other source, contains factual information sufficient to establish the elements of a delinquency offense),[47] and on the basis of suitability for Court handling. If the referral source has not made sufficient efforts to resolve the problems (by repeated offers of non-court services, etc.) then minor cases will be referred back even though legally sufficient. The intake philosophy is that the Court is a "terminal agency" for use only when other resources are clearly unable to cope with the problem.

Delinquency referrals which are not rejected by the casework supervisor are assigned to a probation officer, who summons child and parent to an initial interview. At that interview, where 95% of "new" children are not represented by counsel, the parties are notified of their rights, and the child is asked if he is willing to admit the offense. If the child admits, he signs a "statement of responsibility." The probation officer then has the discretion to handle the case non-judicially (by dismissal with warning, "adjustment," or "non-judicial probation" for a three month period). Certain offense categories have been determined by the judges to require

[47] "Delinquency" is a very broad category in Connecticut, including a broad range of non-criminal conduct. There is no spearate "PINS" category. The procedure in neglect cases, which are prosecuted by the State Attorney General's office, was not investigated.

judicial handling (*i.e.,* prosecution), whether denied or admitted, if there is a legally sufficient case. These so-called "mandatory" offenses include crimes of violence, drug selling, motor vehicle offenses, shoplifting, and children referred to Court more than two or three times. Still, 75% of all delinquent cases processed by intake are handled non-judicially. "Advocates" normally have no contact with such cases. In some cases, even if the child admits the offense, the probation officer will decide that the case merits judicial handling and will draft a petition and return the case to his casework supervisor for approval. Normally, advocates have no contact with these (uncontested) prosecutions; the probation officer who made the intake decision functions as prosecutor right through the disposition stage: negotiating with defense counsel, and appearing at detention, adjudication and disposition hearings. In some instances, however, the casework supervisor will desire legal advice concerning the petition or legal sufficiency of the case.[48] He will then consult with an advocate, usually by telephone.

In those cases where the child denies the offense, the probation officer has no choice but to refer the case back to his casework supervisor for assignment to an advocate. All contested cases must be prosecuted by advocates. The major scope of professional prosecution thus consists of the contested portion of the 25% of delinquency cases which are judicially *handled.* Although we obtained no estimates, this probably constitutes only some 10 or 15 percent of all delinquency cases accepted by the Juvenile Court at intake.

Advocates are assigned by the casework supervisor from a list containing over sixty names of private practitioners who have indicated their interest in being assigned to represent the state or the defense in juveni'e cases, and who have been "accepted" by the court clerk as qualified. The supervisor assigns defense counsel from the same list, when the child or parent requests counsel. However, the judges have set the policy that no lawyer is eligible to be assigned as an advocate *and* as a defense counsel in the court; furthermore, a policy exists to appoint as advocates only two or three well-qualified practitioners. In fact, an estimated 85% or more of the cases assigned to advocates are assigned to three Hartford practitioners. All three are engaged in the general practice of law; only one of them does substantial (privately retained) criminal and juvenile defense work.

When an advocate is assigned a case, he reviews it for legal sufficiency. Some advocates also screen cases for "prosecutorial merit" beyond legal sufficiency, and may advise against prosecuting trivial offenses. If probation persists in wanting a petition, they will refer the dispute to one of the judges for resolution. An advocate's approval of a case is often conditioned upon the conduct of further investigation, which is generally assigned to the full-time investigator attached to the Court. The advocate will prepare the case for trial, including the interviewing of witnesses, often in his private law office, in advance of trial. Although he will frequently engage in discussions with defense counsel prior to trial, most "plea-bargaining" by defense counsel takes place with the probation officer before a petition is filed. Once the petition is filed, cases are virtually never diverted prior to adjudication. The only possible result of post-petition "bargaining" is a decision to admit the allegations. Advocates do *not* appear at disposition, however, so that if defense counsel's consent not to contest the petition is conditioned upon some understanding as to dispositional recommendations, he will have to deal with probation as well.

In practical effect, participation of advocates is generally limited to only two stages, in the handling of contested cases: screening and filing the petition, and adjudication hearing. They have no role at bind-over proceedings, simply because bind-overs "never occur."[49] Advocates do not appear at detention hearings unless the child denies the offense, in which case a probable cause hearing is held and the advocate participates. Pretrial motions almost never are made—in part, the result of an "open files" discovery policy. (The defense has full access to all material—police reports, etc.—in the petitioner's file.) Nor has an advocate any role at appeal, because appeals are not known ever to occur. The advocate's role therefore normally concludes with the adjudication. However, an advocate will appear at probation revocation hearings if the youth denies his alleged violation of probation. Advocates have also appeared at rare collateral attack hearings.

The following criticisms about the role of prosecution in Hartford were made to center staff by participants in the process.

### *1. Intake screening.*

a. *Efficiency.* All participants agree that the intake system as a whole does an effective job in screening out trivial cases and cases which might be handled more satisfactorily without adjudication. The sole possible exception here relates to the inclusion of shoplifting among "mandatory" offenses for adjudication hearing, but this is seen as a question of judicial policy, rather than in efficiency of intake.[50] But several participants stated that the initial intake screening by probation—prior to the time an advocate enters the case—is inadequate. Many trivial cases are said to reach the stage of initial interview with child and family. Defense counsel may then enter the case, and have to "waste" time convincing probation and/or an advocate that the case be dropped. (One can only speculate on the extent to which inadequate cases are "admitted to" by juveniles who are not represented by counsel, and then either handled "non-judicially" or prosecuted (as uncontested) without an advocate. One of the judges, however, did not feel that screening of uncontested prosecutions was, in the least, defective, on the basis of those coming to trial before her.) Some of the participants suggested two solutions to the problem created by the advocate's late arrival on the scene under the present system: either to have an advocate involved earlier in the process (*e.g.,* before cases are referred by the probation case supervisor to individual probation officers), or to give some formal legal training (short of degree training) to the probation officers involved in intake. Most preferred the latter, however, on the ground that a lawyer's "narrow" approach might hinder the free diversion of legally sufficient cases at intake.

b. *Probation Personnel.* Two criticism were directed to the lack of specialization within the probation staff. One source criticized the present system whereby intake cases are channeled to the same probation officer who has had prior contact with the youth's court career. Another source criticized the fact that the same probation officer makes the intake decision and later recommends disposition. Both felt that intake staff should be distinct from regular probation staff.

c. *Delay.* A major problem has been that of delay in satisfying requests made by probation to advocates for screening decisions. Delays of up to "a couple of months" have occurred between the time the casework supervisor refers a "denial" case to an advocate for his approval of the case for prosecution. The delay was apparently attributable to the fact that the file had to be sent by mail to an advocate at his law office, and he might "sit on" it for long periods of time. One month ago, a "solution" was found for the Hartford cases by arranging with one advocate to come to the Court once every week, and to screen all the cases collected for his review. He now makes over 90% of all screening decisions for the Court. The problem has not been solved, however, for prosecutions within the Third District which take place in rural locations—the judges "ride circuit" every week. In this respect (and several other respects in which the Hartford system of prosecution works well)

[48] His policy is to screen out even uncontested cases lacking legal insufficiency, despite the judgment that the child "needs" the Court's services.

[49] Connecticut bind-over rules are extremely restrictive. The Juvenile Court's jurisdiction is exclusive for youths under 16. The only youths subject to bind-over are those charged with first degree murder, and the judges have indicated they would not likely exercise their discretion to bind-over even such cases.

[50] The Chief Judge reportedly feels that middle-class shoplifting offenses, which have increased markedly in recent years, require the solemnity of judicial proceedings to impress the community with the seriousness of this conduct. Most such cases are actually dismissed. Some participants questioned the wisdom of the Court's "unyielding" policy which prevents pre-petition diversion of any such case.

there is more dissatisfaction with the handling of rural cases.

d. *Expense.* Advocates (and defense counsel) are paid $50 for pretrial preparation of each case, and another $50 for the adjudication hearing. It is felt that by having one advocate come in to screen a number of files one day a week, it may be able to pay for his services on some less costly basis than $50 per case screened.

e. *Investigations.* Several sources indicated that the investigative staff available to advocates are insufficient. The police are felt to do inadequate investigation on many of the cases referred to the Court. Further investigation is therefore often required before a petition can be filed. Adequate, trained investigative personnel are not available, with the result that many delays are caused.

***2. Drafting of petitions.*** Several sources criticized the quality of petitions, particularly in uncontested cases, which are not subject to review by an advocate. In contested cases, the advocate who screens the case normally "suggests" language for the petition to the probation officer, and that language is generally adopted. The solution proposed was for advocates to draft or to review the petitions in both contested and uncontested cases.

***3. Detention hearings.*** As previously remarked, advocates appear only at detention hearings if the youth denies commission of the delinquent act, in which case an advocate's presence is deemed necessary to argue on probable cause. Otherwise, the probation officer argues the case for detention. Probation officers are reportedly embarrassed in this role, because the detention stage is often their initial contact with a youth whose personal trust they seek to gain, and arguing for detention they feel prejudices their position from the start. (They reportedly do not feel any qualms about advocating restrictive measures at the disposition stage, by which time they have established a good relationship with the youth, and can frankly disclose their views.) The need exists, therefore, to expand the advocate's role to all detention hearings.

***4. Disposition hearings.*** Most persons interviewed felt that there was no need for an advocate at disposition. While a defense counsel rarely opposes a probation officer's recommendations for disposition, he does reportedly play some role in informal consultation with the probation officer prior to the actual hearing. One defense lawyer reported opposing the probation officer's plan on two occasions, and "winning" both times. The sources unanimously stated their admiration for the probation staff, who reportedly work hard for good dispositions short of commitment to the state training school. They view the disposition decision as a "social" issue, in which the prosecutor can make no special contribution. Two lawyers, when pressed by Center staff, conceded that in "serious cases" (where commitment was possible) an advocate's participation might be useful.

