

Legal Representation of Minority Youth: An Exploratory Study

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Executive Summary

The intent of this study was to examine the issue of legal representation of minority youth in Utah's juvenile justice system. A large component of the impetus for this project was the observation by many in the justice system that there may be notable disparity in not only the appointment of counsel to youth in general, but particularly the dimension of legal representation for those youth who are of a minority ethnic/racial background as compared to those who are not. Supported primarily by the Commission on Racial and Ethnic Fairness, the present study took a three-pronged approach to answering questions related to such legal representation, utilizing statistical/quantitative data, and qualitative data derived from interviews with both attorneys and juveniles.

Literature Review

- There is very little information available in the literature that specifically addresses the issue of representation of minorities.
- Prior to *Gault* attorneys represented youth offenders in approximately 5% of all juvenile delinquency cases.
- Feld (1993) found minorities received more representation than did non-minorities. There was an assumption that minorities were in court for more serious offenses. More non-minority youth had private counsel. Additionally, the literature review indicates that youth with counsel tended to receive more severe dispositions than those without legal representation. These differences occurred across all ethnic groupings.
- OJJDP (1993) found that youth offenders who did not receive representation were at a greater risk of longer confinement and other adverse conditions.
- In reference to quality of representation, one study suggested that few defense attorneys perceived themselves as specialists in juvenile law, with 50% reporting that they had little interest in the substance of juvenile law, and 70% indicating that they had received no specialized training. Fifty percent of transcripts examined in the study had appealable errors.

- Several studies suggest that attorneys' caseloads are often too high to allow for quality representation.
- An OJJDP study in Utah found that waiver requests by prosecutors were approved in 87% of the cases when the offender used a weapon to injure a victim. Additionally, waiver requests were approved in 81% of cases involving offenders with 5 or more prior cases in juvenile court.
- A bulk of the research indicates that there is little correlation between the use of waivers and public safety.
- While studies continue to document the over-representation of minorities, there is no relevant literature that could be procured that linked minority youth to dispositional bias.
- A few studies suggest a positive correlation between offense severity and the appointment of counsel, but serious offenses represent a small percentage of juvenile court cases. However, youth offenders charged with only minor offenses who didn't receive counsel were the most likely group to be incarcerated.
- Some studies suggest that factors other than legal and social circumstances might affect a disposition. One study found that once detained at intake, youth are more likely to be detained at a preliminary hearing. Others have indicated that African American and Latino youth are perceived to be more dangerous offenders, and that cultural differences motivate judges' perceptions of conduct and disorder.

Quantitative Analysis

- Dataset was obtained that included 18,058 youth with dispositions in calendar year 2001, which accounted for 90,660 dispositions. Nineteen percent of these were not coded for race/ethnicity. The only racial/ethnic data available was that of White, Minority, or Other.
- Only 2,224 (12%) could be confidently matched with attorneys, and of these only 2,096 had clear race data. Of this number 1,584 (76%) were White and 512 (24%) were Minority.
- Of the total 2,096 cases, 1,199 (57%) were represented by defense counsel and 897 (43%) were not.
- Of the 512 Minority youth, 289 (56%) were represented by defense counsel and 223 (44%) were not.
- Of the 1,584 White youth, 910 (57%) were represented by defense counsel and 674 (43%) were not.
- There was not a statistically significant relationship between race and representation by counsel.
- When comparing districts no appreciable relationships between race and representation emerged. However, in Districts 5, 6, and 8 ALL youth were represented by defense counsel. Also interestingly, in District 7 minority youth were more likely to be represented by counsel than their White counterparts.

Qualitative Attorney Interviews

- Fifty-two attorneys were interviewed using a semi-structured question format, with 29 defense attorneys, 18 prosecutors, and 5 attorneys associated with the

Attorney General's Office. These were selected based on having experience with over 30 juvenile cases in the juvenile justice system.

