THE IMPACT OF DEFENSE ATTORNEY PRESENCE ON JUVENILE COURT DISPOSITIONS

Thesis for the Degree of M. S.
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DAVID W. HAYESLIP JR.
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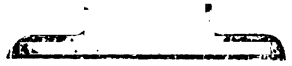

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By
David W. Hayeslip Jr.

A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

MASTER OF SCIENCE

School of Criminal Justice

1976

Approved by:

Terence Dungworth
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ABSTRACT

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THE PROBLEM

In 1967 the United States Supreme Court held that juveniles throughout the United States have the right to assistance of counsel for their defense in juvenile court proceedings where the possibility of institutionalization exists. The purpose of this investigation was to examine what actual impact attorneys are having on the outcomes of disposition hearings in a midwestern county juvenile court. The hypothesis selected for study was:

> Attorneys presence in the formal disposition hearings of a midwestern county juvenile court tends to increase the likelihood that the cases will be dismissed or the child will be placed on probation; and where there is no attorney present there will be a greater likelihood that the cases will receive harsher dispositions, particularly in the form of commitment to institutions.

METHOD

Data were collected from the case files of all the youths referred to the juvenile court in 1975 who had a

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formal disposition hearing in that year or sometime in the past. The association between attorney presence and outcome of the hearings was investigated and this association was controlled for by introducing the variables of offense, race, sex, number of previous referrals, unreferred delinquent history, who adjudicated, prosecutor presence and plea.

MAJOR FINDING

It was found that the original association between presence of attorneys and the outcomes of the hearings was directly contradictory to the hypothesis and so it was denied. That is, when an attorney was present at a formal hearing of this particular court the likelihood that the youth would be sent to an institution increased significantly. It was also found that a number of the other variables appeared to be having an impact on the choices of attorney presence as well as the outcome of the hearing. However, throughout the control situations investigated, attorney presence consistently had a negative impact on the hearing outcomes.

IMPLICATIONS

These findings suggest that the theoretical and philosophical foundations of the insistence of the right to counsel for juvenile should be reevaluated. Also the role that attorneys are supposed to play in these hearings should be more thoroughly investigated. For if this situation also

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occurs in other areas of the juvenile justice system, then the utility of attorney presence as a matter of right might seriously be questioned and recent suggestions that attorney participation in juvenile proceedings should be increased should be reexamined.

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ACKNOWLEDGMENTS

I would like to express my appreciation to Dr. Terence Dungworth for his invaluable guidance in completing this study. I would also like to sincerely thank him for giving me the opportunity to participate in the project from which this investigation evolved.

In addition, I would like to express my appreciation to Mr. Roger Likkell and the entire "County X" Juvenile Court staff for their cooperation in collecting the data, and the College of Social Science for their financial support of the project. A special note of thanks also is given to Angela Sharpe for her cheerful assistance under such demanding time constraints.

Most importantly, I wish to affectionately thank my wife, Peggy, whose tolerance and support contributed so much to the realization of this study.

LIST OF TAB

Chapter

I. JU

II. TH

III. M

IV.

TABLE OF CONTENTS

LIST OF TABLES

CHAPTER I

JUVENILES RIGHT TO COUNSEL

INTRODUCTION

In this thesis I shall investigate what impact the presence of attorneys has on the outcomes of a juvenile court's disposition hearings. Juveniles in these types of hearings have the right to the assistance of counsel as a matter of law. Juvenile justice theorists and legal bodies have concluded that this right is appropriate in juvenile courts and that such a measure is a long needed improvement. However, little attention has been focused on the actual impact that such attorney presence has had in a system which has traditionally been considered to be informal in nature and not procedurally oriented.

This investigation will seek to provide some insight into the possible impact attorneys are actually having on the outcomes of a juvenile court's formal hearings in order to examine the soundness of the theoretical and legal concepts which have formed the basis for the insistence on a juvenile's right to counsel.

RIGHT TO COUNSEL

The sixth amendment to the United States Constitution states: "In all criminal prosecutions, the accused shall

enjoy the right...to have the Assistance of Counsel for his defence."[1] In interpreting this amendment, the United States Supreme Court has held that the assistance of counsel is a necessary element for a fair trial in felony cases for adults, and that, when the accused cannot afford a lawyer, the court must appoint one to act in his behalf.[2] The right was further extended to prosecutions for misdemeanor cases in Argersinger v. Hamlin where the Supreme Court stated, "No imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel."[3] The right to counsel has also been extended beyond the actual trial to other "critical stages" in criminal proceedings, such as the preliminary hearing. In Coleman v. Alabama the court held: "Plainly the guiding hand of counsel at the preliminary hearing is essential to protect the indigent accused against erroneous or improper prosecution."[4] Other cases have also extended the right to stages such as sentencing,[5] investigation of a particular suspect,[6] questioning a suspect in custody,[7] appeals where

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[1]U.S., Constitution, Amendment VI.

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

[3]Argersinger v. Hamlin, 407 U.S. 25, 40 (1972).

[4]Coleman v. Alabama, 339 U.S. 1, 9 (1970).

[5]Mempa v. Rhay, 389 U.S. 128 (1967).

[6]Escobedo v. Illinios, 378 U.S. 478 (1964).

[7]Miranda v. Arizona, 394 U.S. 436 (1966).

they are a matter of right,[8] and identification procedures such as lineups.[9]

Of course, even though the right to counsel is absolute at these various stages of criminal proceedings, an adult may at any time waive the right. The Supreme Court held that "...the Constitution does not force a lawyer upon a defendant. He may waive his Constitutional right to assistance of counsel if he knows what he is doing and his choice is made with eyes open."[10] If a person waives the right to counsel, however, it is up to the trial judge to determine if the waiver was made intelligently and competently and it is not enough to simply inform an accused of his right to counsel and let him waive it.[11] It should also be noted that not only may an accused waive the right to counsel but he may also choose to represent himself. The Supreme Court said in Faretta v. California, "The right to self-representation - to make one's defense personally - is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."[12]

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[8]Douglas v. California, 372 U.S. 353 (1963).

[9]United States v. Wade, 388 U.S. 218 (1967).

[10]Adams v. United States, 317 U.S. 269, 279 (1942).

[11]Von Moltke v. Gillies, 332 U.S. 708 (1948).

[12]Faretta v. California, -- U.S. --, 95 S.Ct. 2525 (1975).

The right to counsel in all the mentioned circumstances has been made binding on the various states as a matter of due process under the 14th amendment to the Constitution. This right to counsel has been held to apply to those persons accused in criminal prosecutions and traditionally this has been interpreted as meaning adults only. Generally the handling of juveniles in separate juvenile courts has been thought of as a civil rather than a criminal process. Thus, traditionally, juvenile court proceedings have not been considered to fall within the meaning and language of the Sixth Amendment.

The first separate juvenile courts were established in the United States when Illinois passed the first juvenile court act in 1899. Other states quickly followed the example of Illinois by creating separate juvenile court systems. The rationale for creating separate juvenile courts was that children are not inherently bad and so, through the appropriate rehabilitative measures, those referred to the juvenile courts could be steered away from later criminal behavior. The idea which has developed over the last century has been to avoid adversary proceedings in juvenile courts because of their harshness, and for the state to proceed in "parens patriae," or in other words, for the state to operate in a parental type of role to protect and help wayward children. Julian W. Mack commented early in the development of the juvenile courts on the philosophy of the

concept:

> The child who must be brought into court should, of course, be made to know that he is face to face with the power of the state, but he should know at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the court-room are out of place in such hearings. The judge on the bench, looking down upon the boy standing at the bar, can never evoke a proper sympathetic spirit. Seated at a desk, with the child at his side, where he can on occasion put his arm around his shoulder and draw the lad to him, the judge, while losing none of his judicial dignity, will gain immensely in the effectiveness of his work.[13]

The President's Commission on Law Enforcement and Administration of Justice summed up the philosophy of separate juvenile court systems by saying:

> Juvenile courts are judicial tribunals that deal in a special way with young people's cases... They differ from adult criminal courts in a number of basic respects, reflecting the philosophy that erring children should be protected and rehabilitated rather than subjected to the harshness of the criminal system. Thus, they substitute procedural informality for the adversary system, emphasize investigation of the juvenile's background in deciding dispositions, rely heavily on the social sciences for both diagnosis and treatment, and are committed to rehabilitation of the juvenile as the predominant goal of the entire system.[14]

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[13]Julian W. Mack, "The Juvenile Court," 23 Harvard Law Review 104, 120 (1909).

[14]The President's Commission on Law Enforcement and Administration of Justice, Challenge of Crime in a Free Society, (Washington: U.S. Government Printing Office, 1967), p. 79.

As a result of this philosophy the juvenile court system has developed proceedings over the last century which have emphasized procedural informality because it has been thought that such an approach provided the best setting for achievement of the goals of treatment and rehabilitation. Overall, the child has not been technically considered to be criminally responsible for his acts, and because of this, the rights to bail, trial by jury, protection against self-incrimination and the assistance of counsel were held not applicable to the proceedings.[15]

However, despite this philosophy, which made juvenile adjudication distinct from adult criminal proceedings, the lack of procedural safeguards in the system has often been criticized. A large amount of this criticism has focused on the absence of a juvenile's right to counsel. Monrad G. Paulsen was one of the strongest critics of the lack of counsel in juvenile hearings. He said in 1957:

> Every child faced with an adjudication of delinquency should have access to legal help. A lawyer's skill in developing the facts in detail can, if done without harsh grilling of young witnesses, result in a fuller understanding of a total situation.[16]
>
> Counsel is important for another reason. Juvenile proceedings are conducted behind closed doors. Only

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[15]Pee v. United States, 107 U.S. App. D.C. 47 (1959).

[16]Monrad G. Paulsen, "Fairness to the Juvenile Offender," 41 Minnesota Law Review 547, 570 (1957).

> the judge, the child, the witnesses, the parents, the social workers and an occasional interested person (by permission of the judge) are present. This may seem like a large group, but one factor is lacking - competent impartial observation not dependent on the judge. It would not be a hasty guess to suppose that a judge's performance (and that of his staff) will be much more alert and careful under the gaze of a lawyer than otherwise. The greatest value of the attorney may be his very presence, rather than his ability to give affirmative help.[17]

The National Probation and Parole Association felt the necessity of the right to counsel for juveniles important enough to include in its draft of the Standard Family Court Act which was prepared in cooperation with the National Council of Juvenile Court Judges and the U.S. Children's Bureau in 1959. The act stated in its section of procedure in children's cases:

> At the first appearance of the child and his parents before the court - whether a preliminary hearing, a hearing upon detention or a hearing upon the merits - and at the hearing at which the court's disposition is rendered, the parents shall be informed that they have a right to be represented by counsel. If they request but are financially unable to employ counsel, counsel shall be provided by the court.[18]

The President of the National Council of Juvenile Court Judges strongly endorsed the idea of having attorneys present in

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[17] Ibid., 571.

[18] Committee on the Standard Family Court Act, "Standard Family Court Act," National Probation and Parole Association Journal, V (April 1959), p. 137.

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juvenile courts and in 1962 he called upon the bar, law schools and bar examining committees to become more involved in the processes of the juvenile court.[19]

The criticism of the lack of the right to counsel in juvenile proceedings focused on a number of arguments. The first of these arguments was that without attorneys present in the juvenile court the state could easily abuse the individual rights of an accused youth. Jacobs Isaacs commented on this argument when he said:

> In the earlier days of the juvenile court movement the thesis was widely accepted that the participation by counsel in proceedings before these courts was antithetical to their specialized social objectives, philosophies and procedures. Experience has demonstrated, however, that excessive rejection of traditional legal safeguards carries with it the seeds for abuse of individual rights.[20]

It was also argued that such abuse of individual rights can occur quite easily since the juvenile hearings are normally conducted behind closed doors. Eugene Siler, in restating Paulsen's argument, said: "No one can better prevent these abuses than an attorney who is there especially to look out for the interests of the child."[21]

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[19]Henry A. Riederer, "The Role of Counsel in the Juvenile Court," 2 Journal of Family Law 16, 28 (1962).

[20]Jacobs L. Isaacs, "Should a Right to Assigned Counsel Be Established in Juvenile Court Hearings?" 15 Juvenile Court Judges Journal 6 (1964).

[21]Eugene E. Siler, Jr. "The Need For Defense Counsel in the Juvenile Court," Crime and Delinquency, XI (January, 1965), p. 54.

