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IN DEFENSE OF YOUTH: A CASE OF THE PUBLIC DEFENDER IN JUVENILE COURT*

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INTRODUCTION

The purpose of this paper is to analyze one major consequence of *in re Gault* in which the United States Supreme Court held, *inter alia*, that juveniles are entitled to: (1) timely notice of the specific charges against them, (2) notification of the right to be represented by counsel in proceedings which "may result in commitment to an institution in which the juvenile's freedom is curtailed," 2 (3) the right to confront and cross-examine complainants and other witnesses, and (4) adequate warning of the privilege against self-incrimination and the right to remain silent. The right to counsel was a fundamental issue in the *Gault* case because it encompassed procedural regularity and the implementation of related principles:

[a] proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. 3

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

counsel must be appointed where it can be shown that failure

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1. 387 U.S. 1 (1967).
2. Id. at 41.
3. Id. at 36.
to do so would prejudice the right of the person involved. . . . Nor does reason appear for the argument that counsel should be provided in some situations but not in others; in delinquency proceedings, for example, but not in neglect. *Wherever coercive action is a possibility, the presence of counsel is imperative.* . . . [W]hat is urgent and imperative is that counsel be provided in the juvenile courts at once and as a regular matter for all who cannot afford to retain their own. . . . *Counsel should be appointed . . . without requiring any affirmative choice by child or parent.*

Not much is yet known about how the new "legalized" juvenile courts are working but some information is available concerning the role of the lawyer in juvenile court. It is worthwhile discussing the impact of this "major institutional change" because much of the constitutional argument relies on the effectiveness of legal representation. Before the enactment of the New York Family Court Act in 1962, a study by Schinitsky revealed that ninety-two percent of juvenile respondents in New York were not represented by counsel. A similar inquiry in California found that "in most counties attorneys are present in 1% or less of the juvenile court cases." Another study, based on a national survey of juvenile court judges in 1964, found that "in most courts lawyers represent children in less than 5% of the cases which go to hearing."

Lemert recently studied the effects of the 1961 California Juvenile Court Act and found that the percentage of cases in which counsel appeared more than trebled in four years, rising from a median of three to ten percent. "The evidence is impressive," writes Lemert, "that representation by counsel more often secures a favorable outcome of the case then where there is no counsel. Proportionally, dismissals were ordered nearly three times as frequently in attorney as in non-attorney cases." Close analysis of the data, however, shows that attorneys were mostly successful in neglect cases and had almost no impact on delin-
quency cases. In fact, juveniles without attorneys were less likely to be detained while awaiting trial in one county studied. 12

The appropriate role of the lawyer in juvenile court has been given considerable attention in the literature. Isaacs, in a recent study of the New York Family Court, proposes that the juvenile court lawyer performs the functions of advocate, guardian, and officer of the court. As advocate, he "must stand as the ardent defender of his client's constitutional and legal rights"; as guardian, he is required to have regard for the "general welfare of the minor"; and as officer of the court, he "must assume the duty of interpreting the court and its objectives to both child and parent, of preventing misrepresentation and perjury in the presentation of facts, [and] of disclosing to the court all facts in his possession which bear upon a proper disposition of the matter. . . ." 13 But Isaacs' tripartite definition represents an ideal rather than a statement of current realities. Lemert, in an empirical study of California juvenile courts, found that adversary tactics are marginal in relation to "the attorney's function as a negotiator and interpreter between judge and family." 14 And the public defender is more likely than a private attorney to be "co-opted into the organization of the court, even becoming its superficial appendage. Factors encouraging this are the low priority public defenders give to juvenile work and the growth of inter-departmental or informal reciprocity with probation officers." 15

There is strong pressure from legislatures, judges, and legal commentators to formally constrain the defense lawyer in juvenile court. In the "law guardians" system in New York, "the concept of 'guardianship,'" according to one of its sponsors, "would seem to require that not only the legal rights but the general welfare of the minor be thrown on the scale in the weighing by counsel of his course of action." 16 Similarly, the Florida legislature has interpreted Gault by providing both prosecution and representation through the State Division of Youth Services. 17 This provision reinforces the juvenile court's traditional policy of assuming that state officials are always likely to act in the best interests of young persons charged with crimes. Most juvenile judges "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

12. Id. at 443.
16. Isaacs, supra note 13, at 507.
rather than more traditional roles of fact elicitation and preservation of legal rights."\textsuperscript{18} Welch, writing from the perspective of the constitutionalist, also perceives the attorney as interpreter rather than advocate because he is better situated than anyone to explain the nature and objectives of the juvenile courts. He should explain that the juvenile is not being tried as a criminal, the court is not going to punish him, and criminal court tactics of resistance are not appropriate in juvenile court. . . . Above all, the attorney in a delinquency hearing should discard any personal interest in winning cases. Where punishment has truly been eliminated, real 'victory' is realized when a delinquent has been re-habilitated. The real 'defeat' lies in obstructing the legitimate operation of the rehabilitation mechanism.\textsuperscript{19}

The success of \textit{Gault} will ultimately depend on the availability and quality of defense lawyers.\textsuperscript{20} This task will fall to legal aid and public defender organizations because, as we recently reported, private lawyers make only sporadic and hazardous appearances in juvenile court.\textsuperscript{21} In this paper, we will analyze the role played by the public defender representing juveniles in a large midwestern city which we shall call Metro. Metro's juvenile court handles nearly 17,000 referrals annually and requires the daily presence of six judges and a presiding judge.