- Interviews were analyzed with a qualitative software program (ATLAS-ti).
- Of the attorneys interviewed, a vast majority had not received training in juvenile law or minority law training.
- Only 20 attorneys indicated that they were familiar with the programs available in dispositions.
- There was marked disparity in whether attorneys perceived youth as receiving legal representation and whether they should receive legal representation.
- Additionally, there were notable differences of opinion regarding the adequacy of representation for whites and minorities. Many felt that public defenders offered more quality of representation than private counsel
- Most of those interviews indicated that youth received better dispositions if represented, while a minority of attorneys suggested that representation did not change dispositions.
- Approximately half of those interviewed perceived no racial/ethnic bias in the charging/referring process. Several, however, indicated strong sentiments that racial/ethnic bias did exist in both charging and referral processes.
- Many of those interviewed suggested that while youth had a right to appeal a decision, this was rarely utilized, and depended on a number of factors including fiscal costs, legal issues, and a perceived right to appeal.
- Time spent preparing for cases varied widely depending on the complexity of the case and the type of hearing. Many felt that public defenders did not have sufficient time or resources to offer comprehensive representation.

Qualitative Juvenile Interviews

- Interviews were conducted with 21 youth who were currently involved in the juvenile justice system and were on probation or in the custody of DYC/DCFS. Initially there was difficulty obtaining youth for this study. This primarily had to do with the transient nature of many of the youth in the database and incorrect demographic information, the youth or their guardian declining to participate, and in some instances probation officers or caseworkers unwilling to allow the interview to be conducted.
- Youth ranged in age from 13 to 18, with 17 males and 4 females.
- Racial/ethnic identities included Hispanic, Hispanic/Caucasian, Caucasian, Pacific Islander, Asian and African American.
- Nineteen youth indicated that they had a court-appointed attorney, while one had a private attorney, and one was not provided the opportunity for legal representation. Six of those with legal representation reported having 2 defense attorneys.
- Fourteen of the youth interviewed perceived treatment to be equal across race, while 3 did not and 2 were unsure.
- None of the youth perceived racial bias by their court appointed attorney, although a substantial number suggested that their appointed attorneys did not fulfill their obligations to the youths as their clients.

- Only one youth suggested that minorities receive harsher dispositions than non-minorities.

Recommendations

- Facilitate and maintain increased data recording quality and accuracy in relation to legal representation and race/ethnicity of juvenile offenders.
- Revisit data to monitor ongoing progress.
- Determine if the Utah Juvenile Justice system should provide legal counsel to all youth.
- Research should be implemented that addresses youth who commit minor offenses but are not represented versus those that are and the difference between their dispositions and trajectory in the juvenile justice system.
- Further research should be given to the discrepancies across judicial districts when it comes to implicit or explicit policies and practices regarding appointment of counsel.
- Attention should be given to the substantial group of juveniles who do not qualify for public defense yet cannot afford private counsel.
- The adequacy of resources for public defenders should be reevaluated.
- Enhance the juvenile justice curriculum at the two colleges of law in the state.
- Provide CLE hours for those who practice in the juvenile court.
- Provide certification by the Utah Bar Association to those who practice in the juvenile courts in Utah.

Introduction

This report begins with a cursory examination of the existing literature, and sets a context for the relevant questions addressed in the research design and implementation. Following the review of the literature, the results of both quantitative and qualitative research methodologies employed in this study are presented and discussed. Recommendations delineated from the results of the study are then presented for consideration by policy-makers and practitioners alike.

Historical Development of the Juvenile Justice System

Mission of the First Juvenile Court

The first juvenile court with non-criminal jurisdiction over law violations by children was established by the State of Illinois in 1899 (Rothman, 1980; Watkins, 1998). The court was given a flexible structure in order to individualize rehabilitation *treatment*, which was designed to meet the unique circumstances of each offender rather than to match sentences designed to *punish* offenders.

The primary mission established for the first court was to examine the circumstances leading to each youth's offense and then to create sanctions and services to correct their behavior. A lower standard of due process was purposefully used, which gave juvenile courts the flexibility and power needed to intervene in young offenders' lives according to factors such as the youth's family background, educational performance, social misconduct or any other related factors (Butts & Mitchell, 2000). A new set of juvenile laws, which were distinct from state criminal codes, was established.

Juvenile courts were responsible for meeting the needs of and providing appropriate treatment services for poor and destitute children as well as youth offenders. Historically, court jurisdiction over juveniles has been practiced for centuries in other countries such as Britain, which has developed a complex body of laws regulating juvenile justice. But, this appeared to be the first time a court had been given state-sponsored power to intervene in the lives of youths outside traditional criminal laws and institutions (Butts & Mitchell, 2000).

The juvenile court's quasi-civil jurisdiction gave it the power to take custody of youth offenders charged with both criminal and noncriminal behaviors, including vagrancy, running away, theft and violent crimes. In 1909, Judge Mack of the Chicago juvenile court defined the court's role as, "Not to ask whether a boy had committed a 'special wrong' but rather 'what is he, how has he become what he is and what had to be done in his interest and in the interest of the state to save him from a downward career.'" (Mack, 1909).