Although some participants in the process recognized a need to expand the role of prosecution in some of the areas described above, most preferred the present method of appointing prosecutors to a system of full-time prosecutors. For the most part, those interviewed did not feel that the law fees and the part-time arrangements adversely affected the quality or continuity of service. Furthermore, they felt that advocates were independent even though they must rely upon probation for appointments. Finally, they argued that the Court may not have sufficient business to warrant full-time prosecution; even if it did, someone hired on a full-time basis would undoubtedly be young and inexperienced as opposed to the experienced lawyers now serving as advocates. Hartford is indeed fortunate to have the kind of assistance it is now receiving from private practitioners. It is unlikely, however, given the need to expand the role of prosecution in such areas as petition drafting and review, court intake, diversion, pretrial hearings, investigation, etc., that exclusive reliance upon part-time advocates will be feasible or desirable in the future. This is particularly true if efforts are made, consistent with this report, to utilize prosecution in far more creative ways than have been attempted thus far in Hartford or most other jurisdictions.



CHAPTER VII

# PROSECUTION GUIDELINES FOR BOSTON JUVENILE COURT

## A. GENERAL PRINCIPLES FOR JUVENILE PROSECUTION

1.1. The prosecutor is an *advocate* of the State's interest in juvenile court. The "State's interest" is complex and multivalued, and may vary with the type of proceeding and the nature of the particular case. Foremost, it includes: (a) protection of the community from the danger of harmful conduct by the restraint and rehabilitation of juvenile offenders; and (b) concern, shared by all juvenile justice system personnel, as *parens patriae,* with promotion of the best interests of juveniles.

1.2. To the extent that the State's interest in community protection may conflict with its interest as *parens patriae* in promoting the well-being of a particular child, the prosecutor will be required to balance the interests based upon the nature and facts of the particular case. For example, to the extent that interests have to be balanced in given cases, the balance might be struck in favor of community protection when the juvenile presents a substantial threat to community security but of promoting the well being of a child for most other types of situations.

1.3. In his role as *advocate,* the prosecutor has responsibility to ensure adequate preparation and presentation of the State's case, from the stage of police investigation through post-disposition proceedings. He is also committed generally to the advancement of legitimate law enforcement and child welfare goals by the participation of his office, together with other agencies such as the public defender's office, in drafting court rules and legislation, in appellate litigation, and in other activities which shape development of the law.

1.4. Commitment to the rehabilitative philosophy of the juvenile court bars the use of certain penal objectives to achieve community security and protection. Retribution, for example, is not a proper goal of juvenile court prosecution.

1.5. Since unnecessary exposure to juvenile court proceedings and to formal labeling and treatment in the juvenile court process is often counter-productive for many juveniles, the prosecutor's duty to promote both the community's long-term security and the best interest of particular juveniles requires him to encourage and stimulate early diversion of cases from the court and to strive for imposing the least restrictive alternative available in dealing with a juvenile throughout the juvenile justice process. It also requires that a prosecutor proceed only on legally sufficient complaints or petitions even though a juvenile may require treatment or other types of assistance. Responsibility in this area is exercised by such means as issuing enforcement guidelines to the police, screening out deficient, insufficient, or trivial complaints, and actively encouraging and participating in efforts to refer juveniles to other agencies or reach agreement on other acceptable dispositions in cases where court handling is not the best means for either protecting the community or helping the juvenile.

1.6. The prosecutor shares the responsibility with other juvenile court personnel to ensure that rehabilitative measures undertaken as alternatives to court handling or pursuant to court-ordered disposition are actually carried out, and that facilities and services for treatment and detention meet proper standards of quality.

1.7. The prosecutor has a duty to *seek justice* in juvenile court by insisting upon fair and lawful procedures. This entails the responsibility to ensure, for example, that baseless prosecutions are not brought, that all juveniles receive fair and equal treatment, that liberal discovery of the State's case is available to defense counsel, that exculpatory evidence is made available to the defense, and that excessively harsh dispositions are not sought. It also entails the responsibility to oversee police investigative behavior to ensure its compliance with the law.

## B. SPECIFIC GUIDELINES

In accordance with the preceding general principles and objectives, the following standards are proposed with regard to the establishment and operation of an office for prosecution in the Boston Juvenile Court.

2.1. An Office for Prosecution should be established in the Boston Juvenile Court, under the direction of a Chief Juvenile Court Prosecutor.

***Commentary.*** These standards envision the creation of a specialized office of prosecution located in the Boston Juvenile Court. Location of the office in the Juvenile Court should serve to facilitate efficiency and promote close liaison with the various other segments of court operation: judges, the court clerk, probation, and the court clinic. The Chief Juvenile Court Prosecutor and his prosecution staff will be trained attorneys and will constitute an independent office for juvenile prosecution which will be distinct in personnel and organization from any other state or local prosecution apparatus. His duties, which are elaborated in the standards which follow, include some tasks presently performed by personnel without adequate legal training—such as police and probation officers—and some tasks which are not currently any particular agent's responsibility. Generally, he should represent the Commonwealth at all stages of proceedings in the Boston Juvenile Court and assume overall responsibility for the investigation, preparation and presentation of all cases involving juveniles. Creation of a special prosecution office should serve to centralize and coordinate the various tasks appropriate to proper representation of the state's interest under the direction of persons adequately trained to carry them out.

There is some merit in the suggestion that the state advocate in juvenile courts should be given some title other than "prosecutor," in order to distinguish his special functions from those of criminal court prosecutors. Professor Fox, for example, proposes the title "Community Advocate." [1] In the Hartford Juvenile Court, the simple term "Advocate" is used. We have used the term "prosecutor" because we believe its negative connotations are offset by advantages of clarity and directness. It should be possible to distinguish the functions of this office from that of the District Attorney without resorting to more neutral labels which may mislead the public.

### *1. Police enforcement and investigation*

2.2. In addition to the prosecutor's responsibility to give general guidance and assistance with regard to police operations involving juveniles (see Standard 4.1, *infra*) he should instruct and advise police officers on matters pertaining to particular cases. His approval should be required for all applications to the court for issuance of arrest and search warrants.

***Commentary.*** In Standard 4.1, *infra,* we suggest that the juvenile court prosecutor should have responsibilities for general liaison and assistance to the police regarding enforcement methods and policies in juvenile cases. That aspect of the prosecutor's interaction with the police concerns relationships with the upper levels of police administration. This standard, in contrast, is addressed to the prosecutor's responsibility for relating on a case by case basis with individual police officers regarding cases they have brought before the court. At this stage of the proceedings, the prosecutor bears responsibility vis-a-vis the police on several different levels. If the case is unsuitable for prosecution because, for example, there is insufficient evidence to support a complaint, or because it represents a class of cases which under applicable enforcement guidelines should be handled without court processing, the prosecutor is obliged to explain these deficiencies to the officers concerned. He has a similar educational role in cases which reveal the use of illegal enforcement measures by the police or other state agents. Where more evidence is required for the prosecution of any case, the prosecutor should so instruct the police and provide general supervision over the subsequent investigation. All of these functions are appropriate to implement the prosecutor's role as advocate

[1] Fox, "Prosecutors in the Juvenile Court: A Statutory Proposal," 8 Harv. J. Leg. 33 (1970).



(General Principles, *supra,* para. 3) and his general duty to seek justice for juveniles (General Principles, *supra,* para. 7).

This standard further establishes a requirement of prior prosecutorial approval of police requests for arrest warrants and search warrants. This requirement is in keeping with the prosecutor's overall responsibility for proceedings which reach the court stage, and for policies governing detention (Standard 2.3, *infra*). Arrest and search warrants authorize very serious degrees of state intervention. If requests are screened by a legally trained prosecutor prior to the time they are presented to the court, the court can have increased confidence in the justification for their issuance.[2] Also, the prosecutor should encourage the police to make full use of the power to obtain arrest and search warrants in all appropriate cases.

### *2. Pretrial detention*

2.3. The Juvenile Court Prosecutor should represent the Commonwealth at detention and probable cause hearings. He should also coordinate the execution of policies governing pretrial detention of children. In carrying out this responsibility, he may encourage the promulgation of written guidelines to govern detention decisions made by police, detention personnel, and court staff.

***Commentary.*** The prosecutor has an important role to play at detention hearings, where he should represent the Commonwealth in addressing the factual and legal issues which may arise. In jurisdictions which hold "probable cause" hearings in juvenile cases, either in conjunction with detention hearings or separately, the prosecutor has a similar role to play.

This standard also places substantial responsibility on the prosecutor for pretrial detention policy. Juvenile detention policies must reflect a delicate balance between the need to avoid unnecessary pretrial restraint of juveniles—in recognition both of the harms suffered by children confined in shelter detention facilities, and of the duty to honor every child's right to liberty and the presumption of innocence which he enjoys—and the need to protect society and/or some children against the harms which potentially flow from unsupervised freedom. The person best situated to express the community's view of this balance—generally, in regard to the proper criteria for detention, and specifically, in arguing the application of promulgated criteria to particular cases—is the Juvenile Court Prosecutor. This standard therefore assigns him responsibility to participate in the formulation of overall policy, and to oversee its execution by the police, probation and parole officers, and detention staff. While policy should and must be informed by the perspectives of these other personnel, the prosecutor is well situated to provide overall coordination.