The data for this paper were collected in a variety of ways. The paper is essentially based upon four months of participant observation;\textsuperscript{22} approximately twenty hours a week were spent with a public defender as he performed his daily functions. We also analyzed the files of a public defender's caseload during a twelve-month period.\textsuperscript{23} Information concerning court personnel and lawyers is the result of over a year's observations in Metro's juvenile court.

\textsuperscript{18} Skoler and Tenney, supra note 5, at 97.


\textsuperscript{20} B. George, \textit{Gault and the Juvenile Court Revolution} 52-54 (1968).


We would like to thank Metro County's Public Defender and the Assistant Public Defenders in juvenile court for their cooperation in this study.
The *Gault* decision encouraged legal aid and public defender offices to send lawyers into juvenile court. Many such organizations anticipated the Supreme Court's ruling and established special services for juveniles in 1966. Legal agencies around the country reported the following juvenile caseload for 1967: Newark-500, Oakland-1324, Cincinnati-526, Houston-114, Cleveland-400, Los Angeles-2951, and San Francisco-324. Even in a small town like Rockford, Illinois, the public defender handled as many as 250 cases during 1967.

Metro's juvenile court is subject to a relatively new state statute. Although proceedings under the act are "not intended to be adversary in character," Metro's juvenile court in effect operates like a minor criminal court. The state is represented by the State's Attorney's Office and, correspondingly, juveniles have the right to be represented by either private or court-appointed counsel. In April 1966, the County Public Defender assigned one full-time attorney to Metro's juvenile court and, in the same year, the Legal Aid Bureau established a special office to handle juvenile cases.

Metro's juvenile court processes juveniles on petitions for delinquency, minor in need of supervision, dependency, and neglect. We shall restrict our remarks in this paper to delinquency which is properly within the jurisdiction of the public defender. In 1966, Metro's juvenile court handled a total of 11,636 delinquency cases, of which almost twenty-five percent were "adjusted" by administrative officers in the complaint department and were not referred to the courts due to a lack of evidence or seriousness. During the last seven years, Metro's court has never processed less than 10,000 juveniles annually. The statistical trend from 1960 to 1967 was disrupted by a new juvenile court statute but 1966 appears to be a typical example of future trends.

In a twelve-month period, the public defender handled 345 (four percent) delinquency cases out of a total juvenile court caseload of 8,920 cases. His clients were generally representative of all defendants in juvenile court. The public defender's clients are selected for him by

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24. The statistical data were obtained from the juvenile court's statistician and the Public Defender's files. Some twenty-five items of information were abstracted from the public defender's case files for a twelve-month period. All data were checked for accuracy by cross-reference to police files. The Assistant Public Defender who was responsible for the files also validated our analysis.

25. The *Gault* decision was rendered on May 15, 1967.

26. Personal correspondence with Legal Aid and Public Defender organizations in these cities.

27. In February, 1968, Metro County's Public Defender assigned another three fulltime attorneys to juvenile court.

28. See Table 1, *infra*. 
the court and analysis by offenses shows that the public defender is more likely to be appointed in cases considered "serious" by judges, such as injury to person or property, burglary, and sex offenses.29

The public defender's 345 delinquency cases account for eighty-seven percent of his total caseload during the year.30 His clients are on the average fourteen and one-half years old, predominantly Negro, and male.31 Analysis of individual cases shows that the public defender (1) rarely appeared at detention hearings,32 (2) made oral rather than written motions (in eighty-three percent of his cases he made no motions at all), (3) had no continuances in one-third of his cases, (4) held only one client conference prior to the court hearing in almost one-half of his cases, (5) had no witnesses in over one-half his cases, and (6) on the basis of the above criteria, investigated minimally in sixty-seven percent and moderately in twenty-five percent of his cases.

The lack of investigation does not reflect upon the personal competence of the public defender but rather upon his heavy caseload, lack of assistance, and systematic pressures to expedite his cases. Comparing defendants with and without the services of the public defender suggests that the public defender's clients stand a better chance of having their case dismissed or receiving probation. On the other hand, the public defender's clients are more apt to be committed to a penal institution. But it should be remembered that juveniles with records and charged with serious offenses are more likely to be assigned to the public defender.33

PUBLIC DEFENDER AS A SOCIAL WORKER

The public defender in Metro's juvenile court maintains two seemingly conflicting roles. As an "officer of the court," whose prevailing ethic is "child saving,"34 the public defender sees himself as a social worker. At the same time, however, he is a defense attorney who takes pride in the craft of advocacy. As a social worker, the public defender is

29. See Table 2, infra.
30. The remainder of his caseload is delinquency and neglect cases.
31. The average of all defendants in juvenile court is fifteen years. The public defender represented thirty-six girls on delinquency charges. Although he proportionally represented more girls than the total juvenile court caseload, he underrepresented Negro girls (public defender-fifty-five percent, juvenile court-sixty-eight percent).
32. "Unless sooner released, a minor taken into temporary custody must be brought before a judicial officer within 48 hours for a detention hearing to determine whether he shall be further detained" pending the adjudication hearing. (State juvenile court act).
33. Our following observations do not refer to the public defender who was discussed in the introductory sections. The public defender referred to hereafter is the supervising public defender in Metro's Juvenile Court.
an integral part of the court's rehabilitative machinery and committed to helping children in trouble.\textsuperscript{35}

While playing the social worker's role, the public defender must acknowledge that juveniles are naturally dependent and require supervision by mature adults.\textsuperscript{36} He is required to listen sympathetically to family problems, to comfort juveniles before or after a court appearance, to interpret judicial mysteries for the child, and to point out the beneficial value of court decisions. His personal involvement in cases is motivated by a desire to determine exactly what is "best for a kid." Unlike his colleagues in the criminal courts, the public defender does not merely see himself as a bargaining agent who tries to win cases or negotiate a short sentence, \textit{i.e.}, "in criminal court I would just do everything I could to get my client off. But here I won't." How then does he determine what is best and how does this influence his handling of a case? We shall answer this question by first attempting to systematize the four criteria which the public defender employs in constructing his strategy:

1. does the juvenile claim to be innocent or guilty?
2. is the alleged offense of a "serious" nature?
3. does the juvenile have a criminal record?
4. is the juvenile a "good kid" or a "bad kid?"

