IN DEFENSE OF YOUTH

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A Study of the Role of Counsel in American Juvenile Courts

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and
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To my wife, Joan

WVS

and

In memory of my father,
whose wise counsel
is greatly missed

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Foreword

This work, the product of close collaboration between a sociologist and a lawyer, carries a significance far beyond the modest claims of its authors. It represents a major research effort to determine the effect of defense counsel's performance on the conduct and outcomes of delinquency proceedings; one that combines legal analysis with social science methodology and interpretation in the study of an action-oriented project.

With scholarly restraint, the authors have chosen quite properly to confine their analysis to a set of empirical observations made in the juvenile courts of two American cities and to impose sharp limits on the "external validity" or generalizability of the findings. Although they describe the larger issues which motivated the study, they are careful to warn the reader against undue dependence on their results for the formulation of policy. Nevertheless, the study carries important implications for our mode of generating and monitoring policy in the entire criminal justice system, if not throughout the legal process. These implications derive from the assumption, on which the study is based, that precise empirical information concerning the consequences of legal policy can contribute substantially to the rational shaping of law as an instrument of order and justice.

The important thing about this book is that it provides a rare example of extremely precise observation concerning the effect of a change in legal policy. The change which was selected, moreover, is far from being jurisprudentially trivial. On the contrary, it goes to the heart of the adversary system. The authors closely observed certain main effects of introducing defense attorneys into the juvenile court setting, where representation of the accused previously had been largely absent. In the circumstances, this change can be said to have transformed the proceeding, by definition, into an adversary process.

Much has been said about the importance of the adversary process, but we have had little precise information concerning its consequences. Legal writings on the subject serve as a probably valid indication of widespread support among lawyers. Viewed as a political fact, such support may help to explain the persistence of the adversary process. It hardly provides satisfactory proof,

however, of the superiority of that process over alternative modes of adjudication for any given setting.

The case for the adversary process includes many propositions which are open to question. Some of these, at least, ought to be subject to empirical examination. We are told, for example, that the adversary process is still the best way for determining the truth where two interested parties cannot agree. Contrary to this view, however, is the belief of many lawyers and laymen that the "battle of experts" promotes victory for the side that can find and pay the most convincing experts. A proposed alternative, the use of court-appointed impartial experts, showed promise when it was tried in New York's First Judicial District,[1] although methodological flaws in the accompanying evaluative research prevented a conclusive comparison between the impartial and adversarial approaches to fact finding.[2]

Similarly, we do not yet know the effects of the adversary process on the various objectives of the criminal law. It has long been assumed that defense counsel would help to effectuate the traditional objective that "it is better that a hundred guilty persons go free than for an innocent one to be convicted." Recently, the Supreme Court, guided by that assumption, has sought to protect the accused by extending the right to counsel in a variety of ways. Whether defense counsel serve in practice to protect the innocent or the guilty or neither has become a matter of lively controversy.[3] This study reports some valuable information on that question.

Beyond the traditional issue of guilt and innocence, lie other issues for the criminal law. For many, the criminal law is intended as an instrument which, taken as a whole, is expected to control crime by deterring potential offenders and by rehabilitating those who have offended. It is assumed that these objectives are not incompatible with the earlier-stated goal of protecting the innocent from conviction. In principle that may be true in a limited sense.[4] That is, there may be some measures which will simultaneously better protect the innocent, deter others from violating the criminal law, and rehabilitate those who are guilty of such violations. Even so, a tension inevitably exists—as Herbert Packer puts it—between the due process model and the crime control model.[5]

The juvenile court movement has sought to escape this tension by minimizing the need for traditional due process safeguards. Its rationale has been that protection against conviction of a crime was unneeded since the proceeding was not a criminal one. This rationale has worn thin as critics have demonstrated that the consequences of a finding of delinquency—involuntary detention, probation, and social stigma—are indistinguishable by the delinquent and the society from criminal penalties. As this belief has gained sway, strong pressure has been exerted, particularly by the higher courts, for the introduction of procedural safeguards which would protect the accused juvenile. As a conse-

quence, the juvenile courts have been required to change to include more of the elements of procedure required in the adult criminal process. In the *Gault*[6] case particularly, right to counsel is extended by the Supreme Court to juvenile court proceedings.

This development means that the juvenile court can no longer avoid the tension between crime control and due process. The requirement of counsel in the juvenile court may be expected to have implications for all the objectives earlier described. What will be the effect of counsel in protecting the rights of the accused, preventing the conviction of the innocent, deterring others from violating the law, and preventing future violations by those who are found delinquent? Those who continue to favor the traditional concept of the juvenile court fear that the last of these objectives, at least, will be harder to achieve in consequence of the adoption of the adversary model. Those who favor the introduction of counsel may or may not acknowledge this danger. Some say defense lawyers will heighten rehabilitation by demonstrating fairness, minimizing alienation, and avoiding unjustified convictions. Another argument is that any measure which minimizes committment to juvenile institutions will tend to diminish subsequent delinquency by reducing the enrollment in so-called schools for crime. All of these positions rest on assumptions concerning the effects of counsel on outcomes in the juvenile court. For those who approach the problem in such terms, empirical information would seem to be vital. They will find much that is relevant in this book.

Of course, there will be others who will insist that no empirical consequences should intrude on the making of decisions that are essentially matters of legal principle. Often this view is supportable by the valid assertion that existing data are insufficiently accurate or germane. A study such as this one should challenge those who prefer principle to pragmatism, because its information is accurate and germane. Would the principle of representation in juvenile court continue to recommend itself if it meant that more juveniles would be committed to institutions? Would the answer be affirmative even if it meant an increase in recidivism? How far should a principle be carried in the face of findings that indicate that its application produces the opposite of its apparent purpose?

The findings of this study raise even more difficult questions. One key discovery is that the effect of legal representation differs dramatically between jurisdictions. If lawyers provide protection and release for juveniles in Zenith and conviction and commitment in Gotham, what general policy should be adopted and why? Various answers are possible: right is right, try harder in Gotham to approximate Zenith (or vice versa), discretion reflects and matches (or distorts and exacerbates) local needs, return to *parens patriae,* and so forth. Whatever the answers, such questions are clearly raised by this study. It is to be hoped that

comparable efforts will be spent trying to find out why jurisdictions implement general doctrines so differently and exploring the implications for judicial and legislative decision-making of this phenomenon.

A word should be added concerning the circumstances that led to this study. It is, in my opinion, a tribute to leaders of the National Council of Juvenile Court Judges that this research could be done at all. As one who was consulted by the Council from 1962 to the present, I had the opportunity to observe the tensions which this project generated within the Council. No professional group easily supports research which may cast a shadow over its fundamental beliefs and practices. The present study might well have produced findings which would have discredited the *parens patriae* assumption on which the juvenile court movement rests. Understandably, therefore, many judges opposed the project almost from the beginning.

There were others, however, who bent every effort to make the study possible. A large grant had been obtained from the Ford Foundation to introduce lawyers into the juvenile courts of selected cities. Staff and officers of the Council then received permission to convert this demonstration project into a carefully controlled field experiment. Observations and interventions attendant upon the research design aroused concern among some judges, in consequence of which the project itself was jeopardized. In the end, however, the completion of the study is attributable to the conviction that knowledge about the workings of the court, albeit costly and difficult to obtain, is essential to its continuing vitality. In their adherence to this conviction, as well as in their concern over possible deleterious side effects of the project, four judges in particular stand out. Since this book could not have been written without their help, they should be mentioned here: Henry Riederer of Kansas City, Florence Kelley of New York, Orman Ketcham of Washington, D.C., and Monroe Paxman of Provo, Utah. All four deserve warm thanks from those of us who believe that empirical knowledge can improve the administration of justice.

Richard D. Schwartz

State University of New York at Buffalo
May 1972

NOTES

[1] D. W. Peck (chairman), Impartial Medical Testimony: A Report by a Special Committee of the Association of the Bar of the City of New York on the Medical Expert Testimony Project (1956).

[2] H. Zeisel, "The New York Expert Testimony Project: Some Reflections on Legal Experiments," 8 *Stanford Law Review* 730 (1956).

[3] D. Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office," 12 *Social Problems* 255 ff. [1965]; J. H. Skolnick, "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 59 ff. [1967].

[4] Compatibility among these objectives does not appear to be unlimited, such that each objective can simultaneously be maximized. To ensure that no innocent man were convicted would be an easily achieved objective—if it were the only goal: if no one were accused, no innocent person would be convicted. But to completely avoid, in that manner, any danger of conviciting the innocent would necessarily mean the abandonment of the criminal law as an instrument of deterrence or rehabilitation.

[5] H. L. Packer, *The Limits of the Criminal Sanction,* Stanford: Stanford University Press, 1968, esp. 149–246. For an alternative view, see J. Griffiths, "A 'Third Model' of the Criminal Process," 70 *Yale Law Journal* 359–417 (1970). Griffiths argues for changes in the formulation of objectives of the criminal process and suggests that models other than the prevailing one of "combat" might better achieve the objectives, old or new.

[6] *In re Gault,* 387 U.S. 1 [1967].

Acknowledgments

A common statutory device is the recital that a certain provision "includes, but is not limited to" an enumerated set of activities or circumstances. That is the spirit of this Acknowledgment. Many and great debts are always incurred in a study such as the one reported here and only a few can be mentioned.

Initially, we must thank those who participated in the action phase of the Lawyer in Juvenile Court Project: the attorneys who tried the cases, the observers who sat through and recorded numerous juvenile court hearings, and The Research Guild, Inc., which contributed greatly to the success of the action phase. Particular mention is due Norman Lefstein, now director of the District of Columbia Public Defender Service, who served as co-director of this project with consummate skill and tact, and who encouraged the authors during analysis as well.

In a different sphere, the continuing support of Donald Campbell of Northwestern University and of Richard D. Schwartz, now dean and provost of the Faculty of Law and Jurisprudence at the State University of New York at Buffalo, deserve special mention. Their encouragement of methodological rigor in data collection and analysis were of great importance to this study. Our appreciation to the Ford Foundation, which funded the action stage, and to the National Council of Juvenile Court Judges should also be expressed.

The debts incurred during analysis of the project are not less pressing. Without the generous support of Russell Sage Foundation, there would have been no analysis. Stanton Wheeler of the Foundation and Yale University Law School provided continuing assistance as well as valuable comments upon completion of the analysis. Francis A. Allen of the University of Michigan Law School also read the manuscript and contributed advice for which we are most grateful. Editorial suggestions, virtually all of which were gladly embraced, came from Judge Marcia O'Kelley of Grand Forks, North Dakota.

In addition, we wish to acknowledge a special debt to Mrs. Fern O. Day, librarian of the University of North Dakota School of Law, for her great kindness in securing needed materials despite a limited budget.

W. V. S.
L. E. T.

Introduction

At common law a youth who violated the law was treated much the same as an adult once it had been established that he was mature enough to be capable of forming a criminal intent. Children below the age of seven were conclusively presumed incapable of so doing. Those between the ages of seven and fourteen were rebuttably thought incapable, with the strength of the presumption waning as age increased. Youths over the age of fourteen were presumed capable of entertaining a criminal intent and were held responsible to the same extent as an adult. The procedural framework for determining the guilt of a child was the same as for an adult, and if found competent in this special sense, the defendant was subject to the same penalties. Thus, at least on paper, an eight-year-old of uncommon perception could be arrested, haled into court, indicted, tried, and sentenced in the same manner and with the same consequences as an adult.

In 1899 Illinois, soon followed by a number of other states, enacted legislation that was to revolutionize this aspect of the administration of justice. In place of the traditional criminal law approach, the new statutory scheme was based on the principle that "no child under sixteen years of age shall be considered or treated as a criminal; that a child under that age shall not be arrested, indicted, convicted, imprisoned, or punished as a criminal."[1] The language employed was significant in reflecting the rehabilitative goals of the juvenile justice system. Although the definition of "delinquent child" implicitly recognized that youths were capable of acts which, if committed by an adult, would be criminal in nature, the new juvenile court laws nevertheless accorded differential treatment to the youthful offender. No longer would he "be branded in the opening years of its life with an indelible stain of criminality, or be brought, even temporarily, into the companionship of men and women whose lives are low, vicious, and criminal."[2]

The implementation of this philosophy required substantial changes in the terminology, procedure, and dispositional alternatives of the courts.[3] A delinquency proceeding was initiated by "petition" rather than by indictment

or information. The child was not to be brought into court under arrest, but by the parents or, if they should fail, by a probation officer. If detention was necessary, the child was not to be confined in an institution where adults were held. The hearing itself was to be as informal and non-adversary as possible with the emphasis on determining what disposition would best suit the child's particular needs. While the original Illinois Juvenile Court Law did provide for trial by jury and for notice to the respondent's parents or guardian, these provisions were added to the draft bill by the Legislature.[4] They were not generally adopted.[5]

If it was determined that the petition should be sustained, the youth was adjudged "delinquent," not "found guilty." Upon such a determination, he might be placed on probation, under the supervision of an officer to be appointed for this purpose by the court, or, if institutionalization seemed required, remanded to a "school" for delinquent children.

Although criticism of the juvenile court movement has not been entirely lacking during its seventy-year history, in general it may be said that the effort was received amid acclaim. Indeed, juvenile courts were thought by some to have "devised the best plan for the conservation of human life and happiness ever conceived by civilized man."[6] In recent years, however, dissatisfaction with the philosophy and practice of children's courts has increased substantially. This concern was also voiced by the United States Supreme Court in *In re Gault*,[7] handed down on May 15, 1967, its first decision touching the manner in which youths are found delinquent. The *Gault* case, in extending to children the privilege against self-incrimination and the rights to notice of charges, counsel, confrontation, and cross-examination, struck at the core of juvenile court philosophy. These rights had previously been regarded as the cornerstones of, and only appropriate for, an adversary system of justice. Many advocates of the juvenile court movement felt at the time of the decision, and still feel, that the imposition of these legal restrictions upon the juvenile court will hinder its rehabilitative work by stressing procedure at the expense of the child's condition.

At the heart of the debate over extending constitutional rights to children is the question of the right to counsel. Argument most often centers on whether an attorney can enhance the court's effectiveness or whether the adversary-minded attorney's tactics will limit the court's ability to fulfill its rehabilitative goals. First, the participation of counsel interposes an agency between the court and the child so that the juvenile court's message to the child and his parents may be determined by the lawyer's attitudes and comments rather than by the court's pronouncements and disposition. The judge's effort to impart to the child a sense of responsibility to himself and society may likewise fail if the lawyer intervenes too actively in the judge-child communication process. Second, the presence of an attorney will tend to make

delinquency hearings more closely resemble the adversary procedures of criminal courts, and this, it is said, will inhibit the juvenile court in its fact-finding task. Lawyers will insist that some evidence which might be helpful in deciding a case be excluded, and, as a consequence, many of the complex social and psychological factors surrounding a juvenile's delinquent act will be obscured. Finally, estimates show that the majority of children appearing before juvenile courts readily admit involvement in acts of delinquency. With lawyers present, children may be less inclined to admit their guilt, thereby removing from the court and its staff a valuable source of information. This is especially unfortunate since the child's statements are crucial in making a valid assessment of his deviant behavior. In the extreme case, if an attorney succeeds in getting the petition dismissed when the child is guilty of the delinquent act, the court will have been prevented from serving the interests of both the child and society.

Other commentators on the juvenile court, strong in their support of increased representation for children, doubt whether the foregoing results will occur. More positively, they maintain that, although intended to serve the best interests of children, the juvenile court is nonetheless a court of law and must act as an impartial fact-finding tribunal. Lawyers are indispensable to a reliable fact-finding process, particularly where children are involved. When a youth appears without effective assistance of counsel, it cannot confidently be assumed that he will be able to present his story effectively, however meritorious it may be. As a result, the court's disposition may be made without the benefit of important information. An attorney can also ensure that the proceeding be conducted with some regularity and without reference to matters not directly relevant to the case at hand. More generally, legal representation will ensure an extension of principles of justice from the adult to the juvenile world. Indeed, concepts of fairness cannot be communicated to juveniles unless the court acts impartially in deciding a case. Such impartiality might best be expressed if the judge were to stand somewhat more removed from the adjudicatory phase of delinquency proceedings.

At this time, the foregoing hypotheses fall entirely within the realm of speculation. There has been no empirical information indicating how a juvenile reacts to the conduct of counsel in a juvenile court proceeding, nor even whether the participation of counsel has an effect on the outcome of the cases in which he is involved.[8] Yet the answers to these questions, unavailable without a systematic test of the efficacy of counsel, are of obvious importance to those interested in the problem of introducing defense counsel in delinquency matters. Even before the Supreme Court spoke, the National Council of Juvenile Court Judges anticipated future changes in the structure of juvenile court proceedings (in part realized by the *Gault* decision) and was anxious to conduct extensive research in this area. In 1964, it submitted to the Ford Foundation a formal

proposal to study "the value and role of attorneys in juvenile courts." The National Council's proposal met with a favorable response, and funds were provided for an action and research program to provide legal assistance for indigent juveniles accused of committing delinquent acts.

This book is a partial account of the National Council's three-year experiment. It examines the role of legal counsel in delinquency hearings in the light of detailed observations and interviews gathered during the course of the project. This study is divided into three principal sections. Chapters I and II review some of the theoretical and practical dilemmas facing counsel, outline the historical and conceptual development of the juvenile court movement, and discuss the research design and the fundamental questions to be answered in the course of the study. Chapters III through V present our major findings. These chapters indicate in what manner and under what circumstances an attorney may influence the conduct or outcome of cases in which he appears and, conversely, to what extent the nature of the forum affects the way in which he does, or should, discharge his professional responsibility. Chapter VI summarizes the body of the manuscript and offers some suggestions for the administration of juvenile justice based upon the empirical data presented.

It should be emphasized that this book in no way represents the official view of the National Council of Juvenile Court Judges. It is an individual effort undertaken on behalf of the authors, both of them participants in the program described herein.

NOTES

[1] R. Tuthill, "History of the Children's Court in Chicago," in S. Barrows, *Children's Courts in the United States* (Washington, D.C.: Government Printing Office, 1904), p. 1.

[2] *Ibid.*, pp. 1–2.

[3] See Law of April 21, 1899, *Laws of Illinois* (1899), § 1 *et seq.*

[4] T. Hurley, "Origin of the Illinois Juvenile Court Law," in Jane Addams (ed.), *The Child, the Clinic, and the Court* (New York: New Republic, Inc., 1927), pp. 320, 327. (Hereinafter referred to as *The Child.*)

[5] The present Illinois Juvenile Court Act does not provide for trial by jury, *Illinois Revised Statutes,* Chap. 37, §701 *et seq.* (1967), nor does the newly adopted Uniform Juvenile Court Act (1968). Only twelve jurisdictions now provide for jury trial in delinquency proceedings. See, generally, Note, 45 *North Dakota Law Review* 251 (1969).

[6] C. Hoffman, "Organization of Family Courts, with Special Reference to the Juvenile Court," in *The Child,* pp. 255, 266.

[7] In re Gault, 387 U.S. 1 (1967).

[8] E. Lemert, "Legislating Change in the Juvenile Court," 1967 *Wisconsin Law Review* 421.

I *The American Juvenile Court: Problems of Form and Function*

The origins of the juvenile court movement are most commonly laid in "the humanitarian impulse and initiative of many lawyers, social workers, clergymen, and others who had become increasingly troubled by the treatment of the children under the criminal law."[1] Doubtless, humanitarian outrage at the imposition of harsh penalties on the very young contributed to the rhetoric of the movement. Yet, if this had been the sole ground for opposition to the common law approach to youthful crime, measures short of the erection of a new system of justice would have seemed sufficient. Moral indignation may, in favorable circumstances, lead to change, but it can rarely explain the development of an ideology. The sources of juvenile court theory must be sought in broader propositions—in the prevailing theory of delinquency, in the discussion of what response society should make to deviance, and in the general goals to be served by societal intervention.

THE INFLUENCE OF POSITIVE CRIMINOLOGY

Scientific positivism has dominated the study of criminology for the last century, and, unsurprisingly, its influence also pervades the "modern" approach to juvenile delinquency. Three related assumptions of positivist thought have been important in shaping juvenile court philosophy.[2] The first is that the proper focus of criminological inquiry is on the actor, rather than on the substance or administration of criminal law, and that "the explanation of crime . . . may be found in the motivational and behavioral systems of criminals."[3] The second assumption substitutes scientific determinism for the classical doctrine

of free will. Positive criminology has retained, by and large, a "hard determinism." It assumes that every event in human behavior is determined, however great or small it may be and however much the actor may feel himself free. This ineluctability may be distinguished from the more modern social science position of "soft determinism," which maintains that although human behavior is causally determined, there is nonetheless "freedom" insofar as the actor is not compelled or constrained to act by a force which circumscribes his exercise of volition.[4] The third assumption is that the delinquent is somehow radically different from the nondelinquent, and in this differentiation, whether genetic, social, or cultural, one may find the causes of criminal behavior.[5]

While the importance of positivist premises is rarely stated in appellate decisions (indeed, there is no very great reason to state it), it does appear in extrajudicial statements by judges and in the writings of those influential in the development of children's courts. The first premise is embodied in the canon of traditional juvenile court philosophy which holds that the focus of a delinquency proceeding is not on whether a specific provision of criminal law has been violated, but rather whether the child's *condition* is such as to require intervention. The late Judge Julian Mack, an early incumbent of the Chicago Juvenile Court bench, crystallized this principle in terms familiar to everyone who has read about the children's court movement. "The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career."[6]

Judge Mack's interest in understanding a child's nature and previous career *before* a finding of delinquency is entered is germane only if antecedent factors are relevant to the child's condition—and it is, of course, an article of determinist faith that in such factors lie the origin of delinquency. In an analysis which suggests what has been termed "personality theory" (a branch of positivistic determinism that places the source of delinquency in initial sets of experiences which derive almost entirely from intimate relations with members of the family),[7] Dr. Miriam Van Waters, another early juvenile court judge, observed that the juvenile court ". . . was a new social discovery of far-reaching implications because it was a new attitude toward human beings in conflict with law. It said: If the offender is *young* the object of court procedure is not to discover whether he has committed a specific offense; but to determine if he is in such a condition that he has lost or has never known the fundamental rights of childhood to parental shelter, guidance, and control."[8]

Judge Frederick Cabot of the Boston Juvenile Court bench tended to ascribe causative influence to a wider variety of social experience.

> Now, I take it that the important thing for a court to do, if it is to proceed as a wise, understanding parent, is to have understanding of the child in various relationships: in relation to himself—that is, to his physical, mental and moral

> makeup—his characteristics, his history and development. It should have an understanding of the child in relation to his family, guardian and others; an understanding of mutual duties, services, privileges; an understanding of the child in relation to his former education, to school, to his work; understanding of the child in relationship to the use of his leisure time, to his reading, his play, his companionship, his friends, his clothes; an understanding of him in relationship to his neighbors in the community; and an understanding of him in relationship to his aims and his ideals, his spiritual aspirations.[9]

General inquiries of this sort were necessary in order to find the causes of a child's antisocial behavior. Once the sources of personal and behavioral abnormality were identified, it would be possible for court personnel to act in such a manner as to neutralize them. When the source of delinquency was found in parental failure, the juvenile court could offer the "education and love" necessary to cure the "ignorance and dislocation."[10] When laxity of parental discipline was at fault, the state would undertake that responsibility.[11] When the source of contamination was located in "evil surroundings and the vice and drunkenness with which [the children] are brought into contact,"[12] new surroundings and discipline might be called for in the form of a juvenile correctional institution. The object was not to sanction a particular kind of behavior; it was to so change the child's condition that future undesirable behavior would not result.

THE REFORMATORY MOVEMENT

If the societal response to youthful misconduct must focus on conditions rather than acts, and if the state must undertake the responsibility for curing these conditions when the parent has proved unable to do so, the manner of state intervention becomes important. Dissatisfaction with traditional approaches to criminality was acute in the nineteenth century,[13] as it has been ever since. Existing facilities were considered inadequate because their sole function was to punish, and punishment had proved an ineffective means of achieving a primary desideratum of criminal sanctions: reduction of illegal behavior. In place of penitentiaries, reformatories directed to the prevention of crime were urged and established. The aim of the reformatory movement was not necessarily of a libertarian cast; the purpose was "to protect society to an extent which is not possible under the old theory of retaliation. It assumes that the most effective way to protect society is to reform the criminal."[14] Samuel Barrows, one of the leaders of this movement, observed that the burden of reformation may weigh more heavily on the prisoner than the frankly punitive approach.

> Humanitarian considerations have softened the discipline in many of the old prisons, and sometimes they soften the prisoner without improving him. In many of them it is far easier for a prisoner to adapt himself to rules and regu-

> lations, preserve correct deportment, and perform a certain amount of labor than to submit to the discipline of institutions which make a constant draft upon his mental, moral, and physical powers.[15]

If the proper societal response to deviant conduct was in the direction of rehabilitating the offender, it followed that the kinds of moral and physical discipline to be applied would differ with the constitution of the subject. It was early observed that "Individualization is an essential principle of a reformatory prison discipline. To insure their highest improvement, prisoners must to a certain extent be treated personally."[16] Again, however, individual treatment was not viewed as a means of lessening the impact of societal sanctions upon the wrongdoer; rather, it was a way of maximizing that effect in what was assumed to be a useful direction.

While the reformatory system was not concerned solely with youthful offenders, its applicability to that sector of the criminal population was immediately appreciated and pressed. It had long been recognized that since prisons were even more inadequate for children than adults (assuming reformation and the reduction of crime rather than retribution to be the appropriate yardstick), special facilities for youth were required.[17] By the end of the century, a leading penologist could say that

> the toleration of children in penal institutions of any description is an outrage, to which no government, national, State, or municipal, should under any circumstances give its consent. . . . [M]ost children who commit criminal acts and are arrested on account of them, may be said to have acted without proper discernment; they are only partially responsible, in a legal sense; certainly they have not reached a stage in the development of criminal character such as to exclude the hope of their reformation, under proper treatment and influences.[18]

It was further recognized that commitment to a reformatory should be a last resort for even those children who had committed acts which, if done by an adult, would be criminal. Many youths could be ruined, even in a reformatory, by contact with corrupt associates, whereas they might have been saved had they remained in their own homes. For this reason, the experiment in probation undertaken by Massachusetts in the latter part of the nineteenth century was received with great approval and strenuously urged as a feature of the new juvenile court system.[19]

The desire to segregate children from "hardened" criminals was a reflection of the desire for individualization applied to a class considered amenable to successful reformation, but it also took into account the fact that judges were reluctant to find a child guilty or to impose other than a purely nominal sentence when such a finding meant incarceration with adults. The latter consideration was no less disturbing to the reformers who created the juvenile

court than was the mingling of children with adults, for it likewise frustrated the reformation of the child. Julia Lathrop, one of the original group of Chicago women who were influential in the creation of the first juvenile courts and later first head of the U.S. Children's Bureau, recalled that among the "miscarriages of justice" at the end of the nineteenth century was the fact that children "were let off because often justices could neither tolerate sending children to the bridewell nor bear to be themselves guilty of the harsh folly of compelling poverty-stricken parents to pay fines."[20] This undesirable situation was further aggravated by the lack of a satisfactory system of court and police records, with the result that "the same children could be in and out of various police stations an indefinite number of times, more hardened and skillful with each experience."[21]

If the prevailing system for handling juvenile offenders was inadequate, the question became what was to be done, and by whom. If incarceration was required, the youth should be placed in a facility dedicated to his rehabilitation, preferably located in the country. There the environmental vices of the city would not impinge upon him and the simpler values of the land could be imbued. If institutionalization was not demanded, he could be returned to his home (or to some other), or be counseled by some court-appointed agent.

THE STATE AS PARENT

The logic of the reformatory movement apparently required no more than the creation of more satisfactory dispositional alternatives for the child who had been found to have become delinquent. The logic of those who undertook the reformation of the juvenile justice system did require more. It was becoming apparent to those influential in the juvenile court movement that the American family—the traditional agent of child socialization—was no longer as effective as it once had been. Dr. Miriam Van Waters, an early referee in the California Juvenile Court system and a powerful voice for the court on which she sat, observed that:

> It is significant that it was in America that the first juvenile court arose, for from America about the same time the civilized world received its first warning that all was not well with that ancient institution, the home. The first decade of the juvenile court marks the beginning of the rise of the curve of the broken home, which is still mounting. . . . It would appear almost as if the children's court movement were one of those protective devices by which the human race has so often, with apparent blindness, yet with ultimate wisdom, averted or nullified the consequences of some great doom.[22]

When the family fails, considerations of social welfare (and positivist principles) require the intervention of some other agent. Traditional criminal law operated, however, only when the child's socialization was demonstrated

to be inadequate, as evidenced by the commission of some law violation. American criminal law has been said to be based on the proposition that the state cannot intervene authoritatively unless certain minimum standards of behavior are violated. This concept, which Professor Lon Fuller has described as "the morality of duty," sanctions official interference only at the lowest levels of human conduct for the specific purpose of providing a common ground for the development of rational rules of order.[23] In Fuller's words, "It is the morality of the Old Testament and the Ten Commandments. It speaks in terms of 'thou shalt not,' and, less frequently, of 'thou shalt.' It does not condemn men for failing to embrace opportunities for the fullest realization of their powers. Instead, it condemns them for failing to respect the basic requirements of social living."[24]

This morality was, however, inappropriate to those who sought a new approach to juvenile misbehavior. Response to youthful misconduct was viewed not as an issue solely of penology or even of criminal law; it was part of the broader problem of creating the optimum social order. If education could be converted from the "sterile" dissemination of a certain body of information to a means of adjusting men "in a healthful relation to nature and their fellow men,"[25] so the system of justice, at least as applied to children, could also be made to serve the same end. The state, through its courts, was not thought of as intervening in order to vindicate the interest of society in preserving minimum standards of conduct, nor was it concerned solely with the child who had already violated these norms. Rather, the state was thought to undertake the general tutelage of a child in the same way that his parents should have done. Judge Mack, in rejecting the traditional common law approach to juvenile offenders, put it this way:

> Twenty-five years ago a group of fine women and keen, humanitarian lawyers said, "That is all wrong, that is not real civilization. . . . There is a finer and nobler legal conception hidden away in our history that has never been brought forward or invoked for the purpose of dealing with the youngster that has gone wrong. That is the conception that the State is the higher parent; that it has an obligation, not merely a right but an obligation, toward its children; and that is a specific obligation to step in when the natural parent, either through viciousness or inability, fails so to deal with the child that it no longer goes along the right path that leads to good, sound, adult citizenship."[26]

The "nobler legal conception" to which Judge Mack referred was the power which had been asserted by English courts of chancery on behalf of the King as *pater* (or *parens*) *patriae,* over those children whose parents deprived them of proper care.[27]

There is, of course, a reason why this theory had remained hidden—hitherto criminal law had treated competent adults and competent children alike. The idea of the state as *parens patriae* is obviously inappropriate when

dealing with competent adults, since they are no longer subject to parental authority. Sanctions are permissible only when one transgresses the specific dictates of the morality of duty, not when it is thought that he *might* do so at some later time, and certainly not when the object is to inculcate standards of good, rather than merely noncriminal, behavior.

Underlying the *parens patriae* doctrine, then, was the assumption that the status of youth differs from the status of adulthood—that youth is a "dependent status."[28] In law and custom this assumption carries with it the explicit connotation that a young person is not entitled to the rights and privileges of adulthood. Conversely, however, minority status usually carries with it certain privileges and special protections not accorded adults. Thus, to be classified as a youth is to be defined as biologically and socially "immature," thereby falling into the somewhat ambiguous category of "nonperson" or, perhaps more accurately, "developing person." This principle has never been more clearly stated than in the brief filed by the National Council of Juvenile Court Judges in a recent juvenile case before the Supreme Court.

> In respect to the juvenile court laws, the reasonableness of the classification which separates children from adults ought to be clear upon its face, but in a society such as ours, in which the biological facts are blurred or obscured by poor thinking and improper social customs, perhaps it requires demonstration.
>
> From time immemorial legal codes have made distinctions between adults and children. The Code of Hammurabi, the earliest surviving body of laws, makes such provision. So does the Code of Justinian. . . . In England, from which our law derives, the Laws of Athelstane, in the Fourth Century, provided special treatment for children. . . .
>
> Perhaps it would be justifiable to depart from precedents so ancient in origin, if the reasons for them have ceased to exist, but the reason for these precedents is presently as valid as it has ever been. As one author expressed it,
>
> > Some of the vociferous critics of the juvenile courts seem to forget what the wise parent knows, for example, that children really are not adults. They do not come to life fully equipped with knowledge and wisdom, like Minerva springing full-panoplied from the brow of Jove. They are not like insects which are hatched complete with all the instincts they need to complete their life cycle. On the contrary, human children start life completely helpless and must come to the rights and privileges of adulthood by slow degrees. It is not difficult to see in this failure to recognize that there is a real difference between children and adults the explanation of much of the difficulty which underlies our present problems of delinquency and youth crime. If a child is to be accorded all the rights and privileges of adulthood, what necessity is there for the child to mature? Adults who are themselves immature, children who have never had to grow up, are unable to lead their own children to maturity, in a vicious circle which is nowhere so apparent as in the juvenile courts.[29]

One effect of this perspective is to place young people under the care and control of adults—principally the parents, but when the traditional patterns of family control have been disrupted, in another agent of socialization. When, therefore, parents are judged incapable of maintaining adequate control over their children, it follows that the state should assume the traditional function of guiding and controlling the youth, in the way that a "wise parent" should have done. As Judge Cabot of the Boston Juvenile Court observed with regard to his court's function, "Remember the fathers and mothers have failed, or the child has no business there [in the court], and it is when they failed that the state opened this way to receive them, into the court, and said, 'This is the way in which we want you to grow up.' "[30]

THE INFLUENCE OF THE SOCIAL WORK APPROACH TO CHILD WELFARE

In 1912, only thirteen years after the creation of the Illinois Juvenile Court, the U.S. Children's Bureau was established within the Department of Labor. Its first head was Julia Lathrop, fresh from the battle which had resulted in the passage of the Illinois legislation, and, not surprisingly, the Bureau took its character from its first leader and the like-minded persons who succeeded her. Since its inception, the Children's Bureau has worked for the development of the social work approach to the juvenile court, and has "helped so to orient the juvenile court as to enable it to construct an image of itself as a social-work agency, designed primarily to meet the needs of the child."[31]

A related development, fostered to a substantial extent by the Children's Bureau, was the establishment of social work as a profession.

> During the forty years following the birth of the juvenile court, the growth of social work was rapid. In the colleges and universities, social work, often lodged in sociology departments, gradually broke away to form independent departments; in some universities, it emerged as a full-fledged, degree-granting graduate professional school. The professional organizations kept pace. The American Association of Social Workers, an outgrowth of the National Social Workers Exchange, was founded in 1921, the American Association of Medical Social Workers in 1918, the National Association of School of Social Workers in 1926, the American Association of Group Workers in 1946, and the Social Work Research Group in 1949. [Between 1956 and 1958] all of these groups have joined to form the National Association of Social Workers.[32]

It goes without saying that the development of the social work profession was closely bound up with the image of the court as a social agency. Not only have the workers, individually and through their organizations, had a direct, day-to-day effect on the functioning of juvenile courts, but they have also served as community lobbies to secure the appointment of court personnel who would

embrace their concept of the court's function. The social-agency or "case-work" approach to the juvenile courts has much in common with the deterministic view of those who created the court. It has been strengthened as well by accretions of Freudian psychoanalysis and its therapeutic orientation,[33] which have tended to support the necessity of authoritative state intervention in the career of the misbehaving child.

> Through the 1940's and well into the 1950's [social welfare agency personnel] took an essentially clinical view of delinquency. Whatever the social context, they tended to think, behavior must eventually be interpreted in psychological-motivational terms, and the roots of motivational dynamics were to be found in parent-child relationships as seen in the perspective of psychoanalytic theory. Some delinquency was seen as the product of psychosis, interpreted as either biologically or functionally determined; but much was in the realm of the primary behavior disorder or the neuroses. Conduct disorders in children were seen as "acting out" types of psychoneuroses.[34]

It was further assumed that incipient delinquency, indicated either by personality or behavioral abnormality, could be identified in infancy and, once detected, the children could be treated by appropriate personnel.[35] A practical consequence of the psychoanalytic theory has been the conviction that the moral regeneration of a wayward or delinquent child can be accomplished through the imposition of strong external controls as a guiding force in the child's life—a function normally to be performed by the youth's parents but by society through its courts and therapeutic agencies if the parents are found deficient.

THE WISH AND THE REALITY

The concept of the state as *parens patriae* held obvious appeal for those who administered the juvenile courts, since it gave the color of legal regularity to an approach that took as its model of authority the family rather than the traditional criminal justice system. The conceptual consequences of this choice have been significant. Whereas the principal inquiry in a criminal prosecution is whether the defendant has in fact violated certain defined standards of conduct, the reach of the juvenile court was conceived as being somewhat greater. Those who articulated the need for a juvenile court intended to create a new kind of forum which recognized a responsibility generally to provide guidance for errant youths and place them on the path to "good, sound, adult citizenship." Specifically, the new court would prevent crime by reforming the child who was in danger of becoming criminal. Obviously a parent is free to, and indeed should, act authoritatively when he feels it necessary for the proper development of his child, and not only when the child has done some particularly heinous act. Parental responsibility includes the guidance of children toward

becoming good and useful citizens; when the parent fails, it becomes the duty of the state to assume that role. It was assumed that properly constituted adult authority could and should diagnose and treat symptoms of deviance as well as deviant acts. Thus delinquency proceedings were described as "investigations into serious conditions which if unchecked may lead to the making of its children into criminals instead of law-abiding citizens."[36]

The legislation that resulted from the efforts of the reformers, on the other hand, although in many ways significantly different from the criminal law, was not radical as it affected the kinds of conduct that gave delinquency jurisdiction to the court. To the extent that juvenile court laws defined delinquency in terms of law violations, nothing new was added to the ambit of societal authority. Although there was a pronounced tendency greatly to expand statutory definitions of delinquency as the juvenile court movement gained strength and support,[37] it may still be said, in Fuller's terms, that positive law had only extended the morality of duty to parental obedience, which raises an ethical, but not a jurisprudential, question. Most significantly, the juvenile court laws retained the requirement of a jurisdictional fact defined in terms of specific kinds of misconduct. If it were determined that a boy had not committed the misconduct with which he was charged and no other jurisdictional definition were appropriate, rehabilitation could not legally be ordered even if it appeared that the child was in need of assistance.

Although juvenile court legislation contributed to the substantive power of the state over children in trouble by increasing the categories of misconduct which would invoke the court's jurisdiction, the ability of reformers to achieve their goals was limited by the traditional elements of the statutes within which they were to work. Acceptance of psychiatric casework assumptions has perpetuated the tension between the legal requirements of statutory law and the rehabilitative goals of its administrators. The difference in orientation was summarized by the late Paul Tappan in the following manner:

> In the legal approach to misconduct, it is customary to describe offenses and penalties in specific terms in order to protect the citizen from arbitrary or unjust acts of police and judicial authority and, at the same time, to secure the community against those whose conduct has been shown in court to be dangerous. . . . [C]ase work brings to behavior problems a distinctly different set of methods and values. Its aims, generally, are therapeutic: to aid in the resolution of the individual's maladjustment by seeking out the social roots of his difficulties and attempting to mitigate the conflicts that have caused disturbance. Case work, then, essays to deal with a wide assortment of personal and group problems that represent failures in man's personal and social adjustments. Largely these are maladaptions in behavior: dependence, domestic conflict, desertion, drunkenness, unemployment, avoidance of responsibility, delinquency . . . and many others. . . . *In contrast to the law's preoccupation with*

miscreants who have violated specific and official legal norms, then, social work is concerned with a multitude of problems of behavior that deviate from psychological, social, economic, and—sometimes—legal normality.[38]

Efforts to accommodate juvenile court philosophy within the traditional legal framework have resulted in a kind of dualism in the juvenile court system, with a distinction drawn between the allegations of misconduct which invoked the court's jurisdiction and the circumstances upon which the court should act. A recurrent theme of this study will be the tension created by the growth of parallel systems within the same institution and the problems that arise when their opposing aspects are brought into the open.

THE IMPLEMENTATION OF JUVENILE COURT THEORY

The substantive issue of juvenile court philosophy—the proper scope of official intervention in an individual's life—has by and large been ignored, both currently and when the validity of juvenile court legislation was decided. Instances where the jurisdictional requirement was not met were rarely seen—not because they didn't occur, but because juvenile courts were, and are, of low visibility. Until very recently attorneys only infrequently appeared in children's courts; judges rarely spelled out their reasons for accepting jurisdiction over a child, and even when they did, transcripts were not regularly prepared nor appeals taken. It is hardly surprising, therefore, that the grounds upon which the juvenile court system was challenged only indirectly involved the *power* to intervene but turned rather upon the *manner* of the court's intervention.

The procedural scheme adopted by juvenile courts worked on the assumption, already suggested, that a young person both enjoys special protections and at the same time lacks the rights and privileges accorded adults. Under juvenile court legislation, the state undertook to remove the stigma of criminal involvement and to provide the essentials of guidance and care which presumably were not given by the natural parents. To this end, a new vocabulary for juvenile courts was adopted. The youth was a "delinquent," not a criminal; institutionalization involved "commitment" rather than sentencing, to a "school" or at worst a reformatory, rather than to a jail or penitentiary. Of perhaps greater long-term utility was the common provision that an adjudication of delinquency did not entail the civil disqualifications that would normally accompany a felony conviction. Both juvenile records and hearings were to be confidential, or at least more so than those in other criminal and civil matters. Although laws concerning the conduct of hearings and the keeping of files vary widely from jurisdiction to jurisdiction, it may be said generally that juvenile court records (and sometimes police records) are not public and are available only to persons specifically named by statute or having a "legitimate" interest in the information. Newspaper reporters may or may not be

allowed to attend, and when admitted they are frequently barred from publishing the names and addresses of minors before the court. These provisions have only infrequently become the subject of litigation.[39]

While under this protective umbrella, the youth often did not have, either by statutory provision or judicial interpretation, the rights to notice of charges, trial by jury, or the other rights accorded an adult under state rules of procedure. The question of the state's power to act authoritatively in the absence of these safeguards soon became the primary ground for attack on the juvenile court system. The problem before reviewing courts may be put in a deceptively simple fashion: Can a juvenile be subjected to sanctions which circumscribe his liberty as the result of judicial proceedings which do not maintain traditional procedural safeguards? Prior to the Supreme Court's decision *In re Gault,* the answer was almost universally affirmative, a result which perhaps seems more surprising now than it did at the time. The first juvenile courts were established before state criminal procedure was as closely regulated by specific federal constitutional limitations as it is now. We think of state proceedings as bounded by almost all of the directives of the Bill of Rights—for instance, the right to be free from unreasonable searches and seizures under the Fourth Amendment, the privilege against self-incrimination and the protection against former jeopardy announced in the Fifth Amendment, the rights to trial by jury, the assistance of counsel, and confrontation of one's accusers under the Sixth Amendment, and the right to be free of excessive bail and cruel and unusual punishment under the Eighth Amendment. These guarantees have always operated to restrict the actions of federal courts, but only recently have they come to define the limits of state procedure. Indeed, strictly speaking, it is not the provisions of the Bill of Rights per se that bind the state courts even now; it is the decision that their content is of such importance that their denial contravenes another portion of the Constitution: the requirement of the Fourteenth Amendment that "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

During the last part of the nineteenth century and the first third of the twentieth—covering the period when most juvenile courts were established and their constitutionality decided—the phrase "due process of law" meant "the law of the land" in a special sense. It required that laws operate generally (as opposed to acting with reference to particular persons or arbitrarily drawn classes), that rights and liabilities be adjudicated according to the existing body of law defining the procedure for reaching such decisions,[40] and that this body of law meet some basic standard of sufficiency.[41] There was no infallible guide for defining this standard of procedural sufficiency. It drew to some extent upon the "law of the land" prevailing at the time of the adoption of the United States Constitution (that is, the common and statute law of England as modified by practice in the Colonies),[42] but a procedure obtaining at that time was not necessarily an essential element of due process. Not every

rule of law in 1787 is essential to our system of justice *semper et ubique;* otherwise the result "would be to deny every quality of the law but its age, and to render it incapable of progress or improvement."[43] Nor was due process then defined by the provisions of the Bill of Rights; that process did not begin until the 1920's and did not gain momentum until even more recently. Rather, it was said to turn on whether a given form of procedure embodied "a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government."[44]

The task before appellate courts, then, was to satisfy themselves that juvenile court legislation and practice comported with this generalized notion of due process under the federal Constitution, and with such requirements as appeared in the state constitutions. One important factor, rarely expressed in a decision, was the feeling that the creation of children's courts was generally a desirable step. The Supreme Court of Missouri, with unusual candor, made the following observation in upholding the 1903 Missouri Juvenile Court Act against attack by an eight-year-old sent to the reform school: "We confess, at the outset, that the wise and beneficent purposes sought to be accomplished by this act—the prevention of crime, and the upbuilding of good and useful citizenship—tends, at least, to the creation of a desire to uphold it."[45]

Not only were the requirements of due process in criminal cases far less comprehensive in the late 1800's than they are now, but children's court proceedings were considered civil in nature. The nonpunitive character of delinquency proceedings was often cited as the basis for distinguishing authoritative intervention in children's courts from such intervention in adult cases.

> . . . [T]he proceedings under this law are in no sense criminal proceedings, nor is the result in any case a conviction or punishment for crime. They are simply statutory proceedings by which the state, in the legitimate exercise of its police power, or, in other words, its right to preserve its own integrity and future existence, reaches out its arm in a kindly way and provides for the protection of its children from parental neglect or from vicious influences and surroundings, either by keeping watch over the child while in its natural home, or where that seems impracticable, by placing it in an institution designed for that purpose.[46]

Central to this thesis is, of course, the idea that the state is acting in the child's interest. If the court were seeking to punish—or even possibly to deter others from crime—rather than to rehabilitate the child before it, the usual protections appropriate to criminal prosecutions might have been required.[47] Because a youth was charged with delinquency, however, and because the court was to save him from becoming a criminal rather than to punish him for being one, a different view was taken.

If the state were to act on the child's behalf, and if there were really a community of interest to be served by these proceedings, it could be (and was) argued that the procedure was not adversary in nature, whether civil or

criminal. The parental model of the juvenile court which had been so attractive to its creators and administrators also appealed to those who passed on the validity of the court's procedure, since it described an inquiry which did not focus on the adjustment of opposing interests between either two private parties or a private party and the state, but rather on the needs of a child, in which all were commonly interested. In making such an inquiry, a parent who intervenes need not surround his action with the procedural formalities which attend official action in criminal prosecutions or, for that matter, in civil suits. Analogously, since the juvenile court acts as a parent and undertakes parental functions, it should similarly be free to act informally. This view is illustrated in the course of an opinion by the Supreme Court of Pennsylvania:

> The natural parent needs no process to temporarily deprive his child of its liberty by confining it in its own home, to save it and to shield it from the consequences of persistence in a career of waywardness, nor is the state, when compelled, as *parens patriae*, to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts.[48]

The unusual status of children's courts further served to insulate them from traditional procedural requirements. They were special tribunals, established and defined by legislative enactment, in a form unknown to common law. Because they were entirely creatures of statute, analogies to rights obtaining at common law were not persuasive, removing a prime source of reference in determining whether their procedures violated the due process clause. Thus in the case quoted above, the Pennsylvania Supreme Court was able to hold that a juvenile respondent did not have the rights to process and notice of charges although these rights are generally said to be a requirement of due process in both civil and criminal proceedings.[49]

The children's court hearing not only differed in its focus from the then-current kinds of proceedings, it also differed in its purpose. Emphasis upon reaching the child's condition and adoption of the parental model led to the idea that the delinquency hearing itself, as well as its results, should be therapeutic. The idea of the court acting as a parent for the welfare of the child should be manifested throughout every phase of the proceedings, and the procedural niceties of criminal (or even civil) courts would only interfere with that function.

> The desideratum is to obtain, by the use of kindness and sympathy, the confidence of the child and of its parents if possible, to convince them that the judge and probation officer are friends and not the avengers of offended law. Good results are far more likely to be obtained in this way by the use of informal methods than by bringing them into a court conducted with the form and ceremony attendant upon trials for crime, where all the proceedings suggest that the law is about to be invoked to inflict punishment upon hardened malefactors.[50]

The themes outlined above recurred, alone or in combination, as appellate courts with virtual unanimity upheld the juvenile court experiment. Procedural safeguards accorded parties in criminal prosecutions and also those due persons as a matter of right in civil cases were held inapplicable to children's court hearings. Additionally, in emphasizing the unique character of the juvenile court, these principles have served to insulate the courts from the procedural and substantive developments which have marked the recent course of criminal law. Beginning in 1932,[51] the Supreme Court entered upon a line of decisions holding that a defendant in a state prosecution was entitled under the due process clause of the Fourteenth Amendment to the protection of certain provisions of the Bill of Rights, upon the theory that each to be carried over was "of the very essence of a scheme of ordered liberty."[52] As each was decided, of course, the content of the due process clause in that area was more precisely defined than it had previously been. With few exceptions, however, the doctrines that had successfully protected juvenile courts from an attack based on state constitutional provisions or the more generalized concept of due process continued to preserve them from the concrete requirements of the Bill of Rights. Thus, for instance, while federal courts held that defendants were constitutionally entitled to appointed counsel, first in capital crimes,[53] later under special circumstances,[54] and then for all indigents, at least if the charge was serious,[55] juvenile courts continued free from such requirements on the grounds that delinquency hearings were civil and *ex parte* rather than criminal and adversary in nature.[56] The participation of an attorney in such a proceeding could add little or nothing, and his representation would necessarily detract from the informal and presumably helpful relations between the child and the court.

Similarly, the development of the privilege against self-incrimination did not reach courts for children. In criminal prosecutions, the defendant may not be required to answer any questions, since each is presumably incriminating if relevant,[57] nor for that matter may he even be called to the stand by the prosecutor and forced to invoke his privilege.[58] The right to silence was rejected almost unanimously by juvenile courts,[59] however, usually on the express grounds that the privilege did not apply since the proceedings were civil rather than criminal.[60] Behind this stated reason, no doubt, lay a belief that use of the privilege would also inhibit informality and undermine the therapeutic ends to be served by the juvenile courts. An argument somewhat along these lines was adduced by the Pennsylvania Supreme Court in holding that a child had not been denied due process when the judge "compelled" him to state (in the negative) whether he had a license to drive an automobile during a hearing on a petition alleging, among other things, operation of an automobile without a driver's license. After holding that the privilege was not available in any case, since the hearing was not criminal in character, the court went on to say that "It may be added that appellant was not 'compelled' to testify; he was ques-

tioned in the same manner and in the same spirit as a parent might have acted, for whom, under the theory of juvenile court legislation, the State was substituting."[61] The decision quoted was reached in 1946, some eighteen years before the Supreme Court held that the Fifth Amendment privilege against self-incrimination was applicable in state courts,[62] and turned on state law and the generalized notion of due process. But the same rationales have been equally available to and successful in juvenile courts after the privilege was extended to state proceedings.

The ends to be served by delinquency proceedings were clearly inconsistent with arrangements which interposed some agency between the court and the child. This was one of the reasons that lawyer participation was not encouraged; it also discouraged the requirement of jury trial in delinquency cases.[63] Introduction of a panel of outsiders into the juvenile court was thought to compromise the confidentiality of the hearings, thereby undermining the attempt to prevent stigmatization of the child. The principle that criminal law guarantees were inappropriate in children's court inquiries was as applicable in this area as in others, as was the recurring metaphor of the familial function of the court. In the words of one judge, "Whether the child deserves to be saved by the state is no more a question for a jury than whether the father, if able to save it, ought to save it."[64] Although twelve states now provide by statute for jury trial in delinquency cases, at least twenty-seven others expressly deny that right, and with few exceptions courts have refused to extend the right where the legislature has not spoken to the point.[65] This was the result before the jury trial requirement in the Bill of Rights was made binding in state prosecutions in 1968[66] and has continued to be the result afterward.[67]

The same propositions that justified denial of these constitutional safeguards applied with regard to matters of evidence, which were usually determined by common law or, less frequently, statutory rules. To the juvenile court which considered the jurisdictional predicate of, at best, secondary importance, strict adherence to normal requirements of quality and sufficiency of proof was unnecessary. As Judge Ben Lindsey of the Denver Juvenile Court observed,

> . . . [W]e pay very little attention to the rules of evidence. . . . The whole proceeding is in the interest of the child and not to degrade him or even to punish him. We do not protect the child by discharging him because there is no legal evidence to convict, as would be done in a criminal case when we know that he has committed the offense. This is to do him a great injury, for he is simply encouraged in the prevalent opinion among city children . . . that it is all right to lie all they can, to cheat all they can, to steal all they can, so long as they "do not get caught" or that you have "no proof."[68]

The civil and nonpunitive character of delinquency proceedings led to the conclusion that judgment could be based on a "preponderance of the evidence"

rather than on proof beyond a reasonable doubt, as is required in criminal cases. As one court put it, "to inject into a juvenile delinquency proceeding the strictly criminal law concept of guilt beyond a reasonable doubt would be both unnecessary and improper."[69]

Not only was the quantum of evidence necessary to a finding of delinquency different from that in criminal cases, the kinds of evidence admissible differed not only from the criminal model but from the requirements of civil cases as well. For example, hearsay evidence is inadmissible in criminal prosecutions, both as a matter of evidence law and recently as a result of the constitutional right to confrontation;[70] it is likewise generally improper in civil matters.[71] Because juvenile court acts frequently indicated that hearings were to be "informal," the admission of hearsay evidence was generally permitted in delinquency proceedings.[72] Most jurisdictions, for instance, permitted the introduction of social investigation reports prior to an adjudication of delinquency on a number of grounds, not the least of which was that the general background information was necessary to a knowledge of the "whole child."[73] As a practical matter, insistence upon firsthand testimony would render inquiry into the child's condition virtually impossible. In some cases, as well, it might provide a "technical" ground for the frustration of the court's attempt to hold the child who was in need of assistance.