Another argument focused on the twentieth century experience with state power:

> ...we all - lawyers and non-lawyers alike - have seen enough of the twentieth century world to render untenable any assumption of the inevitable benevolence of state power. Moreover, at a more practical level, we have had occasion to discover that the exercise of arbitrary and undisciplined power in the juvenile courts has retarded rather than advanced attainment of the objectives of the juvenile court movement.[22]

Paul S. Lehman explained how such abuses can take place in the courts:

> Unfortunately, loose procedures, high-handed methods and crowded court calendars, whether singly or in combination, all too often, have resulted in depriving some juveniles of fundamental rights that have resulted in a denial of due process... A juvenile court judge is called upon to fulfill three disparate roles, that of prosecution, defense and analysis of evidence. This is a difficult task and can easily set the stage for abuse of the juvenile's rights.[23]

Another argument for the presence of attorneys at hearings was that an attorney was essential to insure that the hearing was fair and that whenever an attorney was not present it could be assumed the hearing was automatically unfair.[24]

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[22]Francis A. Allen, The Borderland of Criminal Justice, (Chicago: University of Chicago Press, 1964), p. 20.

[23]Paul S. Lehman, "A Juvenile's Right to Counsel in a Delinquency Hearing," 17 Juvenile Court Judges Journal 53, 54 (1966).

[24]Chester James Antieau, "Constitutional Rights in Juvenile Courts," 46 Cornall Law Quarterly 387 (1961).

Additional arguments were also made for the incorporation of the right to counsel in juvenile court on the basis that the presence of counsel would actually improve the service of the courts and would ultimately lead to a better attainment of the movement's goals of rehabilitation and treatment. This argument suggested that attorneys could aid in the fact-finding mission of the courts and could aid the child by challenging evidence. Joel Handler pointed out some of the problems of fact-finding where there is no defense attorney:

> ...where there is no defense counsel to challenge the findings of the social investigation or to insist on other procedural safeguards, and the possibility of very serious consequences, whatever protection the adolescent might receive from the hazards of the arbitrary, the vicious, the incompetent or even the tired, rests solely with the judge. He alone must take it upon himself to challenge the facts and to insist on competent and relevant evidence.[25]

Junius Allison also argued for the presence of attorneys as fact-finders and noted the additional services they could provide the court:

> At the hearing the lawyer can be useful by posing objections to the use of questionable evidence, cross-examining witness who may not be telling the truth, and, in general, by protecting all the rights a minor has even in a juvenile court.

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[25]Joel F. Handler, "The Juvenile Court and the Adversary System: Problems of Function and Form," 1965 Wisconsin Law Review 7, 16 (1965).

> Above all, he can be prepared to round out the case by presenting facts which may lead to a better understanding of the child or parent. The lawyer who is familiar with community resources, including mental health and child guidance clinics, specialized schools and reformatories, can be helpful to the court at the disposition stage.[26]

One additional argument was that the presence of counsel in juvenile court hearings could actually serve as a delinquency prevention device. Orman Ketcham argued that since the court appointed attorney will often be the first outsider to be on the juvenile offenders side against the police, schools and court authorities, his advocacy for the juvenile can create an impression that the court is actually serving the child and is not simply an agent of adult authority.[27] He also suggested that such an emphasis on due process, which leads to the appointment of an attorney to act in the child's behalf, could very well lead to a higher respect by the juvenile of the court, which would mean less future delinquency.[28] Paul Tappan also felt that delinquency prevention could be effected by the presence of counsel:

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[26]Junius L. Allison, "The Lawyer and His Juvenile Court Client," Crime and Delinquency, XII, (April, 1966), p. 168.

[27]Orman W. Ketcham, "Legal Renaissance in the Juvenile Court," 60 Northwestern University Law Review 585, 595 (1965).

[28]Ibid.

> Counsel in the juvenile court, as members of the bar become more sophisticated in the methods and objectives of these courts, are surely destined to be instruments of an improved juvenile justice system, that, by hypothesis, will contribute significantly to the prevention of repeated delinquency.[29]

The President's Commission on Law Enforcement and Administration of Justice adopted some of the preceding arguments concerning the necessity of the presence of counsel in juvenile court proceedings when it reported its findings from the study by the Task Force on Juvenile Delinquency and Youth Crime. The Commission said:

> There is no single action that holds more potential for achieving procedural justice for the child in the juvenile court than the provision of counsel. The presence of an independent legal representative of the child, or of his parents, 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 free of prejudicial and unreliable evidence, to take an appeal - all have substantial meaning for the overwhelming majority or persons brought before the juvenile court only if they are provided with competent lawyers who can invoke these rights effectively. The most informal and well-intentioned of judicial proceedings are technical; few adults without legal training can influence or even understand them; certainly children cannot.[30]

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[29]Paul W. Tappan, "The Role of the Juvenile Court in Delinquency Prevention," 15 Juvenile Court Judges Journal 12, 14 (1964).

[30]The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, (Washington: U.S. Government Printing Office, 1967), p. 32.

Yet, despite these criticisms and recommendations, studies prior to 1967 found that attorneys were rarely used in juvenile court hearings at all. In a survey of judges serving the 15 largest cities in the nation in 1963, it was found that "lawyers appeared on the behalf of children in less than 5% of the delinquency cases."[31] The authors concluded that when an attorney did appear that it was usually in a situation where the child was being brought before the court on a felony charge or else the disposition concerned a contested custody case and generally the attorney was retained rather than appointed.[32]

The reason lawyers were not present very often was that the various states were reluctant to extend the right to counsel to juveniles being brought to court. In the early 1960's New York and California enacted juvenile codes which provided for the appointment of counsel in certain cases and a few other states followed suit. But more importantly the state and federal courts were reluctant to address the Constitutional issue of a juvenile's right to the assistance of counsel under the Sixth Amendment.

There was one federal court, in 1956, which had held

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[31]Daniel L. Skoler and Charles W. Tenney, Jr., "Attorney Representation in Juvenile Court," 4 Journal of Family Law 77, 81 (1964).

[32]Ibid., 96.

that a juvenile had the right to the assistance of counsel but this was merely a Court of Appeals. The case was Shioutakon v. D.C. and the U.S. Court of Appeals for the District of Columbia reversed a lower court decision which had adjudicated a child delinquent and had sent him to reform school. The court in its reversal said:

> A juvenile is entitled to the represented by counsel if he or his parents choose to furnish one... Our concern for the fair administration of justice impels us to hold, that, in this and similar cases in the future, the juvenile must be advised that he has a right to engage counsel or to have counsel named in his behalf.[33]

The appeals court also concluded that this right to counsel was definately not incompatible with the goals of treatment instead of punishment, particularly where the liberty of the child is involved.

Some state courts also followed this approach to a juvenile's right to counsel but it was not until 1966 that the United States Supreme Court reacted to the criticism and recommendations and addressed the Constitutional issue of a juvenile's right to counsel under the Sixth Amendment. The first of two landmark decisions concerning juvenile rights was Kent v. U.S. which was decided in 1966. In this case the petitioner, a juvenile, had been arrested for

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[33]Shioutakon v. D.C., 236 F2d 666, 670 (1956).

entering a woman's apartment, stealing her wallet and raping her. Kent had retained an attorney and this attorney filed a motion for a hearing on the question of waiving jurisdiction of the case to the district court; however, there never was a hearing and the petitioner was subsequently sent to and convicted in district court. The conviction was appealed on the grounds that the waiver to district court was invalid since Kent had been denied a hearing and the assistance of counsel at such a hearing. The Supreme Court agreed with the petitioner's argument saying:

> There is no place in our system of law for reaching a result of such tremendous consequences without ceremony - without hearing, without effective assistance of counsel, without a statement of reasons.[34]

The court did not go so far as to say that all the Constitutional guarantees available to adult defendants should be applied in juvenile court cases but they did indicate that waiver is a "critically important" action determining vitally important statutory rights for a juvenile and in these circumstances the juvenile has a right to a hearing "...including access by his counsel to the social records and probation or similar reports which presumably are considered by the court and to a statement of the reasons for the

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[34]Kent v. U.S., 383 U.S. 541, 554 (1966).

Juvenile Court's decision."[35] They based this decision on the reading of the statutes of the jurisdiction in the context of the Constitutional principles of due process and the right to assistance of counsel. In the dicta the Supreme Court noted that studies and critiques had raised critical questions concerning the immunity of juvenile courts from the Constitutional guarantees afforded in adult courts, but they did not specifically state that any of these guarantees were necessary in juvenile court proceedings, although clearly the implication that they may do so in the future could be seen.

The following year the Supreme Court did in fact clarify the implications mentioned in Kent when it decided In Re Gault. Gault, the petitioner, had at the age of fifteen been taken into custody on a complaint of a woman that he had annoyed her with a lewd telephone call. He was held overnight in the Children's Detention Home and the following day he was given a hearing without being told in advance of the charges. The woman complainant did not appear, no one was sworn, no transcript or recording was made of the hearing, and the judge questioned Gault without advising him of the right to be silent or to be represented by counsel. As a result of the hearing Gault was committed to the State Industrial School until he was twenty-one,

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[35] Ibid., 557.

unless released earlier by the court. The decision was appealed in a habeas corpus petition charging the due process had been violated since the following rights were denied:

> 1. Notice of the charges; 2. Right to counsel;
> 3. Right to confrontation and cross-examination;
> 4. Privilege against self-incrimination;
> 5. Right to a transcript of the proceedings; and
> 6. Right to appellate review.[36]

The Supreme Court reversed and remanded the case, which had been decided in Arizona, concluding that in all juvenile proceedings where there may be a finding of delinquency, and where the possibility of commitment to an institution also exists, juvenile courts must: (1) Provide sufficient notice of a hearing so that the persons involved have a reasonable opportunity to prepare; (2) Respect the Constitutional privilege against self-incrimination for juveniles in the same manner as for adults; (3) Provide for confrontation, sworn testimony and cross-examination; and, most importantly (4) Respect a juvenile's right to assistance of counsel. Their conclusion concerning the right to counsel was:

> We conclude that the Due Process Clause of the Fourteenth Amendment requires that in respect of the 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

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[36] In Re Gault, 387 U.S. 1, 10 (1967).

> retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child.[37]

The rationale for the Supreme Court's decision to make the right to counsel applicable to juvenile proceedings centered on the criticism and recommendations mentioned earlier. The court noted that the Constitutional and theoretical basis on which separate juvenile justice systems operate are "to say the least debatable."[38] They also relied on the idea that informality in the juvenile courts may not be working as well as theorized and that the essentials of due process, such as the right to counsel, may be more effective than the supposed therapeutic nature of the juvenile courts. The court also accepted the fact-finding argument when is said:

> The juvenile needs 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 prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings."[39]

As a result of this case, a juvenile's right to counsel, based on the fourteenth amendment right to due process, was made binding on the various states, at least

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[37] Ibid., 41.

[38] Ibid., 17.

[39] Ibid., 36.

in hearings where the possibility of institutionalization exists. It should be noted, however, that although the Supreme Court extended a number of adult rights to juveniles in this case, they were reluctant and have been reluctant to extend all adult rights to juveniles involved in court hearings. The rationale for not doing so has been that such action would result in the stifling of the various states' efforts in experimenting with new and innovative juvenile justice programs.[40]

Reactions to the Gault decision were mixed. Critics of the decision thought that compelling the juvenile courts to adopt such new rules of due process would force the courts back into a criminal advocacy atmosphere which would be detrimental to the goals of the system. Other critics also thought such requirements as outlined by the Supreme Court would place unrealistic manpower demands on the juvenile court system, would create role problems for attorneys, could possibly congest already crowded court calendars and would put a great deal of stress on juvenile court judges, since without prosecutors this new advocacy by attorneys would have to be counter-balanced by the judges.[41] Another

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

[41]Daniel L. Skoler, "The Right to Counsel and the Role of Counsel in Juvenile Court Proceedings," 43 Indiana Law Journal 558, 575-580 (1968).

concern of critics focused on doubts about the practical value of the new procedural rules, as a New York judge noted:

> Experience in the juvenile courts has alerted its judges to the fact that it is one thing to require procedural safeguards but that it is quite another to secure the services that demand far more from the community. In the states, such as New York where the operative holdings of Gault have been in effect, judges are all too aware of how little adequate notice, the right to counsel, the privilege against self-incrimination, and the right to confront witnesses have affected what is done or left undone to meet the needs of the children brought before the court.[42]

The Executive Director of the National Council of Juvenile Court Judges in 1968 commented on the problems the decision created for operation of the courts and the conflict in roles of the court staff:

> When the Gault decision was first announced some rural judges felt that the juvenile court movement had come to an end and advised their probation staff to bring in no further cases. The probation staff in at least one major city said, in effect, "If we are going to be cross-examined by lawyers, we will no longer do social reports," and some lawyers apparently read the Gault decision as a messianic mandate to drive the case worker out of the court.[43]

On the other hand, many commentators thought the Gault

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[42]Justine Wise Polier, "The Gault Case: Its Practical Impact on the Philosophy and Objectives of Juvenile Court," 1 Family Law Quarterly 47, 52 (1967).