In jurisdictions like Massachusetts which apply the bail system to juveniles, the prosecutor should encourage the use of release on personal recognizance whenever feasible. The prosecutor should also be familiar personally with available shelter and detention facilities, and should encourage efforts by the Department of Youth Services to make available appropriate new facilities where needed. Familiarity with available facilities will enable the prosecutor to fulfill his role adequately as advocate at detention hearings. As stated in the General Principles (*supra,* para. 6), the prosecutor shares responsibility to ensure that these facilities meet proper standards of quality. Where they do not, he is in a good position to support attempts by judges and others with special responsibility for institutions of juvenile justice to bring inadequacies to public attention. The same holds true, of course, with regard to treatment facilities employed at the disposition stage of proceedings.

### *3. Court intake*

2.4. The prosecutor, in conjunction with probation staff, has an important role at court intake to ensure that cases inappropriate for judicial handling, and only such cases, are dismissed or diverted. Prior to the filing of any complaint with the court the prosecutor should review the case to assess its merits. He also has the primary responsibility to initiate proceedings to transfer cases for criminal trial.

[2] The prosecutor is given this screening responsibility in the District of Columbia.

***Commentary.*** The Boston Juvenile Court currently lacks any developed system of intake screening and diversion. This standard proposes that an intake structure be established and that the prosecutor play an important role in its operation.

The prosecutor has functions at intake in relation to three objectives: 1) screening of prosecutions for legal sufficiency, to ensure that any coercive treatment, whether administered on a formal or "informal" basis, rests on an adequate legal basis; 2) prosecuting or diverting legally sufficient cases according to "public policy" considerations regarding the nature of the conduct alleged; and 3) prosecuting or diverting legally sufficient cases on the basis of the juvenile's individual needs or propensities.

The first function, screening of complaints[3] for legal sufficiency, entails review of the allegations, and of the evidence adduced in support thereof, to determine two things: whether sufficient competent evidence exists to support a *prima facie* case that waywardness or delinquency, as defined by statute, exists; and whether the complaint as drafted is both legally sufficient and sufficiently detailed to give fair notice to the juvenile of the matters charged. These functions implement the principles that "a prosecutor proceed only on legally sufficient complaints . . . even though a juvenile may require treatment or other type of assistance" (General Principles, *supra,* para. 5), and that "the prosecutor has a . . . responsibility to ensure . . . that baseless prosecutions are not brought." (General Principles *supra,* para. 7). It would be clearly improper to permit the institution of court proceedings on the basis of a complaint which was known to be insufficient to warrant court jurisdiction. Because the issue of legal sufficiency is a technical one, the screening responsibility should be exercised or reviewed by a lawyer-prosecutor, rather than by a layman.

To enable the prosecutor to perform these functions within the statutory framework of existing Massachusetts law, it might be required that no complaint should be accepted by the court clerk (as a basis for the issuance of process under Mass. Gen. Laws Ann. ch. 119 § 54) unless the prosecutor has countersigned the pleading. This would not eliminate the court clerk's present functions, but would erect another screen between complainants and the issuance of summons, in the person of the prosecutor. Nor would this require that complaints be drafted by the prosecutor, although that might be desirable in some cases; complaints might still be drafted by the clerk's office, but simply reviewed and counter-signed by the prosecutor.

With regard to the second and third objectives of the prosecutor's involvement at intake—to divert or prosecute legally sufficient cases on grounds of public policy or individual attributes—it is essential that some mechanism exist whereby the prosecutor can challenge a refusal by intake personnel to recommend the institution of proceedings. It is most important that intake staff have the discretion to screen out or divert cases even when sufficient evidential basis exists to support the filing of a complaint. As the General Principles state (*supra,* para. 5), "unnecessary exposure to juvenile court proceedings and to formal labeling and treatment in the juvenile court process is often counter-productive for many juveniles." In many cases technically warranting prosecution, neither the juvenile's nor the community's interest would be served by such action. Instead, informal resolution of the precipitating dispute, perhaps accompanied by diversion to other community services agencies, would be indicated. However, in some instances the police or other complainant will feel aggrieved by an exercise of intake staff discretion to dismiss a legally sufficient case. In those cases, the disagreement should be referred to the prosecutor for his judgment whether, all things considered, the community's interest would be furthered by the institution of proceedings. At that juncture, the prosecutor could either be given unreviewable authority to sustain or overrule the intake recommendation, or power only to "appeal" the intake unit's refusal to the judge for final decision on whether a complaint should be filed. The former solution has the disadvantage of permitting the prosecutor to overrule the "expert judgment" of the intake unit's social work staff as to the overall desirability of prosecution; the latter solution arguably requires the court to exercise a "prosecutorial discretion" incompatible with a posture of judicial neutrality. Permitting the judge to make the final decision as to the desirability of prosecution may also lead him re pre-judge cases which might later be presented to him for adjudication. In courts like the Boston Juvenile Court, which have more than one judge, in such cases the judge can, of course, disqualify himself.

Similar considerations arise with regard to a closely related question: Should the prosecutor have an option to oppose an intake staff recommendation to file a complaint, although the evidence is legally sufficient to support an adjudication of waywardness or delinquency? A strong argument can be made that the prosecutor should not be bound by intake staff recommendations to file a complaint,[4] even when sufficient legal grounds for prosecution exist. The prosecutor is in a unique position to weigh other factors which properly bear upon the decision to prosecute in (juvenile) court: whether the community interest in prosecution justifies the expenditure of scarce enforcement and prosecutorial manpower, and of court resources; and whether in his professional judgment it is the sort of case likely to result in adjudication, given judicial attitudes, and credibility of witnesses. The prosecutor's vantage point in the system arguably gives him a unique expertise which should not be subservient to the judgment of other intake staff.

A distinct but related question covered by this standard, whether a juvenile should be diverted from the juvenile court to the criminal justice system through transfer proceedings,[5] also turns upon the prosecutor's special competence to weigh the competing considerations and decide whether to request such a transfer. In his capacity as advocate for community interests, he should bear primary responsibility for this decision, on which consultation with complainants and intake staff will be influential but not binding. Of course the transfer issue is finally for the court to decide, but allocating to the prosecutor the responsibility for initiating those proceedings frees the judge to maintain an appropriately neutral posture prior to the hearing on that issue.

Two other issues relating to the structure and operation of intake screening and diversion machinery will require resolution. These are: should the intake unit have authority to postpone the decision whether to institute formal proceedings for a substantial period of time, while it administers "informal services" to the alleged offender; or should prior judicial approval be required for the provision of extended services before adjudication? And, what criteria should guide preadjudication screening and diversion of cases? With regard to the first question, the system in some jurisdictions whereby court intake staff may delay filing a petition for a long period while the youth "voluntarily" participates in informal probation has been criticized. The defect in such practices relates to the inherent coerciveness of such restrictions, imposed at the uncontrolled discretion of intake staff, whose power derives from their ability to file a petition at any time if the youth fails to "cooperate." To control this practice, some jurisdictions have adopted the intake system proposed by the Children's Bureau *Legislative Guide for Family and Juvenile Courts* (1969), §§ 13 and 33. This system permits intake staff to attempt an informal settlement of the case for a very short period of time.[6] If a petition has not been filed by the end of that period, it can never

[3] The "complaint" refers under Massachusetts law to the formal pleading alleging waywardness or delinquency, known in most jurisdictions as the "petition." We refer to the informant's application to the court for the filing of a complaint as the "request for complaint."

[4] Or a particular kind of complaint rather than another, e.g., whether delinquency should be alleged, or need for care and protection.

[5] *See* Mass. Gen. Laws Ann. ch. 119 § 61.

[6] The *Legislative Guide* is not entirely clear whether that period is ten days (§13(e) ) or thirty days (§ 13(d) ); ten days was probably intended.

be filed. "Informal services" may be offered for an extended period as a means of diverting the case without an adjudication, but the judge, and not solely intake staff, must approve and superintend such arrangements in the form of consent decrees.[7] The *Legislative Guide* restricts the length of time in which the formal prosecution may be revived if the youth violates his agreement under the consent decree. And the prosecutor lacks discretion to press for an adjudication so long as the decree is not violated.

The consent decree device, combined with strict limitations on the intake unit's power to postpone filing a complaint pending the outcome of informal diversion efforts, would seem most in keeping with past and current arrangements at the Boston Juvenile Court. Extended pre-adjudication diversion efforts are commonly made by the judge, in the form of "continuance without a finding," rather than by other staff free of judicial supervision. In other juvenile courts, however, the bulk of diversion activities may take place prior to the filing of a petition. In such courts, the prosecutor should exercise responsibility to ensure that abuses do not occur. He might do so by issuing intake policy guidelines, as discussed below.

The second and final issue for discussion involves the source and content of the criteria which should be employed to govern intake screening and diversion decisions, both prior to and following the filing of a complaint. It is clearly desirable that the criteria governing intake be articulated in some form such as internal policy guidelines, to ensure rational, uniform and reviewable decisionmaking.[8] We have pointed out that various models exist for deciding the prosecutor's precise role in these decisions, beyond his root function of screening complaints for legal sufficiency. Regardless of his role in the intake process, however, he should play a substantial, if not leading, role in the formulation and enforcement of intake criteria. This conclusion follows from his overall responsibility for law enforcement and prosecution policies, and for "actively encouraging and participating in efforts to refer juveniles to other agencies to reach agreement on other acceptable dispositions in cases where court handling is not the best means for protecting either the community or the juvenile." (General Principles, *supra*, para. 5).

### *4. Diversion of cases before adjudication*

2.5. In suitable instances the prosecutor should encourage the use of consent decrees to avoid adjudication in cases in which a complaint has been filed.