Juvenile Court Authority

The juvenile court founders based the court's legal authority on several English law concepts, the most important being *parens patrie*, which means "nation as parent." The concept of *parens patrie* was that government had a natural responsibility to care for and to protect the interests of children when natural parents could not (Butts & Mitchell, 2000).

Juvenile court founders also incorporated concepts of positivism, which asserted that social problems, including crime and poverty, were the consequences of external factors

that could be identified and corrected using appropriate scientific methods. As Feld stated, “Positivism gave reformers the faith and confidence to intervene. *Parens patrie* gave them the power.” (Feld, 1999, p. 57).

The founders were also motivated by more practical motives including the desire to find new methods for controlling crime. Prior to the development of juvenile courts, youth offenders were tried in the same courts and according to the same laws as adults. However, judges and jurors frequently found them innocent or simply released them because of their age (Platt, 1977).

As mentioned above, juvenile courts were created as quasi-civil entities intentionally designed with a lower standard of due process in order to flexibly respond to the unique needs of each offender. The courts were not constrained by constitutional restrictions of criminal prosecutions. Consequently, the courts’ standard mode of operation did not include defense attorneys, appeals, or formal evidentiary procedures. Youth offenders were found guilty or innocent according to a “preponderance of the evidence” rather than the stricter standard of “beyond reasonable doubt” used in criminal court proceedings (Butts & Mitchell, 2000).

As juvenile courts developed over the last century, the flexibility created by a lower standard of due process has led to successful treatment of youth but has also made the court vulnerable as a legal institution. In the early 1900s, juvenile courts became popular and quickly established in growing cities around the United States. However, the development of juvenile courts was not guided by federal statute similar to criminal courts; consequently, each state or local government adapted the original Chicago court model to fit the local legal and organizational culture (Rothman, 1980; Sutton, 1988).

Therefore, juvenile court judges had sufficient unregulated power to effectively intervene in the lives of juvenile offenders but also to inflict unjust and arbitrary punitive measures. No standards existed that matched the length and severity of intervention to the offense committed. Theoretically, a juvenile offender could be brought before a court and placed in secure confinement for even minor offenses (Schlossman & Wallach, 1978). Feld (1999) pointed out that the lower standard of due process also allowed juvenile court judges to impose their personal views of morality upon youth offenders (Feld, 1999).

By the middle of the twentieth century, the U.S. juvenile justice system was burdened with more cases than it could effectively process and started attracting the attention of youth advocates and civil rights lawyers. Paulsen (1957) noted an important law review article, which criticized the juvenile court system, stating that “an adjudication of delinquency, in itself, is harmful and should not be capriciously imposed.” (Paulsen, 1957 quoted in Manfredi, 1998, p. 38). Other advocates charged juvenile courts with violating important principles of equal protection and argued that “rehabilitation may be a substitute for punishment, but a star chamber cannot be substituted for a trial.” (Beemsterboer, 1960 quoted in Manfredi, 1998, p. 39). In 1964, Supreme Court Chief Justice Earl Warren declared the controversy regarding due process in juvenile courts would be resolved as soon as the “proper” case came before the U.S. Supreme Court (Manfredi, 1998).

The Impact of *In re Gault*

The case that changed the American juvenile justice system came three years later in *In re Gault* (387 U.S. 1 [1967]). The Supreme Court ruled that for any youth delinquency trial when confinement was a possible sanction, youth offenders must be given due process including: the right to notice of charges against them, the right to cross-examination of prosecution witnesses, the right to receive assistance of counsel and the right of protection against self-incrimination. The Court based its ruling on the fact that Gerald Gault had clearly been *punished* by the juvenile court and not *treated* (Butts & Mitchell, 2000). The Court also explicitly rejected the doctrine of *parens patriae* as the founding principle of juvenile justice. The Court described the meaning of *parens patriae* as “murky” and characterized its “historic credentials” as “of dubious relevance”, stating, “The constitutional and theoretical basis for this particular system is—to say the least—debatable.” (Bernard, 1992, p. 116).