In some jurisdictions, the requirement of informality also led to departure in juvenile proceedings from the rule common to civil and criminal matters, that unsworn testimony could not be used in ascertaining essential facts.[74] In other jurisdictions, however, the requirement of sworn testimony was maintained.[75]

It can generally be said, then, that only rarely did appellate courts disrupt the functioning of the juvenile court, despite its procedural novelty. Through their affirmation of children's court legislation and the practical gloss written upon it by juvenile court judges, the philosophy of the juvenile court movement was effectively approved. Indeed, by permitting the courts to focus on the child's condition through a broad reading of the court's power to act summarily and in holding formal procedural requirements of both criminal and civil law unnecessary, reviewing courts may well have done more than legislators to further the juvenile court ideal.

CONSOLIDATION OF THE JUVENILE COURT THEORY

Judicial acceptance of the juvenile court experiment led to the expansion of children's court jurisdiction. As already suggested, this development in all likelihood began informally; legislative redefinition of the jurisdictional predicate confirmed this expansion to some extent by increasing the kinds of behavior that would invoke the court's power. The earliest juvenile court acts, whether because of similarity in the conception of the drafters

or simply through adoption of existing statutes, limited the definition of delinquency to law violations. The original Illinois Juvenile Court Law of 1899 divided children under its jurisdiction into two classes: delinquent and dependent. A delinquent child was "any child under the age of 16 who violates any law of this State or any City or Village ordinance." A "dependent or neglected" child was one "who for any reason is destitute or homeless or abandoned; . . . or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty, or depravity on the part of the parents, guardian, or other person in whose care it may be, is an unfit place for such child. . . ."[76] The definition of delinquency was extended in 1901 to include any child "who is incorrigible, or who knowingly frequents a house of ill fame, or who knowingly patronizes any policy shop or place where any gaming device is or shall be operated."[77] While the 1901 amendment might have seemed to cover most relevant kinds of juvenile deviant behavior, the Illinois legislature thought it necessary substantially to extend the definition only six years later.

> The words "delinquent child" shall mean any male child who while under the age of seventeen years or any female child who while under the age of eighteen years, violates any law of the State; or is incorrigible, or knowingly associates with thieves, vicious or immoral persons; or without just cause and without [the] consent of its parents, guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime, or knowingly frequents a house of ill-repute; or knowingly frequents any policy shop or place where any gaming device is operated; or frequents any saloon or dram shop where intoxicating liquors are sold; or patronizes or visits any public pool room or bucket shop; or wanders the streets in the night time without being on [any] lawful business or lawful occupation; or habitually wanders about any railroad yard or tracks or jumps or attempts to jump on any car or engine without lawful authority; or uses vile, obscene, vulgar, profane or indecent language in [any] public place or about any school house; or is guilty of indecent or lascivious conduct; any child committing any of these acts herein shall be deemed a delinquent child. . . .[78]

It should be noted that not only were the particular kinds of proscribed action increased, but complicity in some was declared wrongful only when done on a more or less regular basis—thus the categories of "frequenting" saloons, policy shops, and houses of ill repute, and "habitual" wandering about railroad tracks.

A similar development is found in Missouri. The first delinquency act of 1903 defined "delinquent child" as one who violated a state or local law.[79] In 1909 the Illinois formulation was adopted by Missouri virtually word for word, but was further expanded to include the child who "is either habitually truant from any day school, or who, while in attendance at any school, is incorrigible, vicious or immoral," or who "habitually and wilfully . . . loiters and

sleeps in alleys, cellars, wagons, buildings, lots or other exposed places."[80] Somewhat less dramatically, delinquency in Pennsylvania was expanded in 1903 from violation of law and incorrigibility to include the habitual truant from home or school (that is, runaway) and "a child who so deports himself or herself as to injure or endanger the morals or health of himself, herself, or others."[81] And, as might be expected, those states which were relatively late in adopting juvenile court legislation included broad definitions of delinquency.[82] The strength of this trend was such that, by 1949, no juvenile court act limited delinquency jurisdiction to law violations.[83]

THE QUESTIONING OF JUVENILE COURT PHILOSOPHY

For the first fifty years of the juvenile court's existence there was successful and harmonious interaction within the system. Although criticism of the methods of the juvenile courts appeared from time to time,[84] it was too diverse in focus to upset the apparently stable marriage of legal power and social work goals. Beginning about 1950, however, doubts—heretofore expressed only occasionally—gathered momentum. Practices that had previously been accepted without analysis now became issues, heightened to some extent by the increasing range of delinquency jurisdiction. The exercise of this jurisdiction had previously been accepted without substantial question as to its appropriateness; indeed, the metaphor of the state's power as a parent had achieved the status of an article of faith. Professor Francis Allen was one of those who called it into question.

> [T]he rise of the rehabilitative ideal has often been accompanied by attitudes and measures that conflict, sometimes seriously, with the values of individual liberty and volition. . . . The administration of the criminal law presents to any community the most extreme issues of the proper relations of the individual citizen to state power. We are concerned here with the perennial issue of political authority: Under what circumstances is the state justified in bringing its force to bear on the individual human being?[85]

As a proposition of criminal law, the above is no more than a lucid formulation of a basic question; when applied to juvenile courts it is something more. In Professor Allen's question lies, implicitly, rejection of the *parens patriae* theory, at least as an analytical tool. The state is now seen as acting authoritatively, in the same way that it does whenever it affects personal liberty, and the question is not under what guise it does so, but when it may.

> "The mere deprivation of liberty, however benign the administration of the place of confinement, is undeniably punishment." This proposition may be rephrased as follows: Measures which subject individuals to the substantial and involuntary deprivation of their liberty are essentially punitive in character,

> and this reality is not altered by the fact that the motivations that prompt incarceration are to provide therapy or otherwise contribute to the person's well-being or reform. As such, these measures must be closely scrutinized to insure that power is being applied consistently with those values of the community that justify interferences with liberty for only the most clear and compelling reasons.[86]

The foregoing raises anew the problem of whether any court should be permitted to punish behavior that may not be so intolerable as to threaten the societal fabric. Tappan, in *Juvenile Delinquency,* further questioned the validity of judicial inquiry into the child's condition as a basis for asserting jurisdiction, and particularly the use of the court as a means of preventing future antisocial conduct. "A court," he observed, "by its intrinsic character and limitations, is not designed to do preventive work in the sense of avoiding the first delinquency. Its function is to adjudicate delinquents. . . ."[87] Not only is a court the wrong forum for this sort of inquiry, but the difficulty—or impossibility—of the determination itself became increasingly obvious. One express purpose for looking into the child's condition was to determine whether or not the child was "pre-delinquent," in order to prevent the realization of this potentiality. Commentators in other fields came to dispute the assumption of predictability implicit in the psychiatric approach.[88] They pointed out that in the psychiatric profession itself serious differences of opinion existed on the validity of particular test instruments, and even among those who adopted a multi-instrument approach to diagnosis, no standard method could assign values to the various components.[89] Indeed, there was no consensus on what particular kinds of behavior indicated the need for expert intervention.[90]

Those persons concerned with the scope of juvenile court operations thus came to reject reliance on diagnostic hypotheses that were questioned in principle and unproved in practice. Increasingly they began to adopt the position that "social science cannot predict from a behavior problem to delinquency with any degree of accuracy."[91] Further, the use of inaccurate predictions was considered dangerous to the child as well as an improper assertion of authority. "The community may not safely, therefore, employ the potentially injurious techniques of court treatment upon nondelinquents in the hope that here and there some good may be done. . . . How often delinquents are manufactured through children's courts there is no way to tell. But there is no doubt that the courts are often affirmatively responsible for the delinquent careers of individuals upon whom preventive efforts have been practiced."[92]

Attack upon the legal nature of the juvenile court was not restricted to its substantive jurisdiction. Once it was seen as a court of law, rather than as a social work agency, the exercise of authority—even in a proper case—was naturally subject to reconsideration. The traditional justification for informal procedures was, of course, that the emphasis on "helping" the child and the

necessity for a wide-ranging inquiry negated reliance on rules of procedure and evidence. It no longer received, however, the same approbation.

> This position is self-defeating and otherwise indefensible. A child brought before the court has a right to demand, not only the benevolent concern of the tribunal, but justice. And one may rightly wonder as to the value of therapy purchased at the expense of justice. The essential point is that the issues of treatment and therapy be kept clearly distinct from the question of whether the person committed the acts which authorized the intervention of state power in the first instance.[93]

The distinction between evidence relevant to the court's *power* to sanction and that to *choice* of sanction was now said to be appropriate in juvenile courts.

Legal criticism of the operation of the juvenile courts was supported—and to some extent caused—by a growing dissatisfaction with the ability of the court to achieve its announced ends. Judge Orman Ketcham of the District of Columbia Juvenile Court offered a metaphorical analysis which summarized much of the frustration with the court's performance.[94] He described the *parens patriae* approach as a "mutual compact" between the child and the state, in which the juvenile court is empowered to substitute state control for parental control on the assumption that the state will act in the best interests of the child and that its intervention will enhance the child's welfare.[95] A number of promises to the child are suggested by the "mutual compact" theory: that the finding of delinquency will carry neither legal nor social stigma, that the hearing will be easily understood, fair, and consonant with the treatment process, that the child's treatment will be that which he should have received from his parents, and that when institutionalization is required, the conditions will be healthful.[96] If, it is suggested, these "promises" are not kept, "there is neither legal nor moral justification for the circumvention of constitutional protections or the assertion of state control in the name of *parens patriae*."[97]

The findings of those who addressed themselves to this question, including Judge Ketcham, indicated that the court has failed to keep its part of the compact. Police records for youthful offenders are often kept on the same "blotters" as those of adults, and court records are so generally available that the rule becomes the exception.[98] While the hearings are nonpublic, they are not "easily understood" or particularly fair. Procedural informality has resulted in "disorderliness [amounting to] chaos, thus defeating the implicit aim of equitable, understandable, and wise adjudication."[99] Nor, in many cases, are the judges adequate to the job required of them. During the height of enthusiasm for the juvenile court movement, the attributes of a children's court judge were said to include, in addition to legal training, "a thorough knowledge of psychology, mental hygiene, sociology and anthropology, at least those branches of anthropology that deal with criminology, cultural history of the

race and racial traits and capacities."[100] In practice, however, judges were hampered by a lack of training, by overloaded calendars, and by time-consuming administrative responsibilities.[101] Finally, the state was not providing the promised parental care. As a result of the noncriminal orientation of the court, bail was generally denied in most juvenile courts, with the result that children were held for protracted periods in detention centers where cruelty, overcrowding, and inadequate staffing were frequent.[102] Jails were often used when facilities for juveniles were overcrowded or nonexistent, and institutions for treatment (reformatories or training schools) were marked by "fear and repression."[103]

> . . . [T]he reality in most jurisdictions is that these facilities are so underdeveloped and understaffed that one cannot speak of them as in any sense the equivalent of parental care and protection. The caseloads of juvenile probation officers are often so high as to make it meaningless to talk in terms of individual counseling or supervision. And although the institutions for young delinquents usually have more treatment facilities and programs than do those for adult offenders, the basic fact of coercive confinement remains, and the actual treatment resources available are often too far below any reasonable minimum to qualify as meeting the needs of the juvenile court philosophy.[104]

Two lines of analysis have been suggested thus far: one focuses on the *propriety* of societal intervention on the bases asserted by juvenile courts and on the manner of that intervention; the second on the reality of the assumptions on which this intervention is undertaken, assuming (at least *arguendo*) that intervention would be justifiable *if* the system operates as it undertakes to do. A third line of inquiry turns to the nature of the juvenile court and its effect on its constituency. David Matza, in *Delinquency and Drift,* argues that both the daily operations of the court and the principles on which it operates necessarily lead, not to confidence in the system, but to a sense of injustice. As has already been suggested, juvenile court philosophy, in its attention to the child's condition, tends to consider almost all information relevant, whether related to a particular offense or not, for the dispensation of "individualized" justice.

> Individualized justice is *the* basic precept in the philosophy of the juvenile court. More generally, it is commended to all officials who deal with juveniles. We should, it is suggested by enlightened professionals, gear our official dispositions to suit the individual needs of the accused rather than respond in automatic fashion to the offense that he has allegedly committed. The relating of disposition to individual needs instead of to the offense is a central aspect of the modern *treatment* viewpoint.[105]

This principle, Matza suggests, far from imparting an aura of good feeling, "creates a setting which is conducive to the sensing of rampant inconsistency. It is that milieu in which the sense of injustice flourishes."[106] Although individual

considerations may and do enter into decisions in criminal proceedings, it appears as a doctrinal gloss on the principle of equality, and equality is usually determined with reference to the offense charged and related conditions, such as prior record. In delinquency matters, however, individual treatment is itself the principle, and offense is only one relevant factor (as an indication or "symptom" of some underlying disorder).[107] The principle of individualized justice actually takes into consideration so many factors that the relation between the criteria of decision-making and the decision is not apparent to any observer—including the child.[108] Thus, to the extent that the principle is carried out in practice, it operates in a fashion contrary to the premises of the juvenile court philosophy.[109] To the extent that courts depart from this principle —and Matza argues that most courts have effectively reinstitutionalized the principle of offense, qualified by an assessment of residential facilities—those youths who appreciate this inconsistency are further disabused of the value of the system to which they are subject.[110]

LEGAL REVISIONISM IN THE JUVENILE COURT

Despite the swelling tide of criticism, juvenile courts continued much as they were until 1966, when the Supreme Court for the first time passed upon some aspects of their procedures. The first case, *Kent* v. *United States,*[111] did not itself present questions directly related to the method by which children were found delinquent and their "treatment" was decided. It involved the procedure by which a juvenile court could relinquish its jurisdiction to a criminal court when the youth was within the statutory limits of juvenile court jurisdiction. The District of Columbia Juvenile Court had decided to transfer the case to the criminal court without holding a hearing to decide if such action was appropriate—if the child should be transferred—despite counsel's request that it do so. After young Kent was convicted in criminal court, he successfully appealed the waiver proceeding to the Supreme Court, which held that under the District of Columbia Juvenile Court Act the child enjoyed a *right* to be tried in that court unless it was shown that he would not be benefited by the special protections of the juvenile court, and further that deprivation of such a right could not be justified

> without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. It is inconceivable that a court of justice dealing with adults . . . would proceed in this manner. It would be extraordinary if society's special concern for children, as reflected in the District of Columbia's Juvenile Court Act, permitted this procedure. We hold that it does not.[112]

The *Kent* case, strictly read, does not announce constitutional rules for the conduct of juvenile court hearings. Indeed, it does not even announce such

rules for waiver hearings in other jurisdictions, since it relies on interpretation of the District of Columbia Juvenile Court Act rather than on any general constitutional principles. But the import of the decision, it may safely be said, went far beyond its holding. Its result, the Court suggested, was required "*by the statute read in the context of constitutional principles relating to due process and the assistance of counsel.*"[113] A waiver proceeding must satisfy "the essentials of due process and fair treatment," although it need not "conform with all the requirements of a criminal trial or even of the usual administrative hearing."[114] The foregoing language indicated that a youth enjoys at least some protection in hearings before a juvenile court at which critical rights are in question, although the holding itself was limited by the grounds on which the Court made its decision.

A further suggestion of the problems which the juvenile court system would have to face was found in the Court's approach to *Kent.* The majority noted, without approval, the traditional argument that "[b]ecause the State is supposed to proceed in respect of the child as *parens patriae* and not as adversary, courts have relied on the premise that the proceedings are 'civil' in nature and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases."[115] While declining the opportunity to pass on the constitutional guarantees appropriate in delinquency proceedings (since such proceedings were not actually before the Court), Mr. Justice Fortas for the majority served notice that all was not well in his contemplation.

> While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[116]

Reaction to the *Kent* decision was mixed. A few states amended their juvenile court acts to conform with the Court's suggestions,[117] and more commentators recognized that its implications were of larger significance than its holding.[118] Appellate courts, however, have continued to divide both as to its relevance with regard to local waiver statutes and as to its broader meaning.[119]

Even while the meaning of the *Kent* case was being debated, the Supreme Court was called upon to decide *In re Gault,*[120] which squarely posed a number

of questions about the implementation of the juvenile justice system. Fifteen-year-old Gerald Gault was found delinquent in an Arizona juvenile court for having violated a state statute providing that one who, "in the presence or hearing of any woman or child . . . uses vulgar, abusive or obscene language is guilty of a misdemeanor" and for being "a child who habitually so deports himself as to injure or endanger the morals of himself or others."[121] Following adjudication, he was committed to the state industrial school until he reached the age of twenty-one (unless sooner released) although conviction for use of obscene language in the case of an adult carried a maximum of $5 to $50 fine and imprisonment not to exceed two months. The procedure by which Gault's delinquency was determined was extremely informal. Neither he nor his parents were advised prior to the hearing of the charges he was to answer, nor were they told at any time that they might be represented by counsel. At the hearing, the only testimony was that of a probation officer who reported a conversation with the complaining witness, who was not present—clearly hearsay evidence, affording no opportunity for cross-examination. Additionally, the youth was questioned by the court without having been advised of the privilege against self-incrimination.

The Arizona Supreme Court upheld the adjudication on grounds entirely consonant with traditional juvenile court philosophy. The juvenile and his parents should receive notice reciting only "a conclusion of delinquency," without indication of the exact charge, since "the policy of the juvenile law is to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past."[122] While the respondent's parents could not be denied the right to retain counsel, "a child has different rights and disabilities,"[123] and due process did not require that an infant have a right to counsel. "The parent and the probation officer may be relied upon to protect the infant's interests."[124] The privilege against self-incrimination was denied because "the necessary flexibility for individualized treatment will be enhanced by a rule which does not require the judge to advise the infant of a privilege against self-incrimination."[125] The Arizona court also ruled that the relevancy of the right to confrontation arises "only where the charges are denied"[126] (although the "admission" in this case was in the nature of a self-incriminatory statement rather than a guilty plea, since there is typically no arraignment hearing in delinquency proceedings).[127]

The Supreme Court reversed the state court, holding that the respondent had indeed been denied due process of law in the hearing which resulted in a substantial deprivation of his liberty. Specifically, the majority, again through Mr. Justice Fortas, held the following:

> 1. The child and his parents are entitled to notice of the charges which they are called upon to answer, and such notice must be written, it must "set forth the alleged misconduct with particularity," and it must be timely given.

"Due process of law requires notice of the sort . . . which would be deemed constitutionally adequate in a civil or criminal proceeding."[128]

2. "[T]he Due Process Clause of the Fourteenth Amendment requires that in respect of proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parent must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child."[129]

3. The respondent in a delinquency proceeding is entitled to the privilege against self-incrimination, and it is "applicable in the case of juveniles, as it is with respect to adults."[130]

4. "[A]bsent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in the absence of sworn testimony subjected to the opportunity for cross-examination in accordance with our law and constitutional requirements."[131]

While the particular requirements now imposed on juvenile court hearings by the *Gault* decision are, of course, of the utmost importance, the reasoning by which the decision was reached is not less significant. The Court began by drawing upon earlier cases dealing with the *criminal* prosecution of minors to establish the proposition that "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[132] Mr. Justice Fortas stated clearly, at the outset, what in *Kent* he had only suggested—that *parens patriae* was not a useful shield from procedural requirements. While credit was given to the originators of the juvenile court movement for their good motives, it was made plain that reliance upon *parens patriae*—a principle described as "murky" in meaning and with historic credentials of "dubious relevance"—was misplaced.[133] Nor was the Court impressed with the argument that juvenile courts are "civil" rather than "criminal" in character. To deny the privilege against self-incrimination, for instance, on the ground that there is no possibility of "criminal" consequences "would be to disregard substance because of the feeble enticement of the 'civil' label-of-convenience which has attached to juvenile proceedings."[134]

The majority opinion referred to many of the criticisms that had lately been leveled at the juvenile court. It agreed to some extent with those who argued that, whatever the forum, one facing a deprivation of liberty is entitled to procedural safeguards intended to guarantee a fair and accurate determination of the respondent's guilt—whether that intervention be for treatment or some other purpose.

Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the State may exercise. As Mr. Justice Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure."[135]

Further, the Court observed, the informality of juvenile court hearings has not been successful even on its own terms.

> The absence of procedural rules based upon constitutional principles has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness. . . . Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and prescriptions of remedy.[136]

This failure to provide adjudicative fairness was to be remedied through observance of the procedural rules required by the due process clause—which, in addition to delimiting the state's authority over the individual, "are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data."[137] The juvenile, in order to present his side of the story, must know what story was in question. He needs the assistance of counsel to "cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it."[138] This was a function that could not, as had been argued, be performed by either the judge or the probation officer. It had long been settled in adult cases that judicial protection was an inadequate substitute for the assistance of counsel, and the probation officer's role in the adjudicatory hearing "by statute and in fact, is as arresting officer and witness against the child."[139] The privilege against self-incrimination was appropriate because it defines the state's power to require a person, including a child, to assist the state, and because youthful confessions under threatening conditions are frequently untrustworthy in fact. Nor may a child be found delinquent on the basis of evidence he has no real opportunity to examine or contradict, since the witness is not available to him or his attorney.

The Court went beyond a legal examination of juvenile court principles to a survey of its success in practice, by and large agreeing with critics that the benefits were more illusory than real. The claim of confidentiality was found to be "more rhetoric than reality."[140] Recent sociological sources were cited for the proposition that procedural informality may adversely affect the child's perception of justice and that "Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel."[141] Nor could the fact of deprivation of liberty be glossed over by different labels and promises of treatment.

> Ultimately, however, we confront the reality of that portion of the Juvenile Court process with which we deal in this case. A boy is charged with misconduct. The boy is committed to an institution where he may be restrained of liberty for years. *It is of no constitutional consequence—and of limited practical meaning—that the institution to which he is committed is called an Industrial School.* The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with white-washed walls, regimented routine and institutional laws. . . ." Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and "delinquents" confined with him for anything from waywardness to rape and homicide.[142]

REACTIONS TO *GAULT*

The *Gault* decision left open more questions than it resolved—an unsurprising result considering it was the Court's first foray into what has been a legal system unto itself, "unknown," as the majority observed, "to our law in any comparable context."[143] Its holdings, while of the greatest significance, affected only certain aspects of the adjudication hearing, to which the decision was restricted.[144] Its impact was further obscured by the fact that, although it seems that the *parens patriae* doctrine is no longer a dependable shield for children's court procedures, the Court did repeat its language in *Kent* that "We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing . . . ,"[145] and affirmed a desire to retain the benevolent aspects of the juvenile justice system.

In view of *Gault*'s revolutionary effect on adjudicative procedures and its sometimes ambiguous language, it was to be expected that the decision would be variously interpreted. A number of legislatures moved to amend statutory provisions that did not comply with the new requirements.[146] Some restricted their activity to the particular points decided by the Supreme Court, others looked to what the decision seemed to suggest with reference to juvenile court matters not directly delineated.[147]

Appellate courts have also differed in their interpretations of what *Gault* now requires in juvenile court practice. The many questions left open are now being resolved on a jurisdiction-by-jurisdiction basis, with some courts limiting *Gault* to its literal holding and others reading it more broadly. For example, the Supreme Court did not pass on the appropriate burden of proof, and the issue soon arose whether delinquency findings based only on a preponderance of the evidence were in harmony with due process requirements. The Supreme Court of Illinois decided that proof beyond a reasonable doubt was

now required.[148] Relying upon *Gault*'s emphasis on the actual consequences of an adjudication of delinquency, the Illinois court concluded that

> . . . it would seem that the reasons which caused the Supreme Court to import the constitutional requirements of an adversary criminal trial into delinquency hearings logically require that a finding of delinquency for misconduct, which would be criminal if charged against an adult, is valid only when the acts of delinquency are proved beyond a reasonable doubt. . . . We need not be reminded that the *Gault* decision did not pass upon the precise question of the quantum of proof that must be shown to validate a finding of delinquency. *We believe, however, that the language of that opinion exhibits a spirit that transcends the specific issues there involved, and that, in view thereof, it would not be consonant with due process or equal protection to grant allegedly delinquent juveniles the same procedural rights that protect adults charged with crimes, while depriving these rights of their full efficacy by allowing a finding of delinquency upon a lesser standard of proof than that required to sustain a criminal conviction.*[149]

The Supreme Court of California, however, reached a different conclusion, adopting an approach earlier suggested by a Pennsylvania appellate court:

> [W]e are in full agreement with the holding of the Supreme Court that the constitutional safeguards of the Fourteenth Amendment guaranteed to adults must similarly be accorded juveniles. It is inconceivable to us, however, that our highest Court attempted, through *Gault,* to undermine the basic philosophy, idealism and purposes of the juvenile court. We believe that the Supreme Court did not lose sight of the humane and beneficial elements of the juvenile court system; it did not ignore the need for each judge to determine the action appropriate to each individual case; it did not intend to convert the juvenile court into a criminal court for young people. Rather, we find that the Supreme Court recognized that juvenile courts, while acting within the constitutional guarantees of due process, must, nonetheless, retain their flexibile procedures and techniques.[150]

Once the assumption was made that *Gault* does not generally affect the traditional juvenile court values, it was not difficult to conclude that while the adjudicative hearing must "measure up to the essentials of due process and fair treatment," proof beyond a reasonable doubt was not one of those essentials.

> But even after *Gault,* as we have seen, juvenile proceedings retain a *sui generis* character: although certain basic rules of due process must be observed, the proceedings are nevertheless conducted for the protection and benefit of the youth in question. In such circumstances, factors other than "moral certainty of guilt" come into play: e.g., the advantages of maintaining a non-criminal atmosphere throughout the hearing, and the need for speedy and individual-

> ized rehabilitative services. Indeed, the youth's alleged crime may often be only the latest or most overt symptom of an underlying behavioral or personality disorder which could equally well warrant a declaration of wardship pursuant to other provisions of the code. Thus a determination whether or not the person committed the particular misdeed charged—although the very heart of an adult criminal prosecution—may not in fact be critical to the proper disposition of many juvenile cases. On the contrary, in the latter the best interests of the youth may well be served by a prompt factual decision at a level short of "moral certainty."[151]

The California decision implicitly rejects, of course, the idea that *Gault* establishes more than a limited number of particular rules for juvenile court procedures. The accuracy of the fact-finding process is balanced against, if not overwhelmed by, the desirability of undertaking treatment throughout the hearing—even before an adjudication is reached. The importance of jurisdictional predicate is minimized as "not in fact critical" to the proper disposition of many delinquency matters, since it is only a "symptom" of some underlying disorder at which the court's attention should primarily be directed.

The reactions of legislators and appellate courts are relatively easily discernible; reactions of those who are called upon to administer *Gault* on a day-to-day basis are somewhat elusive. A gross reading is available through the resolutions adopted by regional and national groups of juvenile court judges following the Supreme Court's decision. Three themes predominate in these statements. The decision itself is read narrowly so as to minimize its effect upon traditional juvenile court philosophy. The Statement of the Council of Judges of the National Council on Crime and Delinquency, adopted May 27, 1967, asserted:

> The juvenile court hearing, however, remains a unique type of judicial proceeding characterized by its treatment-oriented philosophy and its focus on the individual child. We do not read the *Gault* decision as undermining the noncriminal character of juvenile and family courts, or as abrogating their judicial concepts whose intrinsic soundness was affirmed by the justices even though they were compelled to view them through the unsympathetic and atypical lens shaped from the facts of the *Gault* case.[152]

The National Council of Juvenile Court Judges responded to *Gault* by asserting the following among a list of "points of Juvenile Court law and philosophy."

> Juvenile Court proceedings are not criminal proceedings. They are not, except in some elements in rare cases, adversary proceedings, but *ex parte* by and in the name of the state in the interest of the child. They are special proceedings partaking of the elements of civil, rather than criminal, actions. . . .[153]

Judges' groups hastened to reaffirm the basic juvenile court values and

assumptions. The National Council of Juvenile Court Judges included among its "points" the following:

> Immaturity is the natural and normal condition of childhood. Immaturity is not bad, and it is unreasonable to endeavor to turn children into adults prematurely.
>
> The pressures of urbanization and the upsurge of interest in civil liberty and its constitutional safeguards should not be allowed to confuse the issues in Juvenile Court cases to the extent that any child before the Juvenile Court is deprived of the best opportunity the court can possibly provide for him, or that legal precedents, particularly those precedents which are based on sound common sense and understanding of biological realities, are ignored or overruled. . . .
>
> The fundamental right of a child is not to unrestrained liberty, but to custody. . . .
>
> In making dispositions in children's cases, the true rule is that the court should judge upon the circumstances of the particular case and give its direction accordingly.[154]

The National Council on Crime and Delinquency urged its constituency to "incorporate the mandates of *Gault* into the juvenile court hearings while retaining the many basic values of the juvenile court process."[155] And a resolution by the Blue Ridge Training Institute for Southern Juvenile Court Judges affirmed "the original concept and theory of the Juvenile Court as a court of individualized justice, acting in the best interest of the child."[156]

Finally, the judges' groups, while admitting the effect of *Gault,* indicated interest in ensuring that such a result did not happen again. The National Council of Juvenile Court Judges' statement begins with a somewhat ill-tempered attack on the Council's Steering Committee for barring the filing of an *amicus curiae* brief in *Gault,* and called for active intervention in future appellate cases by its Committee on Appellate Litigation.[157] This appeal bore fruit when the National Council filed a brief opposing further extension of constitutional rights to juveniles in *In re Whittington,*[158] heard by the Supreme Court during the 1968 term. The resolution adopted by the Blue Ridge Training Institute was, if anything, more forceful. The preamble recited that "WHEREAS, there are those who would seek to destroy the basic principles of the juvenile court . . . and WHEREAS, any attack designed to so change or destroy the juvenile court as an institution, which acts in behalf of children, and not against children, *should be promptly noted, identified and dealt with effectively and with dispatch*"; it was resolved that the National Council of Juvenile Court Judges should "be alert as to the magnitude and potential potency of any attack on the Juvenile Courts of our land . . . establish the necessary facilities to the end that the Na-

tional Council be informed of every such instance where any Juvenile Court is attacked on constitutional grounds . . . supply on request of any court which has been subject to such an attack all information which may be available in the central office; and consider filing briefs as *Amicus Curiae* in cases of paramount importance. . . ."[159]

The most significant test of juvenile court reactions to *In re Gault* is how they have adapted their operations to its requirements. A self-reporting study of Ohio juvenile courts indicated that few changes in procedure had been considered necessary, and that there was substantial, if not uniform, compliance with what the judges questioned took to be *Gault*'s requirements.[160] These results should be accepted with some reservations, however, because they depend wholly on the judges' answers, and because no working definition of adequate compliance with *Gault* can be found in the questionnaire or deduced from the answers presented.

An observation study of cases involving unrepresented minors in three large metropolitan juvenile courts indicates differential acceptance of the Supreme Court requirements.[161] Substantial compliance was found in one city which, it should be noted, had adopted an adversary model for its administrative operation (including the regular participation of the State's Attorney's office, the institution of a separate arraignment hearing at which pleas were taken and advice of constitutional rights imparted, and a clearly bifurcated procedure for the adjudicative and dispositional segments of the delinquency matters).[162] Additionally, the judges in this city were relative newcomers to the juvenile court bench, and therefore presumably less imbued with traditional juvenile court philosophy. In the other cities, where the structure and personnel are of the traditional juvenile court mold, the impact of *Gault* was less evident.[163] In one-third of the cases in one city, and 85 per cent of those in another, the right to counsel was not mentioned by the Court to youths appearing before it. In virtually all of the other instances, the advice given was insufficient in content to comply with constitutional requirements.[164] Similarly, it was found that in one city the privilege against self-incrimination was not mentioned at any observed hearing. In the other it was mentioned in only 29 per cent of the cases, and in all but one (2 per cent) of those cases, the privilege was brought up in such a manner as to discourage its exercise.[165] The right to confrontation was more generally accorded, but necessary witnesses were frequently absent even in contested cases.[166]

It appears from this study that while *Gault* has accelerated the trend toward provision of legal representation, "the fact remains that in the Metro and Gotham juvenile courts—and in courts like Metro and Gotham—children are frequently and sometimes flagrantly denied their constitutional rights."[167] Support for this conclusion may be found in an observation study of juvenile court hearings undertaken by the *Washington Post* in six suburban

juvenile courts in the metropolitan Washington, D.C., area, which also revealed systematic noncompliance with the procedural requirements laid down by *Gault*.[168]

Such, then, was the situation during the operation of the Lawyer in Juvenile Court Project reported here. Since that time, the Supreme Court has decided two cases dealing with juvenile court procedure. *In re Winship,*[169] the first, resolved the standard-of-proof controversy by holding that proof beyond a reasonable doubt is required to support a finding of delinquency when the respondent is subject to confinement in a state institution for conduct which, if done by an adult, would constitute a crime. In reaching its decision, the Court again found traditional justifications for procedural relaxation unpersuasive with regard to the right involved and expressed its conviction that insistence upon this right "will not displace any of the substantive benefits of the juvenile process."[170] Perhaps predictably, this ruling has been greeted by mixed reviews and, in at least one jurisdiction, the holding was immediately confined to the facts presented in *Winship*.[171]

At the end of the 1970 term, the Supreme Court handed down *McKeiver* v. *Pennsylvania*[172] which laid to rest—at least for the moment—hopes and fears that *Gault* presaged extension of all criminal trial procedures to juvenile matters. In *McKeiver,* the majority held that the Sixth Amendment right to trial by jury—only recently made binding in state criminal prosecutions[173]—was *not* constitutionally required in delinquency proceedings. Important to the Court's conclusion were the beliefs that imposition of the jury-trial requirement would add little to the accuracy of fact-finding in juvenile court[174] and that to do so would "bring with it into that system the traditional delay, the formality and the clamor of the adversary system and, possibly, the public trial."[175]

With this decision, it is clear that the issues currently disputed among and, indeed, within the states will remain hotly argued. Until these questions find their way to the Supreme Court for authoritative resolution, it may safely be assumed that striking diversity of analysis and result will continue. Moreover, it appears that matters are not now very different in most respects than when the Lawyer Project was in operation. The ambiguities of the *Gault* decision have been intensified, if anything, by judicial recognition of them.[176] The ultimate effect of the decision remains problematic.

THE LAWYER'S DILEMMA

The dislocation occasioned by *Gault* is attributable in part to the fact that although juvenile court law was new territory for the Supreme Court, it had been in existence for more than sixty-five years, enveloped in a philosophy and procedure unique in our jurisprudence. In view of the fundamental conflict between the juvenile court philosophy and method of operation on the one

hand, and the language and holding of *Gault* on the other, it is not surprising to find considerable resistance to *Gault* among juvenile court personnel. The official statements of judges' groups indicate what should be obvious—the foundations of a legal philosophy are not easily shaken, nor are basic changes welcomed. Empirical studies show what is to be expected—traditional courts and personnel are reluctant to adapt themselves to the new procedures now required by the due process clause, particularly as they imply injection of elements of an adversary system into juvenile court proceedings. This, taken with the increasing appearance of counsel in juvenile court proceedings, undoubtedly will have consequences for the manner of legal representation. An attorney in traditional courts will find himself within a legal system that still considers itself non-adversary and seeks to serve goals not usually associated with other branches of law. It is only reasonable to anticipate that he will face formal and informal pressures to conform his manner of participation in delinquency hearings to the values of these courts—for example, to be less of an advocate for the child's interests. As seen by the Task Force Report on Juvenile Delinquency and Youth Crime,

> Introduction of counsel for the child or the parent in the juvenile court raises important and difficult problems. . . . It has been urged that counsel for the juvenile should: "exercise intelligent discrimination in the use of tactics learned in other courts since wholesale importation of techniques developed in the handling of criminal or civil cases before other tribunals may not only threaten the objectives of the court but will rarely serve the interest of the minor client." Certainly few will quarrel with this pragmatic approach. But does it imply that the attorney may sometimes sacrifice the legal rights of his minor client out of his apprehension of what his general welfare requires? Is that what it means to say "that not only the legal rights but the general welfare of the minor [should] be thrown on the scale in the weighing by counsel of his course of action"? Is it part of the lawyer's duty, as an officer of the court, to disclose to the court "all facts in his possession which bear upon a proper disposition of the matter"? If he demands proof of the alleged acts of delinquency, is he thereby adopting a dishonest "beat the rap" approach or is he exemplifying "honest but firm concern for the protection of his client's rights"? Should he, as urged recently by a New York family court judge, first ascertain "the sufficiency of the moving papers and [satisfy himself] in his own mind that his client actually was involved in the incident or incidents as set forth in the petition," and, if satisfied, then "cooperate with the court in working out a logical solution to the problems presented"? Should he do this even if it seems logical to him that the court should send his client to the reformatory for the duration of his minority? . . . These questions of accommodation between the juvenile court and the adversary system are troublesome ones.[177]

The questions posed by the President's Commission suggest part of a

somewhat broader issue: How will the courts react to the participation of an attorney who, by training, is oriented to an adversarial system, and how will defense counsel react to the court before which he appears? In the Supreme Court's view, provision of the right to counsel was "indispensable to a practical realization of due process of law"[178] and the key to the other rights posited for children. It follows that the manner in which lawyers define and perform their duties will determine, in great measure, the real effect of *Gault* upon the juvenile court's legal structure.

NOTES

[1] American Bar Association, *Standards for Juvenile and Family Courts* (New York: Institute of Judicial Administration, 1966), p. 2.

[2] Our analysis of the influence of positive criminology on the juvenile court draws heavily upon the work of David Matza, particularly his *Delinquency and Drift* (New York: John Wiley & Sons, 1964). Another recent work that goes to the same source is A. Platt, *The Child Savers: The Invention of Delinquency* (Chicago: University of Chicago Press, 1969).

[3] D. Matza, *Delinquency and Drift,* p. 3.

[4] *Ibid.,* pp. 5–9.

[5] *Ibid.,* p. 11.

[6] J. Mack, "The Juvenile Court," 23 *Harvard Law Review* 104, 119–120 (1909).

[7] Matza, *Delinquency and Drift,* pp. 15–16.

[8] M. Van Waters, "The Juvenile Court from the Child's Viewpoint," in *The Child,* pp. 217, 218.

[9] F. Cabot, "The Detention of Children as a Part of Treatment," in *The Child,* pp. 246, 247.

[10] T. Hurley, "Development of the Juvenile Court Idea," in S. Barrows (ed.), *Children's Courts in the United States* (Washington, D.C.: Government Printing Office, 1904), p. 7.

[11] At one time personnel of the Colorado Juvenile Court went so far as to "propose several times a law for the compulsory education of parents; that is, legislation providing a mild compulsion of parents to attend lectures concerning home discipline, diet, mental and physical hygiene, problems of fatigue, and all of those various subjects which parents need for the intelligent care of their children. . . ." B. Lindsey, "Colorado's Contribution to the Juvenile Court," in *The Child,* pp. 274, 284.

[12] Barrows, *Children's Courts,* Chap. XVI.

[13] For a recent treatment of the reformatory movement, see Platt, *Child Savers,* pp. 46–74.

[14] S. Barrows, *The Reformatory System in the United States* (Washington, D.C.: Government Printing Office, 1900), p. 9.

[15] *Ibid.*

[16] E. Wines, *The State of Prisons and of Child-Saving Institutions in the Civilized World* (Cambridge, Mass.: J. Wilson and Son, 1880), p. 52.

[17] The need for special juvenile institutions was felt long before the coming of the twentieth century, of the juvenile courts, or of the general acceptance of the reformatory system. A Wisconsin court spoke forcefully to the problem some twenty-five years earlier: "Certainly common jails and penitentiaries are unfit places for the confinement of children; even of ordinarily vicious children. In these it cannot be said that children are altogether without opportunities of education; but it is vicious education. All experience has shown the tendency of prisons for crime, to aggravate the depravity of less guilty adult prisoners. The association with practiced criminals generally to be found in such places, which is almost necessary to confinement within them, must inevitably expose children to corrupting influences, which few children have character to resist. And when children must be confined for crime, common humanity to them, common regard for the future welfare of the state, requires, in many cases, that they should be sent to some place of detention more appropriate for them, where they may have a reasonable opportunity of becoming better, instead of worse, by their confinement; where the prison authorities are not their mere jailers, but are charged with parental duty as well as with parental authority; and where education for good is not only not excluded, but is made a condition of their restraint." Milwaukee Industrial School v. Supervisors of Milwaukee County, 40 Wis. 328, 332–333 (1876).

[18] F. Wines, *Punishment and Reformation* (New York: T. Y. Crowell and Co., 1895), p. 302.

[19] *Ibid.*, pp. 303–304.

[20] J. Lathrop, "The Background of the Juvenile Court in Illinois," in *The Child,* pp. 290–291.

[21] *Ibid.*, p. 291.

[22] Van Waters, "Juvenile Court from the Child's Viewpoint," pp. 218–219.

[23] L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), pp. 5–6.

[24] *Ibid.*, p. 6.

[25] C. Lasch, *The New Radicalism in America* (New York: Random House, 1965), pp. 13–14.

[26] J. Mack, "The Chancery Procedures in the Juvenile Court," in *The Child,* pp. 310, 311–312.

[27] It appears that English chancery courts generally would not accept *parens patriae* jurisdiction unless the child was of some means. See Wellesley v. Beaufort, 2 Russell Chancery Reports 1 (1827), where Lord Chancellor Eldon observed, with reference to the property requirement that "if any one will turn his mind attentatively to the subject, he must see that this Court has not the means of acting, except where it has property to act upon. It is not, however, from any want of jurisdiction; because the Court cannot take on itself the maintenance of all the children in the kingdom. It can exercise this jurisdiction usefully and practically, only where it has the means of doing so; that is to say, by its having the means of applying property for the use and maintenance of the infants." *Ibid.*, pp. 19–21. American courts were more willing to take on the supervision of needy children, and the property requirement was less important. *Cf.* Milwaukee Industrial School v. Supervisors of Milwaukee County, supra note 17.

[28] D. Matza, "Position and Behavior Patterns of Youth," in Edward Faris (ed.), *Handbook of Modern Sociology* (Chicago: Rand McNally and Co., 1964), p. 191.

[29] Brief for the National Council of Juvenile Court Judges as Amicus Curiae, pp. 10–12. In re Whittington, 391 U.S. 347 (1968).

[30] Cabot, "Detention of Children," p. 249.

[31] See W. Dunham, "The Juvenile Court: Contradictory Orientation in Processing of-

fenders," in R. Giallombardo (ed.), *Juvenile Delinquency: A Book of Readings* (New York: John Wiley & Sons, 1966), pp. 337, 342.

[32] *Ibid.*, p. 343.

[33] *Ibid.*, p. 344.

[34] A. Kahn, "From Delinquency Treatment to Community Development," in S. Lazarsfeld *et al.* (ed.), *The Uses of Sociology* (New York: Basic Books, 1967), pp. 477, 480.

[35] The thrust of the psychiatric school is summarized by Anna Freud: "There is no child analyst, I believe, who would not welcome the next step forward to a state of affairs which places therapeutic intervention . . . at [a] time before symptom formation [necessarily including any manifested misconduct] has been resorted to at all." A. Freud, "Child Observation and Prediction of Development—A Memorial Lecture in Honor of Ernst Kris," in J. Goldstein and J. Katz (eds.), *The Family and the Law* (New York: Free Press, 1965), pp. 953, 955.

[36] State v. Scholl, 167 Wis. 504, 510, 167 N.W. 830, 832 (1918).

[37] The earliest juvenile court acts limited the definition of delinquency to law violations. The original *Illinois Juvenile Court Law* of 1899, for instance, divided children under its jurisdiction into two classes: delinquent and dependent. A delinquent child was "any child under the age of 16 who violates any law of this State or any City or Village ordinance." A "dependent or neglected" child was one who "for any reason is destitute or homeless or abandoned; . . . or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of the parents, guardian, or other person in whose care it may be, is an unfit place for such child. . . ." Law of April 21, 1899, *Laws of Illinois* (1899) §1. The definition of delinquency was extended in 1901 to include any child "who is incorrigible, or who knowingly associates with thieves, vicious, or immoral persons, or who is growing up in idleness or crime, or who knowingly frequents a house of ill fame, or who knowingly patronizes any policy shop or place where any gaming device is or shall be operated." *Laws of Illinois* (1901) §1. In 1907 the definition was again substantially extended, to reach the child who ran away from home, or frequented saloons, pool rooms or bucket shops, or wandered the streets at night without being on any lawful business, or wandered railroad yards or tracks, or used profanity, or was guilty of "indecent and lascivious conduct." Law of June 4, 1907, *Laws of Illinois* (1907–1908) §2, p. 70.

A similar development is found in Missouri, where the notion of delinquency progressed from violation of a state or local law, *Missouri Laws* (1903) §1, p. 213, to the broadest Illinois definition improved by inclusion of the child who "habitually and wilfully . . . loiters and sleeps in alleys, cellars, wagons, buildings, lots or other exposed places." *Missouri Laws* (1909) §1, p. 423. Somewhat less dramatically, delinquency in Pennsylvania was extended from violation of law and incorrigibility, Act of April 23, 1903, *Laws of Pennsylvania* (1903) §1, p. 274, to the habitual truant from home or school and to "a child who so deports himself or herself as to injure or endanger the morals or health of himself, herself, or others." Act of June 2, 1933, *Laws of Pennsylvania* (1933) §1, p. 434. And, as might be expected, those states which were relatively late in adopting juvenile court legislation included broad definitions of delinquency. See, e.g., *Laws of South Dakota,* Chap. 119, §1 (1915). The strength of this trend was such that it was reported, at least by 1949, that there was no juvenile court law which limited delinquency jurisdiction to law violations. S. Rubin, "The Legal Characteristics of Juvenile Delinquency," in Giallombardo (ed.), *Juvenile Delinquency,* pp. 25, 26. In recent years, however, the tendency has been in the opposite direction. See, e.g., *Illinois Revised Statutes,* Chap. 37, §702–2 (1967) *Uniform Juvenile Court Act,* §2–2 (1968).

[38] P. Tappan, *Juvenile Delinquency* (New York: McGraw-Hill Book Co., 1949), pp. 4–6 (emphasis supplied).

[39] See, generally, G. Geis, "Publicity and Juvenile Court Proceedings," 30 *Rocky Mountain Law Review* 101 (1958).

[40] See Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272, 277 (1855); L. Hand, *The Bill of Rights* (Cambridge, Mass.: Harvard University Press, 1958), pp. 35–36.

[41] See T. Cooley, *Constitutional Limitations,* 7th ed., V. Lane (Boston: Little, Brown and Co., 1903), pp. 502–506. Perhaps the most famous early definition of due process was that issued in the celebrated Dartmouth College Case: "By the law of the land is most clearly intended the general law; a law, which hears before it condemns; which proceeds upon inquiry, and renders judgement only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land." Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 581 (1819).

[42] See Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. (18 How.) 272, 276 (1855).

[43] Hurtado v. California, 110 U.S. 516, 529 (1884).

[44] Twining v. New Jersey, 211 U.S. 78, 106 (1908).

[45] Ex parte Loving, 178 Mo. 194, 202, 77 S.W. 508, 509 (1903).

[46] State v. Scholl, 167 Wis. 504, 509, 167 N.W. 830, 831 (1918).

[47] Cf. People v. Fuller, 24 N.Y. 2d 292, 303, 248 N.E. 2d 17, 21–22 (1969).

[48] Commonwealth v. Fisher, 213 Pa. 48, 53, 62 Atl. 198, 200 (1905).

[49] E.g. re Oliver, 333 U.S. 257 (1948) (criminal prosecution); Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950) (civil suit).

[50] State v. Scholl, 167 Wis. 504, 510, 167 N.W. 830, 832 (1918). A similar approach was used to avoid the necessity for timely and adequate notice of the charges brought against the respondent. An Illinois appellate court, in sustaining an adjudication where the child was informed only that she was charged with being "incorrigible," without further specification of just what she had done to be so labeled, observed that "a recital of the particular act or acts upon which the finding that she was incorrigible is based would have been very much against rather than in her interests. Indeed, we think it can hardly be said that mistakes of youth should be perpetuated in a permanent record which would be available to the public during the adult life of the child." People v. Cyrnik, 259 Ill. App. 646 (Cir. Ct. Cook County, 1930) (Abst.).

[51] Powell v. Alabama, 287 U.S. 45 (1932).

[52] The phrase is Mr. Justice Cardozo's in Palko v. Connecticut, 302 U.S. 319, 325 (1937).

[53] Powell v. Alabama, 287 U.S. 45 (1932).

[54] Betts v. Brady, 316 U.S. 455 (1942).

[55] Gideon v. Wainwright, 372 U.S. 335 (1963).

[56] See, e.g., People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875 (1956); People ex rel. Weber v. Fifield, 136 Cal. App. 2d 741, 289 P. 2d 303 (1955); Akers v. State, 115 Ind. App. 195, 51 N.E. 2d 91 (1943); People v. Lewis, 260 N.Y. 171, 183 N.E. 353, 86 A.L.R. 1001 (1932); *cert. denied* 289 U.S. 709; In re Holmes, 379 Pa. 599, 109 A. 2d 523 (1954), *cert. denied* 348 U.S. 973. But see Shioutakon v. District of Columbia, 236 F. 2d 666 (D.C. Cir. 1956) (based on interpretation of District of Columbia Juvenile Court Act and, perhaps, the Fifth Amendment due process clause, though the latter is unclear); Interest of Long, 184 So. 2d 861 (Miss. 1966).

[57] 8 J. Wigmore, *Evidence,* rev. by J. T. McNaughton (Boston: Little, Brown and Co., 1961), p. 369.

[58] *Ibid.,* p. 406, and cases cited at note 6.

[59] See P. Driscoll, "The Privilege Against Self-Incrimination in Juvenile Proceedings," 15 *Juvenile Court Judges Journal* 17 (1964); N. Lefstein, "*In re Gault:* Juvenile Courts and Lawyers," 53 *American Bar Association Journal* 811 (1967).

[60] E.g. In re Santillanes, 47 N.M. 140, 138 P. 2d 503 (1943); In re Holmes, 379 Pa. 599, 109 A. 2d 523 (1954), *cert. denied* 348 U.S. 973; In re Lewis, 51 Wis. 2d 193, 316 P. 2d 907 (1957).

[61] In re Holmes, 379 Pa. 599, 605, 109 A. 2d 523, 525 (1954), *cert. denied* 348 U.S. 973.

[62] Malloy v. Hogan, 378 U.S. 1 (1964).

[63] In the jurisdictions that did provide for right to jury trial (and counsel), the guarantees were often viewed as useful to forestall constitutional attack, not as viable parts of the juvenile court system. It has been said with regard to the Colorado Juvenile Court Law that "In order to avoid constitutional difficulties . . . it was considered the better part of prudence to provide for trial by jury in case it was demanded; also the right to counsel, a right that could be claimed in a criminal case. In dealing with a child as a ward of the court, for its own welfare . . . we do not believe that any such provisions are necessary. . . . The court is their defender and protector as well as corrector." B. Lindsey, "The Juvenile Court of Denver," in Barrows (ed.), *Children's Courts,* pp. 28, 47, 64.

[64] Commonwealth v. Fisher, 213 Pa. 48, 54, 62 Atl. 198, 200 (1905).

[65] See Note, 45 *North Dakota Law Review* 251 (1969).

[66] Duncan v. Louisiana, 391 U.S. 145 (1968).

[67] See DeBacker v. Brainard, 183 Neb. 461, 161 N.W.2d 508 (1968), *prob. juris. noted,* 393 U.S. 1076 (1969) (adjudication affirmed although four of seven judges would make jury trial applicable in delinquency cases in light of *Duncan* and *Gault;* affirmance required by state constitutional provision requiring majority of five to declare law unconstitutional). The Supreme Court had an opportunity to decide the applicability of the right to jury trial in delinquency cases during the 1969 term when DeBacker v. Brainard was scheduled for argument. A previous opportunity was lost when the case was remanded to state courts for reconsideration in light of *Gault.* In re Whittington, 391 U.S. 341 (1968). The issue was finally resolved in McKeiver v. Pennsylvania, 403 U.S. 528 (1971), discussed at Note 176.

[68] Lindsey, "Juvenile Court of Denver," p. 107.

[69] In re Bigesby, 202 A. 2d 785, 786 (D.C. Mun. Ct. App. 1964). Although the civil standard of proof was the majority rule, a few jurisdictions required "clear and convincing" proof, e.g., Application of Gault, 99 Ariz. 181, 407 P. 2d 760 (1965), and some proof beyond a reasonable doubt. Jones v. Commonwealth, 185 Va. 335, 38 S.E. 2d 444 (1946).

[70] Pointer v. Texas, 380 U.S. 400 (1965); Douglas v. Alabama, 380 U.S. 415 (1965).

[71] See 5 Wigmore, *Evidence,* §1364, for a brief history of the rule. Cf. Greene v. McElroy, 360 U.S. 474 (1959) (right to confrontation applies to adjudicatory administrative proceedings).

[72] E.g. In re Holmes, 379 Pa. 599, 109 A. 2d 523 (1954), *cert. denied* 348 U.S. 973; State ex rel. Christiensen v. Christiensen, 227 P. 2d 760 (Utah 1951); In re Bentley, 246 Wis. 69, 16 N.W. 2d 390 (1944).

[73] See L. Teitelbaum, "The Use of Social Reports in Juvenile Court Adjudications," 7 *Journal of Family Law* 425 (1967).

[74] See State ex rel. Christiensen v. Christiensen, 227 P. 2d 760 (Utah 1951); State v. Scholl, 167 Wis. 504, 167 N.W. 830 (1918).

[75] In re Sippy, 97 A. 2d 455 (D.C. Mun. Ct. App. 1953); In re Mantell, 157 Neb. 900, 62 N.W. 2d 308 (1954).

[76] Law of April 21, 1899, *Laws of Illinois* (1899) §1.

[77] *Laws of Illinois* (1901) §1.

[78] Act of June 4, 1907, *Laws of Illinois* (1907–1908) §2, p. 70.

[79] Law of March 23, 1903, *Missouri Laws* (1903) §1, p. 213.

[80] *Missouri Laws* (1909) p. 423.

[81] Act of 23 April 1903, *Laws of Pennsylvania* (1903) §1.