***Commentary.*** Standard 2.4, *supra*, gives the prosecutor a responsibility to encourage the diversion of suitable cases from juvenile court in the period before a complaint is filed. This diversion responsibility is extended, by this standard, up to the time of adjudication. Since judicial approval is necessary for any decision to suspend or withdraw prosecution once a complaint has been filed, the "consent decree" mechanism has been adopted in several jurisdictions. See Commentary to Standard 2.4, *supra*. In the Boston Juvenile Court, consent decrees as such are not used, but the device of "continuance without a finding" serves the same basic purpose of suspending the proceedings for a fixed period while the youth submits to judicially sponsored supervision or treatment. The purpose of this is to try to terminate the proceedings without resorting to a formal adjudication of delinquency or waywardness. Such diversion is to be encouraged by the prosecutor, in order to safeguard the juvenile from unnecessary proceedings and stigma, to gain his cooperation in the program of correctional treatment, and to conserve judicial time. This standard therefore imposes on him the duty to encourage the use of post-complaint, pre-adjudication diversion through constructive negotiations with probation and defense counsel.

### *5. Preparation of cases for trial*

2.6 The prosecutor has primary responsibility for preparing cases for trial, including the selection, interviewing and summoning of witnesses, and the conduct of further investigation when necessary.

***Commentary.*** Paragraph 3 of the General Principles, *supra*, states: "In his role as advocate, the prosecutor has responsibility to ensure adequate preparation and presentation of the State's case, from the stage of police investigation through post-disposition proceedings." This standard implements that principle by stating the prosecutor's duty with regard to preparation for trial: to select, interview and summons witnesses, and to see that further investigation is carried out when necessary. The latter task might be accomplished by use of the police, or by investigative staff attached directly to the prosecutor's office. See Standard 3.2, *infra*, on personnel. In general, the prosecutor's investigation and preparation for trial should meet the standards established by the American Bar Association, *Standards Relating to the Prosecution function*, §§ 3.1–3.3.

### *6. Pretrial motions and discovery*

2.7. The prosecutor has the responsibility to represent the State at hearings on pretrial motions. He should also be available to confer with defense counsel before trial for the purpose of expediting resolution of the case. This includes the duty to grant liberal discovery to the defense.

***Commentary.*** The prosecutor's responsibility to appear as advocate of the State's interest in juvenile court proceedings requires that he take an active part in making and responding to pretrial motions. In addition to hearings on bind-over and detention, discussed *supra*, these may include motions to suppress evidence, grant discovery, order a medical examination, or dismiss a complaint on double jeopardy grounds.

The prosecutor's interaction before trial with defense counsel should not be limited, however, to adversary motion practice. The prosecutor has a very important role to play in cooperative relationships with defense at this stage. He should take the initiative to elicit defense views on such issues as whether the evidence warrants filing of a complaint, whether there are desirable possibilities for diversion without adjudication, and whether certain issues can be disposed of prior to trial by stipulation or otherwise. In the interest of fair and expeditious handling of the case, he should grant the defense liberal discovery of information and materials in his possession, within such limits as have been established by the American Bar Association, *Standards Relating to Discovery Before Trial* (Approved Draft, 1970). This includes notifying the defense of any exculpatory evidence, and of the substance of any written reports resulting from social investigations under Mass. Gen. Laws Ann. ch. 119, § 57, and from medical, psychological, or other examinations. See General Principles, *supra*, para. 7. On the other hand, the prosecutor's legal training enables him to judge when defense requests for discovery should *not* be granted—in order to protect the identity of informants, for example. Liberal discovery can expedite not only the conduct of adjudicatory hearings, but also the contingent planning of dispositional recommendations.

### *7. Presentation of State's case at trial*

2.8. Professional prosecutors should represent the State at trial whenever possible. Where manpower limitations necessitate the use of non-professionals, such as police or law students, they should act under close professional supervision, and only in restricted categories of cases.

***Commentary.*** This standard proposes that professional prosecutors should represent the state at trials whenever possible. This contrasts with the current system of prosecution in Boston Juvenile Court, which relies almost exclusively upon non-lawyer police prosecutors. The proposal is based on the belief that introduction of professional prosecution in all cases will raise the general level of representation presently afforded both the state and the defense.

Should manpower limitations necessitate the continued use of police prosecutors in some cases, or limited prosecution by law students or other non-professionals, then those persons should operate under the close supervision of the Juvenile

[7] In some jurisdictions the prosecutor's agreement to a consent decree is a prerequisite to its issuance; in others, the prosecutor has the right to make objections to a decree, but the judge may overrule his objections.

[8] See American Bar Association, *Standards Relating to the Prosecution Function* (1970) at § 2.5.

Court Prosecutor. Furthermore, certain cases—which present major legal or evidentiary problems—should not be handled by non-professionals. We also recommend that an investigating police officer not be eligible to prosecute "his own" case, because of the awkward role conflicts inherent in that situation.

### *8. Disposition*

2.9. If there is a finding of delinquency or waywardness, the prosecutor should ensure that a fair disposition hearing is held, and that appropriate recommendations for disposition are presented to the court. In appropriate cases, he should make a recommendation as to disposition based upon his own knowledge of the case. The objective of the recommendation should be to secure not the most severe disposition in each case, but one entailing the minimum restriction on the child calculated to prevent further delinquency or waywardness. To this end, the prosecutor should consult with probation staff and, if requested by counsel for the child, should disclose the disposition recommendation he proposes to make to the court and the reasons therefor.

***Commentary.*** This standard asserts the desirability of continuing the lawyer-prosecutor's involvement in the case past the adjudication, and into the disposition stage. His functions at disposition are of two kinds. First, particularly where the underlying facts supporting alternative dispositions are contested, he has the responsibility to ensure that the hearing to establish those facts is fair, and that only reliable evidence is introduced. Second, he has responsibiilty to ensure that an adequate dispositional recommendation is placed before the court. He may do this in several ways. By advance consultation with both probation and the defense, he may stimulate them to conduct the necessary investigation and planning to propose recommendations—either separately or in concert—which seem acceptable. In addition to serving as a catalyst to others, in some cases the prosecutor may feel constrained to make his own disposition recommendation to the court, in opposition to that proposed by probation and/or defense. His duty to do so stems from his role as advocate for the community, and a conception of the probation staff as experts, not advocates. As an advocate, the prosecutor rather than the probation officer is the appropriate person to communicate with the defense and if necessary, to contest dispositional recommendations which may be made by the defense. His presence not only frees probation from the burden of advocacy, but may free the defense lawyer from any inhibitions he may have in opposing the recommendations of lay probation officers for fear of arousing the court's "protective" reactions or endangering cooperative relationships with this probation staff.

In those courts where probation plays an assertive role at disposition, the prosecutor may find it unnecessary in some cases to appear at the disposition hearing, especially in minor and uncontested cases. But the prosecutor should never abdicate his overall responsibility to ensure that the court is presented with concrete and acceptable disposition recommendations and that open communication and disclosure exists between probation and the defense prior to disposition.

### *9. Appeals and collateral attack*

2.10. The Juvenile Court Prosecutor should represent the State at appeals and in collateral proceedings, whether in the Juvenile Court or other court.

***Commentary.*** The system of prosecution in the Juvenile Court envisioned by these standards is characterized by a unique approach to representation. This approach would be fostered by special training and experience. See Standard 3.3, *infra.* In order to safeguard the integrity of this system, it is important that the Juvenile Court prosecutor, rather than a District Attorney or other outside lawyer, represent the State in appeals and collateral proceedings such as *habeas corpus* petitions. Sufficient manpower should be allocated to the Juvenile Court Prosecutor to meet these demands as they may arise.

### *10. Proceedings at the correction stage*

2.11. The Juvenile Court Prosecutor should represent the State in proceedings to modify or terminate dispositional orders and treatment measures, including proceedings to revoke probation and parole.

***Commentary.*** Juvenile Court proceedings do not always terminate with the findings at disposition. Further proceedings may occur such as revocation of probation or parole, proceedings to modify, extend or terminate dispositional measures, and proceedings to seal or expunge records. At such proceedings the State should be represented by the Juvenile Court Prosecutor, whose role is to interpret and advocate the community's interest in the outcome of the proceedings. It is far preferable for the prosecutor to argue the case for revocation of probation, than for example, for the probation officer involved to do so. Not only might the probation officer be a witness in the proceedings, but performing the advocacy function may interfere with his other roles vis-a-vis the probationer. Professional prosecution is also desirable in view of the increasing extent to which Constitutional due process requirements are becoming applicable to these post-dispositional stages of proceedings. Lay advocates may not be equipped to deal with the manifold technical issues of procedure, evidence and substantive "rights to treatment" which may arise.

### *11. Personnel and training*

3.1. Juvenile Court Prosecutors should be members of the Bar. They should have demonstrated legal ability in the field of juvenile or criminal justice, demonstrated interest in the problems of juvenile delinquency and a commitment to non-punitive responses to those problems.

***Commentary.*** The fundamental premise of these standards is that the prosecutor in juvenile court ought to be a lawyer. Therefore, this standard requires that he be a member of the Massachusetts Bar. While demonstrated proficiency in criminal or juvenile justice is also made a necessary condition of eligibility, it is not a sufficient condition: a sympathetic interest in the problems of juvenile delinquency, and a demonstrated personal commitment to a non-punitive approach to these problems, are also essential criteria for selection. The prosecutor will therefore be a lawyer familiar with the "social" philosophy of the Juvenile Court, and committed to its constructive goals. He must have the ability to communicate well with both legal and non-legal personnel in and outside of the Court.