In 1971, the Supreme Court reversed the *Gault* decision in *McKeiver v. Pennsylvania* stating that there was no constitutional basis requiring juvenile courts to offer jury trials to accused juvenile offenders. In the four years since the *Gault* case, the Court had realized that requiring juries in juvenile court might “effectively end the idealistic prospect of an intimate, informal protective proceeding” (403 U.S. 528 p. 545 [1971]). The Court also stated that “equating the adjudicative phase of the juvenile proceeding with a criminal trial ignores the aspects of fairness, concern, sympathy, and paternal attention inherent in the juvenile court system” (403 U.S. 528 p. 550 [1971]). At the time of this reversal, few juvenile courts actively functioned on these ideas and the ruling was no longer relevant because of new policies allowing juvenile court records to enhance the severity of criminal court sentences. Juvenile offenders could now be imprisoned for many years as a direct result of adjudications in juvenile court.

Feld (1999) noted that by the 1980s, the juvenile courts had become “constitutionally domesticated” and had adopted the orientation and prosecution standards of criminal courts without proportionally extending due process rights (Feld, 1999). Juvenile courts required evidence indicating reasonable doubt rather than a preponderance of evidence and juvenile adjudications were considered equivalent to criminal convictions in the evaluation of double jeopardy claims (Bernard, 1992). Juvenile offenders did have far more due process protection as a result of *Gault* but were still denied the federal rights of bail, jury trial and speedy trial.

Developmental Consequences

Access to Counsel

Feld estimated that before the *Gault* decision, attorneys represented youth offenders in approximately five percent of all juvenile delinquency cases (Feld, 1988; Feld, 1993). Using the National Juvenile Court Data Archives from six states, Feld found that some states (or jurisdictions within states) still weren’t appointing counsel in a majority of cases (Feld, 1988).

Results of other studies on access to counsel show that representation rates in different parts of individual states vary dramatically. For example, Feld (1993) found representation rates varied from 19 to 95 percent in different Minnesota counties (Feld, 1989; Feld, 1993). Feld also found that some of the variations in representation were

related to population density (e.g., urban, suburban or rural areas) (Feld, 1989; Feld, 1993). He found a positive correlation between the seriousness of the offense and the appointment of counsel, but that serious offenses represented only a small percentage of most juvenile court cases (Feld, 1993). Consequently, youth offenders charged with only minor offenses who did not receive counsel were the most likely group to be incarcerated (Feld, 1989; Feld, 1990; Feld, 1993).

In a separate study of access to counsel conducted in Minnesota, Stuart (1991) found that almost one-third of all youth removed from their homes and more than one-quarter of those incarcerated did not receive any representation at the time of their adjudication and disposition (Stuart, 1991). Studies conducted in other jurisdictions confirmed Feld's results that indicated that inadequate juvenile access to counsel has been a widespread problem throughout the country. Other studies that have looked at representation during specific stages of the juvenile legal process have also found counsel is still severely lacking (Puritz, 1995).

Research suggests that in some jurisdictions representation is technically available, but that youth offenders must formally request the appointment of counsel. Most youth offenders are not aware of this option or its benefits. Representation is also hindered by judges and court personnel who tacitly discourage offenders from requesting counsel in cases when they anticipate that only a probationary term will be imposed (Bortner, 1982; Feld, 1993). A few studies have examined the impact of representation for status offenders, many of whom face long-term consequences as a result of court jurisdiction, but are not given the same rights to counsel that other delinquents receive under *Gault* or state law (Criminal Justice Statistical Center, 1984; Smith, 1992).

Feld's research also indicates that the most common reasons for the lack of representation are a result of: (1) inadequate public defender services, particularly in rural areas, (2) the reluctance of parents to retain private attorneys or use public defenders for financial reasons such as court reimbursement for attorney fees, (3) judicial preference for waivers of counsel to ease the administrative burdens of the court, (4) judicial hostility toward lawyers, (5) judicial predeterminations not to appoint counsel in cases where probation is the anticipated outcome, (6) misleading judicial advice which does not communicate the importance of the right to counsel and suggestions that waivers of counsel are meaningless technicalities, and (6) inexperienced youth offenders who do not understand their rights or what they are giving up in a "knowing and intelligent" way (Feld, 1993; Feld, 1989; Feld, 1988).

A study conducted by the American Bar Association Working Group on the Unmet Legal Needs of Children suggested that many young offenders are not mature enough to effectively communicate important information to judges and prosecutors that may impact the outcome of their hearing. The study also found that youth offenders who don't receive representation are at greater risk of longer confinement, poor living conditions, ineffectively challenging legal issues relating to jurisdiction, poor conditions of custody, or inadequate services (Office of Juvenile Justice and Delinquency Prevention, 1993).