[82] South Dakota, for example, did not adopt the juvenile court system until 1915, but made up in vigor for the lost years. The phrase "delinquent child" was defined to include, "in addition to those who violated the law or were incorrigible, those who patronized pool rooms, saloons, houses of ill fame, restaurants where liquors may be purchased after nine o'clock (if done with a member of the opposite sex), or who is found alone with one of the opposite sex in a private apartment or room of any restaurant, lodging house, hotel, or other place at night time, or who goes to any secluded place with a member of the opposite sex for the evident purpose of concealing their acts, who smokes cigarettes or uses tobacco in any form," and a host of the usual proscriptions. *Laws of South Dakota,* Chap. 119, §1 (1915).

[83] Rubin, "Legal Character of Juvenile Delinquency," pp. 25, 26.

[84] E.g. E. Waite, "How Far Can Court Procedure Be Socialized Without Impairing Individual Rights?" 12 *Journal of Criminal Law and Criminology* 339 (1921); J. Wigmore, "Juvenile Courts vs. Criminal Courts," 21 *Illinois Law Review* 375 (1926).

[85] F. Allen, "Criminal Justice, Legal Values and the Rehabilitative Ideal," 50 *Journal of Criminal Law, Criminology and Police Science* 226, 230 (1959).

[86] *Ibid.*

[87] Tappan, *Juvenile Delinquency,* p. 200.

[88] See P. Tappan, "Juridical and Administrative Approaches to Children with Problems," in M. Rosenheim, *Justice for the Child* (New York: Free Press of Glencoe, 1962), pp. 144, 151–152; M. Hakeem, "A Critique of the Psychiatric Approach to the Prevention of Juvenile Delinquency," in Giallombardo (ed.), *Juvenile Delinquency,* p. 453.

[89] Hakeem, "Critique of the Psychiatric Approach."

[90] The following is a list of personality traits and kinds of behavior considered symptomatic of need for referral in one study: bashfulness, boastfulness, boisterousness, bossiness, bullying, cheating, cruelty, crying, daydreaming, deceit, defiance, dependence, destructiveness, disobedience, drinking, eating disturbances, effeminate behavior (in boys), enuresis, fabrication, failure to perform assigned tasks, fighting, finicalness, gambling, gatecrashing, hitching rides, ill-mannered behavior, impudence, inattentiveness, indolence, lack of orderliness, masturbation, nail biting, negativism, obscenity, overactivity, over-masculine behavior (in girls), profanity, quarreling, roughness, selfishness, sex perversion, sex play, sexual activity, shifting activities, show-off behavior, silliness, sleep disturbances, smoking, speech disturbances, stealing, stubbornness, sullenness, tardiness, tattling, teasing, temper displays, tics, timidity, thumbsucking, truancy from home, uncleanliness, uncouth personalities, underactivity, undesirable recreation, unsportsmanship, untidiness, violation of street-trade regulations, violation of traffic regulations. S. Stone, E. Castendyck, and H. Hanson, *Children in the Community: The St. Paul Experiment in Child Welfare* (1946), quoted in Hakeem, "Critique of the Psychiatric Approach," pp. 453, 458. The great majority of these "symptoms" have been questioned by other psychiatrists, both as to whether they are indicative of any disturbance and as to the significance, if any, to be attached to them. See *ibid.,* pp. 460–462.

[91] Tappan, *Juvenile Delinquency,* p. 201.

[92] *Ibid.*

[93] Allen, "Criminal Justice," p. 231.

[94] Ketcham, "The Unfulfilled Promise of the American Juvenile Court," in Rosenheim (ed.), *Justice for the Child,* p. 22.

[95] *Ibid.,* pp. 25–26.

[96] *Ibid.,* pp. 27–28.

[97] *Ibid.,* p. 27.

[98] *Ibid.,* pp. 28–30.

[99] *Ibid.,* p. 31.

[100] Van Waters, "The Socialization of Juvenile Court Procedures," in *Abnormal Minds and the Law* (Indianapolis: The Bobbs-Merrill Co., 1923), pp. 158, 160.

[101] Ketcham, "Unfulfilled Promise," p. 31.

[102] *Ibid.,* p. 34.

[103] *Ibid.,* pp. 34–37. See A. Deutsch, *Our Rejected Children* (Boston: Little, Brown & Co., 1950), p. xix; Tappan, *Juvenile Delinquency,* pp. 416–447.

[104] S. Wheeler and L. Cottrell, *Juvenile Delinquency: Its Prevention and Control* (New York: Russell Sage Foundation, 1966), p. 32.

[105] Matza, *Delinquency and Drift,* pp. 111–112.

[106] *Ibid.,* p. 112.

[107] *Ibid.,* pp. 112–113.

[108] *Ibid.,* p. 115.

[109] *Ibid.,* pp. 124–129.

[110] *Ibid.,* p. 124.

[111] Kent v. United States, 383 U.S. 541 (1966).

[112] *Ibid.,* p. 544.

[113] *Ibid.,* p. 557 (emphasis supplied).

[114] *Ibid.,* p. 562.

[115] *Ibid.,* p. 555.

[116] *Ibid.,* pp. 555–556.

[117] E.g. *Ill. Rev. Stat.,* Chap. 37, §701 *et seq.* (1967).

[118] E.g. M. Paulsen, "Kent v. United States: The Constitutional Context of Juvenile Cases," 1966, *Supreme Court Review,* p. 186.

[119] E.g. In re Harris, 64 Cal. Rptr. 319, 434 P. 2d 615 (1967); Summers v. State, 230 N.E. 2d 320 (Ind. 1967); Smith v. Commonwealth, 412 S.W.2d 256 (Ky. App. 1967); State v. Hance, 233 A.2d 326 (Md. App. 1967); State v. Acuna, 78 N.M. 119, 428 P. 2d 658 (1967); State v. Yoss, 225 N.E.2d 275 (Ohio App. 1967); Knott v. Langlois, 231 A.2d 767 (R.I. 1967); Cradle v. Peyton, 208 Va. 243, 156 S.E. 2d 874 (1967).

[120] In re Gault, 387 U.S. 1 (1967).

[121] Arizona Revised Statute Ann. § 13–377 (1956).

[122] Application of Gault, 99 Arizona 181, 407 P.2d 760 (1965).

[123] *Ibid.,* p. 190, 407 P. 2d, p. 767.

[124] *Ibid.,* p. 191, 407 P. 2d, p. 767.

[125] *Ibid.,* p. 191, 407 P. 2d, pp. 767–768.

[126] *Ibid.,* p. 191, 407 P. 2d, p. 768.

[127] The Arizona Supreme Court also passed on other issues which were not decided by the U.S. Supreme Court. The state court held that the adjudication could be based on "clear and convincing evidence" rather than proof "beyond a reasonable doubt," since "[a] juvenile court proceeding is not a criminal case." Application of Gault, 99 Ariz. 181, 407 P. 2d 760, 768 (1965). It was also held that the respondent had no right to an appeal from the decision. *Ibid.,* 407 P. 2d, p. 768. Gault also claimed that his arrest was invalid since

arrests for misdemeanors without warrants are authorized only if committed in the presence of an officer, which, of course, was not true of the telephone calls. This allegation was disposed of on the grounds that (1) "the general law of arrest is usually held to be inapplicable in juvenile proceedings," and (2) the rules for arrest of children were modified by statute. *Ibid.*, 407 P. 2d, pp. 769–770.

[128] In re Gault, 387 U.S. 1, 33 (1967).

[129] *Ibid.*, p. 41.

[130] *Ibid.*, p. 55.

[131] *Ibid.*, p. 57.

[132] *Ibid.*, p. 13.

[133] *Ibid.*, p. 16.

[134] *Ibid.*, p. 50.

[135] *Ibid.*, pp. 20–21.

[136] *Ibid.*, pp. 18–20.

[137] *Ibid.*, p. 21.

[138] *Ibid.*, p. 36.

[139] *Ibid.*

[140] *Ibid.*, p. 24.

[141] *Ibid.*, p. 26, quoting Wheeler and Cottrell, *Juvenile Delinquency,* p. 35.

[142] *Ibid.*, p. 27 (emphasis supplied).

[143] In re Gault, 387 U.S. 1, 17 (1967).

[144] "We do not in this opinion consider the impact of [the Fourteenth Amendment and the Bill of Rights] upon the totality of the relationship of the juvenile and the state. We do not even consider the entire process relating to juvenile 'delinquents.' For example, we are not here concerned with the procedures or constitutional rights applicable to the pre-judicial stages of the juvenile process, nor do we direct our attention to the post-adjudicative or dispositional process." *Ibid.*, p. 13.

[145] *Ibid.*, p. 30.

[146] E.g. *California Welf. and Inst. Code* §§630, 630.1 (Supp. 1971), 634, 658, 679, 700, 702.5 (Supp. 1971); *Colorado Revised Stat.* Chap. 22, §22-1-1 *et seq.* (Supp. 1967); *N.D.C.C.* §27-20-01 *et seq.* (Supp. 1971); *Vermont Stat. Ann.* tit. 33, Chap. 12 (Supp. 1971).

[147] E.g. *Calif. Welf. and Inst. Code* §§625, 627.5 (Supp. 1971) (providing rights of the sort guaranteed by Miranda v. Arizona, 384 U.S. 436 (1966) in adult cases).

[148] In re Urbasek, 38 Ill. 2d 535, 232 N.E. 2d 716 (1967).

[149] *Ibid.*, p. 540, 232 N.E. 2d, p. 719 (emphasis supplied).

[150] In re M., 75 Cal. Rptr. 1, 7, 450 P. 2d 296, 302 (1969), quoting Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A. 2d 9, 15–17 (1968).

[151] *Ibid.*, p. 8, 450 P. 2d, p. 303. This precise issue has since been resolved in favor of the higher standard. In re Winship, 397 U.S. 358 (1970). See text at notes 169–171, *infra.*

[152] The "atypical" nature of the facts presented in *In re Gault* has frequently been given as a reason for dissatisfaction with the rulings (on the theory, one supposes, that "bad cases make hard law"), or, at least, for limiting the decision to the facts and issues squarely presented. Proponents of this position do not mean, of course, that the "facts" in the usual sense were atypical, rather they suggest that the legal procedure involved was unusual, and therefore not representative of the normal functioning of juvenile courts. While it is true, as the Supreme Court and commentators upon *Gault* point out, that several states had by legislation or judicial decision extended some aspects of procedural due process to juvenile courts, see In re Gault, 387 U.S. 1, 14–16 (1967) and notes; Comment, 44 *Washington Law Review* 421, 423 (1969), it can hardly be said that the majority of

jurisdictions accorded the rights to retained or appointed counsel, timely and adequate notice of charges, confrontation, and the privilege against self-incrimination to minor respondents as a matter of law. See N. Lefstein, V. Stapleton, and L. Teitelbaum, "In Search of Juvenile Justice: *Gault* and Its Implementation," 3 *Law and Society Review* 491, 492 (1969). Indeed, there was ample decisional authority for each of the procedures followed, as the opinion of the Arizona Supreme Court indicates. Application of Gault, 99 Ariz. 181, 407 P. 2d 760 (1965). Nor is there convincing evidence that, as a practical matter, juvenile courts were granting these rights even though not required to do so. Although a self-reporting questionnaire survey undertaken by the National Legal Aid and Defender Association in its *amicus curiae* brief in *Gault* indicated that many of the responding courts did "protect" the rights asserted in *Gault,* fundamental questions as to the reliability of self-reporting studies combined with a failure in this survey to define what was meant either by "protect" or what the legal content of the matters to be protected was, do not permit great confidence in the data presented. Brief for National Legal Aid and Defender Association as *Amicus Curiae,* at Appendix 2B, In re Gault, 387 U.S. 1 (1967). Further, empirical observation studies indicate that even after *Gault* was handed down, adjudications of delinquency in major city courts are still reached in much the same procedural setting. Lefstein, Stapleton, and Teitelbaum, *supra.*

[153] 18 *Juvenile Court Judges Journal* 106, 107 (1967).

[154] *Ibid.*

[155] Statement of the Council of Judges, National Council on Crime and Delinquency, p. 1.

[156] "Training at Blue Ridge," 18 *Juvenile Court Judges Journal* 142, 143 (1968).

[157] 18 *Juvenile Court Judges Journal* 106 (1967).

[158] In re Whittington, 391 U.S. 341 (1968).

[159] 18 *Juvenile Court Judges Journal* 142, 143 (1968) (emphasis supplied).

[160] W. Reckless and W. Reckless, "The Initial Impact of the Gault Decision in Ohio," 18 *Juvenile Court Judges Journal* 121 (1968).

[161] Lefstein, Stapleton, and Teitelbaum, "In Search of Juvenile Justice," p. 491.

[162] *Ibid.,* pp. 495–496.

[163] *Ibid.,* p. 495.

[164] *Ibid.,* pp. 509–511, 516. In both cities, a written notice of the right to counsel was sent to the parents of children charged with delinquency, but neither mentioned the right to appointed counsel, nor can, in all likelihood, written notice alone fully satisfy constitutional requirements.

[165] *Ibid.,* pp. 520–524.

[166] *Ibid.,* pp. 526–527.

[167] *Ibid.,* p. 560.

[168] *Ibid.,* pp. 560–561, *n.* 186.

[169] 397 U.S. 358 (1970).

[170] *Ibid.,* p. 367.

[171] See Warner v. State, 258 N.E. 2d 860 (Ind. 1970).

[172] 403 U.S. 528, 547 (1971).

[173] Duncan v. Louisiana, 391 U.S. 145 (1968); Bloom v. Illinois, 391 U.S. 194 (1968).

[174] McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

[175] *Ibid.,* p. 550.

[176] The Court in *McKeiver* several times referred, directly and indirectly, to the ambiguous constitutional status of juvenile courts after *Gault* without, it must be said, doing much to clarify the situation. At the end of the plurality opinion (per Blackmun J.), the

strains were brought together in the following way: "Concern about the inapplicability of exclusionary and other rules of evidence, about the juvenile court judge's possible awareness of the juvenile's prior record and of the contents of the social file; about repeated appearances of the same familiar witnesses in the persons of juvenile and probation officers and social workers—all to the effect that this will create the likelihood of pre-judgment—chooses to ignore, it seems to us, every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court system contemplates.

If the formalities of the criminal adjudicative process are to be superimposed upon the juvenile court system, there is little need for its separate existence. Perhaps that ultimate disillusionment will come one day, but for the moment we are disinclined to give impetus to it." *Ibid.*, pp. 550–551.

At an earlier point, the same opinion quoted at length from the opinion rendered in In re Terry, 438 Pa. 339, 265 A.2d 350 (1970), including the observation that *Gault* is " 'somewhat of a paradox, being both broad and narrow at the same time'; that it 'is broad in that it evidences a fundamental and far-reaching disillusionment with the anticipated benefits of the juvenile court system'; that it is narrow because the court enumerated four due process rights which it held applicable in juvenile proceedings, but declined to rule on two other claimed rights . . . ; that as a consequence the Pennsylvania court was 'confronted with a sweeping rationale and a carefully tailored holding. . . .' " *Ibid.*, pp. 538–539.

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

[178] In re Gault, 387 U.S. 1, 40 (1967), quoting New York Family Court Act §241.

II *The Research Design and Its Implementation*

Although the decision to establish legal aid offices serving juvenile courts was not unprecedented, systematic research into the effect of providing counsel had not previously been undertaken, and in this feature lies the uniqueness of the Lawyer in Juvenile Court Project. The thrust of the research reported in this book was directed to answering the following questions:

1. Does the introduction of counsel affect dispositional outcomes in delinquency proceedings?

2. In what manner does counsel affect the conduct of delinquency hearings? How does the traditional juvenile court, with its procedural informality, react to the introduction of an adversarial role?

Once having decided to include a research component, the most troublesome problem in administering the project became one of supplying pragmatic answers while simultaneously meeting the two major questions asked of any social science research—those involving its internal and external validity.[1] "Internal validity" is concerned with whether the experimental treatment (here, project-lawyer participation) in fact accounts for any experimental differences observed. If, for instance, it appeared that differences in outcomes were discernible between the experimental group (that to which project lawyers were assigned) and the control group (for which project lawyers were not assigned), would they be accounted for by the presence of specially trained attorneys, or could the differences be explained equally well by other factors, such as the existence of a previous record or the nature of the offense with which the juvenile was charged? Considerations of "external validity" are primarily addressed to the question of generalizability; that is, to what extent can effects observed and validated in project cities be expected to occur in other cities and, within each city, how representative was the "test" popula-

tion (the youths selected for the research sample) of the total populations processed by the juvenile courts during the time of the project?

In view of the analytical problems raised by this approach, several basic research strategies were adopted to gather data on the impact of legal participation in delinquency matters. Of these, by far the most important was a design whereby youths charged with delinquency were randomly assigned to experimental and control groups. The experimental group was offered specially trained law counsel whose caseloads were held to a maximum of six new assignments per week, far below that of the ordinary legal aid attorney. The control group, drawn from the same population as the experimental group, was left to the regular legal services available in the project cities. The impact of representation was measured through use of court records on dispositions and through the use of "case reports" which were prepared by the project attorneys and contained a day-to-day summary of each case handled. The case reports included information concerning preparation of the case, defense theories and tactics, the kind and quality of contacts with clients, and personal observations on the nature of the juvenile court as a system.

THE EXPERIMENTAL RESEARCH DESIGN

The classical method of controlling for factors other than the one being studied is the "true" experiment.[2] Subjects are selected from a common population and randomly assigned to different groups, one of which receives an experimental "stimulus" while the other remains as a comparison group. Ascertainment and measurement of the effect of the stimulus is successful only to the extent that the two groups can be said to be similar, since the naturally occurring differences may either cover up or, more importantly, themselves account for any results that may be found.

The key to successful formation of comparable groups is random assignment. By leaving the selection of groups entirely to chance, rather than to the inherently fallible process of personal judgment, the researcher may be confident that the groups with which he deals are equal. Thus, if any results are noted for the experimental group—results missing in the comparison group—it is safe to interpret the differences as having been caused by the experimental stimulus rather than by other variables. Because the experimental method is the most reliable technique for studying the effects of legal innovation,[3] the major research effort was devoted to the planning and execution of a "true" field experiment.

In order to study the effect of legal representation, a design was adopted which controls for the possibility that factors affecting internal validity such as history, maturation, testing, instrumentation, regression, selection, mortality,[4] and the interaction of certain of these factors, such as selection and matura-

tion, might account for any observed effect, rather than the experimental stimulus. This design calls for an experimental (attorney) group and a control (no attorney) group. Youths chosen by random assignment for the experimental group were invited to make use of the project's services—all other juveniles remained uninvited.

The following diagram represents the classic experimental design; O represents an observation, in our study the outcome of the case, X attorney representation, and R random assignment.

	Court Hearing	*Case Outcome*
R	X	O_1
R		O_2

Main effects are readily discernible through the use of this design. If there are differences in outcomes such that these differences cannot be attributed to chance, then it may safely be stated that they were caused by the interceding variable X, which, of course, is attorney representation.

SAMPLE FULFILLMENT: THE PROBLEM OF ATTRITION

In a perfect experiment of this type, there would be no "attrition"—that is, in all experimental cases the youths would be represented by a project lawyer, and no attorney would be retained or appointed in any control case. For obvious reasons, however, we could not force a youth who did not want a lawyer to accept our representation, nor could we effectuate denial of other counsel to youths in the control group who desired legal assistance. The design, therefore, was experimental only insofar as it offered special services to a randomly selected group of youths. All other juveniles were free to obtain either private or appointed counsel.

As Tables II.1 and II.2, setting out rates of sample fulfillment, indicate, attrition was high—especially in Zenith where a public defender and a legal aid office specializing in juvenile court law were available to youths desiring court-appointed counsel. In Gotham, sample fulfillment was somewhat more successful, primarily because alternative legal services were less generally available.

There are two ways of dealing with the problem of attrition. One may simply abandon the experimental design and look for differing effects among the three naturally occurring groups. This method raises serious problems of group comparability, however, which cannot adequately be resolved through available statistical techniques. The more conservative, but statistically acceptable, approach is to maintain the experimental and control groups intact—that

Table II.1
Sample Fulfillment—Zenith

	Experimental Group		*Control Group*	
	%	(*N*)	%	(*N*)
Represented by project lawyer	66.3	(214)		
Represented by other lawyer	16.1	(52)	38.7	(120)
Not represented by lawyer	17.6	(57)	61.3	(190)
	100.0	(323)	100.0	(310)

Table II.2
Sample Fulfillment—Gotham

	Experimental Group		*Control Group*	
	%	(*N*)	%	(*N*)
Represented by project lawyer	76.5	(186)	2.0[a]	(5)
Represented by other lawyer	6.2	(15)	9.4	(24)
Not represented by lawyer	17.3	(42)	88.6	(226)
	100.0	(243)	100.0	(255)

[a] This cell includes five cases from the Gotham control group in which project lawyers were appointed despite an earlier agreement with the court. While the project lawyers in Gotham felt it unwise to refuse assignment in these cases, subsequent negotiations with Gotham's court re-established the original design which stressed the importance of random assignment of cases to the project attorneys.

is, to compare the total experimental group (including the youths who did not accept our offer of representation as well as those who did) with the total control group (including those youths who obtained counsel as well as those who did not).[5] Obviously, any error flowing from this sort of analysis will be in the direction of asserting that there are no differences between groups when in fact differences exist. Equally clearly, this approach increases certainty in interpretation of those effects that do appear, and this confidence amply justifies adoption of the more conservative method. At the same time, differences among the three groups will be presented, but not relied upon, in demonstrating the main impact of the project.

SUCCESS OF RANDOMIZATION

In order to confirm the effectiveness of random assignment, data were gathered on seven factors which, hypothetically, could affect the outcomes in delinquency proceedings: the offense, age, previous court experience, number of petitions filed, judge, race, and home situation of each youth falling into the sample population. As Appendix Tables A.1 through A.14 indicate, there were no significant differences between the experimental and control groups on any of these indexes, vindicating traditional faith in the efficacy of randomization.

A strikingly different picture appears if the same criteria are applied to the three groups occurring as a result of experimental attrition (i.e. project lawyer, other lawyer, no lawyer). Table II.3 (p. 54), particularly when compared with the companion tables in the Appendix, A.33 through A.46, suggests the operation of self-selection in both cities (i.e. that to some extent the subjects themselves determined the available naturally occurring group into which they would fall).

SAMPLE SELECTION

Certain basic restrictions stemming from the nature of the project were placed on selection of the "test population" from which experimental and control groups were randomly selected. The major limitation, imposed by grant requirements, was to include only those youths whose families could not afford to retain counsel. Other restrictions arose from the desire to maintain homogeneity of the test population and to reduce experimental attrition. The characteristics of the sample may be outlined as follows:

1. *Delinquency petitions.* The sample was limited to official cases of delinquency and, in Zenith, "minors in need of supervision." Youths before the court as a result of neglect or dependency were not included in the sample.
2. *Sex.* For reasons of economy, the sample was limited to males to ensure a relatively uniform test population.
3. *Criteria of indigency.* Project cases were limited to poverty areas in the project cities as defined by the 1960 census and by poverty maps furnished by the Office of Economic Opportunity. All youths residing within the poverty areas were assumed for this purpose to be indigent. The client's parent was asked to sign a statement of indigency, and if the parent indicated that he was not indigent, an attorney was not provided by the project.
4. *Homicides.* Boys charged with homicide were excluded because of the vir-

Table II.3
Summary Table—Difference Between Project-Lawyer, Other-Lawyer, and No-Lawyer Groups[a]

	Zenith	*Gotham*
Offense		
Project–None	*n.s.*	**
Other–None	**	**
Project–Other	*n.s.*	*n.s.*
Age		
Project–None	*n.s.*	*n.s.*
Other–None	*n.s.*	*
Project–Other	*n.s.*	*
Previous Court Experience		
Project–None	*n.s.*	**
Other–None	*n.s.*	*n.s.*
Project–Other	*n.s.*	*n.s.*
Number of Petitions		
Project–None	*n.s.*	*n.s.*
Other–None	*n.s.*	**
Project–Other	*n.s.*	*
Judge		
Project–None	*n.s.*	*n.s.*
Other–None	**	*n.s.*
Project–Other	**	*n.s.*
Race		
Project–None	*	*n.s.*
Other–None	*	*n.s.*
Project–Other	*n.s.*	*n.s.*
Home Situation		
Project–None	*n.s.*	*n.s.*
Other–None	*n.s.*	*n.s.*
Project–Other	*n.s.*	*n.s.*

[a] Although not strictly applicable, differences are expressed as significance levels measured by the χ^2 statistic. *n.s.*=not significant, *=$p<.05$, **=$p<.01$.

tual certainty that there would be no control group. In Gotham, for example, all such youths must, under state law, be provided counsel.

5. *Parental complaint.* Early pre-tests of the program indicated that parents who initiate charges against their children are unreceptive to having an attorney represent their child. Consequently, in order to reduce the attri-

tion rate, all cases where a parent was the official complainant were excluded. Many cases remained, however, in which the parent originated the proceedings by filing a complaint with the police, but the latter appear as the complainants of record. It is likely that many of our attrition cases were of this sort, but there is insufficient data to test this hypothesis.

6. *Length of time between filing and court date.* A minimum of five days in Gotham and six days in Zenith between official filing and the first scheduled court date was established as a selection standard. This procedure did not, it should be noted, result in the exclusion of children held in detention facilities, even though their hearings were usually scheduled soon after initial filing of charges. Boys in custody as well as those released to their parents were included in the test population.
7. *Age.* The specific age ranges adopted were: over eight years old in both cities, and up to eighteen in Gotham and seventeen in Zenith (the maximum jurisdictional limits), if the child would reach the latter limit within three months of intake.
8. *Multiple cases.* To reduce the possibility of conflicting interests in legal representation, if several boys were jointly charged with an offense, only one of them, selected at random, was included in the test population. The same approach was adopted where it appeared that youths were involved in more than one court case at a time and with different groups of boys, the objective being to avoid the assignment of "associated boys" to the project lawyers.
9. *Counsel already present.* Boys known to have retained an attorney were excluded.
10. *Other exclusions.* The following special exclusions were applied in the respective project cities:

    Gotham: Cases referred to conference committees at the intake stage were excluded.[6]

    Zenith: Boys brought to court on a "mentally retarded" petition in conjunction with either a delinquency or minor in need of supervision petition were excluded.
11. *Rule of boy* v. *Rule of case.* A boy once excluded as ineligible for the research sample was not subsequently acceptable for inclusion. For example, a boy initially rejected because he did not live in a poverty area did not become eligible for inclusion on a subsequent occasion even if it then appeared that he had a new address within a designated area. In addition, there were many cases where boys, having previously been represented by project counsel, were brought back to court on new charges. Although these boys were free to come back to the project on their own initiative, they were not accepted into the test population a second time.

The foregoing exclusions—resulting in part from the strong emphasis placed on internal validity—necessarily reduce the extent to which project findings may be generalized. We are confident, however, that within the project cities, the "test" populations are closely comparable with the "total" populations against whom delinquency charges are filed, except, of course, that the study is not addressed to middle-class or female delinquency, nor to the defense of homicide cases. With a few exceptions, the group of youths selected as a test population in each city is remarkably similar to the total juvenile court population so far as relevant background characteristics are concerned. Appendix Tables A.15 through A.26 indicate that in both Zenith and Gotham the groups are about equal in terms of offense charged, age of respondent, presiding judge, and home situation. There are, unsurprisingly, differences in racial distribution between the test and total populations in both cities. These differences undoubtedly are explained by the exclusion of youths residing in nonpoverty areas; since race is correlated with poverty, this correlation should and does appear in the selection process. Differences also appear in the number of petitions filed on respondents; this phenomenon is discussed in the next chapter.

It is also true that since the project courts served large, northern, urban populations, no data are provided regarding non-metropolitan areas, nor can the results be safely generalized to other geographical regions. Nonetheless, the effects set forth in this study may be generalized to the extent that the problems of delinquency are those of northern urban population centers.

THE COURTS

The Business of the Courts. As has been suggested, each of the courts studied is located in an urban area. The county served by Zenith's juvenile court has a population slightly in excess of five million; that served by the Gotham court claims just under one million residents. During the project's activities, 4,242 delinquency petitions were filed on 3,884 youths in Zenith—a ratio of 1.09 petitions per juvenile. Expectedly (in view of the population difference), fewer petitions were filed in Gotham; however, the petition-per-child proportion was higher—1,794 juveniles were charged with 2,528 offenses, a ratio of 1.41.

Although the sample populations closely approximated the total juvenile court population in each city, some differences between the two cities regarding the types of cases handled should be noted. As Tables A.27 through A.32 in the Appendix reveal, far more petitions alleging homicide and aggravated offenses against the person were filed in Zenith than in Gotham (18.2 per cent as compared with 5.5 per cent). Correspondingly, charges of crimes against property, albeit the most frequently invoked category in both cities, were con-

siderably less prevalent in Zenith (45.5 per cent as against 54.3 per cent). Similar differences appear in other measures; Zenith's court had a somewhat greater proportion of cases involving children in the 14–15-year-old range, fewer petitions filed per youth, and a much greater proportion of cases in which the home situation was characterized by a missing father. A number of factors probably account for these differences, not least among them are varying approaches to police work and intake procedures.

The Judicial Personnel. Seven juvenile courtrooms were operating in Zenith at this time, presided over by a much larger number of judges due to rotation of personnel and the use of "visiting" judges. Four judges were assigned to the separate juvenile and domestic relations branches of the Gotham court. One sat only on the juvenile bench, two rotated every six months between the two assignments, and the fourth extended his term in domestic relations court, coming to the juvenile section only at the project's end.

The Nature of the Courts. Aside from the numbers of judges and delinquency petitions processed, court procedures in the two cities differed substantially—so much so, indeed, that each court can justifiably be treated as a separate social system. The Gotham court more nearly typifies the traditional juvenile court philosophy, with its "social work" orientation and concomitant de-emphasis of legal procedures in favor of reaching and treating the "whole child." This, of course, does not mean that Zenith's court is disinterested in the child's well-being; on the contrary, its judges demonstrate considerable concern for the child's welfare at the dispositional hearing. However, unlike Gotham's court, the adjudicative and dispositional processes are clearly delineated, and a finding of delinquency, if one is made, is carefully noted. Tests for the admissibility of evidence are more consistently applied in Zenith's court, and there is less reliance on a "social report" at the adjudication stage than was the practice in Gotham.

Several factors account for the more "legalistic" approach of the Zenith juvenile court. In the first place, proceedings tended to be more formally structured, and the roles and rights of participants more clearly defined. This formality is attributable in part to the use of a separate, pre-adjudicative "arraignment" hearing at which rights are explained and specific pleas taken, and to the presence of a prosecuting attorney at all delinquency hearings. These elements were only rarely found in the Gotham court.

Second, the state statute governing Zenith's juvenile court was enacted about a year and a half before the Supreme Court's decision in *Gault.* According to its provisions, juvenile court judges were required to advise the child and his parent that, upon request, counsel would be appointed by the court if they were financially unable to employ an attorney. The statute also permitted a minor to refuse to testify during a delinquency adjudication, although it does not appear that the judge was required to inform the parties of this privilege. In

Gotham, the code governing juvenile procedures prior to *Gault* was older and more consistent with traditional juvenile court philosophy. The statute provided only that a juvenile was entitled to be "represented by counsel at every stage of the proceedings," and that the court could, *at its discretion,* assign counsel where it was deemed necessary for a fair hearing and where the respondent was unable to secure his own. The child was specifically guaranteed legal representation only when he was charged with homicide. The privilege against self-incrimination was neither statutorily recognized for, nor extended in practice to, delinquency hearings in Gotham.

Finally, and perhaps most important, none of the judges in Zenith had been on the juvenile court bench very long and, consequently, they were less committed to the value of procedural informality which characterizes traditional juvenile court orientation. In fact, five of the six judges sitting regularly at the time of this study had served less than a year, and the sixth judge was in his third year. On the other hand, one of the four Gotham judges was in his twenty-third year of service, and another in his eleventh. Both these judges had, in addition, filled high positions in the National Council of Juvenile Court Judges and were deeply committed to its fundamentalist philosophy. Of the remaining judges, both in their third year of service, only one—formerly a criminal law practitioner—evidenced much sympathy with the "legalistic" approach.

THE LAWYERS

As suggested in Chapter I, the role of the defense attorney in juvenile court might have been defined in a number of ways. It was decided by the project's Advisory Board, however, that project lawyers should consistently conduct themselves in a generally adversary fashion, especially at the adjudication hearing, rather than adopt a more "treatment-oriented" posture or any combination of approaches.[7] The notion that a lawyer should "assist the court" in determining the propriety of a delinquency finding was rejected; thus, for instance, dismissals were to be sought when the evidence was legally insufficient and motions to suppress evidence were to be filed whenever appropriate.

Consistent with the Advisory Board's recommendations, applicants were selected for the project on three principal criteria—academic standing, recommendations, and willingness to undertake a substantially "adversarial" role in the defense of delinquency matters. Three attorneys for each city, all graduating law school seniors, were chosen in June, 1966. Overall, the six attorneys comprised an unusually homogeneous group; in addition to approaching representation with similar viewpoints, they were also of the same sex, race, and approximate age. Thus, in analyzing the effects produced on the court

and the children represented, the lawyers are treated as a group as well as individuals.

Special orientation sessions were arranged for the project attorneys before their entrance into practice, including visits to institutions, an introduction to police department procedures, a survey of available community facilities which worked with "problem" youths, examination of relevant statutory and decisional law, and observation of juvenile court proceedings. In addition, the lawyers were enrolled in graduate law courses dealing with juvenile courts, delinquency, and related areas throughout their association with the project. This preparation, apart from its general usefulness, was designed to enable the project attorneys to participate fully in the dispositional as well as adjudicative aspects of juvenile court proceedings. They were expected to analyze critically social investigation and other reports, to locate community agencies willing to work with their clients' particular problems, and generally to assist their clients and the court by canvassing and presenting alternative dispositional arrangements in appropriate cases.

In view of the intensive training afforded project lawyers, their interest in the area of juvenile law, and the controlled caseload, it may be that they are neither typical of general practitioners nor of legal aid attorneys. Differences with other lawyers, however, are neither regretted nor unintended. In order to test whether lawyers *can* have an effect on the court's structure and on the children represented, it was essential to involve attorneys with high dedication and ability, and to provide specialized training and ample time for court preparation. If, for instance, no lawyer effects are perceived, but the lawyers are less than wholly dedicated, are inadequately trained or overworked, it still would be impossible to state whether legal representation actually *can* influence the matters under investigation.

Thus, highly skillful and intensive representation by project lawyers was desirable, since any effects on the attitude and behavior of the juveniles studied, as well as outcomes, were more likely to be related directly to either the presence or absence of counsel. On the other hand, if no effects were recorded despite the specialized representation afforded, this would suggest that recommendations regarding the conduct of counsel be based on grounds other than the presumed effects on the attitudes and behavior of youths or the outcomes of cases.

It may be suggested that, to the extent that legal experience is related to skillful practice, the project's reliance on recent law graduates subserved the achievement of maximum effect through maximization of the level of representation. Without denying the general proposition that experience in law, as with medicine, leads to more capable performance, two interrelated points should be made. First, the Lawyer Project, like other field experiments, must to some extent experiment with several factors at the same time—in this case,

with groups of lawyers and judges as well as with groups of boys. Of course, the former groups are too small to permit generalization, and to be confident that the study measures what it set out to measure—the impact of a style of representation—it was necessary to control the lawyer group as far as possible. For this reason, the homogeneity actually achieved in the lawyer group was not fortuitous but designed and important, as has already been stated. Since differences in legal experience among practitioners are inevitable and their effects unpredictable, the requirement of homogeneity militated against use of practiced attorneys. Moreover, it is not wholly clear that use of experienced counsel would have resulted in more capable *adversarial* representation in the long run. It may be that older lawyers are already impressed with the traditional mold in regard to representation in juvenile court matters,[8] or that they are accustomed to settling (by plea, for example) criminal and quasi-criminal cases, rather than pushing them.[9] Thus, concern for securing homogeneous lawyer groups and for providing representation of a certain description led to reliance on the foregoing criteria, supplemented by special training.

NOTES

[1] D. T. Campbell and J. C. Stanley, *Experimental and Quasi-Experimental Designs for Research on Teaching* (Chicago: Rand McNally and Co., 1966).

[2] "True" experimental designs have rarely been attempted in sociolegal research. Notable exceptions have been the Vera Foundation's Bail Study in New York City (D. Freed and P. Wald, *Bail in the United States* [New York: Record Press, 1964], pp. 59–64); A Report to the National Conference on Bail and Criminal Justice, Washington, D.C., May 27–29, 1964; R. D. Schwartz and S. Orleans, "On Legal Sanctions," 34 *University of Chicago Law Review* 274 (1967); R. D. Schwartz and Jerome Skolnick, "Two Studies of Legal Stigma," 10 *Social Problems* 133 (1962); M. Rosenberg, *The Pretrial Conference and Effective Justice; A Controlled Test in Personal Injury Litigation* (New York: Columbia University Press, 1964).

[3] H. Zeisel, H. Kalven, and B. Buchholz, *Delay in Court* (Boston: Little, Brown & Co., 1959), pp. 241–242.

[4] (1) *History,* the specific events occurring between the first and second measurement in addition to the experimental variable.

(2) *Maturation,* processes within the respondents operating as a function of the passage of time per se (not specific to the particular events), including growing older, growing hungrier, growing more tired, and the like.

(3) *Testing,* the effects of taking a test upon the scores of a second testing.

(4) *Instrumentation,* in which changes in the calibration of a measuring instrument or changes in the observers or scorers used may produce changes in the obtained measurements.

(5) *Statistical regression,* operating where groups have been selected on the basis of their extreme scores.

(6) Biases resulting from differential *selection* of respondents for the comparison groups.

(7) *Experimental mortality,* or differential loss of respondents from the comparison groups.

D. T. Campbell and J. C. Stanley, *Experimental and Quasi-Experimental Designs,* p. 5.

[5] D. T. Campbell, "Invited Therapy in an Archival or Institutional Records Setting: With Comments on the Problems of Turndowns," ms., Northwestern University, undated.

[6] Conference committees, established pursuant to state law, are comprised of lay members who seek to adjust on an informal basis what otherwise would be official cases in juvenile court.

[7] Indeed, at one point in the project's development, it was proposed that the effects of two or more distinct modes of attorney representation be tested by having the lawyers vary their styles of representation systematically. It was ultimately decided, however, that a single, adversarial approach be adopted by all project counsel. See N. Lefstein and V. Stapleton, "Counsel in Juvenile Courts: An Experimental Study," *National Council of Juvenile Court Judges,* 1967, p. 12.

[8] See, e.g., A. Platt and R. Friedman, "The Limits of Advocacy: Occupational Hazards in Juvenile Court," 116 *University of Pennsylvania Law Review* 1156 (1968), for a discussion of modes of representation in one juvenile court.

[9] For a discussion of defense roles, see A. Blumberg, *Criminal Justice* (Chicago: Quadrangle Book, 1970); D. Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office," 12 *Social Problems* 255 (1965); J. Skolnick, "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 52 (1967). And, from the other end of the system, the remarks of Jackson's thief are of interest: "When you want a lawyer, you don't want a trial lawyer, you want a fixer. You don't care how good he is in a courtroom, you want to fix it; you don't want to have to go to trial. . . . But if you got to go to trial, then you do not want any one of these old fixers that doesn't know how to fight a case. You want a good trial lawyer. And most good trial lawyers are young lawyers that are right out of law school, because at law school they've practiced on this and they're actually better than some of your older lawyers. [If you cannot get someone like Percy Foreman], you want to get you a young lawyer that's trying to make a reputation for himself." B. Jackson, *A Thief's Primer* (1969), pp. 130–131.

III *The Impact of the Lawyer*

It is of considerable interest to know precisely what impact lawyers have on the outcomes of delinquency hearings in view of the widely felt apprehension that, once attorneys entered the juvenile courts on a regular basis, the unrestricted use of adversarial defense tactics would subvert the special purposes of these courts. Dismissals by virtue of a legal "technicality" were matters of particular concern—the guilty youth obviously would not benefit from available rehabilitation alternatives, and society might be harmed through the return to its midst of an unregenerated and unrepentant juvenile.

Fears of a massive increase in the dismissal rate are based, perhaps, upon the reputation of the American trial lawyer, whose legendary skills suggest that forensic talent and legal wisdom influence the decisions of judge and jury. The Supreme Court's landmark decision in *Gideon* v. *Wainwright*[1] certainly lends official recognition to the belief that defense counsel may be indispensable to the fair and proper conduct of the criminal hearing, and there is no doubt that the words of the Court in *In re Gault* reflect this assumption.

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. *The child "requires the guiding hand of counsel at every step in the proceedings against him."*[2]

While the majority opinion clearly established the right to counsel in at least those delinquency proceedings where incarceration may result, there is some internal evidence that the Court shared with others grave concern about the potential effects of its decision. After proclaiming that "due process of law is the primary and indispensable foundation of individual freedom,"[3] the opinion carefully points out—less than a page later—that "the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the

juvenile process."[4] Additionally, in addressing itself to the role of lawyers in delinquency hearings, the Court stated, "recognition of the right to counsel involves no necessary interference with the special purposes of juvenile court procedures; indeed, it seems that counsel can play an important role in the process of rehabilitation."[5]

The Court's somewhat oblique references to the role of counsel were preceded by years of intense speculation by judges,[6] lawyers,[7] and social scientists[8] on just what the obligation of defense attorneys might be in juvenile courts. Although by no means unanimous, general opinion did not discourage a somewhat modified version of the traditional adversarial role. A statement from the National Council on Crime and Delinquency illustrates both the form and content of these modifications.

> Does the lawyer in juvenile court have an additional duty to present facts coming to his attention which may lead to an adjudication of delinquency or neglect or a supervisory order? Disclosure [to the court] of facts pointing to the need for treatment may be viewed as consistent with the child's ultimate interest, and should be so presented to him and his parents. This disclosure may be viewed as a fulfillment of the duty the attorney must assume, as an officer of the court, in any proceeding involving more than merely private interests, to the court and the community as well as to his client.[9]

Recommendations urging modification of the traditional attorney's role have been based largely on the personal experiences of juvenile court judges whose opinions, not unnaturally, favor a substantial curtailment of adversarial tactics. A 1964 survey of American juvenile courts serving the largest metropolitan areas concluded that:

> Almost all judges look with favor on attorney appearances in their courts although they consider the performance of most attorneys to be not better than adequate (with perhaps a third of this group seen as less than adequate). In terms of critical assessment, judges are concerned with a perceived lack of knowledge of the philosophy and purposes of the juvenile court and unfamiliarity with its procedures on the part of attorneys. They see the lawyer's chief value as lying in the areas of interpretation of the court's approach and securing cooperation in the court's disposition rather than more traditional roles of fact elicitation and preservation of legal rights.[10]

There is, in light of the judicial reaction to *Gault* already set forth, good reason to believe that the above statement still expresses a view generally held by juvenile court judges, and at least one among them has reiterated a non-adversarial conception of the attorney's role:

> We welcome these Legal Aid lawyers in the Juvenile Court and we acknowledge as we have always done that every child and parent has the right to be represented by competent counsel. But the availability of these lawyers has

> greatly increased the number of denials of the charges. We are hopeful that as these lawyers become more familiar with the workings of the Court, our purpose and philosophy, that they will become more accepting of our procedures. However, in the meantime their vigorous and contentious representation of their clients makes it more difficult for the Judge to adduce the direct evidence, and almost impossible for him to cross-examine.[11]

Underlying these statements and recommendations is a belief that adversary-minded attorneys will somehow tip the scales of justice against the court and society. Unfortunately, however, firm evidence is lacking that lawyers have *any* impact on the outcomes of trials. Indeed, it is a question that has rarely been well studied. Kalven and Zeisel, addressing themselves to the lawyer's impact on jury trials, conclude that the influence of "superior counsel" on outcomes of cases (when contrasted with the prosecutor's performance) is, at best, minimal.[12]

More recent studies of the public defender system cast further doubts. Although the *Canons of Professional Ethics* state explicitly that a lawyer ". . . is bound by all fair and honorable means, to present every defense that the law of the land permits . . ."[13] and further that the "lawyer owes, 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied,"[14] it would appear that the indigent can expect their court-appointed lawyers to be more interested in plea-bargaining than in a "zealous" defense.[15] Nor, apparently, is this a characteristic solely of the overworked and underpaid public defender—the charge has been made that privately retained counsel in criminal cases rarely live up to the adversarial model of advocacy.[16]

Research on the impact of counsel in juvenile hearings has been equally limited. Although one study of California juvenile courts has indicated "that representation by counsel more often secures a favorable outcome of the case than where there is no counsel," and that "proportionally, dismissals were ordered nearly three times as frequently in attorney as in non-attorney cases,"[17] it appears that this effect is confined to neglect cases, and that the presence of counsel has no observable impact on delinquency hearings—a fact the author readily concedes. Another study, involving a large, metropolitan juvenile court, reports that the dismissal rate for cases in which the public defender appeared was substantially higher (by 20 per cent) than that for cases in which the child was not represented or was represented by another attorney. Consequently, the authors conclude, "The public defender in juvenile court is not, as it has been suggested of his counterparts in criminal courts, merely an instrumentality for processing guilty clients. . . ."[18] These findings should, however, be received with some caution. The definition of "dismissal" is somewhat vague, and includes an interim "supervision" order which may lead

to a future "dismissal" (pending good behavior), but is not technically the same as an outright dismissal of the sort resulting from the state's unwillingness to prosecute, or inability to prove, the case. Confidence in the reported effects is further impaired by the study's failure to control for other factors which might account for their results, such as the nature of the offense charged, the number of pending petitions, extent of previous court record, and the possibility of interaction effects between the child's situation and the public defender's performance.[19] It may fairly be said, therefore, that with regard to both criminal and delinquency proceedings, the effect of defense counsel on the outcomes of cases in which they appear has yet to be demonstrated in conclusive fashion.

It would, of course, be gratifying to report that our research in Zenith and Gotham has definitively confirmed (or refuted) prevailing assumptions concerning the effect of legal representation. Since the analytical method adopted goes far toward assuring that the experimental stimulus (project-attorney involvement) in fact accounts for any effects observed in each city, discovery of a similar pattern of effects (or lack thereof) would permit the drawing of conclusions regarding the impact of lawyer participation, within the limits of generalization set out in the previous chapter. Unfortunately, as Table III.1 indicates, there are striking differences in effects when the project cities are compared. With regard to adjudicative results (the extent to which findings of delinquency were entered), it is clear that Zenith's attorneys

Table III.1
Outcomes of Cases

	Zenith				*Gotham*			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*	
Disposition	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Case dismissed	49.8	(161)	40.0	(124)	18.5	(45)	19.2	(49)
Delinquency not formally entered, case continued under court supervision for a limited time	9.9	(32)	3.9	(12)	30.5	(74)	34.5	(88)
Probation	31.6	(102)	43.9	(136)	40.3	(98)	40.4	(103)
Commitment	8.7	(28)	12.3	(38)	10.7	(26)	5.9	(15)
	100.0	(323)	100.1[a]	(310)	100.0	(243)	100.0	(255)
	$\chi^2 = 20.008, p < .01$				$\chi^2 = 4.169$, *n.s.*			

[a] Per cents do not add up to 100 due to rounding.

had a profound impact on the outcomes of cases with which they were associated. It will be recalled that the "experimental" and "control" groups in Table III.1 were maintained intact for analytical reasons already described—that is, project-lawyer effect in the experimental group is diluted to the extent that the youths refused project-lawyer representation, and the control group includes a considerable number of youths who were in fact represented by other lawyers. Even using this conservative analysis, dismissals in Zenith (either on the merits of the case, or for other reasons, such as want of prosecution) were ordered in 49.8 per cent of all experimental cases compared with 40.0 per cent in the control groups—a distribution of outcomes which cannot be attributed to chance variation.

This trend is even more pronounced where the court ordered a case continued under informal court supervision, an avenue explored when it is felt that, although the child has in fact committed the delinquent act alleged, mitigating circumstances exist which justify withholding formal adjudication and sanctions. Statutory authorization for this procedure is included in Zenith's State Juvenile Court Act adopted in 1966, affording the judge an opportunity to continue the proceeding without a finding of delinquency; the practical result of proceeding in this fashion normally is a dismissal at a later time if the youth avoids further difficulty with the law.[20] In Zenith, experimental group cases resulted in such a continuance between two and three times as often as control group cases, a circumstance that gains added significance in view of the relative infrequency of such orders.

In Gotham, by contrast, no significant differences appear between the adjudicative results reached in the experimental and control groups. Dismissals were entered in 18.5 per cent of the experimental group cases and in 19.2 per cent of those in the control group. The Gotham court has also adopted a continuance without finding procedure and, as the table suggests, relies heavily on the option.[21] Unlike Zenith, no difference in its availability was observed; approximately 30 per cent of the experimental group and 34 per cent of the control group cases were continued under court supervision.

A further measure of the comparative impact of project-lawyer representation confirms the differences indicated above. Combining the cases in which no finding of delinquency was entered at adjudication (i.e. outright dismissals and "continuances under supervision") affords an indication of the extent to which counsel influenced the rendition of "favorable" (or "lenient") adjudicative results. Taking first only the control groups—those unaffected by the assignment of project counsel—it appears that Gotham's court is somewhat more likely to reach a "favorable" adjudicative result (based largely, however, on the continuance option) than is true in Zenith (53.7 per cent as compared with 43.9 per cent). These data are reflected in Figure III.1 on page 84.

Measured in this fashion, the impact of defense counsel in Zenith is even

more pronounced. The results in Gotham—a decrease of 4.7 per cent in dismissals and continuances and a similar increase of 5.2 per cent in findings of delinquency where project counsel appeared—may indicate a trend toward less favorable results but can still be ascribed to the operation of chance. This trend is emphatically reversed in Zenith. The increase of almost 16 per cent in the combined "dismissal" and "continuance" categories is explainable only in terms of lawyer participation.

Once a finding of delinquency was entered, somewhat different but no less interesting results were noted in Zenith and Gotham. While Table III.1 might seem to suggest that Zenith's attorneys were as successful in reducing the number of commitments once a finding was made as they were in avoiding adjudications of delinquency in the first place, Table III.2 indicates this

Table III.2
Disposition of Children Found Delinquent

	Zenith		*Gotham*	
	Experimental Group	*Control Group*	*Experimental Group*	*Control Group*
	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Probation	78.5 (102)	78.2 (136)	79.0 (98)	85.5 (103)
Commitment	21.5 (28)	21.8 (38)	21.0 (26)	14.5 (15)
	100.0 (130)	100.0 (174)	100.0 (124)	100.0 (118)
	$p = n.s.$		$\chi^2 = 2.28$, *n.s.*	

not to be the case. In fact, it seems that the lower commitment rate for experimental group cases in Zenith is wholly a function of the lawyers' success in avoiding entrance of a finding of delinquency; the distribution of dispositions between probation and commitment of youths found delinquent is almost identical in the experimental and control groups. In Gotham, what seemed a trend toward more severe dispositions in experimental group cases also appears when cases which did not result in an adjudication of delinquency are eliminated. It should be emphasized, however, that the results in Gotham indicate at most a trend; they still are explainable by the operation of chance rather than project-attorney performance.

It has already been conceded that the conservative analytical approach followed in this study creates the possibility that the project lawyers' impact in Gotham is somehow "covered up" by attrition in the experimental and control groups. A less rigorous practice would be to compare project-attorney

cases with all other cases falling into the sample selection. Although, as suggested earlier, this sort of analysis does not take into account the possibility of interaction between selection and treatment, it is useful, nonetheless, to contrast observed project outcomes with the "normal" disposition rates (occurring both where the client is unrepresented and where he is represented by nonproject counsel) for each of the courts. If attrition has indeed "covered up" true effects in both cities, this secondary analysis should show "stronger" lawyer effects in both instances. Table III.3 clearly demonstrates that no hid-

Table III.3
Project Cases Compared with All Other Outcomes

	Zenith				*Gotham*			
	Project Cases		*All Other Cases*		*Project Cases*		*All Other Cases*	
Disposition	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismissed	54.2	(116)	40.3	(169)	17.3	(33)	19.9	(61)
Delinquency not formally entered, case continued under court supervision for a limited time	12.6	(27)	4.1	(17)	30.9	(59)	33.5	(103)
Probation	26.2	(56)	43.4	(182)	40.8	(78)	40.1	(123)
Commitment	7.0	(15)	12.2	(51)	11.0	(21)	6.5	(20)
	100.0	(214)	100.0	(419)	100.0	(191)	100.0	(307)

den effects exist. Zenith's attorneys are extraordinarily successful in winning cases, and if the 54.2 per cent dismissal rate is combined with the "continuance" cases, the incidence of "favorable" adjudication results reaches 66.8 per cent as compared with a rate of 44.4 per cent in all other cases.

In Gotham, however, no such increase in attorney effectiveness is indicated. Indeed, the proportion of favorable results drops slightly (both absolutely and in relation to all other cases), clearly indicating that experimental attrition does not account for the lack of observed project-lawyer effect in that court.

PROJECT LAWYERS AND OTHER LAWYERS

We have until now ignored comparisons between the project-attorneys' results and those for the groups including minors who were without representa-

tion and those who were represented by "other" counsel. In the section on methodology we pleaded that such a breakdown greatly complicates interpretation, because of a confounding of selection with representation. It may be useful to indicate more clearly why interpretation of this sort is necessarily questionable and, at the same time, to show that comparison of "project," "other," and "no attorney" groups does not detract from our earlier and more reliable findings.

Table III.4 summarizes the results achieved in Gotham and Zenith by each of these three groups. Accepting the figures at face value, it appears that Zenith's office was effective in producing what have been considered "favorable" results while "other" attorneys (93 per cent of whom were employed by legal aid or public defender offices) have no effect whatsoever, and that, in Gotham, no project-lawyer effect is discerned, but "other" attorneys (usually private attorneys) apparently suffer a higher proportion of commitments than occurs in unrepresented cases (20.5 per cent as against 4.5 per cent). From this information, one may be tempted to infer, for instance, that because clients represented by "other lawyers" in Gotham are more likely to be committed to an institution than those who have project counsel or none at all, the "other" lawyers are somehow less competent than project attorneys or, indeed, than youths appearing *pro se*. This hypothesis is quickly dispelled if we take into account factors other than the identity of counsel which might influence disposition, and which may, in fact, lead to the engagement of private counsel. The causal inference regarding incidence of commitment is thus changed from:

attorney ⟶ disposition

to an alternative model

selection (by client) ⟶ attorney ⟶ disposition.