If a client in his first encounter with the public defender declares his innocence and shows no glaring inconsistencies in his story, the public defender will assume his client's statement to be truthful, plead him not guilty, and attempt to secure a dismissal or the most lenient sentence.

\textsuperscript{35} The basic philosophy of the juvenile court was considered antithetical to narrow, restrictively specific jurisdictional requisites, which were discarded in favor of all-encompassing formulations intended to bring within the court's jurisdiction virtually every child in need of help, for whatever the reason and however the need was manifested. ... The rationale for this comprehensive array of jurisdictional pegs generally emphasized the growth of social as opposed to legalistic justice and the new efforts to bring the law out of isolation and into partnership with the ascending social and behavioral sciences. It was strengthened by precepts of optimism and paternalism. Children, assumed to be malleable, seem eminently salvageable; as the rehabilitative theme crept into the criminal law, it naturally appeared most applicable to children. Thus the juvenile court was to arrest the development of full-fledged criminals by catching them early and uncovering and ameliorating the causes of their disaffection. Symptoms take many shapes, some of them only indirectly related to the disease. The 'child savers' saw in youthful cursing and carousing the beginnings of a life of crime, and they feared that the conditions of the neglected were all too likely to breed the behavior of the delinquent.

\textsuperscript{36} Juvenile court personnel subscribe to the notion that children are naturally dependent and that it is, therefore, their task to punish premature independence. This point is documented by A. Platt, \textit{supra} note 34. See also D. Matza, \textit{Delinquency and Drift} 101-151 (1964).
possible. This is a clear-cut situation which makes up about one-half of the public defender's caseload. The rest of the caseload, consisting of clients who declare themselves guilty, is more problematic and involves a variety of determining factors. If the public defender considers his client a "good kid" with little or no criminal record, he will plead him guilty on the grounds that he will receive only a lecture, or supervision, or probation. The public defender believes that a minimal sanction is often what a client needs; the idea is that "these kids need a good scare. They should learn that they can't get away with anything. A lot of them need extra supervision."

In situations where his client is a "good kid" but has a more substantial record, the public defender will do something quite different. He will plead the youth not guilty, force the state to prove its case, and attempt to secure a dismissal or a lenient sentence. He follows the same procedure when the youth involved is a "good kid" who is charged with a "serious" offense. In both instances he knows that a finding of guilty may well mean automatic commitment to a reformatory. The public defender does not subscribe to the notion that reformatories are rehabilitative institutions capable of remedying his clients' problems. Metro's institutional resources are publicly recognized as inadequate, overcrowded, and ineffectual instruments of either reform or deterrence.

"Bad kids" invite an attitude of despair. The public defender assumes, along with all juvenile court functionaries, that little can be done to "help" these clients. He pleads them guilty and cooperates in processing them into reformatories. They have long records, they admit the offense, no "responsible" adults are willing to be their spokesmen, and they are likely to antagonize judges with their poor school record. The public defender does not waste his time on "bad kids." A serious effort on behalf of these clients would only jeopardize his chances with more "worthy" defendants.

The determination of whether a client is "good" or "bad" is, thus, crucial to the public defender's consideration of a case. How does he decide to apply these judgmental labels? To a great extent, he looks for criteria which positively indicate moral and social propriety. "Badness"

37. See Table 4, infra.
38. "Supervision" means a lengthy continuance during which time the client is expected to keep out of trouble. If he is judged to have kept out of trouble until the trial date, the case is dismissed. This procedure is similar to the "sitting out period" used in criminal courts, except in that case the defendant serves "dead time" under the misconception that he is avoiding a record.
is a residual category applied to clients who do not meet these wholesome criteria. His decision is based primarily upon the demeanor of his client and secondarily upon the demeanor of his client's parents. Race, class, and economic status play a minimal role in this decision because most of his clients are poor and non-white. He is concerned, however, with how his client speaks, the amount of respect he is shown, the way the client dresses, and with such highly subjective factors as "charm," "personality," and how "cute," "pretty," or "handsome" the client might be. If the client is a "clean kid," said a former juvenile court public defender, "you go out of your way to help him." Whether the client is in school or has a job, as opposed to being a "drop-out" or unemployed, are meaningful indices of worthiness. Parents who are employed and show "proper" concern for their child are considered by the public defender to be positive assets. The previous arrest record is also of great importance in making this "determination." It is quite possible for a boy with a substantial record to be seen as "good" if he scores high, so to speak, on the above criteria. However, it is a negative factor in the overall determination. Conversely, any client who has no previous record at all is automatically defined as "good."

The public defender first contacts the child and his parents in his office. If the boy is in custody, he will see him in the "bull-pen" before the arraignment. This initial encounter is of crucial importance, for it is here that the public defender sizes up his client on the basis of the above criteria and makes his determination. The public defender is more likely to be enthusiastic about a case if a client presents an image of forthrightness and sincerity. One client, for example, denied his complicity in a theft. "It looks like you're getting railroaded," said the public defender, "but I'm quite sure they won't be able to prove it. . . . You give the impression of being very sincere about this. Some boys come up here and I know they're lying through their teeth."