Quality of Representation

A comprehensive study examined the quality of representation offered by law guardians in New York state (Knitzer & Sobie, 1984). The authors found that only twenty-five of the panel lawyers interviewed saw themselves as juvenile law specialists and more than 50 percent said that they had little interest in the substance of juvenile law. Almost 70 percent indicated that they had not received any special screening, orientation, or co-counsel experience before joining the panel, and 30 to 40 percent had received no relevant clinical training within the previous two years. An even higher percentage of respondents in rural areas indicated not receiving recent training. The study also discovered that less than 15 percent of the panel lawyers representing youth offenders and Persons in Need of Supervision cases saw their role as similar to that of a criminal defense attorney. The authors found many cases that had unresolved violations of statutory or due process rights and had been left unchallenged by law guardians. Almost 50 percent of the transcripts examined included errors that could have been appealed (Knitzer & Sobie, 1984).

Systemic Barriers to Effective Representation

Flicker (1983) examined the impact of organizational and fiscal variables on the quality of representation in public defender, legal aid societies, court-appointed counsel and contract/retainer systems. She found insufficient funds, low morale, high turnover, lack of training, low professional status, political pressure, low salaries and excessive caseloads to be important variables that place system-wide limitations on effective representation (Flicker, 1983).

Other variables she discovered that affect the quality of representation in court-appointed counsel programs included the use of unqualified, inexperienced attorneys, inadequate performance evaluations, and difficulty maintaining independence from the judiciary that appoints the lawyers. In regards to contract or retainer systems, Flicker reported that cost-cutting efforts, such as flat fee pay structures, have a strong impact on the quality of representation juvenile offenders receive (Flicker, 1983). Other studies confirmed Flicker's findings that large caseloads, insufficient funds and under-trained defenders create systematic barriers to effective representation (Illinois Supreme Court Special Commission on the Administration of Justice, 1993).

Excessive Caseloads

Ainsworth (1991) studied urban public defenders offices and found that all had caseloads well above the recommended guidelines of 200 or fewer cases per year. Attorney caseloads per year in 1989 varied from 250 to 550. Her research also suggested that excessive caseloads are an even greater problem in rural areas (Ainsworth, 1991).

Another study conducted in Washington State found one attorney in a rural county who had been assigned 912 cases in one year (Ainsworth, 1991). Bortner's (1982) study of metropolitan juvenile courts found that attorneys were assigned between 80 to 90 cases per month (Bortner, 1982). Studies from other jurisdictions around the country have also reported similar problems with excessive caseloads for attorneys working as public defenders (Puritz, 1995).

Insufficient Preparation

Researchers have found that another important factor limiting the effectiveness of juvenile offender representation is properly advising youth offenders and adequate pre-trial preparation. Lawrence found that 17 percent of attorneys interviewed spent less than one hour on each case, 44 percent spent one to two hours, 28 percent spent three to four hours and 11 percent spent five or more hours. Bortner (1982) found that among non-detained children, public defender pre-hearing interviews with the youth offender and families varied from 30 minutes to an hour and that public defender actions were usually based on a “paper profile” of the child and past offense experience (Bortner, 1982).

Ethical Confusion as a Barrier to Quality Representation

Research has also measured the impact of the institutional failure to clearly define the role of juvenile representation. Shepard and Volenik (1987) found that many attorneys representing juvenile offenders do not clearly understand their ethical obligations to youth offenders and fail to adequately represent them (Shepard & Volenik, 1987). This confusion makes it difficult for defenders to balance and comply with the often competing expectations of the court, the offender’s parents and the offender (Bortner, 1982).

In independent studies, Ainsworth (1991), Knitzer & Sobie (1984) and Finkelstein (1984) found that some public defenders fail to address clients’ legitimate legal claims, fail to adequately inform them of their right to appeal and sometimes even solicit harsher sentences, believing it to be in their clients’ best interests (Ainsworth, 1991; Finkelstein, 1973; Knitzer & Sobie, 1984).

Analyzing IJA and ABA standards for representation of children, Costello (1980) revealed ways attorneys representing youth offenders implicitly take on the roles of other court personnel and accept the state’s right to intercede (Costello, 1980). Established legal standards and codes of ethics demand that attorneys represent youth offenders as ardently as adults. Unfortunately, the original concepts of *parens patriae* and long-established codes of conduct still influence the quality of representation defenders provide youth offenders (Ainsworth, 1991; Bortner, 1982).