To take a single specific example, certainly one factor which may be said to influence the difficulty of a case—both with regard to the likelihood of obtaining an outright dismissal and of incurring a less severe disposition in the event of an adjudication of delinquency—is the number of petitions filed against a juvenile at the time he appears before the court. As Table III.5 indicates, it is obvious that "other" attorneys in Gotham receive a greater proportion of the cases in which multiple petitions are lodged than either of the other groups. This in itself could easily justify the proposition that "other" attorneys are handling more difficult cases. When the influence of multiple petitions on outcomes is taken into account, moreover, the weakness of the non-experimental interpretation becomes manifest. Table III.6(a) indicates the outcomes

Table III.4
Project-Other-No Lawyer Comparisons on Case Dispositions

Disposition	Zenith						Gotham					
	Project Lawyer		*Other Lawyer*		*No Lawyer*		*Project Lawyer*		*Other Lawyer*		*No Lawyer*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismissed	54.2	(116)	42.4	(73)	38.9	(96)	17.3	(33)	20.5	(8)	19.8	(53)
Delinquency not formally entered, case continued under court supervision for a limited time	12.5	(27)	4.7	(8)	3.6	(9)	30.9	(59)	28.2	(11)	34.3	(92)
Probation	26.2	(56)	40.7	(70)	45.3	(112)	40.8	(78)	30.8	(12)	41.4	(111)
Commitment	7.0	(15)	12.2	(21)	12.1	(30)	11.0	(21)	20.5	(8)	4.5	(12)
	99.9[a]	(214)	100.0	(172)	99.9[a]	(247)	100.0	(191)	100.0	(39)	100.0	(268)

[a] Per cents do not add up to 100 due to rounding.

of cases in each of the three groups when only one petition is pending against the respondent at adjudication. Tables III.6(b) and III.6(c) set out the results when more than one charge has been laid. The former deals with multiple petitions filed simultaneously and the latter with cases in which additional charges have been filed between the time of the original delinquency petition and the date of the adjudicatory hearing. Although relationships among the groups in Zenith are the same regardless of the number of petitions pending, substantial shifts in comparative disposition rates are found in Gotham. The only conclusion that can be drawn with regard to Gotham is that project and other attorneys are differentially more effective in securing favorable outcomes, depending wholly on the category under examination. Over-all, there is little support for the suggestion that youths with "other" attorneys are worse off than others. Indeed, once having controlled for the selection factor, it might even be claimed that the "other" attorney group is the most successful and that the Gotham project clientele was least successful in avoiding unfavorable results.

In addition, although project counsel were selected on the basis of certain known criteria and submitted case reports indicating the nature of their legal activities, nothing is known about the personal background of the "other" lawyers, nor about the nature and quality of their preparations for, and tactics of, defense. The absence of information on these points also prevents useful comparison of the "project" and "other" lawyer groups, rendering any effort in that direction wholly speculative. Accordingly, such comparisons will be avoided in favor of concentration on more certain knowledge about the legal activities of the two project groups.

SPECIFICATION OF EFFECTS*

The foregoing has established the existence of first-order (main) effects in the Zenith experimental group cases, and that these effects are explained by the presence of a project attorney rather than by some other variable. Nevertheless, it is useful to know, as precisely as possible, just where these effects occur. It may be that the project lawyer is effective only in certain kinds of cases; for instance, his success may be limited to cases where he appeared before Judge A or Judge B, or where his client was under fifteen years of age, or was charged with a crime against property. In more technical language, explanation of project results might be confined to the interaction of lawyer participation with one or more of the variables that might hypothetically affect outcomes (e.g. identity of judge, age, race, previous court experi-

* The data for this discussion are reflected in Figures III.2–III.16 located at the end of this Chapter beginning on page 85.

Table III.5
Distribution of Cases by Number of Petitions

Number of Petitions Filed	*Zenith*						*Gotham*					
	Project Lawyer		*Other Lawyer*		*No Lawyer*		*Project Lawyer*		*Other Lawyer*		*No Lawyer*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Single petition on intake	75.7	(162)	77.9	(134)	78.5	(194)	56.5	(108)	35.9	(14)	63.4	(170)
Multiple petition on intake	12.1	(26)	11.6	(20)	15.0	(37)	27.7	(53)	33.3	(13)	25.4	(68)
Apprehended one or more times after intake	12.1	(26)	10.5	(18)	6.5	(16)	15.7	(30)	30.8	(12)	11.2	(30)
	99.9[a]	(214)	100.0	(172)	100.0	(247)	99.9[a]	(191)	100.0	(39)	100.0	(268)

[a] Per cents do not add up to 100 due to rounding.

Table III.6(a)
Outcomes of Cases by Type of Representation and Number of Petitions: Single Petition on Intake

	Zenith						*Gotham*					
	Project Lawyer		*Other Lawyer*		*No Lawyer*		*Project Lawyer*		*Other Lawyer*		*No Lawyer*	
Disposition	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismissed	56.8	(92)	47.8	(64)	43.8	(85)	22.2	(24)	50.0	(7)	22.9	(39)
Delinquency not formally entered, case continued under court supervision for a limited time	14.2	(23)	4.5	(6)	3.1	(6)	34.3	(37)	14.3	(2)	34.7	(59)
Probation	23.4	(38)	38.8	(52)	43.3	(84)	38.9	(42)	28.6	(4)	37.6	(64)
Commitment	5.6	(9)	9.0	(12)	9.8	(19)	4.6	(5)	7.1	(1)	4.7	(8)
	100.0	(162)	100.1[a]	(134)	100.0	(194)	100.0	(108)	100.0	(14)	99.9[a]	(170)

$\chi^2 = 32.610$, $p < .01$ $\chi^2 = 6.322$, *n.s.*

[a] Per cents do not add up to 100 due to rounding.

Table III.6(b)
Outcomes of Cases by Type of Representation and Number of Petitions: Multiple Petition on Intake

	Zenith			*Gotham*		
	Project Lawyer	*Other Lawyer*	*No Lawyer*	*Project Lawyer*	*Other Lawyer*	*No Lawyer*
Disposition	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Dismissed	57.7 (15)	40.0 (8)	27.0 (10)	15.1 (8)		20.6 (14)
Delinquency not formally entered, case continued under court supervision for a limited time	7.7 (2)	5.0 (1)	8.1 (3)	32.1 (17)	53.8 (7)	33.8 (23)
Probation	30.8 (8)	45.0 (9)	51.4 (19)	47.2 (25)	23.1 (3)	44.1 (30)
Commitment	3.8 (1)	10.0 (2)	13.5 (5)	5.7 (3)	23.1 (3)	1.5 (1)
	100.0 (26)	100.0 (20)	100.0 (37)	100.1[a] (53)	100.0 (13)	100.0 (68)

$\chi^2 = 6.788$, *n.s.* $\chi^2 = 15.591$, $p < .05$

[a] Per cents do not add up to 100 due to rounding.

Table III.6(c)
Outcomes of Cases by Type of Representation and Number of Petitions: Youth Apprehended One or More Times after Filing of Initial Petition

	Zenith			*Gotham*		
	Project Lawyer	*Other Lawyer*	*No Lawyer*	*Project Lawyer*	*Other Lawyer*	*No Lawyer*
Disposition	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Dismissed	34.6 (9)	5.6 (1)	6.2 (1)	3.3 (1)	8.3 (1)	
Delinquency not formally entered, case continued under court supervision for a limited time	7.7 (2)	5.6 (1)		16.7 (5)	16.7 (2)	33.3 (10)
Probation	38.5 (10)	50.0 (9)	56.2 (9)	36.7 (11)	41.7 (5)	56.7 (17)
Commitment	19.2 (5)	38.9 (7)	37.5 (6)	43.3 (13)	33.3 (4)	10.0 (3)
	100.0 (26)	100.1[a] (18)	99.9[a] (16)	100.0 (30)	100.0 (12)	100.0 (30)

$\chi^2 = 10.337$, *n.s.* $\chi^2 = 11.787$, *n.s.*

[a] Per cents do not add up to 100 due to rounding.

ence, offense, number of petitions, and home situation). Conversely, although main effects are not found in Gotham, more specific analysis might reveal that first-order interactions do occur, suggesting that, at least in certain types of cases, the presence of an attorney makes a difference.[22] Thus it might appear that, although project attorneys are not generally effective in Gotham, they do have an effect when representing a client with a previous record, or from a broken home.

For ease of presentation, the figures that follow are condensed to reflect the percentage of "favorable" results reached in experimental and control groups controlling for each of the background variables mentioned above. Figures III.2 through III.8 clearly show that the main effects of project representation in Zenith—an increase in favorable dispositions—carry across all categories. Thus, favorable results are obtained more frequently in experimental cases both when the client has a previous court record and when he has not.

When home situation is controlled, youths in the experimental group are far more likely to obtain a favorable result when both parents are in the home than those in the control group (70 per cent as against 43 per cent). Trends in the same direction are found when only one parent is in the home and in "other" situations (e.g. the child lives with his grandparents). No real difference was indicated where the child lived with a stepparent.

Similarly, lawyer cases were less likely to result in a finding of delinquency than were control cases where a single petition faced a client, where a new charge was added after filing of the original petition and, less clearly, where multiple charges had been filed in the beginning.

It should, moreover, be noted that the effect of project representation is most clearly established where the child has *no* previous court history (Figure III.2), where he lives with *both parents* rather than in some other arrangement (Figure III.3), and where only *one petition* is pending (Figure III.4). This is, perhaps, unsurprising, since all of these categories represent background factors that fall well within the traditional juvenile court predisposition to take into consideration mitigating circumstances when acting upon the juvenile offender. Presumably an attorney is better able to establish and develop the legal and social significance of these factors than an unrepresented child.

Less easily explained, but still significant, are the interactions between assignment to the experimental group and the factors of age, race, and offense. Of the three, race is most easily explained by the simple fact that too few youths are classified as "white" for significance to attach to the results. The direction of effects, however, remains the same; regardless of race, assignment of a juvenile to the experimental group produces a more lenient disposition.

Within age and offense categories, interpretation becomes more difficult.

As Figure III.6 indicates, experimental effects are most pronounced for the 14–15 year age group.

Within categories of offense, there is nothing to contradict the general thesis. Experimental group results are more "favorable" across the board than those for the control group, but with the exception of crimes against property, the differences are not significant. In this category, however, lawyers have a substantial impact, one leading to the suggestion that "property" cases are somehow easier to defend than other offenses. As a matter of common sense, it might be observed that in crimes against the person there is, by definition, a person present at the commission of the crime who frequently is an eyewitness to the event. For instance, while nobody may view a theft from a building at night (burglary), theft from a person (robbery) is almost always observed by the victim, and his evidence is likely to be most persuasive. With regard to juvenile crimes, such as curfew violation, the arrest is frequently either "on view" by a police officer or at the insistence of a parent, both of whom will, as a matter of course, appear and testify effectively against the respondent. In crimes against property, however, it may well be that the owner of the goods cannot be located or, having the property returned, does not wish to proceed further. Finally, to the considerable extent that crimes against property involve unlawful use of an auto, there is an intent requirement which is often difficult of proof.

The influence of the judges varies, as can be expected, considering natural differences in judicial style and temperament. A trend appears in the direction of greater success in obtaining "favorable" results before four of the six Zenith judges (C, D, E and F), with little difference before Judge A and apparently somewhat less success when Judge B sat. Referral to the expanded tables in the Appendix reveals, however, that for Judges A and C, who have the highest "commitment" rates over-all (17 and 16 per cent, respectively), assignment to the project office leads to a lower rate of commitment. Only with Judge B are the effects reversed, but, as the expanded tables indicate, project representation apparently shifts the general direction of results away from either outright dismissal or commitment to either of the intermediate categories (continuance under supervision or probation).

As indicated above, what differences in judicial behavior exist are most readily explained in terms of individual style and temperament. There is no reason to believe that Judges A and B, by training or experience, represent a distinct school or approach to juvenile court law, nor that they represent a "traditionalist" approach that might have prevailed at some earlier time among the Zenith bench.

While the project-lawyer effect in Zenith appears regardless of the particular variable examined, the search for specifying factors leads to anomalous results in Gotham. The lack of first-order effects remains unchanged, and in

areas such as age, race, identity of judge, or previous court experience there are no differences in results between the experimental and control groups. It also appears, however, that assignment of a juvenile to the experimental group leads to *less* favorable results in several other categories. Thus, a youth faced with a subsequent petition in addition to the original charge might have fared better if he had not been assigned to a project attorney. The same might be said with greater confidence for the youth living in a home from which one parent (usually the father) was missing, or who was charged with a simple offense against the person (e.g. simple assault and battery, robbery). Indeed, not only are experimental group clients less likely to receive a favorable adjudication result but, as Tables A.58 through A.67 in the Appendix indicate, they also appear more likely to be committed to an institution. In further contrast to the results in Zenith, the interaction of lawyers with the more "severe" judges (as indicated by their over-all commitment rates) leads to an increased probability of commitment.

A SEARCH FOR EXPLANATIONS

The problems of interpretation raised by these findings are as complex as they are obvious. Why in Zenith does assignment of youths to the experimental group unquestionably influence the outcomes of cases—an influence that carries across categories and, in addition, overcomes the "covering" effects of experimental attrition? Conversely, why in Gotham are there virtually no effects other than a slight increase in the commitment rate—an increase that becomes alarmingly large when considered within the framework of background variables?

Several obvious hypotheses can be advanced to explain the differences in effects, the first of which concerns the comparability of project representation in the cities. It will be remembered that the attorneys were chosen, in part, on the basis of similarities in legal training and philosophy. However, identification and assessment of these qualities are not sure, and it remains at least plausible that differences existed in their legal abilities—differences that might well account for differential impact. A disparity of this sort would be particularly evident, for instance, if the high dismissal rate in Zenith can be attributed to the outstanding performance of one of the attorneys; conversely, it is possible that the lack of effect in Gotham can mirror one lawyer's failure to obtain a lenient finding for his clients.

The data on comparative success rates within each office do not support the hypothesis that one or two of the project lawyers account for the differences. Although small variations exist in dispositional outcomes as measured by individual lawyer performance, they are attributable to chance fluctuations. Apparently, therefore, whatever accounts for the differential impact can be

Table III.7
Outcomes of Cases by Project Lawyer

Disposition	*Zenith*			*Gotham*		
	Lawyer D % (*N*)	*Lawyer E* % (*N*)	*Lawyer F* % (*N*)	*Lawyer A* % (*N*)	*Lawyer B* % (*N*)	*Lawyer C* % (*N*)
Petition dismissed	52.4 (43)	56.4 (44)	53.7 (29)	22.0 (13)	12.3 (7)	17.1 (12)
Delinquency not formally entered, continued under supervision of court for a limited time	8.5 (7)	14.1 (11)	16.7 (9)	25.4 (15)	28.1 (16)	38.6 (27)
Probation	30.5 (25)	25.6 (20)	20.4 (11)	42.4 (25)	45.6 (26)	34.3 (24)
Commitment	8.5 (7)	3.8 (3)	9.3 (5)	10.2 (6)	14.0 (8)	10.0 (7)
	99.9[a] (82)	99.9[a] (78)	100.1[a] (54)	100.0 (59)	100.0 (57)	100.0 (70)
	$\chi^2 = 5.103$, *n.s.*			$\chi^2 = 5.273$, *n.s.*		

NOTE: Although assignment to project office was made at random, assignment within the office was left to the project attorneys so that different work schedules and conflicts with other project duties (e.g., graduate work) might be more easily resolved.

[a] Per cents do not add up to 100 due to rounding.

said to affect the law offices as independent entities rather than individual performance within offices.

Two additional explanations, relating to the comparability of the cases handled in each city, may be advanced. Table III.1 indicated that Zenith's court has an over-all dismissal rate approximately twice that in Gotham. The over-all difference may be explicable on the basis of the seriousness of the cases brought before the courts. If, for instance, Gotham employed an intake procedure that referred only the more "serious" offenses for formal processing, it could be argued that defense is generally more difficult in Gotham, thus explaining the lower over-all dismissal rate. The Gotham police might also be the more active in screening out cases at the station house; thus, if Zenith's police force does not make as liberal use of its discretion to "adjust" less serious cases rather than refer them to court, the same conclusion might be reached.

It was, unfortunately, difficult to collect information on these factors either during the project or during subsequent analysis of the data. The available evidence, however, does not support a hypothesis that differences in intake and police referral practices explain the findings. Indeed, if anything, Zenith's juvenile court appears to handle the more serious cases and has the advantage of more careful screening both at the intake and police department levels.

Table A.27 in the Appendix demonstrates that the distribution of types of offenses (as indicated by court intake records) is approximately equal, with the striking exception that Gotham reports proportionally more crimes against property, whereas Zenith reports a greater number of aggravated crimes against the person. If, as is true at least in the context of the criminal law, crimes against the person are regarded as more "serious" than those against property, it seems clear that the Gotham court generally handles the less, rather than the more, severe cases. Nor does it appear that the difference in gravity of offense is offset by relative ease of defense; for reasons suggested earlier, offenses against persons are likely to be the more difficult to defend successfully.

Further, it is the Gotham court that lacks a full-fledged intake department, rather than Zenith's. Although no accurate court statistics exist from which to infer precise intake and referral figures for Gotham,[23] it was the project's experience that virtually every youth filed upon received a hearing. The regularity of this practice was such that project staff was instructed to consider every case coming into court as a potential project case, the only exclusions being those required by research considerations. In Zenith's court, however, the project intake could not function until the case had been first screened by the court's intake department, which exercised a considerable amount of discretion in initiating formal proceedings. If the intake worker felt the case was sufficiently minor in nature, and if the complainant agreed, the

case could be settled informally with a reprimand or informal referral to a nonjudicial social agency for counseling.

Apparently, the screening function was performed in Gotham by the Youth Division of the Police Department, which exercised the more or less traditional prerogative to adjust a case at the station rather than refer it to court. This conclusion is based solely on experience, since all attempts to obtain information on police referral practices met with silence, either because no official figures are available or because the Gotham Police Department has, from repeated and unflattering investigations into their practices, become extremely wary of outsiders. Police Department records in Zenith are somewhat more useful, confirming the exercise of police discretion in virtually every category of offense. Thus, in 1967, referrals to court ranged from 22.4 per cent for shoplifting to 92.5 per cent for aggravated assault. Although comparisons of the cities on this dimension are obviously impossible, it can nevertheless be asserted with some confidence that cases handled generally, and by project attorneys in particular, had been subject to double screening in Zenith, whereas the only discretion brought to bear in Gotham was at the station house.

A second and related hypothesis may be forwarded. As noted earlier, Gotham records a substantially greater number of cases involving multiple petitions. Although it has already been shown that the presence of multiple petitions, by itself, does not account for the differential impact of project offices (see Tables III.6(a) through III.6(c)), it might nonetheless be said that *in certain situations* the filing of such petitions serves as an explanatory factor. It was, for instance, the lawyers' belief that the most difficult cases to defend were those involving multiple charges where one of those charges was an offense peculiar to juveniles. If a youth is arrested in a stolen automobile at 2 A.M., he can be charged with only the more serious offense (auto theft or unlawful use of an auto) or he can be charged with both auto theft and curfew violation. Obviously, it is extremely difficult to defend against the latter charge even if an element of proof is missing as to the former. Thus, if more multiple petitions are filed in Gotham (and particularly more multiple petitions alleging as one count commission of a "juvenile" offense) and if the Zenith attorneys were no more successful in handling these cases than those in Gotham, this would explain at least in part the difference in effect. In fact, substantially more such petitions were handled in Gotham; 14.8 per cent of its cases are of this sort compared to 7.1 per cent of those in Zenith. However, the attorneys in each city were not similarly disadvantaged by this circumstance. As Figure III.16 indicates, the Zenith attorneys were effective in securing favorable results where multiple petitions including a juvenile offense were pending, whereas the project office had no observable impact in Gotham.

One final methodological point must be recognized. It may be suggested

that the proposed analysis does not adequately allow for the possibility of a "Hawthorne" or "guinea pig" effect—that is, that awareness on the judges' part of their involvement in a large-scale experiment might itself produce changes in their behavior which would account for observed differences in outcomes. It is not possible, of course, to disprove directly the existence of such an effect, since to do so would have required the use of project lawyers rendering wholly inadequate representation—a procedure that, needless to say, is ethically intolerable.

There are, however, reasons why it is difficult to conclude that the differences found can be explained in this way. In the first place, the level of project visibility should correlate directly with the level of effect; specifically, the greater effect should be found in the city where the project was most visible. In fact, it seems that the project was more visible in Gotham than in Zenith, for several reasons. The Zenith court was larger in terms of personnel and volume of business. Private and agency attorneys appeared there more regularly than in Gotham, both before and during the project's operation. Moreover, it is important to note that all project "negotiations" were with a presiding judge in Zenith whose duties were almost wholly administrative in nature, rather than with sitting judges as was the case in Gotham. Nevertheless, attorneys in Zenith, where the project was *less* visible, apparently were far more successful than those in Gotham. There remains, of course, the possibility that the high rate of success in Zenith was, for some time, a function of a testing effect (until it had become institutionalized), and that, but for a testing effect, the Gotham office would have been even less successful than it was. Given the actual results set forth in this chapter, however, seriously to entertain this hypothesis requires the assumption that, if *all* of the Gotham lawyers had been working for some other agency or as private practitioners, they would have been extremely unsuccessful, in absolute terms, as compared with other attorneys in the same court and as compared with the lawyers in Zenith. Such an assumption cannot comfortably be indulged in view of the initial qualifications and special training of the Gotham attorneys on the one hand, and of the over-all comparability of both project staffs on the other.

There is another line of thought on the same matter which may logically be advanced. It might be that, although a testing effect did exist in Zenith and Gotham, its force in the latter city was offset by other factors yet to be explained. To be sure, while no evidence suggests that the project in and of itself would produce a *negative* effect on the judges, there is considerable reason to believe that the lawyers' activities pursuant to project directives would cause negative reactions in Gotham, and to a greater extent than in Zenith. Indeed, examination of this last point is precisely the task of much of what follows. This hypothesis cannot be rejected out of hand, but the strength and consistency of results in both cities over the duration of the project argues against

giving it controlling weight. And, of course, it *presumes* rather than attacks the proposition that something in the courts themselves accounts for the differential impact of counsel in the two cities. Thus, the problem of adequate interpretation remains with us and can be resolved, we believe, only through a closer examination of those courts.

FIGURES

Figure III.1
Per Cent "Favorable" Dispositions by Group and City

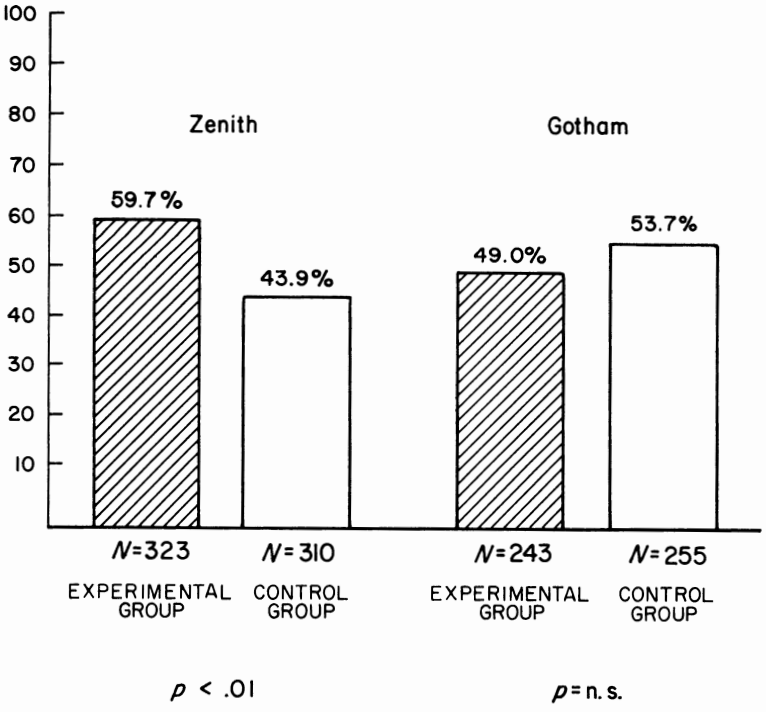
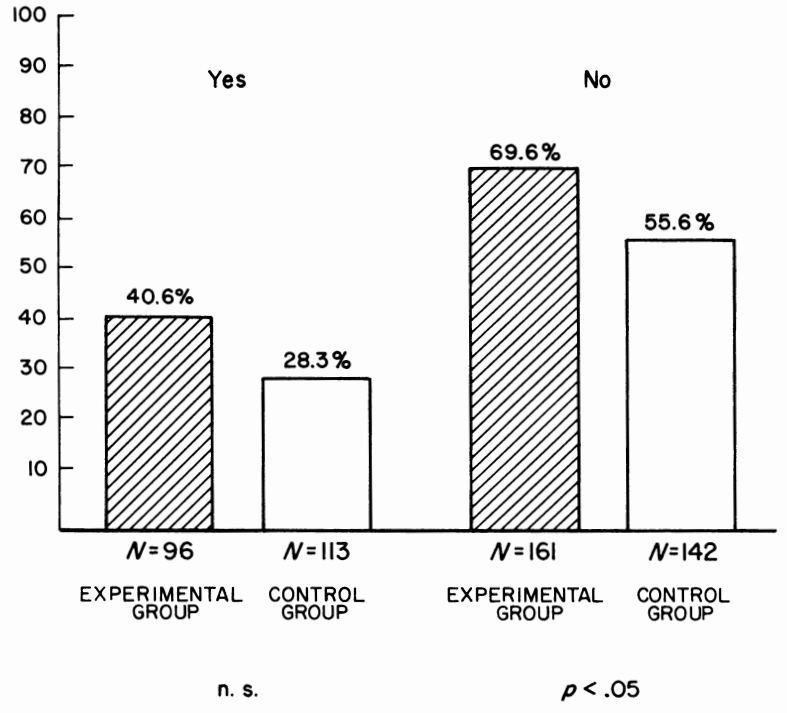
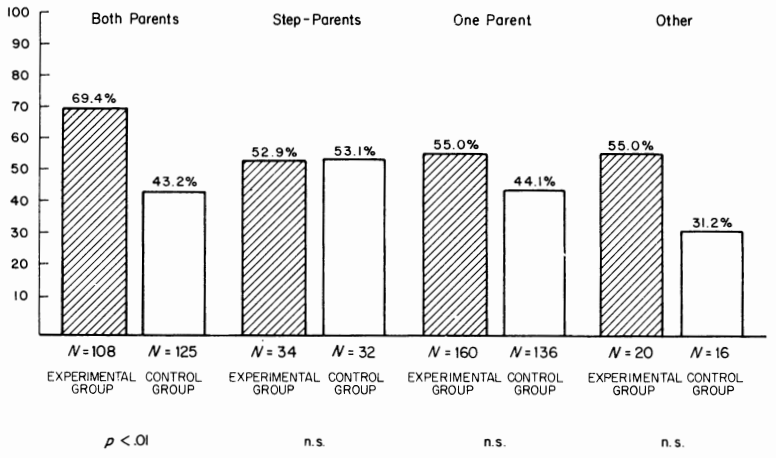


Figure III.2
Zenith: Per Cent "Favorable" Dispositions Controlling for Previous Court Experience[a]



[a] Previous court experience determined for 512 cases only.

Figure III.3
Zenith: Per Cent "Favorable" Dispositions Controlling for Home Situation[a]



[a] Two cases not ascertained.

Figure III.4
Zenith: Per Cent "Favorable" Dispositions Controlling for Number of Petitions

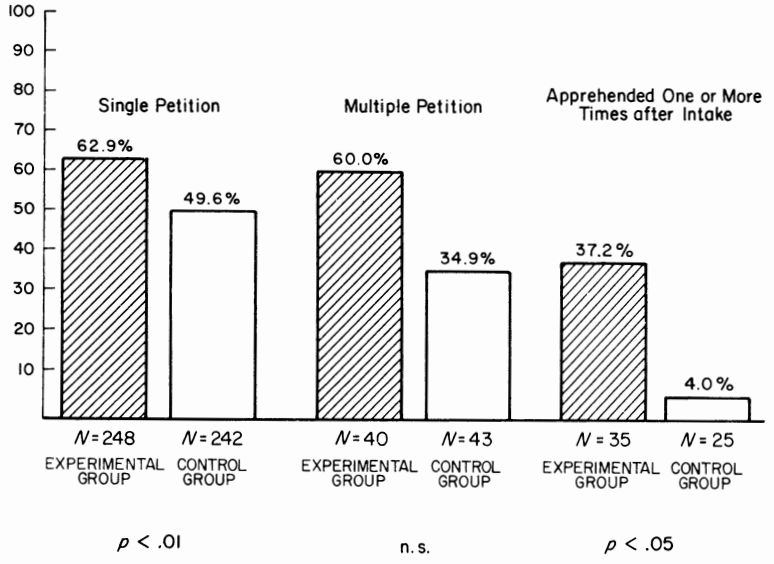


Figure III.5
Zenith: Per Cent "Favorable" Dispositions Controlling for Race

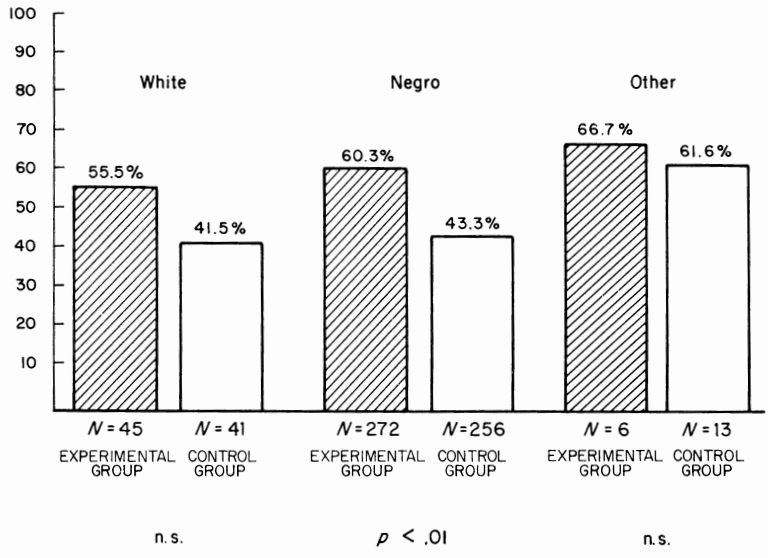
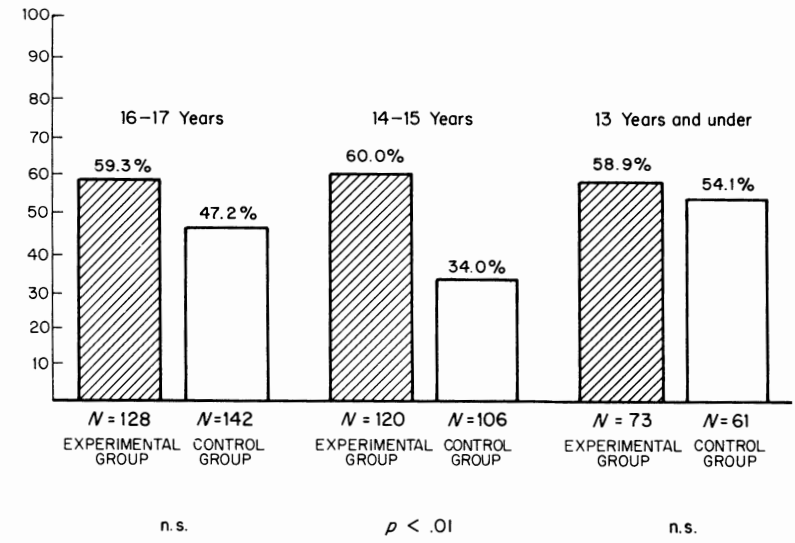


Figure III.6
Zenith: Per Cent "Favorable" Dispositions Controlling for Age[a]



[a] Three cases not ascertained.

Figure III.7
Zenith: Per Cent "Favorable" Dispositions Controlling for Offense

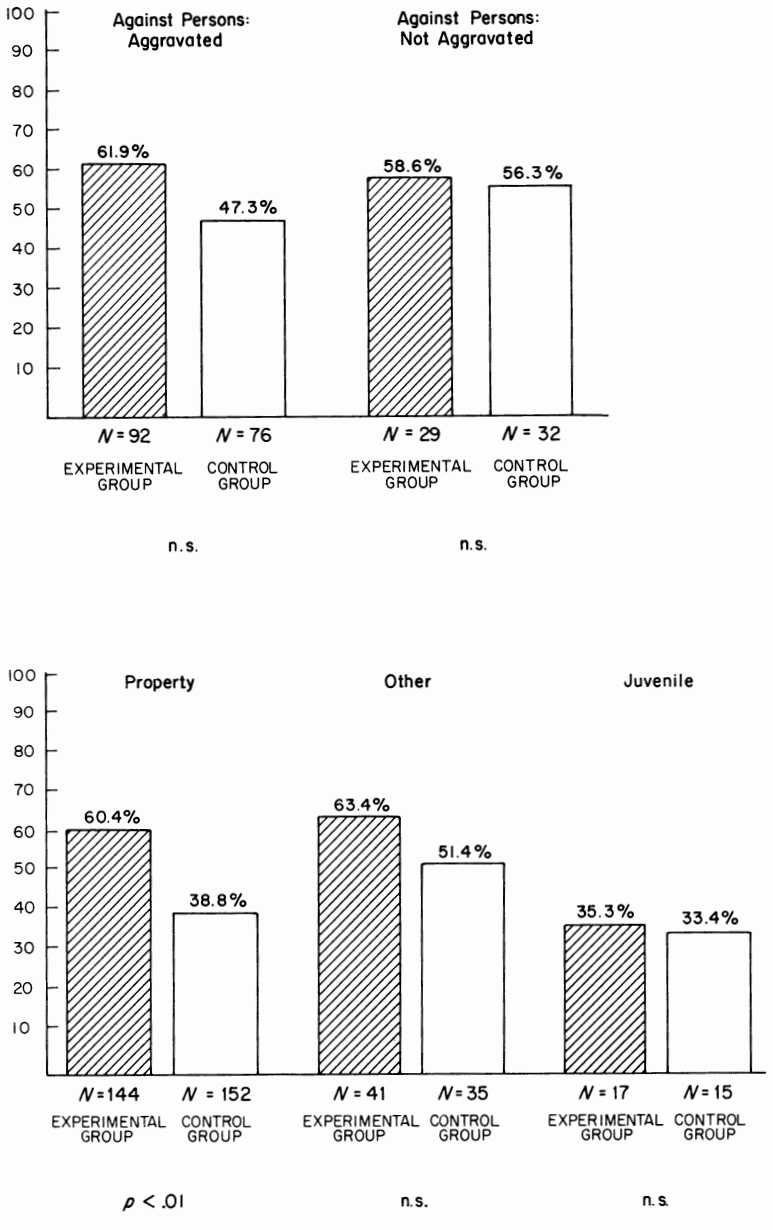
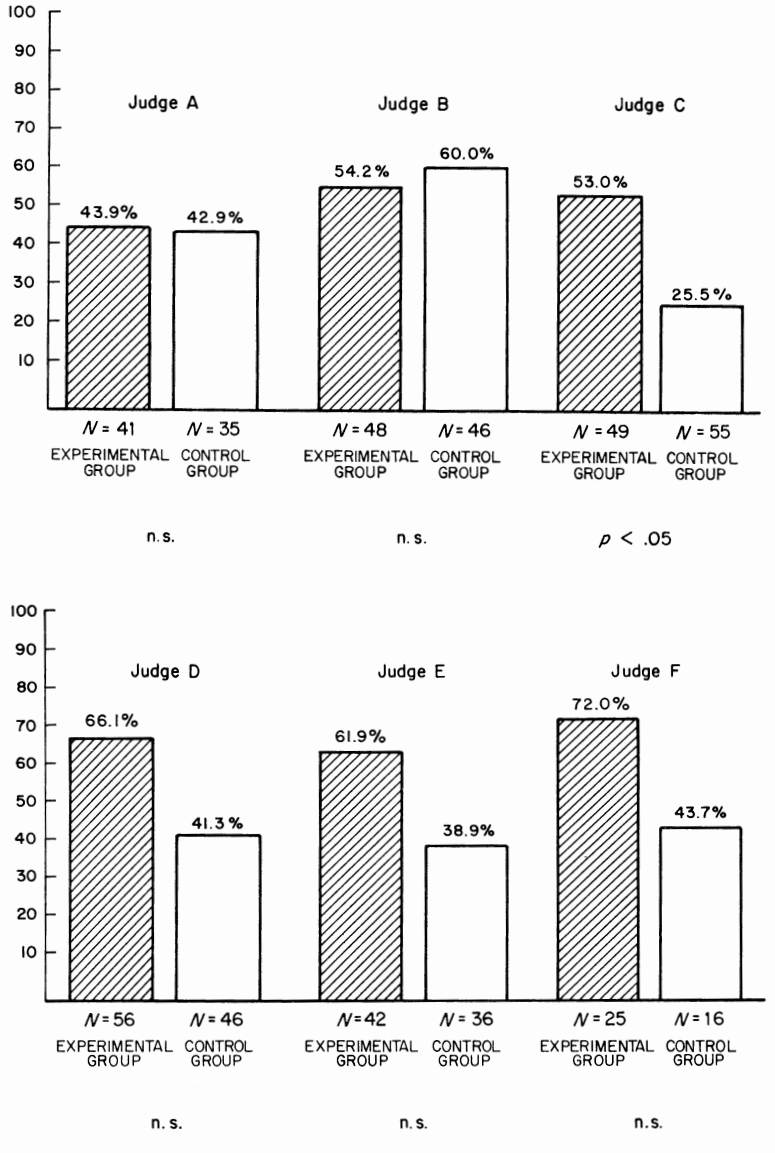
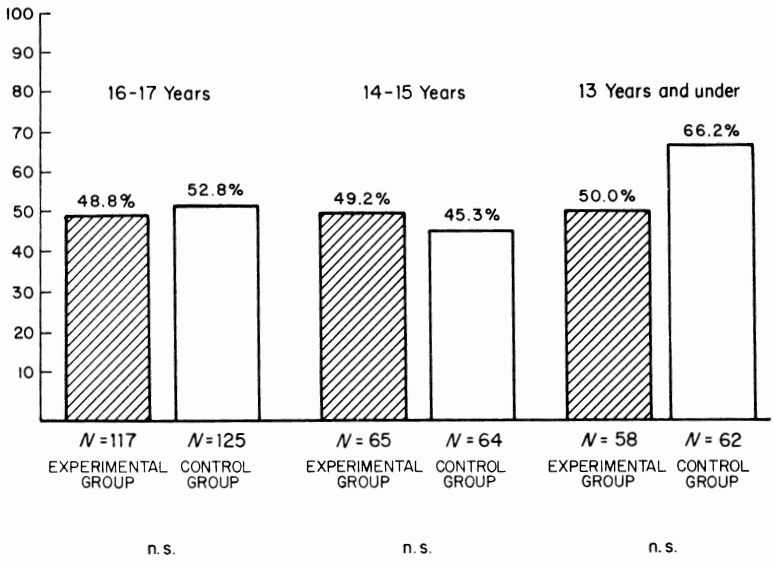


Figure III.8
Zenith: Per Cent "Favorable" Dispositions Controlling for Judge[a]



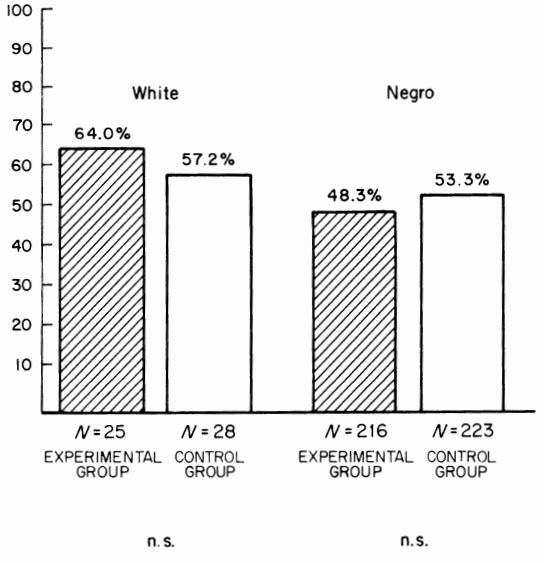
[a] Does not include 62 experimental group cases and 76 control group cases heard by a judge other than those listed or by more than one judge. See Appendix Table A.5.

Figure III.9
Gotham: Per Cent "Favorable" Dispositions Controlling for Age[a]



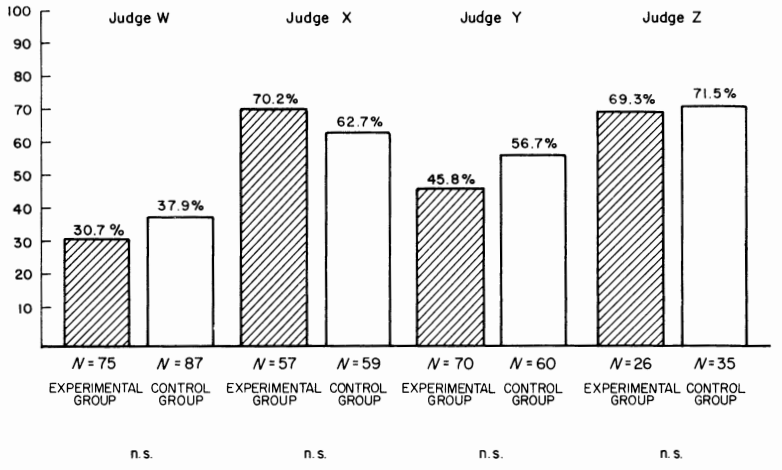
[a] Seven cases not ascertained.

Figure III.10
Gotham: Per Cent "Favorable" Dispositions Controlling for Race[a]



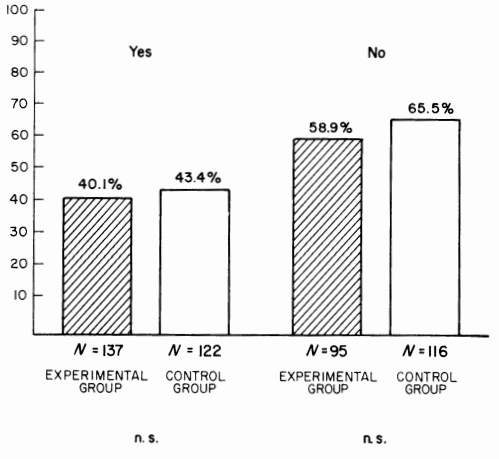
[a] Does not include four cases where the respondent was other than White or Negro and two cases in which race was not ascertained.

Figure III.11
Gotham: Per Cent "Favorable" Dispositions Controlling for Judges[a]



[a] Does not include 14 experimental group cases and 11 control group cases heard by a judge other than those listed or by more than one judge. Four cases not ascertained.

Figure III.12
Gotham: Per Cent "Favorable" Dispositions Controlling for Previous Court Experience[a]



[a] Twenty-eight cases not ascertained.

Figure III.13
Gotham: Per Cent "Favorable" Dispositions Controlling for Number of Petitions

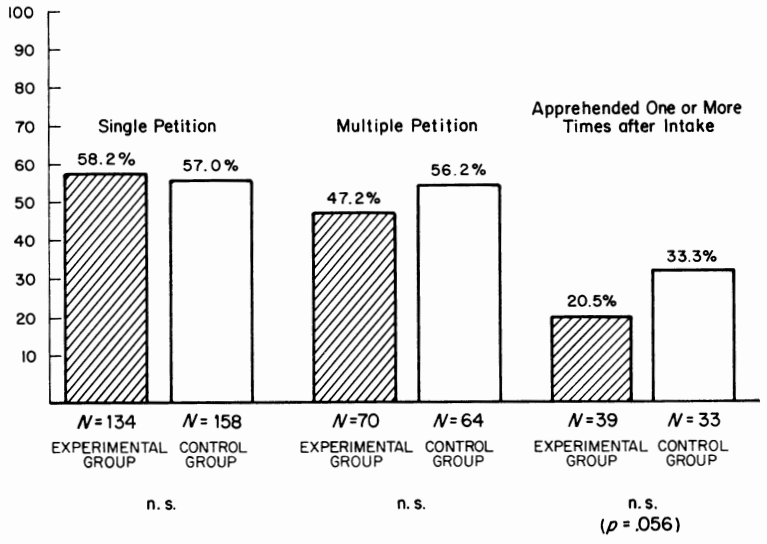
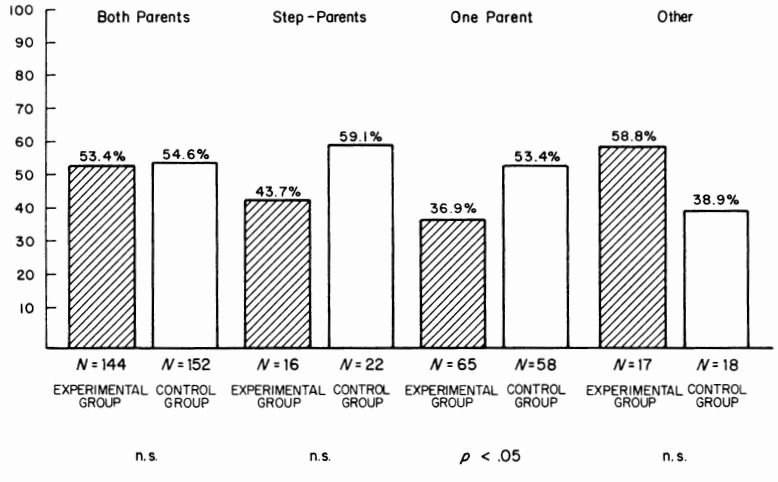
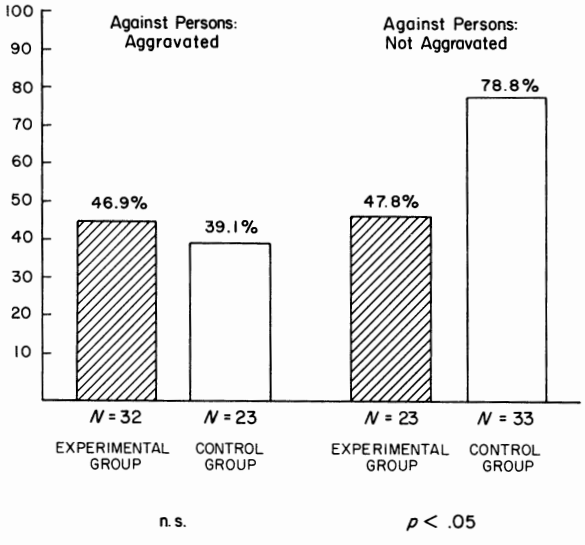


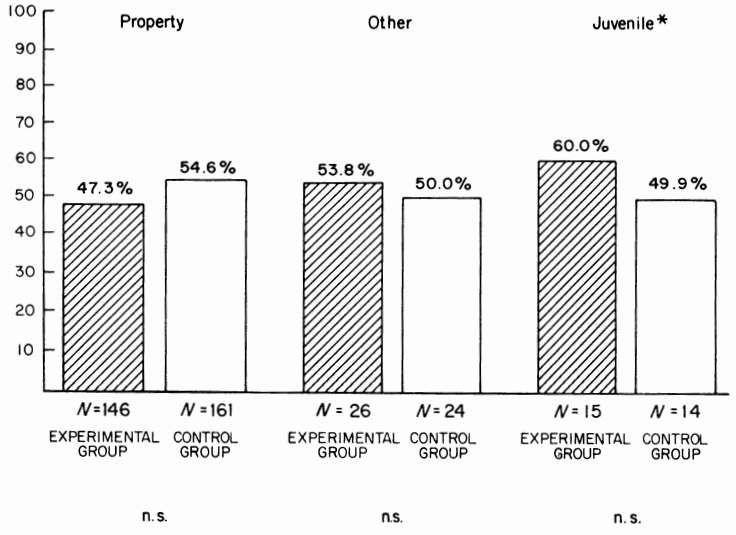
Figure III.14
Gotham: Per Cent "Favorable" Dispositions Controlling for Home Situation[a]



[a] Six cases not ascertained.

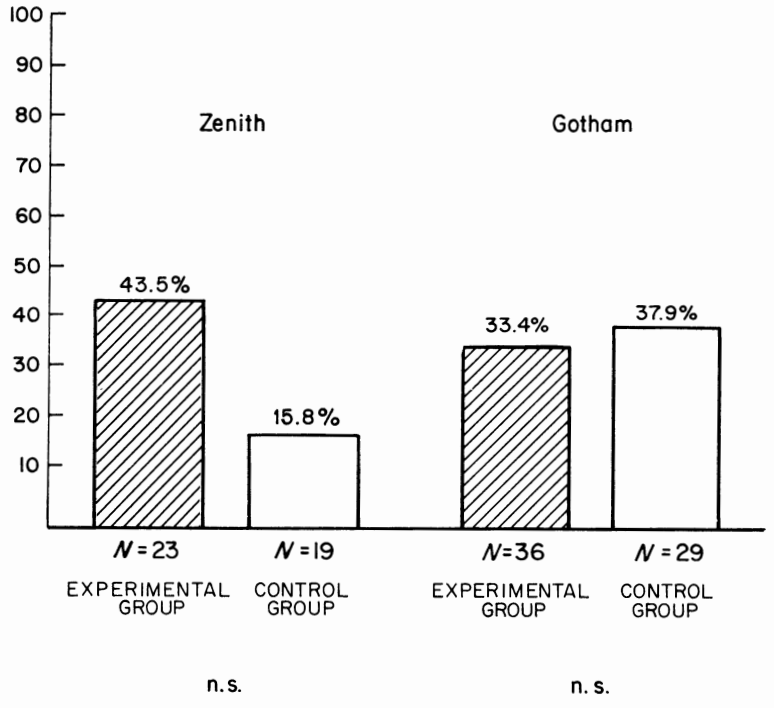
Figure III.15
Gotham: Per Cent "Favorable" Dispositions Controlling for Offense[a]





[a] One case not ascertained.
* Includes 7 traffic offenses.

Figure III.16
Per Cent "Favorable" Dispositions by Multiple Petitions which Include Juvenile Offenses



NOTES

[1] Gideon v. Wainwright, 372 U.S. 335 (1963).

[2] In re Gault, 387 U.S. 1, 36 (1967) (emphasis added). The first sentence of the quoted passage is taken from Powell v. Alabama, 287 U.S. 45 (1932), in which the Supreme Court first extended the right to counsel to state court prosecutions. In doing so, the Court observed that "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces

the danger of conviction because he does not know how to establish his innocence." 287 U.S. 45, 69 (1932).

In addition to *Gideon, Powell,* and *Gault,* a number of other Supreme Court decisions reveal, explicitly or implicitly, confidence that the presence of an attorney can affect the result of a prosecution, at least to the extent that a lawyer will redress an imbalance in skill and power thereby preventing convictions which might otherwise result from inadequate or impermissible evidence or procedures. See, e.g., Williams v. Kaiser, 323 U.S. 471, 476 (1945).

[3] *Ibid.,* p. 20.

[4] *Ibid.,* p. 21.

[5] *Ibid.,* p. 38, n. 64.

[6] National Council of Juvenile Court Judges, "Symposium on the Role of the Lawyer in Juvenile Courts," 1964.

[7] J. Isaacs, "The Lawyer in the Juvenile Court," 10 *Criminal Law Quarterly* 222 (1967).

[8] P. Tappan, *Juvenile Delinquency* (New York: McGraw-Hill Book Co., 1949).

[9] National Council on Crime and Delinquency, "Procedure and Evidence in the Juvenile Court," 1962, p. 43.

[10] D. Skoler and C. Tenney, Jr., "Attorney Representation in Juvenile Court," 4 *Journal of Family Law* 77, 96–97 (1964).

[11] W. Whitlatch, "The *Gault* Decision—Its Effects on the Office of the Prosecuting Attorney," 41 *Ohio Bar Journal* 41, 44 (1968).

[12] H. Kalven, Jr., and H. Zeisel, *The American Jury* (Boston: Little, Brown and Co., 1966), pp. 351–372.

[13] American Bar Association, *Canons of Professional Ethics* (Chicago: American Bar Foundation, 1967), p. 85.

[14] *Ibid.,* p. 15.

[15] D. Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defenders Office," 12 *Social Problems* 255 (1965). But see J. Skolnick, "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 52 (1967).

[16] A. Blumberg, "The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession," 1 *Law and Society Review* 15 (1967).

[17] E. M. Lemert, "Legislating Change in the Juvenile Court," 1967 *Wisconsin Law Review* 421, 442.

[18] A. Platt, H. Schechter, and P. Tiffany, "In Defense of Youth: A Case Study of the Public Defender in Juvenile Court," 43 *Indiana Law Journal* 619, 636 (1968).

[19] D. T. Campbell and J. C. Stanley, *Experimental and Quasi-Experimental Designs for Research* (Chicago: Rand McNally and Co., 1969), p. 19.

[20] The relevant part of the *State Juvenile Court Act* governing delinquency hearings in Zenith states: "(1) In the absence of objection made in open court by the minor, his parents, guardian, custodian or responsible relative, the court may, before proceeding to findings and adjudication, continue the hearing from time to time, allowing the minor to remain in his own home subject to such conditions as to conduct and visitation and supervision by the probation officer as the court may prescribe."

[21] Although the continuance disposition is widely used by Gotham's judges, there is no provision for it in the rules of the court governing juvenile hearings:

"The court shall dispose of juvenile cases (sic) in one of the following ways: (a) Dismiss the complaint; (b) Place the juvenile on probation to the chief probation officer of the county, on such terms as may be deemed to the best interest of the juvenile. The terms of such probation may include conditions which shall be binding on the parents, guardians

and custodian of the juvenile as well as the juvenile himself; (c) Place the juvenile under the supervision of a suitable person or private agency, if they will accept such supervision or under the care, custody and supervision of a juvenile conference committee established pursuant to Rule 6: 2–2; (d) Commit the juvenile as provided by law; or (e) Commit to a private institution, in lieu of a public institution, on the condition that the expense thereof shall be paid either (1) by the parent of the juvenile, or (2) by and with the consent of the guardian of the juvenile."