The public defender has two other important sources of raw materials for labelling clients who have had previous contact with the court. These are the diagnostic reports of the court and of probation officers. The public defender relies heavily on the formal and informal judgments of probation officers; he often consults a probation officer for his personal recommendation about a client and the conversation is usually simple and brief: "what kind of kid is this Smith boy?" is typically answered by, "he's a good kid, doing well in school, hasn't been in

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40. The idea of "residual category" is taken from Bittner, Police Discretion in Emergency Apprehension of Mentally Ill Persons, 14 Social Problems 278-92 (1967).
41. For an analogous account of the importance of demeanor in the interaction of juveniles with police, see Piliavin & Briar, Police Encounters with Juveniles, 70 Am. J. of Sociology 206-14 (1964).
serious trouble before.” The public defender may also ask to see the court’s psychological report. He attaches great importance to this document when evaluating a client and determining his best interests.\textsuperscript{42}

**PUBLIC DEFENDER AS AN ADVOCATE**

As has been pointed out, the public defender sees himself as a defense attorney and advocate for the accused. He takes pride in performing this craft with competence and style; he is well trained in both procedural and substantive law, and he gets great satisfaction from a well executed trial. If a case “goes to trial,” the state’s attorney needs a properly prepared, coherent presentation if he wants to obtain a guilty verdict against a client of the public defender.

During a trial, the public defender’s professionalism and competence are quite apparent. He plays the role of a disinterested advocate, making his moves with the skill and dexterity of a craftsman. This professionalism is not necessarily suspended at the end of a trial; for example, it is quite common for the public defender, state’s attorney, and the judge to hold an amicable conference after a case. The attorneys review the trial, pointing out where one or another might have taken an advantage. It resembles the interaction of chess players discussing the strategies of a completed game.

The public defender places a great deal of emphasis on making the system appear legal and just. It is very important to him that it appear that there has been a fair hearing, even if the case concludes with a punitive sentence. As the public defender has commented, “the appearance of justice is all important.”

Although the public defender enjoys the contest of a trial, advocacy is nevertheless a limited commodity in Metro’s juvenile court. Appeals are rare, jury trials are prohibited, police testimony is hard to repudiate, and witnesses often prove unreliable when faced with cross-examination. The public defender does not rehearse a client who, according to his demeanor and story, is probably innocent. If he is telling the truth, the public defender believes that his testimony should be natural and spontaneous. Most lawyers, however, feel that juvenile clients have “poor memories,” “don’t remember,” “don’t have the social and intellectual maturity of an adult,” are likely to “blurt out and convict themselves,” and “easily spill the beans.”\textsuperscript{43}

The public defender is, however, something more than a personal social worker or lawyer for individual clients. He is also an “officer of

\textsuperscript{42} For a discussion of the importance of the psychiatric and psychological perspective in the juvenile court, see Hakeem, *A Critique of the Psychiatric Approach to the Prevention of Juvenile Delinquency*, 5 *Social Problems* 194-205 (1957).

\textsuperscript{43} Platt & Friedman, *supra* note 21.
the court” and an employee of a system in which he must operate from day to day. As Blumberg has observed, “accused persons come and go in the court system scheme, but the structure and its occupational incumbents remain to carry on their respective career, occupational and organizational enterprise. . . .”44 The public defender is “in the system” in a number of ways. First, he is a member of a political community. His job, however, is much less politically significant than those of judges and state’s attorneys who, in return for sponsorship, are expected to remain faithful to their political party and may even be required to perform political tasks, such as supporting election campaigns or contributing technical expertise. Secondly, the public defender is a county employee and is paid from the same budget that supports all court personnel. Finally, the public defender is a court employee and, like his counterparts in the state’s attorney’s office, is subject to the authority and discretionary powers of individual judges.

His performance is judged by his superiors in a variety of ways. Thus, he is concerned with his “batting average,” i.e., the percentage of cases won and lost, and “doing a good job.” He is expected to be properly prepared in court, not to ask for an unreasonable number of continuances, not to antagonize unnecessarily the state’s witnesses, and not to offend judges by requesting a change of venue on the grounds of prejudice. The public defender knows that assessments of his competence by judges will ultimately reach his boss.

The public defender has informal, friendly relationships with judges, prosecutors, and bailiffs in juvenile court. A former public defender said that he was “on a first name basis with everybody in court.” One prosecutor was a personal friend of his and it was not uncommon for the public defender to go out to lunch with a group of judges and prosecutors. Being “in the system” provides the public defender with tactical advantages because he quickly learns the personal idiosyncrasies of judges and prosecutors. For example, “I know Judge D is prosecution-minded, but I’ve had a lot of good dismissals from him.” Also, the public defender is attuned to politically sensitive issues and wants to avoid confrontations which will discredit his membership in the court community. “The judges don’t like to hear about police brutality,” said a former juvenile court public defender. “I’d rather not handle this type of case because I get a lot of police officers to testify for me. I’ve won cases that way. They wouldn’t want to do that for a guy who was trying to cut their throats at every opportunity on police brutality.”