Offender’s Perceptions of Representation

The most prevalent concerns of juvenile offenders in regards to legal representation are lack of adequate communication and distrust of the attorneys’ commitment to their case. These perceptions may reflect large caseloads and insufficient preparation, but research indicates that public defenders’ unwillingness to properly relate to youth offenders plays an important role. Despite the statistical limitations imposed by the small sample size, in a study of the perceptions of the juvenile justice center of 24 Colorado youth offenders, 34 percent had positive experiences with their attorneys, 53 percent had negative experiences and 14 percent remained neutral on the subject (Huerter & Saltzman, 1992).

The Influence of Compromise

As mentioned above, research has clearly demonstrated the negative impact of excessive caseloads on juvenile legal representation. Other research has found that attorneys are under extreme pressure to cooperate with court personnel in order to maintain the functioning of an over-burdened court system, even at the personal expense of the youth offender's legal interests (Ainsworth, 1991; Bortner, 1982; Feld, 1993; Flicker, 1983). Occasionally, defenders are reminded by the court personnel, including prosecutors and judges, that ardent advocacy isn't appropriate and that it is not in their own personal best interest. Attorneys who don't comply receive subtle disapproval and reduced legal fees and have been excluded from the panel of court-appointed attorneys (Ainsworth, 1991).

Use of Waivers and Equitable Representation

Researchers have profiled juveniles with the highest probability of transfer into criminal court and identified two distinct but overlapping populations (Snyder & Sickmund, 1999). The first group consists of chronic offenders with long histories of arrest and juvenile court involvement. The second and smaller group consists of juveniles charged with serious person offenses. Research conducted in Utah and sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), discovered that waiver requests by Utah prosecutors were approved in 87 percent of cases where a youth used a weapon to injure a victim (Snyder, Sickmund, & Poe, 1999). The same study found that waiver requests were approved in 81 percent of cases involving offenders with five or more prior cases in juvenile court. In South Carolina, judges approved 82 percent of waiver requests for youths with almost no offense histories if charged with serious violent offenses. Similar findings have emerged from other research on the use of waivers in other parts of the country (Feld, 1999; Howell, 1997; U.S. General Accounting Office, 1995).

The Impact of Waivers on Youth Offense Behavior and Public Safety

Policymakers who advocate for transfer to adult court argue that adult court provides more severe sanctions and a stronger deterrent to crime for youths actually transferred (specific deterrence) and potential offenders (general deterrence). Either effect is difficult to measure and in regards to the few studies that have tried to study this, little or no effect has been found from criminal court transfer. In an analysis of deterrent effects of transfer, Fagan (1995) found that youth convicted of robbery in adult court re-offended more quickly and more frequently than those adjudicated in juvenile court (Fagan, 1995). Another study analyzed matched samples of youth in Florida and found similar results (Bishop, Frazier, Lanza-Haduce & Winner, 1996; Winner, Lanza-Kaduce, Bishop, & Frazier, 1997). The authors concluded that criminal court transfers were more likely to aggravate recidivism than to stem it (Winner, Lanza-Kaduce, Bishop, & Frazier, 1997). Podkopacz and Feld (1996) found that transferred youths in Minnesota were more likely than non-transferred youths to re-offend, 58 percent versus 42 percent respectively, over 24 months (Podkopacz & Feld, 1996).

Researchers investigating the general deterrent effect of juvenile transfer laws have failed to find clear associations between transfer and public safety. Singer (1996) and Singer & McDowall (1998) examined the impact of New York State laws that

automatically transferred any juvenile from age 13 to 15 who committed one of several violent offenses. Analysis suggested that the new laws had no consistent or significant effects on juvenile violence (Singer, 1996; Singer & McDowall, 1998).

The general consensus appears to be that increasing the use of criminal court for young offenders does not ensure conviction for youths handled in adult court and does not guarantee incarceration even for those youths who are convicted. If expanding criminal court transfer policies does increase public safety, researchers have yet to find clear evidence.

Court Outcomes

In the 1980s and 1990s researchers began examining the type of criminal court sanctions imposed on juveniles who were eligible for transfer. They wanted to know if sanctions were more punitive and applied more consistently than in juvenile court. Hamparian et al. (1982) used data from a 1978 multi-state study and discovered that 91 percent of juveniles tried in criminal court were convicted but more than 50 percent resulted in probation, fines, and other sanctions besides incarceration. They also found that 46 percent of judicial transfers and 39 percent of prosecutor direct files resulted in sentences that included incarceration (Hamperian et al., 1982).