[22] In explaining the sociologically technical terms of "specification" and "interaction" we can do no better than to refer to T. Hirschi and H. C. Selvin, *Delinquency Research: An Appraisal of Analytic Methods* (New York: Free Press, 1967), particularly Chap. 7, "Interaction of Variables."

[23] Gotham's juvenile court stopped publishing an annual report and statistics in 1966, just prior to the start of the project.

IV *Courts as Social Organizations*

As noted earlier, the personnel and procedure of the Gotham and Zenith courts sufficiently differ that each may conveniently be treated as a separate social structure. It is in terms of these differences, as they influence the project-lawyers' performance, that an adequate interpretation of the findings of Chapter III may be formulated. Stated simply, the hypothesis is that the performance of defense counsel, and consequently his impact on the outcomes of the cases he handles, will be largely determined by the circumstances of the forum in which he appears.

This proposition is not as startling as it might first appear. The idea that structural features of organizations dictate in great part the forms and manner of human behavior within them is hardly new to sociologists. In an ideal bureaucracy, for that matter, human action would be wholly determined by the perquisites and duties of the office held. A rational, goal-directed organization necessarily views its personnel as means to the achievement of its ends and expects only that conduct which is systematically assigned to the actors.[1]

Most social organizations—families, business corporations and, until recently, universities—are based on a norm of cooperation. Their efforts to mobilize human and other resources for the accomplishment of organizational ends are predicated on the assumption that these resources should function with as little conflict as possible.[2] Because individuals within the organization tend to act as individuals (or "wholes") rather than simply as means, however, and because no organization exists in a vacuum, some degree of conflict necessarily arises. The problem of social control in such bodies is directed toward the adjustment and minimization of these sources of conflict, and various strategies are developed to defend against threats to the security and stability of the organization.[3]

Nevertheless, some organizations take conflict rather than cooperation as a normative theme. Jerome Skolnick, in his article "Social Control in the

Adversary System," uses the sporting event as illustrative of "conflict" systems:

> Not only are most sporting events zero-sum games in which one player must lose and the other win; even more fundamental is the condition that each player try to win. . . . Within the ethic of the institution it is understood that each fighter will attempt to throw his best punches, that each will strain to achieve victory. Otherwise the fight will not be considered genuine. *Procedure* is as important as *outcome*.[4]

In conflict organizations, the "deviant" strain is toward *cooperation,* that is, toward accommodating pressures that lead the actors to cooperate in certain situations rather than to adopt an adversarial posture.

THE CRIMINAL PROCESS AS A CONFLICT SYSTEM

While the antagonistic game may present the only situation in which the excitement of struggle and victory provide the exclusive motivation for conflict,[5] surely mechanisms for handling legal disputes (and particularly those between the state and the individual) adopt conflict as a normative theme. As the Allen Committee Report on Poverty and the Administration of Federal Criminal Justice makes clear, "American criminal procedure is accusatorial in nature and is founded upon the adversary system."[6] The essence of this system is challenge; it presupposes, not cooperation with and accession to governmental demands, but "a constant, searching, and creative questioning of official decisions and assertions of authority at all stages of the process."[7] It is, in its conception, based on the assumption that the primary interest of the accused lies in avoiding conviction and that the state's interest lies in securing that result; thus, conflict is necessary to the system.

As with sporting events, this element of conflict exists within a framework bounded by norms which may be more rigid and more carefully observed than those of groups formed for cooperative purposes.[8] The adversary system " 'presumes' the innocence of the accused. It requires the government to establish the guilt of the defendant beyond reasonable doubt. *It imposes procedural regulations on the criminal process by constitutional command.*"[9] The importance of *procedure* in criminal matters, and the consequences of its disregard, are widely known; all parties are bound to its observance. Thus, for example, the prosecutor has a multifaceted role, defined by the adversarial motif. He is, of course, the attorney for the people, called upon to lead the war against crime and its perpetrators. At the same time, he is bound, on pain of reversal, to respect the rules thrown up for the protection of the accused; that is, while representing the people, he must honor and, perhaps, protect the defendant's right to oppose societal intervention in his career.[10] Although it

might be far more efficient to adopt other than prescribed means of identifying and protecting society from malefactors, the desirability of the result must give way to procedural boundaries referable to the norm of conflict.

The structure of the criminal justice system—as is true of social organizations generally—reflects the norms which the organization serves.

The prosecution and defense attorneys: The provision of attorneys for the state and the accused epitomizes the adversarial theme. The fact that legal quarrels are conducted by professional counsel both confirms the existence of conflict and helps to define its scope by removing from the controversy any personal associations that do not directly bear on it.[11]

The grand jury: In the federal system and about half of the states, prosecutions for serious crimes must be initiated by grand jury indictments. Grand jury proceedings seem, at first blush, a vestige of a more inquisitorial age: they are secret in nature, and the accused is not entitled to appear either personally or by his attorney. While it does not contemplate adversarial practices, the grand jury may protect the accused from public accusation and trial until probable cause has been established and, informally but of equal importance, monitors the decision to prosecute even if the evidence is technically sufficient.[12]

The preliminary hearing: Typically, the defendant's first court appearance is a "preliminary hearing," which has three functions. The first is to determine the sufficiency of the evidence before going to trial; the prosecution must establish that there is "probable cause" to believe that an offense has been committed and that the defendant has committed it. In addition to review of the evidence (*not* of the desirability of prosecution), the preliminary examination affords the defense an opportunity to learn something of the state's case and for both sides to preserve or "freeze" the testimony of witnesses who may later refuse to testify or alter their testimony.[13]

The arraignment hearing: The principal functions of the arraignment hearing are to advise the defendant formally of the charges against him and to ascertain whether he intends, by pleading not guilty, to put the state to its burden of establishing the defendant's misconduct.[14] In recognition of the plea's functional significance, it is not taken on oath. Entrance of a denial is not necessarily an affirmation that the defendant did not in fact commit the offense alleged; rather, it serves notice that the defendant will require the state to prove his guilt in law. If the defendant is not represented at arraignment, the court will normally use this opportunity to inform him of his right to retained or appointed counsel, and if assistance is requested, will postpone the hearing for that purpose.[15]

The plea-taking ceremony: Even if the defendant pleads guilty, considerable care is taken to ensure that he knows what he is doing, what the consequences of his admission are, and that he seems to be guilty. Although the dis-

appearance of conflict obviously serves bureaucratic ends, observance of the rules requires that the court satisfy itself that the guilty plea is entered with knowledge of its significance and of the consequences that may result.[16] The American Bar Association's Project on Standards for Criminal Justice requires the following inquiry by the court, even after the defendant has been apprised of his right to counsel and has declined:

> The court should not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and,
> (a) determining that he understands the nature of the charge;
> (b) informing him that by his plea of guilty or nolo contendere he waives his right to trial by jury; and
> (c) informing him:
> (i) of the maximum possible sentence on the charge, including that possible from consecutive sentences;
> (ii) of the mandatory minimum sentence, if any, on the charge; and
> (iii) when the offense charged is one for which a different or additional punishment is authorized by reason of the fact that the defendant has previously been convicted of an offense, that this fact may be established after his plea in the present action if he has been previously convicted, thereby subjecting himself to such different or additional punishment.
>
> Determining the voluntariness of plea.
>
> The court should not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the court should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence concessions which must be approved by the court, the court must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the court. The court should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.
>
> Determining the accuracy of plea.
>
> Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as may satisfy it that there is a factual basis for the plea.[17]

Concededly, the scheme set forth by the American Bar Association represents an optimum that goes considerably beyond current practice. It is, however, clear that great care and activity on the judge's part is in principle necessary in federal and, less consistently, state courts to ensure that a plea of guilty is competently made and that its acceptance will withstand later attack.

Miscellaneous procedures before trial: If the accused challenges the allegations against him, a number of other procedures may be invoked before trial. The defendant may move for, and have a separate hearing on, severance of defendants or counts, a Bill of Particulars (describing the charges with greater specificity), suppression of illegally obtained evidence and statements, and to inquire into the reasonableness of bail. Although the scope of discovery in criminal cases is generally quite limited and varies from jurisdiction to jurisdiction, the defense may be entitled to request production of oral, written, or recorded statements made by the defendant to investigating officers or third persons that are in the state's possession, of the names and addresses of government witnesses, and of physical or documentary evidence. The accused may also be entitled to have the prosecution state whether an informer was involved and whether he will be called to testify; to have disclosed evidence in the state's hands that is favorable to the defendant on the question of his guilt and to disclosure of prosecution plans to call expert witnesses. The prosecutor, for his part, may be authorized to require the defendant to state if he will rely on an alibi and, if so, the names and addresses of his alibi witnesses; to permit the taking of specimens; to provide samples of his handwriting; or to state whether he will claim incompetency to stand trial or irresponsibility by reason of insanity. Each of these procedures may or does involve the filing of papers and/or arguments thereon.

The trier of fact: Every defendant charged with a "serious" offense has the right to trial by jury.[18] This is not the time to trace the historical roots of this institution; for present purposes, it is enough to observe that the jury provides an impartial arbiter of the facts. The adversarial theme is reflected in the requirement that the jury have no personal knowledge of the facts involved in the case; their development is left wholly to the parties through their professional representatives. Much the same restriction exists in a bench trial; the judge's presumed ability to divorce extraneous information from his deliberations explains the fact that he is not subject to retirement during deliberations.

Sentencing: In the event that a verdict of guilty is returned, the general practice is to order a pre-sentence investigation and adjourn the case for some time to complete that investigation and permit an opportunity for the defense to prepare its case.[19] There has, admittedly, been some tendency for defense attorneys to underestimate the importance of active participation in this aspect of the case; it is, however, now clear that the sentencing hearing may be of the utmost importance. Although the proceeding may not be considered strictly "adversary," the likelihood of conflict remains great, and the judge's deliberations are aided by evidence and argument from both the state and the representative of the accused.

Appeal: The Supreme Court has consistently held that there is no constitutional right to appeal *per se*,[20] but every state provides avenues for the

review of convictions.[21] In most trial courts a verbatim stenographic or mechanical record is made, and in many petty offense courts review may often be had by way of a trial *de novo*. The appellate process is no less adversarial than trial proceedings. The major difference is that advocacy is generally limited to questions of law rather than those of fact.

The significance of the structure of the criminal process is not modified either by the fact that the full range of procedures is rarely, if ever, invoked in any one case, nor by the circumstance that the great majority of cases never come to trial because the defendant pleads guilty to the crime charged or to some lesser offense. These observations confirm, indeed, the extent to which the criminal justice system is designed to accommodate conflict. Particularly in view of the high rate of guilty pleas, a simpler procedure—without, for instance, the multiplicity of separate hearings, which are pre-eminent consumers of valuable time and labor—is far more justifiable from a bureaucratic standpoint. The criminal process is structured, however, to reflect its normative theme. The procedures adopted for that purpose are considered necessary to the fair resolution of that conflict, both in terms of accuracy and in terms of the other norms that surround authoritative confrontation between society and the individual.

THE JUVENILE COURT AS A QUASI-COOPERATIVE SYSTEM

Much of the thrust of the original juvenile court movement was directed at eliminating the theory and practice of the criminal justice system. As Chapter I sets out in some detail, matters involving children were taken to be nonadversarial. The juvenile court philosophy neither presumes nor recognizes an essential conflict between the interest of the state and that of the child, any more than it recognizes a conflict of *interests* underlying the family relationship. Societal intervention was not "punitive," at least in the sense that it sought to express moral indignation at and exact retribution for wrongdoing; nor was it seen as threatening the child's freedom. As the Pennsylvania Supreme Court observed, "There is no restraint upon the natural liberty of children contemplated by the [Juvenile Court Act]—none whatever, but rather the placing of them under the natural restraint, so far as practicable, that should be, but is not, exercised by parental authority. It is the mere conferring upon them of that protection to which, under the circumstances, they are entitled as a matter of right."[22]

Ideologically, the juvenile court was likened to the family, which is preeminently a cooperative organization. Of course, conflict does from time to time occur in juvenile court matters, as it does within the family. Nevertheless, the conflict bears no relation to the *principle* of either the family or of the

court; indeed, it runs counter to that principle.[23] Hearings were not, after all, for the purpose of resolving those narrow factual issues of the sort for which an adversarial system is peculiarly suited. In view of the premise that the juvenile court was to concern itself with the totality of the child's condition, and only incidentally with any particular conduct, it naturally followed that "In such a court, the accoutrements of due process evolved from the 18th century experience—public trials, shields against self-incrimination, adversary inquiry into the single event which brought the child to court—seem irrelevant."[24] The "accoutrements of due process" seem irrelevant of course, precisely because they fix the rules by which conflict between adverse interests is to be resolved. Where the organization is based upon cooperation among the actors in aid of an interest commonly shared—here, the identification and protection of the child's welfare—structures that cater to conflict resolution are not only unnecessary but inappropriate. Procedural informality served both psychological and institutional ends—the former by minimizing the "trauma" of appearance before the court, the latter by facilitating (and consequently enforcing) the cooperative direction of the hearings. Jane Addams identified this relationship between goals, mode and structure in juvenile proceedings long ago:

> Perhaps the most striking result of the Juvenile Court was that brought about in the law court as such, where lawyers have for many years ranged themselves to prosecute and to defend a prisoner. There was almost a change in *mores* when the Juvenile Court was established. The child was brought before the judge with no one to prosecute him and none to defend him—the judge and all concerned were merely trying to find out what could be done on his behalf. The element of conflict was absolutely eliminated and with it, all notion of punishment as such with its curiously belated connotation.[25]

Accordingly, professional attorneys were not encouraged in juvenile courts. The participation of a prosecutor has been exceptional and is still not the rule in most jurisdictions. Since the matter was said to be *in the interest of,* rather than *against,* the child, an accusatory official was not wholly appropriate. Functionally, the necessity of professional representation was diminished since the issue was not primarily one of specific conduct, but the more diffuse one of the child's condition. While it was occasionally recognized that the presence of a state's attorney was desirable in contested cases, even here it appeared that this was taken to be an unusual situation, and the prosecutor's role, when he appeared, was not classically accusatorial. Certainly, the prosecutor was not regarded as an institutional feature of the juvenile court.

Although defense attorneys retained by the child or his parents were rarely excluded from hearings, their participation was not encouraged and, when their presence was unavoidable, efforts were sometimes made to im-

press upon them the peculiar nature of delinquency proceedings and the necessity of modifying their tactics and approach in children's cases.[26] As Chapter I suggests, the preferred role for the lawyer was that of liaison between the court and the child, of explicator of the juvenile justice system; he was not thought of as an advocate for the child in any adversarial sense.

Similarly, the procedure for juvenile court hearings was simplified in two ways. First, the conduct of the proceedings was more informal than in criminal cases. Since "the primary function of the judge is not to prove that the child is or is not guilty of an offense but to get from the child the truth, to weigh the results of the social, physical, and mental findings, to determine what the needs of the child are . . . the proceedings of the court must be simple, summary or informal. . . ."[27] This conviction found expression in the statutes which regularly provided that hearings are to be informal or summary in nature, and are to be conducted under such rules as the court may prescribe.

The adoption of summary hearings, and de-emphasis of technical defenses, led to a consolidation of proceedings. In some courts, an informal hearing was held to determine whether or not the case should be referred for official action. These intake hearings are held before a probation officer or other social worker, and typically consider the following questions: "Does the complaint or the action appear to be a matter over which the court may have jurisdiction [*not,* is there probable cause to believe the child has committed the action]? Can the interests of the child and the public be best served by court action (i.e., the filing of a petition) or by referral to another agency in the community? If by referral to another agency, what agency? If court action is indicated, what type of proceeding should be initiated? If the child is in detention, is continued detention care needed or should the child be released?"[28] Neither the intake hearing nor, in those jurisdictions where it is used, a judicial detention hearing amounts to, or is designed to fill the function of, the preliminary examination or the arraignment hearing employed in criminal cases. As a rule, the first hearing before a judicial officer that relates to the merits of the case is the one at which adjudication and disposition are decided. The tendency, then, has been to dispose of all substantive issues in a single hearing. Motions (if any) are made at this point, the jurisdiction of the court is established and its rehabilitative scheme determined. The last of these decisions is possible because social investigation studies have been prepared by the court staff between the time of the filing of a petition and the delinquency hearing. Typically, these reports have been made available to the judge at the beginning of proceedings, for adjudicative as well as dispositional purposes.[29]

It followed from the ideological and structural de-emphasis of the conflict motif that access to appellate review was also de-emphasized. In a number of states, no provision was made for review in any form and, because the

juvenile court system was wholly a creature of statute, no right to appeal was recognized. Even where appeal was allowed, the presence of stenographic reporters was infrequently authorized. Several practical and theoretical justifications for denying access to review and to a verbatim transcript have been offered. Since the contested case was exceptional, and most offenders either admitted involvement in the offense charged or some other conduct or condition necessitating the court's intervention, appeals were infrequent and the cost of providing a reporter became unjustifiable. Additionally, the informality that characterizes most juvenile court matters tends to produce an unclear record; the stages and issues are not so clearly defined that questions on appeal are presented in sharp relief. The mere fact that a reporter is present in the court, taking down every word that is said, has been felt to increase formality in the hearings at least indirectly by limiting the openness of the parties' disclosures to the court and by leading the court to rest its decision on more "legalistic" grounds than it might otherwise.[30]

Despite the ideology announced by its proponents, the juvenile court—as established in law—was not *purely* cooperative in conception. As Chapter I suggests, the enactments that gave life to the child-saver's dream were not so radical as the ideology apparently required. The reformers insisted that the juvenile court direct its attention to the child's conduct rather than to any specific conduct; official intervention was not to be constrained by legal conceptions of guilt, but was to be guided by the necessities of the child's situation. This principle was not, however, embodied in the official expressions of the court's power. Statutory definitions of delinquency were expanded, but juvenile court legislation uniformly required the finding of a jurisdictional fact defined in terms of particular misconduct. If it were not determined that the respondent was responsible for some enumerated act, and no other jurisdictional category (such as neglect or dependency) was appropriate, treatment could not legally be ordered even if it otherwise appeared that the child could benefit from the court's assistance. The existence of this requirement was recognized by even the most traditional authorities on juvenile court law. Herbert Lou's early treatise on *Juvenile Courts in the United States,* published in 1927, concedes that:

> This specific proof is the basis of the adjudication of the child as a delinquent or a ward of the court, and of the whole treatment that follows. *If it is found that the child has not committed the act alleged in the petition, the petition must be dismissed without prejudice, even though the investigation shows the child's habitual conduct to be such that the court's protection is required.*[31]

Insistence upon a jurisdictional predicate almost necessarily reintroduced something of the adversarial flavor to delinquency proceedings; it enabled the child, as a statement of legal right, to say: "Don't help me unless you have

first shown that my acts—not my condition—are of a particular sort defined as delinquency under the statute."

It might also be suggested that the choice of a judicial rather than an administrative forum for the determination of delinquency cases militated against the creation of a true cooperative organization. During the discussions preceding enactment of juvenile court legislation, it was often suggested that administrative agencies would be more appropriate to the informal adjustment of children's cases than judicial tribunals, with their heritage of and design for resolving conflicting interests and allegations. It was decided, however, that since the effect of intervention in juvenile cases was substantial, and since the rights of persons were involved, jurisdiction should be placed in the hands of courts rather than administrative bodies.[32] In reaching this result, of course, the possibility of conflict within the system was recognized and, indeed, emphasized.

THE GOTHAM AND ZENITH COURTS: AN ORGANIZATIONAL COMPARISON

There has been a tendency to speak of "the juvenile court system" in this country, a terminology we have not abandoned in the course of our discussion. A caveat is necessary at this point. Although useful as a shorthand expression referring to the collectivity of courts specially constituted for the handling of children's cases, the phrase becomes misleading to the extent it implies uniformity within this group. As the foregoing discussion suggests, juvenile courts embody differing and inconsistent normative themes. The consequent tension may be resolved by rejecting either one in operation—on the one hand, by acting as an adversarial system without any pretense at enforcing cooperative values; on the other, by seeking to eliminate the conflict norm in favor of the "child-saving" philosophy. In all likelihood, neither of these alternatives has ever been adopted. Resolution of normative inconsistency has been achieved by way of compromise, and courts can be placed along a continuum ranging from "conflict" to "cooperation." Since the organization of courts expresses their norms as well as serving and perpetuating them, it follows that the more "traditional" courts—that is, those which more closely adhere to the original juvenile court philosophy—are less structured in their proceedings, for reasons that led proponents of courts for children to urge simplicity and informality. Similarly, those courts that have accorded greater importance to the conflict norm have adopted procedures more akin to those which the criminal process has developed.

As already suggested, Gotham is representative of jurisdictions on the "traditional" end of the spectrum. Two of the four judges had long and ex-

tensive involvement with the juvenile court and with the "traditionalist" National Council of Juvenile Court Judges. Their approach was shared by at least one of the remaining two judges. The structure of the court reflects this orientation in three principal areas.

1. No prosecutor appeared at any juvenile court hearing. The charges were read by a member of the court staff, and development of the evidence was undertaken entirely by the presiding judge.

2. The Gotham court followed the traditional practice of combining arraignment, adjudication, and disposition in a single hearing. Typically, a child and his parents, having been served a summons and petition by mail, would appear before the court on the scheduled date. The charges would be read by either the judge or a Gotham City Youth Division police officer assigned to the court. After the reading of the charge, the youth (or his attorney) would be asked if there was an admission, and if one was made, discussion of an appropriate disposition would often, but not always, ensue. Contested cases, where a denial or partial denial was entered, would usually proceed to trial without benefit of a continuance. Evidence would be introduced and testimony taken, sometimes without regard to the lawyer's state of preparation or the availability of material witnesses. In many cases, dispositional orders immediately followed entrance of a finding of delinquency.

3. Neither a mechanical nor a stenographic transcript of the proceedings was available in Gotham. Despite repeated efforts by way of motion and appeal on the part of the Gotham Lawyer Project, it was not until the very end of the project that a change of court rules provided for a tape recording of all delinquency hearings. This does not mean that appeals were not allowed; however, the record on appeal could only be constructed by a Statement of Proceedings. This statement was to be prepared by the defense attorney from his recollection; in practice, this statement had to be submitted to the trial judge who was empowered to make such corrections as seemed necessary or appropriate.

The procedures in Zenith differ substantially from those in Gotham. A state's attorney was assigned to each court and appeared at every stage of the delinquency proceedings. He was charged with the responsibility for deciding whether to prosecute and for the prosecution of each case before the court.

With regard to the hearing structure, it is important to note that during most of the project, the Zenith court used a separate pre-adjudicative "arraignment" hearing at which time rights were explained and specific pleas entered. As in criminal cases, an unrepresented respondent was advised of his right to counsel at this point and, if the right was exercised, the arraignment was continued until such time as the respondent and his attorney could appear. If the offense was admitted and a finding of delinquency deemed

appropriate, the case would normally be docketed for a disposition hearing at a later date, at which time social factors relevant to the youth's condition would be considered in making the disposition. Social investigation reports were never prepared before a finding was entered on an original delinquency petition.

If the allegations were contested, the case would automatically be scheduled for a hearing on the merits of the charge. If pre-trial motions such as those to discover or suppress evidence were filed by the defense, a separate hearing on the question would be held prior to the adjudication hearing, either on an earlier date or on the same day as adjudication but prior to consideration of the merits of the case.

In the event that a finding of delinquency was made, the court would order a subsequent disposition hearing and the preparation of whatever reports were necessary (social investigations and, in some cases, psychiatric and/or psychological evaluations).

Lastly, verbatim transcripts were taken by stenographic reporters at all delinquency hearings. The only problem in seeking review of decisions in Zenith was that transcripts were not available without cost even in cases of demonstrated indigency. This difficulty was overcome in two ways: the Lawyer Project office purchased the transcript whenever an appeal was contemplated, and at the same time, a successful appeal on the question of the right to a free transcript was taken to the supreme court. At no point, therefore, were the Zenith attorneys cut off, or the court free, from effective appellate review of adverse decisions.

THE COOPTIVE MECHANISM AND ITS FUNCTION

Briefly stated, "cooptation" is "the process of absorbing new elements into the leadership or policy-determining structure of an organization as a means of averting threats to its stability. . . ."[33] By reference to this mechanism and to the prior discussion of the differential organizational framework of the two project courts, an explanation of the findings reported in Chapter III may be essayed. Of the two courts, Gotham was predictably the less accustomed to the participation of law counsel. The differential impact of the project in Zenith and Gotham may be explained, then, by the fact that the more radical threat to judicial organization was posed in Gotham—a threat successfully met and countered by the court during the course of the project. The following chapter, by drawing upon additional sources of data, seeks to describe with greater particularity the nature and extent to which court structures and practices affected the performance of defense counsel in each city.

NOTES

[1] H. Gerth and C. Mills (eds.), *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), pp. 196–244.

[2] J. Skolnick, "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 52 (1967).

[3] *Ibid.*

[4] *Ibid.*

[5] See G. Simmel, "Conflict," in G. Simmel, *Conflict and the Web of Group Affiliations,* trans. K. Wolff (New York: Free Press, 1955), pp. 11, 34–35. (Hereinafter cited as *Simmel.*)

[6] "Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice," 1963, p. 11. (Hereinafter cited as the *Allen Committee Report.*)

[7] *Ibid.*

[8] See *Simmel,* pp. 35–38.

[9] *Allen Committee Report,* p. 11 (emphasis supplied).

[10] See generally, American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function* (Chicago, 1970). (Hereinafter cited as *Prosecution and Defense Standards.*)

[11] See *Simmel,* p. 37.

[12] See J. Spain, "The Grand Jury, Past and Present: A Survey," 2 *American Criminal Law Quarterly* 119, 123–125 (1964).

[13] See generally, F. Miller and F. Remington, "Procedures Before Trial," 339 *Annals* 111 (1962); Federal Rules of Criminal Procedure, Rule 5(c).

[14] See Federal Rules of Criminal Procedure, Rule 10.

[15] See American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty* (Chicago, 1967), §1.3.

[16] Until recently, it might have been assumed that the trial judge must also be assured that a defendant was in fact guilty of the crime to which he pleaded, as evidenced by the latter's admission. In North Carolina v. Alford, 400 U.S. 25 (1970), however, the Supreme Court held that an express admission of guilt was not a constitutional prerequisite to imposition of a criminal penalty, and that an individual accused of crime may voluntarily consent to imposition of sentence even if he is unwilling or unable to admit participation in the acts constituting the crime.

[17] See American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty,* §1.4–1.6.

[18] Duncan v. Louisiana, 391 U.S. 145 (1968).

[19] See American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedures* (Chicago, 1967), §5.3(h), pp. 245–246.

[20] McKane v. Durston, 153 U.S. 684 (1894). See Griffin v. Illinois, 351 U.S. 12, 18 (1956).

[21] Griffin v. Illinois, 351 U.S. 12, 18 (1956).

[22] Commonwealth v. Fisher, 213 Pa. 48, 56, 62 AH. 198.201 (1905).

[23] See *Simmel,* p. 68.

[24] W. v. Family Court, 24 N.Y. 2d 196, 198, 247 N.E. 2d 253, 254 (1969).

[25] J. Addams, *My Friend, Julia Lathrop* (New York: The Macmillan Co., 1935), p.

137, quoted in M. Rosenheim, "Perennial Problems in the Juvenile Court," in *Justice for the Child* (New York: Free Press of Glencoe, 1962), pp. 1, 14.

[26] See discussion, Chap. I, pp. p. 19; Chap. III, p. 64.

[27] H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), p. 129.

[28] U.S. Children's Bureau, *Standards for Juvenile and Family Courts* (1966), p. 54.

[29] See President's Commission on Law Enforcement and Administration of Justice, "Task Force Report: Juvenile Delinquency and Youth Crime," 1967, p. 82, Table 19; L. Teitelbaum, "The Use of Social Reports in Juvenile Court Adjudications," 7 *Journal of Family Law* 425 (1967).

[30] See generally, A. Bowman, "Appeals from Juvenile Courts," 11 *Crime and Delinquency* 63 (1965).

[31] Lou, *Juvenile Courts in the United States,* p. 134 (emphasis supplied).

[32] *Ibid.,* p. 32: "In fact, although the juvenile court concerns itself with social justice rather than strict justice, it is still a court of law—with a new status indeed—intimately bound up with the judicial machinery of the state, and it decides legal questions of social import, such as the custody and disposition of children, which cannot be disposed of in any other way than through the intervention of a court following conscientiously and more or less definitely the established principles of law."

[33] P. Selznick, *TVA and the Grass Roots* (New York: Harper & Row, 1966), p. 13.

V *The Courtroom Experience: Organizational Constraints on the Lawyer's Role*

At this juncture, let us recapitulate and emphasize several points made earlier. First, the lawyers' performances were clearly consistent within each office, which permits treatment of each office as a unit. Second, the project attorneys were all chosen for, and enjoined to pursue, an adversarial approach to the representation of their young clients. Chapter III, however, showed that the results of representation differed greatly in Gotham and Zenith, and that these variances could not be explained in terms of variations in the sample or any other element in the research design. The thesis was adopted that differences in the courts themselves accounted for the differences in outcomes. Chapter IV set out the theoretical basis for this thesis and compared the organizations of the project courts. This chapter seeks to show, with some particularity, the ways in which the nature and structure of the courts affected the conduct of the defense in each city and the relation between defense posture and the results obtained.

In describing the differences in the lawyers' performances, it is useful to begin by indicating the grounds upon which the Zenith and Gotham courts rested their decisions. Sufficient information on this score is available in 183 of the 195 cases reported in Zenith, and in 156 of the 162 Gotham cases. These expanded tables are presented, their unwieldiness notwithstanding, because reference will be made to them with some frequency during the course of this discussion.

Even brief attention to Tables V.1 and V.2 reveals considerable difference in the operation of the Gotham and Zenith courts. Apparently almost every case coming before the Gotham court went to trial and was decided on its merits. In only one case (0.5 per cent) did the "state" decline prosecution, although such a decision accounted for almost 16 per cent of the dispositions in Zenith. This difference, although striking, is readily explained by the presence in Zenith of a prosecuting attorney who would make a motion to dismiss at the outset if he was persuaded no case could (or perhaps should) be made. To some extent, the significance at this difference might be reduced if there were in Gotham an increase in the rate of dismissals due to mitigating circumstances. In fact, the proportion of *dismissals* on that ground was somewhat greater in Gotham than in Zenith (28.6 per cent to 21.1 per cent), and the over-all proportion of dispositions because of mitigating circumstances is approximately the same for each city (Zenith's rate is slightly higher, in fact—15.3 per cent compared with 13.5 per cent in Gotham). Combination of the two rows (dispositions resulting from the state's declining prosecution and from mitigating circumstances) reinforces the difference in results suggested above, though the cause may differ: 31.1 per cent of the outcomes in Zenith are for one of these two reasons, whereas only 14 per cent of those in Gotham are attributable to them.

It also appears that approximately one-third of the cases in Zenith were resolved (by dismissal) either because a necessary witness did not appear or on the ground of insufficient evidence. In Gotham, by contrast, decisions rarely were based on these reasons. Dismissals for failure of a witness to appear were ordered in only 4.6 per cent of the adjudications (as compared with 14.2 per cent of those in Zenith), and those for insufficient evidence were only slightly more common (5.1 per cent of the cases, as compared with 17.5 per cent of those in Zenith).

The infrequency, in Gotham, of dispositions based on insufficient evidence, failure of witnesses to appear, and want of prosecution—grounds frequently invoked in criminal courts—is offset by reliance on two other categories: instanter amendments and admissions. In some 10 per cent of the cases in Gotham (but only 1.6 per cent in Zenith), the court's result was based on a new charge, laid and adjudicated during the course of the adjudicatory hearing, which was neither contained in the original complaint nor a lesser included offense of an original allegation. By far the greatest reason for disposition in Gotham (accounting for 52.6 per cent of the decisions) was the admission of the respondent. By comparison, admissions also constituted the single largest basis for outcomes in Zenith, but were relied upon in less than 21 per cent of the cases.

A cursory examination of Tables V.1 and V.2 indicates that, despite the adversarial orientation originally espoused by and urged upon the staff law-

Table V.1
Zenith: Reasons Recorded for Dispositions in 183 of 195 Case Reports

Disposition	*Case Dismissed* % (*N*)	*Delinquency Not Formally Entered, Case Continued under Court Supervision* % (*N*)	*Probation* % (*N*)	*Commitment* % (*N*)	*Other* % (*N*)	*Totals* % (*N*)
State proves case	6.9 (7)[a]	4.1 (1)	31.7 (13)	50.0 (5)	(1)	14.8 (27)
Insufficient evidence	31.7 (32)					17.5 (32)
Failure of witness to appear	25.7 (26)					14.2 (26)
Mitigating circumstances	5.9 (6)	79.2 (19)	2.4 (1)		(2)	15.3 (28)
State declines prosecution	27.7 (28)				(1)	15.8 (29)
State amends petition and proves case			4.9 (2)	10.0 (1)		1.6 (3)
Admission	2.0 (2)[a]	16.7 (4)	61.0 (25)	40.0 (4)	(3)	20.8 (38)
Totals	99.9[b] (101)	100.0 (24)	100.0 (41)	100.0 (10)	(7)	100.0 (183)

[a] Case marked "dismissed" on motion of counsel to vacate finding.
[b] Per cents do not add up to 100 due to rounding.

Table V.2
Gotham: Reasons Recorded for Dispositions in 156 of 162 Case Reports

Disposition	*Case Dismissed* %	(*N*)	*Delinquency Not Formally Entered, Case Continued under Court Supervision* %	(*N*)	*Probation* %	(*N*)	*Commitment* %	(*N*)	*Other* %	(*N*)	*Totals* %	(*N*)
State proves case			11.4	(6)	12.2	(5)	38.5	(5)	18.5	(5)	13.5	(21)
Insufficient evidence	36.4	(8)									5.1	(8)
Failure of witness to appear	31.8	(7)									4.6	(7)
Mitigating circumstances	27.3	(6)	24.5	(13)					7.4	(2)	13.5	(21)
State declines prosecution	4.5	(1)									0.5	(1)
State amends petition and proves case			7.5	(4)	14.6	(6)	7.7	(1)	18.5	(5)	10.2	(16)
Admission			56.6	(30)	73.2	(30)	53.8	(7)	55.6	(15)	52.6	(82)
Totals	100.0	(22)	100.0	(53)	100.0	(41)	100.0	(13)	100.0	(27)	100.0	(156)

yers, project cases in Gotham were far less likely to be contested than was true in Zenith. It also appears that, where outcomes rested on grounds other than entrance of an admission, those grounds were rarely of a "legalistic" character in Gotham. Relatively few cases, for example, were disposed of because of a failure of proof, either due to the nonappearance of an essential witness or failure of a more general sort. These observations confirm the differences in orientation of the project courts discussed earlier. At the same time, they suggest that there may also be substantial differences in the nature of the defenses raised by the Gotham and Zenith offices.

THE DEFENSE FUNCTION: THE PLEA

Introduction. In the criminal process, entrance of a plea has functional as well as informational significance. As already shown, courts are required to satisfy themselves that *admissions* are truthful, or at least have some factual basis. A plea of guilty waives such constitutionally protected rights as trial by jury, the privilege against self-incrimination, and the right to confrontation and waivers of constitutional rights are closely scrutinized, however they may occur. On the other hand, entrance of a *not guilty* plea clearly need not serve a truth-telling purpose. A denial says only that the defendant asserts his right to freedom from authoritative intervention until his guilt has been proved beyond a reasonable doubt, by lawful evidence, and according to proper procedure. Thus, pleas are rendered in a separate proceeding and are not given on oath, as are other statements by witnesses or parties.

Juvenile courts have traditionally rejected the proposition that pleas may serve a purely institutional purpose. Indeed, "pleas" in the usual sense are often not taken at all; more commonly, the respondent is simply asked at some point in the proceedings whether he committed the alleged act, or if he has anything to say. Such was the situation in *In re Gault* and, as a previous study of the Gotham court has shown, such is the practice there as well.[1] The reasons for insisting upon truthful statements at all stages of delinquency hearings are evident. In the absence of an adversary system, the challenge to the state is inappropriate. Additionally, the therapeutic orientation of juvenile matters requires that the child not tell a lie to the court or, at the very least, that he not leave the court with that lie on his conscience.

The Plea as an Indication of Adversariness: Plea-Taking in Gotham and Zenith. Analysis of the case reports reveals striking differences between the cities with regard to the entrance of pleas. As Table V.3 indicates, straightforward denials were entered in 53 per cent of the Zenith cases but in only 36 per cent of those in Gotham. Moreover, the failure to enter a plea—which occurred in better than 16 per cent of the Zenith cases but less than 1 per cent

Table V.3
Plea on Principal Petition

Plea	Zenith %	Zenith (N)	Gotham %	Gotham (N)
Admit	27.2	(53)	51.2	(83)
Deny	53.3	(104)	35.8	(58)
Admit in part/ deny in part	3.1	(6)	11.7	(19)
No plea given	16.4	(32)	0.6	(1)
Don't know/ unreported	0.0		0.6	(1)
	100.0	(195)	99.9[a]	(162)

[a] Per cents do not add up to 100 due to rounding.

of Gotham's—has the same functional significance as a denial, since the Zenith court uniformly entered a denial on the child's behalf and treated the case as if one had been formally entered. Combining these categories, it appears that almost 70 per cent of the Zenith matters were contested, as opposed to 36 per cent of the Gotham cases.

These figures alone go far toward explaining the differential "success" ratios in Gotham and Zenith. As Tables V.1 and V.2 suggest, entrance of an admission, by itself, accounts for a substantial proportion of outcomes in each city. Further, reliance upon admissions is negatively correlated with dismissals. Clearly, the decision to submit a client to the court's jurisdiction greatly affects the outcome of the case in favor of exertion of at least minimal authority over the child.

The Child's Story and Plea Determination. Having established that contested cases were substantially less frequent in Gotham, with the obvious correlative that the incidence of adversarial defense was reduced *pro tanto,* it becomes important to show why this was so. A common-sense explanation would be that the incidence of guilty pleas merely reflects the extent to which project clients admitted their guilt to their attorneys. There is, indeed, statistical evidence to support this interpretation. As Table V.4 indicates, over one-half of the Gotham office's clientele, at some point before trial, admitted full complicity to their attorneys, and another 14 per cent made partial admissions. In all, almost two-thirds of the children (65.9 per cent) represented by the Gotham office made at least a partial admission to their lawyers. In Zenith, by contrast,

Table V.4
Child's Statement to Lawyer

Statement to Lawyer	*Zenith* %	(*N*)	*Gotham* %	(*N*)
Admission	40.4	(76)	51.6	(83)
Part admit/part deny	6.4	(12)	14.3	(23)
Denial	53.2	(100)	34.2	(55)
	100.0	(188)	100.1[a]	(161)

[a] Per cents do not add up to 100 due to rounding.

less than one-half of the children made even a qualified admission to the staff.

It is not immediately clear *why* children in Gotham were far more likely to admit guilt to their attorneys. Randomization ensures that the test population is representative of the total sample *within each city*. The explanation must lie, therefore, either in differences between the clientele of the offices (in the sense that the Gotham staff received a higher proportion of guilty children), or in the relations between the clients and the attorneys. With regard to the former, it might be suggested that police and intake department screening in Gotham are singularly efficient, with the result that the vast majority of the cases referred to court, and hence to the project office, are clearly guilty. This effort to account for the differential admission rate to the attorneys would be much more convincing if the cities were reversed, however; it is Zenith—as we have already had occasion to mention—that has the more professional police department and the more active and thorough intake staff.

The second hypothesis—that the incidence of admissions to lawyers is affected in some way by the lawyer-client relationship—is more easily supported. Information on this score is available from two items in the case reports, one concerning the extent to which the lawyer believed his client's story and the second indicating whether or not the attorney counseled or urged the child to enter an admission in court. Table V.5 reveals that, although belief in the child's story was approximately the same in each city, actual disbelief on the lawyer's part was registered in only 2 per cent of the Zenith cases, compared to some 15 per cent of those in Gotham. Correspondingly, the proportion of "Don't knows" for Zenith is 22 per cent, as against 14 per cent in Gotham. It is fair to infer from these figures that the attorneys in Gotham were substantially more concerned with the truthfulness of the child's story than were their Zenith counterparts.

Table V.5
Lawyer's Belief in Client's Story

Lawyer's Belief	*Zenith* %	(*N*)	*Gotham* %	(*N*)
Yes	71.3	(139)	69.8	(113)
No	2.0	(4)	15.4	(25)
Don't know whether to believe or not	22.6	(44)	14.2	(23)
Not reported	4.1	(8)	0.6	(1)
	100.0	(195)	100.0	(162)

These figures taken alone might not be compelling evidence of the difference in attorney-client relations regarding interest in the truthfulness and actual innocence of their clients. The inference is strengthened, however, by looking to the extent to which project lawyers exerted pressure on their clients to make a judicial admission. On only three occasions (1.5 per cent of all cases) did the Zenith lawyers seek to convince their clients to plead guilty. The Gotham staff was far more active in this regard; pressure to admit was exerted in twenty-three cases (14.2 per cent of their total caseload). Lest there be some confusion as to the significance of this difference, it should be noted that we refer here only to instances of affirmative action by the lawyers directed to securing a judicial admission. Cross-examination of the sort traditionally employed by the defense attorney to test the veracity of his client is not categorized as an attempt to convince the child to admit guilt, nor are mere reflections on the soundness of a story or explanation of alternative strategies available to the defense.

The more likely explanation, therefore, is that the Gotham attorneys attached greater significance to the truthfulness of their clients' stories, were less ready to believe those stories, and were more willing to exert pressure of an informal sort to secure both a truthful answer and, if appropriate, a judicial admission. It is not surprising that, in the course of this pre-trial truth-determining process, a greater number of their clients should concede guilt. The difference in proportion of admissions to the lawyer is, in this interpretation, primarily a function of the relative lack of concern in Zenith with the truthfulness (as opposed to the general credibility) of their clients' representations to them, which is suggested by the large number of cases in the "Don't know"—perhaps "Don't much care"—category of Table V.5.

The foregoing indicates, in addition to the Gotham staff's greater con-

cern for the truthfulness of their clients' stories, a concern that the truth be reflected in the plea. Tables V.6 and V.7 present this information in somewhat different form. Table V.6 suggests a relationship between the lawyer's disbelief in the client and his attempt to convince the child to enter an admission in court. In 28 per cent of the Gotham cases where the lawyer disbelieved his client, and in 9 per cent of those where he was unsure, the child was urged to make a guilty plea. Presumably, these were cases where the youth denied involvement to the lawyer. The obvious inference from this evidence is that the Gotham office's preferred posture was to admit guilt when the child was involved in the offense and, if necessary, to convince him to make such an admission despite an original denial. This does not mean, of course, that the Gotham attorneys were unwilling actively to defend an admittedly guilty client if the client insisted; it does suggest, however, that there was a substantial effort to have the youth confess if he appeared to be involved in the offense charged.

That the plea *actually entered* in Gotham was largely a function of the child's admission or denial in pre-hearing interviews is clearly established by Table V.7. In only two instances did defense counsel enter the hearing with a denial when, in fact, the juvenile had admitted to him either all or part of the charges pending. For example, if the child had admitted the entire charge to the lawyer, a plea of guilty followed in 98 per cent of the cases. In effect, then, the entrance of a plea in Gotham followed quite closely the pattern envisioned by traditional proponents of the juvenile court movement; it represents, by and large, truth rather than defense strategy.

The Zenith office, on the other hand, did not treat the plea as a virtual concomitant of the child's admission or denial to the attorney. Unlike Gotham, belief or disbelief in the child's story was apparently of far less moment to the staff, either in and of itself or for purposes of deciding upon a plea. While Gotham's attorneys sought to convince their clients to admit responsibility in 28 per cent of the instances of disbelief and 9 per cent of the cases where they were uncertain, such an effort was undertaken only once in Zenith when the lawyer did not know if his client was telling the truth (2.3 per cent of such cases) and not at all when the lawyer disbelieved the child. Indeed, the Zenith office affirmatively urged a respondent to plead guilty only on two occasions where the child was believed (and, presumably, had admitted complicity to the lawyer).

Consistent with the disinclination in Zenith to place great importance on the truthfulness of their clients' stories was a dissociation of the plea actually entered from prior statements to the attorney. Table V.7 shows that in nineteen cases where the youth previously admitted full involvement in the charge against him, the lawyer either entered a denial or stood mute, which, in this situation, has the same legal effect as a plea of not guilty. Since Table V.4

Table V.6
Relationship of Lawyer's Belief in Client's Story and Pressures Exerted on Client to Admit

Pressure on Client to Admit Offense	*Belief in Client's Story*											
	Gotham								*Zenith*			
	Yes		*No*		*Don't Know*		*No Information*		*Yes*		*No*		*Don't Know*		*No Information*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Yes	12.4	(14)	28.0	(7)	8.7	(2)	0		1.4	(2)	0		2.3	(1)	0	
No	87.6	(99)	72.0	(18)	91.3	(21)		(1)	98.6	(137)		(4)	97.7	(43)		(8)
	100.0	(113)	100.0	(25)	100.0	(23)		(1)	100.0	(139)		(4)	100.0	(44)		(8)

Table V.7
Relationship Between Plea and Youth–Lawyer Agreement

	Plea							
	Gotham[a]				*Zenith*			
Youth-Lawyer Agreement	*Admit* % (*N*)	*Deny* % (*N*)	*Admit Part, Deny Part* % (*N*)	*No Plea* %	*Admit* % (*N*)	*Deny* % (*N*)	*Admit Part, Deny Part* % (*N*)	*No Plea* % (*N*)
Agree on admission	98.8 (82)	0	0	0	100.0 (53)	0	0	16.0 (4)
Youth admits, lawyer denies		1.7 (1)				9.6 (10)		36.0 (9)
Agree on denial		94.8 (55)				84.6 (88)		48.0 (12)
Youth part admits, part denies, lawyer agrees	1.2 (1)	1.7 (1)	100.0 (19)			1.0 (1)	100.0 (6)	
Youth part admits, part denies, lawyer disagrees		1.7 (1)				4.8 (5)		
	100.0 (83)	99.9[c] (58)	100.0 (19)	0	100.0 (53)	100.0 (104)	100.0 (6)	100.0 (25)[b]

[a] Excludes one case where plea actually entered not known.
[b] There were seven cases where no plea was entered but no information was recorded on the case reports concerning the juvenile's admissions or denials.
[c] Per cent does not add up to 100 due to rounding.

records seventy-six instances in which such an admission was made to the attorney, it appears that a full one-quarter of those cases ended up as denials despite the child's admitted involvement. To this might be added another five cases where the client conceded, at least partially, the truth of the allegations, but a straight denial was entered by the attorney on his behalf. The total of five cases in this category represents some 42 per cent of all partial admissions by clients to lawyers in Zenith. Finally, in four cases the attorney did not enter a plea at all, and, because of the direction taken by the proceedings, entrance of a plea never became necessary.

Finally, one should note that in Zenith, as in Gotham, all cases where the child persisted in his declaration of innocence were denied in court. The only difference in this regard is one already discussed—the reduction of denials in Gotham by virtue of the attorneys' closer examination of their clients' stories.

Thus, the Zenith office was apparently quite willing to treat the plea as is frequently done in the criminal process—as an expression of the accused's desire to force the state to its proof, rather than as a statement of fact. Indeed, use of the plea as a posture-defining occasion in a sense epitomizes the adversarial scheme in that it reaffirms the diversity of interests between the state and the person upon whom it seeks to act. This approach contrasts strikingly with the practice in Gotham, and with the traditional view of the relation between the child (and his lawyer) and the court in juvenile matters.

Institutional Structures and Plea Determination. As already suggested, the circumstances of the forum affect counsel's operation before it. A number of identifiable factors and pressures converged to modify the original thrust of representation in Gotham, forcing the lawyers away from initial inclinations and instructions. These factors were either absent or significantly reduced in Zenith.

First, the entrance of the plea in Gotham was not treated institutionally as a posture-defining ceremony. Unlike Zenith, no separate plea-taking hearing was held in Gotham; indeed, as has already been observed, formal pleas (as opposed to self-incriminatory statements in the course of proceedings) were often not solicited at all by the court. Moreover, an earlier study of the Gotham court indicated that all persons present were sworn at the outset of the adjudication hearing, with the result that any statement the child might make thereafter was on oath[2]—a circumstance wholly inconsistent with the taking of pleas in criminal courts or, for that matter, in Zenith.

In addition, the determination of a plea can be an event of considerable complexity as well as one of great legal significance. The decision may depend, in large part, on whether it appears that the state can prove its case *in law,* or whether evidence exists which may permit the raising of an affirmative defense. This information often is not readily available. Sole reliance upon the client's initial presentation is, as has widely been recognized, highly undesir-

able. Even in the case of an admission, the attorney should inquire closely, other than simply from his client, into the circumstances surrounding the charges. Accordingly, the recently published American Bar Association *Standards Relating to the Prosecution Function and the Defense Function* makes the following comment:

> The lawyer's duty to investigate is not discharged by the accused's admission of guilt to him or by his stated desire to enter a guilty plea. The accused's belief that he is guilty in fact may often not coincide with the elements which must be proved in order to establish guilt in law. In many criminal cases the real issue is not whether the defendant performed the act in question but whether he had the requisite intent and capacity. The accused may not be aware of the significance of facts relevant to his intent in determining his criminal liability or responsibility. Similarly, a well-founded basis for suppression of evidence may lead to a disposition favorable to the client. The basis for evaluation of these possibilities is the lawyer's factual investigation for which the accused's own conclusions are not a substitute.
>
> The lawyer's duty is to determine, from knowledge of all the facts and applicable law, whether the prosecution can establish guilt *in law,* not in some moral sense. An accused may feel a sense of guilt but his subjective or emotional evaluation is not relevant; an essential function of the advocate is to make a detached professional appraisal independent of the client's belief either that he is or is not guilty.[3]

Clearly, then, the plea decision can be, and perhaps should be, a time-consuming process. Both project offices had the same time between selection of a case for representation and assignment to the lawyer; cases were referred to the offices a uniform number of days before the first scheduled hearing. In both cities, however, it frequently happened that project representation was not accepted or interviews arranged until the day preceding, or even the day of, that first hearing—a situation hardly unknown to defense attorneys, particularly those associated with legal aid or public defender agencies. In Zenith, the closeness in time of initial client contact and first hearing worked no great hardship, even when the first interview was conducted immediately prior to appearance before the judge. Separation of hearings in time and by issue, as was done in the Zenith court, greatly facilitated development of the case both in terms of posture and in its detail. If the lawyer felt he could not enter a plea, he could defer that decision either to a continued pre-adjudicative ("arraignment") hearing or until the adjudicatory hearing. Often, the lawyer chose to stand mute if he felt that he did not have sufficient information to decide on a plea or, from time to time, a strategic denial was entered to gain the time automatically provided by the court's procedure. The arraignment hearing, it will be recalled, provides a built-in delay, in that entrance of a denial ensures an automatic continuance for a period of some two weeks.

During that time, the attorney could decide upon a plea after investigation and, if the decision were to deny the charges, he could prepare the defense. Moreover, the continuance, because it was institutional in character, did not prejudice the lawyer's ability to obtain a further delay if one seemed necessary, and worked no bureaucratic inconvenience.

In Gotham, no such opportunity to investigate whether the state could prove its case was available. Due perhaps to the traditional juvenile court emphasis on informality and dispatch, and to its concentration on the "whole" child rather than proof of any particular set of facts, delay was not only not institutionalized, but also was discouraged. Thus, although original assignment to the Gotham and Zenith offices afforded each the same preparation time, the Zenith lawyers could frame their pleas with more preparation and care, whereas their colleagues in Gotham had to go to trial at once in most cases. The difference in opportunity to interview and investigate the persons and circumstances surrounding allegations is indicated by the following table, which records the total number of interviews with clients and/or potential witnesses in each city. Table V.8 reveals that, in the vast majority of cases (83.9 per cent), the Gotham attorneys had but one chance—often within twenty-four hours of trial—to ascertain what posture the defense should adopt; in 98 per cent of the cases, they had no more than two such opportunities. In Zenith,

Table V.8
Total Number of Interviews with Client—
Project Offices Compared[a]

Number of Interviews	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
One	51.8	(186)	83.9	(203)
Two	26.7	(96)	14.0	(34)
Three	12.5	(45)	1.6	(4)
Four	4.5	(16)	0.5	(1)
Five or more	4.5	(16)	0	
	100.0	(359)	100.0	(242)
	Average number of interviews per client: 359/214 *1.68*		Average number of interviews per client: 242/191 *1.27*	

[a] Figures based on face-sheet information from experimental design. They do not reflect case-sheet reports or analysis.

on the other hand, more than one interview was held in almost one-half the cases (48.2 per cent), and three or more contacts were made in more than 20 per cent.

The differences in investigatory opportunities are further demonstrated by Table V.9, which compares the location of interviews in the project cities. The exigencies of time required that virtually all Gotham client contacts occur either in the office or in court; only three instances were reported in which an interview was held at some other place. In Zenith, however, the staff attorneys were not only able to do legal preparation in their offices, but could interview witnesses in the field to see what defenses, if any, might be available, thereby reducing reliance on the client's story.

At this point, it must be admitted that no figures are available separating interviews by stage of proceedings. This circumstance, although perhaps of some importance, does not negate the usefulness of interview data as it reflects on the way in which the plea had to be determined. In many cases an automatic denial was entered by the Zenith attorneys to gain investigation time, with the possibility of changing the plea to guilty available (if rarely invoked) if that course seemed indicated. Thus, a correlation of interview by stage of proceedings might be more misleading than helpful. If the "not guilty" plea were maintained (or an original decision to stand mute not changed), the interview would be considered relevant to the adjudicatory rather than the plea-taking portion of the proceeding, although *both* purposes were in fact served. Further, it is perhaps implicit in what has already been said that the Zenith attorneys could look forward to an opportunity to develop a defense, whereas that luxury was denied the Gotham office. The latter had to make a decision as to plea knowing that there was little chance to produce witnesses not already known and to prepare a defense for which all the elements were not immediately at hand.