Although the public defender accepts the “child saving” ethic which

44. Blumberg, The Practice of Law as a Confidence Game: Organizational Cooptation of a Profession, 1 L. & Society Rev. 20 (June, 1967).
pervades the juvenile court, he is also faced with the problem of handling huge caseloads in a manner which is expedient and, hopefully, just. Like almost all situations where people work together, informal ties affect the performance of the objective task at hand. This is no less true in the "halls of justice" than it is in a factory, store, or other work location. The public defender often sits in a judge's chambers, not discussing the next case but the next vacation, not pondering the problems of gang behavior but the relative merits of the city's night clubs. It is not unreasonable then that we find the state's attorney on occasion dropping a charge for no other reason that it is a favor of convenience for his friend, the public defender. It is not unreasonable also that a judge can say to a public defender: "I wouldn't have dismissed this case unless you were handling it." The converse situation is also true. The public defender will take a particular course of action as a gesture of friendship to other court personnel. According to Blumberg, "the accused's lawyer has far greater professional, economic, intellectual and other ties to the various elements of the court system than he does to his own client. In short, the court is a closed community."

Mutual cooperation by all court personnel makes possible the management of large caseloads. The bailiffs of each courtroom give preference to the public defender cases, getting him in and out of the courtroom with as little waiting time as possible. Private lawyers are denied this fringe benefit. In return, the public defender must be careful not to obstruct the efficient processing of cases, for the other court functionaries are depending on him to help finish or expedite the court call for the day. Due to his large caseload, some of the formal rules which apply to private attorneys are waived for the public defender. For example, written motions are seldom necessary and special arrangements to circumvent particular formalities are not difficult to obtain at any given time.

The large caseload also creates problems of preparation and presentation. Quite often the state's attorney will be briefed on the details of a case by the public defender so that he may be prepared to deal with it. He will do a similar service for a judge who is confused about the

45. On expediency and efficiency in processing court cases, see Skolnick, Social Control in the Adversary System, 11 J. CONFLICT RESOLUTION 52-70 (1967).
46. For discussions of the crucial role the "informal" organization plays in shaping the goals of the formal structure, see P. BLAU, BUREAUCRACY IN MODERN SOCIETY 45-67 (1956); Selznick, An Approach to a Theory of Bureaucracy, 8 AM. SOCIOLOGICAL REV. 47-54 (1943). For empirical work which has validated this process, see P. BLAU, THE DYNAMICS OF BUREAUCRACY (1955); A. GOLDFNELL, PATTERNS OF INDUSTRIAL BUREAUCRACY, (1955); P. SELENCIE, T.V.A. AND THE GRASS ROOTS (1949); Roth, hired Hand Research, 1 AM. SOCIOLOGIST 190-96 (1966).
47. Blumberg, supra note 44, at 21.
status of a case. It is a reciprocal arrangement and the public defender is
often informed by the state's attorney on matters crucial to his presenta-
tion of a defense. "The state's attorney will usually tell me ahead of time
what kind of tactics he'll use and how hard he's going to hit. He'll say,
'[w]e've got this case up today,' he gives you the arrest report, 'I'm
bringing in so-and-so as a witness, the police officer will say thus-and-so.
...'." This information is never questioned as biased data but immedi-
ately accepted as true, as if it had come from a disinterested source.

Aside from the role cooperation plays in facilitating the mechanics
of the proceeding, it also makes the entire process more personally
tolerable for everyone involved. Court interaction is intensely focused
upon deciding the fate of others' lives and this responsibility is made
impossible if conflict is the norm underlying the task at hand. The court
functionaries see themselves as colleagues rather than adversaries, for
"the probability of continued future relations and interaction must be
preserved at all costs."750

PLEA BARGAINING

Given this added notion of the public defender's being "in the court
system," how must we modify our earlier presentation of the manner in
which the public defender defends his clients? The requisite modification
consists in adding the concept of plea bargaining to describe more
accurately the "routine grounds"751 of the public defender's behavior.752

The American system of criminal justice, as Skolnick has pointed out, is
predominantly pre-trial in character and full-scale trials reflect a break-
down of negotiations between the defense and prosecuting attorneys.753
Approximately ninety percent of all convictions in lower criminal courts
are the result of a negotiated plea or "deal."754 Rules of evidence are
routinely ignored or bypassed and advocacy is subordinate to, what
Blumberg has called, "bureaucratically ordained and controlled 'work
crimes,' short cuts, deviations, and outright rule violations."755 "The
'trial' becomes a perfunctory reiteration and validation of the pretrial
interrogation and investigation."756

There are limited opportunities for plea bargaining in Metro's

49. "Closely knit groups in which there exists a high frequency of interaction
and high personality involvement of the members have a tendency to suppress conflict."

50. Blumberg, supra note 44, at 20.

51. H. Garfinkel, STUDIES IN ETNOMETHODOLOGY 35-75 (1967).

52. See Table 4, infra.

53. Skolnick, supra note 45.

54. Blumberg, supra note 44, at 22. See also D. Newman, CONVICTION: THE
DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL (1966).

55. Blumberg, supra note 44, at 22.

56. Id. at 19.
juvenille court because a defendant can only be found guilty of "delinquency" no matter what criminal charge is proved. Nothing is gained by reducing "aggravated battery" to "assault" if the outcome is the same in either case. The state's attorneys cannot make deals about reduced "time" in exchange for a guilty plea because they do not have the power to fix sentences. The state youth commission operates under a policy of indeterminate sentencing and only the commission and its staff have the power to release juveniles from reformatories.

Some plea bargaining, however, is possible and necessary for efficient, cooperative work relations. A guilty plea can be offered in exchange for a warning, supervision, probation, or even some "short time" in the court's detention facility. The basic capital with which the public defender can bargain is time. A plea of guilty saves a tremendous amount of time, effort, and labor for the state's attorneys, judges, and other court functionaries. In return for a guilty plea, the judge and state's attorney willingly make concessions as to the fate of the public defender's client. An effective public defender, therefore, must be an accomplished entrepreneur with an affable demeanor and sociable personality.