[43]John F. X. Irving, "Juvenile Justice - One Year Later," 8 Journal of Family Law 1, 3 (1968).

decision would provide the opportunity for the juvenile court movement to improve the operation of the courts and that ultimately the goals of the system would be better realized by adding these procedural rights to the system. A number of writers thought the decision was a valuable step away from some of the problems of the past:

> Gault represents, then, a beginning, a significant step toward diluting the doctrine of parens patriae which has served as an excuse for the arbitrary treatment the juvenile sometimes has received at the hands of the juvenile court.[44]

> The major effect of the Gault case therefore seems to be that of a challenge to legislatures and to the practicing bar along with juvenile courts to devise ways of carrying out the original juvenile court ideal by fair and constitutional means. If we have sufficient imagination and organizing ability to do this, then some of the optimism of the early days of the juvenile court movement will have been warranted.[45]

> In the name of protective power of the state, there has been arbitrary interference with the lives of children and their parents; for the most part this interference has not brought about any commensurate gain to society. The laudable aims of the juvenile court system, at least as far as courtroom procedures themselves are concerned, will more probably be achieved under a fair system of procedure in which attorneys participate than under the traditional system.[46]

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[44]Lovell Henry Carver and Paul Anthony White, "Constitutional Safeguards for the Juvenile Offender," Crime and Delinquency, XIV, (January, 1968), p. 71-72.

[45]Homer H. Clark, Jr., "Why Gault: Juvenile Court Theory and Impact in Perspective," in Gault: What Now for the Juvenile Court? ed. by Virginia Davis Nordin, (Ann Arbor: Lithocrafters, 1968), p. 24.

[46]B. James George, Jr., Gault and the Juvenile Court Revolution, (Ann Arbor: Institute of Continuing Legal Education, 1968), p. 119.

Comment concerning the impact and implications of Gault has continued over the last decade with both favorable and unfavorable sides being well represented. Indeed, some recent critics have even called for the abandonment of the juvenile court system for children committing crimes. This would mean that their rights would be extended beyond those granted in Gault to the level of those available to adults.[47]

The American Bar Association also appears to be taking a stance such that juvenile rights should be expanded and attorney presence in the juvenile court process should be expanded. The Institute of Judicial Administration along with the American Bar Association is in the process of publishing its recommended juvenile justice standards. The chairman of the standards project, Irving Kaufman, has recently indicated that the standards will call for increased participation by attorneys in advocacy roles:

> Our standards on counsel for private parties provide that, unless the child-client is incapable of judgment, his or her attorney must advocate the child's interest as determined by the child after full consultation.[48]

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[47]Frank J. Parker, "Instant Maturation for the Post-Gault 'Hood'," 4 Family Law Quarterly 113 (1970).

[48]Irving R. Kaufman, "Of Juvenile Justice and Injustice," 62 American Bar Association Journal 730, 732 (1976).

> The standards envisage the lawyer's active participation at all stages of the delinquency process.[49]

Despite all the commentary, however, it is now law throughout the United States that juveniles have the right to have lawyers present in juvenile court hearings. If the child or his parents request counsel but cannot afford to retain counsel then the juvenile courts must appoint one. The lawyers are supposed to help the children by being advocates, interpreters of the complicated procedures and helpful guides through the juvenile court process. They are also supposed to aid the court by helping with the development of the facts in cases, and by bringing into the proceeding their knowledge of the community and its resources.

The question which must be asked, however, concerns the actual impact of lawyers on the juvenile justice system. This is particularly important considering the American Bar Association's upcoming standards which appear as though the role of counsel will be expanded in the system. Are attorneys fulfilling the roles already assigned them and becoming assets to the system, or are they having overall a detrimental impact on the court and its functioning? Indeed, perhaps it is the case that they are having no impact whatsoever.

This thesis shall attempt to investigate these questions.

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[49] Ibid.

Chapter II reviews the existing empirical research which has already been done on the impact of attorney presence on juvenile court outcomes; Chapter III will set forth the methodology and data collection procedures of this study; Chapter IV will present the data and provide an analysis of them; and Chapter V will examine the conclusions and implications of this investigation.

CHAPTER II

THE IMPACT OF ATTORNEY PRESENCE ON JUVENILE COURT HEARINGS

REVIEW OF PREVIOUS RESEARCH

If attorneys are indeed functioning in juvenile courts as advocates for children, interpreters of the complicated legal process, guides through the court proceedings, complements to the court's goals of treatment and rehabilitation, and skilled fact-finders in the court proceedings, then one would suppose that their presence in the court system would be having some sort of impact. One impact that attorneys may be having would be on the disposition of cases, whether at the pre-adjudication stage or at the formal hearing stage where the state's full power may be imposed on the child in the form of probation, removal from the home, declaration of delinquency and possibly institutionalization.

A few studies have focused on the question of the impact of the attorney's presence on the formal juvenile court disposition hearings. In 1967 Spencer Coxe discussed the implications of Gault, basing his conclusions on an unpublished report of the Community Legal Service's Office for Juvenile in Philadephia. He concluded:

> Stated bluntly, the presence of lawyers willing to fight for their clients is preventing judges from dumping children into institutions because they

> don't know what else to do and are too harried or callous to find another solution.[50]

The methodology and data on which these conclusions were made were not in this article so these conclusions must be looked upon cautiously.

Another study looked at the role of the public defender in a large midwestern city which handled 17,000 referrals annually. The researchers looked at the files of the court over a one year period and also engaged in participant observation of the agency in 1966. They compared the dispositions which occurred when a public defender was present to the dispositions received in the court when there was no public defender present. They found that in the situation where a public defender was present, 41.1% of the cases where dismissed while 18.8% of the cases were sent to institutions. In the situation where there was no public defender present they found that 21.6% of the cases were dismissed while 14.9% were sent to institutions.[51] The conclusion they reached was, "Public defenders can often be more effective than a private lawyer in obtaining dismissals or light sentences."[52]

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[50]Spencer Coxe, "Lawyers in Juvenile Court," Crime and Delinquency, XIII, (October, 1967), p. 493.

[51]Anthony Platt, Howard Schechter and Phyllis Tiffany, "In Defense of Youth: A Case of the Public Defender in Juvenile Court," 43 Indiana Law Journal 619, 640 (1968).

[52]Ibid., 637.

This study must also be viewed with some caution because the definitions of the dispositions were somewhat unclear; for example, in the situation where no public defender was present 30.4% of the cases received "other" dispositions.[53] Also the category of no public defender included cases where the child or his parents retained their own counsel. Additionally, alternative outside factors which may have had an effect on the disposition were not controlled for and thus the apparent relationship could have been spurious.

Edwin M. Lemert looked at the dispositions of juvenile court cases in Sacramento County, California, from 1962 to 1963 to see the impact of the California juvenile court law which was enacted in 1961. This law was passed prior to the Gault decision but it provided that notice to the right to assistance of counsel was to be given in juvenile court cases, and that the courts had to provide counsel in certain cases. The conclusions he reached from looking at 1,760 cases, of which 308 had attorneys and 1,452 did not, was:

> The evidence is impressive that representation by counsel more often secures a favorable outcome of the case than when there is no counsel. Proportionately dismissals were ordered nearly 3 times as frequently in attorney as in non-attorney cases. The same was true for granting informal probation. Wardships were more often declared in non-attorney cases, and with no attorney on hand children were more likely to be placed away from their home.

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[53] Ibid., 640.

> Where the California Youth Authority was recommended or ordered, it was more frequently suspended for youth with attorneys. Only in the category of youths sent to the California Youth Authority did the attorney cases fare worse than the non-attorney cases.[54]

One problem with this study was that dependency and neglect cases were included with cases involving commission of crimes or delinquent acts (status offenses). So, the impact of attorney presence in offense situations alone is not readily discernable. Also, once again other possible influences were not controlled for and consequently, the relationship between attorney's presence and the outcomes of the hearing could be attributed to something else.

The most comprehensive study of the impact of attorneys was done by W. Vaughan Stapleton and Lee. E. Teitelbaum and was published in 1972. In this research, Stapleton and Teitelbaum sought to investigate whether or not introduction of counsel affects the outcomes of dispositions of juvenile court hearings and, if so, in what manner. To do this they incorporated an experimental research design where they randomly assigned youths who were to have disposition hearings to experimental and control groups. The experimental group was provided with counsel, but the control group was not, although they could pursue representation on their own, that is, to retain their own counsel or request other representation.

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[54]Edwin M. Lemert, "Legislating Change in the Juvenile Court," 1967 Wisconsin Law Review 421, 442-443 (1967).

The study was conducted in two large, northern urban areas designated Zenith (population five million) and Gotham (population one million). The participants in the study were restricted to males who were referred for delinquency. Neglect and dependency cases were excluded, along with homicides. Additionally, the youths' families had to be considered indigent and referrals by parents were not included.[55] The lawyers which were offered to the experimental groups were graduating law school students who were given intensive training in juvenile court philosophy and operation and their roles were defined as adversarial in nature.[56] The courts in the two areas were aware of the experiment and the judges of the courts cooperated in its development.

The researchers investigated the association between the presence of an active, adversarial counsel and the outcome of the disposition hearings and compared this to the control groups where this type of counsel was not introduced. They additionally collected data from both the experimental and control groups on the following variables: The offense, age, previous court experience, number of petitions filed, judge, race and home situation.[57] The researchers then used

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[55]W. Vaughan Stapleton and Lee E. Teitelbaum, In Defense of Youth. (New York: Russell Sage Foundation, 1972) p. 53-55.

[56]Ibid., p. 58-59.

[57]Ibid., p. 53.

these additional variables as control variables since they thought that they might also affect the outcome of the hearings.

The results of this investigation were quite different in the two areas. In Zenith they found that those having attorneys present received a larger proportion of dismissals than the control group. However, in Gotham they found no significant association between the variables.[58]

When the researchers controlled for the alternative variables they found that in Gotham the original situation, where there was no association between presence of attorney and outcome, remained unchanged: "...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."[59] However, in Zenith when these alternative variables were controlled for the researchers found that, "Youths in the experimental group are far more likely to obtain a favorable result when both parents are in the home than in the control group,"[60] and that the same trend remained in other family situations except in the case where the child lived with one step-parent, where no real difference was found.[61] They found that the association also held up when

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[58] Ibid., p. 67.

[59] Ibid., p. 79.

[60] Ibid., p. 77.

[61] Ibid.

the number of petitions, race, age and offense type were controlled for, and that, the trend also existed for four of the six judges.[62]

The conclusion reached by the researchers was that the difference in the impact of attorneys presence in the two areas was possibly attributable to a situation where, "the performance of defense counsel, and consequently his impact on the outcomes of cases he handles, will be largely determined by the circumstances of the forum in which he appears."[63] Despite the difference in the two areas, it should be noted that the results did not suggest a trend where attorney presence had a negative impact on the outcomes of court dispositions. That is, where an attorney was introduced his presence did not lead to harsher sentences.

Although this study was very extensive, the authors readily admit that it is "not addressed to middle-class or female delinquency, nor to the defense of homicide cases,"[64] and this fact reduces the extent to which their findings can be generalized. Also since the study focused on large, northern, urban areas the findings cannot be generalized to more rural areas in other parts of the country. Also since the judges were aware of the study they may have contaminated

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[62] Ibid., p. 78.

[63] Ibid., p. 97.

[64] Ibid., p. 56.

the results by disposing of the cases consistent with their opinion of what the results of the experiment should be, rather than approaching the proceedings in their normal manner. Another problem with the findings is that they are restricted to only indigent youths, and, while this may be appropriate in urban areas, it is not necessarily representative of the delinquent population elsewhere.