Table V.9
Location of Interviews with Client—
Project Offices Compared

Location of Interviews	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
Office	31.5	(113)	54.9	(133)
Court	52.1	(187)	43.9	(106)
Elsewhere	16.4	(59)	1.2	(3)
	100.0	(359)	100.0	(242)

It is hardly surprising, therefore, that the Gotham attorneys exhibited great concern for the child's story; as likely as not, that was all they had to go on. It might, perhaps, be thought that too much is made of the absence of institutional separation of hearings if the attorney can obtain a continuance in the event he is unable to proceed at once. However, continuances were apparently far more generally available in Zenith, which already had institutional delays, than in Gotham, which did not. As Table V.10 indicates, the judges in Zenith were not only more likely to order a continuance in general, but defense requests for them were more likely to be granted.

It is not entirely clear why Gotham's court should grant fewer continuances, nor why three of fourteen defense requests (21.4 per cent) were denied. One answer might be that Zenith's court was accustomed to institutionalized delays and was therefore more tolerant of counsel's requests for postponement. Conversely, in Gotham the very informality of the hearing militated against delay.[4] Given a traditional view of juvenile court procedures, continuances for witnesses and for preparation of legal defenses are unnecessary—the desideratum is an immediate and thorough examination of the child and his circumstances. The Gotham court's lack of sympathy with continuances, even for adjudication purposes, is demonstrated in the following excerpt from a project-lawyer's report. J——, counsel for a child accused of rape, intended to defend on the ground that the complaining witness was a willing participant in sexual intercourse with the respondent and several other youths. To establish this defense, Y——, an adult witness, was subpoenaed to testify. The staff attorney reported the following:

> The first thing of interest is that the hearing commenced without the presence of Mr. ——, attorney for X, one of the co-defendants. Secondly, at the begin-

Table V.10
Continuances Reported by Defense Counsel

Continuances	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
Continuance asked for and granted	19.0	(37)	6.8	(11)
Continuance asked for and denied	0.0		1.9	(3)
Continuance requested by the state/institutional	42.6	(83)	15.4	(25)
No continuance recorded	38.5	(75)	75.9	(123)
	100.1[a]	(195)	100.0	(162)

[a] Per cents do not add up to 100 due to rounding.

> ning of the case, I registered an objection to the effect that the hearing was proceeding without Y——, whom I had subpoenaed and for whom I had proof of service. The judge then put the victim on the stand.

A previous study of the manner in which the Gotham court implemented the *Gault* decision observed that hearings would sometimes proceed without the presence of all necessary witnesses, regardless of the youth's plea, if any plea were indeed taken.[5] That this should happen when the respondent is unrepresented may not be surprising; the relative lack of legal sophistication on the part of the juvenile court's clientele allows the judge to wield immense influence on the conduct of the hearing. That the same practices were followed despite the presence of, and over objection by, counsel is even stronger evidence of the court's commitment to traditional, non-adversarial procedures.

A further indication of the Gotham court's unwillingness to permit delays, for whatever reason, is gleaned from two cases in which a hearing was held and an order entered despite the temporary and unavoidable absence of the attorney himself. In one of the cases, a dispositional hearing had been scheduled for a date subsequent to adjudication. In the project-lawyer's words:

> [The hearing] was scheduled on the calendar for noon. Mrs. E—— received a summons for 11:30. . . . She called me in the morning to remind me to come to court. I thanked her. I arrived at court at 11:15. The case had been heard at 11:00 without me. I spoke to Mrs. E—— afterward and she said she got there a half hour early at 11:00, the case was taken immediately and she was assured by somebody that it didn't matter whether I was there.

The fact that the client received no more severe disposition than had been expected (one year's probation) does not detract from the lesson of this case, nor does the circumstance that the hearing was for dispositional purposes only. As the case preceding this one indicates, the courts were also willing to go to adjudication without the lawyer's presence.[6]

Clearly the Gotham attorneys did not have the time necessary for careful determination of the plea, and they could not rely on the court's allowing them that time. In this regard, they were not only playing in a different ballpark than their colleagues in Zenith; in a real sense, they were playing a different game as well. Reliance upon the client's story, though undesirable, was in practice the only avenue open to the Gotham office, with consequences on the determination of the defense posture which have already been described.

Standards of Proof and Plea Determination. The structure and orientation of the Gotham court affected the plea decision in other ways. Prevailing modes and standards for proving delinquency have an obvious bearing on determination of the defense posture. For example, among the factors relating to the

state's ability to prove its case in law is the availability of its witnesses. From time to time, a defense attorney in Zenith might enter a not guilty plea if there was reason to believe that the complainant or some other witness would not appear—particularly if, in view of the child's record, it seemed that the same disposition would result whether adjudication was made on the plea or after a contest. This tactic is useful, of course, only if the court will in fact order a dismissal for failure of witnesses to appear, and Table V.1 showed that such was the case in Zenith. Twenty-six of 183 cases (14.2 per cent) were dismissed because a necessary witness was not present. The Gotham court, however, based a decision on that ground in only 7 of 156 cases (4.6 per cent), as Table V.2 indicates. There is no reason to believe that this difference simply reflects a difference in methods of securing the attendance of witnesses; nothing in the known police or court practices would account for such variance. On the other hand, an earlier study of the Gotham court documented its readiness to hear and decide cases notwithstanding the absence of a necessary state witness,[7] a situation observed in some represented cases as well. Thus, the Gotham office was not so free to use the not guilty plea as a "wait-and-see" device, since a dismissal was by no means assured even if the lawyer's assessment of the situation was correct.

The looseness of standards of proof in Gotham also discouraged denials by making more diffuse the question to which defense was directed. Dismissals for lack of evidence are quite common in contested criminal matters and, as Table V.1 demonstrates, in Zenith as well: some 18 per cent of all cases were decided on that basis. The Gotham figures, set out in Table V.2, differ noticeably; in only 8 of 156 cases (5 per cent) was insufficient evidence the reason for the result. The low dismissal rate is quite consistent—as is Gotham's practice in general—with traditional juvenile court orientation. Dismissals for failure of proof are peculiarly appropriate when the issues are sharply defined. One is normally granted when the state does not prove one or more essential elements of the particular offense alleged. The defense attorney knows that if he can establish the state's failure to prove one of those elements, a dismissal must follow as a matter of law. Where the inquiry is more diffuse—for example, into the child's "condition" or prior behavior generally—reliance upon dismissal cannot be placed with the same confidence. A case from Gotham illustrates how the focus of adjudication can shift as the inquiry becomes more generalized. J. M., a juvenile charged with malicious damage to property (by breaking the back door of a private residence) entered a denial. The defense was based on the testimony of a friendly witness, who happened to be the son of the complainant. The adjudication hearing, as described by the lawyer, took the following direction:

> J. M. stated that he was playing in the back with H. R. [a friend] when someone came and told them that the door had been broken. Further, though J. M.

> then entered the basement with H. R., he was obviously there at H.'s invitation so that the complaint could not be amended to Trespass. It therefore appeared that J. M. had to have been found not guilty. However, during the hearing Judge —— looked at [J. M.'s] school report and noticed that he had not been in school since October. He asked me about this and I said that the mother and the school were having trouble getting together, and that we hoped this situation could be remedied. *The judge then sustained the petition against J. M. and put him on one year's probation to make sure the boy got back to school.*

In this case, it appears that the judge sustained the original petition alleging criminal damage to property on the basis of evidence going to a wholly different proposition. More usually, the judge would achieve the same result by an "instanter amendment"; that is, he would on his own motion "amend" the original petition in one of several ways, among them inclusion or substitution of charges other than those filed by the police or the original complainant. The existence of this power and the dubiety of some of the results to which it lends itself have long been recognized.[8] Its exercise was considered a potent factor by lawyers in both cities, particularly when the court wished to retain jurisdiction although elements of proof were lacking in the first, and often more serious, charge. As one might expect, instanter amendments appear considerably more frequently in Gotham; they were ordered in 16.7 per cent of the cases, as opposed to 6.7 per cent of those in Zenith. The importance of this tactic in Gotham is further suggested by reference to Tables V.1 and V.2, where it appears that the *outcome* rested expressly on the amendment in over 10 per cent of the cases in Gotham, but less than 2 per cent of those in Zenith.

The attorneys in Gotham, consequently, were faced with the problem of dealing with an amendment that often could not be foreseen in cases where a denial was entered. Alteration of the charge was a constant threat to the Gotham staff, and the usefulness of an aggressive defense was frequently modified by the apprehension that defense strategy would be frustrated by amendment to a different charge—possibly less precise and less readily met—if, and perhaps because, the main line of defense was successful.

In sustaining the petition in J. M.'s case, the Gotham judge relied on the child's school record. Since truancy was not originally alleged, this information must have been part of a social investigation report prepared before trial. Although social reports typically contain much background information with no legal relevance to the particular charges lodged against the respondent,[9] they are often available to the court at adjudication where all aspects of proceedings are combined.[10] The nature of this problem is discussed in a later portion of this chapter (see pages 143–145). For present purposes, it is enough to note that the Gotham court was able to make an instanter amendment not only when the evidence established commission of a lesser included or somewhat related offense, but could also do so on the basis of a considerable body

of generalized information, some of which might well be unknown to the lawyer or even his client, and to which a defense could not usually be conceived and presented on the spot. The instanter amendment thus might effectively inhibit pursuance of an adversarial defense.

Perceptions of Judicial Attitudes and Plea Determination. The foregoing discussion of institutional pressures affecting the plea-determining process would be incomplete without reference to somewhat more direct instances of judicial pressure. The following case demonstrates a Gotham judge's successful effort to undermine the adversarial posture adopted by the defense. The respondent was charged with possession of stolen property and tampering with parking meters. The hearing went as follows:

> With respect to the complaint charging parking meter tampering, an interesting development occurred. There were no arresting officers present to testify on behalf of the State in regard to this complaint. I advised S. that he need not say anything with respect to this complaint if the officers were not there.
>
> The following interchange occurred:
>
> The Judge asked the Youth Aid Bureau to read that complaint. They did. At this point the Youth Aid Bureau asked for an adjournment so that the patrolman who had arrested S. in that incident could be brought to the court to testify. The judge then turned to myself and asked whether S. admitted the offense so that it would not be necessary to obtain the patrolman's presence. I indicated that my client pleaded not guilty and would insist on the presence of the officer to confront his testimony. The court then, contrary to my wishes, asked my client whether he admitted the offense. S. probably felt intimidated by this. At any rate he immediately responded, "yes," he was guilty. At this point I rose and noted for the record my objection to the court's persistence in questioning my client for the purpose of incriminating himself when there was no evidence on behalf of the State at this hearing.

This example of judicial intervention, clearly designed to ensure that the plea served a truth-telling rather than posture-defining function, is all the more striking because it occurred in August 1967—well after the *Gault* decision had granted the rights to silence and confrontation of witnesses in delinquency cases.

It is clear from the Gotham case reports that the lawyers believed that a denial, coupled with a less-than-convincing story, would work to the disadvantage of their clients, and further, that there was no assurance that the privilege against self-incrimination—which would require the state to prove its case other than from the mouth of the respondent—would be respected. The important point here is that the lawyers *believed* that they were up against these obstacles and reacted correspondingly in determining the defense posture.[11]

> The cross-examination ended and Judge —— asked if my client was going to take the stand. *I take this as a tacit indication that if a person wishes to remain silent, Judge —— is bound to commit him.* I, however, chose to have D. take the stand and he testified that he had in no way and at no time threatened, harassed or done anything to the complainant.

The lawyers' perceptions of judicial attitudes toward practices that frustrate the classic first steps in treatment of the child—confession and direct confrontation with the judge as community representative[12]—were shared by others in the Gotham court system. One attorney was made aware of the situation in the following manner:

> I mentioned to one of the court attendants in passing that I had considered [invoking the privilege against self-incrimination] in this case, and his answer was that when I did that in front of Judge —— he would grant the boy the right, but "God help the rest of my clients for the rest of the year."
>
> As A.'s hearing began, I had said to the court, "Your Honor, I have informed my client of his right against self-incrimination," and with these words Judge ——'s head snapped up. I then went on—"he chooses to waive this right and will address the court at the appropriate time"—at which Judge —— looked down again. He was not smiling.

We believe it is significant that instances of such pressure were only rarely reported in Zenith, and that consequently the decision to enter a plea of guilty was based entirely on an assessment of the legal and factual merits of the case. The lawyers in Zenith recorded incidents of this sort in 17 of 194 cases (8.8 per cent). By contrast, exertions of judicial pressure for cooperation were reported more than twice as frequently in Gotham; 32 of 162 cases were marked by such expressions. Equally important, the more "legalistic" approach characteristic of the Zenith court worked to reduce the impact of these pressures. In the following case, for example, the attorney assumes and maintains throughout an aggressive adversarial stance, and even though the judge handling the case is clearly disturbed by the position taken, the lawyer can successfully resist the court's pressure to adopt a more cooperative approach. The case unfolds with R. M. being charged with burglary of a local school. A denial was entered at the arraignment hearing, at which time the lawyer spoke with the school board representative who was pressing the charges.

> He told me that he had statements from all of the boys involved, indicating their own and each other's complicity in burglary. I asked how he got these statements, and he stated that he had called each one of them into an office at the police station and questioned them there. I asked him whether or not they were charging that all of the items recovered at the police station were stolen at this time by these respondents [R. M. was charged with four other youths represented by Zenith Legal Aid]. He stated that they were. Although R. had

admitted to me what appeared to be the technical theft of a fire extinguisher, we denied the charge of burglary at the arraignment hearing.

Immediately before the adjudication hearing, the school board representative approached the project attorney and offered not to press charges if the respondents would agree to come in every morning and pick up litter about the school yard. Legal aid counsel was agreeable, but the project lawyer, after ascertaining that his client strongly opposed the plan, refused the offer. Consequently, the case went to trial.

When we went into court, I realized that the only witness for the State was the school board representative. He was called, and as soon as he began to speak, I interrupted, stating that I had reason to believe that [he] was going to give testimony concerning statements allegedly made by the respondents and my respondent, and that I would object to any such statements being made. The State's Attorney then asked him whether or not he had knowledge of any statements made by these youths, to which I again objected, pointing out that any incriminatory statements were barred unless a proper foundation was laid for them, and that any statements made by any of the other respondents relating to R. M.'s actions were hearsay and inadmissible as such. I also argued that there was no corroboration proved by the State for any admissions. . . . The State's Attorney again asked Mr. —— [school board representative] about the statements and I again objected on the same grounds as before, spelling out my arguments a little more. Judge —— decided to ask the school board representative if he had any corroboration for these statements, and Mr. —— replied that he did not. The Judge then commented that the court was bound by the law and that there would have to be some other kind of evidence. He then called counsel and the school board representative into the chambers.

In chambers much discussion was had as to what the State could prove. Nothing new came out, except that the principal of the school, who was also present, was extremely upset that it appeared that the petitions would be dismissed, and said that these were all very bad boys. Mr. —— approached again the subject of having the boys clean up the school yard, and having the delinquency petition dismissed. Judge —— was quite taken with this suggestion and asked [Legal Aid] whether or not his clients would agree. I said that we would not agree to any such arrangement. At this turn of events, the principal and the school board representative said a great deal about how this was terrible that the boys should get off without learning anything, and rehashed the difficulties of running a school and how these were all members of some sort of school gang. Judge —— at one point referred to me as a stumbling block, and several times during this lengthy conference in chambers stated that he was sure that I was convinced of my client's innocence, for if I were not there would be severe ethical problems in my position. . . . Judge —— finally decided that he was going to have no recourse but to dismiss the petition as to my client and to the others but to have the others come in to do clean-up. As we began to leave, he again stated that he was sure I believed that R. was inno-

> cent, and the school board representative made further comments about letting boys like this go on a technicality. . . .
>
> The hearing recommenced on the record and the petition against R. M. was dismissed. Judge —— said that only R. would know whether or not he was guilty of the burglary, but that the court had to follow legal rules. I left at this point with R. as quickly as I could. It is my understanding that the other boys' petitions were dismissed but that they agreed on the record to clean up the school.

It is clear that the judge was under considerable pressure, imposed in part by his view of the proper orientation of the proceedings and in part by the school personnel, to avoid outright dismissal, and that this pressure was transferred to defense counsel. At the same time, the judge felt constrained, after unsuccessfully trying to resolve the conflict between legal and child-saving norms, to act in strict accordance with the legal situation. Moreover, the lawyer, despite some personal discomfort, felt sufficiently confident that the law would be followed that he did not relax his stand and accept even the informal and minimally coercive compromise endorsed by the state's attorney and the judge.

From the foregoing, it appears clear that the plea-determining function was approached quite differently by the Zenith and Gotham offices. The Zenith lawyers felt free to use the plea as an indication of their client's desire to resist authoritative intervention until adequate proof of guilt had been adduced in a procedurally proper fashion. This approach contrasts strikingly with the practice in Gotham, and with the traditional concept of the lawyer's role in juvenile courts. The conceptual incompatibility of adversarial tactics—which the Zenith approach to plea-rendition epitomizes—with the original juvenile court idea has already been suggested, possibly at tiresome length. It should also be noted that the Zenith experience contradicts, as well, practical descriptions of the lawyer's function in delinquency cases. Studies of this problem have frequently emphasized the presumed absence of a real factual issue in the great majority of delinquency cases. As one recent work puts it:

> As in adult criminal courts, in the majority of [delinquency] cases there is little or no dispute over the "facts" of the offense. Cases tend to be straightforward, and defenses directed at overturning the evidence generally appear to be hopeless and futile. Defense strategy therefore usually concedes the delinquency of the client but tries to minimize the penalty.[13]

This proposition implicitly accepts a fundamental assumption: most juveniles readily admit their involvement in delinquent acts once apprehended and charged, and, further, counsel's strategy is controlled by that admission. Admittedly, there is support for this assumption in the Gotham experience; the evidence from Zenith suggests, however, that it need not be indulged in *all*

juvenile courts. In view of the findings set out above, it is more useful to treat the plea decision as a form of defense strategy rather than as a necessary concomitant of either apprehension or, indeed, of admitted complicity.[14] Thus, determination of the plea is affected by the formal and informal pressures which act generally to constrain or permit adversarial defense in juvenile courts. Adoption of a particular defense posture is more closely related to the organization and orientation of the forum than to anything inherent in the representation of the young.

Plea-Bargaining in the Gotham and Zenith Juvenile Courts. To those not acquainted with the operation of the juvenile justice system, it may seem strange that so much time has been spent on the plea-determining process without reference to plea-bargaining. Those more familiar with juvenile court literature may find equally odd the devotion of a separate section to that question. Studies of juvenile courts have tended to discount the importance of plea-bargaining.[15] While it is generally conceded that informal pre-judicial conviction agreements are common in criminal prosecutions—one study, for example, indicates that the majority of felony convictions in that district resulted from bargains between defense and prosecution[16]—something in the nature of delinquency definitions and dispositional theory has been thought to make this arrangement by and large unavailable in juvenile court. In particular, plea-bargaining is considered difficult or impossible because a juvenile court judge need not, and perhaps should not, correlate disposition with offense. Thus, a common bargain such as reduction of the charge from robbery to disorderly conduct, which in criminal cases might mean a difference between a felony conviction carrying a penalty of one to twenty years and a misdemeanor conviction punishable by fine and/or not more than six months in jail, would have no necessary impact on dispositional alternatives in juvenile matters. Once a youth is found "delinquent," the disposition is based on his "best interests" rather than on the adjudicated conduct.

> There is no automatic or necessary relation between charge and disposition. Disposition is left to the discretion of the judge, and while the nature of the delinquent act may influence his decision, the formal charge does not. Reduction of the charge therefore generally confers no benefit to the accused. Conversely, since there is no formal plea of guilty, the police have nothing to gain by reducing the charge.[17]

In neither Gotham nor Zenith was there a necessary relationship—either by statute or in practice—between the dispositional order and the offense charged or committed. As Table V.11 indicates, however, plea-bargaining did prove to be an important element in Zenith. In 19 per cent of the Zenith cases, plea-bargaining was attempted, as opposed to only 3 per cent of the cases in Gotham. The explanation for the differential availability of this

Table V.11
Plea-Bargaining

Initiation of Plea Bargaining	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
Yes	19.0	(37)	3.1	(5)
No	81.0	(158)	96.9	(157)
	100.0	(195)	100.0	(162)

tactic lies in structural considerations, particularly the participation of a prosecuting attorney. As has already been explained, both courts had adopted a type of "interim" adjudication or disposition procedure,[18] which delayed official court action on the case for a period of time to ascertain the extent of adjustment by the child without formal court intervention. The official status of this procedure in Zenith, combined with the presence of a state's attorney with whom defense counsel could agree regarding its invocation, permitted more confident recourse to the continuance without finding. Obviously, the chances for achieving this result are greater when both defense and prosecution concur than when it is urged only by the defense; moreover, the defense lawyer can explore this possibility with greater assurance since he can discover the likely consequences of entering an admission before trial.

The way in which plea-bargaining was used to avoid direct confrontation with the judge—a problem endemic to Gotham's court—is demonstrated in the following, more orthodox example of pre-judicial negotiation taken from a Zenith case report. Client A was charged with burglary by taking money from the cash register of a dry-cleaning store, an offense which he admitted to his attorney. A denial was entered at arraignment because the attorney felt, in his words, "that on the basis of the [police] report's failure to state [that the police had found money on the premises], that it was possible that there would be no testimony as to this fact, and that they would not be able to prove a burglary." The case was set for trial, and the following occurred prior to and during the adjudication hearing.

> I met [the family] at court. The owner of the cleaners and the arresting officers did not appear. The State's Attorney, ——, approached me and asked why I was denying on such a clear-cut case. I told him that I didn't feel it was so clear-cut. He told me that his witnesses had not appeared because someone had failed to serve the subpoenas and that he would ask for a continuance. I knew that he would get one. We continued to discuss the case and he finally stated that if I would admit to "criminal trespass to land" he would not object

> to this, and that if I then requested no finding and court supervision, he would concur. I mulled it over for a while and then agreed to do this even though A's action did not technically constitute criminal trespass to land. In making my decision I was forced to conclude that the police sheet had merely neglected to mention the money because both A and his mother stated that it had been fully discussed at the police station. I had become certain from the State's Attorney's remarks that he would have his witnesses on the next [court] date. However, before agreeing, I talked it over with A. I told him that if we did this, I was fairly certain that we would get a no finding because of his [lack of] prior record and his present activities. I also told him that I could not be so sure that this would happen if we went ahead to a contested hearing on the burglary charge and he was found guilty. A stated that as far as he was concerned, he was guilty, and that he would be willing to do whatever I thought was best. I told him that if that were the case, then I would go ahead and admit to criminal trespass.
>
> We then went before Judge —— and explained that by agreement with the State, the charge was being amended to criminal trespass to land and that we were admitting this charge. I then asked the court to grant supervision without a finding, explaining the past history and present activities of A. The State's Attorney stated that he had talked to me beforehand and had agreed to concur. Judge —— then entered an order of no finding and court supervision until October 9, 1967.

At the October 9 hearing, it appeared that Client A had no intervening difficulty with the authorities, and the petition as amended was dismissed.

The role of the prosecutor is clearly revealed in this report. In the first place, the attorney can entertain the idea of pleading guilty without committing himself, since the negotiations occur before trial. Second, the lawyer can rely to a great extent on the acceptance of an arrangement that appears advantageous to his client, since the judge's involvement typically is limited to accepting the state's amendment and recommendation. The court is not, of course, bound by the terms of informal agreements of this sort, but inquiry into the bases of the arrangement is most difficult and, given bureaucratic considerations, little impetus exists for doing so when both parties are represented by counsel.

In Zenith, bargaining generally followed a then familiar pattern. Of the 37 cases where plea negotiation was undertaken, the defense attorneys initiated discussions in 26 cases (70.3 per cent of the total) and the prosecuting attorney did so in another 5 cases (13.5 per cent). In five cases the judge began negotiations, and there was one additional instance in which it was not clear whether the defense lawyer or the prosecutor first entered upon plea-bargaining.

In Gotham, on the other hand, plea-bargaining constituted only a small part of the defense strategy of the project attorneys, primarily because the lawyer, in preparation of his case, could not depend on extrajudicial arrangements in the same way that Zenith's lawyers could. This does not mean that

there was no bargaining at all, absent the participation of a prosecuting attorney; in both cities admissions were entered specifically in exchange for the assurance of a more lenient disposition *given by the judge.* Thus, in five cases in Zenith and one in Gotham, the judge himself initiated plea negotiations. In another three Gotham cases, negotiations were at the instance of the defense and were, in the absence of a prosecutor, addressed to the judge. Nevertheless, it clearly appears that plea-bargaining was a most exceptional procedure in Gotham, as it is said to be in traditional juvenile courts.

There is, perhaps, some irony in the fact that informal methods of reducing conflict (such as plea-negotiation) are more readily available in organizations which take adversity of interests as a normative theme, and which are expressly structured to accommodate that conflict. It is, however, common knowledge that the great majority of potential criminal and civil conflicts never come to trial; in criminal prosecutions, contests occur in something between 10 and 20 per cent of the cases. Several reasons account for the relatively low incidence of realized conflict. In the first place, although the legal system has generally taken conflict as a normative theme, insistence upon that norm at every stage or every case would, over an extended period of time, place an intolerable burden on the system.[19] To some extent, this burden could be relieved by abandoning the accusatorial scheme in favor of a more expeditious one which would tolerate a somewhat greater margin of error in exchange for increased bureaucratic convenience. This alternative has been rejected, by and large, because of the norms that surround the confrontation of state and individual. Accordingly, subsystems within the criminal process are responsible for handling the cases in a fashion that avoids placement of an unbearable strain on the actors and on the system as a whole. It has been suggested that there is pressure toward cooperation at all levels within the criminal process. Jerome Skolnick, indeed, takes as a basic theme the propositions that

> administrative requirements characterizing the American administration of criminal justice make for a reciprocal relationship between prosecutor and defense attorney that strains toward cooperation; that this relationship is based upon interests wider than those of the parties they represent . . . ; and that the dilemma of the adversary system arises from the fact that such tendencies toward "cooperation"—under existing conditions—do not demonstrably impede the quality of representation.[20]

Too much can be made of the "deviant" character of these pressures toward cooperation among the actors, however. Not all defendants care to invoke the adversary system, though it be available to them. Many seek only the best arrangement possible according to their attorney's and their own assessment of the circumstances. As Skolnick correctly observes, "It is frequently in the interests of the defendant to plead to a lesser charge, rather

than to engage the prosecutor in an actual courtroom contest."[21] Recognition of interests which lead to cooperation is found in all conflict situations. "Pure conflict, in which the interests of two antagonists are completely opposed," it has been observed, "is a special case; it would arise in a war of complete extermination, otherwise not even in war. For this reason, 'winning' in a conflict does not have a strictly competitive meaning; it is not winning relative to one's adversary. It means gaining relative to one's own value system; and this may be done by bargaining, by mutual accommodation, and by the avoidance of mutually damaging behavior."[22]

In the criminal process and, arguably, in the adversarial juvenile court, the conflict theme demands that each accused have an *opportunity* to oppose state intervention, not that he choose to do so. The attorney's conduct in the case of client A, related above, does no violence to the normative theme of the Zenith juvenile court, nor would it in the adult context. Cooperation itself has not taken on normative significance in this case, which *would* pose a problem in a conflict system; the handling of the case is simply based on a pragmatic assessment of the least coercive result apparently obtainable under the circumstances.

The Gotham court, however, does not recognize a diversity of interest between the child and the state. Consequently, it is not designed to handle the conflict that results when diversity is nonetheless perceived by the respondent. The situation is incapable of institutional resolution without appearance before and participation by the judge who, if traditionally oriented, denies the child's interest in avoiding the court's jurisdiction. As has been shown throughout this discussion, the Gotham court has invoked a number of devices for retaining authority. From the standpoint of the judge—the only agent with whom a "bargain" might be made in Gotham—compromise or accession was largely unnecessary. Moreover, the attorney's negotiating position was different than his Zenith counterpart's. His leverage was reduced by the strategies open to and used by the court, and whatever advantage might flow from withholding the plea was minimized in most cases by the necessity of adopting a posture before "negotiations" began. Thus, the Gotham lawyer's "pragmatic assessment of the circumstances" most often took the form of deciding whether admission was necessary to avoid a perceived punishment factor on the child presenting an implausible story, rather than the form of plea-negotiation, as in Zenith.

THE DEFENSE POSTURE: THE CONDUCT OF THE CASE

Many of the institutional pressures that affected the defense posture with regard to rendition of a plea were not less important in their effect on the conduct of contested cases. As already shown, adoption of an "adversarial" posture in Gotham was curtailed in a number of ways and for a variety of rea-

sons. It is only to be expected that major differences exist as well with regard to the manner in which the case is handled and the type of defense presented where denial of the charges resulted in an adjudication hearing. Indeed, one reason why pressures to enter a truthful plea were so significant in Gotham was precisely because they presupposed the uselessness of certain kinds of defenses upon which lawyers in Zenith could rely.

In describing the conduct of the defense in Gotham and Zenith, emphasis is placed on two sources of information: (1) the number and kinds of motions made by defense counsel, and (2) the type of defense actually prepared for contested cases. Other indicators might have been used, such as the number of objections made, but in filling out the case reports the project attorneys were specifically asked to mention any motions made, whether oral or written, and their defense strategy if the case went to trial. Thus, these activities are, in some degree, manifest indications of the lawyer's strategy, whereas other kinds of legal activity, such as cross-examination and objections, were more likely to be taken for granted and therefore less likely to be reported. The making of formal motions and the planning and execution of defense strategy, however, are such salient features of the lawyer's role that we feel confident that the following presentation adequately reflects legal reality.

If the hypothesis can be accepted that the use of motions is an indicator of the willingness of project counsel to use legal remedies in the conduct of their cases, it is clear that Zenith, both in number and type of motions made, is the more "legalistic" of the two offices. As Table V.12 shows, one or more motions (either written or oral) were filed in approximately 54 per cent of the Zenith cases; by comparison, such action was taken in 12 per cent of those in Gotham.

Of course, more than one motion can be made in any given case, and

Table V.12
Types of Motions Reported (by case)

Type of Motion	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
Oral only	50.3	(98)	10.5	(17)
Written only	1.0	(2)	0.6	(1)
Both	3.1	(6)	0.6	(1)
None	45.6	(89)	88.3	(143)
	100.0	(195)	100.0	(162)

when all motions are included, as they are in Table V.13, it appears that the Zenith office filed a total of 156 motions, more than six times the number employed by Gotham lawyers. For example, it appears that motions to dismiss were made in 104 of 195 cases in Zenith (a true rate of 53.3 per cent, since multiple motions of the same kind were not recorded separately), but in only 9 of Gotham's 162 cases (5.5 per cent). The greatest number of Zenith's motions to dismiss were entered at the close of the state's case, on the ground that a prima facie case had not been established. In view of the Gotham court's disinclination to dismiss cases on grounds of failure of evidence and its insistence upon direct confrontation with the child, the de-emphasis of this tactic in that city is easily understood. These statistics also reveal the role of procedural regularity in Zenith's court, where the granting of a "favorable" disposition depends in part on counsel's request for dismissal or vacation of a finding; in Gotham, "leniency" depends primarily on the court's initiative, and not on action by defense counsel.

Of perhaps greater importance are the other motions (such as those to discover or suppress evidence, to object to the court's jurisdiction, or to sequester witnesses) which reflect, in varying degrees, assumptions regarding the conduct of proceedings that are more formalistic and adversarial than the traditional juvenile court hypothesizes. It is only to be expected that motions of this sort

Table V.13
Types of Motions Made (by motion)

Types of Motion	*Zenith*	*Gotham*
Discovery	3	1
Suppress evidence	9	3
Post trial	2	
Notice of appeal	1	2
Objection to court's jurisdiction	10	1
Vacate finding	24	
Dismiss petition	80	9
Strike testimony	4	1
Sequester witnesses	7	3
Other	16	5
	156	25

are more usual in Zenith than Gotham. Of the 156 motions made in Zenith, 52 (or approximately 33 per cent) were of this "technical" nature, almost three times the incidence in Gotham (where 16 such motions, or 64 per cent of all those filed, were of this variety). Thus, with the single exception of the "notice of appeal on file" category,[23] Zenith's staff registered more "legalistic" motions in the course of their cases than did Gotham's.

The difference in defense activities is confirmed by investigation of the general type of defense pursued in each city. Table V.3 revealed that in 53 cases in Zenith and 83 in Gotham, a full admission was entered. Of the remaining 142 cases in Zenith, the nature of the defense prepared is described in 91 instances. In Gotham this information is available for 65 of the 79 cases where either a partial or complete denial was entered. Table V.14 summarizes the general character of the defense for each office.

Table V.14
Defense Made

Type of Defense	*Zenith*	*Gotham*
Alibi	9	5
Credible denial	47	38
Denial but lawyer doesn't believe	6	18
Principle of law already established for juveniles	17	1
Principle established in criminal law but not in juvenile law	9	
Novel legal argument	3	4
	91	66

Three of the categories in Table V.14 are essentially factual: the alibi (where the defendant specifically claims that he was some other place at the time of the offense with which he is charged) and the two "denials" (differentiated solely on the basis of the lawyer's belief in the child's story) may raise no real legal question other than the sufficiency of the evidence. The other three categories are of a "legalistic" sort. Invocation of a "principle of law already established for juveniles" would include, for instance, a motion to dismiss for inadequate service of notice after the *Gault* decision had been handed down. The "principle established in criminal law but not in juvenile law" category would comprise tactics such as a motion to suppress a con-

fession on the ground that the requirements of *Miranda* v. *Arizona*[24] had not been satisfied; in neither jurisdiction have these guarantees specifically been carried over to juvenile cases by decision or statute. A "novel legal argument" was one for which, so far as could be ascertained, no clear precedent existed in that jurisdiction—for example, a motion to dismiss a weapons charge in Zenith on the ground that a homemade "zip-gun" was not a "weapon" until proved operable.

The contrast between Gotham and Zenith with regard to type of defense bears out what the information on motions suggested. Sixty-one of sixty-six contested cases in Gotham (92.4 per cent) were argued on purely factual grounds. Only one case was based on a legal defense already established for juveniles in that jurisdiction, and in none was there an attempt to apply criminal law principles to juvenile cases. There were, to be sure, four instances of a "novel legal argument"—an interesting, but not currently explainable, variation from an otherwise clear trend. In Zenith, on the other hand, more or less traditional legal defenses were raised in 26 cases (28.6 per cent of all cases) and a "novel legal argument" used in another 3 cases. Sole reliance was placed on factual assertions in slightly over two-thirds of the cases (68.1 per cent).

These figures are, of course, perfectly consistent with the earlier data indicating the willingness of Zenith's staff to enter a denial even when the youth admitted all or part of the charges against him. In this situation, a legal rather than factual defense is surely the more likely. The following case represents a classic adversarial (or "technical," depending on the perspective) stratagem in a case where the client admitted the charge to his lawyer. The child had also admitted possession of marijuana to the police, and signed a confession to that effect at the station. The lawyer, in preparing his defense, filed a motion "to suppress any evidence seized at the time of the defendant's arrest, as well as any statements or admissions, both oral and written, taken from the defendant." The case report recounts the success of this strategy:

> The State had been served with notice of my motion to suppress and was ready to proceed at this time. As my first witness I called A. J. [the respondent], who stated that he was sitting on a porch with a friend of his when the police came up to the porch and searched him, and removed a pack of cigarettes from his possession. He then indicated that at the police station he was questioned by three detectives and that the questioning took place without the presence of his father. A. J. further indicated that he was subsequently questioned by the youth officer while his father was present and that the youth officer had indicated that A. should only read the bottom part of the report since that was the only part that was pertinent. I then called Mr. J. [A.'s father] who corroborated A.'s description of what happened at the police station.
>
> The State then called officer P. T. who testified that he and his partner

were driving along at about 10:15 P.M. and saw two boys smoking marijuana on the porch of T. F.'s home. They indicated that they went up to the porch and searched A. and removed a pack of cigarettes from his person. The officer was not questioned by the State as to what occurred at the police station. On cross-examination I asked the officer to describe where his car had been located in relation to the porch and it appeared that the car was between 20 and 40 feet away from the porch. The State offered no further evidence and with very little argument, Judge —— granted my motion in its entirety, thus suppressing the marijuana that had been seized, along with any oral and/or written statements that had been taken.

The State admitted that since this evidence had been suppressed, no further evidence was available to them, and Judge —— dismissed the delinquency petition.

In a real sense, the structure of the proceedings in Zenith facilitated the raising of legal defenses. In the first place, the automatic continuance after entrance of a denial at arraignment gave the defense at least a week or two in which to investigate and prepare pre-trial motions, if they seemed appropriate. Evidence concerning the allegations of such a motion could be obtained and relied upon in the papers, and a memorandum in support of the motion prepared for presentation to the court. This opportunity was not available, of course, in Gotham, where the defense had to be prepared to go forward immediately in most cases.

Second, hearings on motions to suppress, for example, were frequently held in Zenith on a date prior to that for which adjudication was scheduled, or before the taking of evidence at adjudication. In the vast majority of cases, therefore, the only information before the judge related to the rather limited question raised by the motion. Any temptation to take either the whole situation or the whole child into account at this stage was, therefore, subject to institutional constraint.

The situation in Gotham was quite different. The single informal hearing, originally designed to ameliorate the impact of official power, has had other consequences for the conduct of delinquency hearings. The President's Task Force on Juvenile Delinquency quite correctly noted that the blurring of procedural stages has frequently resulted in the blurring of evidentiary lines as well, and data from Gotham confirms the observation that use of materials such as social reports is characteristic of "traditional" juvenile courts[25]—although this practice is not wholly unknown in Zenith. For coding purposes, the use of social reports was recorded as "explicit" where the judge was *known* to have knowledge of the social report, "implicit" when the judge made statements revealing otherwise unavailable information concerning the youth's background, and "no indication" in the absence of clear evidence of its use. While this measure concededly offers only a rough indication of access, either

explicit or implicit mention of social report information occurred in 16 per cent of the cases in Gotham, compared to 8.6 per cent in Zenith. The availability of social reports is significant for our purposes because of the extent to which it either negates or replaces the purely legal considerations implied by the "legal defense" category. Interestingly enough, their use is not necessarily correlated with punitive action by the court. The petition was dismissed outright in 9 of the 26 Gotham cases where some use of the report was recorded (35 per cent), and the same was true in 4 of 17 cases in Zenith. Moreover, when dispositions are further broken down, it appears that in an

Table V.15
The Use of Social Reports Prior to Adjudication

	Zenith		*Gotham*	
Evidence of Use	%	(*N*)	%	(*N*)
Explicit	7.2	(14)	6.8	(11)
Implicit	1.5	(3)	9.3	(15)
No indication	91.3	(178)	83.9	(136)
	100.0	(195)	100.0	(162)

additional 29 per cent of the cases in Zenith (5 of 17 cases) and 35 per cent of those in Gotham (9 of 26 cases), the court continued the case without a finding. Thus, although Gotham's court apparently continues the traditional practice of using background factors as an aid in determining delinquency, the use of such information is likely to lead to a result which is, if anything, more lenient than the general run of cases. It must be said, of course, that these data do not show the extent or nature of the impact of background information on the judge's deliberations. Although the case of J. M., discussed earlier, is an unequivocal example of direct influence, other cases are unclear and no direct conclusions can safely be drawn in either direction. In an indeterminate number of cases, particularly in Gotham, it may be that a judge's awareness of the use of inadmissible information would lead to leniency as a way of protecting the record and discouraging appeal. This was less likely to be the case in Zenith since, in asking for a dismissal or continuance without finding despite admission of the facts, knowledge of the child's circumstances was often secured at the instance of defense counsel.

It should be emphasized that the infrequency of legal defenses in Gotham does not mean that the Gotham office was unwilling or unable to respond vigorously and ably to violations of due process; it suggests, rather, that they

Table V.16
Zenith: Use of Social Reports Prior to Adjudication and the Relationship to Disposition

Disposition	*Explicit Use* %	(*N*)	*Implicit Use* %	(*N*)	*No Use of Social Report Recorded* %	(*N*)
Case dismissed	28.6	(4)			60.7	(108)
Delinquency not formally entered, case continued under court supervision for a limited time	21.4	(3)		(2)	10.7	(19)
Probation	21.4	(3)		(1)	21.3[a]	(38)
Commitment	14.3	(2)			4.5	(8)
Other[b]	14.3	(2)			2.8	(5)
	100.0	(14)		(3)[c]	100.0	(178)

[a] Includes 2 cases of suspended commitment.
[b] The "other" category has been added to reflect court sanctions which include probation on a limited or informal basis plus other dispositions such as fine, order of restitution, reprimand and release or order to leave state.
[c] Percentages not calculated for *N*'s < 10.

Table V.17
Gotham: Use of Social Reports Prior to Adjudication and Relationship to Disposition

Disposition	*Explicit Use* %	(*N*)	*Implicit Use* %	(*N*)	*No Use of Social Report Recorded* %	(*N*)
Case dismissed	45.4	(5)	26.7	(4)	13.2	(18)
Delinquency not formally entered, case continued under court supervision for a limited time	9.1	(1)	53.4	(8)	32.4	(44)
Probation	27.3	(3)	6.7	(1)	27.2	(37)
Commitment	18.2	(2)			8.1	(11)
Other			13.3	(2)	19.1	(26)
	100.0	(11)	100.1[a]	(15)	100.0	(136)

[a] Per cents do not add up to 100 due to rounding.

were less inclined to *initiate* "legalistic" grounds and base the defense on them. The continual tactical and psychological dilemma was whether to use these strategies, and whether their invocation would be useless or even injurious to their cause, given the court's general antipathy toward adversarial tactics. To go full circle, this dilemma was often resolved by an effort to avoid contests in those cases where, because of the child's admitted or probable guilt, something other than a factual defense was necessary.

In concluding discussion of defense activities in Gotham and Zenith, it is appropriate to consider the effect of judicial organization on the roles of the actors. The informal and non-adversarial orientation of the juvenile court movement elevated the judge's role considerably, transforming him from the generally inactive and detached trier of relatively narrow legal and factual questions to the practitioner of what David Matza has characterized as "Kadi justice," in which the Kadi (a Moslem judge)

> operates with an extremely wide framework of relevance in which, in principle, everything matters. In each particular case he implicitly chooses that section of the frame of relevance he wishes to invoke. He is under no sustained obligation to choose the same section of the frame of relevance in every case. That is the Kadi's distinctive prerogative which he may or may not exercise.[26]

Much of the thrust of an adversarial defense—particularly one "legal" in character—is devoted to constricting the frame of decisional reference. In the case of A. J., described above, the lawyer by his motion to suppress evidence in effect seeks to remove information from the court's lawful consideration and, because the motion reached all of the state's evidence, wholly to remove the child from the court's attention.

Because the *Gault* case gives at least some degree of legitimacy to defense tactics of this sort, they cannot be rejected summarily by the court; yet their pursuit can cause severe role strain for all parties. Moreover, the procedural arrangement adopted by traditional courts does nothing to relieve this strain. Thus, for example, the use of a single hearing in Gotham may require the attorney, if charges are denied, to function as an adversary for adjudicative purposes, and then take on the character of an *ad hoc* social worker in helping the court to reach a proper disposition should the petition be sustained. That the traditional court should not be structured to accommodate this conflict is consistent with its rejection of the lawyer's adversarial function. At the same time, its existence has been recognized for some time and, indeed, common sense suggests that an active and substantially adversarial defense followed immediately by a dispositional argument stressing the child's "good points" imposes performance standards that would sorely press the most adroit of actors. The organization of the Zenith court, in contrast, goes some distance toward alleviating this dilemma. Separation of hearings in time and

by issue afforded the lawyers the comparative luxury of a functional separation of roles specific to each stage of the delinquency proceeding.

The strain on the judge is surely no less real. It is apparent that, in the traditional juvenile court hearing, he is forced by the circumstances of the moment to act out two roles simultaneously when confronted by aggressive defense counsel. Absent a confession, and within the framework of a full adjudication hearing, the judge acts not only in his usual role as a judge, but also must undertake, at least for purposes of developing the charge facing the child, the prosecutorial role.

In this situation, the role conflict for the judge presumably is severe, and resolution of the conflict presents a problem for both the judge and the defense lawyer. If the defense conducts an active cross-examination of hostile witnesses or of the arresting officer, there is only the judge to counteract his line of questioning. If the judge objects, he cannot avoid doing so both as judge and prosecutor, since he effectively sustains the objection at the moment he makes it. Conversely, when the judge assumes the role of prosecutor in trying to elicit the facts of the case, and the defense attorney raises an objection, he is forced to step back from the adversarial role, rule on the objection, and then return to prosecutorial activity. This obvious source of strain has not gone unnoticed by juvenile court judges themselves, and at least one (not of this project) has argued for the placement of a prosecutor in the juvenile court despite his obvious sympathy with traditional practice.

> The unjustified implications of *Gault* to the effect that children are universally being deprived of their constitutional rights and treated unfairly by the Juvenile Courts has brought about a defensiveness which sorely handicaps the Court in the conduct of the traditional Juvenile Court hearing. . . . A few members of the Bar proceed with the attitude that they are the saviour of the child if they prevent an adjudication of delinquency, despite the validity of the complaint and the obvious need of the child for the care and protection that the Court can give him. Consequently it becomes increasingly difficult for the Judge, with no knowledge of the case prior to hearing, to elicit from the witnesses the testimony necessary to sustain the complaint. . . . 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.[27]

Lawyers, who undergo no little strain themselves in conducting a defense knowing that they will be directly challenging the judge at every turn, often are sensitive to the consequences of the judge's dilemma, particularly as its resolution affects their presentation of the case. The fact that lawyers in Gotham reported a higher incidence of pressure by the court to cooperate—already set forth on pages 130–135—supports the proposition that the strain

was greater there than in Zenith. It may be hypothesized that use of such pressures represents an effort by the judges to reduce their role strain by minimizing the conflict in the case. Thus, as one would expect, resort to such pressure was roughly twice as frequent in Gotham, where the role conflict was greatest, than in Zenith, where the participation of the state's attorney's office relieved the judge of one part of his responsibility.

One thread that has run throughout the discussion of the circumstances in which the Gotham office operated should be picked up. To many advocates it may seem strange that, under these conditions, the Gotham attorneys did not appeal more frequently. We have already suggested that appeal was a difficult business there, far more than it normally is. The memorandum filed by that office in support of its unsuccessful motion for appointment of a court reporter in a way not only summarizes the difficulty of representation in a traditional court, but also brings to light yet another aspect of the dual role played by the judge in such courts.

> The rules governing the Juvenile and Domestic Relations Court presently provide that appeals shall be taken to the Appellate Division of the Superior Court in accordance with the rules of that court. . . .
>
> > "In the event no stenographic record of the evidence or proceedings at the hearing or trial was made, the appellant shall, within 10 days of the filing of the notice of appeal, prepare and serve on the respondent a statement of the evidence or proceedings from the best available sources, including his recollection, for use instead of a stenographic transcript. The respondent may serve objections or propose amendments thereto within 10 days after service upon him. Thereupon the statements, with the objections or proposed amendments, shall be submitted forthwith to the court below for settlement and as settled and approved shall be included by the clerk of the court in the record on appeal. The court below shall approve or disapprove the statement within 10 days after its submission."[28]

The difficulties inherent in using records of this sort are obvious; indeed, the Illinois State's Attorney conceded during oral argument in *Griffin* v. *Illinois*,[29] a case dealing with the issue of free transcripts in criminal appeals, that an alternative to a verbatim transcript of the sort used in Gotham was often an inadequate substitute.

> With respect to the so-called bystanders' bill of exceptions or the bill of exceptions prepared from someone's memory in condensed and narrative form and certified to by the trial judge—as to whether that's available in Illinois I can say that everybody out there understands that it is but nobody has heard of its ever being actually used in a criminal case in Illinois in recent years. . . .

> And I will say that Illinois has not suggested in the brief that such a narrative transcript would necessarily or even generally be the equivalent of a verbatim transcript of all of the trial.[30]

Moreover, the Gotham procedure obviously contemplates the presence of a prosecuting attorney during the proceedings, with the judge acting as neutral arbiter between opposing counsel. Since no prosecutor attends Gotham juvenile court hearings, this role necessarily devolves upon the judge. As the Gotham memorandum puts it,

> Therefore, it becomes the function of the juvenile court judge, acting as "respondent," to submit his own "objections or proposed amendments," and then acting as "court below," to settle the differences between appellant's statement of proceedings and his own. Thus, the juvenile court judge is not the neutral arbiter envisioned . . . settling differences in recollections of the proceedings between two adverse parties. Further, when the juvenile court judge . . . includes in his statement of proceedings a statement setting forth the reasons for his determination, the judge's official version of the proceedings tends to lack the objectivity of a neutral stenographic record.[31]

Thus the procedure for review in Gotham served to reinforce the closed nature of the system, while imposing yet another sort of duality of roles on the actors.

A BRIEF CAVEAT

It is important to recognize that the problems faced by the Gotham staff were not of their own making, nor were they unique to that city. As the preceding discussion has indicated, the practices that bore heavily on the lawyers in Gotham occurred, though less regularly and with less impact, in Zenith as well, and research on other juvenile courts has revealed similar difficulties. The vital point is that the organization of the Zenith court allowed lawyers in that city to apply different criteria in deciding how to handle cases —criteria both more universalistic and more suited to the maintenance of an adversarial posture. Successful advocacy in Gotham meant that the lawyers had to learn and abide by the implicit rules of the traditional juvenile court system, a system, to use once again the Supreme Court's language, "unknown to our law in any comparable context."[32] It may be said that, by learning to apply the particularistic criteria of Gotham's judges in order to obtain the most favorable disposition for their clients, the attorneys were being "co-opted" into that city's juvenile court scheme. The difference lies in the fact that structural elements were already present when the Zenith staff first appeared which could accommodate their participation, structures to which they, in turn, accommodated themselves during their practice in that court.

NOTES

[1] N. Lefstein, V. Stapleton, and L. Teitelbaum, "In Search of Juvenile Justice: Gault and Its Implementation," 3 *Law and Society Review* 491, 519–520 (1969). (Hereinafter cited as *Juvenile Justice.*)

[2] *Ibid.*, p. 519.

[3] American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function* (Chicago: American Bar Foundation, 1970), pp. 226–227.

[4] Gotham's assignment procedure may also have contributed to the difficulty in obtaining continuances, to an unascertainable extent. When a case was selected for "research" purposes—and subsequently assigned to the law office—the court clerk automatically entered the project office as representing the child even if our services were refused. Repeated efforts to change this practice were unsuccessful, with the result that when a Gotham lawyer appeared, the original date of assignment was on the case jacket. This may have led to an erroneous assumption from time to time that the lawyer already had sufficient time to prepare when, as sometimes happened, the first contact had occurred the day before court appearance.

[5] *Juvenile Justice,* pp. 526–527.

[6] It may put the onerousness of this practice in perspective to observe that holding a hearing in the temporary and justifiable absence of counsel amounts to a more or less impolite way of excluding his participation, something that even traditional courts held improper. See People ex rel. Weber v. Fifield, 136 Cal. App. 2d 741, 289 P. 2d 303 (1955); In re Poulin, 100 N.H. 458, 129 A. 2d 672 (1957). Moreover, even though the result might be comparatively lenient, official records are created and the nature of the sanction recorded. While the stigmatizing effects of the various court dispositions are open to question, it has forcefully been argued that a record, once made, is usually not destroyed and is subject to use by various agencies and authorized persons. E. H. Lemert, "Records in the Juvenile Court," in S. Wheeler (ed.), *On Record: Files and Dossiers in American Life* (New York: Russell Sage Foundation, 1969), p. 355.

[7] *Juvenile Justice,* p. 519.

[8] See, e.g., Note, "Rights and Rehabilitation in the Juvenile Courts," 67 *Columbia Law Review* 281, 308 (1967); Note, "Minnesota Juvenile Court Rules: Brightening One World for Juveniles," 54 *Minnesota Law Review* 303, 326 (1969). The Rules adopted in 1969 for Minnesota Juvenile Courts apparently recognize and guard against oppressive use of the instanter amendment by requiring the consent of all parties before an amendment can be ordered after evidence has been presented in the case, and by providing for a continuance as a right if the petition is amended before evidence has been introduced. Minnesota Juvenile Court Rules §3–6 (1) and (2), reproduced in 54 *Minnesota Law Review* 457, 466–467 (1969).

The power to amend instanter may also work to the defendant's advantage where, for example, the court consents to reduction of the petition from delinquency to dependency or neglect. In cases such as this, the amendment may occur—as in several Zenith cases—at the insistence of the defense attorney.

[9] The following outline of points to be covered in the social investigation of delinquency complaints has been furnished in H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina, 1927), p. 116.

(1) The cause of the complaint.

(2) The child's developmental history, habits, and conduct, including previous delinquencies.

(3) Home conditions:
   a. Composition of the family . . .
   b. Type of dwelling, and living and sleeping arrangements.
   c. Conditions in the home which may have a special relation to the child's conduct.
   d. Constructive possibilities in the home.

(4) The child and his school:
   a. Present standing with reference to academic progress and conduct.
   b. School history.

(5) The child's working history (if he has been employed).

(6) The child's recreational activities and connections with churches, clubs, and other organizations.

[10] The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 1967, p. 53. The following table indicates the extent to which social reports were available immediately prior to *Gault:*

Table 19—Point at Which Facts of a Social Study in Delinquency Cases Are Usually Presented to Judge in 207 Juvenile Courts Serving Populations of 100,000 or Over, United States and Puerto Rico, 1966.

Point at Which Facts of Social Study Are Presented to Judge	*Number of Courts by Group Size*				
	All Groups	*Group 1*	*Group 2*	*Group 3*	*Group 4*
Before hearing on allegations	92	2	24	16	50
Before adjudication of allegations	46	2	3	5	36
After adjudication of allegations	65	7	14	14	30
No response	4	—	—	—	4
Total number of courts	207	11	41	35	120

[11] The sociological tradition of "symbolic interactionism," currently known by the term "ethnomethodology," stresses the importance of knowing the social definition of "reality" as used by actors within the system described. The time-honored maxim of this thinking has been, "If people define situations as real, they are real in their consequences."