How does plea bargaining affect the public defender's handling of cases? First, there are a significant number of cases in which the public defender would prefer to enter a guilty plea; these he does not need to negotiate and they facilitate the job of the state's attorney and judge. These cases consist of the "good kids" with little or no previous records who are charged with minor offenses. Further, it includes all the clients in the "bad kid" category. It is with the remaining cases that he has an opportunity to negotiate and thus contribute to the court's efficiency. These cases are instances in which the public defender would like to plead not guilty and achieve dismissals or light sentences. If he is fairly certain that he can prove his client not guilty, he will neither encourage nor be receptive to a negotiated plea. He makes this determination by examining his client's story, the availability of witnesses, his client's demeanor and any other factors which might be relevant to the expectations and idiosyncrasies of a particular judge.

If the public defender, in assessing these factors, feels he has a good chance of winning the case, he will enter a plea of not guilty and attempt to secure a dismissal. If, on the other hand, the case does not look promising, he will seek a negotiated settlement. The judge is always

57. It should be noted that the state's attorney has no power to fix sentences in adult criminal cases, but that the effect of prosecuting under a reduced charge is a lesser sentence. It should also be noted that agreements to a reduced plea must have judicial approval in adult cases.
informally aware that a "deal" has been made and it is an unwritten rule that he accepts the state's attorney's recommendation. Mindful of this cooperation, the judge will not only be agreeing to a reduced sentence but also implicitly encouraging future negotiated guilty pleas. George, commenting on the likely implications of the Gault case, observes that any lawyer in juvenile court will be required to adapt the lesson that he has learned elsewhere, that overzealous advocacy, or even advocacy that is standard and proper from the standpoint of the legal profession, is not in the long run to the advantage of the client who continues to be affected detrimentally by administrative actions that for the time being are beyond the reach of the courts to remedy.\

The Public Defender and Clients

The clients' perception of the public defender is difficult to ascertain because they say very little in court which is indicative of their feelings. We will discuss, therefore, some of the structural properties of the public defender's behavior which are likely to influence clients. Many of the following comments will necessarily have a speculative quality.

It is quite apparent that in some ways the public defender goes out of his way to initiate a genuine, client-lawyer relationship. In the first meeting with a defendant, he immediately makes it clear that the juvenile is "his" client. The public defender shows that he expects his client to trust in his expertise. He listens respectfully to his client's comments and deals with him as an individual. In fact, he communicates unusually well with a group of people who differ from him significantly in terms of social, economic, and educational background.

It appears, however, that these few courtesies cannot overcome the overwhelming number of factors which might serve to alienate the youth from the public defender. The structural demands under which the public defender operates make it apparent to his clients that he is not "their" advocate—dedicated to the best defense possible. The client is usually directed to the public defender, he brings no fee, and makes demands upon the public defender's time and expertise. Structurally, the relationship is one of passivity and dependence. It is not surprising, therefore, that

58. B. GEORGE, supra note 20, at 121-22.
59. Formal interviews of juveniles, particularly of black youth by white adults, tell us very little about the subjective experience of being represented by a public defender.
among juveniles the public defender is characterized as a person of dubious loyalty to his clients:

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

Clients usually must wait a long time outside the public defender's office which is located between the police and the clerks' offices. After a few hours of waiting, they may get a chance to see the public defender, but, more likely, they see one of his student assistants. Often the public defender will be in a hurry or trying to get a few minutes rest in between cases. The interview is short and typically there is little time for more than "name, rank, and serial number" and a sketchy outline of the client's story. Many times the public defender receives calls or visits from probation officers, clerks, and state's attorneys. The close relationship of the public defender and prosecutor is likely to make clients question the allegiance of "their" attorney. One former public defender said that his clients did not really think of him as an attorney. "They think of me as functioning as their representative in court, as somebody who might get them off." There are no credentials or diplomas on the wall to identify the public defender as a lawyer. "they say, 'I'm the public defender, they say 'I think we need an attorney,' I say, 'I'm an attorney' and they say, 'Oh yeah?'."

The public defender's cooperation with parties who are seemingly non-supportive of his clients' position is very visible. The public defender has no inhibitions about discussing other cases with a prosecutor in the presence of clients and he may even talk openly about "deals." These relationships are so non-secret that the public defender was able to say in court, "in light of my previous cooperation with the prosecuting attorney in securing admissions from clients, I am sure that he won't

61. Interview with sixteen year old Negro youth a few days after his trial in juvenile court. This interview is part of a larger, related study of juvenile justice.
object to my motion..." After a judge has decided a case, it becomes quite apparent that the public defender is involved in matters beyond defense work. For example, he has never been heard to criticize the juvenile court system in the presence of a client. Often it is clear that he is trying to justify a harsh decision to a client, despite his own personal reservations.

The public defender, however, is not the only party who makes it apparent that the "appearance of justice" is really a sham. The whole court experience tends to reduce a juvenile to a "non-person." This ceremonial degradation of juveniles can take many forms. A minor issue, perhaps, is court etiquette. For example, defendants are ordered where to stand, how to stand (hands out of pockets and on the bar), and are continually policed by bailiffs. On the other hand, it is not uncommon to see prosecutors leaning against the bar, or a clerk chewing gum, or other functionaires wandering in and out of the courtroom. Similarly, the swearing-in process is handled with disarming speed and it is never made sufficiently clear who is supposed to raise his right hand. The rule of privacy in hearings is rigidly enforced, but it is a routine matter to see juveniles in handcuffs being led through the corridors. It is unlikely that these inconsistencies between theory and reality go unnoticed.