Given the broad scope of the prosecutor's responsibility envisioned by these standards, the Chief Juvenile Court Prosecutor must be a full-time, salaried official as should the assistant prosecutors under his supervision. Under special circumstances, prosecutors might be assigned in individual cases from among interested and qualified private practitioners, like the system used by the Hartford Juvenile Court. If assigned prosecutors are used, they should be required to participate in the training programs recommended by Standard 3.3, *infra,* and they should work under the general supervision of the Chief Juvenile Court Prosecutor.

There are many options for the method of appointing the Chief Juvenile Court Prosecutor. He might be appointed by the District Attorney, by the Corporation Counsel, by the Governor acting upon the recommendation of a special board or council. For any case, the Chief Judge of the Juvenile Court should participate fully in the appointment process. The precise method of appointment to be chosen is a matter which requires further study. During an interim year of experimentation, however, we anticipate that the juvenile court prosecution office would be a special project funded within the office of either the Suffolk County District Attorney or the City of Boston Corporation Counsel.

3.2. In addition to lawyers, the Office of Prosecution should include adequate numbers of trained social workers, criminal investigators, and para-professionals in law and social work.

***Commentary.*** This standard outlines the major personnel needs of the Juvenile Court Office for Prosecution. The Chief Prosecutor should supervise a staff of lawyer-prosecutors adequate for the legal demands facing the office. In addition, he must have ready access to the services of social

workers to conduct social investigations at various stages: intake, bind-over, detention, and disposition principally come to mind. These social workers need not necessarily be attached to his office; in some courts they may be organized in a separate probation unit, and coordinate in some way with the prosecutor's office. Skilled investigators with experience in criminal investigation are an essential resource for the prosecutor. Frequently, cases referred to juvenile court have been incompletely investigated by the police or other referral source, and the decision to prosecute may be conditioned upon the conduct of further investigation. Investigators attached to the court ought to be available to do this under the prosecutor's direct supervision.

Para-professional personnel in the fields of law and social work can also perform useful roles for the office. In a university community like Boston, students are particularly available for this function. The use of law students, for example, to perform legal tasks at intake screening, investigations, at various sorts of simple pre- and post-trial hearings, and at the adjudication hearing under adequate supervision is an attractive possibility, and one of proven advantage in other current legal contexts. The educational value of such experience to the students is substantial. For the community, students provide an inexpensive but competent and energetic resource. The long-term value of exposing students to the theory and reality of the juvenile justice system would be inestimable. Finally, the student connection can and should be used as the basis for conducting continuous research and evaluation of the prosecution function in the court, as well as other aspects of the juvenile justice system.

3.3. A special training program should be devised and administered to Juvenile Court Prosecutors and other officer personnel. Training should include both initial orientation, and continuing education involving liaison with related agencies in the field of juvenile justice.

***Commentary.*** Even assuming the exercise of special care in staffing decisions, there will be need for a training program designed to orient juvenile prosecution lawyers and other personnel, and to maintain a continuously high standard of knowledge and understanding in their work. Orientation training might be achieved by an intensive program of lectures, readings, discussions, and institutional visits, designed to familiarize staff with the court and its processes, the background and philosophy of juvenile justice institutions, and the interplay of court and other community agencies such as the schools, welfare administration, police, and health care systems. Training should also introduce staff to the treatment services locally available outside the court and to skills required for selecting the facilities appropriate for particular children and families. A manual of prosecution policies and procedures should be prepared, for continuing use in operations and in orientation of new personnel.

Part of the training program should also consist of periodic seminars or conferences at which prosecution staff would meet with persons from other organizations involved in the juvenile justice system: police and school officials, representatives of private and public treatment agencies such as the Department of Youth Services, public defenders, etc., to exchange views on problems of common concern. Such forums would contribute to maintaining an open perspective in the prosecution office, and to a continual refocusing upon the nonpunitive goals of the court.

3.4. Including the Chief Juvenile Court Prosecutor, the Office of Prosecution should be staffed by four full-time prosecutors. It is further contemplated that law students will be used to provide supporting services and that investigative and social service liaison assistance will be required.

***Commentary.*** The question of manpower standards for prosecutors' offices is one for which few guidelines are available. An examination of the literature and consultations with the National Association of District Attorneys reveals no reliable guidelines for determining proper prosecutorial staffing needs. In the area of juvenile prosecution which, until recently, was largely undeveloped, the problems in this regard are even more pronounced. The widely varying scope of responsibility which prosecutors have in different jurisdictions and the organizational and procedural variations among juvenile courts in the United States provide few reliable models.



In the Boston Juvenile Court, with *no* previous experience in the use of professional prosecutors, the difficulty in making accurate manpower projections is further compounded. Furthermore, these standards contemplate a far more expansive role for prosecution than is currently played by police prosecutors. These broader responsibilities, which would include participation in screening and diverting cases and in the preparation of consent decrees, could have an effect on the number of cases which require a full hearing on the facts. On the other hand, the creation of mechanisms for increasing pre- and post-complaint diversion opportunities may well increase the number of court referrals.

However, while difficult, a reasonable assessment of prosecutorial staff needs is not impossible. In the opinion of the Court's Chief Judge, five or six attorney-prosecutors would be required to provide comprehensive, high quality community representation. In support of this estimate, it is noted that the four to six public defenders who now provide defense representation in the court do not have sufficient time to prepare their cases adequately. Our own observations indicate that two prosecutors would be essential merely to provide bare physical coverage for the court's two courtrooms which are frequently in simultaneous session. It is not unrealistic to assume that the prosecutor's out-of-court responsibilities would consume an amount of time at least equivalent to that committed to court appearances. Accordingly, it is anticipated that a minimum of four prosecutors would be required to provide adequate services in the court and that a larger number may well be necessary. In the King County Juvenile Court (Seattle, Washington), which has twice as many annual court referrals as the Boston Juvenile Court but only half the number of cases which are judicially disposed of, four prosecutors are used. It is believed that with the effective utilization of law student personnel to provide back-up assistance (*e.g.*, interviewing witnesses, conducting legal research, preparing and arguing motions, etc.), a full-time staff of four prosecutors would probably be sufficient in the Boston Juvenile Court. The assignment of prosecutors from the private bar should be considered as a temporary measure to relieve serious caseload pressures in the event that they arise.

The juvenile prosecutor may also require the supporting services of an investigator and an individual to assume social service liaison responsibilities. Depending upon emerging needs, these positions may be filled by assigning personnel from other agencies (*e.g.*, police or probation officers).

As stated earlier, staffing requirements for a juvenile prosecutor's office are dependent upon a wide assortment of variables. For this reason, it is not suggested that staffing recommendations for the Boston Juvenile Court would necessarily apply to other courts. However, in determining prosecutorial needs, consideration should be given to the following factors: the scope of prosecutorial involvement (will he play a role in intake decisions, diversion and disposition); the extent to which present court resources will retain responsibility for prosecutorial functions (for example, drafting petitions); the court's caseload (including non-judicial adjustments, judicial proceedings and contested cases); the amount and scope of defense representation; the number of judges who hear juvenile cases at the same time; and the availability of supplemental personnel resources (*e.g.*, law students).

### *12. Relationship with other agencies*

4.1. The Office for Juvenile Prosecution should consult regularly with the Office of Legal Counsel to the Police Department, for the purpose of:

(a) keeping the police informed of current legal and court developments;

(b) encouraging and assisting in the preparation and enforcement of Police Department guidelines for juvenile cases, including criteria for police intervention, custody and detention practices, and discretion to dispose of cases without referral to court.

***Commentary.*** In Standard 2.2, *supra,* we addressed ourselves to the prosecutor's role in relating to individual police officers about the conduct

of particular cases. This standard envisions a broader role for the Office for Prosecution in relation to the Police Department—that of general liaison. This ought to be a multi-faceted role. In one aspect, the prosecutor serves as advisor and assistant to the police, communicating court attitudes and current legal developments, with the aim of improving police effectiveness in dealing with the court. In a closely related aspect, he helps to shape police enforcement policy, so that it comports with the overall goals of justice, including resort to the court only when necessary and proper under express, fair criteria. Lastly, in his liaison role he helps the court to avert or meet criticism by interpreting its policies and actions to the police. He thereby helps in insulating the judges from the pressure to respond to such criticism. As a lawyer and prosecutor, he is likely to gain a more sympathetic hearing from the police that, for example, might a head of juvenile court probation services. For all these reasons, we believe the prosecutor's liaison role with the police is of principal importance.

4.2. The Office of Juvenile Prosecution should consult regularly with the departments of probation and youth services, to facilitate mutual coordination with regard to the functioning of probation and treatment services. It should also maintain continuous liaison with public and private community agencies which provide preventive and treatment services to juveniles.

***Commentary.*** The Office for Prosecution in the Juvenile Court plays a key role in the enforcement of the law involving youth. In order to function effectively and efficiently, the Chief Juvenile Prosecutor must maintain regular liaison with agencies other than the Police Department which affect youth. Coordination with probation and youth services administrators is of crucial importance, since these agencies are directly engaged in the treatment and control of prosecuted youths. Liaison with other public and private agencies, including the school system, child welfare organizations, and private treatment agencies is also important. To them, the Chief Juvenile Prosecutor can serve as spokesman for the court in explaining prosecution and treatment policies, and in stimulating cooperative responses from the community. For example, the prosecutor might explain court intake policy to school administrators, to encourage them not to use the court as a "dumping ground" for truants who might otherwise be dealt with more effectively. In such liaison efforts, the prosecutor may in appropriate instances be able to insulate the Juvenile Court Judge from community pressures or misunderstanding.