Despite these generalization problems, however, their findings are certainly consistent with the theoretical notions of the role of defense counsel. One would expect that the presence of defense counsel who served as an advocate would tend to protect the child from arbitrary rulings of the court. An attorney's aid in developing the facts and cross-examining witnesses could lead to a more complete picture of the child's situation and his alleged crime and this could tend to reduce the likelihood of his being sent to an institution. Additionally, if the attorneys are fulfilling their roles as knowledgeable advocates which can bring into the hearing additional referral ideas based on thir familiarity with community resources then one would also suppose that the children having these attorneys present would be more likely to be referred to other community facilities, either on probation or through dismissal, rather than being sent to an institution. So, overall, the findings of this study seem to indicate that the theoretical considerations espoused for the presence of counsel in juvenile court hearings may be well grounded.

However, this study focused on the issue of what attorneys can do in the way of affecting outcomes of juvenile court hearings. But, it did not address the issue of what really does happen day to day. In other words, attorneys can have the impact of reducing the likelihood that children accused of crimes will be sent to institutions, but are attorneys actually having this impact? Do attorneys in day to day situations, not participating in an experiment, really fulfill the roles that the theoretical foundations suggest they fulfill. Do attorneys who normally participate in juvenile court without this intensive training and reduced caseload really act as skilled fact-finders, advocates for the children and guides through the court process? Are they actually having the impact on outcomes that is possible under experimental conditions?

I submit that these questions are critical areas worthy of continued investigation. If it can be shown that attorneys are actually having the impact that seems to be possible, then a number of inferences can be made towards confirmation of the theoretical rationale upon whith the right to counsel for juvenile was founded. However, if it can be determined that attorneys are actually having no impact or indeed are having a negative impact, then it could be necessary to review the basic philosophy of the attorney's role. Also, if it can be found that there is no impact, or one in a negative way, then questions concerning training and performance

can be made in light of the possible impact shown in the experimental study. Investigation of these questions carries with it the possibility of developing practical and theoretical implications for both the legal profession and the juvenile court system.

Furthermore, an investigation into another area of the country could be worthwhile in helping to note any possible differences there may be in attorney impact as compared to large, northern, urban areas. Including female delinquents as well as male and including those who are referred to the court by their parents would also be valuable since it would tend to give a more complete picture of the manner in which juvenile courts are actually functioning. This could additionally give a more representative look at the actual impact that the attorneys may be having on the outcomes of the hearings. An investigation including these factors could fill part of the research gap left from the Stapleton and Teitelbaum study.

CHAPTER III

METHODOLOGY AND DATA COLLECTION

A HYPOTHESIS

In this thesis I have chosen to investigate the impact of attorneys in a midwestern county juvenile court to see if the situation is that attorneys in this less urban setting are functioning differently or are having the same sort of impact on outcomes of hearings as is possible in an urban situation. Due to the findings mentioned in the previous study as well as the theoretical considerations mentioned earlier I suspect that the attorney impact will prove to be a favorable one. More formally stated, the main hypothesis I wish to investigate in this study is:

> Attorneys presence in the formal disposition hearings of a midwestern county juvenile court tends to increase the likelihood that cases will be dismissed or the child will be placed on probation; and where there is no attorney present there will be a greater likelihood that the cases will receive harsher dispositions, particularly in the form of commitment to institutions.

There will be no null hypothesis since I will be investigating an entire juvenile court population of 1975. Thus, inferential statistics such as chi-square are inappropriate since I will not be sampling.[65]

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[65]Herman J. Loether and Donald G. McTavish, Inferential Statistics for Sociologists, (Boston: Allyn and Bacon, Inc., 1974), p. 211-212.

Since I will be dealing primarily with 2 x 2 tables I will measure the strength of any association by using the Yule's Q statistic, which is an appropriate measure when dealing with 2 x 2 tables when the variables are being defined on the nominal level of measurement, as are those in this study.[66]

The independent variable in this study will be the presence or lack of presence of an attorney at the formal disposition hearing of the juvenile court. Presence will include both attorneys who are retained and those that are appointed, since I do not wish to investigate the impact of merely one or the other, but rather the impact of all attorneys.

The dependent variable will be the outcome of the formal dispositional hearings of the juvenile court. The following outcomes are possible in the study juvenile court: dismissal; probation, either in the child's own home, a relative's home or a foster home; commitment to the juvenile home, a private or state institution; other dispositions; or taking the matter under advisement and later disposing of the case in one of the preceding ways.

After looking at the initial association between the independent and dependent variables I will then control for the effects of a number of alternative variables. A more complete definition and description of these variables will be

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[66]Herman J. Loether and Donald G. McTavish, Descriptive Statistics for Sociologists, (Boston: Allyn and Bacon, Inc. 1974), p. 201

included later in this chapter. The first control variable, however, will be offense, whether adult felony, adult misdemeanor or status. The second will be race, either white or non-white. The third will be sex, either male or female. The fourth will be the number of previous referrals. The fifth will be whether or not the child has had a history of delinquency in the past which had not been brought to the court's attention in the form of a petition. The sixth will be who adjudicated the case, whether the judge of the court or one of the referees, who can also hear the cases. The seventh will be whether or not a prosecutor was present at the hearing, and the last control will be the type or plea the child entered, guilty or not guilty.

These variables were chosen because of their potential impact on the disposition of the case. Thus, they may account for any apparent association between the presence of attorney and outcome, making any associations found between the independent and dependent variables spurious, that is, attributable to one of the other variables.

I chose offense because the situation may exist where those charged with the more serious offenses are those who chose to have counsel present or the adjudicator of the hearing may take the attitude that those charged with more serious offenses are the ones who deserve the harsher punishment, particularly institutionalization, and that the presence of the attorney is really irrelevant.

Race was included as a control variable to investigate the possibility that prejudice on the part of the court may be the actual determinant of the outcome at the hearing rather than whether or not an attorney was present. The situation could be, although not intentionally, that non-white youths referred to the court are the ones most likely to receive harsh dispositions.

Sex was also included to see if there may be some bias on the part of the court in terms of dispositions being affected by the sex of the person rather than the presence of counsel. For example, the situation could be that males are more likely to be sent to institutions than females and lawyers aren't really having an impact.

Previous number of referrals and history of unreferred delinquency were included to investigate the impact of the child's past delinquent history on the outcome of the disposition. Perhaps the case is that those with long and serious delinquent careers are the most likely to be sent to institutions rather than being dismissed.

Who adjudicated the case may also have an impact. The judge of the county is an attorney and thus his response to the presence of defense attorneys may be quite different from that of referees who hear the cases without the benefit of long term legal training. The possibility exists that this difference may in fact account for any association between attorney presence and outcome of the case.

The presence of a prosecutor may also have an impact, even though they rarely participate in the hearings. The situation may be that when a prosecutor is present the hearing becomes more adversarial in nature and thus the outcome could be attributable to the prosecutor's presence rather than the defense counsel's presence.

Plea was also included because the possibility exists that the plea is the determinant of the outcome of the hearing. The court may look more favorably on the child who admits guilt than on those who contest the charge.

Of course, it is quite likely that all these variables are interrelated in a variety of ways. I intend to examine one of these possible interrelationships by controlling for the effects of race on the association between attorney presence and outcome and then introducing type of offense as a second order control variable. This will be done to investigate the relationships which exist between the four variables.

I should strongly point out that a great number of other variables might actually be causing any association found between the independent and dependent variables and these variables have not been included in this investigation. For example, home situation factors could be a prime influence on the outcome of the hearings. Perhaps a broken home situation could be causing the outcomes to be harsher because the court may think that treatment may be more effective if

the child is removed from the home. This was not included because of time priority considerations, since data were available on the home situation only in the most recent case for each child. Past cases were also investigated in this study and attributing current home situation to past offenses would be speculative.

The age of the child at the time of the hearing could also have been helpful but once again this variable suffered from time priority problems since age data was collected only at the time of the child's most recent offense. The same was true for school situation and a number of other variables which traditionally have been thought of as being associated with the causes of delinquency.

It would also have been helpful to have information available on a number of factors involved in the hearing situation itself. Where the hearing was held, interpersonal relationships between the participants, types of evidence presented, presence of police or parents and the like. All these situational factors certainly could have an impact on the outcome of the hearings and may actually account for any appeared relationship between attorney presence and outcome. For example, it may be the case that the hearing official, either the judge or the referee may be more swayed in the disposition by appearance and demeanor of the child in the hearing than anything else and the attorney's presence may make no difference either way.

Thus, while I have looked at a number of variables which may affect the outcome of dispositional hearings in juvenile courts, there may be many other factors which may be the actual causes of the outcomes. Nonetheless, this serves as a beginning point in investigating the notion that attorneys are influencing the juvenile courts and that their presence is having an impact consistent with the theoretical considerations which in large measure accounted for making the assistance of counsel in juvenile court hearings a right for an accused child.

METHODOLOGY AND DATA COLLECTION

The juvenile court from which data were collected for testing of the hypothesis is a county agency located in a midwestern state. The county, which shall be designated County X, had a 1970 population of approximately 142,000. There are four cities located in the county, one of which contains the major industrial center of the county. Surrounding this city is a metropolitan area in which approximately 63% of the total county population lives. The population of the county is predominantly white. It was estimated in 1970 that 91% of the residents were caucasian. The county also appears to be relatively affluent, since the median income in 1970 was approximately $11,000 and only 10.6% of the households were considered falling below poverty level.[67]

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[67]U.S., Census, 1970.

The juvenile court of County X was esbtablished to handle referrals of youths under the age of 18 for criminal offenses and so-called juvenile offenses, such as runaway and truancy. The court is also responsible for handling referrals in dependency and neglect cases but these types of referrals constitute only a minor portion of their workload. In 1975 the juvenile court of county X handled a total of approximately 2,250 offense referrals involving about 1,600 youths.

Generally, the manner in which the agency operates is that the police, schools, parents or other interested parties may make a referral concerning an alleged offense to the court. Shortly after the receipt of the referral, a referee reviews it and makes a determination of whether to dismiss the case, refer it to another agency or to continue the case within the court system. If it is continued then it is sent to a field services unit which may either make an intake background screening or an update of existing information which was collected if the child had been referred to the court previously. An intake background screening consists of collecting relevant information concerning the child such as family situation, offense, school situation and the like. At this point field services may also elect to dismiss the case or refer it elsewhere for alternative services. Or, the case may be continued within the court system in which case there will generally be a preliminary hearing. The

preliminary hearing may be held by a referee or the judge and at this point a determination of sufficiency for formal adjudication is made. The case can then be sent on to the formal adjudication hearing or once again it may be dismissed or sent elsewhere for services.

The formal hearing can be handled by either the judge or a referee. Although this is not really a formal hearing in the strictest sense of the term, as adult hearings are, it is at this point that the child or his parents may exercise or waive a number of their legal rights as outlined in the Gault case. In terms of this investigation the most important right they can choose to exercise is the right to counsel. At the formal hearing the judge or referee, as noted earlier, has the option of dismissing the case or referring it to another agency if it is felt that further court involvement is not in the child's best interests. Or they may adjudicate the child delinquent and make him a temporary or permanent ward of the court and then place the child on probation in his own home, a relative's or a foster home. This probation may be for a specified or indefinite period of time. The child may also be sent to juvenile home for confinement, and once again this may be for a specified or indefinite period of time. Also the child may be sent to a private institution or he may be committed to a state institution through the State Department of Social Services. Also, as noted earlier, the judge or referee may defer the disposition for a period

of time by taking the matter under advisement and later deciding the disposition.

All through this process the agency collects relevant background data, offense information and recommendations and decisions for each stage of the court process. This information takes the form of specific agency forms, memorandum as well as narrative reports. All these pieces of information are stored in separate case files for each child referred to the court. It was from these case files that the data on the relevant variables investigated in this study were collected.

Independent and Dependent Variables

The case files for some 1,607 youths referred to the court in 1975 formed the basis for data collection. There were actually more than 1,607 youths referred to the court in 1975 but the files on the additional youths were not available at the time of data collection. This was primarily due to processing constraints in the agency. The number of missing files, however, was small, perhaps not more than fifteen. So I assume that the 1,607 youths were representative of the total population referred to the court in 1975. The files of the 1,607 youths were investigated for the existence of a formal disposition hearing either in 1975 or at some time previously. So, for example, a child could have been referred for an offense in 1975 and the referral was dismissed prior to adjudication, but in 1974 he had been referred for another offense and in that situation there was a formal

disposition. The 1974 disposition would be included as a dependent variable event, while the 1975 referral would not. Alternatively, if a child was referred twice in 1975 and each referral went to a disposition hearing then each hearing was included in the dependent variable as a single event, even though the same child was involved in both hearings. This was done since I was interested in the outcome of the hearing event and the impact of attorneys on that event rather than on the individual child. There is one possible error in treating each hearing as a separate event. It is possible that a child could have a single hearing for more than one referral. In this situation the court could have chosen to overlook one of the referrals and based the disposition on the more serious one. Thus, strictly speaking there would not be independent hearing events for each referral. However, during the data collection I found little indication that this may have occurred and I will still make the assumption that each hearing for a particular referral was an independent event.