The "halls" of Metro's juvenile court are overcrowded waiting rooms where, again, people are forced to wait hours for a hearing that often lasts only minutes. Perhaps the most degrading of all aspects of the court process is the general lack of credibility invested in the juvenile by the court. He is seldom spoken to and when he is addressed, it is usually in the form of a moralistic lecture or verbal disciplining. Most judges assess a wide variety of adolescent behavior in terms of mental or moral impairments. Truancy, glue-sniffing, fighting, sex, and running away, for example, are rarely viewed as "normal," socially learned behavior, but rather as symptoms of underlying pathology. The concept of cultural relativism is apparently unknown to most juvenile court judges who appear to feel compelled to lecture and moralize even if a youth is found not guilty. Take, for example, the following case involving a Negro boy charged with "deviate sexual assault." The case was dismissed after the judge said, "you're a pig, and you [the girl] are no better. Why doesn't the state file a petition against this girl? You're both animals! No decent girl would go to someone's apartment with another boy. . . . You're both a total discredit to society. A case like this sets your race back a hundred years."

63. See D. Matza, supra note 36.
Conclusions

In this paper, we have analyzed the probable impact of one consequence of the *Gault* decision. It seems likely that the public defender model of representation will become widely operative in urban juvenile courts and that court-appointed lawyers will be charged with the task of implementing reforms suggested by the Supreme Court. Private lawyers still find juvenile court to be occupationally and economically unprofitable. Fortunately, county boards and legal aid organizations around the country have recognized the importance of providing funds and lawyers for juveniles charged with delinquency.

The pattern of the public defender's performance in juvenile court differs considerably from the work of public defenders in Metro's other courts. Relatively few of his cases (three and one-half percent) are dismissed on the motion of the state's attorneys. Prosecutors are apparently unwilling to release juvenile defendants, even though concrete evidence for a conviction may be lacking. The public defender in juvenile court is formally discouraged from plea bargaining and he pleads fewer clients guilty (twenty-five percent) than his counterparts in criminal courts. Moreover, the public defender loses more cases which go to trial (thirty-one percent), because the rule of "reasonable doubt" does not apply and prosecutors win cases with minimal evidence. The public defender in juvenile court is not, however, as it has been suggested of his counterparts in criminal courts, merely an instrumentality for processing guilty clients.

64. Although the following comparative data from municipal courts are not especially reliable, they nevertheless give a crude indication of the different patterns of representation:

<table>
<thead>
<tr>
<th>Public Defender</th>
<th>Acquitted by Motion of State</th>
<th>Plea Guilty</th>
<th>Found Guilty at Trial</th>
<th>Total Guilty</th>
<th>Found not Guilty at Trial</th>
<th>Total not Guilty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile Court N=345</td>
<td>3.5</td>
<td>25.0</td>
<td>31.1</td>
<td>56.1</td>
<td>37.6</td>
<td>41.1</td>
</tr>
<tr>
<td>Municipal Court N=2104</td>
<td>15.8</td>
<td>30.5</td>
<td>9.4</td>
<td>39.9</td>
<td>44.3</td>
<td>60.1</td>
</tr>
</tbody>
</table>

65. See Blumberg, *infra* note 44; Lemert, *infra* note 10; Sudnow, *infra* note 15. The point is most forcefully expressed by Blumberg, *infra* note 44, at 23: "The defense attorneys... ultimately are concerned with strategies which tend to lead to a plea." Less emphatic is Sudnow, *infra* note 15, at 262: "Both P.D. and D.A. are concerned to obtain a guilty plea wherever possible and thereby avoid a trial."
informing them of the functional importance of ‘telling it like it is,’ he ‘believes everything [his] kids tell [him]. [He] couldn’t operate any other way.’

The findings in this paper indicate that delinquency, aside from its psychological and ‘subcultural’ motivation, is the product of social judgment and ‘procedural definition’ by officials. The public defender, as a member of the juvenile court community, is in an important position to create and influence official judgments. The perspective employed by the public defender in organizing and defining his job suggests that juvenile court advocacy differs in many ways from criminal court advocacy. Juvenile clients do not get the same standard of representation that is accorded to adult defendants.

Finally, it is worth noting that we do not mean to imply that the public defender has been ‘co-opted’ into a juvenile court super-structure. On the contrary, our research supports Skolnick’s assertion that the public defender can often be more effective than a private lawyer in obtaining dismissals or light sentences. It is inaccurate to regard the public defender as a ‘fallen’ lawyer who sells out his clients in return for emotional well-being or bureaucratic expediency. Rather, the public defender brings to his job common sense notions about adolescence and ‘troublesome’ behavior. His views on youth and delinquency are really no different from other adult officials (teachers, social workers, youth officers, etc.) who are charged with regulating youthful behavior. Juveniles get the same kind of treatment in juvenile court that they get in school or at home and the public defender accepts this as one of the inevitable and appropriate consequences of adolescence.