[12] The admission of the juvenile is an important element throughout the processing of the case. Our study does not disagree with Lemert's statements concerning the issue: " 'Telling the truth' by the minor greatly simplifies the probation officer's task, and is welcomed as validating his 'helping' role, likewise the purposes of the juvenile court. Finally, it may become an important criterion by which a first-hand judgment of the minor is made. In actuality, 'telling the truth' often is more like a conversion of child-like or adolescent perspectives on events to an adult's view, or a redefinition of normal delinquency into the formal administrative terms consistent with anticipated departmental action. In the process the minor may become his own worst enemy without knowing it. Parents, too, contribute heavily to adverse records, for often it is very important to have their child admit the truth. More canny parents may see truth-telling in strategic terms, a possible way

of securing a lenient disposition of the case." Lemert, "Records in the Juvenile Court," pp. 355, 367.

[13] R. M. Emerson, *Judging Delinquents: Content and Process in Juvenile Court* (Chicago: Aldine Publishing Co., 1969), p. 20.

[14] Other research on these juvenile courts has also demonstrated that, even in unrepresented cases, guilty pleas are not the unvarying, or even the virtually unvarying, rule. *Juvenile Justice,* p. 528.

[15] E.g. Emerson, *Judging Delinquents.*

[16] D. Newman, "Pleading Guilty for Considerations: A Study of Bargain Justice," 46 *Journal of Criminal Law, Criminology and Police Science* 780 (1956).

[17] Emerson, *Judging Delinquents,* p. 22.

[18] The Gotham court used both an "adjourned adjudication" and an "adjourned disposition" category, the difference being that, in the latter, a finding of delinquency was in theory made, but not in the former. In practice, it seemed that, due to the informality with which decisions were reached and records kept, the two were invoked interchangeably by the court. For the sake of simplicity, and without sacrificing, we feel sure, accuracy, these two classifications have been collapsed into a single "adjourned adjudication" category. As appears in the course of Chaps. III and IV, we have also assumed that the use of either category by the court represents judicial "leniency."

[19] See Newman, "Pleading Guilty for Considerations," p. 788; J. Skolnick, "Social Control in the Adversary System," 11 *Journal of Conflict Resolution* 52, 55 (1967).

[20] Skolnick, "Social Control in the Adversary System," p. 53.

[21] *Ibid.,* p. 68.

[22] T. C. Schelling, *The Strategy of Conflict* (Cambridge, Mass.: Harvard University Press, 1960), pp. 4–5, as quoted in Skolnick, "Social Control in the Adversary System," p. 69.

[23] It should be remembered that the "case reports" reflect only the "research sample" of cases, i.e., those assigned at random. Other cases, taken both before and after the "research phase" of the project—as well as "callbacks" (previous clients who came back to the office on a later offense)—revealed the total legal activity of each project law office. An examination of the full range of appellate work for the two cities reveals the same basic pattern; Zenith reported nine formal appeals (including one habeas corpus action) compared to Gotham's three.

[24] 384 U.S. 436 (1966).

[25] See table in note 10, above. A recurrent theme in Gotham's case reports is the lawyer's expression that if the judge had prior knowledge of the social report, they should have equal access. The following—taken from the field notes of a court observer—occurred in the judge's chambers and is one example of this particular problem.

> Judge —— then started to talk about a case that he was due to hear in court. The case turned out, as I later found out, to be that of ——, one of our research cases which had been assigned to the law office. Judge —— had the youth's file on the desk in front of him and he leafed through it during our conversation. In reference to seeing the social report, he had even picked out a sheaf of papers from the file and waived it to indicate that this was the sort of thing he did not want lawyers to see. In a discussion of the case, he said that if this boy were found involved he would have to be sent away. The judge had full knowledge of the case and the police report. He stated that the boy had been in several previous times to the Juvenile Court and was currently on a double charge of (1) assault and (2) robbery. The judge stated that he knew that the child had been involved in a robbery of another boy where he had struck the boy up against the wall and had picked his pockets using a toy pistol to

threaten him. It was obvious to me that Judge —— knew all about the case that was about to appear in his courtroom.

[26] D. Matza, *Delinquency and Drift* (New York: John Wiley & Sons, 1964), pp. 118–119.

[27] W. Whitlatch, "The *Gault* Decision—Its Effects on the Office of the Prosecuting Attorney," 41 *Ohio Bar Journal* 41, 43–44 (1968).

[28] Memorandum in Support of Motion for Court Reporter, In re W. E., before the Gotham Juvenile Court.

[29] 351 U.S. 12 (1956).

[30] *Ibid.*, p. 14, n. 4.

[31] Memorandum in Support of Motion for Court Reporter.

[32] In re Gault, 387 U.S. 1, 17 (1967).

VI *The Lawyer's Dilemma Revisited: Some Notes on the Ethical Responsibility of Lawyers in Juvenile Courts*

If any one thing is clear from this study, it is that analyses of the "juvenile court system" which presume uniformity in organization and operation within that "system" are disserved by their premises. Methods of accommodating the normative conflict inherent to the juvenile court movement vary considerably from court to court. Courts such as the one in Gotham have maintained so far as possible the spirit of the child-saving movement at the expense of "legal" norms suggested by the legislation under which they operate and the political consequences of their actions. The less traditional courts, among which Zenith must be counted, closely approximate the criminal justice system, at least with regard to their organization for purposes of adjudication. The structural and operational differences between these courts have been developed at some length in Chapters IV and V and need not be retold here.

In view of these differences—sufficiently great, we have argued, to justify treating Zenith and Gotham as distinct justice systems—it is not surprising that the introduction of a given stimulus, here adversarial counsel, should have varied results. The participation of such lawyers posed no great threat to the functioning of the Zenith court which was, in organization and orientation, equipped for the resolution of conflict between the child and the state. Indeed, the *Gault* decision affected procedures in that city only minimally, due to the adoption of a "progressive" juvenile court statute only the year before.

Adversarial counsel—and, for that matter, the *Gault* decision in general—occasioned far greater dislocation in the Gotham court. The Supreme Court's assertion that "the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process"[1] to one side, the fact remains that the Gotham court was organized to function, and viewed itself, as a cooperative rather than a conflict system. Whereas the Zenith court provided a forum reasonably congenial to the project-lawyers' tactics, that in Gotham understandably—perhaps necessarily—inhibited adoption of such a posture. Chapter V has suggested the complexity of the relation between judicial organization and its effect on the actors in that system. At the risk of oversimplification, it appears from the discussion that if lawyers are expected to offer "effective" representation in the commonest sense, that is, by preserving their clients against unwanted official intervention except according to "the law of the land," then they must be provided the tools of their trade: a transcript of the proceedings, the right to confrontation and cross-examination of all relevant witnesses, and the effective use of the privilege against self-incrimination.

It may seem curious that the functioning of counsel apparently depends largely on his ability to rely on enforcement of other rights, since it is commonly assumed that their enforcement will flow from the fact of legal participation. As the President's Commission on Law Enforcement and Administration of Justice observed with regard to the provision of attorneys in delinquency cases,

> The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires. The rights to confront one's accusers, to cross-examine witnesses, to present evidence and testimony of one's own, to be unaffected by prejudicial and unreliable evidence, to participate meaningfully in the dispositional decision, to take an appeal have substantial meaning for the overwhelming majority of persons . . . only if they are provided with competent lawyers who can invoke those rights effectively.[2]

The significance of the pressures on the Gotham project staff is perhaps heightened by the realization that their posture was affected by the inability to rely on the same rights their presence presumably guaranteed.

THE LAWYER'S ROLE IN GOTHAM AND ZENITH

The Professional Consequences of the Style of Representation

While the lawyers were selected for, and urged to maintain, an adversarial approach to representation, the approach actually adopted in Gotham

relied far more heavily on the child's story and its truthfulness, and less on "legal defenses," than did the staff in Zenith. Accepting for this discussion, as we have implicitly throughout the study, a definition of "role" as a set of normative prescriptions for behavior, it is apparent that the conditions of representation had an effect on the lawyer's *functional* definition of his role.

The Responsibility of the Defense Lawyer in Criminal Cases with Regard to the Determination of Guilt. As the discussion of the adversary system in the criminal process implied, the lawyer's role in that context is that of an advocate for his client. It is this institutional assumption which answers the otherwise troublesome questions: Why should an attorney defend one whom he knows to be guilty? What of his duty to justice and to society? Although it is tolerably clear that a lawyer need not accept any particular case,[3] once having undertaken the defense, his duty, "regardless of his personal opinion as to the guilt of the accused, is to invoke the basic rule that the crime must be proved beyond a reasonable doubt by competent evidence, to raise all valid defenses and, in case of conviction, to present all proper grounds for probation or mitigation of punishment."[4] In so doing, the attorney subjects official assertions of authority to that "constant, searching, and creative questioning" upon which, it is said, "the survival of our system of criminal justice . . . depends."[5]

While a criminal defense lawyer is, as are all members of the profession, an "officer of the court," this concept in no way alters his responsibility as an aggressive representative of his client.

> When the lawyer's role as an officer of the court is understood in the highest sense, there can rarely be any conflict between these duties. The lawyer's duty to his client is to give him the best professional representation of which he is capable. His duty to the court is to represent the client vigorously, in a manner consistent with his position as a professional officer of the court, so that the adversary process may operate.[6]

Thus, the attorney's duty of "candor and fairness" to the court primarily requires that he not subvert the institution he serves, for instance, by bribing the jury or introducing evidence known to be false.[7] Beyond this, his duty to client, to the court, and to society are coterminous. It is his responsibility to obtain an acquittal if he can do so, short of what amounts to fraud on the justice system. If he possesses information indicating the culpability of his client, he is under no obligation to disclose that information either to the court or to the prosecuting attorney and, indeed, he should not do so.[8] A somewhat flamboyant, but accurate, portrayal of the defense attorney's role is given in William Forsyth's *Hortensius:*

> Every man charged with an offense in a court of law stands or falls according to the evidence there produced. If that which is brought forward against him is weak and insufficient, or the charge itself is so inartificially [sic] framed that

> the law, if appealed to, must relax its hold upon its prisoner, it can be no violation of moral duty to point out these deficiencies to the court, although the effect must be that the criminal will escape. . . . [The defense attorney] may honorably say to the accuser: "Prove my client guilty if you can. You use the law as a sword; I will take it as a shield," and so long as he keeps within the lines which the law has traced for the protection of the accused, he may—nay he must—afford his client the benefit of its shelter. If the law allows a loophole of escape, he is a traitor to his trust if he does not bring this before the attention of the judge. He would incur a fearful responsibility if, knowing that an objection which, if taken, would be fatal to an indictment, he were to suppress it, because he was satisfied of the fact of his client's guilt.[9]

This was, in essence, the role adopted by the Zenith office—a role they could indulge because of the organization of the court before which they appeared. Denials were entered in more than one-quarter of the cases in which clients admitted full or partial complicity in the charges placed against them, indicating not only the use of the plea as a posture-defining device but also much about the lawyers' definition of their roles. It has been observed that "Common law legal institutions long ago resolved that the system must permit (although it does not require) the accused to compel the state to establish his guilt in law under the rules of procedure and evidence, even though he privately admits facts which, if shown, would warrant a verdict of guilty."[10] This resolution was accepted in the Zenith juvenile court as well, at least by the staff of the Zenith project office.

The Responsibility of the Defense Lawyer in Traditional Juvenile Courts with Regard to the Determination of Guilt. Since the focus of a delinquency proceeding has traditionally been considered fundamentally different from that in the ordinary criminal—or for that matter, civil—case, it is not surprising that the responsibilities and function of an attorney in juvenile court should also have been thought fundamentally different. If, as proponents of the juvenile court system have long insisted, the law is not used as a sword, and the process by which the accused appears before the court serves as his shield as well, the adversarial approach is inappropriate. For this reason, the participation of an attorney in juvenile matters was often considered inadvisable, since it "usually complicates the proceedings and serves neither the interests of the child nor the interests of justice."[11] And, naturally enough, the rehabilitative view of juvenile court supporters and personnel also colored their perceptions of the role of counsel when he did appear. Judges tended to believe that the functions most appropriate to the lawyer were the securing of cooperation in the court's disposition and interpretation of the goals of the court to the child and his parents, rather than the more traditional responsibilities of developing the facts and protecting the rights of the accused.[12] Correlatively, chief among the perceived deficiencies of lawyers appearing before the court

were lack of understanding of the philosophy and purpose of the juvenile court, lack of familiarity with juvenile court procedures, and a tendency to see these matters as criminal in nature.[13]

Clearly, there is a reciprocal relationship between the "function" of an attorney and his responsibility to his client. Judge McMullen of the St. Louis Juvenile Court spoke for many of his brethren in stating, "Since the [juvenile court] proceedings are in the interest of the child, in his behalf, they are not basically adversary proceedings, and the lawyer who comes into the juvenile court only to convince the court that the child did not do a certain act is missing the whole point of the proceedings, if the child did, in fact, do it."[14] Implicitly, the attorney's function in juvenile court traditionally differs from that in criminal court where the attempt to avoid conviction is, or may be, the whole point of his presence, and properly so. It follows, then, that the lawyer's responsibility to his client is to some extent defined by the forum, since he now may be bound to seek something other than an acquittal, the client's wishes apparently notwithstanding.

If the youthful client admits his involvement in the offense charged, the attorney's function is not to obtain dismissal of the petition, but to submit the child to the court's jurisdiction and to render such assistance as he can at that point. This position may be explained on the ground that the lawyer's responsibility to his client is, within the juvenile court framework, either partially reduced in favor of one or more alternative sources (the court or society in general) or, what amounts to the same thing, his responsibility is defined by the court's philosophy in favor of its own assumption of authority and contrary to what may be the child's wishes or the attorney's evaluation of his client's "best interests."

There are, it should be noted, other areas of law in which the attorney is sometimes said to owe a more affirmative duty to the court than the mere avoidance of fraud upon the legal system. In tax law, for instance, it has been suggested that the tax lawyer owes a dual responsibility: "He must be loyal to his client, but he is also duty bound to the Government to see that his client does not avoid his just share of the tax burden except by positive command of law. . . ."[15] Two reasons are given for this special duty. The first is based on the unusually close relationship of the tax lawyer to the Bar before which he practices, and to the Treasury agents with whom he regularly deals.[16] The second derives from the perceived relationship between the taxpayer (and derivatively, his adviser) and the government.

> I think the heart of our problem [as tax lawyers] is in the ethical judgment we make as to the relations between the taxpayer and his government. If you think of the citizen's relationship to his government as comparable to that of a plaintiff or a defendant to his adversary in a litigation, perhaps you can justify the absence of an ethical standard of full and fair disclosure. . . . But is that a

> proper standard by which to conduct the citizen's relations to his government in the taxing area? Does not the citizen owe his government and his neighbors the duty of paying his share of taxes as required by law? As ministers of the law, can we countenance or be accessory to an escape by taxpayers of their duty to their government?[17]

In matrimonial cases, as well, it has been argued that the lawyer "must always keep in mind the interest of society, and that his duty is not only to represent the party engaged by him, but also the State."[18] To this end, the divorce attorney should delay institution of the legal action requested by his client in an effort to achieve reconciliation.[19] As with delinquency matters, the higher duty to society is to some extent related to rejection of the adversary system.

> Many lawyers, judges, and social workers regard the adversary procedure, as it is traditionally known in the law, as inappropriate in divorce, custody, and related family matters. It tends to discourage reconciliation and to intensify animosities. To be sure, so long as the usual fault grounds for divorce are retained, it will not be possible to eliminate all adversary situations. However, some of the worst evils are avoided and others mitigated by the philosophy and procedure of the family courts with their staff of experts. . . . [I]f the lawyer can establish a reasonable line between his functions as counsellor and as lawyer, he may be able to perform in both capacities.[20]

Similarly, the juvenile court attorney is sometimes viewed as a participant in an atypical legal scheme, in which the respondent does not occupy the traditional adversary posture vis-à-vis the court and society. The attorney's responsibility consequently runs to both client and court, and is defined according to the latter's assumptions concerning the child's "best interests," in order that the child not be denied the court's rehabilitative resources and so that he, and society, may be spared the consequences of future unacceptable behavior. In reaching its view of the child's "best interests," the traditional juvenile court ideology has generally rejected freedom from official action as an independent element. Accordingly, the interests of the defendant, for this purpose, are defined in radically different terms than they are in criminal prosecutions.

Not only does the juvenile court's interpretation of the lawyer's role affect his relationship to his client with regard to the entrance of a plea, but it also affects the attorney's conduct of the defense upon a denial. In all other cases, as we have seen, the lawyer is entitled, indeed required, to assert every defense allowed by the law of the land and urge every argument legally permissible. This is not so, however, in juvenile court proceedings. In order to clarify the role of defense counsel before his court, one judge (not in our study) undertook the following responsibility:

> I soon made it a practice when an attorney was to appear as counsel in the juvenile court to have the probation officer give the attorney a copy of a [statement entitled "Practical Suggestions for Attorneys Involved in Juvenile Court Matters]" and then bring him to my chambers before court opened. In the presence of the probation officer, the attorney and I would discuss the role of the lawyer in a juvenile court proceeding. It was not surprising to learn that most lawyers were totally unfamiliar with the philosophy, policy and procedures used in the juvenile court. . . . I would therefore endeavor to explain to the lawyer that his function in juvenile court was very different from that of counsel in any other kind of court, civil or criminal, and that the informal juvenile "hearing" was to be clearly distinguished from the criminal "trial." [I explained] that in my opinion a lawyer could best serve his client's interest or that of the parents by helping to interpret the philosophy of the court to the ward. . . .
>
> Most lawyers were receptive to the idea that as officers of the court, they had a professional obligation to assist in the supervision, rehabilitation and treatment of the ward. There were a few rare instances in which the lawyer insisted that his client be treated in much the same way that he would be in a criminal court, and that his client's "rights" made it necessary for the lawyer to demand that strict rules of evidence should be followed. One effective way of meeting this contention was to suggest that if he or his client wanted a criminal trial, it would be necessary for the juvenile court to transfer the case to the criminal court. . . . This suggestion usually brought a change in the attitude of belligerent counsel.[21]

If it can generally be said that an attorney undertaking the defense of a client has the responsibility of deciding what matter is legally objectionable and asserting his objection to its introduction, it appears that the juvenile court attorney's duty is altered in favor of the informal functioning of the system.

Attorneys as well as judges have to some extent modified their view of the traditional defense function to take into account the nature of the forum and of the client without, however, defining the precise character of this accommodation. Thus the Executive Director of the Philadelphia branch of the American Civil Liberties Union, after forthrightly stating that "the role of counsel should be basically the same as in criminal cases, namely, to present the defendant's situation in the best possible light at every stage of the proceedings,"[22] hastens to add:

> This does not imply that the lawyer will regard his client the way he would regard an adult accused of crime, or that his technique in dealing with the child's case will be the same. A sensitive lawyer will recognize that his role is not necessarily to help a kid beat the rap. A sensitive lawyer, like a sensitive judge or a sensitive social worker, knows when confession is good for the soul.[23]

At adjudication, then, the lawyer's responsibility to his client is modified to the extent that he is to act in the child's interests *as defined by traditional*

juvenile court philosophy and practice. To be sure, in many cases he will function much as he would in any other matter. All agree that the investigatory function is appropriate to the juvenile court attorney, as is the examination of complaining witnesses and, to a limited extent, objection to questionable evidence.[24] Certainly he should bring forth witnesses for the child who credibly denies involvement in the offense charged, and assist the child in bringing before the court his own story. The difficulty comes when the lawyer, by insisting on the youth's right to resist official interference without adequate proof of guilt and invoking technical objections to otherwise enlightening evidence, seeks to avoid the court's jurisdiction over a client who, for his own welfare, should be within that jurisdiction. And, although much ink has been spilled on a general discussion of the lawyer's obligation in juvenile court practice, very little has been devoted to isolating instances in which the attorney should act differently because of the forum or to suggesting which rights are expendable when the admittedly guilty child is on trial.

Because of the difficulty in ascertaining the lawyer's traditional role in delinquency matters, there is no point in asserting categorically that the Gotham staff operated in any particular mold. A few observations can be made, however. It is clear that that office, while willing to defend an admittedly guilty client, went to some lengths to reduce the occasions for doing so, as indicated by their greater concern with the truthfulness of their clients, by their efforts to ascertain that truth, and by the almost perfect relationship between the child's ultimate position and the plea actually entered in court. Indeed, it appeared in Table V.7 that there were only two instances in which a lawyer in Gotham entered a denial after an admission to him by the child.

Moreover, when a denial was entered, it appeared that the defense was far more likely to be factual in nature, with less reliance on "technical" objections to the assumption of jurisdiction than was the case in Zenith or in adversarial courts generally. Thus, the *functioning* of the defense in Gotham typified the model adopted by traditional juvenile courts to a considerable extent.

At the same time, there may not have been any real differences in the Gotham and Zenith lawyers' own concepts of their responsibility to their clients. All may well agree that the primary consideration was achieving the least onerous result possible under prevailing conditions. Certainly the incidence of plea-bargaining in Zenith suggests that conclusion. Because the prevailing conditions differed radically between the cities, however, different postures and tactics were seen as necessary to achieve the common desideratum and, in the process of adapting to those conditions, the functional definitions of the attorney's role diverged.

To many lawyers, this explanation may raise more questions than it resolves. It may be suggested that the attorney's role, even in a situation such

as that in Gotham, includes the securing of all the respondent's legal rights. In this view, the Gotham lawyers would be expected to adopt a "legalistic" position in every case and, if it should not be respected by the court, to seek review in every such instance. This, of course, requires an expanded definition of the lawyer's role—one which may involve the more or less certain sacrifice of the immediate client's liberty for the protection of others at some later point. This is not the place to take up this question; suffice it to say that the answer is by no means clear, and the dilemma increases the difficulty in role definition for the attorney to whom it is put.

The Social Consequences of the Style of Representation

The success of the Zenith office in maintaining an adversarial posture has been demonstrated by its willingness to enter a denial even in those cases where the child admitted all or part of the charges facing him. If these denials were fruitless in the sense that the clients were reached and treated by the court, then the pattern carries little importance other than establishing the posture of the defense and confirming the efficacy of the guilt-determining process in Zenith. If, on the other hand, those who entered pleas of not guilty did escape the court's jurisdiction, there are obvious social consequences to be considered.

Tables VI.1 and VI.2 indicate that consideration of these consequences cannot be avoided. In the bluntest possible terms, the adversarial approach in these cases freed the guilty. Of the 19 Zenith cases where the youth admitted guilt to his lawyer but a denial was entered in court, 13 (68.4 per cent) were dismissed outright, and another 2 were continued without a finding. Thus, approximately 79 per cent of the youths who acknowledged responsibility to the attorney but not to the court were returned to society without visible sanction. Moreover, all five cases where the juvenile admitted partial guilt but a straight denial was made in court were dismissed.

There were, of course, only two cases of this general description in Gotham. Neither escaped judicial attention, although it may be said that neither was severely sanctioned, and at least one could expect a "dismissal" in the future if he avoided further difficulty with the law.

One might conclude that the worst fears of juvenile court traditionalists regarding the appearance of adversarial counsel in children's cases have been realized, at least in "legalistic" courts. Solace might, perhaps, be available if it appeared that the offenses committed were minor in nature, or by youths of tender years and generally untroubled background. Indeed, this seems to be the case in Gotham, where the offense was one against property, the child between the ages of 10 and 12, and with no previous police or court record. A profile of the Zenith cases is less comforting. Only 2 of the 19 cases were in the youngest (10–12) age range, while the majority fell in the 13–14 area.

Table VI.1
Zenith: Relationship Between Plea and Disposition of Case

Final Disposition	*Lawyer and Youth Agree on Admission*[a] %	(*N*)	*Youth Admits, Lawyer Denies* %	(*N*)	*Youth Denies, Lawyer Denies* %	(*N*)	*Youth Admits to Part of Offense, Lawyer Admits* %	(*N*)	*Youth Admits to Part of Offense, Lawyer Denies* %	(*N*)	*Totals* %	(*N*)
Case dismissed	15.8	(9)[b]	68.4	(13)	79.0	(79)		(1)		(5)	56.9	(107)[b]
Delinquency not entered, case continued under limited supervision	28.1	(16)	10.5	(2)	2.0	(2)					10.6	(20)
Delinquency entered but disposition adjourned for time	3.5	(2)						(2)			2.1	(4)
Probation[c]	38.6	(22)	10.5	(2)	13.0	(13)		(4)			21.8	(41)
Commitment	7.0	(4)	5.3	(1)	5.0	(5)					5.3	(10)
Other	7.0	(4)	5.3	(1)	1.0	(1)					3.2	(6)
Totals	100.0	(57)	100.0	(19)	100.0	(100)	100.0	(7)[d]	100.0	(5)[d]	99.9[f]	(188)[e]

[a] Includes four cases where lawyer entered no plea.
[b] Includes two cases where state proved guilt but mitigating circumstances convinced judge to enter a judgment of "not delinquent."
[c] Includes two suspended commitments.
[d] Percentages not calculated on *N*'s.
[e] Number of missing units = 7.
[f] Per cents do not add up to 100 due to rounding.

Table VI.2
Gotham: Relationship Between Plea and Disposition of Case

Final Disposition	*Lawyer and Youth Agree on Admission* % (*N*)	*Youth Admits, Lawyer Denies* % (*N*)	*Youth Denies, Lawyer Denies* % (*N*)	*Youth Admits to Part of Offense, Lawyer Admits* % (*N*)	*Youth Admits to Part of Offense, Lawyer Denies* % (*N*)	*Totals* % (*N*)
Case dismissed	3.7 (3)		34.5 (19)	18.2 (4)		16.1 (26)
Delinquency not entered, continued under limited court supervision	11.0 (9)	(1)	10.9 (6)	9.1 (2)		11.2 (18)
Delinquency entered but disposition adjourned for time	30.5 (25)		16.4 (9)	4.5 (1)		21.7 (35)
Probation[a]	29.2 (24)		16.4 (9)	36.4 (8)		25.5 (41)
Commitment	7.3 (6)		9.1 (5)	9.1 (2)		8.1 (13)
Other	18.3 (15)		12.7 (7)	22.7 (5)	(1)	17.4 (28)
Totals	100.0 (82)	(1)	99.9[b] (55)	100.0 (22)	(1)	100.0 (161)

[a] Includes 10 cases of suspended commitment.
[b] Per cents do not add up to 100 due to rounding.

Nor were the offenses committed "minor" in nature. Three cases were "crimes against the person" (15.8 per cent), seven charged unlawful possession of weapons (36.8 per cent), eight were crimes against property (42.1 per cent), and a final case involved possession of marijuana. Not one case, it should be noted, involved the less grave category of behavior illegal only for juveniles.

Finally, the Zenith cases were not distinguished by earlier histories unmarred by contact with the law. Less than one-half of the children (eight of nineteen cases, or 42.1 per cent) had no prior record of any sort, while five (26.3 per cent) had police records involving one or more transactions; three were currently on probation (15.8 per cent), and an equal number had prior juvenile court records but were not on probation or parole at the time of the hearing. The reasons for the results reached in these cases also suggests the adversarial character of representation in Zenith. Two cases were continued without findings, and in one the delinquency petition was changed to a Minor in Need of Supervision petition. In three cases, the state did not choose to prosecute. Four cases were dismissed due to the failure of a necessary witness to appear, and another three because of a general failure of proof by the state.

There may be other social consequences of the style of representation. Much speculation has centered on the effect of the role adopted by counsel on the attitudes of those he represents. It has been suggested, for example, that communication of a "beat-the-rap" approach will necessarily and unfortunately affect the child's perception of the juvenile justice system, or will lead him to believe crime really *does* pay.[25] A systematic study of the way in which project clients viewed the juvenile court, its personnel, and themselves was included in the research design. Unfortunately, these data have not yet been fully analyzed, and, to the best of our knowledge, no similar information is available from other sources. Accordingly, judgment on what may be called the internal consequences of the manner of representation must be withheld.

A Proposition, Another Caveat, and a Plea

The Proposition. The simple truth is that, to the extent the *Gault* decision in operation means that adversarial representation is appropriate in delinquency cases, concern for "inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy" must be multidimensional. The scope and significance of this concern depends, however, largely on its relation to the principle upon which the Court's decision rests. Had, for example, the Supreme Court founded its decision on the political judgment that any person, adult or child, is entitled to a particular set of procedures—presumably those required in criminal prosecutions—whenever official deprivation of liberty is threatened, it would follow that any consequent social cost must be

absorbed in order to protect other values. No such political principle has yet been adopted, however, in *Gault* or any other Supreme Court decision. The panoply of criminal protections is not required in a number of circumstances that may result in deprivation of liberty, as for example, when one is the subject of commitment proceedings because of some alleged mental disability[26] or is charged with civil contempt,[27] or where the threatened deprivation is not considered "serious."[28]

A somewhat narrower version of the same approach would hold that the consequences of adjudication of delinquency and commitment to a state institution for delinquents cannot meaningfully be distinguished from conviction and imprisonment in the criminal process, and that the same body of protections should, therefore, apply to each. In this view, the question of similarity or identity of consequences would be an appropriate subject of concern and various kinds of information, including that derived from the social sciences, might well be valuable. Once those consequences are ascertained and characterized, however, it would seem that concern for, and investigation of, the costs would be largely academic, at least insofar as analysis of adjudicatory hearings is concerned. The various aspects of adversarial criminal trials would be carried over, in gross, to delinquency proceedings.

Although language in *Gault* may lend support to the latter reading, the conclusion that juvenile adjudication hearings are now to be little criminal trials is not warranted by the decision as a whole.[29] In the first place, the majority felt compelled to conclude its rather broad discussion of the due process clause with this qualification: "We do not mean . . . to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment."[30] This language, if not both gratuitous and fundamentally misleading, suggests that even the adjudicatory hearing (the only "hearing" to which *Gault* addresses itself) may differ in some ways from the traditional adult prosecution.

Further, the Court's insistence on restricting its decision with regard to fact-finding procedures argues against the proposition that delinquency hearings must now be conducted in every material respect as criminal matters. In addition to the careful initial statement limiting the Court's consideration to "the problems presented to us by this case,"[31] the majority expressly reserved the issue of use of hearsay evidence,[32] the correct standard of proof,[33] the right to a transcript[34] and the right to appeal from an adverse finding.[35] Such circumspection would hardly seem necessary, particularly as to issues already passed upon by the Arizona Supreme Court in the same case, had a broad holding been intended by the Court.

Finally, it seems important that the majority strove mightily to place its result on considerations of due process, rather than on an equal protection

analysis such as that offered by Mr. Justice Black's concurring opinion.[36] This factor, combined with the recognition that the juvenile justice system contains some unique and advantageous characteristics, suggests that criminal prosecutions will provide a referent rather than a model for juvenile adjudication procedures. Such an approach falls somewhere between Mr. Justice Black's theory and the strict due process approach of Mr. Justice Harlan, who would have the Court

> . . . determine what forms of procedural protections are necessary to guarantee the fundamental fairness of juvenile proceedings, *and not which of the procedures now employed in criminal trials should be transplanted intact to proceedings in these specialized courts.*[37]

A middle view, which insists on certain aspects of criminal procedure when necessary to achieve accuracy and fairness, but modified by concern for the peculiar requirements of the forum, thus seems to best describe the *Gault* decision. There is reason to believe that a similar calculus was invoked in *In re Winship,*[38] where the majority expressed concern with potential adverse effects on certain aspects of the *adjudication* hearing, notably "informality, flexibility, [and] speed of the hearing."[39] This concern with preserving the perceived benefits of juvenile court hearings found its strongest expression in the Court's most recent decision, *McKeiver* v. *Pennsylvania.*[40] The plurality opinion by Mr. Justice Blackmun concluded that the jury-trial requirement would contribute little to the accuracy of fact-finding.[41] Against this were placed the perceived costs of juries: delay, formality, publicity—in a phrase, the "clamor of the adversary system."[42] Moreover, Mr. Justice Blackmun noted, the arguments advanced for the petitioners "necessarily equate the juvenile proceeding—or at least the adjudicative phase of it—with the criminal trial."[43] This equation overlooked, in his view, "every aspect of fairness, of concern, of sympathy, and of paternal attention that the juvenile court contemplates."[44] These values, and the opportunity for experimentation in devising procedures for children, were not lightly to be rejected in favor of a unitary and adversarial system.

> The juvenile concept held high promise. We are reluctant to say that, despite disappointments of grave dimensions, it still does not hold promise, and we are particularly reluctant to say, as do the Pennsylvania petitioners here, that the system cannot accomplish its rehabilitative goals. So much depends on the availability of resources, on the interest and commitment of the public, on willingness to learn, and on understanding as to cause and effect and cure. In this field, as in so many others, one perhaps learns best by doing. We are reluctant to disallow the States to experiment further and to seek in new and different ways the elusive answers to the problems of the young, and we feel that we would be impeding that experimentation by imposing the jury trial.[45]

It seems, therefore, that provision of certain aspects of due process does not imply the complete transformation of the juvenile court into a "little criminal court," even for purposes of the adjudicatory hearing. Analogously, it may be proposed that provision of the right to counsel does not necessarily imply that attorneys in delinquency matters should act as "little criminal lawyers"—as adversaries. Certainly, there is a considerable body of ambiguous writing on the function of counsel in juvenile cases, some of which has been alluded to above. The resulting confusion is not relieved by the *Canons of Professional Ethics*. Not only may the usefulness of the *Canons* depend on an original decision as to the nature of the proceedings, but identification of the client's "interests" in cases involving children may pose substantial difficulties.[46] Moreover, as has been shown, it is tolerably clear that in some areas of law counsel is said to owe a special duty to the court or to society. Arguably, the same concern for social interests may be required of a child's lawyer that is demanded of a matrimonial or tax attorney.

If the definition of the attorney's role in juvenile cases has not already been determined by a political judgment of the sort reached in criminal prosecutions or by current rules of professional conduct, information relating to the social and professional consequences of role selection may appropriately be considered. Indeed, the Supreme Court itself, in *Gault,* analyzed the consequences of traditional juvenile court practice by reference to social science "fact." Accordingly, re-examination of the Court's factual premises may be appropriate, not for the purpose of impeaching its precise holding, but as a guide to considering the implications of the decision for the attorneys who must live with it.

Paramount among the Court's factual considerations were the following: (1) juvenile crime has increased, not decreased since the establishment of the juvenile court system, indicating the system's inability to effect reformation;[47] (2) a "delinquency" label is inherently stigmatizing, suggesting that unintended "punitive" consequences attend appearance before the juvenile court;[48] (3) the manner in which a youth perceives the legal system has profound effects for his future development as an adult member of society, and the juvenile's view of the court is a damaging one;[49] and (4) that institutionalization, though theoretically for purposes of treatment, does not accomplish that result.[50] Each of these elements will be considered separately.

Crime and Recidivism Rates as Indicators of Juvenile Court Failure

In assessing the success of the juvenile justice system, the majority relied heavily on a study of juvenile recidivism conducted for the President's Commission on Crime in the District of Columbia. Quoting from that report, the opinion states:

> In fiscal 1966 approximately 66 per cent of the 16- and 17-year-old juveniles referred to court by Youth Aid Division had been before the court previously. In 1965, 56 per cent of those in the Receiving Home were repeaters. The SRI study revealed that 61 per cent of the sample Juvenile Court referrals in 1965 had been previously referred at least once and that 42 per cent had been referred at least twice before. . . . Certainly, these figures and the high crime rates among juveniles to which we have referred . . . could not lead us to conclude that the absence of constitutional protections reduces crime, or that the juvenile system, functioning free of constitutional inhibitions as it has largely done, is effective to reduce crime or rehabilitate offenders.[51]

The Court's reasoning, from a rigorous social science perspective, leaves much to be desired. In seeking to determine whether the juvenile justice system has been ineffective, the Court draws its conclusions without the benefit of one of social science's most powerful inferential tests, a comparable "control group" of delinquency cases which have been processed through some system other than the juvenile courts.[52] The lack of an available control group is not a purely technical problem; it leaves as an equally plausible hypothesis for the relationship between crime rates and juvenile courts the proposition that, without a system of juvenile justice, youth crime rates would have been *even greater* than the figure cited. Such an explanation may strike many as unlikely in the extreme; however, the logic of social science inquiry views either statement as equally plausible until the proposition has been tested—which, as is generally agreed, has never been done.[53]

Stigmatizing Effects of a Juvenile Record

The majority opinion relies heavily on the assumption that the juvenile court experience is a "stigmatizing" one: "[I]t is frequently said that juveniles are protected by the process from disclosure of their deviational behavior. . . . This claim of secrecy, however, is more rhetoric than reality."[54]

One may, provisionally, grant the correctness of the Court's assumptions that juvenile records are used, and that they do not redound to the benefit of the child in subsequent life, although only one rigorous study has been made on the potential stigmatizing effects of criminal sanctions,[55] and none has yet been done in the juvenile justice field. Even so, is not careful protection of the confidentiality of these records, rather than insistence that they be made only in legally provable cases, the more appropriate approach? After all, records are kept on almost all critical areas of a person's life—even to the status and condition of the family at any given point in time.[56] The criticism leveled at the juvenile justice system by the Court applies as well to educational, credit, security, armed forces, and Internal Revenue Service files. It may be suggested that it is not the record per se which constitutes the core of the problem—rather, it is the illegitimate use of *all* such records.

The Juvenile Court's Effect on Youthful Offenders

In assessing the impact of traditional juvenile court procedures on youthful attitudes, the majority opinion sharply questioned the value of informality as a molder of desirable views of justice.

> But recent studies . . . suggest that the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process—*may* be a more impressive and more therapeutic attitude so far as the juvenile is concerned. . . . [W]hen the procedural laxness of the "*parens patriae*" attitude is followed by stern disciplining, the contrast *may* have an adverse effect upon the child, who feels that he has been deceived or enticed. . . . Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel.[57]

In drawing these conclusions, the Court relies heavily on a small booklet entitled *Juvenile Delinquency: Its Prevention and Control.*[58] It is not, and does not purport to be, a report of actual findings. Rather, the authors—sociologists Stanton Wheeler and Leonard Cottrell of the Russell Sage Foundation—are careful to point out that their report was designed to provide a "brief overview of major problems, issues, and developments in the field of juvenile delinquency. . . ."[59] Moreover, recent studies on the attitudes of juvenile offenders suggest that, for many, there is little understanding of the system or perception of "unfairness."[60] In addition, data from an as yet unreleased portion of this study indicate that relatively few juveniles processed through the Zenith and Gotham courts regard the system as "unjust."[61] Generally, therefore, it may be said that the theories connecting juveniles' perceptions of justice with the courts' processes are little more than current and provocative, but untested, ideas, and that the Supreme Court's evaluation rested heavily on intelligent guesswork rather than empirical data.

Institutionalization as Punishment

In its final major factual justification for its decision, the *Gault* Court commented extensively on the punitive nature of the institutionalization process.

> It is of no constitutional consequence—and of limited practical meaning—that the institution to which [a boy] is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a "receiving home" or an "industrial school" for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes "a building with whitewashed walls, regimented routine and institutional laws. . . ." Instead of mother and father and sisters and brothers and friends and

> classmates, his world is peopled by guards, custodians, state employees, and "delinquents. . . ."[62]

The importance of this consideration to the Court is confirmed by the frequent suggestions—which find support, indeed, in a strict reading of the *Gault* case itself—that only in cases of possible incarceration do the rights there extended apply.[63]

The assumptions upon which the Court's statement rest—that institutionalization is necessarily peno-custodial rather than rehabilitative—can itself be called into question, particularly when enforced by the supposition that, for treatment purposes, the home is necessarily better than an institution. Recent research by Marguerite Q. Warren in California quite clearly indicates that for certain types of youths (measured by "maturity levels" of emotional development), institutionalization offers a more favorable prognosis than release to the community.[64] The lack of faith in "rehabilitative" programs is typically justified by the failure of these programs to show any positive effect. But this failure may more properly be attributed to inadequate research methodologies; careful experimental programs that attempt to maximize treatment (and holding aside a comparable control group for comparison of effects) do show positive treatment results.[65] And, if credence can be placed in the autobiographical accounts of Claude Brown and Eldridge Cleaver, there were positive "therapeutic" effects flowing from their experiences in institutions.[66]

It is, therefore, possible that the juvenile court can, and does even now, act as an effective agency of socialization. Assuming that the *Gault* decision does not require the adversarial scheme as an operative principle for delinquency proceedings, the question of the attorney's role becomes yet more complex. One must face a fundamental question generally avoided because of the presumed bankruptcy of rehabilitation in the juvenile court context: *If* the system can work, how can the requirements of due process necessary to ensure that the child is a proper subject for treatment be reconciled with the social interest in providing services for the still malleable child when the primary agent of socialization—the family—breaks down? This dilemma may be presented more sharply by reference to a case from Zenith which, because of its complexity, will be set forth at length.

> C. W. was a thirteen-year-old with a prior station-house record of eighteen arrests for curfew and burglary and two prior court referrals for burglary, for which he was on probation at the time of an additional filing for burglary. Between the time of taking the case and the initial adjudicatory hearing, C. W. was arrested again for criminal trespass to a vehicle. In presenting his case the defense counsel was able to persuade the prosecutor that the state did not have sufficient evidence to uphold the second charge. The initial petition was also dismissed, much to the probation officer's dismay, through the use of a legal

technicality—the complaining witness was an invalid and, being housebound, could not appear in court to testify to the allegation of burglary from her home.

It is clear that Zenith's defense attorney was quite successful in obtaining the most favorable disposition of the case, a complete dismissal on the grounds that the state was either unwilling or unable to prosecute the charges. Defense counsel's "success" was in keeping C. W. from being committed (in all probability) to the "care and custody" of the State Youth Commission. In doing so he was also clearly acting on the wishes of C. W. and his mother, who were quite adamant in not wanting C. W. to receive such a disposition. The full moral dilemma facing counsel, however, is revealed in the following data from the case report.

> It might also be added that the comfortable bromide, in these circumstances, home is as good as anything, may not be acceptable either. There seems no real question that Mrs. W. is an alcoholic, and that the home circumstances are very close to intolerable. None of the children goes to school, because Mrs. W. is now living with a sister of hers and does not want to enroll the children and then have them transferred. At the same time, she has been with this sister for some six to eight months, and according to the probation officer, has taken no steps towards moving, however often she asserts that she intends to do so in the near future. It is his belief that she really has no plans for moving in the near future, and that as a result, the children are not going to go to school in the very near future. The apartment in which they are living is very badly overcrowded, and the living conditions are pretty close to impossible.
>
> One may further ask whether or not the simple fact that C. went to school would be meaningful. He claims physical distress while attending classes including ringing in his ears, and there is every reason to believe that he is subject to some rather vicious teasing because of the scar on his head. Further, his I.Q. is right around the mental retardation level, and his performance is severely handicapped by his emotional difficulties. To the best of my knowledge there is no institution within the control of the Board of Education which is suited to a boy with his difficulties, and, as observed above, it does not seem that there is any institution in the State which is suited, as a practical matter, to his needs.

Without question, the adversarial approach followed in this case satisfies the requirements of the *Canons of Professional Ethics*. The attorney was guilty of no misrepresentations to the court, nor did he insist on anything except that the state prove its case by competent evidence. Also without question, the result reached cannot realistically be thought to have done C. W. any identifiable good. The attorney's judgment was, of course, that no *possible* result was desirable in any but the strictest political sense, and he may well have been

correct in believing that no available institution in the state was equipped to deal with C. W.'s problems. But what if C. W.'s case was *not* so aggravated, or if some dispositional arrangement could be made which would in fact help C. W.? For that matter, how can the attorney have any assurance that, given the disastrous family situation, even commitment to the industrial school would be less desirable, at least for the child's social, as opposed to political, interests, than remaining at home?

Because these questions are not now answerable, resort might be had to systematic investigation of the consequences of particular dispositions. This demands a commitment by social scientists to what has been called an "experimenting society," one which

> . . . tries out proposed solutions to recurrent problems, which makes hard headed multi-dimensional evaluations of the outcomes, and where the remedial effort seems ineffective, goes on to other possible solutions. The focus will be on reality testing and persistence in seeking solutions to problems. The justifications of new programs will be in terms of the seriousness of the problem not in the claim that we can know for certain in advance what therapy will work.[67]

In the juvenile court context, the "experimenting society" would make C. W., his evaluators, and his attorney part of a continuing evaluational scheme. For example, in three hundred cases like that of C. W. (or any other class of cases), one would require an outright admission in one-third, with an adjudication of delinquency and commitment to the State Youth Authority the probable consequence. In another third, C. W. would be treated under some alternative program that did not threaten the delinquency sanction. For example, the case might be continued without a finding while the lawyer seeks to secure services that have been found desirable in this case at a hearing involving one or more teams of social scientists and himself. If these services were not available, the lawyer might be under an obligation to use legal means to secure them. It also follows, of course, that if this evaluation team decides that treatment is required, the lawyer enter an admission to the court when he urges provision of these services. Finally, the last one-third of the cases would be handled in the adversarial method actually adopted with C. W.

Evaluation of this type would establish, on a number of indexes, the substantive benefits—or lack thereof—of any or all of the programs. If it could be shown that the second type of treatment produced the lowest rate of recidivism and the greatest degree of emotional adjustment after a year's time while the other two alternatives produced dramatically different effects, then it could be urged that Type Two treatment should be the preferred position for the juvenile court and for the attorney with such a case. Of course, social

science findings are rarely so dramatic or clear-cut; however, the advantage of proceeding from some useful information, rather than wholly on the basis of even intelligent speculation, should be obvious.

Another Caveat

The "Proposition" squarely places us at a frontier which, like all frontiers, at least seems to present special perils. Lawyers, for example, may have substantial difficulties with the "experimenting society," at least in this context. Its major justification lies, of course, in the fact that it provides a design by which the benefits of various approaches to behavior abnormality can be assessed with some rigor. At the same time, it is perfectly clear that the securing of socially useful information, however desirable, is limited by other norms and, further, that there are instances in which ideological or ethical norms outweigh empirical ones. Before endorsing the foregoing proposal, then, one must first be satisfied that no supervening value prohibits its implementation. Underlying the experimental program outlined above is a simple but very important proposition: it necessarily denies the existence of any right on the part of the admittedly guilty child to resist societal intervention. The fact that a part of the class—those who have the adversarial lawyer—can set up the various defenses allowed under the law does not mean that children as a group have the right to resist such intervention. One can hardly claim something as a right if its availability depends solely upon random assignment rather than on something which inheres in the relationship of the person to the state.

One may ask if this cost would be accepted if the subject were an adult and the system were the criminal process. The logic of the experimenting society apparently requires an affirmative answer; one that would be resisted at least by "libertarian" lawyers because it fundamentally changes the nature of the political compact. The adversarial assumptions underlying the criminal justice system would seemingly permit the adult defendant to invoke his right to resist authoritative intervention even if the state were to staff a prison with the appropriate experts and give it a rehabilitative orientation, as indeed has been suggested and attempted.

If experimentation of this sort may not be permissible in the criminal forum, is the cost substantially reduced by reason of the subject's minority? This is the question which, it may well be, the Supreme Court has not confronted. It cannot be answered, however, by the observation that, for *some* legal purposes, children may be subject to special regulation. The political distance between the state and any individual varies according to, among other things, the nature and extent of official intervention. Nor, of course, is it concluded by the Supreme Court's failure to require any given procedure or procedures,

such as trial by jury, in delinquency matters. The proper question here is whether, *for purposes of this particular kind of official action,* children can be wholly denied the right to oppose the state, at least in cases where they are in fact guilty of the offense charged. This question is one of political philosophy which must be determined *before,* rather than after, experimentation begins. It is not sufficient to say that this cannot reasonably be done; that much of the thrust of the inquiry goes to whether children can usefully be subjected to the state for treatment, and that, to some degree, the existence of "rights" should be determined by the answer to the practical question. The implicit adjustment of the boundary between individual and society must be recognized and its propriety determined on its own merits.

To the point that the *Gault* case, in its reliance upon social science fact, has made the issue of a child's rights before the juvenile court dependent upon such information, this objection may be offered: The method of decision in *Gault* can be viewed as beginning from the proposition that children are "persons," in a constitutional sense. If that is indeed the starting point, the question then becomes whether or not society can justify according him lesser rights than are enjoyed by an adult when both are faced with incarceration for what may be a substantial period of time and, if so, how and when. From this perspective, the burden of persuasion may lie not on the opponents of the juvenile court movement as originally constituted but rather on that system's proponents. All that *Gault* may say, then, is that the evidence offered to justify provision of lesser protection for children is not persuasive, but tends, rather, to show the opposite. If this is indeed the posture of the *Gault* decision, one may concede that the Court erred in its characterization and appreciation of the social science material used, but that concession might not fundamentally affect the soundness of the decision reached.

There are finally practical problems in the proposal of an experimenting society within the juvenile court which may be thought important for principled analysis as well. For example, there simply may be no legal remedy available to the attorney representing C. W. Establishment of treatment facilities is a legislative rather than judicial function; the usual remedy for failure to provide adequate treatment, where that ground exists, is release by *habeas corpus,* which surely frustrates the purpose of the experiment. Moreover, even if an appeal to the legislature were successful, in all likelihood the immediate client would have spent several years in the Industrial School, reached his majority, and left the juvenile court's jurisdiction before funds could be allocated, walls erected, staff hired, and the doors opened. In such an event, the lawyer is in the position of subjecting his client to the court's authority with a view toward providing facilities for other persons in the future, a definition of the attorney's role that is itself not free from difficulty.

These observations do not, it should be noted, imply that useful empirical

research cannot be done or that there is not considerable scope for collaboration between law and social science. They simply suggest that this may be one of those points at which the interests of the two disciplines conflict, and that the conflict must be resolved before action can be undertaken.

A Concluding Plea

This study is the first of, hopefully, many such empirical investigations; admittedly, it has raised a number of problems not now soluble. The question of the attorney's role is a pressing one. We have sought to indicate the problems in adopting—indeed, in ascertaining—the various alternatives. The American Bar Association has not spoken to this point directly. It may be that the present *Canons of Professional Ethics* are intended to cover the lawyer in juvenile court as well as lawyers in other courts. If so, one can only say that the decision—whether correct or incorrect—was not the product of any systematic consideration of its consequences. Nor, with respect, does it appear that the Supreme Court gave much thought to the consequences of its decision to introduce attorneys into delinquency matters on a large scale; certainly nothing, save passing references to "special problems" in waiver of the rights secured by *Gault,* would indicate careful attention to this question. It is not, we hope, inappropriate to suggest that authoritative consideration be given to the role of the lawyer in delinquency cases in order that a taxing ambivalence might be reduced, if not resolved.

Perhaps implicit in the foregoing is the proposition that consideration of the attorney's role must be principled as well as realistic. As a professional advocate, the lawyer is something more than his client's alter ego; at the same time, the posture available to and adopted by him is necessarily related to the client's posture vis-à-vis any other party to the proceeding. There are, accordingly, questions of political philosophy to be faced. Are the limits on state action the same when the nature of the action is, for instance, a delinquency proceeding and the subject a minor as they are when the state proceeds criminally against an adult? Has the child an institutionally recognizable interest in avoiding state action of a coercive nature, or indeed, of any nature? If so, is this interest properly recognized by insulating him from such action until the forms provided for adults are met? In short, is the distance between the child and the state the same as that between an adult and the state? So long as inquiry into deviance focused on the actor rather than upon his relationship to legal institutions, these questions have been avoided. Although the *Gault* decision seemed to have recognized the existence of political issues, it would be too much to say that they have been resolved, or even carefully explored. Yet, as the course of this study has suggested, much may hang on their resolution.

NOTES

[1] In re Gault, 387 U.S. 1, 21 (1967).

[2] President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society," 1967, p. 86, as quoted in In re Gault, 387 U.S. 1, 38, n. 65 (1967).

[3] See American Bar Association, *Code of Professional Responsibility* (Chicago: American Bar Foundation, 1969), pp. 76, 44n; "Professional Responsibility: Report at the Joint Conference," 44 *American Bar Association Journal* 1159, 1216 (1958).

[4] American College of Trial Lawyers, "A Code of Trial Conduct," 36 *North Dakota Law Review* 175, 176 (1960).

[5] "Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice," 1963, p. 11.

[6] American Bar Association, *Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function* (Chicago: American Bar Foundation, 1970), p. 149. (Hereinafter cited as *Prosecution and Defense Standards.*)

[7] See ABA, *Code of Professional Responsibility,* DR 7–102.

[8] See J. Ram, *A Treatise on Facts* (4th American ed., 1890), pp. 272–273. "On a criminal prosecution, one principle acted on by the English law is that no one is bound to convict himself; another is, that the *onus probandi,* the burthen of proof of the offense charged, lies on the party prosecuting. These principles exempt the advocate of any one accused from all obligation to divulge, through his examination of the witness, any fact of which the advocate may happen to have knowledge, and which he thinks will be injurious to his client. The conscience of the advocate cannot be hurt except by a breach of his duty: he owes no duty to the public, nor to any one, to disclose the accused person's guilt; his whole duty is to his client; and this duty is to take care that his client have justice." The same rule is observed in civil cases as well. "[W]hile [the attorney] is engaged as counsel he is not only not obliged to disclose unfavorable evidence, but it is a violation of his duty to his client if he does so." S. Williston, *Life and Law* 272 (1941). See C. Curtis, "The Ethics of Advocacy," 4 *Stanford Law Review* 3, 11 (1951).

[9] W. Forsyth, *Hortensius* (London: J. Murray, 1874), pp. 408–409.

[10] ABA, *Prosecution and Defense Standards,* p. 5.

[11] H. Lou, *Juvenile Courts in the United States* (Chapel Hill: University of North Carolina Press, 1927), pp. 137–138.

[12] D. Skoler and C. Tenney, "Attorney Representation in Juvenile Court," 4 *Journal of Family Law* 77, 91–92 (1964).

[13] *Ibid.,* pp. 90–91.

[14] D. McMullen, "The Lawyer's Role in Juvenile Court," 8 *Practical Lawyer* 49, 52 (1962).

[15] R. Paul, "The Lawyer as a Tax Advisor," 25 *Rocky Mountain Law Review* 412, 422 (1953).