As mentioned earlier the disposition may come immediately following the formal hearing or the decision may be deferred for a period of time by taking the case under advisement. I considered both of these situations to be outcomes of the disposition hearing and I combined them as the dependent variable. That is, I have made no distinction in this analysis between outcomes following the hearing and outcomes which

follow a period of taking the case under advisement. It is my contention that the situation where the case is taken under advisement is not significantly different than the original disposition hearing. I suspect that whatever impact an attorney may have will be made during the actual hearing and the adjudicator's decision will be based on that impact, whether or not he takes the matter under advisement. I realize, however, that it may be argued that taking the matter under advisement is a situation such that the judge or referee is observing the child's behavior pending disposition. Thus, it is more likely that the disposition will be lenient if the child is on good behavior and more harsh if he misbehaves. The reasons for taking the case under advisement were not specified in the case files so I cannot conclude that decisions following advisement are different from those immediately following the hearing. So, I elected to combine the two outcomes into a single dependent varaible for clarity in interpreting attorney impact, realizing that such a combination may result in the loss of information.

The dispositions that a judge or referee may impose and the way in which the dispositions were categorized in the data collection instrument were as follows: (1) Dismiss; (2) Probation in the child's own home; (3) Probation in a relative's home; (4) Probation in a foster home; (5) Commitment to a private institution; (7) Commitment to a state

institution; and (8) Other dispositions. Dismissal and all three types of probation were combined in the analysis as non-institution dispositions. This was done since it was felt that these types of outcomes are the less serious possibilities and the ones which would be more likely if an attorney was having a favorable impact on the hearing. It was also felt that such an outcome reflected a feeling by the court that the child could function with minimal restriction of his activities in the environment. Commitment to the juvenile home, a private institution or a state institution were combined into a new category in the analysis as institutional placement. The category of commitment to a state institution may not necessarily mean institutionalization, since this really means commitment to the State Department of Social Services, which has its own capability to place a child in an institution, a halfway house or on some sort of probation. However, this was included with the other two institutional placement outcomes since the commitment to the department is considered to be a very serious disposition and one in which the child is made a ward of the state and is removed from his environment. Further, the case files indicated the child was in fact generally placed in an institution when committed to the department. Thus, these outcomes were considered to be of a more serious nature and the ones which attorneys would seek to avoid for the child. The category of other dispositions concerned a

number of other various outcomes which could not adequately be placed into serious or nonserious categories and so they were not included in the analysis.

Information concerning the outcome of the hearings was found both in the memorandum of the formal hearing and the official court orders of adjudication. If there was an indication that a formal hearing had taken place but there was no evidence in the case files of the actual disposition then the hearing was not included in the analysis.

As noted in the hypothesis, attorney presence is the independent variable. If an attorney was present at a particular hearing generally there was a specific document included in the case file indicating that a particular attorney represented the youth. Also, attorney presence could be located by reading the memorandum of the formal hearing. As a check it was also necessary to look at other documents in the file concerning waiver of rights to insure that those with no indication of attorney presence had indeed not requested representation. Attorney presence was categorized in the collection instrument as follows: (1) None; (2) Retained; (3) Appointed. As noted earlier, retained and appointed attorney categories were combined for purposes of analysis. This may have created some distorted results in that retained and appointed attorneys may be having quite different and perhaps offsetting influences on the outcomes of the hearings. However, I have assumed that if the theoretical considerations

outlined earlier are valid then there would be little practical difference in the manner in which the attorneys function in court. Either type of attorney should still be an advocate, a helpful fact-finder and a defender against the abuse of the court, regardless of their means of employment. Certainly this assumption is subject to question since some would argue that privately retained attorneys are less familiar with the functioning and organization of the juvenile court. It could be that attorneys with the public defender's office are more familiar with juvenile court since they may be in contact with the court more often. It could also be argued that private attorneys could be more effective since they tend to represent the more affluent youths and probably have more resources to bring to bear in the juvenile court. Regardless of these arguments, however, it is my contention that either type of counsel will perform the role designated applicable for juvenile advocacy, and that, therefore, distinctions between retained and appointed are not so serious as to jeopardize the findings of this study.

Once again in situations where information was missing or not applicable the cases were not included in the following analysis.

Control Variables

Offense was the first control variable. The data concerning the type of offense was located on the referral form

as well as in the petition, memorandum of the formal hearing and the field services background screening report. Offense in the collection instrument was categorized as follows:

01. Murder
02. Negligent Manslaughter
03. Forcible rape
04. Robbery
05. Aggravated Assault
06. Burglary
07. Larceny (over $100)
08. Larceny (under $100)
09. Auto Theft
10. Simple Assault
11. Forgery, fraud
12. Stolen Property (over $100)
13. Stolen Property (under $100)
14. Arson
15. Weapons
16. Commercial Sex
17. Other sex
18. Narcotics possession
19. Narcotics sale
20. Gambling
21. Liquor driving
22. Liquor possession
23. Drunkeness
24. Disorderly conduct
25. Traffic
26. Vandalism
27. Curfew
28. Runaway
29. Truancy/school
30. Incorrigible
31. Other juvenile
32. Other adult
98. No offense

These categories were broken down into adult felony offenses, adult misdemeanor offenses and status offenses, that is, juvenile offenses. Adult felony offenses included the following crimes: Murder; Negligent Manslaughter; Forcible rape; Robbery; Aggravated assault; Burglary; Larceny over $100; Arson; Auto theft; Forgery, fraud; Stolen property over $100;

Weapons; Narcotics possession; Narcotics Sale; and other adult offenses.

Adult misdemeanor offenses included the following categories: Larceny under $100; Simple Assault; Stolen property under $100; Commercial and other sex; Gambling; Liquor offenses including drunkeness; Disorderly conduct; Traffic; and Vandalism. Curfew, runaway, incorrigibility and other juvenile offenses were categorized as status offenses. The category of no offense occurred when a child was referred to the court for unspecified behavior or when the referring agency or person simply wished to have the court investigate possible infractions. This category was thus not included in the analysis.

The race of the individual, which was the second control variable was located in the case file both in the background history, the referral petition and the police report, if applicable. Race was categorized as follows: (1) White; (2) Black; (3) American Indian; (4) Oriental; (5) Latin (Spanish); (6) Other. Since white was the predominant race of individuals referred to the court it was necessary to collapse the race categories into white and non-white to gain a reasonable reflection of the impact of race. Categories two through six were combined in the non-white category.

Sex was quite obviously categorized as male and female.

Previous referrals were indicated in the collection instrument by the actual number of times that a child had been

referred to the court in the past. This data was compiled by simply counting the number of previous referral forms existing in the case file. The actual number of previous referrals was broken down into categories of none, one previous and two or more previous referrals for analysis. These categories were chosen because it was felt that a previous history would have an impact on the hearing outcome, particularly if the child was a repeat offender. That is, it was felt that the court would tend to be more lenient in its handling of a youth who had never been referred before or maybe only one other time. On the other hand, it was felt the court would be more harsh on those who were coming before the court for at least the third time. All previous referrals were included in this variable whether or not the referral had ended up at the formal adjudication stage. This was done since the record of all previous referrals, even those which were dismissed, were available to the adjudicator of the hearing.

Previous known delinquent behavior was simply categorized on the data collection instrument as yes or no. This data was found in background reports and supplementary narratives made by investigators and probation officers or other interested personnel. If there was some indication in the records that the child had displayed delinquent type behavior in the past, although it had not been officially brought to the court's attention, then the "yes" category was the appropriate

response. However, if there was nothing in the file to indicate that there had been previous unreferred delinquency then, of course, "no" was the response.

The next control variable was who adjudicated the hearing. As noted earlier in this chapter, this could have been either the judge of the court or one of the referees. No distinction was made between the different referees, and the categories available on the collection instrument were merely judge or referee. No distinction between referees was made because the difference which was being investigated was between the legally trained judge and the non-trained referees. This information was found in the memorandum of the hearing. The judge signed all the official court orders but the one who actually held the formal hearing had to sign the memorandum. This signature was also checked against the interchange of questions in the memorandum to insure the correct party had indeed adjudicated the hearing.

Prosecutor's presence was the next control variable and this was once again categorized as "yes" or "no". This information was again found in the memorandum of the hearing, as well as the memorandum concerning notification of witnesses and interested parties. Prosecutors were not named in the case files so no distinction could be made between different prosecutors. Indeed, it was not known if more than one prosecutor actually participated in the hearings.

Plea was categorized on the data collection instrument as

guilty, not guilty and no contest. This information was also found in the hearing memorandum where there was a specific section concerning plea. No contest was eliminated as a category for analysis because only one child chose to exercise this plea.

This, then, is the manner in which the data was collected for the various variables of interest in this study and the manner in which the categories were collapsed or eliminated for analysis.

POSSIBLE ERRORS AND CONSEQUENCES

As I noted in the variable definition section of this chapter the manner in which I collapsed the categories of the variables could have caused distortion in the data. One of the examples I discussed was the problem of combining retained and appointed attorneys into a single category. By doing this I am able to get at the overall effect that all attorneys are having but I have also lost any distinction there may be between the two types of attorneys. The same problems extend to all the other variables and the manner in which they were collapsed.

Collapsing of the dependent variable loses any distinction between dismissal and the various types of probation dispositions. Also any distinctions between the various types of institutionalization is necessarily lost. Race ignores any distinction between the various non-white categories. Combining various offenses loses the distinctions

between handling of specific types of crimes. Previous referrals were categorized quite artibrarily and such a scheme may not at all represent what the court considers to be a long previous record. Although it would be difficult to categorize previous unreferred delinquency in another manner, distinctions between the types of previous behavior is lost. For example, two children may have had indications of previous unreferred delinquency in their files but one child's behavior may have been school trouble, while the other's may have been an offense committed in another state and yet they would be categorized identically. As I also noted earlier, the categorization of who adjudicated the hearing also loses sight of possibly valuable information. Different referees may act quite differently in the hearings and these differences may offset one another by combining all referees into a single category. Prosecutor's presence suffers from the same problem. As noted earlier, there may be a variety of prosecutors participating in the hearings and individual impacts may be quite different, yet these distinctions are also lost in the collapsing process.

Although I am aware of these problems resulting from my manipulation of the data, I wish to emphasize that I am investigating general trends and not specific differences in all the variables. Furthermore, the low total number of subjects studied necessitates collapsing in order to recognize general relationships and impacts of the various variables studied. It should be stressed, however, that the results

and conclusions of this investigation should be viewed with a great deal of caution due to the possibility of data distortion due to the process of categorizing the variables.

A great deal of caution should also be exercised in generalizing the findings and conclusions of this study to other jurisdictions. The character of the county and the juvenile court which was studied is not necessarily representative of the juvenile justice system as a whole. It is quite possible that this court operates in an environment quite different from the environments of the bulk of juvenile courts. For example, the majority of youths referred to this court are white, but many urban courts referrals consist primarily of non-white youths. Also this county tends to be rather affluent while other counties in the state and the nation may not have this same level of social economic status. Another difference between this county and others is that they tend to devote substantial resources to the operation of their juvenile court but other areas probably do not support their juvenile justice systems quite so generously. Further, since the total number of cases investigated is so low, only 742, caution should be exercised in relating these findings to other jurisdictions and generalizing beyond County X.

Despite these drawbacks and potential errors, this study and the manner in which it was pursued offers some insight into an area of the juvenile justice system which has not been

thoroughly investigated. Even though the findings must be looked at with caution there nonetheless is the possibility that this investigation will provide some insight into the functioning of the juvenile court system and the validity of the theoretical basis for the insistence on the right to the presence of counsel in juvenile court.