# APPENDIX A

## SURVEY CITIES

Questionnaires were sent to juvenile court judges serving in the 100 largest cities in the United States, as listed below. The thirty-two cities which bear an asterisk (*) are those from which no completed questionnaires were returned.

1 New York City, New York
2 Chicago, Illinois
3 Los Angeles, California
4 Philadelphia, Pennsylvania
*5 Detroit, Michigan
6 Houston, Texas
*7 Baltimore, Maryland
8 Dallas, Texas
9 Washington, D. C.
10 Cleveland, Ohio
11 Indianapolis, Indiana
*12 Milwaukee, Wisconsin
13 San Francisco, California
14 San Diego, California
15 San Antonio, Texas
16 Boston, Massachusetts
17 Memphis, Tennessee
18 St. Louis, Missouri
19 New Orleans, Louisiana
20 Phoenix, Arizona
21 Columbus, Ohio
22 Seattle, Washington
23 Jacksonville, Florida
24 Pittsburgh, Pennsylvania
25 Denver, Colorado
*26 Kansas City, Missouri
27 Atlanta, Georgia
28 Buffalo, New York
29 Cincinnati, Ohio
30 Nashville-Davidson County, Tenn.
*31 San Jose, California
32 Minneapolis, Minnesota
33 Ft. Worth, Texas
34 Toledo, Ohio
35 Newark, New Jersey
36 Portland, Oregon
37 Oklahoma City, Oklahoma
38 Louisville, Kentucky
39 Oakland, California
*40 Long Beach, California
*41 Omaha, Nebraska
*42 Miami, Florida
43 Tulsa, Oklahoma
44 Honolulu, Hawaii
45 El Paso, Texas
46 St. Paul, Minnesota
47 Norfolk, Virginia
*48 Birmingham, Alabama
*49 Rochester, New York
*50 Tampa, Florida
51 Wichita, Kansas
52 Akron, Ohio
*53 Tucson, Arizona
*54 Jersey City, New Jersey
*55 Sacramento, California
*56 Austin, Texas
57 Richmond, Virginia
58 Albuquerque, New Mexico
59 Dayton, Ohio
60 Charlotte, North Carolina
*61 St. Petersburg, Florida
62 Corpus Christi, Texas
63 Yonkers, New York
64 Des Moines, Iowa
65 Grand Rapids, Michigan
*66 Syracuse, New York
67 Flint, Michigan
*68 Mobile, Alabama
*69 Shreveport, Louisiana
*70 Warren, Michigan
71 Providence, Rhode Island
72 Ft. Wayne, Indiana
73 Worcester, Massachusetts
74 Salt Lake City, Utah
*75 Gary, Indiana
*76 Knoxville, Tennessee
77 Virginia Beach, Virginia
*78 Madison, Wisconsin
*79 Spokane, Washington
80 Kansas City, Kansas
*81 Anaheim, California
82 Fresno, California
*83 Baton Rouge, Louisiana
*84 Springfield, Massachusetts
85 Hartford, Connecticut
*86 Santa Ana, California
87 Bridgeport, Connecticut
88 Columbus, Georgia
*89 Tacoma, Washington
90 Jackson, Mississippi
91 Lincoln, Nebraska
*92 Lubbock, Texas
93 Rockford, Illinois
94 Paterson, New Jersey
95 Greensboro, North Carolina
96 Youngstown, Ohio
*97 Riverside, California
98 Ft. Lauderdale, Florida
99 Evansville, Indiana
*100 Newport News, Virginia

# APPENDIX B

**TABLE 1.—Who Can Authorize Issuance of Arrest Warrants? (68 Cities)**

| Officer | No. | Percent |
|---|---|---|
| Clerk | 4 | (5.9) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 0 | (0.0) |
| Probation officer | 1 | (1.5) |
| Judge | 50 | (73.5) |
| Probation officer/judge | 3 | (4.4) |
| Prosecutor/probation officer | 0 | (0.0) |
| Prosecutor/judge | 2 | (2.9) |
| Judge/prosecutor/probation officer | 2 | (2.9) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 6 | (8.8) |
| Total | 68 | (100.0) |

**TABLE 2.—Who Reviews the Initial Detention Decision? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 2 | (2.9) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 0 | (0.0) |
| Probation officer | 16 | (23.5) |
| Judge | 39 | (57.4) |
| Probation officer/judge | 7 | (10.3) |
| Prosecutor/probation officer | 1 | (1.5) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 3 | (4.4) |
| Total | 68 | (100.0) |

**TABLE 3.—Who Represents the State at a Detention Hearing? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 2 | (2.9) |
| Attorney-prosecutor | 26 | (38.2) |
| Probation officer | 11 | (16.2) |
| Judge | 1 | (1.5) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 2 | (2.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 23 | (33.8) |
| No response | 3 | (4.4) |
| Total | 68 | (100.0) |

**TABLE 4.—Who Can Authorize the Filing of a Petition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 6 | (8.8) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 8 | (11.8) |
| Probation officer | 16 | (23.5) |
| Judge | 9 | (13.2) |
| Probation officer/judge | 7 | (10.3) |
| Prosecutor/probation officer | 3 | (4.4) |
| Prosecutor/judge | 3 | (4.4) |
| Judge/prosecutor/probation officer | 7 | (10.3) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 9 | (13.2) |
| Total | 68 | (100.00) |

**TABLE 5.—Who Prepares the Petition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 19 | (27.9) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 15 | (22.1) |
| Probation officer | 23 | (33.8) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 4 | (5.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 7 | (10.3) |
| Total | 68 | (100.0) |

**TABLE 6.—Who Reviews the Petition for Legal Sufficiency? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 7 | (10.3) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 25 | (36.8) |
| Probation officer | 8 | (11.8) |
| Judge | 11 | (16.2) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 3 | (4.4) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 7 | (10.3) |
| No response | 6 | (8.8) |
| Total | 68 | (100.0) |



**TABLE 7.—Who Must Sign the Petition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 4 | (5.9) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 6 | (8.8) |
| Probation officer | 18 | (26.5) |
| Judge | 1 | (1.5) |
| Probation officer/judge | 1 | (1.5) |
| Prosecutor/probation officer | 5 | (7.4) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 33 | (48.5) |
| Total | 68 | (100.0) |

**TABLE 8.—Who Represents the State at Pretrial Motions? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 2 | (2.9) |
| Attorney-prosecutor | 52 | (76.5) |
| Probation officer | 3 | (4.4) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 2 | (2.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 4 | (5.9) |
| No response | 5 | (7.4) |
| Total | 68 | (100.0) |

**TABLE 9.—Who Represents the State at Probable Cause Hearings? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 3 | (4.4) |
| Attorney-prosecutor | 50 | (73.5) |
| Probation officer | 4 | (5.9) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 0 | (0.0) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 3 | (4.4) |
| No response | 8 | (11.8) |
| Total | 68 | (100.0) |

**TABLE 10.—Who Conducts Prehearing Negotiations for the State? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 1 | (1.5) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 31 | (45.6) |
| Probation officer | 10 | (14.7) |
| Judge | 2 | (2.9) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 8 | (11.8) |
| Prosecutor/judge | 1 | (1.5) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 2 | (2.9) |
| No response | 12 | (17.6) |
| Total | 68 | (100.0) |

**TABLE 11.—Who May Request That a Juvenile be Bound Over? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 2 | (2.9) |
| Attorney-prosecutor | 32 | (47.1) |
| Probation officer | 3 | (4.4) |
| Judge | 5 | (7.4) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 10 | (14.7) |
| Prosecutor/judge | 5 | (7.4) |
| Judge/prosecutor/probation officer | 1 | (1.5) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 10 | (14.7) |
| Total | 68 | (100.0) |

**TABLE 12.—Who Represents the State at a Bindover Hearing? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 2 | (2.9) |
| Attorney-prosecutor | 52 | (76.5) |
| Probation officer | 1 | (1.5) |
| Judge | 2 | (2.9) |
| Probation officer/judge | 2 | (2.9) |
| Prosecutor/probation officer | 2 | (2.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 1 | (1.5) |
| No response | 6 | (8.8) |
| Total | 68 | (100.0) |

**TABLE 13.—Who May Request Physical or Mental Examination of the Juvenile? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 2 | (2.9) |
| Probation officer | 9 | (13.2) |
| Judge | 8 | (11.8) |
| Probation officer/judge | 8 | (11.8) |
| Prosecutor/probation officer | 17 | (25.0) |
| Prosecutor/judge | 3 | (4.4) |
| Judge/prosecutor/probation officer | 13 | (19.1) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 7 | (10.3) |
| Total | 68 | (100.0) |

**TABLE 14.—Who Represents Petitioner in Consent Decrees? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 29 | (42.6) |
| Probation officer | 2 | (2.9) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 5 | (7.4) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 1 | (1.5) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 5 | (7.4) |
| No response | 25 | (36.8) |
| Total | 68 | (100.0) |

**TABLE 15.—Who Has Authority to Amend a Filed Petition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 15 | (22.1) |
| Probation officer | 4 | (5.9) |
| Judge | 31 | (45.6) |
| Probation officer/judge | 1 | (1.5) |
| Prosecutor/probation officer | 5 | (7.4) |
| Prosecutor/judge | 3 | (4.4) |
| Judge/prosecutor/probation officer | 5 | (7.4) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 4 | (5.9) |
| Total | 68 | (100.0) |

**TABLE 16.—Who Can Move for Dismissal of a Filed Petition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 30 | (44.1) |
| Probation officer | 3 | (4.4) |
| Judge | 1 | (1.5) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 21 | (30.9) |
| Prosecutor/judge | 3 | (4.4) |
| Judge/prosecutor/probation officer | 2 | (2.9) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 7 | (10.3) |
| Total | 68 | (100.0) |