Bortner (1982) analyzed a 1980-81 dataset of a cohort of 214 youth transfers in a Western state and found that 96 percent were convicted but only 32 percent resulted in jail or prison time (Borter, 1982). Heuser (1984) examined a sample of youth transfers in Oregon and found that 81 percent were convicted while 54 percent received incarceration as part of their sentence (Hueser, 1984). A 1996 study conducted by McNulty found that 92 percent of youth transfers were convicted but only 43 percent were incarcerated as part of their sentence and 49 percent received probation (McNulty, 1996). Fagan's 1995 and 1996 studies discovered that as many as 60 percent of youth transfers were convicted in criminal court but less than half were incarcerated as part of their sentence (Fagan, 1995; Fagan, 1996).

In 1999, the Florida Department of Juvenile Justice studied criminal court dispositions of all transferred youth, about 6,000 that year; 54 percent received probation, 15 percent were acquitted or dismissed and 1 percent resulted in pretrial diversion (Bureau of Data & Research, 1999).

These studies indicate that transfers do not necessarily result in serious sentences including incarceration but other research has found that compared to offenders who remain in the juvenile system, those convicted of violent crimes in criminal court do receive more punitive sanctions while nonviolent youths receive similar and sometimes lighter sentences compared to their counterparts in juvenile court (Fagan, 1995; Fagan, 1996).

Minorities and the Court

Although African American youth age 10 to 17 constitute 15 percent of the U.S. population, they account for 26 percent of juvenile arrests, 30 percent of delinquency referrals to juvenile court, 45 percent of juveniles detained in delinquency cases, 40 percent of juveniles in corrections institutions, and 46 percent of juveniles transferred to adult criminal court after judicial hearings (Snyder & Sickmund, 1999). African American, Latino, Asian American, and Native American youth are incarcerated in U.S.

detention facilities and public training schools at rates three to four times those of Whites (National Prison Project, 1990). Minority youth comprise more than half of all juveniles incarcerated nationwide (Feyerherm, 1995).

Historically, the nation's prisons, jails, and juvenile training schools have been disproportionately populated by the poor, racial and ethnic minorities, and immigrant groups. However during the 1980s the population of juvenile correctional facilities became increasingly over represented by non-White youths (McGarrell, 1993). Despite policy reform, the rising racial disparity in juvenile corrections systems continues. In 1989 and 1990, motivated by reports that the percent of minority youth in public facilities had increased by 15 percent from 1977 to 1989, the National Coalition of State Juvenile Justice Advisory Groups issued a report to the President and Congress calling attention to the problem. They asked the Office of Juvenile Justice and Delinquency Prevention to give priority to research designed to address these issues. The research prioritized by the Office documented two main factors: 1) varying trends in the representation of minority youth in juvenile correctional facilities (Allen-Hagen 1991), and 2) comparison of the influence of race on judicial decision making and corresponding legal and extralegal factors (Pope and Feyerherm 1990). Studies of 159 counties found that the rates for cases of minority youth referred, detained, petitioned, and placed increased by over 30 percent between 1985 and 1989. Studies also took population increase into account. During the four year time span, minority youth populations increased by 4.6 percent while White youth populations declined by 1.6 percent. Although the rates of referrals and petitions for Whites were up 6 percent and 10 percent, the rates of detention and placement were actually down (-11 percent and -1 percent). The dramatic increase in non-White cases was not simply the product of a larger at-risk population. Despite this important finding, the documentation of trends didn't indicate specific causal factors for the increase. Likewise, the studies of judicial decision making were mostly cross-sectional analysis, and did not provide trend data. Most studies were of a single court, and didn't provide national data.

From 1985 to 1989 there was a 4.3 percent increase in White referrals and a 38 percent increase for non-Whites. In 1985, 32 percent of the youths referred to court were non-White, but by 1989 this figure had increased to 39.1 percent. For Whites, the overall increase was largely driven by a 22 percent increase in referrals for personal offenses. There were relatively small increases in property and public order referrals, and a significant 20 percent decline in referrals for drug offenses. For non-whites there were increases in referrals for all four offenses with a particularly large increase for drug offenses.