[16] See T. Tarleau, "Ethical Problems in Dealing with Treasury Representatives," 8 *Tax Law Review* 10, 13 (1952): "A striking difference between the general practice of law and tax practice is that the tax lawyer has the same adversary in every matter. His opponent is always the Government, and his dealings are mainly with its agents and lawyers. . . . If the lawyer is of good repute he soon finds that these Government representatives are ready to rely upon his integrity. . . . Although this situation makes the practice of tax law a pleasant one, it also saddles the lawyer with a great responsibility. Because he knows that his work, his version of the facts, or the data he submits may be accepted without further

verification, he is under a duty to make certain of the accuracy of the material he presents to these Government representatives."

[17] J. Hellerstein, "Ethical Problems in Office Counseling," 8 *Tax Law Review*, 4, 9 (1952).

[18] J. Peebles, "Lawyers and Divorce," 19 *Tennessee Law Review* 930, 936 (1947).

[19] *Ibid.*

[20] F. Harper and M. Harper, "Lawyers and Marriage Counseling," 1 *Journal of Family Law* 73, 80–81 (1961).

[21] W. McKesson, "Right to Counsel in Juvenile Proceedings," 45 *Minnesota Law Review* 843, 846–847 (1961).

[22] S. Coxe, "Lawyers in Juvenile Court," 13 *Crime and Delinquency* 488, 490 (1967).

[23] *Ibid.* The propriety of the attorney's weighing the legal and social values involved has been the subject of debate since lawyers began to appear regularly in juvenile courts. A California public defender's office has taken the position that its attorneys should follow the youth's wishes rather than their judgment of his best interests. Note "Rights and Rehabilitation in the Juvenile Courts," 67 *Columbia Law Review* 281, 327 (1967). On the other hand, it has been said that a law guardian in New York must consider the minor's general welfare as well as his legal rights in determining his cause of action. "The role of the 'wise parent' has, in effect, been transferred from the court itself to the law guardian." J. Isaacs, "The Role of the Lawyer in Representing Minors in the New Family Court," 12 *Buffalo Law Review* 501, 507 (1963).

[24] See McMullen, "Lawyer's Role in Juvenile Court," p. 54; Coxe, "Lawyers in Juvenile Court," p. 490; J. Allison, "The Lawyer and His Juvenile Court Client," 12 *Crime and Delinquency* 165, 168 (1966).

[25] See, e.g., Isaacs, "Role of Lawyer in Representing Minors in New Family Court," pp. 501, 506, 507.

[26] See generally, F. Lindman and D. McIntyre, *The Mentally Disabled and the Law* (Chicago: University of Chicago Press, 1961). For the relation between procedures and benefits promised but oft forgotten, see "Symposium: The Right to Treatment," 57 *Georgetown Law Journal* 673 (1969).

[27] E.g., Shillitani v. United States, 384 U.S. 364 (1966). See Illinois v. Allen, 397 U.S. 337, 345 (1970).

[28] See, e.g., Frank v. United States, 395 U.S. 147, 151–152 (1969) (distinction based on *kind* of deprivation of liberty); Duncan v. Louisiana, 391 U.S. 145 (1968) (distinction based on *duration* of deprivation of liberty).

[29] See N. Dorsen and D. Rezneck, "*In re Gault* and the Future of Juvenile Law," 1 *Family Law Quarterly* 1 (December 1967); M. Paulsen, "The Constitutional Domestication of the Juvenile Court," 1967 *Supreme Court Review* 233.

[30] In re Gault, 387 U.S. 1, 30 (1967).

[31] While the majority does hold that hearsay evidence cannot be the sole basis for a finding of delinquency, 387 U.S. 1, 56, it is not clear that such evidence cannot be received at all. See Dorsen and Rezneck, "*In re Gault*," p. 3; L. Teitelbaum, "The Use of Social Reports in Juvenile Court Adjudications," 7 *Journal of Family Law* 425, 431 (1967).

[32] 387 U.S. 1, 13 (1967).

[33] 387 U.S. 1, 11 (1967). It has already been mentioned that this issue was subsequently resolved in In re Winship, 397 U.S. 358 (1970).

[34] 387 U.S. 1, 58 (1967).

[35] *Ibid.* In addition, several issues relating to adjudication were not raised at all, including the applicability of the exclusionary rule to evidence (other than confessions) ob-

tained illegally, the right to compulsory process to secure witnesses, the right to a public hearing, and the right to trial by jury. The last of these was resolved in McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

[36] In re Gault, 387 U.S. 1, 59, 61 (1967).

[37] *Ibid.*, p. 74 (emphasis supplied).

[38] 397 U.S. 358 (1970).

[39] *Ibid.*, p. 366.

[40] 403 U.S. 528 (1971).

[41] *Ibid.*, p. 547.

[42] *Ibid.*, p. 550.

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*, p. 547.

[46] See Illinois Code of Professional Responsibility, EC 7–11, 7–12 (1970): "The responsibilities of a lawyer may vary according to the intelligence, experience, mental condition or age of a client . . . or the nature of a particular proceeding. . . . Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer." This comment is appended to the general canon entitled "A Lawyer Should Represent a Client Zealously Within the Bounds of the Law" and makes no particular reference to juvenile court matters.

[47] In re Gault, 387 U.S. 1, 20n., 21–22 (1967).

[48] *Ibid.*, pp. 23–25, and *n.* 31.

[49] *Ibid.*, p. 26, and *n.* 37.

[50] *Ibid.*, p. 27.

[51] *Ibid.*, p. 22.

[52] An explanation of a "true" field experiment is found in H. Zeisel, H. Kalven, and B. Buchholz, *Delay in Court* (Boston: Little, Brown and Co., 1959), pp. 241–242: "Whenever a legal innovation is introduced, it should be done, if possible, under circumstances which will permit thorough evaluation of its effects. The popular notion of an 'experiment,' in the sense of an innovation, tentatively introduced on a limited scale, is already quite familiar to the field of judicial administration. The trouble is that these tryouts are as a rule not accompanied by control procedures that permit us to learn exactly what was and what was not achieved. Only a scientifically controlled experiment can do this.

"In principle the experiment is simple enough. The experimental treatment is applied to one group, and not applied to another, the 'control group.' The two groups are otherwise kept as much alike as possible, so that any effect appearing in the experimental group can unequivocally be attributed to the deliberate experimental variation. . . . Comparability of experimental group and control group in a scientific experiment is achieved by leaving it to chance, that is to a lottery process, which units ought to go into the experimental group and which into the control group."

Also see N. Morris, "Book Review," 66 *Yale Law Journal* 962–972 (1957); and R. D. Schwartz and S. Orleans, "On Legal Sanctions," 34 *University of Chicago Law Review* 274 (1967).

[53] See especially Dunham, "The Juvenile Court: Contradictory Orientations in Processing Offenders," in R. Giallombardo (ed.), *Juvenile Delinquency: A Book of Readings* (New York: John Wiley & Sons, 1966), pp. 337, 352–354. Yet another criticism of the recidivism statistics used by the Court might be made. Although one may properly infer that recidivism is high in the court surveyed, the base from which that figure is derived is questionable. It would have been more proper and useful to look, *not* at the percentage of re-

cidivists in the court population at a given time, but rather at the percentage of the court population which is recidivistic. It may be, for instance, that a substantial proportion of juveniles do *not* repeat, but this can be determined only by looking at the *total* juvenile court population over a period of time and tracing each case over a sufficient period to determine accurate recidivism rates.

[54] In re Gault, 387 U.S. 1, 24 (1967).

[55] R. Schwartz and J. Skolnick, "Two Studies of Legal Stigma," 10 *Social Problems* 133 (1962).

[56] See generally, S. Wheeler (ed.), *On Record: The Use of Files and Dossiers in American Life* (New York: Russell Sage Foundation, 1969).

[57] In re Gault, 387 U.S. 1, 26 (1967) (emphasis supplied).

[58] S. Wheeler and L. Cottrell (eds.), *Juvenile Delinquency: Its Prevention and Control* (New York: Russell Sage Foundation, 1966).

[59] *Ibid.*, p. vii.

[60] M. Baum and S. Wheeler, "Becoming an Inmate," in S. Wheeler (ed.), *Controlling Delinquents* (New York: John Wiley & Sons, 1968), p. 153. The authors further note that: "The bulk of the youths accepted their commitment as fair. . . . Save for those whose first reaction was one of indignation, they did not, by and large, deny the rightness or justness of the decision. This seems very important, for it means that despite their haziness about the court proceeding, despite the fact that they have been told, oftentimes, various and conflicting things about what is happening to them, despite their shock and unhappiness at commitment, they still largely accord legitimacy to the decision, and by doing so, to the decision-making apparatus of the courts." *Ibid.*, p. 171.

[61] Tentative data from Gotham and Zenith seem to indicate that Baum and Wheeler's observations hold true in both of these quite different courts.

Zenith: Of boys using unfavorable words (N=273), the percentage of words indicating

	Project Attorney (N=95)	*All Other Cases* (N=178)
1. Sense of *injustice*	5.4	7.9
2. *No* sense of injustice	94.6	92.1

Gotham: (N=185)	*Project Attorney* (N=71)	*All Other Cases* (N=114)
1. Sense of *injustice*	8.5	7.9
2. *No* sense of injustice	91.5	92.1

[62] In re Gault, 387 U.S. 1, 27 (1967).

[63] "We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of *proceedings to determine delinquency which may result in commitment to an institution* in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child." In re Gault, 387 U.S. 1, 41 (1967) (emphasis added).

[64] M. Q. Warren, "The Community Treatment Project," in N. Johnston *et al., The Sociology of Punishment and Correction* (New York: John Wiley & Sons, 1970), p. 671.

[65] See especially S. Adams, "The PICO Project" (p. 548) and W. C. Bailey, "An Evaluation of 100 Studies of Correctional Outcome" (p. 733), both in Johnston *et al., Sociology of Punishment and Correction.*

[66] C. Brown, *Manchild in the Promised Land* (New York: Macmillan Co., 1965); E. Cleaver, *Soul on Ice* (New York: McGraw-Hill Book Co., 1968).

[67] D. Campbell, "Application for a Grant to Support Research on Methods for the Experimenting Society," application sent to the Russell Sage Foundation, 1970. See Campbell, "Reform as Experiment," 24 *American Psychologist* 409 (1969).

Appendix I

OFFENSE LIST—BOTH CITIES

I. *Offenses against Person/Aggravated*
- Armed robbery
- Strong armed robbery
- Rape
- Aggravated assault and battery

II. *Offenses against Person/Not Aggravated*
- Extortion/intimidation
- Purse snatching
- Assault and battery

III. *Weapons*
- Carrying/possession of weapons

IV. *Offenses against Property*
- Breaking and entering
- Burglary
- Receiving/possession of stolen property
- Illegal use of auto/theft of auto
- Riding in stolen auto
- Shoplifting
- Theft from auto
- Theft
- False pretenses, deceptive practice, cashing bogus checks
- Criminal trespass to property
- Damage to motor vehicle
- Damage to property
- Tampering with parking meter
- Arson
- Possession of lottery tickets

V. *Substance Abuse*
- Marijuana
- Glue sniffing
- Heroin
- Narcotics (unspecific)
- Alcohol

VI. *Offenses against Public Order*
- Disorderly conduct
- Mob, gang fighting

Disorderly conduct in school
False alarm

VII. *Sex Offenses (except Rape)*
Immorality, sexual intercourse
Lewdness
Sodomy
Indecent behavior

VIII. *Juvenile Offenses*
Loitering
Incorrigibility
Truancy
DEGHW (Deportment endangering general health and welfare)
Curfew
IRSAN (Idly roaming the streets at night)
Runaway

IX. *Traffic (Gotham Only)*
Driving without a license
Violation/motor vehicle code

*Appendix II**

Table A.1
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Offenses

Offense	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
Offense against person/aggravated	28.5	(92)	24.5	(76)
Offense against person/not aggravated	9.0	(29)	10.3	(32)
Weapons/carrying, possession	5.9	(19)	5.5	(17)
Offense against property	44.6	(144)	49.0	(152)
Substance abuse	1.9	(6)	1.9	(6)
Offense against public order	0.9	(3)	1.0	(3)
Sex (not rape)	4.0	(13)	2.9	(9)
Juvenile	5.3	(17)	4.8	(15)
	100.1*	(323)	99.9*	(310)

$\chi^2 = 2.585$, *n.s.*

* Throughout Appendix II the asterisk (*) following a number indicates that per cents do not add up to 100 due to rounding.

Table A.2
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Age

	Experimental Group		*Control Group*	
Age	%	(*N*)	%	(*N*)
16–17	39.9	(128)	46.0	(142)
14–15	37.4	(120)	34.3	(106)
13 and under	22.7	(73)	19.7	(61)
	100.0	(321)[a]	100.0	(309)[b]

$\chi^2 = 2.44$, *n.s.*
[a] Two cases undetermined.
[b] One case undetermined.

Table A.3
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Previous Court Experience[a]

	Experimental Group		*Control Group*	
Previous Court Experience	%	(*N*)	%	(*N*)
Yes	37.4	(96)	44.3	(113)
No	62.6	(161)	55.7	(142)
	100.0	(257)	100.0	(255)

$\chi^2 = 2.286$, *n.s.*
[a] Previous court experience determined for 512 cases only. Zenith's court records proved inaccurate on this item and the project had to invalidate early records. During the course of the project self-reporting data was substituted. The responses reflected here were the juveniles' answers to the question "Have you ever been to juvenile court before?"

Table A.4
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Number of Petitions

Number of Petitions	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
Single offense on intake	76.8	(248)	78.1	(242)
Multiple offense on intake	12.4	(40)	13.9	(43)
Apprehended one or more times after intake	10.8	(35)	8.1	(25)
	100.0	(323)	100.1*	(310)

$\chi^2 = 1.582$, *n.s.*

Table A.5
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Judge

Judge	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
A	12.7	(41)	11.3	(35)
B	14.9	(48)	14.8	(46)
C	15.2	(49)	17.7	(55)
D	17.3	(56)	14.8	(46)
E	13.0	(42)	11.6	(36)
F	7.7	(25)	5.2	(16)
Others	6.5	(21)	4.5	(14)
More than one judge	12.7	(41)	20.0	(62)
	100.0	(323)	99.9*	(310)

$\chi^2 = 9.699$, *n.s.*

Table A.6
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Race

	Experimental Group		*Control Group*	
Race	%	(*N*)	%	(*N*)
White	13.9	(45)	13.2	(41)
Negro	84.2	(272)	82.6	(256)
Other	1.9	(6)	4.2	(13)
	100.0	(323)	100.0	(310)

$\chi^2 = 2.984$, *n.s.*

Table A.7
Zenith: Internal Validity, Comparison of Experimental and Control Groups—Home Situation

	Experimental Group		*Control Group*	
Child Lives with:	%	(*N*)	%	(*N*)
Both parents	33.5	(108)	40.5	(125)
Mother only	46.6	(150)	41.4	(128)
Father only	3.1	(10)	2.6	(8)
Other relative or stepparent	15.6	(50)	14.5	(45)
Other	1.2	(4)	1.0	(3)
	100.0	(322)[a]	100.0	(309)[a]

$\chi^2 = 3.413$, *n.s.*
[a] One case undetermined.

Table A.8
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Offense

Offense	*Experimental Group* %	(*N*)	*Control Group* %	(*N*)
Offense against person/aggravated	13.2	(32)	9.0	(23)
Offense against person/not aggravated	9.5	(23)	12.9	(33)
Weapons/carrying, possession	1.7	(4)	1.2	(3)
Offense against property	60.3	(146)	63.1	(161)
Substance abuse	2.9	(7)	3.9	(10)
Offense against public order	2.9	(7)	2.7	(7)
Sex (not rape)	3.3	(8)	1.6	(4)
Juvenile	4.5	(11)	4.3	(11)
Traffic	1.7	(4)	1.2	(3)
	100.0	(242)[a]	99.9*	(255)

$\chi^2 = 5.804$, *n.s.*
[a] One case undetermined.

Table A.9
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Age[a]

Age	*Experimental Group* %	(*N*)	*Control Group* %	(*N*)
16–17	48.7	(117)	49.8	(125)
14–15	27.1	(65)	25.5	(64)
13 and under	24.2	(58)	24.7	(62)
	100.0	(240)	100.0	(251)

$\chi^2 = 0.159$, *n.s.*
[a] Seven cases undetermined.

Table A.10
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Previous Court Experience[a]

Previous Court Experience	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
Yes	59.1	(137)	51.3	(122)
No	40.9	(95)	48.7	(116)
	100.0	(232)	100.0	(238)

$\chi^2 = 2.576$, *n.s.*
[a] Undetermined for 28 youths.

Table A.11
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Number of Petitions

Number of Petitions	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
Single offense on intake	55.1	(134)	62.0	(158)
Multiple offense on intake	28.8	(70)	25.1	(64)
Apprehended one or more times after intake	16.0	(39)	12.9	(33)
	99.9*	(243)	100.0	(255)

$\chi^2 = 2.447$, *n.s.*

Table A.12
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Judge[a]

Judge	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
W	31.0	(75)	34.5	(87)
X	23.6	(57)	23.4	(59)
Y	28.9	(70)	23.8	(60)
Z	10.7	(26)	13.9	(35)
More than one judge	5.4	(13)	4.4	(11)
Other	0.4	(1)		
	100.0	(242)	100.0	(252)

$\chi^2 = 3.986$, *n.s.*
[a] Unreported for four youths.

Table A.13
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Race[a]

Race	*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)
White	10.3	(25)	11.0	(28)
Negro	89.3	(216)	87.8	(223)
Other	0.4	(1)	1.2	(3)
	100.0	(242)	100.0	(254)

$\chi^2 = 0.992$, *n.s.*
[a] Unreported for two youths.

Table A.14
Gotham: Internal Validity, Comparison of Experimental and Control Groups—Home Situation[a]

Child Lives with:	*Experimental Group* %	(*N*)	*Control Group* %	(*N*)
Both parents	59.5	(144)	60.8	(152)
Mother only	23.6	(57)	19.2	(48)
Father only	3.3	(8)	4.0	(10)
Other relative or stepparent	8.3	(20)	12.4	(31)
Other	5.4	(13)	3.6	(9)
	100.1*	(242)	100.0	(250)

$\chi^2 = 4.311$, *n.s.*
[a] Unreported for six youths.

Table A.15
Zenith: Comparison of Test with Total Population—Offense

Offense	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Homicide			0.8	(36)
Kidnapping			0.1	(5)
Crimes against persons/aggravated	22.1	(175)	17.3	(733)
Crimes against persons/not aggravated	8.7	(69)	8.2	(346)
Weapons/carrying, possession	5.3	(42)	6.6	(281)
Crimes against property	44.4	(352)	45.5	(1,929)
Substance abuse	1.6	(13)	2.9	(123)
Offenses against public order	2.6	(21)	2.9	(122)
Sex offenses (excluding rape)	3.5	(28)	3.2	(137)
Juvenile offenses	11.6	(92)	12.5	(530)
Total offenses	99.8*	(792)[a]	100.0	(4,242)[a]

[a] Totals include multiple petitions counted separately.

Table A.16
Zenith: Comparison of Test with Total Population—Age

Age	*Test Population* %	(*N*)	*Total Population* %	(*N*)
16–17	42.9	(270)	44.9	(1,745)
14–15	35.9	(226)	35.5	(1,377)
13 and under	21.3	(134)	18.8	(731)
Undetermined	[a]	(3)	0.8	(31)
	100.1*	(633)	100.0	(3,884)

[a] Less than 1 per cent.

Table A.17
Zenith: Comparison of Test with Total Population—Number of Petitions

Number of Petitions	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Single offense on intake	77.4	(490)	83.0	(3,222)
Multiple offense on intake	13.1	(83)	15.4	(597)
Apprehended one or more times after intake	9.5	(60)	1.6	(65)
	100.0	(633)	100.0	(3,884)

Table A.18
Zenith: Comparison of Test with Total Population—Judge

Judge	*Test Population* %	(*N*)	*Total Population* %	(*N*)
A	12.0	(76)	15.0	(582)
B	14.8	(94)	18.4	(716)
C	16.4	(104)	16.2	(628)
D	16.1	(102)	21.5	(834)
E	12.3	(78)	14.1	(547)
Other	12.0	(76)	11.6	(452)
More than one judge	16.3	(103)	3.2	(123)
Not ascertained			[a]	(2)
	99.9*	(633)	100.0	(3,884)

[a] Less than 1 per cent.

Table A.19
Zenith: Comparison of Test with Total Population—Race

Race	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Negro	83.4	(528)	66.7	(2,587)
White	13.6	(86)	27.7	(1,075)
Other	3.0	(19)	5.6	(218)
	100.0	(633)	100.0	(3,880)[a]

[a] Four cases undetermined.

Table A.20
Zenith: Comparison of Test with Total Population—Home Situation

Child Lives with:	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Both parents	36.9	(233)	40.3	(1,566)
Mother only	44.1	(278)	38.4	(1,492)
Father only	2.9	(18)	3.6	(140)
Stepparent or relative	15.0	(95)	16.7	(650)
Institution, other	1.1	(7)	0.4	(14)
Not ascertained	[a]	(2)	0.6	(22)
	100.0	(633)	100.0	(3,884)

[a] Less than 1 per cent.

Table A.21
Gotham: Comparison of Test with Total Population—Offense[a]

Offense	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Homicide			[b]	(1)
Crimes against persons/aggravated	7.9	(60)	5.6	(139)
Crimes against persons/not aggravated	10.8	(82)	7.7	(194)
Weapons/carrying, possession	1.7	(13)	1.4	(35)
Crimes against property	58.0	(440)	54.3	(1,372)
Substance abuse	3.4	(26)	5.3	(134)
Offense against public order	3.0	(23)	2.7	(68)
Sex offenses (excluding rape)	1.8	(14)	2.7	(68)
Juvenile offenses	9.1	(69)	15.1	(381)
Violation of Motor Vehicle Code	4.2	(32)	5.3	(135)
	99.9*	(759)	100.1*	(2,527)

[a] Totals include multiple petitions counted separately.
[b] Less than 1 per cent.

Table A.22
Gotham: Comparison of Test with Total Population—Age

Age	*Test Population* %	(*N*)	*Total Population* %	(*N*)
16–17	49.3	(242)	51.9	(931)
14–15	26.3	(129)	25.9	(466)
13 and under	24.4	(120)	18.3	(328)
Undetermined			3.8	(69)
	100.0	(491)[a]	99.9*	(1,794)

[a] Seven cases undetermined.

Table A.23
Gotham: Comparison of Test and Total Population—Previous Court Experience

Previous Court Experience	*Test Population*[a] %	(*N*)	*Total Population*[b] %	(*N*)
Yes	55.1	(259)	53.4	(933)
No	44.9	(211)	46.6	(815)
	100.0	(470)	100.0	(1,748)

[a] Twenty-eight individuals undetermined.
[b] Fifty individuals undetermined.

Table A.24
Gotham: Comparison of Test with Total Population—Number of Petitions

Number of Petitions	*Test Population* %	(*N*)	*Total Population* %	(*N*)
Single offense on intake	58.6	(292)	64.9	(1,164)
Multiple offense on intake	26.9	(134)	30.3	(544)
Apprehended one or more times after intake	14.5	(72)	4.7	(86)
	100.0	(498)	99.9*	(1,794)

Table A.25
Gotham: Comparison of Test with Total Population—Judge

Judge	*Test Population*[a] % (*N*)	*Total Population*[a] % (*N*)
W	29.7 (162)	41.3 (670)
X	24.0 (131)	23.9 (387)
Y	27.8 (152)	23.4 (379)
Z	13.7 (75)	9.7 (158)
More than one	4.6 (25)	1.6 (26)
Other	[b] (1)	[b] (1)
	99.8*(546)	99.9*(1,621)

[a] Excludes 173 cases that had not been heard at project's shutdown.
[b] Less than 1 per cent.

N.B. Test population figures inflated due to erratic court assignment of cases to judges.

Table A.26
Gotham: Comparison of Test Population with Total Population—Race

Race	*Test Population* % (*N*)	*Total Population* % (*N*)
Negro	88.5 (439)	71.6 (1,280)
White	10.7 (53)	27.8 (497)
Other	0.8 (4)	0.6 (10)
	100.0 (496)[a]	100.0 (1,787)[b]

[a] Two cases undetermined.
[b] Seven cases undetermined.

Table A.27
Comparison of the Two Project Cities—Type of Offense[a]

Offense	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
Homicide	0.8	(36)		(1)
Kidnapping	0.1	(5)		
Crimes against persons/aggravated	17.3	(733)	5.5	(139)
Crimes against persons/not aggravated	8.2	(346)	7.7	(194)
Weapons/carrying, possession	6.6	(281)	1.4	(35)
Crimes against property	45.5	(1,929)	54.3	(1,372)
Substance abuse	2.9	(123)	5.3	(134)
Offenses against public order	2.9	(122)	2.7	(69)
Sex (excluding rape)	3.2	(137)	2.7	(68)
Juvenile offenses	12.5	(530)	15.1	(381)
Violation of Motor Vehicle Code			5.3	(135)
	100.0	(4,242)	100.0	(2,528)

[a] Totals include multiple offenses counted separately.

Table A.28
Comparison of the Two Project Cities—Age

Age	*Zenith*		*Gotham*	
	%	(*N*)	%	(*N*)
16–17	44.9	(1,745)	51.9	(931)
14–15	35.5	(1,377)	25.9	(466)
13 and under	18.8	(731)	18.3	(328)
Undetermined	0.8	(31)	3.8	(69)
	100.0	(3,884)	99.9*	(1,794)

Table A.29
Comparison of the Two Project Cities—Previous Court Experience

Previous Court Experience	*Zenith*[a] %	(*N*)	*Gotham*[b] %	(*N*)
Yes	40.8	(209)	46.6	(815)
No	59.2	(303)	53.4	(933)
	100.0	(512)	100.0	(1,748)

[a] Previous court record for Zenith from juveniles' statements to interviewers. The court records on Zenith proved inaccurate and could not be used.
[b] Forty-six cases undetermined.

Table A.30
Comparison of the Two Project Cities—Number of Petitions

Number of Petitions	*Zenith* %	(*N*)	*Gotham* %	(*N*)
Single offense on intake	83.0	(3,222)	64.9	(1,164)
Multiple offense on intake	15.4	(597)	30.3	(544)
Apprehended one or more times after intake	1.7	(65)	4.7	(86)
	100.1*	(3,884)	99.9*	(1,794)

Table A.31
Comparison of the Two Project Cities—Race

Race	*Zenith* %	(*N*)	*Gotham* %	(*N*)
Negro	66.7	(2,587)	71.6	(1,280)
White	27.7	(1,075)	27.8	(497)
Other	5.6	(218)	0.6	(10)
	100.0	(3,880)[a]	100.0	(1,787)[b]

[a] Four cases undetermined.
[b] Seven cases undetermined.

Table A.32
Comparison of the Two Project Cities—Home Situation

Child Lives with:	*Zenith* %	(*N*)	*Gotham* %	(*N*)
Both parents	40.3	(1,566)	62.0	(1,113)
Mother only	38.4	(1,492)	20.6	(370)
Father only	3.6	(140)	3.6	(64)
Stepparent or relative	16.7	(650)	10.9	(196)
Institution, other	0.4	(14)	0.7	(13)
Not ascertained	0.6	(22)	2.1	(38)
	100.0	(3,884)	99.9*	(1,794)

Table A.33
Zenith: Project Crosstabs of Project, Other, or No Attorney—Judge

Judge	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
A	10.3	(22)	12.8	(22)	13.0	(32)
B	15.9	(34)	16.3	(28)	13.0	(32)
C	13.6	(29)	22.1	(38)	15.0	(37)
D	16.8	(36)	9.3	(16)	20.2	(50)
E	15.0	(32)	7.0	(12)	13.8	(34)
F	7.9	(17)	7.0	(12)	4.8	(12)
Other	7.5	(16)	2.9	(5)	5.7	(14)
More than one judge	13.1	(28)	22.7	(39)	14.6	(36)
	100.1*	(214)	100.1*	(172)	100.1*	(247)

Table A.34
Zenith: Project Crosstabs of Project, Other, or No Attorney—Age[a]

Age	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
16–17	41.0	(87)	43.6	(75)	43.9	(108)
14–15	36.8	(78)	33.7	(58)	36.6	(90)
13 and under	22.2	(47)	22.7	(39)	19.5	(48)
	100.0	(212)	100.0	(172)	100.0	(246)

[a] Three cases undetermined.

Table A.35
Zenith: Project Crosstabs of Project, Other, or No Attorney—Race

Race	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
Negro	87.9	(188)	86.6	(149)	77.3	(191)
White	9.8	(21)	12.2	(21)	17.8	(44)
Other	2.3	(5)	1.2	(2)	4.9	(12)
	100.0	(214)	100.0	(172)	100.0	(247)

Table A.36
Zenith: Project Crosstabs of Project, Other, or No Attorney—Previous Court Experience

Previous Court Experience	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
Yes	35.6	(62)	46.9	(69)	40.8	(78)
No	64.4	(112)	53.1	(78)	59.2	(113)
	100.0	(174)	100.0	(147)	100.0	(191)

Note: Data available on 512 cases only. See Table A.3.

Table A.37
Zenith: Project Crosstabs of Project, Other, or No Attorney—Offense

Offense	*Project*		*Other*		*None*	
	%	(*N*)	%	(*N*)	%	(*N*)
Against persons/aggravated	29.4	(63)	29.7	(51)	21.9	(54)
Against persons/not aggravated	7.9	(17)	11.0	(19)	10.1	(25)
Weapons/carrying, possession	6.1	(13)	7.0	(12)	4.5	(11)
Against property	45.8	(98)	45.9	(79)	48.2	(119)
Substance abuse	2.3	(5)	1.7	(3)	1.6	(4)
Public order	1.4	(3)	1.2	(2)	0.4	(1)
Sex (excluding rape)	3.7	(8)	2.9	(5)	3.6	(9)
Juvenile	3.3	(7)	0.6	(1)	9.7	(24)
	99.9*	(214)	100.0	(172)	100.0	(247)

Table A.38
Zenith: Project Crosstabs of Project, Other, or No Attorney—Number of Petitions

Number of Petitions	*Project*		*Other*		*None*	
	%	(*N*)	%	(*N*)	%	(*N*)
Single petition	75.7	(162)	77.9	(134)	78.5	(194)
Multiple petition	12.1	(26)	11.6	(20)	15.0	(37)
Apprehended one or more times after intake	12.1	(26)	10.5	(18)	6.5	(16)
	99.9*	(214)	100.0	(172)	100.0	(247)

Table A.39
Zenith: Project Crosstabs of Project, Other, or No Attorney—Home Situation[a]

	Project		*Other*		*None*	
Child Lives with:	%	(*N*)	%	(*N*)	%	(*N*)
Both parents	38.0	(81)	35.1	(60)	37.2	(92)
Mother only	46.5	(99)	43.3	(74)	42.5	(105)
Father only	3.3	(7)	3.5	(6)	2.0	(5)
Stepparent or relative	10.8	(23)	17.6	(30)	17.0	(42)
Other	1.5	(3)	0.6	(1)	1.2	(3)
	100.1*	(213)	100.1*	(171)	99.9*	(247)

[a] Two cases undetermined.

Table A.40
Gotham: Project Crosstabs of Project, Other, or No Attorney—Judge[a]

	Project		*Other*		*None*	
Judge	%	(*N*)	%	(*N*)	%	(*N*)
A	29.8	(57)	28.2	(11)	35.6	(94)
B	29.3	(56)	10.3	(4)	21.2	(56)
C	27.2	(52)	35.9	(14)	24.2	(64)
D	8.4	(16)	20.5	(8)	14.0	(37)
Other	0.5	(1)				
More than one judge	4.7	(9)	5.1	(2)	4.9	(13)
	99.9*	(191)	100.0	(39)	99.9*	(264)

[a] Four cases undetermined.

Table A.41
Gotham: Project Crosstabs of Project, Other, or No Attorney—Age[a]

	Project		*Other*		*None*	
Age	%	(*N*)	%	(*N*)	%	(*N*)
16–17	48.9	(93)	61.5	(24)	47.7	(125)
14–15	25.3	(48)	30.8	(12)	26.3	(69)
13 and under	25.8	(49)	7.7	(3)	26.0	(68)
	100.0	(190)	100.0	(39)	100.0	(262)

[a] Seven cases undetermined.

Table A.42
Gotham: Project Crosstabs of Project, Other, or No Attorney—Race[a]

	Project		*Other*		*None*	
Race	%	(*N*)	%	(*N*)	%	(*N*)
Negro	90.1	(172)	89.7	(35)	87.2	(232)
White	9.9	(19)	10.3	(4)	11.3	(30)
Other					1.5	(4)
	100.0	(191)	100.0	(39)	100.0	(266)

[a] Two cases undetermined.

Table A.43
Gotham: Project Crosstabs of Project, Other, or No Attorney—Previous Court Experience[a]

Previous Court Experience	*Project*		*Other*		*None*	
	%	*(N)*	*%*	*(N)*	*%*	*(N)*
Yes	63.0	(114)	60.5	(23)	48.6	(122)
No	37.0	(67)	39.5	(15)	51.4	(129)
	100.0	(181)	100.0	(38)	100.0	(251)

[a] Twenty-eight cases undetermined.

Table A.44
Gotham: Project Crosstabs of Project, Other, or No Attorney—Offense[a]

Offense	*Project*		*Other*		*None*	
	%	*(N)*	*%*	*(N)*	*%*	*(N)*
Against persons/aggravated	13.7	(26)	28.2	(11)	6.7	(18)
Against persons/not aggravated	11.0	(21)	20.5	(8)	10.1	(27)
Weapons/carrying, possession	2.1	(4)			1.1	(3)
Against property	59.5	(113)	41.0	(16)	66.4	(178)
Substance abuse	2.1	(4)	5.1	(2)	4.1	(11)
Public order	2.6	(5)	5.1	(2)	2.6	(7)
Sex (excluding rape)	4.2	(8)			1.5	(4)
Juvenile	3.7	(7)			5.6	(15)
Traffic	1.1	(2)			1.9	(5)
	100.0	(190)	99.9*	(39)	100.0	(268)

[a] One case undetermined.

Table A.45
Gotham: Project Crosstabs of Project, Other, or No Attorney—Number of Petitions

Number of Petitions	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
Single petition	56.5	(108)	35.9	(14)	63.4	(170)
Multiple petition	27.7	(53)	33.3	(13)	25.4	(68)
Apprehended one or more times after intake	15.7	(30)	30.8	(12)	11.2	(30)
	99.9*	(191)	100.0	(39)	100.0	(268)

Table A.46
Gotham: Project Crosstabs of Project, Other, or No Attorney—Home Situation[a]

Child Lives with:	*Project* %	(*N*)	*Other* %	(*N*)	*None* %	(*N*)
Both parents	58.9	(112)	52.6	(20)	62.1	(164)
Mother only	24.2	(46)	23.7	(9)	18.9	(50)
Father only	2.6	(5)	5.3	(2)	4.2	(11)
Stepparent or relative	9.0	(17)	15.8	(6)	10.6	(28)
Other	5.3	(10)	2.6	(1)	4.2	(11)
	100.0	(190)	100.0	(38)	100.0	(264)

[a] Six cases undetermined.

Table A.47
Zenith: Judge (a)

Disposition	A		B		C	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	39.0 (16)	42.9 (15)	37.5 (18)	54.3 (25)	46.9 (23)	25.5 (14)
Delinquency not entered, case continued under court supervision for limited time	4.9 (2)		16.7 (8)	6.5 (3)	6.1 (3)	
Probation	43.9 (18)	34.3 (12)	37.5 (18)	26.1 (12)	32.7 (16)	56.4 (31)
Commitment	12.2 (5)	22.9 (8)	8.3 (4)	13.0 (6)	14.3 (7)	18.2 (10)
	100.0 (41)	100.1*(35)	100.0 (48)	99.9*(46)	100.0 (49)	100.1*(55)
	$\chi^2 = 3.473$, *n.s.*		$\chi^2 = 4.972$, *n.s.*		$\chi^2 = 10.194$, $p < .05$	

Table A.48
Zenith: Judge (b)

Disposition	*D*		*E*		*F*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	55.4 (31)	32.6 (15)	61.9 (26)	38.9 (14)	48.0 (12)	31.2 (5)
Delinquency not entered, case continued under court supervision for limited time	10.7 (6)	8.7 (4)			24.0 (6)	12.5 (2)
Probation	26.8 (15)	50.0 (23)	31.0 (13)	47.2 (17)	24.0 (6)	56.2 (9)
Commitment	7.1 (4)	8.7 (4)	7.1 (3)	13.9 (5)	4.0 (1)	
	100.0 (56)	100.0 (46)	100.0 (42)	100.0 (36)	100.0 (25)	99.9*(16)
	$\chi^2 = 6.734$, *n.s.*		$\chi^2 = 4.197$, *n.s.*		$\chi^2 = 4.735$, *n.s.*	

Table A.49
Zenith: Judge (c)

Disposition	*Other*				*Multiple*			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismiss	52.4	(11)	42.9	(6)	58.5	(24)	48.4	(30)
Delinquency not entered, case continued under court supervision for limited time	19.0	(4)			7.3	(3)	4.8	(3)
Probation	23.8	(5)	50.0	(7)	26.8	(11)	40.3	(25)
Commitment	4.8	(1)	7.1	(1)	7.3	(3)	6.5	(4)
	100.0	(21)	100.0	(14)	99.9*	(41)	100.0	(62)
	$\chi^2 = 4.587$, *n.s.*				$\chi^2 = 2.058$, *n.s.*			

Table A.50
Zenith: Age[a]

Disposition	16–17 Experimental Group %	16–17 Experimental Group (N)	16–17 Control Group %	16–17 Control Group (N)	14–15 Experimental Group %	14–15 Experimental Group (N)	14–15 Control Group %	14–15 Control Group (N)	13 and Under Experimental Group %	13 and Under Experimental Group (N)	13 and Under Control Group %	13 and Under Control Group (N)
Dismiss	52.3	(67)	44.4	(63)	50.0	(60)	32.1	(34)	45.2	(33)	44.3	(27)
Delinquency not entered, case continued under court supervision for limited time	7.0	(9)	2.8	(4)	10.0	(12)	1.9	(2)	13.7	(10)	9.8	(6)
Probation	32.8	(42)	42.3	(60)	30.0	(36)	52.8	(56)	32.9	(24)	31.1	(19)
Commitment	7.8	(10)	10.6	(15)	10.0	(12)	13.2	(14)	8.2	(6)	14.8	(9)
	99.9*	(128)	100.1*	(142)	100.0	(120)	100.0	(106)	100.0	(73)	100.0	(61)
	$\chi^2 = 5.512$, *n.s.*				$\chi^2 = 18.038$, $p < .01$				$\chi^2 = 1.721$, *n.s.*			

[a] Three cases undetermined.

Table A.51
Zenith: Race

Disposition	*White*		*Negro*		*Other*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	42.2 (19)	36.6 (15)	51.1 (139)	40.2 (103)	50.0 (3)	46.2 (6)
Delinquency not entered, case continued under court supervision for limited time	13.3 (6)	4.9 (2)	9.2 (25)	3.1 (8)	16.7 (1)	15.4 (2)
Probation	37.8 (17)	51.2 (21)	30.5 (83)	43.7 (112)	33.3 (2)	23.1 (3)
Commitment	6.7 (3)	7.3 (3)	9.2 (25)	12.9 (33)		15.4 (2)
	100.0 (45)	100.0 (41)	100.0 (272)	99.9*(256)	100.0 (6)	100.1*(13)
	$\chi^2 = 2.711$, *n.s.*		$\chi^2 = 19.062$, $p < .01$		$\chi^2 = 1.104$, *n.s.*	

Table A.52
Zenith: Previous Court Experience[a]

Disposition	*Yes*				*No*			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismiss	35.4	(34)	24.8	(28)	58.4	(94)	51.4	(73)
Delinquency not entered, case continued under court supervision for limited time	5.2	(5)	3.5	(4)	11.2	(18)	4.2	(6)
Probation	37.5	(36)	46.9	(53)	28.6	(46)	38.7	(55)
Commitment	21.9	(21)	24.8	(28)	1.9	(3)	5.6	(8)
	100.0	(96)	100.0	(113)	100.1	(161)	99.9*	(142)

$\chi^2 = 3.580$, *n.s.* $\chi^2 = 10.566$, $p < .05$

[a] Data available for 512 cases only. See Table A.3.

Table A.53
Zenith: Offense (a)

Disposition	*Against Persons: Aggravated*		*Against Persons: Not Aggravated*		*Weapons*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	54.3 (50)	43.4 (33)	44.8 (13)	46.9 (15)	63.2 (12)	52.9 (9)
Delinquency not entered, case continued under court supervision for limited time	7.6 (7)	3.9 (3)	13.8 (4)	9.4 (3)		5.9 (1)
Probation	25.0 (23)	34.2 (26)	34.5 (10)	40.6 (13)	36.8 (7)	23.5 (4)
Commitment	13.0 (12)	18.4 (14)	6.9 (2)	3.1 (1)		17.6 (3)
	99.9*(92)	99.9*(76)	100.0 (29)	100.0 (32)	100.0 (19)	99.9*(17)
	$\chi^2 = 3.931$, *n.s.*		$\chi^2 = 0.865$, *n.s.*		$\chi^2 = 5.152$, *n.s.*	

Table A.54
Zenith: Offense (b)

Disposition	*Property*		*Substance Abuse*		*Public Order*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	48.6 (70)	36.8 (56)	83.3 (5)	33.3 (2)	33.3 (1)	33.3 (1)
Delinquency not entered, case continued under court supervision for limited time	11.8 (17)	2.0 (3)	16.7 (1)			33.3 (1)
Probation	31.2 (45)	50.0 (76)		66.7 (4)	66.7 (2)	33.3 (1)
Commitment	8.3 (12)	11.2 (17)				
	99.9*(144)	100.0 (152)	100.0 (6)	100.0 (6)	100.0 (3)	99.9*(3)
	$\chi^2 = 19.958, p < .01$		$\chi^2 = 6.286$, *n.s.*		$\chi^2 = 1.333$, *n.s.*	

Table A.55
Zenith: Offense (c)

Disposition	Sex				Juvenile			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismiss	38.5	(5)	44.4	(4)	29.4	(5)	26.7	(4)
Delinquency not entered, case continued under court supervision for limited time	15.4	(2)			5.9	(1)	6.7	(1)
Probation	46.2	(6)	55.6	(5)	52.9	(9)	46.7	(7)
Commitment					11.8	(2)	20.0	(3)
	100.1*	(13)	100.0	(9)	100.0	(17)	100.1*	(15)
	$\chi^2 = 1.525$, *n.s.*				$\chi^2 = 0.438$, *n.s.*			

Table A.56
Zenith: Number of Petitions

Disposition	*Single Petition*		*Multiple Petition*		*Apprehended One or More Times after Intake*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	52.8 (131)	45.5 (110)	50.0 (20)	30.2 (13)	28.6 (10)	4.0 (1)
Delinquency not entered, case continued under court supervision for limited time	10.1 (25)	4.1 (10)	10.0 (4)	4.7 (2)	8.6 (3)	
Probation	30.2 (75)	40.9 (99)	35.0 (14)	51.2 (22)	37.1 (13)	60.0 (15)
Commitment	6.9 (17)	9.5 (23)	5.0 (2)	14.0 (6)	25.7 (9)	36.0 (9)
	100.0 (248)	100.0 (242)	100.0 (40)	100.1*(43)	100.0 (35)	100.0 (25)
	$\chi^2 = 12.397, p < .01$		$\chi^2 = 5.828$, *n.s.*		$\chi^2 = 9.092, p < .05$	

Table A.57
Zenith: Home Situation[a]

Disposition	*Both Parents*				*Stepparents*				*One Parent*				*Other*			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*		*Experimental Group*		*Control Group*		*Experimental Group*		*Control Group*	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
Dismiss	54.6	(59)	36.8	(46)	38.2	(13)	53.1	(17)	48.1	(77)	41.9	(57)	55.0	(11)	25.0	(4)
Delinquency not entered, case continued under court supervision for limited time	14.8	(16)	6.4	(8)	14.7	(5)			6.9	(11)	2.2	(3)			6.2	(1)
Probation	25.9	(28)	46.4	(58)	41.2	(14)	31.2	(10)	31.9	(51)	42.6	(58)	45.0	(9)	62.5	(10)
Commitment	4.6	(5)	10.4	(13)	5.9	(2)	15.6	(5)	13.1	(21)	13.2	(18)			6.2	(1)
	99.9*	(108)	100.0	(125)	100.0	(34)	99.9*	(32)	100.0	(160)	99.9*	(136)	100.0	(20)	99.9*	(16)

$\chi^2 = 17.148$, $p < .01$ $\chi^2 = 7.432$, *n.s.* $\chi^2 = 6.332$, *n.s.* $\chi^2 = 4.936$, *n.s.*

[a] Two cases undetermined.

Table A.58
Gotham: Judge (a)

Disposition	*W*		*X*		*Y*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	12.0 (9)	8.0 (7)	29.8 (17)	25.4 (15)	12.9 (9)	26.7 (16)
Delinquency not entered, case continued under court supervision for a limited time	18.7 (14)	29.9 (26)	40.4 (23)	37.3 (22)	32.9 (23)	30.0 (18)
Probation	56.0 (42)	55.2 (48)	28.1 (16)	33.9 (20)	38.6 (27)	33.3 (20)
Commitment	13.3 (10)	6.9 (6)	1.8 (1)	3.4 (2)	15.7 (11)	10.0 (6)
	100.0 (75)	100.0 (87)	100.1*(57)	100.0 (59)	100.1*(70)	100.0 (60)
	$\chi^2 = 4.385$, *n.s.*		$\chi^2 = 0.891$, *n.s.*		$\chi^2 = 4.339$, *n.s.*	

Table A.59
Gotham: Judge (b)[a]

Disposition	*Z*		*Multiple*		*Other*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	30.8 (8)	22.9 (8)	15.4 (2)	9.1 (1)		
Delinquency not entered, case continued under court supervision for a limited time	38.5 (10)	48.6 (17)	23.1 (3)	45.5 (5)	100.0 (1)	
Probation	26.9 (7)	25.7 (9)	38.5 (5)	45.5 (5)		
Commitment	3.8 (1)	2.9 (1)	23.1 (3)			
	100.0 (26)	100.1*(35)	100.1*(13)	100.1*(11)	100.0 (1)	
	$\chi^2 = 0.753$, *n.s.*		$\chi^2 = 3.692$, *n.s.*			

[a] Four cases undetermined.

Table A.60
Gotham: Age[a]

Disposition	16–17		14–15		13 and Under	
	Experimental Group	*Control Group*	*Experimental Group*	*Control Group*	*Experimental Group*	*Control Group*
	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Dismiss	19.7 (23)	21.6 (27)	21.5 (14)	14.1 (9)	13.8 (8)	21.0 (13)
Delinquency not entered, case continued under court supervision for a limited time	29.1 (34)	31.2 (39)	27.7 (18)	31.2 (20)	36.2 (21)	45.2 (28)
Probation	38.5 (45)	40.8 (51)	40.0 (26)	45.3 (29)	43.1 (25)	32.3 (20)
Commitment	12.8 (15)	6.4 (8)	10.8 (7)	9.4 (6)	6.9 (4)	1.6 (1)
	100.1*(117)	100.0 (125)	100.0 (65)	100.0 (64)	100.0 (58)	100.1*(62)
	$\chi^2 = 2.907$, *n.s.*		$\chi^2 = 1.425$, *n.s.*		$\chi^2 = 4.418$, *n.s.*	

[a] Seven cases undetermined.

Table A.61
Gotham: Race[a]

Disposition	*White*		*Negro*		*Other*	
	Experimental Group	*Control Group*	*Experimental Group*	*Control Group*	*Experimental Group*	*Control Group*
	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Dismiss	20.0 (5)	28.6 (8)	18.1 (39)	17.9 (40)	100.0 (1)	33.3 (3)
Delinquency not entered, case continued under court supervision for a limited time	44.0 (11)	28.6 (8)	29.2 (63)	35.4 (79)		
Probation	28.0 (7)	39.3 (11)	41.7 (90)	40.4 (90)		66.7 (2)
Commitment	8.0 (2)	3.6 (1)	11.1 (24)	6.3 (14)		
	100.0 (25)	100.1*(28)	100.1*(216)	100.0 (223)	100.0 (1)	100.0 (3)
	$\chi^2 = 2.226$, *n.s.*		$\chi^2 = 4.337$, *n.s.*			

[a] Two cases undetermined.

Table A.62
Gotham: Previous Court Experience[a]

Disposition	*Yes*				*No*			
	Experimental Group		*Control Group*		*Experimental Group*		*Control Group*	
	%	(*N*)	%	(*N*)	%	(*N*)	%	(*N*)
Dismiss	18.2	(25)	17.2	(21)	16.8	(16)	22.4	(26)
Delinquency not entered, case continued under court supervision for a limited time	21.9	(30)	26.2	(32)	42.1	(40)	43.1	(50)
Probation	43.1	(59)	45.9	(56)	37.9	(36)	32.8	(38)
Commitment	16.8	(23)	10.7	(13)	3.2	(3)	1.7	(2)
	100.0	(137)	100.0	(122)	100.0	(95)	100.0	(116)

$\chi^2 = 2.408$, *n.s.* $\chi^2 = 1.673$, *n.s.*

[a] Twenty-eight cases undetermined.

Table A.63
Gotham: Offense (a)

Disposition	*Against Persons: Aggravated*		*Against Persons: Not Aggravated*		*Weapons*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	21.9 (7)	13.0 (3)	8.7 (2)	39.4 (13)	25.0 (1)	
Delinquency not entered, case continued under court supervision for a limited time	25.0 (8)	26.1 (6)	39.1 (9)	39.4 (13)	50.0 (2)	
Probation	34.4 (11)	52.2 (12)	34.8 (8)	18.2 (6)	25.0 (1)	100.0 (3)
Commitment	18.7 (6)	8.7 (2)	17.4 (4)	3.0 (1)		
	100.0 (32)	100.0 (23)	100.0 (23)	100.0 (33)	100.0 (4)	100.0 (3)
	$\chi^2 = 2.524$, *n.s.*		$\chi^2 = 9.393$, $p < .05$		$\chi^2 = 3.937$, *n.s.*	

Table A.64
Gotham: Offense (b)

Disposition	*Against Property*		*Substance Abuse*		*Public Order*	
	Experimental Group	*Control Group*	*Experimental Group*	*Control Group*	*Experimental Group*	*Control Group*
	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)	% (*N*)
Dismiss	19.9 (29)	18.0 (29)			28.6 (2)	
Delinquency not entered, case continued under court supervision for a limited time	27.4 (40)	36.6 (59)	42.9 (3)	30.0 (3)	42.9 (3)	42.9 (3)
Probation	43.2 (63)	39.8 (64)	57.1 (4)	60.0 (6)	28.6 (2)	57.1 (4)
Commitment	9.6 (14)	5.6 (9)		10.0 (1)		
	100.1* (146)	100.0 (161)	100.0 (7)	100.0 (10)	100.1*(7)	100.0 (7)
	$\chi^2 = 4.18$, *n.s.*		$\chi^2 = .899$, *n.s.*		$\chi^2 = 2.667$, *n.s.*	

Table A.65
Gotham: Offense (c)

Disposition	Sex		Juvenile[a]	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss			20.0 (3)	28.6 (4)
Delinquency not entered, case continued under court supervision for a limited time	37.5 (3)	25.0 (1)	40.0 (6)	21.4 (3)
Probation	50.0 (4)	75.0 (3)	33.3 (5)	35.7 (5)
Commitment	12.5 (1)		6.6 (1)	14.3 (2)
	100.0 (8)	100.0 (4)	99.9*(15)	100.0 (14)
	$\chi^2 = .911$, *n.s.*		$\chi^2 = 1.64$, *n.s.*	

[a] Includes 7 traffic offenses. One case undetermined.

Table A.66
Gotham: Number of Petitions

Disposition	*Single*		*Multiple*		*Apprehended One or More Times after Intake*	
	Experimental Group % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)	*Experimental Group* % (*N*)	*Control Group* % (*N*)
Dismiss	26.1 (35)	22.2 (35)	12.9 (9)	20.3 (13)	2.6 (1)	3.0 (1)
Delinquency not entered, case continued under court supervision for a limited time	32.1 (43)	34.8 (55)	34.3 (24)	35.9 (23)	17.9 (7)	30.3 (10)
Probation	36.6 (49)	38.6 (61)	48.6 (34)	37.5 (24)	38.5 (15)	54.5 (18)
Commitment	5.2 (7)	4.4 (7)	4.3 (3)	6.2 (4)	41.0 (16)	12.1 (4)
	100.0 (134)	100.0 (158)	100.1*(70)	99.9*(64)	100.0 (39)	99.9*(33)
	$\chi^2 = .811$, *n.s.*		$\chi^2 = 2.352$, *n.s.*		$\chi^2 = 7.555$, ($p = .056$)	

Table A.67
Gotham: Home Situation[a]

Disposition	Both Parents				Stepparents				One Parent				Other			
	Experimental Group		Control Group		Experimental Group		Control Group		Experimental Group		Control Group		Experimental Group		Control Group	
	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)	%	(N)
Dismiss	20.8	(30)	19.7	(30)	12.5	(2)	9.1	(2)	12.3	(8)	22.4	(13)	29.4	(5)	16.7	(3)
Delinquency not entered, case continued under court supervision for a limited time	32.6	(47)	34.9	(53)	31.2	(5)	50.0	(11)	24.6	(16)	31.0	(18)	29.4	(5)	22.2	(4)
Probation	38.2	(55)	41.4	(63)	50.0	(8)	27.3	(6)	46.2	(30)	44.8	(26)	29.4	(5)	33.3	(6)
Commitment	8.3	(12)	3.9	(6)	6.2	(1)	13.6	(3)	16.9	(11)	1.7	(1)	11.8	(2)	27.8	(5)
	99.9*	(144)	99.9*	(152)	99.9*	(16)	100.0	(22)	100.0	(65)	99.9*	(58)	100.0	(17)	100.0	(18)
	$\chi^2 = 2.688$, *n.s.*				$\chi^2 = 2.655$, *n.s.*				$\chi^2 = 9.560$, $p < .05$				$\chi^2 = 1.961$, *n.s.*			

[a] Six cases undetermined.

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