# JUVENILE COURT: THERAPY OR CRIME CONTROL, AND DO LAWYERS MAKE A DIFFERENCE?

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Disillusionment with the therapeutic ideal has led to the current movement to reduce the jurisdiction of juvenile courts to cases in which they can exercise a crime-prevention function and to emphasize a fair, adversarial court procedure including representation by a lawyer. Two North Carolina juvenile courts were studied in 1975-1976 to determine their degree of concern about rehabilitation, crime prevention, and adversarial procedure. These courts showed a trend toward reducing their intake of cases with a less serious prior record and current offense and becoming more punitive with regard to the remaining cases. The dominant factors associated with disposition—particularly with the decision to commit the child to training school—were prior court record and seriousness of current offense. Other factors found to be of some importance were the child's family structure, support by the family as shown by court attendance, and whether the complainant in the case was a parent or probation officer. Race, family income, and the sex of the child had little or no effect on decisions to commit. Differences in individual judges' commitment rates were explained largely by differences in the cases they handled. Being held in detention before the court hearing made commitment more likely. The type of counsel a child had—private, individually assigned, or specialized Juvenile Defender—made no difference in whether he was adjudicated delinquent or committed. In fact, children represented by counsel were somewhat more likely to be committed than those without counsel. This and other findings of the study suggest that the participation of lawyers in juvenile court may be largely a formality, a token compliance with due process requirements rather than an integral part of court fact-finding.

## I. DEVELOPMENT OF THE JUVENILE COURT CONCEPT

### *Gault, the President's Crime Commission, and the IJA-ABA Standards*

A recently published history of juvenile courts in the United States (Ryerson, 1978) describes almost a full circle in the development of ideas about society's response to

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delinquency. Classical criminology regarded crime as the product of a free moral decision; the proper response was viewed as a schedule of punishments carefully adjusted to the seriousness of each criminal act, designed to serve as a deterrent and "curb the capricious exercise of judicial power" (Ryerson, 1978: 17). The classical school eventually gave way to the positivist school, which blamed crime on the offender's personal traits and his environment. Positivist criminology contributed to the development of the concept of a therapeutic juvenile court whose most important function was to assist and reform the juvenile offender, not punish his offense. More recent criticism of the juvenile court's effectiveness and its abuse of discretion has revived acceptance of classical criminology: a recognition of the role of punishment in controlling dangerous acts, a renewed emphasis on weighing seriousness of offenses, and a movement to curb abuse of discretion by adopting adversarial procedure and standards for decision making.

Disillusionment with the therapeutic juvenile court and its informal procedures culminated with *In re Gault* (1967). In that case, the Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires that most of the procedural protections afforded to adults charged with crime must also be afforded to children charged with juvenile offenses, when adjudication may result in commitment to an institution. These protections include the child's right to advance written notice of the allegations, the right to counsel and to appointed counsel if the parents cannot afford to hire a lawyer, the privilege against self-incrimination, and the right to confront and cross-examine witnesses. Rejecting the argument that informal, loose procedures have therapeutic benefit for the child, the Supreme Court emphasized the need for careful, accurate findings of fact in adjudication of delinquency and the belief that this end would be promoted by formal, adversarial procedure: "It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data" (*In re Gault*, 1967: 20-21).

The President's Crime Commission Report, which appeared in 1967 and cited the *Gault* decision, recommended retaining juvenile courts separate from the adult criminal courts and continuing an emphasis on rehabilitation and individualized treatment. It recognized that "in the past our reach exceeded our grasp"—for example, by laws allowing

judicial intervention in minor misbehavior on the dubious premise that the intervention could prevent subsequent serious delinquency or crime.[1] The Commission recommended that the courts' intake be reduced by "dispositional alternatives to adjudication" and that their jurisdiction be narrowed (President's Commission, 1967: 81). In the cases that remained, courts should be concerned about crime control.

> The cases that fall within the narrowed jurisdiction of the court and filter through the screen of pre-judicial, informal disposition modes would largely involve offenders for whom more vigorous measures seem necessary. Court adjudication and disposition of those offenders should no longer be viewed solely as a diagnosis and prescription for cure, but should be frankly recognized as an authoritative court judgment expressing society's claim to protection. While rehabilitative efforts should be vigorously pursued in deference to the youthfulness of the offenders and in keeping with the general commitment to individualized treatment of all offenders, *the incapacitative, deterrent, and condemnatory purposes of the judgment should not be disguised* [emphasis added] (President's Commission, 1967: 81).

Because the Commission believed that juvenile courts should act punitively if they found a child seriously delinquent, it recommended that the adjudicatory hearing be consistent with basic principles of due process. The Commission believed that no procedural protection was more important than the right to counsel and recommended that counsel "be appointed as a matter of course wherever coercive action is a possibility, without requiring any affirmative choice by child or parent." Calling the presence of counsel "the keystone of the whole structure of guarantees that a minimum system of procedural justice requires," the Commission emphasized the role of the child's lawyer not only at the adjudicatory hearing, but also in the disposition decision (President's Commission, 1967: 86-87).

The 1977 Draft Standards for Juvenile Justice of the Institute of Judicial Administration and the American Bar Association continued the recent emphasis on the role of counsel in juvenile court and on obtaining reliable proof of the child's specific delinquent actions (Institute of Judicial Administration, 1977: 138, 171).[2] The Draft Standards also continued the trend of emphasizing the offense rather than the

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[1] The fundamental flaw in the view that juvenile courts should take action based on "pre-delinquent" behavior was that it incorrectly assumed that most "pre-delinquents" went on to commit criminal acts, or, as Ryerson puts it, that "boys who wandered around railroad tracks or used profane language were more likely than most eventually to rob banks" (Ryerson, 1978: 47). For a criticism of the notion of "pre-delinquency" based on Philadelphia data, see Clarke, 1978.

[2] See Institute of Judicial Administration, 1977, §§ 4.2, 4.3, which recommends requiring proof beyond a reasonable doubt in all contested cases, thus going beyond *In re Winship* which requires such proof only if the juvenile respondent could be institutionalized for the alleged misconduct (see Commentary, at 56-60).

offender; they stated that the "purpose of the juvenile correctional system is to reduce juvenile crime," and they recommended a sentencing scheme which divided delinquent acts into five classes limited by the maximum punishment an adult could receive for a similar offense.[3]

*The Role of Juvenile Court Counsel*

Both the Supreme Court and the President's Crime Commission emphasized the importance of counsel as the intermediary who would make procedural reforms work. The primary purpose of this article is to report data that sheds some light on the effectiveness of juvenile court counsel after *Gault*. It is helpful to begin by examining the Court's expectations about lawyers.

Despite what one critic has suggested (Horowitz, 1977: 171-219), the Supreme Court that decided *Gault* was not endorsing the findings of social science, and it was not requiring more formal procedures in order to achieve any social goal other than fairness and accuracy of adjudication. The precise question the Court faced was what sort of process should be required when "a determination is made as to whether a juvenile is 'delinquent' as a result of alleged misconduct on his part, with the consequence that he may be committed to a state institution" (*Gault*: 13). Gerald Gault was accused of making an indecent telephone call, for which, as a juvenile under Arizona law, he could be committed to a State Industrial School for up to six years. When juvenile court proceedings have so punitive a potential, the Court said, the fact-finding procedure must be fair and accurate: "Under our Constitution, the condition of being a boy does not justify a kangaroo court" (*Gault*: 28). In Gerald's sloppily handled case, he and his parents received no advance notice of the specific alleged misconduct, no opportunity to confront the complainant, and no right to the assistance of counsel.

The Supreme Court rejected the argument that informal hearings without lawyers were of therapeutic benefit to the child, citing—perhaps too uncritically—research suggesting that "fairness, impartiality and orderliness" promote the child's

[3] For an offense which would result in no more than six months imprisonment for an adult, incarceration of the juvenile is not allowed; for an offense carrying an adult penalty of up to one year of prison, a maximum of three months incarceration of the juvenile is allowed but only if the juvenile has a prior record; and for an offense punishable by death or more than 20 years imprisonment, he may be incarcerated up to 24 months (Institute of Judicial Administration, 1977: 190-200).

rehabilitation better than informality, however benign (*Gault*: 25-27). However, in insisting on more formal procedures, the Court was not attempting to rehabilitate delinquents; it only sought to achieve greater fairness and accuracy for their own sake.

As Horowitz points out (1977: 172-177), while the Court was properly skeptical about the therapeutic effectiveness of informal juvenile court procedures, it accepted on faith the effectiveness of lawyers. The Court said that the juvenile court, despite any therapeutic trappings, must be considered the child's adversary when it could subject him "to the loss of his liberty for years. . . ." In this situation the judge and the probation officer could not be relied on to protect the child's interests. The child was entitled to the assistance of counsel to "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it" (*Gault*: 36). The Court cited no evidence to support its belief that lawyers would maintain an arm's-length, formal, adversarial fact-finding procedure, just as the President's Commission had little basis for its claim that counsel would assist the juvenile court in achieving its "therapeutic aims" by helping to develop "individualized treatment plans" using community resources as alternatives to institutionalization (President's Commission, 1967: 86). The Court may have expected juvenile court counsel to exhibit "the same probing, challenging, contentious behavior" that would bring a few cases like *Gault* all the way to the Supreme Court (Horowitz, 1977: 175). If so, perhaps the Court was naive about the routine operation of juvenile courts and the lawyers who practice in it—or perhaps the Supreme Court, as leader of the judicial system, was proclaiming an ideal that it knew would be difficult to achieve in practice.

Research reviewed by Horowitz (1977: 185-204) suggests that what the Supreme Court expected of juvenile court counsel did not in fact occur. Frequency of representation by counsel increased very little after *Gault*; it was easy for juvenile court judges to evade the requirement of counsel simply by not appointing counsel when lenient dispositions were expected. Many judges believed that the child's interest was better served by nonadversarial procedures, and parents often agreed. (Our study, as will be explained later, found representation by counsel in the post-*Gault* court to be very

frequent, but there was evidence that lawyers' participation was seen as perfunctory.)

The research findings with respect to lawyers' effect on juvenile court disposition are mixed, but there is some indication that having counsel is associated with a more lenient disposition (Horowitz, 1977: 191-194). The behavior and effectiveness of counsel may depend on whether the court in which they practice is traditional or adversarial in its procedure.[4]

Horowitz's review indicates that attorneys have not effectively protected the child's privilege against self-incrimination: "Study after study reports that the lawyer is expected to act as an interpreter between the court and the family." The result is a "thrust toward truthtelling that is quite at odds with the privilege against self-incrimination, strictly construed" (Horowitz, 1977: 200-201). In fact, with the lawyer acting as social worker as well as advocate, "the presence of lawyers often seems to facilitate rather than impede informal disposition . . ." (Horowitz, 1977: 188). This is perhaps the most important point Horowitz makes. We found nothing in our data to contradict the notion that the lawyer acts as interpreter between the court and the family. However, the impression we have of the juvenile courts we studied is that the defense lawyer was perceived as superfluous, with the result that he may have sometimes hindered rather than helped the granting of leniency to the child.

*North Carolina Juvenile Courts*

North Carolina law has attempted to narrow the juvenile courts' intake and jurisdiction as recommended by the President's Crime Commission and the IJA-ABA Draft Standards. A statute effective in 1974 allows the chief court counselor in each juvenile court to employ an "intake counselor" to "conduct a preliminary inquiry to determine whether it is in the best interest of the child or the State that a juvenile petition be filed." This counselor "may hold conferences with the child, his family, the school and other

[4] Horowitz speculates that "the Supreme Court in *Gault* may have traded in one set of issues for another." When juvenile court lawyers do act adversarially, plea bargaining may occur, with the lawyer for the child trading his right to put the state to its proof in return for concessions. The result may be the out-of-court, unreviewable settlement of juvenile cases by the prosecutor and defense attorney, merely ratified by judges—just as in criminal court (Horowitz, 1977: 194-200). Our study showed no indication of plea bargaining; we found no leniency of disposition in exchange for admission of guilt.

appropriate community resources to adjust the case so that filing a petition will not be necessary" (N.C. Gen. Stat. § 7A-289.7).[5] North Carolina has also followed the national trend of narrowing the juvenile court's powers with respect to noncriminal juvenile offenses. It has recently completed the exemption of noncriminal juvenile offenders from commitment to state training school by excluding juvenile probation violators from the "delinquent" category.[6]

Aside from these recent statutory amendments, the North Carolina statutes contain both therapeutic and crime-control elements. A juvenile court may commit a delinquent only if it finds each of the following: (1) that the child "would not adjust in his own home on probation or while other services are being provided"; (2) that "[c]ommunity-based residential care has already been utilized or would be unsuccessful or is not available"; (3) that the child's behavior "constitutes some threat to persons or property in the community or to the child's own safety or personal welfare"; and (4) that, if the child is younger than 10 years, all "community-based alternatives" to commitment have been exhausted (N.C. Gen. Stat. §7A-286[5]). Thus, while "adjustment" at home and "community-based" rehabilitative services are still important concerns, commitment cannot occur without an express finding that the child's *behavior* is threatening to public safety or his own safety or personal welfare.