**TABLE 17.—Who Represents Petitioner at Adjudication Hearing? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 49 | (72.1) |
| Probation officer | 1 | (1.5) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 4 | (5.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 5 | (7.4) |
| No response | 8 | (11.8) |
| Total | 68 | (100.0) |

**TABLE 18.—Who Represents Petitioner at Disposition? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 33 | (48.5) |
| Probation officer | 6 | (8.8) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 9 | (13.2) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 13 | (19.1) |
| No response | 6 | (8.8) |
| Total | 68 | (100.0) |



**TABLE 19.—Who Conducts Examination of Witnesses? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 2 | (2.9) |
| Attorney-prosecutor | 46 | (67.6) |
| Probation officer | 2 | (2.9) |
| Judge | 2 | (2.9) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 4 | (5.9) |
| Prosecutor/judge | 9 | (13.2) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 1 | (1.5) |
| No response | 2 | (2.9) |
| Total | 68 | (100.0) |

**TABLE 20.—Who Recommends Disposition to the Judge? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 1 | (1.5) |
| Attorney-prosecutor | 6 | (8.8) |
| Probation officer | 41 | (60.3) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 17 | (25.0) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 1 | (1.5) |
| No response | 2 | (2.9) |
| Total | 68 | (100.0) |

**TABLE 21.—Who Represents the Petitioner on Appeal? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 47 | (69.1) |
| Probation officer | 1 | (1.5) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 2 | (2.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 4 | (5.9) |
| No response | 14 | (20.6) |
| Total | 68 | (100.0) |

**TABLE 22.—Who Represents the State in Habeas Corpus Proceedings? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 49 | (72.1) |
| Probation officer | 2 | (2.9) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 0 | (0.0) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 4 | (5.9) |
| No response | 13 | (19.1) |
| Total | 68 | (100.0) |

**TABLE 23.—Who Presents the Case on an Alleged Probation Violation? (68 Cities)**

| Officer | Number | Percent |
|---|---|---|
| Clerk | 0 | (0.0) |
| Non-attorney prosecutor | 0 | (0.0) |
| Attorney-prosecutor | 21 | (30.9) |
| Probation officer | 24 | (35.3) |
| Judge | 0 | (0.0) |
| Probation officer/judge | 0 | (0.0) |
| Prosecutor/probation officer | 19 | (27.9) |
| Prosecutor/judge | 0 | (0.0) |
| Judge/prosecutor/probation officer | 0 | (0.0) |
| Clerk/prosecutor/probation officer | 0 | (0.0) |
| No one | 0 | (0.0) |
| No response | 4 | (5.9) |
| Total | 68 | (100.0) |

# APPENDIX C

**TABLE 1.—Charges in the Boston Juvenile Court (1971)**

| Charges | Number | Percent |
|---|---|---|
| Assault and battery | 83 | (3.6) |
| Assault and battery (dangerous weapon) | 80 | (3.5) |
| Assault with intent to kill | 4 | (0.2) |
| Carnal abuse | 1 | * |
| Murder | 4 | (0.2) |
| Rape | 5 | (0.2) |
| Armed robbery | 57 | (2.5) |
| Unarmed robbery | 85 | (3.7) |
| Assault with intent to rob | 15 | (0.6) |
| Extortion | 1 | * |
| Accessory before the fact | 3 | (0.1) |
| Manslaughter | 1 | * |
| Larceny in a building | 20 | (0.9) |
| Arson | 9 | (0.4) |
| Breaking and entering | 189 | (8.2) |
| Destruction of property | 19 | (0.8) |
| Larceny and attempted larceny | 498 | (21.5) |
| Larceny from a person | 167 | (7.2) |
| Larceny from a motor vehicle | 10 | (0.4) |
| Operating a motor vehicle without authority | 144 | (6.2) |
| Receiving stolen property | 138 | (6.0) |
| Trespassing | 34 | (1.5) |
| Uttering | 7 | (0.3) |
| Beating animals | 1 | * |
| Possession of counterfeit bills | 1 | * |
| Lewdness | 3 | (0.1) |
| Disturbing a public assembly | 5 | (0.2) |
| Affray | 4 | (0.2) |
| Disorderly conduct/disturbing peace | 10 | (0.4) |
| Drunkenness | 34 | (1.5) |
| False alarm | 3 | (0.1) |
| Glue sniffing | 4 | (0.2) |
| Possession of drugs | 42 | (1.8) |
| Possession of marijuana | 3 | (0.1) |
| Presence of drugs | 34 | (1.5) |
| Operating motor vehicle without a license | 44 | (1.9) |
| Operating motor vehicle to endanger | 14 | (0.6) |
| Other motor vehicle violations | 31 | (1.3) |
| Possession of burglars' tools | 54 | (2.3) |
| Prostitution | 11 | (0.5) |
| Runaway | 247 | (10.7) |
| Stubborn child | 60 | (2.6) |
| Threats | 4 | (0.2) |
| Truant | 35 | (1.5) |
| Wayward child | 2 | * |
| Possession of a BB gun | 2 | * |
| Disorderly person | 19 | (0.8) |
| Discharging firearm | 1 | * |
| Possession of a hypodermic needle/syringe | 20 | (0.9) |
| Violation of park rules | 3 | (0.1) |
| Breaking glass | 6 | (0.3) |
| Hitching | 1 | * |
| Attempt to rescue a prisoner | 4 | (0.2) |
| Possession of firearm | 13 | (0.6) |
| Possession of a dangerous weapon | 11 | (0.5) |
| Interfering with the MBTA | 1 | * |
| Soliciting | 2 | * |
| Sale of drugs | 5 | (0.2) |
| Unknown | 6 | (0.3) |
| Total | 2314 | (99.6) |

**TABLE 1.—Charges in the Boston Juvenile Court (1971)—Continued**

**TABLE 2.—Charges in the Boston Juvenile Court—Representation by Private Retained Council (1971)**

| Charges | Number | Percentage of all Cases Involving Retained Counsel | Percentage of Total Court Caseload |
|---|---|---|---|
| Assault and battery | 10 | (7.8) | (3.6) |
| Assault and battery (dangerous weapon) | 5 | (3.9) | (3.5) |
| Assault with intent to kill | 1 | (0.8) | (0.2) |
| Murder | 1 | (0.8) | (0.2) |
| Rape | 1 | (0.8) | (0.2) |
| Armed robbery | 3 | (2.3) | (2.5) |
| Unarmed robbery | 2 | (1.5) | (3.7) |
| Accessory before the fact | 1 | (0.8) | (0.1) |
| Manslaughter | 1 | (0.8) | * |
| Breaking and entering | 6 | (4.7) | (8.2) |
| Destruction of property | 4 | (3.1) | (0.8) |
| Larceny | 31 | (24.4) | (21.5) |
| Larceny from a person | 13 | (10.2) | (7.2) |
| Operating motor vehicle without authority | 7 | (5.5) | (6.2) |
| Receiving stolen property | 9 | (7.1) | (6.0) |
| Trespassing | 2 | (1.5) | (1.5) |
| Disturbing a public assembly | 1 | (0.8) | (0.2) |
| Disorderly conduct | 2 | (1.5) | (0.4) |
| Drunkenness | 2 | (1.5) | (1.5) |
| False alarm | 2 | (1.5) | (0.1) |
| Possession of drugs | 3 | (2.3) | (1.8) |
| Possession of marijuana | 1 | (0.8) | (0.1) |
| Presence of drugs | 1 | (0.8) | (1.5) |
| Operating motor vehicle without license | 2 | (1.5) | (1.9) |
| Prostitution | 1 | (0.8) | (0.5) |
| Runaway | 4 | (3.1) | (10.7) |
| Stubborn child | 1 | (0.8) | (2.6) |
| Truant | 1 | (0.8) | (1.5) |
| Disorderly person | 6 | (4.7) | (0.8) |
| Breaking glass | 1 | (0.8) | (0.3) |
| Possession of firearm | 1 | (0.8) | (0.6) |
| Sale of drugs | 1 | (0.8) | (0.2) |
| Total | 127 | (99.3) | — |



**TABLE 3.—Bail Amounts (1971)**

| Bail Amount | Number | Percent |
|---|---|---|
| $50 or less | 77 | (12.5) |
| $51–100 | 138 | (22.4) |
| $101–250 | 4 | (0.7) |
| $251–500 | 145 | (23.6) |
| $501–850 | 2 | (0.3) |
| $851–1,000 | 106 | (17.2) |
| $1,000–2,500 | 58 | (9.4) |
| $2,501–5,000 | 63 | (10.2) |
| $5,001–10,000 | 9 | (1.5) |
| $10,000 or more | 8 | (1.3) |
| No data | 5 | (0.8) |
| Total | 615 | (99.9) |

**TABLE 4.—Posting of Bail by Amount (1971) (N = 610) [a]**

| Amount | Posted | | Not Posted | | No Data | | Total | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| $50 or less | 29 | (37.7) | 35 | (45.5) | 13 | (16.8) | 77 | (100.0) |
| $51–250 | 87 | (61.3) | 34 | (23.9) | 21 | (14.8) | 142 | (100.0) |
| $251–500 | 75 | (51.7) | 41 | (28.3) | 29 | (20.0) | 145 | (100.0) |
| $501–1,000 | 70 | (64.8) | 27 | (25.0) | 11 | (10.2) | 108 | (100.0) |
| $1,001–5,000 | 96 | (79.3) | 6 | (5.0) | 19 | (15.7) | 121 | (100.0) |
| $5,000 or more | 10 | (58.8) | 1 | (5.9) | 6 | (35.3) | 17 | (100.0) |
| Total | 367 | (60.2) | 144 | (23.6) | 99 | (16.2) | 610 | (100.0) |

[a] Bail was set in 615 cases. This table includes 610 cases (99.2%) in which data on amount were available.