CHAPTER IV

DATA PRESENTATION AND ANALYSIS

Looking at all the files for youths referred to the juvenile court of County X in 1975, it was found that there were 742 instances of formal hearings in that year or the past. Out of those 742 hearings attorneys were present in court only 88 times, or in other words, attorneys represented referred youths in formal hearings only 11.9% of the time. I find this low proportion of representation rather unusual, considering the fact that presence of counsel is a right in these types of hearings where the possibility of institutionalization exists. One would assume that youths in these types of hearings would exercise their right to counsel more often than the data indicate.

Overall, dismissals and probation, or in other words, non-institutional dispositions were the most prominent types of outcomes of the formal hearings. Out of the total of 742 hearings, 561 of them resulted in this type of disposition. That means that 75.6% of the hearings resulted in the less serious forms of dispositions. This fact seems consistent with the ideals of rehabilitation and less harshness in the handling of youths in juvenile courts.

Table 1 presents the data concerning the association between the independent variable, attorney presence, and the

dependent variable, outcome of the formal hearing. As indicated previously, dismissal and probation, the non-institutional dispositions, were the most prominent outcomes of the hearings, accounting for 75.6% of the total.

Table 1: Disposition Hearing Outcome by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	506	(77.4)	55	(67.5)	561	(75.6)
Institutional Placement	148	(22.6)	33	(37.5)	181	(24.3)
	654	(100)	88	(100)	742	(100)

Q = .34

However, those having an attorney present are sent to an institution 37.5% of the time, while those who are not represented are sent to institutions only 22.6% of the time. Yule's Q indicates this is a moderate association, in terms of strength. Thus, the initial findings of this bivariate association do not support the test hypothesis. Indeed, the conclusion reached from this data is in complete contradition to the test hypothesis, for attorneys appear to be having a negative impact on the outcomes of the hearings. This apparent association may be attributable to other alternative

variables, however. So, as was discussed earlier it is necessary to control for the effects of relevant alternative variables to investigate the possibility of this phenomenon.

Offense

34.5% of the formal hearings were for adult felony type offenses, 33.4% of the hearings were for adult misdemeanor type offenses and 32.1% of the hearings were for status type offenses. So, overall, each of the three offense categories were about evenly represented in the formal hearings in the court.

Table 2 demonstrates that offense type is also related to the exercise of the right to counsel. In this case, clearly, the more serious the offense the more likely it will be that the child chooses to have counsel present at the hearing. Only 7.3% of the status offenders had counsel present, while 11.9% of the misdemeanants did and 16.3% of the felony offenders did.

Table 2: Attorney Presence by Offense

	Offense							
	Felony		Misd.		Status		N	
Attorney	N	(%)	N	(%)	N	(%)	Total	(%)
No Attorney	210	(83.7)	214	(88.1)	217	(92.7)	641	(88.1)
Attorney Present	41	(16.3)	29	(11.9)	17	(7.3)	87	(11.9)
	251	(100)	243	(100)	234	(100)	728	(100)

G = +.18

It is also apparent that offense type and disposition are related in that the more serious felony offenses and the status offenses tend to receive the harsher sentences while the misdemeanants tend to receive the lesser sentences, that is dismissal and probation (Table 3, 4, 5).

For those having hearings for felony type offenses, overall once again the majority received non-institutional placements. However, when an attorney was present there was again a greater likelihood that the disposition would be harsher than when the child was not represented. Those cases where attorneys were present resulted in institutional placement 46.3% of the time, while those which did not have attorneys present resulted in such a disposition only 22.9% of the time (Table 3). Yule's Q indicates this association is rather strong and again the test hypothesis is denied and the opposite situation occurs in felony cases.

Table 3: Felony Dispositions By Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	162	(77.1)	22	(53.6)	184	(73.3)
Institutional Placement	48	(22.9)	19	(46.3)	67	(26.7)
	210	(100)	41	(100)	251	(100)

Q = .49

When the hearing was for adult misdemeanors the same association occurred. For these types of offenses, when an attorney was present harsher dispositions occurred in 34.6% of the hearings while where there was no attorney such dispositions occurred only 16.8% of the time. Yule's Q indicates a moderate association (Table 4).

Table 4: Misdemeanor Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	178	(83.2)	17	(65.5)	176	(79.6)
Institutional Placement	36	(16.8)	9	(34.6)	45	(20.4)
	214	(100)	26	(100)	243	(100)

Q = .26

For status offenses institutional placements occurred at about the same proportion whether or not an attorney was present. There is a slight trend towards the negative impact of attorney presence on outcomes, but Yule's Q indicates that the association is weak (Table 5).

So it appears that offense and attorney presence are both having an impact on the hearing outcome and offense is also having an impact on choosing to have attorney representation. But in this control situation attorneys still

Table 5: Status Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	163	(75.1)	12	(70.6)	175	(75)
Institutional Placement	54	(24.9)	5	(29.4)	59	(25)
	217	(100)	17	(100)	234	(100)

Q = .11

appear to be having a negative impact on the hearing outcomes, denying the test hypothesis.

Race

In table 6, it can be seen that non-whites are far more likely to elect to exercise their right to counsel. 21% of the non-whites elected to have attorneys presence, while only 8.2% of the whites had attorneys present at the hearings.

There is little difference between the race categories as to dispositions, although non-whites are slightly more likely to receive institutional placements (Table 7, 8). Whites significantly outnumber non-whites in formal hearing attendance. Whites were present in 74.1% of the hearings while non-whites were present in 25.9% of the hearings. This is not surprising considering the racial composition of the county as a whole, although non-whites appear to be

overrepresented in the court.

Table 6: Attorney Presence by Race

	Race					
	White		Non-White		N	
Attorney	N	(%)	N	(%)	Total	(%)
No Attorney	490	(91.8)	147	(79)	637	(88.4)
Attorney Present	44	(8.2)	39	(21)	83	(11.5)
	534	(100)	186	(100)	720	(100)

Q = .49

For whites there is a very slight, almost non-existent association between the independent and dependent variables. Proportionately, when attorneys are present for whites there is a slightly greater likelihood that institutionalization will occur, but the proportions are so close, it can safely be said that no association exists (Table 7).

For non-white children, however, there is a strong association between attorney presence and outcome as indicated by the Yule's Q value of .54. For non-white youths with no attorney present in the hearings, institutional placement occurred 20.4% of the time. However, when there is an attorney present institutional placement occurs more than twice as often; 46.2% of the time. This once again is in direct contradition to the test hypothesis (Table 8).

Table 7: White Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	382	(78)	33	(75)	415	(77.7)
Institutional Placement	108	(22)	11	(25)	119	(22.3)
	490	(100)	44	(100)	534	(100)

Q = .08

Table 8: Non-white Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	117	(79.6)	21	(53.8)	138	(74.2)
Institutional Placement	30	(20.4)	18	(46.2)	48	(25.9)
	147	(100)	39	(100)	186	(100)

Q = .54

Once again consistently the test hypothesis has been denied and apparently race has an impact on the choice of attorney presence, although this association may be spurious, which in turn has an impact on the outcome of the formal

disposition hearing.

Sex

When controlling for sex it was found that the majority of youths referred to the court that had formal hearings were male. But there is very little difference between males and females in terms of dispositions or in electing to have representation of counsel at the formal hearing. They both received institutional placement about the same proportion of the time (Table 10, 11) and they both elected to have attorney presence about the same proportion of the time (Table 9).

Table 9: Attorney Presence by Sex

	Sex					
	Male		Female		N	
Attorney	N	(%)	N	(%)	Total	(%)
No Attorney	479	(89)	172	(89.6)	651	(89.1)
Attorney Present	59	(11)	20	(10.4)	79	(10.8)
	538	(100)	192	(100)	730	(100)

Q = .03

Looking at the association for males, when attorneys are present they tend to receive harsher dispositions than when attorneys are not present. 40.7% of the males who had formal hearings with an attorney present received institutional

placement, while only 23.6% of the males who did not have attorneys present received this type of disposition. The association is moderate in strength, but, once again the association is opposite of the expected one suggested in the test hypothesis (Table 10).

For females the same association is present, in that 35% of those with attorneys present received institutional dispositions while only 19.8% of those without attorneys present received such a disposition. The association between the independent and dependent variables is also moderate in strength for females (Table 11).

Table 10: Male Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	366	(76.4)	35	(59.3)	401	(74.5)
Institutional Placement	113	(23.6)	24	(40.7)	137	(25.5)
	479	(100)	59	(100)	538	(100)

Q = .38

Previous Referrals

37% of the hearings involved youths which had never been referred to the court before, 26.7% of the hearings involved youths who had been referred to the court only once before

Table 11: Female Dispositions by Attorney Presence

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	138	(80.2)	13	(65)	151	(78.6)
Institutional Placement	34	(19.8)	7	(35)	41	(21.3)
	172	(100)	20	(100)	192	(100)

Q =.37

and 36.7% of the hearings involved youths who had been referred to the court at least two previous times. Previous number of referrals has an odd impact on whether or not a child exercises his right to assistance of counsel. Those with multiple previous referrals chose to have representation most often, about 14% of the time. However, the group which chose to be represented the least often was the one which had been referred to the court only once before (Table 12).

It is also quite apparent that the number of previous referrals is having a strong impact on the dispositions received at the formal hearing. For those with no prior referrals, institutional placement occurred only 10.6% of the time (Table 13). Youths who had been referred to the court only once before received the harsher treatment only 20% of the time, while those with multiple prior referrals were institutionalized 38.6% of the time (Table 14, 15). Clearly

Table 12: Attorney Presence by Previous Referrals

	Previous Referrals							
	None		One		Two or More			
Attorney	N	(%)	N	(%)	N	(%)	Total	(%)
No Attorney	234	(88.6)	179	(91.8)	227	(86)	640	(88.5)
Attorney Present	30	(11.4)	16	(8.2)	37	(14)	83	(11.4)
	264	(100)	195	(100)	264	(100)	723	(100)

G = +.21

the more referrals the youth has, the more likely he will receive institutionalization, and this information will influence the outcome of the hearing as much as, if not more than, the presence of an attorney.

For first time referrals, attorney presence had a strong impact on the outcome of the hearing. When an attorney was present in the hearing, 26.7% of the time the first time referral received institutional placement. However, when no attorney was present, first time referrals receive the harsher treatment in only 8.5% of the cases. The association was strong as indicated by a Yule's Q of .59 (Table 13).

In the hearings where the youth had been referred to the court once before there was almost no association between attorney presence and outcome. These youths were equally likely to receive institutional placement whether or not an attorney was present in the hearing (Table 14).

Table 13: Disposition by Attorney Presence
For Those With No Previous Referrals

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	214	(91.5)	22	(73.3)	236	(89.4)
Institutional Placement	20	(8.5)	8	(26.7)	28	(10.6)
	234	(100)	30	(100)	264	(100)

Q = .59

Table 14: Disposition by Attorney Presence
For Those With One Previous Referral

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	143	(79.8)	13	(81.3)	156	(80)
Institutional Placement	36	(20.1)	3	(18.8)	39	(20)
	179	(100)	16	(100)	195	(100)

Q = .04

In the situation where the youth had been referred to the court two or more previous times, attorney representation again appeared to have a negative impact on the outcome of

the hearing. There is a small association between attorney presence and outcome in that 48.9% of those with attorneys received the harsher dispositions, while 37% of those who were not represented received this type of outcome (Table 15).

So, once again in this control situation the test hypothesis has been consistently denied and the association originally found is not directly attributable to previous referrals.

Table 15: Dispositions by Attorney Presence For Those With Two or More Previous Referrals

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	143	(63)	19	(51.4)	162	(61.4)
Institutional Placement	84	(37)	18	(48.6)	102	(38.6)
	227	(100)	37	(100)	264	(100)

Q = .23

Unreferred Delinquent History

When controlling for unreferred delinquent history once again it was found that the test hypothesis was denied and the opposite impact of attorney presence was demonstrated. The majority of those having formal hearings had some indication of unreferred delinquency in their case files, some

75%. The choice of exercising the right to counsel representation does not seem to be dependent on whether or not the youth had a history of unreferred delinquency (Table 16). However, it does appear that such a history is having an impact on the outcome of the hearing, at least as strongly as attorney presence. Those with a history of unreferred delinquency are more likely to be institutionalized than are those without such a history (Table 17, 18).

Table 16: Attorney Presence by History of Unreferred Delinquency

	Unreferred Delinquency					
	History		No History		N	
Attorney	N	(%)	N	(%)	Total	(%)
No Attorney	394	(87.4)	134	(89.3)	528	(87.8)
Attorney Present	57	(12.6)	17	(10.6)	74	(12.3)
	451	(100)	150	(100)	601	(100)

Q = .07

For those who did have a history, there was again a clear indication that when an attorney was present the likelihood of harsher treatment increased. 45.6% of those with attorneys present received harsher institutional placements as compared to only 27.4% of those without attorneys (Table 17).