## II. BACKGROUND OF THE STUDY

Our aim, using post-*Gault* data from the juvenile courts of Charlotte and Winston-Salem, North Carolina, is to estimate the influence of a number of factors on juvenile court dispositions through multivariate statistical analysis. We will then compare the resulting model with the original therapeutic concept of the juvenile court, the crime-control concept found in the President's Crime Commission Report, and the due

[5] Both the Winston-Salem and Charlotte juvenile courts had intake counselors at the time the study data were collected, and there is reason to believe that their effectiveness increased between 1975 and 1976. Total case intake in the two courts dropped from 770 cases in the 1975 study period (six months) to 665 cases in the 1976 study period, and the cases became somewhat more serious. The proportion of cases at the lowest level of the record-offense index decreased from 56.5 percent in 1975 to 45.1 percent in 1976.

[6] N.C. Gen. Stat. § 7A-278(2) (Cum. Supp. 1977) (statute as amended by 1975 N.C. Session Laws, Ch. 929, effective July 1, 1978). This statute was not in effect at the time of our study. A new Juvenile Code, effective in 1980, continues the trend by making intake screening more thorough, and provides a greater degree of procedural protection to the child (1979 N.C. Session Laws, Ch. 815).

process orientation of *Gault*.[7] In particular, we want to focus on the role of counsel. In a statistical analysis, we can only infer the degree to which juvenile courts (1) operated with therapeutic goals in mind, (2) were concerned about punishment and crime control, or (3) were giving effect to the adversarial procedure emphasized by *Gault*. We have tried to make reasonable inferences from the available data while acknowledging the ambiguity of some findings. (For example, we found that the courts studied were apparently influenced by the child's home structure; this suggests a therapeutic orientation, but also may show a concern about prevention of criminal acts through parental supervision.)

The following are some of the specific questions our analysis considers:

- How important to the courts' disposition was information about the child's specific misconduct, including the nature and seriousness of his alleged offense or offenses, evidence of those offenses, and the extent of his prior juvenile record?
- To what extent did the courts display an orientation toward controlling serious misconduct by juveniles?
- How important was information about the child's background, home environment, and personal characteristics? [We were able to obtain information about family structure and parental support, but not educational, medical, and psychological information.]
- How much concern did the courts show about the prospects for supervising and rehabilitating the child without institutionalizing him?
- How important were factors suggesting abuse of discretion, such as the child's sex, race, family income, and the identity of the judge?
- What effect did pre-hearing detention of the child have on the court's disposition?
- What effect did the presence of counsel for the child, and the type of counsel provided, have on the courts' disposition?

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[7] Strictly speaking, we are unable to gauge the effect of the *Gault* decision and the ideas expressed in the Crime Commission Report on juvenile court decision-making, because we have no baseline data. However, there is one comparison we can make. A contemporary study of juvenile courts in North Carolina during 1934-1944 found that the majority of juvenile court judges at that time (like most judges today) considered state training schools "places of last resort, to which children should be sent only when local plans could not be made or after the failure of some plan such as probation," even though some judges then (as now) regarded training school as "a place where the child would be given the strict disciplinary training he could not get elsewhere" (Sanders, 1948: 157-159). The rate of commitment to training schools and other correctional institutions, as a percentage of all delinquency cases filed in North Carolina, was 26.3 percent in 1934-1939, and 22.7 percent in 1939-1944; as a percentage of cases where the child was adjudicated delinquent, the commitment rates were 27.9 and 25.1 percent for the two periods (Sanders, 1948: 40-47, 82-89, Tables 20, 21, 22, 46, 47, and 48). In comparison, our data for the Winston-Salem and Charlotte juvenile courts in 1975-1976 show a combined rate of commitment to training school of 8 percent of all cases filed and 13.5 percent of cases adjudicated delinquent. Thus, if it is acceptable to compare statewide data from 1934-1944 with data for two cities in 1975-1976, the comparison suggests that punitiveness has declined in the 1970s, even though authorities such as the President's Crime Commission have recently emphasized the crime-controlling, punitive function of the juvenile courts.

° To what extent did the courts behave as adversarial fora in which the child's opportunity to present his case significantly affected the disposition?

## III. ANALYSIS OF DATA

### *Scope of Study*

The study started as an evaluation of a juvenile defender project that began operating late in 1975 in the juvenile courts of Winston-Salem and Charlotte. To obtain information before and after the project began, data were collected from the court's records for six months in 1975 preceding the start of the project (January through June, 1975, in Winston-Salem and March through August, 1975, in Charlotte[8]), and for the same six months in 1976 after the project was underway. In the statistical analysis, data for the two courts were combined because the two courts were under a single administration with statewide authority and subject to the same laws.[9] The study extended to all respondents in juvenile court cases filed during the periods of data collection (a total of 1,435 children) in which, if the allegations in the petition were proved, the respondent could have been committed or re-committed to a state training school.[10] The unit of information was the individual child (or "case"), including all petitions alleging delinquency and motions to revoke probation or conditional release filed against that child within five days of each other and processed concurrently by the court.

### *Analytic Strategy*

Our analytic strategy consisted of two phases. The objective of the first phase was to construct matched sets of cases within which the disposition rates—particularly commitment rates—were homogeneous. These matched sets were formed by applying a variable-selection procedure to the

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[8] Data collection was delayed until March, 1976, in Charlotte so that the study would cover the period when an attorney from the Public Defender's Office took over as Juvenile Defender.

[9] The decision to combine the data was supported by our later finding that, taking other important factors into account, there was not much difference in the disposition pattern of the two courts, except that the Winston-Salem court was a bit more likely to commit children to state training school.

[10] Thus, all children were included who were charged with either an act that would be criminal if committed by an adult or a violation of juvenile probation or conditional release from training school (N.C. Gen. Stat. §§ 7A-278[2], 7A-286[4], 7A-286.1). The study data were coded so that only noncriminal juvenile offenses (such as truancy and running away from home) were counted as probation or conditional release violations, while criminal offenses committed by a child on probation or conditional release were tabulated as criminal offenses.

association between disposition and all variables that were potentially related to it, except for the administrative variables including detention, judge, and type of counsel which were excluded during the first phase. The first step was to identify the factor having the strongest relationship to the likelihood of various court dispositions. This was done by considering the cross-tabulation of each factor with court disposition as a multi-category outcome. We used the magnitude of the chi-square of each tabulation and/or the value of the chi-square divided by its degrees of freedom as a measure of the strength of the relationship, in the same manner as the "F" statistic is used in stepwise multiple regression. The first factors selected were those relating to prior record.

The second step was to organize various interrelated measures of prior record into a single juvenile record index that efficiently summarized prior record information. The third step was to select the next most important factor once prior record was called for. This was done by examining each joint variable, consisting of all possible combinations of each factor not previously selected with the categories of the record index, and choosing the factor whose joint variable had the largest chi-square and/or chi-square per degree of freedom with respect to the probability of commitment. Following this procedure, the factor chosen next was the offense charged on the petition. We then summarized the several items of offense information by forming an offense seriousness index.

The first phase was concluded by forming a record-offense index combining the information on prior record and offense charged. Prior record and offense factors were strongly associated with each other, as well as with disposition rates. Many of their cross-classified combinations tended to have similar distributions with respect to court disposition and especially with respect to commitment to training school. These combinations needed to be combined and summarized to provide a sufficient matched-set size in the later evaluation of the contribution of other factors. The construction of the record-offense index and other indices was partly *a priori* and partly *a posteriori*. It made sense from an *a priori* point of view to combine information about delinquent activity (past and present) in additive fashion. For the purpose of efficiently summarizing the information, it also made sense to look at the disposition distribution in forming the index. Although the construction of the index was based partly on *a posteriori* knowledge of the disposition distribution, it was neutral with

respect to the analysis of factors other than record and offense, because these other factors were not considered at all in forming the index.[11]

In the second phase, the objective was to examine remaining factors, controlling for prior record and offense, to determine which still showed a substantial relationship to the probability of commitment. This was done by forming joint variables combining each remaining factor with the record-offense index, and comparing the chi-squares of the cross-tabulations of each joint variable with whether or not commitment occurred. To check the significance of the relationship of each remaining factor to commitment, once record and offense had been taken into account, we also used a partial association statistic which combined information *across* the matched sets corresponding to levels of the record-offense index.[12] In this way, we identified the child's home structure, parental attendance at the hearing, whether a policeman testified, and who signed the complaint against the child as being of importance.

The last step was to combine all previously selected factors into a "risk index" and, adjusting for it, to look for any effects of remaining factors, including race, age, sex, who the judge was, the presence and type of counsel, and pre-hearing detention. As a final check, we constructed a multiple regression model. The multiple regression results were generally consistent with those obtained by the procedure just described.[13]

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[11] An Appendix to this paper, available from the authors on request, describes the construction of all indices in more detail. Also see Higgins and Koch (1977) and Landis, Heyman, and Koch (1978).

[12] The statistical significance of the partial association between a specific factor and an aspect of disposition such as commitment after adjustment for one or more previously selected factors was assessed by using the Mantel-Haenszel statistic and its multivariate extensions as reviewed in Landis, Heyman, and Koch (1978). This statistic is obtained by forming a set of two-way contingency tables corresponding to the respective categories h = 1, 2, . . . of the already selected factors. Within each of these tables, differences between observed frequencies and expected frequencies under the hypothesis of within-table independence are formed together with the corresponding covariance matrix. These differences are summed across the $q$ tables and then contrasted with the sum of the corresponding covariance matrices in terms of a quadratic form statistic with an approximate chi-square distribution. This method is appropriate for historical data like those under consideration here because its statistical properties are a consequence of randomness induced by the hypothesis of no partial association. Thus, its use does not specifically require random sampling assumptions, although it is equally applicable when such conditions hold.

[13] In the multiple regression model, commitment to training school (including transfer to superior court) was treated as a binary dependent variable, with commitment = 1 and noncommitment = 0. All of the independent variables described later in this article were included, except for judge and time period, but none of the various indices were included. A forward-selection procedure was used as in Draper and Smith (1966: 169-171),

*Dispositions and Their Frequencies*

Each of the 1,435 cases began[14] with the issuance of either a petition (formal allegation of misconduct within the court's jurisdiction) or a motion to revoke probation or conditional release. We considered seven categories of court dispositions (see Table 1). Where a child was charged with more than one violation, his case was classified according to the most severe disposition.

If the child was charged with a felony crime and was 14 or 15 years of age, the judge could conduct a preliminary hearing. If the judge found probable cause for the charge, he could transfer the child to superior court for trial and possible punishment as an adult. If a case was not dismissed or transferred to superior court, the juvenile court's procedure consisted of adjudication (factual finding as to whether the child was delinquent) and disposition if the child was adjudicated delinquent (N.C. Gen. Stat. §§ 7A-280, 7A-285).[15]

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except that the stopping criterion was an F value of less than 1.0 (see also Nie *et al.*, 1975: 332-333, 345-347). The $R^2$ of the resulting model was .275. Two of the prior record variables (previous delinquency petitions and whether the child was on probation or conditional release) were strongly and positively related to the likelihood of commitment; one offense variable (total petitions against the child) was positively related and another (total seriousness score) was negatively related. (This last negative relationship may be a kind of "damping" attributable to the fact that all effects must be treated as linear in multiple regression, which is one of its drawbacks in this situation.) Being held in detention was strongly associated with commitment, with a coefficient of 0.12 (i.e., detention added 12 percentage points to the likelihood of commitment, other things being equal). Testimony of a policeman and the fact that the petitioner was a probation officer or parent both added to the commitment probability, as did unconventionality of home structure. If the case arose in Winston-Salem (rather than Charlotte), the chance of commitment was estimated to be 3 percentage points higher; a similar small difference was found using the method described in the text. The dummy variables for each form of legal counsel (" no counsel" was the reference category) did not have coefficients significant at the .05 level, except for Juvenile Defender, but all coefficients were positive, suggesting that each form of counsel *added* to the risk of commitment, if it had any effect at all. The coefficients for Juvenile Defender, assigned counsel, and private counsel, which were in the range .03-.05, were not significantly different from each other using the test described by Kmenta (1971: 371-372). All other variables either failed to meet the selection criteria or did not have significant coefficients.