**TABLE 5.—Offenses for Which Bail Was Set (1971)**

| Offense | Number | Percent of Bail Offenses | Percent of Total Court Caseload |
|---|---|---|---|
| Armed robbery | 22 | (3.6) | (2.5) |
| Unarmed robbery | 36 | (5.9) | (3.7) |
| Breaking and entering | 78 | (12.7) | (8.2) |
| Larceny | 73 | (11.9) | (21.5) |
| Larceny from a person | 45 | (7.3) | (7.2) |
| Operating a motor vehicle without authority | 42 | (6.8) | (6.2) |
| Receiving stolen property | 34 | (5.5) | (6.0) |
| Runaway | 130 | (21.1) | (10.7) |
| Stubborn child | 18 | (2.9) | (2.6) |
| Larceny from a building | 4 | (0.7) | (0.9) |
| Drunkenness | 7 | (1.1) | (1.5) |
| Wayward child | 2 | (0.3) | less than (0.1) |
| Trespassing | 3 | (0.5) | (1.5) |
| Assault and battery | 9 | (1.5) | (3.6) |
| Assault and battery (dangerous weapon) | 21 | (3.4) | (3.5) |
| Assault with intent to rob | 3 | (0.5) | (0.6) |
| Arson | 4 | (0.7) | (0.4) |
| Uttering | 4 | (0.7) | (0.3) |
| Possession of marijuana | 3 | (0.5) | (0.1) |

**TABLE 5.—Offenses for Which Bail Was Set (1971)—Continued**

| Offense | Number | Percent of Bail Offenses | Percent of Total Court Caseload |
|---|---|---|---|
| Operating a motor vehicle to endanger | 1 | (0.2) | (0.6) |
| Other motor vehicle violations | 1 | (0.2) | (1.3) |
| Possession of burglars' tools | 12 | (2.0) | (2.3) |
| Unnatural act | 1 | (0.2) | (0.1) |
| Presence of drugs | 7 | (1.1) | (1.5) |
| Destruction of property | 1 | (0.2) | (0.8) |
| Disturbing a public assembly | 1 | (0.2) | (0.2) |
| Operating a motor vehicle without a license | 4 | (0.7) | (1.9) |
| Possession of firearm | 5 | (0.8) | (0.6) |
| Possession of a dangerous weapon | 4 | (0.7) | (0.5) |
| Interfering with the MBTA | 1 | (0.2) | less than (0.1) |
| Possession of drugs | 10 | (1.6) | (1.8) |
| Prostitution | 3 | (0.5) | (0.5) |
| Disorderly person | 2 | (0.3) | (0.8) |
| Accessory before the fact | 1 | (0.2) | (0.1) |

TABLE 5.—Offenses for Which Bail Was Set (1971)—Continued

| Offense | Number | Percent of Bail Offenses | Percent of Total Court Caseload |
|---|---|---|---|
| Carnal abuse | 1 | (0.2) | less than (0.1) |
| Possession of hypodermic needle/syringe | 2 | (0.3) | (0.9) |
| Soliciting | 1 | (0.2) | less than (0.1) |
| Sale of drugs | 4 | (0.7) | (0.2) |
| Rape | 2 | (0.3) | (0.2) |
| Manslaughter | 1 | (0.2) | less than (0.1) |
| Larceny from a motor vehicle | 4 | (0.7) | (0.4) |
| Assault with intent to kill | 2 | (0.3) | (0.2) |
| Unknown | 6 | (0.9) | (0.3) |
| Total | 615 | (100.5) | — |

TABLE 6.—Findings in Cases Where Bail Was Set (1971)

| Disposition | Bail Set | | Total Sample | |
|---|---|---|---|---|
| | Number | Percent | Number | Percent |
| Delinquent | 318 | (51.7) | 854 | (42.0) |
| Not delinquent | 41 | (6.7) | 132 | (6.5) |
| Dismissed without a finding | 85 | (13.8) | 379 | (18.7) |
| Filed without a finding | 39 | (6.3) | 94 | (4.6) |
| Bound over | 40 | (6.5) | 76 | (3.7) |
| Continued without a finding | 25 | (4.1) | 384 | (19.0) |
| Restitution/court costs | 0 | (0.0) | 7 | (0.3) |
| Habitual truant | 0 | (0.0) | 14 | (0.7) |
| No data | 67 | (10.9) | 92 | (4.5) |
| Total | 615 | (100.0) | 2032 | (100.0) |

TABLE 7.—Dispositions in Cases Where Bail Was Set (1971)

| Disposition | Bail Set | | Total Sample | |
|---|---|---|---|---|
| | Number | Percent | Number | Percent |
| Probation | 73 | (23.0) | 302 | (34.8) |
| Suspended Sentence Probation | 84 | (26.4) | 266 | (30.6) |
| Filed | 80 | (25.2) | 155 | (17.9) |
| Committed to D.Y.S. | 68 | (21.4) | 95 | (10.9) |
| Other | 11 | (3.4) | 32 | (3.7) |
| No data | 2 | (0.6) | 18 | (2.1) |
| Total | 318 | (100.0) | 868 | (100.0) |

TABLE 8.—Offenses Represented by Private Retained Attorney (1971)

| Offense | Number | Percent | Percent of Total Court Caseload |
|---|---|---|---|
| Assault and battery | 10 | (7.8) | (3.6) |
| Assault and battery (dangerous weapon) | 5 | (3.9) | (3.5) |
| Assault with intent to kill | 1 | (0.8) | (0.2) |
| Murder | 1 | (0.8) | (0.2) |
| Rape | 1 | (0.8) | (0.2) |
| Armed robbery | 3 | (2.3) | (2.5) |
| Unarmed robbery | 2 | (1.5) | (3.7) |
| Accessory before the fact | 1 | (0.8) | (0.1) |
| Manslaughter | 1 | (0.8) | less than (0.1) |
| Breaking and entering | 6 | (4.7) | (8.2) |
| Destruction of property | 4 | (3.1) | (0.8) |
| Larceny | 31 | (24.4) | (21.5) |
| Larcency from a person | 13 | (10.2) | (7.2) |
| Operating a motor vehicle without authority | 7 | (5.5) | (6.2) |
| Receiving stolen property | 9 | (7.1) | (6.0) |
| Trespassing | 2 | (1.5) | (1.5) |
| Disturbing a public assembly | 1 | (0.8) | (0.2) |
| Disorderly conduct | 2 | (1.5) | (0.4) |
| Drunkenness | 2 | (1.5) | (1.5) |
| False alarm | 2 | (1.5) | (0.1) |
| Possession of drugs | 3 | (2.3) | (1.8) |
| Possession of marijuana | 1 | (0.8) | (0.1) |
| Presence of drugs | 1 | (0.8) | (1.5) |
| Operating a motor vehicle without a license | 2 | (1.5) | (1.9) |
| Prostitution | 1 | (0.8) | (0.5) |
| Runaway | 4 | (3.1) | (10.7) |
| Stubborn child | 1 | (0.8) | (2.6) |
| Truant | 1 | (0.8) | (1.5) |
| Disorderly person | 6 | (4.7) | (0.8) |
| Breaking glass | 1 | (0.8) | (0.3) |
| Possession of firearm | 1 | (0.8) | (0.6) |
| Sale of drugs | 1 | (0.8) | (0.2) |
| Total | 127 | (99.3) | — |



TABLE 9.—Appeals in the Boston Juvenile Court by Offense (1971)

| Offense | Appeals Taken (Not Withdrawn) | | Appeals Taken (Withdrawn) | | Total Appeals | |
|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent |
| Assault and battery | 3 | (4.3) | 3 | (16.7) | 6 | (6.9) |
| Assault and battery (dangerous weapon) | 5 | (7.2) | 4 | (22.2) | 9 | (10.3) |
| Armed robbery | 3 | (4.3) | 0 | (0.0) | 3 | (3.4) |
| Unarmed robbery | 9 | (13.0) | 3 | (16.7) | 12 | (13.8) |
| Assault with intent to rob | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Breaking and entering | 5 | (7.2) | 0 | (0.0) | 5 | (5.7) |
| Larceny | 8 | (11.6) | 3 | (16.7) | 11 | (12.6) |
| Larceny from a person | 11 | (15.9) | 1 | (5.6) | 12 | (13.8) |
| Larceny from a motor vehicle | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Operating a motor vehicle without authority | 2 | (2.9) | 0 | (0.0) | 2 | (2.3) |
| Receiving stolen property | 6 | (8.7) | 1 | (5.6) | 7 | (8.0) |
| Trespassing | 2 | (2.9) | 1 | (5.6) | 3 | (3.4) |
| Disorderly conduct | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Possession of drugs | 2 | (2.9) | 0 | (0.0) | 2 | (2.3) |
| Possession of marijuana | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Operating a motor vehicle without a license | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Possession of burglars' tools | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Runaway | 2 | (2.9) | 1 | (5.6) | 3 | (3.4) |
| Stubborn child | 0 | (0.0) | 1 | (5.6) | 1 | (1.1) |
| Truant | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Possession of firearm | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Interfering with the MBTA | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| No data | 1 | (1.4) | 0 | (0.0) | 1 | (1.1) |
| Total | 69 | (99.3) | 18 | (100.3) | 87 | (99.2) |

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