67. This term is especially used passim by Blumberg, supra note 44; Lemert, supra note 10.
68. Skolnick, supra note 45.
69. This idea is explored more fully in F. Musgrove, Youth and the Social Order (1964).
<table>
<thead>
<tr>
<th>Year</th>
<th>Delinquency Referrals</th>
<th>Delinquency Petitions Filed</th>
<th>Case Dismissed</th>
<th>Probation</th>
<th>Penal Institution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960</td>
<td>10,407</td>
<td>5,984</td>
<td>2,541</td>
<td>837</td>
<td>1,389</td>
</tr>
<tr>
<td>1961</td>
<td>10,118</td>
<td>5,529</td>
<td>2,644</td>
<td>1,015</td>
<td>1,450</td>
</tr>
<tr>
<td>1962</td>
<td>11,758</td>
<td>6,649</td>
<td>3,014</td>
<td>2,536</td>
<td>1,199</td>
</tr>
<tr>
<td>1963</td>
<td>10,148</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
<td>Not Available</td>
</tr>
<tr>
<td>1964</td>
<td>13,075</td>
<td>8,307</td>
<td>2,096</td>
<td>3,579</td>
<td>1,478</td>
</tr>
<tr>
<td>1965</td>
<td>13,078</td>
<td>8,979</td>
<td>2,341</td>
<td>3,410</td>
<td>1,657</td>
</tr>
<tr>
<td>1966</td>
<td>11,636</td>
<td>8,388</td>
<td>4,414</td>
<td>2,966</td>
<td>1,339</td>
</tr>
<tr>
<td>1967</td>
<td>11,452</td>
<td>8,356</td>
<td>3,398</td>
<td>2,770</td>
<td>1,293</td>
</tr>
</tbody>
</table>

70. New juvenile court act in effect.
### Table 2

Percentages of Juvenile Court and Public Defender Case Load by Sex, Race, and Offense in Metro's Juvenile Court, 1966

<table>
<thead>
<tr>
<th>Sex</th>
<th>Race</th>
<th>Offense</th>
<th>Juvenile Court N=8,920</th>
<th>Public Defender N=345</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>Negro</td>
<td>Injury to Person</td>
<td>89</td>
<td>85</td>
</tr>
<tr>
<td>Male</td>
<td>White</td>
<td>Injury to Person</td>
<td>11</td>
<td>15</td>
</tr>
<tr>
<td>Female</td>
<td>Negro</td>
<td>Injury to Person</td>
<td>60</td>
<td>70</td>
</tr>
<tr>
<td>Female</td>
<td>White</td>
<td>Injury to Person</td>
<td>33</td>
<td>24</td>
</tr>
<tr>
<td>Male</td>
<td>Negro</td>
<td>Sex Offenses</td>
<td>21.7</td>
<td>24</td>
</tr>
<tr>
<td>Male</td>
<td>White</td>
<td>Sex Offenses</td>
<td>18.2</td>
<td>17</td>
</tr>
<tr>
<td>Female</td>
<td>Negro</td>
<td>Sex Offenses</td>
<td>19.9</td>
<td>11.7</td>
</tr>
<tr>
<td>Female</td>
<td>White</td>
<td>Sex Offenses</td>
<td>14.9</td>
<td>8.5</td>
</tr>
<tr>
<td>Male</td>
<td>Negro</td>
<td>Other Delinquency Offense</td>
<td>4.9</td>
<td>8.5</td>
</tr>
<tr>
<td>Male</td>
<td>White</td>
<td>Other Delinquency Offense</td>
<td>7</td>
<td>7.8</td>
</tr>
<tr>
<td>Female</td>
<td>Negro</td>
<td>Other Delinquency Offense</td>
<td>7.4</td>
<td>5.2</td>
</tr>
<tr>
<td>Female</td>
<td>White</td>
<td>Other Delinquency Offense</td>
<td>6.3</td>
<td>9.6</td>
</tr>
</tbody>
</table>

71. Includes disorderly behavior, mob action, etc.
### Table 3
Percentage Distributions of Disposition of Cases With and Without the Public Defender in Metro's Juvenile Court, 1966

<table>
<thead>
<tr>
<th>Disposition</th>
<th>With Public Defender N=345</th>
<th>Without Public Defender N=8,575</th>
<th>Total N=8,920</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed²³</td>
<td>41.1</td>
<td>21.6</td>
<td>22.3</td>
</tr>
<tr>
<td>Probation</td>
<td>37.3</td>
<td>33.1</td>
<td>33.2</td>
</tr>
<tr>
<td>Institution²⁴</td>
<td>18.8</td>
<td>14.9</td>
<td>15.1</td>
</tr>
<tr>
<td>Other²⁵</td>
<td>2.8</td>
<td>30.4</td>
<td>29.4</td>
</tr>
</tbody>
</table>

### Table 4
Process of Evaluation and Subsequent Representation (Including Plea Bargaining) of Juveniles by the Public Defender

<table>
<thead>
<tr>
<th>Record</th>
<th>“Good Kids”</th>
<th>“Bad Kids”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Not Serious</td>
<td>Serious</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Little or no previous record</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleas of Guilty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. “Scare”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Lecture</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Supervision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleas of Not Guilty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Make State prove case.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Wants dismissal or minimum sentence.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Plea Bargaining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleas of Guilty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Substantial previous record</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleas of Guilty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Make State prove case.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Wants dismissal or minimum sentence.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Plea Bargaining</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pleas of Not Guilty</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open Cell (No bad kids without previous record)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Plea of Not Guilty
1. Make State prove case. 2. Wants dismissal or minimum sentence. 3. Plea Bargaining

Seems Guilty to Public Defender
<table>
<thead>
<tr>
<th>Not Serious</th>
<th>Serious</th>
<th>Not Serious</th>
<th>Serious</th>
</tr>
</thead>
</table>
| Seeks Guilty to Public Defender

Seems not Guilty to Public Defender

72. Includes representation by private lawyers and legal aid organizations (approximately 770).  
73. Includes dismissals on motion of state's attorneys and "supervision."  
74. Includes commitment to private institutions and state hospitals.  
75. Includes continuances, transferred cases, etc.