[14] Not every complaint about a juvenile brought to the juvenile court results in the filing of a petition against the child. N.C. Gen. Stat. § 7A-289.7 provides for a preliminary inquiry by "intake personnel" of the juvenile court to determine whether filing a petition is in the child's best interests. If the intake personnel decide against filing a petition, the complainant may request the juvenile court judge to review their decision. Obviously, intake (the decision whether to file a formal petition) is an important stage in the processing of a complaint; many factors, including the assistance of counsel, may influence it. Our study did not include intake. (For a discussion of increasing strictness in intake, see note 5, *supra*.)

[15] N.C. Gen. Stat. § 7A-286.1 has similar provisions with regard to allegations of violation of conditional release (juvenile "parole"). The offense the child is found to have committed may be a lesser included offense instead of the offense first alleged. Because there was no reliable information on what

Adjudication and disposition tended to be combined in one hearing.

In the statistical analysis, we gave some thought to treating court outcome in two phases, adjudication and disposition. The problem with this two-phase approach was that it proved difficult to distinguish between adjudicative fact-finding and disposition because they were often merged and, in any event, were usually not handled separately in court records. We decided to treat the juvenile court process essentially as a single phase, but to distinguish between (1) dismissal (including "informal handling" before any court appearance, dismissal on the prosecutor's motion, and dismissal by the judge), and (2) adjudication of delinquency where the court imposed some form of control such as commitment or probation.

Dismissal accounted for 40.6 percent of the total dispositions, as indicated in Table 1.[16] A similar percentage of children received a "probation at home" disposition—i.e., were returned to their parents' or relatives' custody subject to conditions of probation, such as attending school, abiding by a curfew, and obeying parents. About one-fourth of these probation dispositions were continuations of probation imposed for earlier offenses.

Table 1. Juvenile Court Disposition

| | | N | Percent |
|---|---|---|---|
| 1. | Commitment to training school | 115 | 8.0 |
| 2. | Transfer to superior court | 23 | 1.6 |
| 3. | Dept. of social services foster or group home | 63 | 4.4 |
| 4. | Other residential program | 28 | 2.0 |
| 5. | Probation at home | 575 | 40.1 |
| 6. | Dismissed (includes "handled informally") | 582 | 40.6 |
| 7. | Other | 49 | 3.4 |
| 8. | TOTAL | 1,435 | 100.0 |
| 9. | Commitment (includes transfer to superior court) | 138 | 9.6 |
| 10. | Commitment as percent of the 853 cases not dismissed | 138 | 16.2 |
| 11. | Custody change (commitment, foster home, and residential program) as percent of all cases excluding superior court (total 1,412) | 206 | 14.6 |

The court could remove the child from his home for placement in the custody of the department of social services,

offense the court found had actually been committed, only the original offense and its seriousness were coded on our data form. Note that even if the judge adjudicates a child delinquent, he can dismiss the case.

[16] The 33 cases in which the child was returned to his parents' or relatives' custody without either probation or a formal dismissal order were included in the "dismissed" category.

which would in turn place him in a local foster or group home; 4.4 percent of the cases were disposed of in this way. The court could also place the child in some other local residential program for delinquents. This disposition accounted for only 2 percent of the cases.

Commitments to training school occurred in 8 percent of the cases,[17] and 1.6 percent of the cases were transferred to superior court for adult trial. In most of the analysis, we combined transfers to adult court with commitments, on the theory that if the juvenile court had not had the option of the transfer, it would have chosen commitment. (The term "commitment" as used herein includes transfer unless transfer is mentioned separately.) The commitment rate (including transfers) was 9.6 percent of all cases filed, and 16.2 percent of the 853 cases in which the court adjudicated the child delinquent (i.e., in which no dismissal occurred).

## IV. FACTORS AFFECTING COURT DISPOSITION

We analyzed the relationships of a number of factors to juvenile court disposition. These factors can be grouped in six categories:

- The extent and nature of the child's juvenile court record before his current case arose.
- The offense or offenses currently charged and their seriousness.
- The strength of the evidence of the child's offense.
- The child's age, sex, family income, and race.
- Factors related to the child's home and present supervision, including the type of complainant who signed the petition or motion, the child's home structure, and parental attendance at the court hearing.
- Administrative factors, including who the judge was, whether the child was held in detention pending his hearing, and the type of counsel the child had. [The effect of counsel is considered separately in Section V.]

### *Prior Juvenile Court Record*

Information on each youngster's record of involvement with juvenile court was drawn from a search of court files in the judicial district where his current case was heard. Prior record was measured by the number of previous delinquency petitions, number of previous petitions for "undisciplined" (noncriminal "juvenile status") offenses, number of previous commitments of the child to training school, and whether the child was on probation or conditional release when his alleged offense occurred. To summarize the information in these four

[17] Commitment to training school is always for an indefinite period. The Youth Services Division of the State Department of Human Resources has the final authority to decide how long the child must stay, which is usually six to nine months (N.C. Gen. Stat. § 7A-286).

highly intercorrelated measures of juvenile record, we formed a juvenile record index consisting of five levels of increasing juvenile court involvement. This index was based on combinations of adjacent cells of the four-way cross-classification of the four original record variables that had similar rates of commitment, and is presented in Tables 2 and 3.

Table 2. Frequency of Juvenile Record[a] Variables

*Previous Delinquency Petitions*

| | | |
|---|---|---|
| None | 846 | 59.0% |
| 1 | 251 | 17.5 |
| 2 | 133 | 9.3 |
| 3 | 70 | 4.9 |
| 4 | 47 | 3.3 |
| 5 | 28 | 2.0 |
| 6-8 | 38 | 2.6 |
| 9-18 | 22 | 1.5 |
| Total | 1,435 | 100.0 |

*Previous "Undisciplined" Petitions*

| | | |
|---|---|---|
| None | 1,102 | 76.8% |
| 1 | 252 | 17.6 |
| 2 | 48 | 3.3 |
| 3-6 | 33 | 2.3 |
| Total | 1,435 | 100.0 |

*Previous Commitments to Training School*

| | | |
|---|---|---|
| None | 1,327 | 92.5% |
| 1 | 77 | 5.4 |
| 2-3 | 31 | 2.2 |
| Total | 1,435 | 100.0 |

*Probation/Conditional Release Status at Time of Current Offense*

| | | |
|---|---|---|
| Not on prob. or cond. rel. | 1,024 | 71.4% |
| On probation | 339 | 23.6 |
| On cond. rel. | 71 | 5.0 |
| Total | 1,434[b] | 100.0 |

*Juvenile Record Index (Combines Previous Petitions, Commitments, and Probation/Conditional Release Status*

| | | |
|---|---|---|
| Level 1 | 732 | 51.0% |
| Level 2 | 179 | 12.5 |
| Level 3 | 224 | 15.6 |
| Level 4 | 171 | 11.9 |
| Level 5 | 129 | 9.0 |
| Total | 1,435 | 100.0 |

[a] Juvenile court record information was limited to the judicial district (i.e., county) in which the child's current case was filed.
[b] Total less than 1,435 due to missing data.

The majority of children had no record. Forty-one percent had previous delinquency petitions, 23.6 percent were already on probation for earlier offenses when they came before the court, and 5 percent were on conditional release. The 410 children on probation or conditional release were, of course, the only ones in the study who could be charged with violations of probation or conditional release; about half (216) of them were charged with noncriminal violations such as repeated truancy, and the rest (196) were charged with criminal offenses.

## Table 3. First-Order Relationship of Juvenile Record to Court Disposition

| | Commitment to Training School (% of Total) | Transfer to Superior Court (% of Total) | Foster or Group Home (DSS) (% of Total) | Residential Program (% of Total) | Probation at home (% of Total) | Dismissed (Not Adjudicated Delinquent) (% of Total) | Other (% of Total) | Total |
|---|---|---|---|---|---|---|---|---|
| Previous Delinquency Petitions | | | | | | | | |
| (a) None | 2.1 | 0.4 | 2.5 | 1.1 | 41.6 | 49.4 | 3.0 | 846 |
| (b) 1 | 7.2 | 0.8 | 7.2 | 4.0 | 49.8 | 27.9 | 3.2 | 251 |
| (c) 2 | 15.8 | 1.5 | 7.5 | 3.0 | 39.1 | 29.3 | 3.8 | 133 |
| (d) 3 | 21.4 | 2.9 | 10.0 | 1.4 | 28.6 | 32.9 | 2.9 | 70 |
| (e) 4-18 | 31.9 | 10.4 | 5.2 | 3.0 | 19.3 | 23.7 | 6.7 | 135 |
| Previous Undisciplined Petitions | | | | | | | | |
| (a) None | 4.7 | 1.5 | 3.4 | 1.0 | 41.5 | 45.6 | 2.4 | 1,102 |
| (b) 1 | 15.9 | 1.2 | 6.7 | 4.8 | 41.7 | 22.6 | 7.1 | 252 |
| (c) 2-6 | 28.4 | 4.9 | 11.1 | 6.2 | 16.0 | 27.2 | 6.2 | 81 |
| Previous Commitments to Training School | | | | | | | | |
| (a) None | 6.4 | 1.0 | 4.6 | 2.0 | 41.6 | 41.2 | 3.2 | 1,327 |
| (b) 1, 2, or 3 | 27.8 | 9.3 | 1.9 | 0.9 | 21.3 | 32.4 | 6.5 | 108 |
| Probation/Conditional Release Status at Time of Offense | | | | | | | | |
| (a) Not on probation or conditional release | 2.3 | 1.2 | 2.8 | 0.7 | 42.8 | 47.9 | 2.2 | 1,024 |
| (b) On probation | 20.4 | 1.2 | 9.7 | 5.9 | 36.6 | 20.1 | 6.2 | 339 |
| (c) On conditional release | 31.0 | 9.9 | 1.4 | 1.4 | 16.9 | 32.4 | 7.0 | 71 |
| Juvenile Record Index (combines prior petitions, commitments, and release status) | | | | | | | | |
| (a) Level 1 | 0.4 | 0.3 | 1.9 | 0.4 | 40.8 | 54.0 | 2.2 | 732 |
| (b) Level 2 | 3.4 | 1.7 | 4.5 | 1.7 | 55.3 | 31.8 | 1.7 | 179 |
| (c) Level 3 | 9.4 | 0.4 | 7.6 | 4.0 | 45.5 | 25.9 | 7.1 | 224 |
| (d) Level 4 | 22.8 | 2.9 | 10.5 | 5.8 | 31.6 | 24.0 | 2.3 | 171 |
| (e) Level 5 | 35.7 | 9.3 | 4.7 | 2.3 | 16.3 | 24.0 | 7.8 | 129 |

Based on statistical criteria described previously, we selected juvenile record as having the strongest statistical association with commitment rate of any of the factors studied, as well as a strong relationship to other disposition categories. As the seriousness of each of the record factors increases (see Table 3), so do the rates of commitment, transfer to superior court, and custody change.[18] The rate of dismissal generally declines as juvenile record increases. Thus, not only did a prior record make a severe disposition more likely, it also made an adjudication of delinquency more likely.

The rate of probation at home generally tends to decrease as measures of juvenile record increase. This may seem strange in view of the fact that—as will be shown later—probation rates increase as offense seriousness increases. However, if probation at home is regarded as being given a second chance, then it should not be surprising that it is less likely when the child has a record. Probation at home can be regarded as severe treatment (compared with dismissal) for an offender with little or no record or as lenient treatment (compared with commitment) for an offender with a substantial record.