Where there was no history of unreferred delinquency, attorneys were present only three times when institutional

Table 17: Disposition by Attorney Presence For Those With A History of Unreferred Delinquency

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	286	(72.6)	31	(54.4)	371	(70.3)
Institutional Placement	108	(27.4)	26	(45.6)	134	(29.7)
	394	(100)	57	(100)	451	(100)

Q = .38

placement occurred but the same association exists (Table 18).

Table 18: Disposition by Attorney Presence For Those Without A History of Unreferred Delinquency

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	115	(85.9)	14	(82.4)	129	(86)
Institutional Placement	19	(14.1)	3	(17.6)	21	(14)
	134	(100)	17	(100)	150	(100)

Q = .13

Who Adjudicated

Referees handled slightly more disposition hearings than did the judge of the court, although the cases were almost evenly split. The referee handled 50.8% of the cases while the judge handled 49.2% of the hearings. It is quite apparent that the disposition outcomes are also a result of who adjudicated the hearings as well as the presence of counsel. The judge of the court tends to institutionalize youths far more often than the referees (Tables 20, 21). Also it can be seen that who adjudicated the hearings had an impact on whether or not the right to counsel was exercised. This is a quite strong association where 18.9% of the time the judge handled the case an attorney was present, while attorneys were present in only 4.3% of the cases that the referees handled (Table 19).

Table 19: Attorney by Who Adjudicated

	Who Adjudicated					
	Judge		Referee		N	
Attorney	N	(%)	N	(%)	Total	(%)
No Attorney	291	(81.1)	354	(95.7)	645	(88.4)
Attorney Present	68	(18.9)	16	(4.3)	84	(11.5)
	359	(100)	370	(100)	729	(100)

Q = .68

For those situations where the judge handled the hearing and attorneys were present, 39.7% of the cases resulted in institutional placements. When there was no attorney present, however, the harsher dispositions occurred only 29.9% of the time. The association between the independent and dependent variables is weak but once again the test hypothesis is denied with the impact of attorneys presence being exactly opposite of what was expected (Table 20).

In situations where the referees handled the cases the same trend occurred with attorney's presence having a negative impact on the outcomes of the hearings. There is a moderate association between the variables in this situation (Table 21).

Table 20: Disposition by Attorney Presence for Judges

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	204	(70.1)	41	(60.3)	345	(68.2)
Institutional Placement	87	(29.9)	27	(39.7)	114	(31.7)
	291	(100)	68	(100)	359	(100)

Q = .21

Table 21: Disposition by Attorney Presence For Referees

Disposition	Attorney Presence: No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	299	(84.5)	11	(68.7)	310	(83.8)
Institutional Placement	55	(15.5)	5	(31.3)	60	(16.2)
	354	(100)	16	(100)	370	(100)

Q = .42

Prosecutor Presence

Prosecutors were present in only 7% of the formal hearings. Of course, it seems only logical that the presence of defense and prosecuting attorneys would be related. Table 22 shows that there were only a few cases where only prosecutors were present and that 71% of the time a prosecutor appears in formal hearings a defense attorney also appears. Alternatively, 46% of the time a defense attorney is present, a prosecutor is also present. Thus, it is quite apparent that the adversarial format suggested by so many critics of the juvenile court is operating quite often in the juvenile court of County X.

Prosecutor's presence alone has a weak impact on the outcome of the hearings as 30.6% of the time a prosecutor is in the court, institutionalization occurred. But 22.7% of the time that he was not there this type of placement also

Table 22: Attorney Presence by Prosecutor Presence

	Prosecutor Present		Prosecutor Not Present			
Attorney	N	(%)	N	(%)	Total	(%)
Present	35	(71.4)	41	(6.1)	76	(10.6)
Not Present	14	(28.6)	623	(93.8)	637	(89.3)
	49	(100)	664	(100)	713	(100)

Q = .95

occurred (Table 23, 24). Thus, it appears that the presence of defense counsel is having the greater impact on the outcomes of the hearings.

When a prosecutor is present there is a very strong association between attorney presence and outcome. However, the apparent strength of the association is to some extent a result of the fact that there was only one case where a prosecutor was present without the child being represented and the disposition being institutional placement (Table 23). This unique event may be distoring the apparent strength of the association. However, the same trend concerning negative impact of defense counsel is still apparent and the test hypothesis receives no support.

When there is no prosecutor present and no defense counsel present, youths were sent to institutions only 21.8% of the time. However, when defense counsel were present without

Table 23: Disposition by Attorney Presence When Prosecutor Present

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	13	(92.9)	21	(60)	34	(69.4)
Institutional Placement	1	(7.1)	14	(40)	15	(30.6)
	14	(100)	35	(100)	49	(100)

Q = .79

prosecutors, institutional placement occurred 36.6% of the time. This moderately strong association once again contradicts the test hypothesis (Table 24).

Table 24: Disposition by Attorney Presence When Prosecutor Not Present

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	487	(78.2)	26	(63.3)	513	(77.3)
Institutional Placement	136	(21.8)	15	(36.6)	151	(22.7)
	623	(100)	41	(100)	664	(100)

Q = .34

Plea

90% of the time youths entering the formal disposition hearing plead guilty. The plea has virtually no impact on the disposition (Tables 26, 27), but those pleading not guilty insisted on representation 39.7% of the time as compared to only 7.8% of the time for those who plead guilty (Table 25).

Table 25: Attorney Presence by Plea

	Plea					
	Guilty		Not Guilty		N	
Attorney	N	(%)	N	(%)	Total	(%)
Present	48	(7.8)	27	(39.7)	75	(89)
Not Present	568	(92.2)	41	(60.3)	609	(11)
	616	(100)	68	(100)	684	(100)

Q = .77

In the situation where the youths have plead guilty there is a weak association between counsel presence and outcome of the hearing. Once again the same trend concerning the impact of attorney presence is apparent, attorney presence increases the likelihood of being institutionalized (Table 26).

When the child plead not guilty there is a strong association between attorney presence and outcome. When the child

Table 26: Disposition by Attorney Presence For Those Pleading Guilty

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	441	(77.6)	32	(66.6)	473	(76.8)
Institutional Placement	127	(22.4)	16	(33.3)	143	(23.2)
	568	(100)	48	(100)	616	(100)

Q = .27

plead not guilty and elected to have counsel present, institutional placement occurred 40.7% of the time. However, if the plea was not guilty and there was no attorney present representing the child such a harsh disposition occurred only 12.2% of the time (Table 27). So, when a child pleads not guilty the impact of attorney presence is quite detrimental, contrary to the test hypothesis. Thus, it appears that plea has an impact on the exercise of the right to counsel which has a negative impact on outcomes.

Offense and Race

The first two control situations demonstrated that offense, race and attorney presence are interrelated and have an impact on the outcomes of the hearings of the court. In this control situation the focus will be investigation of these interrelationships. This will be done by introducing

Table 27: Disposition by Attorney Presence For Those Pleading Not Guilty

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	36	(87.8)	16	(59.3)	52	(76.3)
Institutional Placement	5	(12.2)	11	(40.7)	16	(23.5)
	41	(100)	27	(100)	68	(100)

Q = .66

a second order control of race on the first order control of offense.

Ignoring the issue of attorney presence for a moment we can see that although race is not associated with disposition, it is indeed associated with the type of offense being committed. Whites tend to commit the status and misdemeanor type offenses while non-whites tend to commit the felony and misdemeanor offenses. 61% of the whites were referred for status and misdemeanor offenses and 84.1% of the non-whites were referred for misdemeanors and felony offenses (Table 28). Race apparently is affecting offense which in turn is associated with outcome.

In the case of whites who committed adult type felonies, they were responsible for 63% of the felony cases before the court. Non-whites accounted for 47% of the felonies

Table 28: Offense by Race

Offense	Race: White N	White (%)	Non-White N	Non-White (%)	Total N	Total (%)
Felony	145	(28.2)	85	(46.7)	230	(32.9)
Misdemeanor	169	(32.8)	68	(37.4)	237	(34.0)
Status	201	(39)	29	(15.9)	230	(32.9)
	515	(100)	182	(100)	697	(100)

(Tables 29, 30). In the white felony situation the same trend that has been apparent in all the previous control situations is present with the attorney presence having a negative impact on the type of dispositions resulting from the hearing. There is a moderate association between the independent and dependent variables as indicated by a Yule's Q value of .31 (Table 29).

For non-white felons 54.2% of the time attorneys are present in the hearings the result is institutional placement while when no attorney is present they were sent to an institution only 26.2% of the time (Table 30). Clearly attorney presence once again is having a negative impact on the hearing outcomes, contrary to the test hypothesis.

Table 29: Disposition by Attorney Presence for White Felons

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	98	(76)	10	(62.5)	108	(74.4)
Institutional Placement	31	(24)	6	(37.5)	37	(25.5)
	129	(100)	16	(100)	145	(100)

Q = .31

Table 30: Disposition by Attorney Presence For Non-White Felons

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	45	(73.8)	11	(43.8)	56	(65.8)
Institutional Placement	16	(26.2)	13	(54.2)	29	(34.1)
	61	(100)	24	(100)	85	(100)

Q = .54

In the remainder of the tables the N's are quite small and care must be taken in making inferences from their contents,

although it is still worthwhile investigating apparent associations.

In the case of white misdemeanants there is a slight association suggesting that attorney presence is indeed having a favorable impact. In this situation 17.4% of those without attorneys received the harsher penalties while 14.3% of those with attorneys received institutional placements, although there are only two cases in this category (Table 31).

Table 31: Disposition by Attorney Presence For White Misdemeanants

	Attorney Presence					
	No Attorney		Attorney Present		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	128	(82.6)	12	(85.7)	140	(82.8)
Institutional Placement	27	(17.4)	2	(14.3)	29	(17.1)
	155	(100)	14	(100)	169	(100)

Q = .12

For non-white misdemeanants there is support for the negative impact of attorney presence on outcomes again. 27.2% of those with attorneys received institutional placement while only 14% of those without attorneys received the same sort of disposition (Table 32).

In the case of white status offenders the impact of

Table 32: Disposition by Attorney Presence For Non-White Misdemeanants

	Attorney Presence					
Disposition	No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	49	(86)	8	(72.7)	57	(83.8)
Institutional Placement	8	(14)	3	(27.2)	11	(16.1)
	57	(100)	11	(100)	68	(100)

Q = .39

attorney presence appears to be favorable although the association is very weak. 26.7% of those without attorneys received the more serious dispositions while only 21.4% of those having attorneys present received the same type of disposition. This situation does support the original test hypothesis (Table 33). In the case of non-white status offenders there are only 29 hearings and an attorney was present in only one of them so meaningful comparison cannot be made (Table 34).

Rearranging the data shows that non-white felons are more likely to receive harsh dispositions than white felons (Table 35). There is very little difference in the outcomes of hearings for white and non-white misdemeanants (Table 36). But, for status offenders whites are more likely to receive the harsher treatments (Table 37).

So looking at the combination of these variables it

Table 33: Disposition by Attorney Presence For White Status Offenders

Disposition	Attorney Presence: No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	137	(73.3)	11	(78.6)	148	(73.6)
Institutional Placement	50	(26.7)	3	(21.4)	53	(26.3)
	187	(100)	14	(100)	201	(100)

Q = .14

Table 34: Disposition by Attorney Presence For Non-White Status Offenders

Disposition	Attorney Presence: No Attorney N	(%)	Attorney Present N	(%)	N Total	(%)
Non-institution	23	(82.1)	1	(100)	24	(82.7)
Institutional Placement	5	(17.9)	0	(0)	5	(17.2)
	28	(100)	1	(100)	29	(100)

Q = inappropriate

Table 35: Disposition by Race for Felony Offenders

	Race					
	White		Non-White		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	108	(75)	56	(66)	164	(71.3)
Institutional Placement	37	(25)	29	(34)	66	(28.6)
	145	(100)	85	(100)	230	(100)

Q = .20

Table 36: Disposition by Race for Misdemeanor Offenders

	Race					
	White		Non-White		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	140	(82.8)	57	(83.8)	197	(83.1)
Institutional Placement	29	(17.1)	11	(16.2)	40	(16.8)
	169	(100)	68	(100)	237	(100)

Q = .04

appears that race coupled with a particular type of offense has an impact on the choice of attorney representation as well as hearing outcome. However, it is still apparent that attorney presence is having a large impact on the disposition,

Table 37: Disposition by Race for Status Offenders

	Race					
	White		Non-White		N	
Disposition	N	(%)	N	(%)	Total	(%)
Non-institution	148	(73.6)	24	(82.6)	172	(74.7)
Institutional Placement	53	(26.4)	5	(17.2)	58	(25.2)
	201	(100)	29	(100)	230	(100)

Q = .26

particularly in the non-white felony situations.