Looking at the record index in the bottom portion of Table 3, which combines all information on prior juvenile record,[19] we can see that as the index increases, so do the rates of commitment, transfer, and custody change, while the rates of dismissal and probation decline. In particular, the rate of commitment (including transfer) increases very sharply as the index increases from Level 1 to Level 5: as a proportion of all cases, it increases from 0.7 to 45 percent, and as a proportion of cases adjudicated delinquent, it increases from 1.5 to 59.2 percent.

*The Alleged Offense*

The information collected on the child's alleged offense included the general offense category (felony, misdemeanor, noncriminal probation violation, and noncriminal conditional release violation), the specific criminal or noncriminal charge, the total seriousness score of all offenses alleged, the number of petitions and motions filed concurrently against the child,

[18] Custody change includes commitment to training school and other dispositions that removed the child from his own home, and the custody change rate is expressed as a fraction of all cases except the very few transferred to superior court.

[19] See note 11 and accompanying text as to how indices were constructed.

and the number of "companion cases" (cases involving co-respondents). If a case involved more than one charge, it was classified according to the most serious charge.

Serious criminal charges were rare; there were only seven felonious assaults, four rapes, and one homicide, as shown in Table 4. Thirty-five percent of the offenses charged were felonies, but two-thirds of the felony charges (25 percent of all charges) were breaking and entering. Half the cases involved misdemeanor charges, the most common being misdemeanor larceny, shoplifting, and simple assault. A total seriousness score was computed for all offenses alleged, based on scores of 25 for murder, 10 for rape, and values ranging from 1 to 20 for other offenses.[20] Noncriminal probation and conditional release violations were first given a score of one point each, but we later decided that it was more appropriate to assign these offenses to a single category than to include them in the seriousness scale applied to criminal offenses.[21]

The offense factors were summarized to form an offense seriousness index comprising six levels. Levels 1 through 4 pertain to criminal offenses in increasing order of severity. Level 5 consists of single noncriminal probation and conditional release violations, and Level 6 consists of multiple noncriminal probation and conditional release violations (see Table 4).

Offense seriousness was determined to be the factor having the most important relationship to court disposition after prior record was taken into account. Juveniles charged with felonies[22] were much more likely to receive a severe disposition than those charged with misdemeanors (see Table 5). Offense seriousness was related to adjudication as well as to disposition. The dismissal rate was half as large for felonies

[20] Examples of scores for the more common criminal offenses are: Robbery—5; burglary and felonious breaking or entering—4; felonious larceny—4; narcotics felony—5; misdemeanor breaking or entering—2; misdemeanor larceny including shoplifting—2; misdemeanor assault—2; motor vehicle offense—1 or 2 depending on seriousness.

[21] One reason for this decision was that these offenses turned out to carry a much greater risk of commitment to training school than one-point criminal offenses. Another, *a priori* reason was that violation of probation and conditional release differs qualitatively from criminal offenses in that it involves direct insubordination to the court's authority exercised in earlier offenses. (Both probationers and conditional releasees are supervised by juvenile court counselors.)

[22] Remarkably, none of the 12 juveniles charged with felonious assault, rape, and homicide was sent to training school or transferred to superior court; eight of the 12 were placed on probation, which suggests that these initial charges were exaggerated or inappropriate.

Table 4. Frequency of Offenses, Offense Seriousness, and Related Variables

| | | |
|---|---|---|
| *General Offense Category* | | |
| Felony | 504 | 35.1% |
| Misdemeanor | 715 | 49.8 |
| Probation violation | 193 | 13.4 |
| Conditional release violation | 23 | 1.6 |
| Total | 1,435 | 100.0 |
| *Seriousness Score* | | |
| 1 point | 44 | 3.1% |
| 2 points | 523 | 36.4 |
| 3 " | 45 | 3.1 |
| 4 " | 188 | 13.1 |
| 5 " | 53 | 3.7 |
| 6 " | 34 | 2.4 |
| 7-8 " | 173 | 12.1 |
| 9-10 " | 41 | 2.9 |
| 11-12 " | 33 | 2.3 |
| 13-16 " | 29 | 2.0 |
| 17-24 " | 31 | 2.2 |
| 25-88 " | 24 | 1.7 |
| Single prob. or cond. rel. violation | 188 | 13.1 |
| Multiple prob. or cond. rel. violation | 29 | 2.0 |
| Total | 1,435 | 100.0 |
| *Number of Petitions or Motions Filed Together Against Child* | | |
| 1 | 1,182 | 82.4% |
| 2 | 175 | 12.2 |
| 3 | 53 | 3.7 |
| 4-9 | 25 | 1.7 |
| Total | 1,435 | 100.0 |
| *Number of Companion Cases (Juvenile "Co-Defendants")* | | |
| None | 800 | 55.7% |
| 1 | 289 | 20.1 |
| 2 | 149 | 10.4 |
| 3 | 99 | 6.9 |
| 4 | 48 | 3.3 |
| 5 or more | 50 | 3.5 |
| Total | 1,435 | 100.0 |
| *Offense Seriousness Index (Combines Seriousness Score and General Offense Category)* | | |
| Level 1 (misdemeanor, 1-2 points) | 567 | 39.5% |
| Level 2 (misd., 3 or more points, or felony, 1-4 points) | 274 | 19.1 |
| Level 3 (felony, 5-8 points) | 226 | 15.7 |
| Level 4 (felony, 9-88 points) | 151 | 10.5 |
| Level 5 (prob. or cond. rel. viol., one offense) | 188 | 13.1 |
| Level 6 (prob. or cond. rel. viol., 2, 3, or 4 offenses) | 29 | 2.0 |
| Total | 1,435 | 100.0 |

(24.4 percent) as for misdemeanors (56.6 percent). The commitment rate was 15.3 percent for felonies and 3.8 for misdemeanors; computed as a proportion of just those cases adjudicated delinquent, the commitment rate was 20.2 percent for felonies and 8.7 percent for misdemeanors. Children charged with felonies were more likely to be placed on probation at home than those charged with misdemeanors (52 versus 34.1 percent), and more likely to receive a change of custody (17.5 versus 6.9 percent).

Surprisingly, charges of noncriminal violation of probation and conditional release were more likely to result in commitment than were felony charges. This relationship is partly explained by the fact that children who allegedly

## Table 5. First-Order Relationship of Offense Charged and Record-Offense Index to Court Disposition

| | Commitment to Training School (% of Total) | Transfer to Superior Court (% of Total) | Foster or Group Home (DSS) (% of Total) | Residential Program (% of Total) | Probation at Home (% of Total) | Dismissed (Not Adjudicated Delinquent) (% of Total) | Other (% of Total) | Total |
|---|---|---|---|---|---|---|---|---|
| **General Offense Category** | | | | | | | | |
| (a) Felony | 10.7 | 4.6 | 4.4 | 1.6 | 52.0 | 24.4 | 2.4 | 504 |
| (b) Misdemeanor | 3.8 | 0.0 | 2.5 | 0.6 | 34.1 | 56.6 | 2.4 | 715 |
| (c) Probation Violation | 16.1 | 0.0 | 11.4 | 8.3 | 34.2 | 21.2 | 8.8 | 193 |
| (d) Conditional Release Violation | 13.0 | 0.0 | 4.3 | 0.0 | 13.0 | 56.5 | 13.0 | 23 |
| **Seriousness Score** | | | | | | | | |
| (a) 1-2 points | 3.5 | 0.0 | 1.8 | 0.3 | 30.8 | 61.3 | 2.2 | 595 |
| (b) 3-4 points | 8.2 | 0.9 | 3.9 | 2.1 | 46.8 | 35.6 | 2.6 | 233 |
| (c) 5-8 points | 8.5 | 3.1 | 3.1 | 1.5 | 54.2 | 26.2 | 3.5 | 260 |
| (d) 9-88 points | 16.5 | 8.2 | 8.9 | 0.6 | 51.9 | 12.7 | 1.3 | 158 |
| (e) Single probation or conditional release violation | 14.3 | 0.0 | 11.1 | 8.5 | 31.7 | 24.3 | 10.1 | 189 |
| **Number of Petitions and Motions Filed Against Child** | | | | | | | | |
| (a) 1 petition | 5.9 | 0.8 | 3.2 | 1.9 | 38.3 | 46.3 | 3.6 | 1,182 |
| (b) 2 petitions | 14.9 | 3.4 | 8.0 | 2.3 | 50.3 | 18.9 | 2.3 | 175 |
| (c) 3-9 petitions | 24.4 | 10.3 | 14.1 | 1.3 | 43.6 | 2.6 | 3.8 | 78 |
| **Number of Companion Cases** | | | | | | | | |
| (a) None | 10.6 | 0.9 | 5.4 | 2.4 | 35.4 | 40.6 | 4.8 | 800 |
| (b) 1 | 3.5 | 3.8 | 4.2 | 2.1 | 44.6 | 38.8 | 3.1 | 289 |
| (c) 2 | 6.7 | 3.4 | 4.0 | 0.7 | 42.3 | 42.3 | 0.7 | 149 |
| (d) 3-7 | 5.1 | 0.0 | 1.0 | 1.0 | 50.8 | 41.6 | 0.5 | 197 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Offense Seriousness Index (combines seriousness score and general offense category) | | | | | | | | |
| (a) Level 1 (Misdemeanor, 1-2 points) | 2.5 | 0.0 | 1.8 | 0.4 | 30.3 | 63.0 | 2.1 | 567 |
| (b) Level 2 (Misdemeanor, 3 or more points; or felony 1-4 points) | 7.7 | 0.7 | 3.6 | 1.8 | 49.3 | 33.9 | 2.9 | 274 |
| (c) Level 3 (Felony, 5-8 points) | 8.8 | 3.5 | 3.1 | 1.8 | 52.7 | 27.0 | 3.1 | 226 |
| (d) Level 4 (Felony, 9-88 points) | 17.2 | 8.6 | 8.6 | 0.7 | 52.3 | 11.3 | 1.3 | 151 |
| (e) Level 5 (Probation or conditional release violation; one offense) | 14.4 | 0.0 | 11.2 | 8.5 | 31.4 | 24.5 | 10.1 | 188 |
| (f) Level 6 (Probation or conditional release violation; 2, 3, or 4 offenses) | 24.1 | 0.0 | 6.9 | 0.0 | 37.9 | 27.6 | 3.4 | 29 |
| Record-Offense Index (combines juvenile record index, offense seriousness index, and total petitions against child) | | | | | | | | |
| (a) Group 1 (least serious) | 0.3 | 0.0 | 1.4 | 0.4 | 38.4 | 57.3 | 2.3 | 735 |
| (b) Group 2 | 5.4 | 0.5 | 6.0 | 3.0 | 54.0 | 26.7 | 4.4 | 367 |
| (c) Group 3 | 18.8 | 2.1 | 13.2 | 6.9 | 27.8 | 24.3 | 6.9 | 144 |
| (d) Group 4 | 29.6 | 4.8 | 4.0 | 3.2 | 36.8 | 17.6 | 4.0 | 125 |
| (e) Group 5 | 36.1 | 8.3 | 16.7 | 0.0 | 22.2 | 16.7 | 0.0 | 36 |
| (f) Group 6 (most serious) | 57.1 | 32.1 | 3.6 | 0.0 | 3.6 | 0.0 | 3.6 | 28 |

Table 6. Relationship of Seriousness and Type of Offense to Commitment[a] Rate, Controlling for Juvenile Record

| Juvenile Record Index | Offense Seriousness Index[b] | Commitment Rate | (Fraction Committed) | Juvenile Record Index | Offense Seriousness Index[2] | Commitment Rate | (Fraction Committed) |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 0.0% | (0/396) | 4 | 1 | 7.1% | (2/28) |
| 1 | 2 | 0.0 | (0/152) | 4 | 2 | 36.4 | (8/22) |
| 1 | 3 | 0.9 | (1/115) | 4 | 3 | 30.0 | (6/20) |
| 1 | 4 | 5.8 | (4/69) | 4 | 4 | 42.1 | (8/19) |
| 1 | 5 | — | (0/0) | 4 | 5 | 23.9 | (17/17) |
| 1 | 6 | — | (0/0) | 4 | 6 | 27.3 | (3/11) |
| 2 | 1 | 1.4 | (1/72) | 5 | 1 | 30.8 | (8/26) |
| 2 | 2 | 4.1 | (2/49) | 5 | 2 | 45.0 | (9/20) |
| 2 | 3 | 10.8 | (4/37) | 5 | 3 | 62.5 | (15/24) |
| 2 | 4 | 9.5 | (2/21) | 5 | 4 | 78.3 | (18/23) |
| 2 | 5 | — | (0/0) | 5 | 5 | 19.4 | (6/31) |
| 2 | 6 | — | (0/0) | 5 | 6 | 40.0 | (2/5) |
| 3 | 1 | 6.7 | (3/45) | | | | |
| 3 | 2 | 12.9 | (4/31) | | | | |
| 3 | 3 | 6.7 | (2/30) | | | | |
| 3 | 4 | 36.8 | (7/19) | | | | |
| 3 | 5 | 4.7 | (4/86) | | | | |
| 3 | 6 | 15.4 | (2/13) | | | | |

[a] Commitment includes 23 cases transferred to superior court for adult trial.

[b] Levels 1 through 4 of offense seriousness index correspond to criminal offenses of increasing seriousness; Level 5 consists of single noncriminal violations of probation and conditional release, and Level 6 consists of multiple noncriminal violations (see text and Table 4).

committed such violations had more extensive prior records (see Table 6); it may also be due to a perception that violators of probation or conditional release were defying the supervisory authority of the court or probation officer.

The total seriousness score computed for the child's offense or offenses was strongly associated with adjudication as well as with disposition. As the score increased, the rate of dismissal declined and the rates of commitment, transfer, probation, and custody change increased (Table 5, Item 2). The presence or absence of companion cases did not seem to affect the juvenile court's disposition, but the total number of petitions and motions filed against the child apparently did affect it (Table 5, Item 3); as this number increased, the commitment and custody change rates increased, and the dismissal rate decreased.[23]

The fact that offense seriousness affects the commitment rate, even when prior record is taken into account, can be seen by inspection of Table 6. Within each of the six levels of the record index, the commitment rate generally increases from Level 1 to Level 4 of the offense seriousness index, corresponding to criminal offenses of increasing seriousness. Levels 5 and 6 of the offense index correspond to single and multiple noncriminal violations of probation and conditional release. Since all cases in Levels 5 and 6 involve children with prior records, by definition, it is not surprising that all such children have moderate or extensive records. The commitment rates for such youngsters (charged with noncriminal violations) are generally similar to those at the lowest two levels of criminal offense seriousness.

*The Combination of Record and Offense*

To combine and summarize the information in the study about prior record and offense seriousness, we formed a record-offense index consisting of six levels based on combinations of original variables. From the lowest to the highest levels of this index, the commitment rate, expressed as a fraction of all cases filed, was 0.3, 6, 20.8, 34.4, 44.4, and 89.3 percent; and as a fraction of just those cases where the child was adjudicated delinquent,

[23] While on the one hand, the commitment rate (including transfer to superior court) increases when total petitions are held constant and the seriousness score is allowed to increase, the reverse is also true; the commitment rate increases when seriousness is held constant and the number of petitions is allowed to increase. After further statistical analysis, the presence of multiple charges was found to have an influence on the court's disposition that was independent of the total seriousness of all charges.

it was 0.6, 8.2, 27.5, 41.7, 53.3, and 89.3 percent (see Table 5, Item 6). The dismissal rate drops from 57.3 to 0 percent as we read from Level 1 to Level 6 of the record-offense index, while the custody change rate increases from 2 to 89.5 percent. Information concerning record and offense, summarized in this index, "explained" 31 percent of the variation in the probability of commitment among the cases studied.[24] When we added home and complainant factors (which had some relationship to court disposition apart from record offense, as explained below) to the record-offense index, making a total of 54 combinations of the different kinds of factors, we were only able to account for 37 percent of the total variance.[25] Thus most of what we were able to explain with our data was accounted for by the child's prior juvenile record and offense seriousness.

*Evidence*

Using court records, the only inferences we could make concerning the quality of the evidence given in regard to the child's alleged offense were: (1) whether a police officer testified against the child, which showed some association with a higher likelihood of being found delinquent and committed, and (2) whether there was an eyewitness to the offense, which bore little or no relationship to disposition rates. We believe

[24] If we define the *i*th child's chance of being committed to training school or transferred to superior court as a random variable $X_i$, equal to one if he receives a training school or superior court disposition and zero otherwise, then the total sum of squares (sample variance) as defined in multiple regression would be $\sum_{i=1}^{N} (X_1 - \bar{X})^2$, where $\bar{X}$, the mean, can be estimated by p, the fraction of children in the sample who received a training school or superior court disposition (.096). This total sum of squares is equal to $Np(1 - p)$. The proportion of variance *not* accounted for by our choice of variables or "risk clusters" can be measured—from an ordinary least-squares point of view—as follows. Consider a contingency table in which there are two columns, representing children who do and do not receive a training school-superior court disposition, and R rows, one for each possible combination of values of all variables (or one for each "risk cluster") selected. The mean value of $X_i$ in the kth row can be estimated by $p_k$, the fraction of children in that row who receive a training school-superior court disposition. The total sum of squares for that row is therefore $n_k p_k(1 - p_k)$, where $n_k$ is the number of children in the *k*th row, and the total for all rows is $\sum_{k=1}^{R} n_k p_k(1 - p_k)$. Thus the proportion of total variance *not* accounted for by the variables chosen can be measured as $\sum_{k=1}^{R} n_k p_k(1 - p_k)/Np(1 - p)$; one minus this quantity is the proportion of variance explained by the variables chosen.

[25] The value of 37 percent explained variation was based on the application of the measure described in the previous footnote to the 54x2 crosstabulation of commitment/noncommitment with the 6x3x3 cross-classification of the record-offense index, the home-parent index, and the complainant index (see subsections 5 and 6 of the text following this note).

that the court records were too unreliable to support any conclusion about the importance of evidence in adjudication.

*Complainant Factors*

When the complainant in the case was a juvenile probation officer or parent rather than someone else, there was a greater likelihood of adjudication of delinquency, commitment, and change of custody. This was true even though the offense involved was usually noncriminal and did not directly endanger public safety.[26] The higher commitment rate for cases initiated by probation officers and parents persisted after prior record and offense seriousness were taken into account as shown in Table 7.

Why did accusations by probation officers or parents make adjudications of delinquency more likely? The courts may have attributed greater reliability to such accusations, and the appearance of defiance toward authority may have increased the gravity of the offense, at least in the eyes of the juvenile judge. Children who defied parental authority were, in any case, not good candidates for a "home supervision" disposition. Also, when probation officers initiated cases, they sometimes may have wanted to be relieved of the responsibility for supervising troublesome (although not criminally misbehaving) children, and therefore may have influenced the court to commit them.

The information on the complainant in each case was merged with the data on whether a policeman testified, to form a single "complainant index." (The police testimony factor was included because it might operate in a fashion similar to that of the complainant factor; that is, the word of a law enforcement official may have been considered more factually correct and authoritative than other evidence.) The complainant index consisted of three groups. Group 1 comprised cases in which no policeman was known to have testified and the complainant was not a probation officer or parent; Group 2 comprised cases in which a policeman testified but the complainant was not a

[26] The type of complainant and the charge were strongly correlated, as might be expected. Most (88.5 percent) of the cases initiated by probation officers and parents involved noncriminal violations of probation or conditional release. Conversely, of all noncriminal probation violation cases, 82.9 percent were filed by probation officers and 5.2 percent by parents; all charges of noncriminal violation of conditional release were filed by probation officers. Almost all (98.1 percent) of the cases initiated by policemen, school officials, and private citizens involved offenses that would be criminal if committed by an adult.

probation officer or parent; and Group 3 comprised cases in which the complainant was a probation officer or parent.

After controlling for record and offense, we found that the complainant and police testimony factors, as summarized in the complainant index, continued to show a relationship to the rate of commitment. The partial association statistic was used to confirm that the identity of the complainant, and whether or not a police officer testified, were associated with the likelihood of commitment, particularly when the child's record and offense seriousness were not at extremely low or high levels.

Table 7. Relationship of Complainant Index to Commitment Rate Within Levels of Record-Offense Index

| Record-Offense Index | Complainant Index | Proportion of Children Committed[a] | Total Cases |
|---|---|---|---|
| Level 1 (least serious record and offense) | Group 1[b] | 0.0% | 281 |
| | Group 2 | 0.4 | 451 |
| | Group 3 | 0.0 | 3 |
| Level 2 | Group 1 | 2.5 | 80 |
| | Group 2 | 6.1 | 197 |
| | Group 3 | 8.9 | 90 |
| Level 3 | Group 1 | 11.8 | 17 |
| | Group 2 | 16.7 | 24 |
| | Group 3 | 23.3 | 103 |
| Level 4 | Group 1 | 21.7 | 23 |
| | Group 2 | 37.6 | 85 |
| | Group 3 | 35.3 | 17 |
| Level 5 | Group 1 | 16.7 | 6 |
| | Group 2 | 46.4 | 28 |
| | Group 3 | 100.0 | 2 |
| Level 6 (most serious record and offense) | Group 1 | 100.0 | 1 |
| | Group 2 | 91.7 | 24 |
| | Group 3 | 66.7 | 3 |

[a] Commitment includes transfer to superior court for adult trial.

[b] Group 1—no police testimony or unknown, and complainant was not parent or juvenile probation officer; Group 2—police officer testified and complainant was not parent or probation officer; Group 3—complainant was parent or probation officer.

### *Parental Factors*

Data were collected on whether the child lived with both natural parents, a single parent, a relative, or foster parents, and also on how many parents (including foster parents and relatives acting as parents) attended the court hearing. The latter was thought to be a possible measure of how much support the parents gave a child in trouble, as the court may have perceived it.[27] A "home-parent index" consisting of three

[27] Of the youngsters in the study, 42.4 percent lived with both mother and father; 44.9 percent lived with a single parent; 6.2 percent lived with a relative; and 6.5 percent lived with someone else (e.g., foster parents). Hearings were

groups was developed to summarize information on home structure and parental attendance.[28]

The more conventional the child's home structure was, and the more parents or relatives attended the juvenile court hearing, the less likely he or she was to be adjudicated delinquent, to be committed to training school, or to be transferred to superior court for adult trial. The pattern persisted when the child's record and offense seriousness were taken into account, as the partial association statistic confirmed (see Table 8): the home situation and parental attendance at the hearing—like the complainant factors discussed previously—apparently influenced the court's decision to commit the child when his record and offense seriousness were not at extremely low or high levels.

Table 8. Relationship of Home-Parent Index to Commitment Rate Within Levels of Record-Offense Index

| Record-Offense Index | Home-Parent Index[a] | Proportion of Children Committed[b] | Total Cases |
|---|---|---|---|
| Level 1 (least serious) | Group 1 | 0.5% | 373 |
| | Group 2 | 0.0 | 299 |
| | Group 3 | 0.0 | 63 |
| Level 2 | Group 1 | 2.4 | 167 |
| | Group 2 | 8.9 | 158 |
| | Group 3 | 9.5 | 42 |
| Level 3 | Group 1 | 20.4 | 49 |
| | Group 2 | 13.0 | 54 |
| | Group 3 | 31.7 | 41 |
| Level 4 | Group 1 | 26.3 | 38 |
| | Group 2 | 35.9 | 64 |
| | Group 3 | 43.5 | 23 |
| Level 5 | Group 1 | 22.2 | 9 |
| | Group 2 | 60.0 | 15 |
| | Group 3 | 41.7 | 12 |
| Level 6 (most serious) | Group 1 | 100.0 | 9 |
| | Group 2 | 81.3 | 16 |
| | Group 3 | 100.0 | 3 |

[a] Group 1—child lived with both natural parents, at least one of whom attended the hearing, or child lived with only one natural parent but both parents attended hearing; Group 2—child lived with one natural parent and only one (or an unknown number) of parents attended hearing, or child lived with relative other than natural parents and at least one parent attended hearing; Group 3—child did not live with natural parents or relatives (e.g., lived with foster parents), or child's hearing was not attended by any parents or relatives.