Throughout this analysis it has been consistently shown, except in a second order control situation, that the presence of an attorney is significantly affecting the outcomes of the hearings of the County X juvenile court. However, the test hypothesis has been consistently denied. Attorneys appear not to be having the anticipated positive impact but instead they are increasing the likelihood that youths who they represent will be institutionalized as compared to hearings where there is no counsel representation.

Moreover, it appears that race is associated with the type of offense the juvenile is charged with and whether or not the child elects to exercise the right to counsel. Furthermore, it appears that the type of offense affects the choice of attorney representation and affects the hearing outcome. Sex, however, appears to have little to do with either the

outcome of the hearing or the choice of attorney presence. Previous referrals is associated with attorney presence and type of disposition but unreferred delinquent history appears to be associated with disposition and not with exercising the right to counsel. Who adjudicates the hearing has a strong effect on the presence of counsel and the disposition of the case. Defense attorneys tend to be in court whenever prosecutors are but it appears that prosecutor's presence has little effect on the outcome of the proceedings. Plea does not affect disposition but it is strongly associated with the choice of attorney representation.

So, overall, it appears that many of the variables investigated in this study are interrelated and impact on each other in a number of ways. But the most signficant finding of this study has been that the test hypothesis has been consistently denied and the presence of attorneys consistently has a negative impact on the outcomes of hearings. That is, institutional placement is consistently more likely whenever a child is represented by counsel.

CHAPTER V

CONCLUSIONS AND IMPLICATIONS

The findings of this investigation clearly indicate that the original test hypothesis was denied. The presence of attorneys in a midwestern county juvenile court is not having a favorable impact on the outcome of dispositional hearings by increasing the likelihood of the case being dismissed or the child being placed on probation. Indeed, it was consistently shown that the presence of attorneys has a detrimental impact on the hearings, at least from the child's point of view. Invariably, despite the other factors investigated, the dispositions for institutional placement were proportionately greater when an attorney was present than when no attorney was present in a variety of similar situations.

As mentioned earlier, caution should be exercised in generalizing these findings to other jurisdictions and the juvenile justice system as a whole. However, if attorneys are having similar impacts in other court systems then a variety of questions need to be asked concerning the role attorneys have in the juvenile courts.

One would assume that if an attorney were acting as a skilled fact-finder that he would bring out information which

would be beneficial about a child to aid in securing a less serious disposition for the client. However, this does not appear to be happening in the juvenile court of County X. One possibility, which would explain the consistent negative impact of attorney presence, would be that he is not bringing out beneficial information concerning his client's situation. Indeed, the possibility may be that in bringing out facts unknown to the court, attorneys might be bringing out information that the court considers to be negative about the child. This may not be intentional on the part of the attorneys but when this negative information is brought to the attention of the court, the adjudicator must take it into account and thus may be more harsh on the child. A judge from another jurisdiction in the state where this investigation was conducted suggested that this situation may often occur and when it does, "attorney presence can actually be a disservice to the child."[65]

The theoretical foundations for the insistence on the presence of counsel in juvenile court hearings also suggest that attorneys will be helpful guides through the court system. Although, one cannot directly infer from these findings that attorneys are not providing this service to their clients, I would still question the utility of attorneys functioning

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[65]Honorable Ray C. Hotchkiss, interview, Michigan State University, October, 1976.

in this role. I do not see what particular benefit can be derived from helping a child through the complicated juvenile court system if once he is adjudicated the child is more likely to receive a harsher disposition from the court. I would suspect that such a role would have a detrimental effect, since the child could become disillusioned with the court system and its functioning if, after being guided through its complexity, he ends up being institutionalized.

Attorneys also are theoretically supposed to help the court by bringing to the court their specialized knowledge of alternative services and placements for the youths. If this is the case, then one would once again suspect that their presence would lead more often to a probationary disposition where these different and applicable programs could be utilized. But there is no indication of this unless these types of alternative programs are operating in institutions. I suspect that attorneys are probably not functioning in this type of role in this juvenile court, or the test hypothesis would have been supported.

Another role in which attorneys are theoretically operating is that of the delinquency prevention device. If they are indeed having an impact on dispositions by increasing the likelihood of institutionalization then I would submit that they are not acting as delinquency prevention agents. If children represented by counsel knew they were more likely to be sent to institutions then I would suspect that they

would be more bitter about the system. Being bitter would often mean a loss of respect for the court and its functioning, and thus, I suspect that prevention of future delinquency would not be likely. Furthermore, institutions, despite their rehabilitative goals, probably create more future delinquency by combining repeat offenders with first time offenders which could have been steered away from future delinquent activity.

The last theoretical foundation for the use of attorneys in juvenile court was that defense attorneys can operate as helpful advocates against the arbitrariness of the court. Also this advocacy could function as protection against hostile witnesses and biased interested persons. It is obvious that often an advocacy situation exists in the County X juvenile court as was demonstrated in the prosecutor control situation. But it does not appear that the protective role of the attorneys is being fulfilled. Advocacy does not in itself seem to be protecting the children from the arbitrariness of the court. Indeed this advocacy seems to be having a detrimental effect. When this role is performed then it appears that the sentences tend to be harsher, and that the chances of dismissals or probation are reduced.

Many supporters of the move to require counsel to be present in the juvenile courts did so because they thought counsel presence would help in the achievement of the goals of the juvenile court system. The major goal of the juvenile

court system has been the provision of rehabilitative services accomplished without the harshness attendant in the adult criminal system. If this is so, then one would expect that youths would receive the less serious and more treatment oriented dispositions rather than the punishment oriented dispositions. Overall, in the juvenile court of County X this tends to be the situation. However, when an attorney is injected into the process the likelihood of the harsher treatments increases. So, it would appear that the attorneys presence is not really aiding the achievement of the overall goals of the juvenile court system and, in fact, seems to be retarding their achievement.

Overall, then, the findings of this study would seem to suggest that attorney presence is having a detrimental impact on the achievement of the goals of the system and attorneys do not seem to be functioning in the roles which were the basis for the insistence on the juvenile's right to counsel. But, why are attorneys having exactly the opposite type of impact than would theoretically be expected? One possible explanation for this phenomenon was noted earlier. Perhaps due to the fact-finding mission of the attorney, he is bringing out negative as well as positive information concerning the child's situation, which means the adjudicator of the hearing must give a harsher disposition.

Another possible explanation for this phenomenon was expressed by Edwin M. Lemert when he discussed the problems

of legislating change in juvenile courts:

> Attorneys undoubtably feel pressure to do something for their clients, but if they become contentious in true adversary style they slow down the proceedings. Insisting on the right to cross-examine adds greatly to the work of the probation officer. He, as well as the witnesses, and even the judge, may become irritated particularly if he regards the case as open-and-shut and the intended disposition as lenient.[66]

Thus, an attorney's presence may in fact irritate the other participants so that the harsher dispositions are given in borderline cases.

A county judge in another state agreed with the argument that Lemert offered. The judge indicated that when an attorney is present in his court with a juvenile, he tends to tie up the court's time and concerns with motions and cross-examination of witnesses. When this procedural attitude is brought into the hearing, which the judge normally conducts in an informal manner, the judge then becomes more legalistic in his approach. That is, he sticks closely to law and procedure rather than informal investigation into the facts. When this happens, the judge admitted that he was much less likely to be lenient with the child. As he said, "If the child had an attorney and wants to play the legal procedure game then we play it too, all the way down the line."[67] The judge, who wished to remain unnamed, readily admitted to giving

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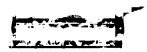
[66]Edwin M. Lemert, op. cit., 43.

[67]Unnamed Judge, interview, September 1976.

harsher dispositions in borderline cases when attorneys were present.

So an attorney, by his advocacy style, may in fact be causing the harsher dispositions for his client. The insistence on procedure and attorney presence in hearings which have been traditionally informal in nature, may be irritating the court to the point of punishing the child because of his insistence on the right to assistance of counsel. Additionally, the argument can be made that increased legalism in juvenile courts reduces the courts' flexibility, in terms of dispositions.

If this phenomenon is occurring in other jurisdictions for the reasons suggested, then there must be a great deal of investigation into the wisdom of the presence of counsel in juvenile court hearings. Indeed, the forthcoming American Bar Association Standards may suggest expansion of attorneys' participation in the juvenile court process. If attorneys are having this negative impact in hearings then one would have to be concerned about what other types of negative impacts counsel could have at other stages of the juvenile court process. Increased participation by attorneys could increase the hearing workload, could reduce dismissals and alternative referrals and increase institution populations by participating in other areas of the system if this same sort of negative impact is carried into the rest of the system.



All of this is not to say that the right to counsel is not a sound concept. As was shown in other studies, attorneys with intensive training in juvenile court advocacy and philosophy can have a favorable impact on the court and its functioning as was demonstrated in the experimental situation. So, the possibility for their active and positive participation exists. But it just does not seem to be occurring in the juvenile court of County X.

I would suggest a more extensive investigation into the actual operations of the court hearings when counsel is present to see what the actual causes of this negative phenomenon are. Perhaps this situation can be remedied by elimination of some of the biases of the court. Also, perhaps intensive training of attorneys who participate in juvenile courts may reduce the negative impact found in this study.

Whatever the solution to the problem may be, it is clear within the limits of this investigation, that the presence of attorneys can in certain circumstances have a negative impact on the outcomes of juvenile court hearings. But this investigation is merely a starting point in investigating the role and functioning of counsel in the juvenile court system. If this situation is prevalent in other jurisdictions, then a great deal of thought must be given to the theoretical foundations upon which the right to counsel exists. However, more sophisticated and in depth research must be focused on the participation of counsel before these issues can be adequately resolved.

APPENDIX

APPENDIX

SURVEY OF ACTIVE CASES

____ 3. SEX
1) Male (2) Female (9) Missing

____ 4. RACE
1) White (2) Black (3) American Indian
4) Oriental (5) Latin (Spanish) (6) Other
9) Missing

____ 6. OFFENSE

01. Murder	17. Other Sex
02. Negligent Manslaughter	18. Narcotics Poss
03. Forcible Rape	19. Narcotics Sale
04. Robbery	20. Gambling
05. Aggravated Assault	21. Liquor - Driving
06. Burglary	22. Liquor - Possession etc.
07. Larceny (over 100)	23. Drunkeness
08. Larceny (under 100)	24. Disorderly conduct
09. Auto Theft	25. Traffic
10. Simple Assault	26. Vandalism
11. Forgery, Fraud	27. Curfew
12. Stolen Property (over 100)	28. Runaway
	29. Truancy/School
13. Stolen Property (under 100)	30. Incorrigible
	31. Other Juvenile
14. Arson	32. Other Adult
15. Weapons	98. No Offense
16. Commercial Sex	99. Missing

____78. FORMAL ADJUDICATION BY
1) Judge (2) Referee (8) (9)

____79. PLEA
1) Guilty (2) Not Guilty (3) No Contest (8) (9)

____80. PROSECUTOR
1) Yes (2) No (8) (9)

____81. ATTORNEY
1) None (2) Retained (3) Appointed (8) (9)

____82. FORMAL FINDING/DISPOSITION
01. Dismiss 02. Probation 03. Probation RH
04. Probation FH 05. Commit Juv. home 06. Commit Private Inst. 07. Commit State Inst.
08. Other Disposition 09. Take under advisement 88 99

____83. IF #09. IN PREVIOUS QUESTION - FINAL DISPOSITION
01. Dismiss 02. Probation OH 03. Probation RH
04. Probation FH 05. Commit Juv. Home 06. Commit Private Inst. 07. Commit State Inst.
08. Other Disposition 88 99

____84. PREVIOUS REFERRALS
1) 0 (2) 1 (3) 2 (4) 3 (5) 4 (6) 5
7) 6 or more (9)

____85. PREVIOUS KNOWN DELINQUENT BEHAVIOR BUT NOT REFERRED
1) Yes (2) No (9)

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