[b] Commitment includes tranfer for adult trial.

attended by two parents in 29.1 percent of the cases, by one parent in 59.3 percent of the cases, and by no parents in 9.8 percent of the cases. Attendance information was unknown in 1.8 percent of the cases.

[28] Group 1 of the index consisted of youngsters who lived with both natural parents, at least one of whom attended the hearing, and also children who lived with only one natural parent but whose hearing was attended by two parents. Group 2 consisted of those who lived with one natural parent whose

The effect of these parental factors on adjudication may be partly due to the fact that it was more difficult for a child to establish his innocence when his parents did not appear at his hearing. The effect on commitment is easier to explain: the court was probably concerned with the effectiveness of supervision the child would receive if allowed to remain at home, and the less cohesive and supportive his family appeared to be, the more likely the court was to confine him in an institution.

*The Child's Age, Sex, Race, and Family Income*

Ninety percent of the youngsters in the study were from 12 to 15 years of age; only 2 percent were under 10 years of age (the youngest being seven), and only 2.5 percent were 16 or 17. Seventy-six percent were boys, and 58 percent were black.[29] The family income of the youngsters in the study was measured indirectly as the median 1969 family income of the census tract in which they resided.[30]

The child's age did not prove to be independently related to commitment. The commitment rate did increase with age (from 3.5 percent for the 7-to-11 age group, to 26.1 percent for the 16-to-17 age group), but so did juvenile record. After juvenile record and offense seriousness were taken into account, no significant effect of age on commitment remained. The child's sex also proved to have little or no relationship to court disposition. Although boys' dismissal rate was somewhat lower than girls', and their probation rate somewhat higher,

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hearings were attended by one or an unknown number of parents, as well as those who lived with a relative other than their natural parents whose hearings were attended by at least one parent. Group 3 of the index comprised children whose hearings were attended by no parents or relatives and children who did not live with natural parents or relatives. Thus, the three groups were ordered from the most conventional home situation and the greatest degree of parental support to the child—as the court may have perceived it—to the least conventional home situation and the least amount of parental support.

[29] Black children were disproportionately represented with respect to their number in the general population. Of all persons age 12 through 15 in 1970 in Forsyth County, 25.6 percent were black; the comparable figure for Mecklenburg County was 28.3 percent (U.S. Bureau of the Census, 1970: 135, 141).

[30] The total range of yearly family incomes derived from census tracts was divided into intervals of $3,177 to $5,953, $6,013 to $8,545, and $8,563 to $20,652, each of which accounted for 25 percent of all cases. The incomes of the remaining 25 percent of the children were unknown because their suburban addresses could not be located. Census tract income is an objective index that has been used in delinquency research (see Wolfgang, Figlio, and Sellin, 1972: 47-52). In the 458 cases for which information on individual family income was available, the two were positively and significantly correlated. The regression equation was: Individual Income = (1.007)(Tract Income)-$747. The F value for the regression was 132.89 with 1 and 456 degrees of freedom, and was significant at .001. R was .475 and $R^2$ was .226.

their commitment rate was the same, and no significant differences appeared when record and offense were controlled for.

We expected that race would be particularly important because the treatment-oriented ideology of the juvenile court could have been used to rationalize more punitive treatment of blacks than whites. In fact, we found no such discrimination. Black youngsters had a higher commitment rate than whites (11.7 versus 7 percent, and 19.2 versus 12.9 percent when expressed as a proportion of cases adjudicated delinquent). However, blacks were more likely to have records and be charged with serious offenses; the proportion of blacks at the high end of the record-offense index (levels 4, 5, and 6) was 19 percent, compared with only 7 percent for whites. We checked for the possibility that race might have played a role in a child's *accumulation* of a juvenile court record by comparing the adjudication of black and white children who had no previous record whatever. The rates of dismissal were 52.7 percent for the 393 blacks in this group and 55.4 per cent for the 325 whites; the difference was not significant.

When the commitment rates of blacks and whites were compared over all six levels of the record-offense index (see Table 9), no significant difference was found. In Level 6 of the index, the commitment rate was much higher for blacks than for whites (96 versus 33.3 per cent); although technically this contrast is significant,[31] it is based on a commitment rate for only three cases involving white youngsters, and does not change our conclusion about the absence of a consistent race effect.

The child's family income, like race, appeared at first to have a substantial relationship to court disposition. The commitment rate for the low-income group was 14.6 percent, as compared with 8 percent for those of medium, high, and unknown incomes. However, like the racial difference, most of this apparent difference is explainable in terms of record and offense. Low-income children were more likely to have records and/or be accused of serious offenses. The proportion of low-income children in the highest three levels of the record-offense index was 24 percent, as compared with 10 percent of other children. We found no evidence of income discrimination in accumulation of a juvenile court record; dismissal rates were

[31] Fisher's exact test was .02 for this comparison.

virtually identical across income groups for children with no record whatever.

Table 9 shows the commitment rates for various income groups within each level of the record-offense index. There were some differences in rates in Levels 3, 4, and 6, but only in

Table 9. Relationship of Race and Income to Commitment Rate Within Levels of Record-Offense Index

| Record-Offense Index | Race/Income | Commitment Rate[a] | Total Cases[b] |
|---|---|---|---|
| Level 1 (least serious) | Black | 0.5% | 412 |
| | Other | 0.0 | 311 |
| Level 2 | Black | 7.9 | 190 |
| | Other | 4.0 | 176 |
| Level 3 | Black | 17.4 | 69 |
| | Other | 24.0 | 75 |
| Level 4 | Black | 32.6 | 95 |
| | Other | 41.4 | 29 |
| Level 5 | Black | 44.4 | 27 |
| | Other | 44.4 | 9 |
| Level 6 (most serious) | Black | 96.0 | 25 |
| | Other | 33.3 | 3 |
| Level 1 (least serious) | Low Income | 0.0 | 147 |
| | Medium Income | 0.0 | 186 |
| | High income | 0.5 | 198 |
| | Unknown income | 0.5 | 204 |
| | Medium, high, & unkn. | 0.3 | 588 |
| Level 2 | Low income | 5.9 | 85 |
| | Medium income | 6.5 | 93 |
| | High income | 4.7 | 107 |
| | Unknown income | 7.3 | 82 |
| | Medium, high, & unkn. | 6.0 | 282 |
| Level 3 | Low income | 21.1 | 38 |
| | Medium income | 5.7 | 35 |
| | High income | 30.0 | 30 |
| | Unknown income | 26.8 | 41 |
| | Medium, high, & unkn. | 20.8 | 106 |
| Level 4 | Low income | 26.0 | 50 |
| | Medium income | 33.3 | 30 |
| | High income | 26.3 | 19 |
| | Unknown income | 57.7 | 26 |
| | Medium, high, & unkn. | 40.0 | 75 |
| Level 5 | Low income | 44.4 | 18 |
| | Medium income | 33.3 | 9 |
| | High income | 66.7 | 3 |
| | Unknown income | 50.0 | 6 |
| | Medium, high, & unkn. | 44.4 | 18 |
| Level 6 (most serious) | Low income | 100.0 | 18 |
| | Medium income | 80.0 | 5 |
| | High income | 33.3 | 3 |
| | Unknown income | 100.0 | 2 |
| | Medium, high, & unkn. | 70.0 | 10 |

[a] Includes transfer for adult trial.
[b] Race figures total 1,421 instead of 1,435 due to missing race information.

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Level 6 was the commitment rate for low-income children significantly greater than that of children of medium, high, and unknown income combined.[32] The partial association statistic indicated that there was no significant and consistent difference between commitment rates of low-income and other children over all levels of record and offense seriousness. We conclude that being from a low-income family had little or no influence on the commitment decision independently of the child's record and offense.

Those who planned the Juvenile Defender Project (described in the next section) thought that children from low-income families were at a disadvantage in juvenile court, and expected that better legal representation—by a specialized juvenile defender—would help them overcome this disadvantage. Our analysis indicates that, at least with respect to commitment, no such disadvantage existed prior to the project. Examining commitment rates in Charlotte and Winston-Salem for the six-month study period in 1975 before the project began, we found no significant differences between low-income and other children, when record and offense seriousness were controlled.

*Pre-Hearing Detention and Judge*

Administrative factors—including who the presiding judge was, whether the child was held in a detention home pending his hearing, and what sort of legal counsel the child had—were purposely set aside for statistical testing until other important factors had been identified, so that their contributions could be tested with special rigor.[33]

The decision to detain a child before his hearing is based, legally, on the same kinds of criteria as the decision to commit him to training school: "the protection of the community or . . . the best interest of the child" (N.C. Gen. Stat. § 7A-286(3).[34] Twenty-five percent of the children studied were held in detention pending their hearings, usually for two to three weeks. Children detained were much more likely to be found delinquent than those not detained (79.9 percent versus 52.7 percent) and to be committed when they had been found delinquent (34.8 versus 7 percent). This was partly explainable

[32] Fisher's exact test was .04 for this comparison.

[33] We also compared the two court districts studied and the two time periods and found that neither was associated with the commitment rate when record and offense seriousness were controlled for.

[34] This statute requires a hearing within five calendar days to determine the need for continued detention.

by the fact that those detained had more serious records or charges, but after record and offense were taken into account as shown in Table 10, the commitment rate remained much greater for children held in detention, except at the highest level of record and offense seriousness, and the partial association statistic confirmed that those differences were significant. We conclude that being detained before adjudication had an independent effect on the likelihood of commitment, entirely apart from the fact that both detention and commitment had some common causal antecedents.

Table 10. Relationship of Detention and Judge to Commitment Rate Within Levels of Record-Offense Index

| Record-Offense Index | | Proportion of Children Committed[a] | Total Cases |
|---|---|---|---|
| Level 1 (least serious) | In detention | 1.6% | 61 |
| | Free | 0.1 | 673 |
| Level 2 | In detention | 9.8 | 92 |
| | Free | 4.7 | 274 |
| Level 3 | In detention | 29.1 | 86 |
| | Free | 8.6 | 58 |
| Level 4 | In detention | 43.5 | 62 |
| | Free | 25.4 | 63 |
| Level 5 | In detention | 51.9 | 27 |
| | Free | 22.2 | 9 |
| Level 6 (most serious) | In detention | 88.0 | 25 |
| | Free | 100.0 | 3 |
| Level 1 (least serious) | Judge 13 | 1.9 | 54 |
| | Judge 7 | 0.0 | 9 |
| | Other judges | 0.1 | 672 |
| Level 2 | Judge 13 | 15.4 | 13 |
| | Judge 7 | 0.0 | 4 |
| | Other judges | 5.7 | 350 |
| Level 3 | Judge 13 | 57.1 | 14 |
| | Judge 7 | 0.0 | 3 |
| | Other judges | 17.3 | 127 |
| Level 4 | Judge 13 | 40.0 | 5 |
| | Judge 7 | 0.0 | 1 |
| | Other judges | 34.5 | 119 |
| Level 6 | Judge 13 | 0.0 | 1 |
| | Judge 7 | — | 0 |
| | Other judges | 45.7 | 35 |
| Level 6 (most serious) | Judge 13 | 0.0 | 1 |
| | Judge 7 | — | 0 |
| | Other judges | 92.6 | 27 |

[a] Commitment includes transfer for adult trial.

According to the original concept of the juvenile court, pre-hearing detention was to serve as the beginning of the child's

rehabilitation (Ryerson, 1978: 38). Evidently, however, the Charlotte and Winston-Salem juvenile courts did not regard detention as therapeutic. Although the child held in a juvenile detention home may have received beneficial treatment for a few weeks, this treatment apparently did not make him appear a better candidate for dismissal or probation at home. The child's ability to defend himself may have been impaired by detention, either because he was prejudged by the same court that later decided his case, or because it was harder for him to talk to his lawyer and otherwise prepare his defense. Perhaps juvenile courts need to use some type of supervised release of children before their hearings instead of holding them in a jail or detention home.

The statutory policy in North Carolina (N.C. Gen. Stat. §§ 7A-146, 7A-147) is to encourage specialization by certifying certain judges to hear juvenile cases, although any district court judge may be assigned to juvenile court. Three out of 13 judges involved in the study—the specialized judges—handled 1,154 (80.4 percent) of the cases, and five other judges each handled between 17 and 88 cases.

Among the eight judges hearing the most cases, there were differences in disposition rates, but differences in caseloads apparently accounted for most of these. Dismissal rates varied from 27.9 to 58.8 percent (as compared with the overall rate of 40.6 percent); five of these rates were between 34.2 and 43.5. The highest commitment rate was 14.8 percent for Judge 13 and the lowest was 0 percent for Judge 7; the other six judges had commitment rates ranging from 7.4 to 11.1 percent, which were very close to the overall rate of 9.6 percent.

Some further analysis was done to check whether Judge 13 and Judge 7—the judges with the highest and lowest commitment rates, respectively—differed from other judges when the record and offense seriousness of their caseloads were taken into account. Judge 7's low rate is apparently due to the fact that most of his cases (13 out of 17) were at the two lowest levels of record and offense seriousness; there were not enough of his cases at higher levels for meaningful rates to be computed (see Table 10). Judge 13 had substantial numbers of cases in Levels 1, 2, and 3; his commitment rate was higher than that of other judges in each of those levels, but the difference was statistically significant only in Level 3.

## V. EFFECTS OF PRESENCE AND TYPE OF COUNSEL

*The Juvenile Defender Project*

North Carolina law provides that a child has a right to be represented by counsel in any juvenile court hearing, and, if indigent, to be represented by counsel at state expense in a juvenile court hearing that could result in commitment to an institution or transfer to the superior court (N.C. Gen. Stat. §§ 7A-451[a][8]).[35] Thus, all children in the present study were legally entitled to counsel.

Before the Juvenile Defender Project (described below), assigning counsel from a list prepared by the local bar association was the standard means of providing indigent youngsters with a lawyer. Youngsters who were not indigent had the right to be represented by privately paid counsel.[36] Normally, assigned and privately paid counsel were not juvenile court specialists.

The North Carolina Administrative Office of the Courts undertook the Juvenile Defender Project in 1976 as an experiment to determine whether it would result in higher quality and more efficient legal service for indigent children than that provided by the existing assigned-counsel system. The Project provided one attorney in each of the two juvenile courts studied. The attorneys hired by the Project had no special experience or training before they became juvenile defenders, and they were given no additional training or orientation in juvenile law or procedure. No lawyer with juvenile court experience supervised them. Although the Juvenile Defender in Charlotte acted under the general supervision of the (adult) Public Defender, the Public Defender had a large number of other lawyers to supervise in adult criminal court matters and was not a juvenile court specialist.[37]

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[35] Where the child has counsel, the state is represented by the district attorney (N.C. Gen. Stat. § 7A-61).

[36] A very small number of indigents (primarily during the 1975 study period) were represented either by the Legal Aid Project in Winston-Salem (a total of 16) or by the regular staff of the Charlotte Public Defender Office (a total of 12). Because this group of 28 Legal Aid and Public Defender cases is too small and heterogeneous for its disposition rates to be meaningful, we have not treated it as a special category in the statistical analysis of the effect of attorneys.

[37] The Juvenile Defender in Winston-Salem, who also had a private law practice, was paid for as many hours of work as he needed to represent indigent juveniles. This turned out to be an average of only six hours per week during the period January through June, 1976. In Charlotte, the Juvenile Defender worked full time.

When the Juvenile Defender Project began to operate, it was necessary for the assigned-counsel system to continue. Groups of two or more children were often brought into court charged with offenses arising out of the same incident. To avoid a conflict of interest, the Juvenile Defender would be appointed only for one member of the group, selected by a coin toss, and the rest would receive separate assigned counsel.

The Juvenile Defender quickly became the most common form of counsel representation. During the 1976 study period, the project represented 22.3 percent of all cases in Winston-Salem and 45.8 percent in Charlotte. In Charlotte, the project increased the exercise of the right to counsel; the proportion of families that did not exercise the right dropped sharply (from 36.5 to 23.4 percent). The same result did not occur in Winston-Salem, probably because the Juvenile Defender there allocated only six hours per week, on the average, to Project cases.

While a large proportion of Juvenile Defender clients were in the low-income group (28.9 percent in Charlotte and 42.6 percent in Winston-Salem), most (67.6 percent of the total) were in the middle-, high-, and unknown-income groups (the latter, being suburban, probably contained few indigents).[38] This suggests that standards of determining eligibility for free counsel became very loose, especially in the Charlotte Juvenile Court, after the project began—probably because of the convenience of using the Juvenile Defender's services. The apparent casualness with which the Juvenile Defender was assigned suggests that counsel may have been regarded as a mere formality—a notion that is not contradicted by our findings about the effectiveness of counsel. Before the Juvenile Defender Project began, as well as afterwards, children whose families were most likely to be able to afford private counsel—those in the middle- and high-income groups—were more likely than low-income children to do without any counsel. This finding also suggests that counsel was regarded as being of little value.

*Effects of Counsel on Adjudication of Delinquency*

There was often no contest as to the facts in the cases we studied: 72.4 percent of the children admitted one or more of the alleged offenses in court. Seventy percent of those who made an admission were adjudicated delinqent; conversely, 77

[38] Because we could obtain no objective data—or clear legal guidelines—on whether youngsters were indigent, we used income groupings based on census tract data.

percent of those adjudicated delinquent had made an admission. Admission was shown to have a strong association with adjudication of delinquency, even when record, offense, and other important factors were taken into account. Comparing the adjudication rates of those who did and did not make admissions across five "risk groups" (described below), we found that the rates were consistently and substantially higher for those who made admissions, as confirmed by the partial association test. However, admitting an offense did not benefit the child by reducing his chance of being committed. When commitment rates of those adjudicated delinquent were compared across risk groups, commitment rates were not found to be significantly different for those who admitted than for those who denied. Thus, there was no evidence of "plea bargaining" insofar as commitment was concerned.

The high overall admission rate and the strong relationship of admission to a finding of delinquency sharply limited the role of counsel in adjudication. Surprisingly, the presence of counsel did not seem to have had much effect on whether the child admitted an offense; 79.7 percent of children without counsel admitted an offense, but 68.3 percent of those with counsel also did so. Youngsters represented by the specialized Juvenile Defenders admitted offenses about as often (66.8 percent) as those represented by other forms of counsel (68.9 percent).

The dismissal rates for the Juvenile Defenders' clients and those represented by assigned counsel, shown in Table 11, were quite low (36.2 and 30.7 percent), while the rate for those represented by private counsel was high (51.0 percent), as was that of children unrepresented by a lawyer (41.6 percent). This comparison reflects a difference in the type of clients represented. For example, 23.4 percent of those represented by Juvenile Defenders and 23.7 percent of those represented by assigned counsel had records and charges that put them in the three highest levels of the record-offense index, as compared with only 1.5 percent of those with private counsel and 4.7 percent of those without counsel. In other words, Juvenile Defenders and assigned counsel generally had cases that were more difficult to defend than those of private counsel.

The presence and type of counsel apparently made little difference in whether children were adjudicated delinquent. After other important factors were taken into account by

## Table 11. First-Order Relationship of Type of Counsel to Court Disposition

| | Commitment to Training School (% of Total) | Transfer to Superior Court (% of Total) | Foster or Group Home (DSS) (% of Total) | Residential Program (% of Total) | Probation at Home (% of Total) | Dismissed (Not Adjudicated Delinquent) (% of Total) | Other (% of Total) | TOTAL | Commitment & Transfer (% of Total) | Commitment & Transfer (% of Cases adjudicated delinquent) | Custody Change (% of total except transfer) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| No counsel | 3.3 | 0.0 | 2.0 | 2.2 | 41.6 | 46.4 | 4.5 | 539 | 3.3 | 6.2 | 7.6 |
| Privately retained counsel | 3.5 | 1.5 | 1.0 | 0.5 | 40.9 | 51.0 | 1.5 | 198 | 5.1 | 10.3 | 5.1 |
| Juvenile Defender | 15.2 | 2.5 | 7.8 | 2.9 | 28.4 | 36.2 | 7.0 | 243 | 17.7 | 27.7 | 26.6 |
| Counsel assigned by court | 12.4 | 3.0 | 7.3 | 1.6 | 44.0 | 30.7 | 0.9 | 427 | 15.5 | 22.3 | 22.0 |
| Public Defender or Legal Aid | 0.0 | 3.6 | 0.0 | 3.6 | 46.4 | 42.9 | 3.6 | 28 | 3.6 | 6.3 | 3.7 |

means of a "risk index" (described below), no consistent and significant difference was found in dismissal rates comparing children with and without counsel, and comparing those represented by Juvenile Defenders with those represented by (1) all other forms of counsel, (2) private counsel, and (3) assigned counsel.

*Effects of Counsel on Commitment*

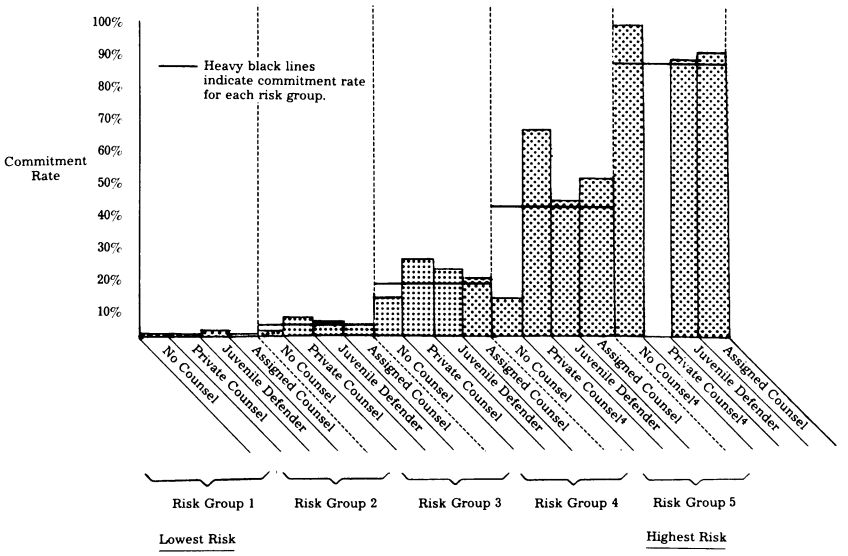
If our conclusion is correct that counsel had little effect on the adjudication of delinquency, the attorney could still have influenced the court's disposition by presenting arguments in favor of alternatives to commitment. But here, too, when factors intrinsic to each case are taken into account, our analysis indicates that counsel were generally ineffective and may have even been detrimental.

Commitment rates for children represented by the Juvenile Defender and assigned counsel were high (17.7 and 15.5 percent), and those for children with private counsel and no counsel were low (5.1 and 3.3 percent), as Table 11 shows. (The same contrast appears when commitment rates are computed as a fraction of just those cases adjudicated delinquent: 27.7 and 22.3 percent for Juvenile Defenders and assigned counsel, versus 10.3 and 6.2 percent for private counsel and no counsel.)

In order to compare the commitment rates for different forms of counsel, taking into account other important factors, we developed a "risk index" that combined information on the child's prior record, the seriousness of the alleged offense, whether the complainant was a court counselor or parent, whether a policeman testified, the child's home structure, and his parents' attendance at the juvenile court hearing. (All of these were found to be importantly related to commitment, as explained in the preceding section.) Graph 1 shows the comparison of commitment rates over all five "risk groups." The risk groups are separated by vertical broken lines in the graph, and the heavy black horizontal lines indicate the commitment rate for all children in each risk group. The vertical bars on the graph show the commitment rate for children represented by no counsel, private counsel, Juvenile Defenders, and assigned counsel.[39]

[39] The graph has little meaning with respect to private counsel cases in Risk Groups 4 and 5 (a total of only four) and uncounseled cases in Group 5 (a total of one).

Graph 1. Relationship of Type of Counsel[1] to Commitment Rate[2] Within "Risk Groups"[3]




1 Excludes 28 cases where counsel supplied by adult public defender or legal aid program.
2 Commitment includes transfer to superior court for adult trial as well as commitment to training school.
3 Risk groups were defined based on record and offense seriousness, complainant, and home-parent factors.
4 Total private counsel cases only 3 in Group 4 and 1 in Group 5; total no-counsel cases only 1 in Group 5.

Although commitment rates differed somewhat for cases with various forms of counsel, these differences were not consistent and significant. As indicated by the partial association statistic, there were no significant differences in commitment rates across risk groups comparing (1) Juvenile Defender cases with assigned counsel cases, (2) Juvenile Defender cases with private counsel cases, and (3) private counsel cases with cases involving all other forms of counsel. However, there was a significant and consistent difference in the commitment rates of uncounseled and counseled cases: *children without counsel were less likely to be committed*, especially if they were in the intermediate risk groups. The commitment rates for uncounseled and counseled cases were

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1.0 and 5.2 percent in Risk Group 2, 14.4 and 20.6 percent in Group 3, and 15.0 and 50.5 percent in Group 4.

*Comparison with Another Study of Effects of Counsel*

Stapleton and Teitelbaum (1972) studied a juvenile defender project conducted in the juvenile courts of two large midwestern cities, dubbed "Zenith" and "Gotham," in 1966 and 1967. In each city, the project was staffed by three attorneys selected on the basis of "academic standing, recommendations, and willingness to undertake a substantially 'adversarial' role in the defense of delinquency matters" (Stapleton and Teitelbaum, 1972: 58-59). The six lawyers were given intensive training, including special orientation sessions on the juvenile justice system and graduate courses on law applicable to juvenile courts. (In contrast, the Juvenile Defenders in Winston-Salem and Charlotte were neither selected with particular care nor given any training.)

The researchers in Zenith and Gotham conducted a controlled experiment. Cases involving children from poverty areas were randomly assigned either to an experimental group in which they received the service of the defender project, or to a control group in which the majority were uncounseled, and the rest were represented by non-project counsel.[40]

Children represented by project lawyers in Zenith and Gotham did not have a significantly lower commitment rate than either those represented by non-project counsel or those unrepresented by counsel. This was true whether the commitment rate was computed as a fraction of all cases or as a fraction of cases adjudicated delinquent. In fact, in Gotham, the commitment rate for project cases was significantly greater than the rate for control cases.[41] In Zenith (but not in Gotham), the project lawyers were relatively successful in avoiding adjudication of delinquency; project cases had higher rates of dismissal and continuance without a formal adjudication than either cases with non-project lawyers or uncounseled cases. In Gotham (but not in Zenith), children

[40] The actual fraction of control group children who were uncounseled was 61.3 percent in "Zenith" and 88.6 percent in "Gotham" (Stapleton and Teitelbaum, 1972: 52, Tables II.1, II.2).

[41] In "Gotham", the commitment rate was 10.7 percent for project cases versus 5.9 percent for controls, computing the rate as a fraction of all cases; computing the commitment rate as a fraction of all cases adjudicated delinquent, the rate was 21 percent for project cases and 14.5 for controls. The first comparison is significant at .05; the second is not significant (Stapleton and Teitelbaum, 1972: 66, 69, Tables III.1, III.2.).

without an attorney had a commitment rate (4.5 percent) significantly lower than the rate for those with an attorney (12.6 percent).[42]

Why were the specially selected and trained juvenile defenders relatively successful at the adjudication stage in Zenith but not in Gotham? Stapleton and Teitelbaum concluded that the difference was attributable to the more formal and adversarial procedures of the Zenith court, which "facilitated the raising of legal defenses" (Stapleton and Teitelbaum, 1972: 143). The Zenith court had four distinct procedural stages: (1) a pre-adjudication "arraignment" to explain the child's rights and enter his admission or denial of the charges, followed by an automatic continuance of one to two weeks to allow for preparation if the child denied the charges; (2) a separate hearing on suppression motions, if any were made; (3) the adjudication hearing; and (4) a separate disposition hearing if the child was adjudicated delinquent. The state was represented by a prosecutor. Verbatim transcripts were provided at all stages. In the Gotham court, on the other hand, there was no prosecutor, and the development of the evidence was left to the judge. Arraignment, motions, adjudication, and disposition were usually merged in one hearing. If the child denied the charge, there was no continuance, and no transcripts of the hearing were routinely provided by the Gotham court (Stapleton and Teitelbaum, 1972: 106-108, 123-125, 143). Children in the Zenith court were more likely "to force the state to its proof": 53.3 percent denied all charges, as compared with 35.8 percent in Gotham, and Gotham attorneys were "more willing to exert pressure of an informal sort to secure both a truthful answer and, if appropriate, a judicial admission" (Stapleton and Teitelbaum, 1972: 122, 118, 116, Table V. 3).

In comparing the two North Carolina juvenile courts with those in Zenith and Gotham, we first note that in all four

[42] The dismissal rate in "Zenith" was 54.2 percent for project cases, 42.4 percent for cases with other lawyers, and 38.9 percent for children unrepresented by lawyers. The proportion of continuance without formal adjudication was 12.5 percent for project cases, 4.7 percent for cases with other lawyers, and 3.6 percent for children unrepresented by lawyers. Although there is no adjustment for other factors in this comparison, it should be fairly reliable. There were 286 children without counsel in the "Gotham" data; 84.3 percent of these were in the control group, and 88.6 percent of the control group did not have counsel. Thus, the control group and the no-counsel group comprised the same children for the most part. Note that the project and control groups were randomly selected (Stapleton and Teitelbaum, 1972: 71, Table III.4; 50-56).

courts, commitment was apparently considered a last resort, as shown by the low commitment rates (10.6 percent in Winston-Salem, 9.1 percent in Charlotte, 10.4 percent in Zenith, and 8.2 percent in Gotham). Aside from that similarity, the North Carolina courts seem to be more like the informal juvenile court of Gotham than the formally adversarial court of Zenith. Although adjudication and disposition hearings were separated more often than not in the North Carolina courts, there was usually no separate "arraignment" or motion hearing, as in Zenith.[43] With regard to the child's willingness to "force the state to its proof," the North Carolina courts were like the Gotham court and unlike the Zenith court; the denial rates were 28.9 percent in Winston-Salem and 35.1 percent in Charlotte.

The fact that the specialized Juvenile Defenders in Charlotte and Winston-Salem did not do appreciably better than other types of counsel, in terms of adjudication and commitment rates, may be attributable, in part, to the fact that the procedures of the courts in which they practiced did not encourage an adversarial posture. Also, it may be partly attributable to the lack of selectivity in hiring the Juvenile Defenders and the absence of formal training. In Zenith's highly adversarial juvenile court, the juvenile defender project's lawyers were relatively successful in avoiding adjudications of delinquency, but they were selectively hired and intensively trained.[44]

### *Doing Without a Lawyer: A Positive Advantage?*

The Winston-Salem-Charlotte analysis indicates that children without counsel were substantially less likely to be committed than children with counsel, after taking into account prior record, seriousness of the alleged offense, and other important factors. Stapleton and Teitelbaum also found that

[43] Conversation with Mrs. Judy Adams, Juvenile Court Clerk in Charlotte, and Mr. James Weakland, Chief Court Counselor in Winston-Salem. These sources estimate that adjudication and disposition hearings were separate in 80 percent of the Charlotte cases and 40 percent of the Winston-Salem cases.

[44] It should be remembered that the carefully selected, trained, and specialized juvenile defenders in the Stapleton and Teitlebaum study were successful only in the "Zenith" court—a court with a procedure much more formal than that of the courts we studied and, we suspect, much more formal than that of most juvenile courts—and that even in the Zenith court, those highly trained attorneys had no apparent impact on the court's decision to commit the child.

uncounseled cases had a considerably lower commitment rate than counseled cases in the Gotham juvenile court.[45] How can these findings be explained?

In our study, youngsters unrepresented by counsel were a predominantly medium- and high-income group; only 15.2 percent were in the low-income groups, as compared with 30.5 percent of those who had lawyers. Free lawyers were not difficult to obtain, even for those in higher income groups, since courts rarely refused to find indigent those who claimed to be. Therefore, those who did without counsel probably did so by choice or by their parents' choice. There are at least two possible explanations (not mutually exclusive) for such a choice. One is that those who did without counsel were aware of circumstances that would make dismissal or some other lenient disposition of their cases very likely. This explanation is weakened by the statistical analysis. The comparison of commitment rates for those with and without counsel took into account some of the most important circumstances that affected disposition, including prior record, offense seriousness, and complainant and parental factors, and showed that while uncounseled children were less likely to have serious records and offenses than counseled children, their commitment rates were consistently lower than those of counseled children with comparable levels of prior record, offense seriousness, and other "risk factors."[46]

Another possible explanation for the fact that children with counsel were no less likely to be adjudicated delinquent and more likely to be committed than those without counsel is that the courts may have regarded attorneys as an impediment. Perhaps juvenile courts like those of Charlotte, Winston-Salem, and "Gotham" maintain only token compliance with the constitutional requirement of counsel, and continue to function much as they would have before *Gault*. It may be that even before *Gault*, these juvenile courts were trying to be as lenient

[45] The juvenile courts of Winston-Salem and Charlotte were much more like the "Gotham" court than the "Zenith" court, where there was no significant difference in commitment rates between counseled and uncounseled children.

[46] We defined five "risk groups" based on record and offense seriousness of cases as well as complainant and parental factors. Within each of these groups, the commitment rates for uncounseled and counseled children, respectively, were as follows (see Graph 1): Group 1—0 and 0.5 percent; Group 2—1.1 and 5.2 percent; Group 3—14.4 and 20.6 percent; Group 4—15 and 50.5 percent. (Group 5 is omitted because there was only one uncounseled case in that group.)

as they possibly could;[47] perhaps the advent of the attorney as a new participant in the process only made it more difficult for them to be lenient.

## VI. CONCLUSIONS

Our analysis indicates that the Winston-Salem and Charlotte juvenile courts were quite reluctant to commit children, but suggests that in deciding who should be committed, the courts were more concerned with control of juvenile crime and misconduct than with rehabilitation. The extent of the child's prior juvenile record and the seriousness of his currently alleged offense or offenses account for most of the variation in the commitment rate that we were able to explain statistically. The data suggest that the courts were also influenced by the child's prospects for successful supervision and rehabilitation by his parents and probation officer if allowed to remain at home. We found no clear evidence of social prejudice in the juvenile courts' decision-making. Black and low-income children were not found to have significantly higher commitment rates than white and higher-income children, once differences in prior record and offense seriousness were taken into account. Allowing for differences in the types of cases handled, personalities of individual judges did not seem to have a strong influence on dispositions.

What indication is there that the juvenile courts functioned adversarially? Entirely apart from his prior record and current offense, a child was more likely to be committed if he had been detained in a juvenile detention home before his hearing. Detention before the child's adjudication hearing apparently tended to impair his defense. If this interpretation is correct, it is consistent with the view that the courts acted adversarially—that is, that their decision to adjudicate and commit was influenced by the evidence and arguments presented on the child's behalf. Unfortunately, our data were insufficient to reach any conclusions as to how the courts' dispositions were affected by the strength of the evidence for and against the child.

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[47] This leniency is suggested by the low commitment rates Stapleton and Teitelbaum (1972) found in the two courts they studied immediately before *Gault*. The Charlotte and Winston-Salem commitment rates were very low eight years after *Gault*, and may well have been equally low before it. The Sanders data (1948) suggests that commitment rates were much higher in North Carolina in the 1930s and 1940s than in Winston-Salem and Charlotte in the 1970s. Perhaps there was a trend toward greater leniency that began well before *Gault*. (See note 7 *supra*.)

The statistical analysis indicates that the assistance of an attorney was on the whole not helpful—and may have actually been detrimental—with respect to reducing the child's chance of being adjudicated delinquent and committed. This finding contrasts with the Supreme Court's view in the *Gault* case that the child "requires the guiding hand of counsel at every step in the proceedings against him," and the declaration by the President's Crime Commission that the assistance of counsel is "the keystone of the whole structure" of due process guarantees (President's Commission, 1967: 86).

Our conclusion that lawyers were generally not effective must be qualified in several important ways. (1) We made no attempt in our study to measure the effectiveness of *individual* attorneys; if we had, we probably would have found that some were quite effective. (2) The participation of a prosecutor in juvenile court (always required when the child had counsel) may have counteracted the effects of the child's lawyer. (3) Nothing in our study indicates what would happen if counsel were removed from juvenile courts. Although children with lawyers did not fare better than those without lawyers, other things being equal, the frequent presence of lawyers as outside observers may have helped to insure that the juvenile court's dispositions were motivated mainly (as we found) by legally relevant considerations such as the seriousness of the child's misconduct and not by social prejudice.

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