Unfortunately, studies providing specific information about minority youth and dispositions did not quantitatively address disposition bias. Instead, studies focused on contributing factors like minority youth's understanding of court procedure. Studies that were not specific to youth were used to demonstrate a correlation between the contributing factors and court decision making. Studies indicated that other factors besides legal and social circumstances might affect disposition (Bell and Lang 1985; Pivilian and Briar 1964). For example, once detained at intake, youth are more likely to be detained at a preliminary hearing (Wordes, 1994). Demeanor of the youth has also been correlated to both race and disposition (Wordes, 1994). Some authors argue that African American and Latino youth are perceived to be more dangerous offenders, and

that cultural differences motivate judges' perceptions of conduct and disorder (Wordes 1994). As few forms of analysis are empirically verified, they may help motivate future research, but do not provide conclusive findings.

Minorities and Legal Representation

Unfortunately very few studies exist that have examined the impact of race or ethnicity on legal representation. Analysis of a 1980 sample of juveniles in Minnesota showed that 15.4 percent more Black youth and 10 percent more youth of other racial minorities had legal representation compared to White youth (Feld, 1993). However, it is thought that the greater percent of representation may be related to the fact that legal representation is more likely for more serious offenses and a longer history of offending. Thus, one conclusion was that the greater rates of counsel may be due to Blacks and other ethnic minorities being more extensively involved or having more serious offenses than Whites in juvenile justice (Feld, 1993). However, when the seriousness of the offense was controlled for in analysis, the differences in rates of representation by race remained (Feld, 1993).

In the Minnesota sample, private counsel represented 10.4 percent of delinquents. More White youth had private counsel and public defenders were more likely to represent youth of ethnic minorities, including Black youth (Feld, 1993). When charges were against a person, White youth were found to be three times more likely to have private counsel than Black youth (30.2 percent versus 10.2 percent). When charges were a felony involving property, White youth were twice as likely to retain private counsel than Black youth (20.9 percent versus 10.6 percent) (Feld, 1993). One problematic issue in the Minnesota study was that data regarding socioeconomic status was not collected, thus the greater rates of use of public defenders by Black youth cannot be attributed strictly to race since use of public defense is also related to socioeconomic status. Another study completed in 1987 found similar findings, that public defenders were more likely to represent ethnic minorities while Whites were more likely to retain private counsel (Feld, 1993).

Private attorneys have been slightly more successful than public attorneys in avoiding the most severe sentences for their clients. However, it has also been reported that, in general, youth with counsel tend to receive more severe dispositions than those without legal representation (Feld, 1993). These differences occur across all ethnic groups.

Gender and Representation

Analysis of the 1980 sample of Minnesota data has shown that 46.7 percent of males and 41.1 percent of females had legal representation. However, it is thought that this difference may be attributed to differences in the seriousness of offenses (Feld, 1993). When youth were broken down by offense type, a larger proportion of males than females charged with similar offenses received legal representation (Feld, 1993). Smith (1980) reported that females were 31 percent less likely to be represented by legal counsel than their male counterparts (Smith, 1980).

The Present Study

It is with the aforementioned contexts in mind that this study was conducted. Because of the paucity of information in reference to legal representation of minority youth, it was felt that a research design implementing both quantitative and qualitative data analysis strategies would lend itself to a more comprehensive picture of legal representation of minority youth in Utah and concomitant issues. Quantitative analysis involved statistical evaluation of representation given a database obtained from the Administrative Office of the Courts. Qualitative procedures involved direct in-person interviewing of selected attorneys from the database who had experience with more than thirty juveniles, and juveniles themselves who assented (with consent of their guardian) to an interview.

Quantitative Analyses

A statistical software program (SPSS) was used to evaluate the quantitative data for purposes of this study. The database obtained from the Administrative Office of the Courts contained records for 18,058 juveniles who received a disposition during the calendar year of 2001. This number of juveniles accounted for 90,660 individual dispositions. Of this original dataset, 11,570 (64 percent) of youth were coded as White, 3,097 (17 percent) as Minority, and the remaining 3,391 (19 percent) as either missing race/ethnicity data, not reported, or Other.

Because of problems with the database, only 2,224 (12 percent) of juveniles were confidently matched with attorneys. If this number had been randomly sampled, an assumption could be made as to it being representative of the population. However, systematic data recording errors may have been operating that limit this numbers' representative nature. Of these 2,224 cases, 2,096 (94 percent) had clear race/ethnicity data.

Considering the sample of 2,096 youth, 1,584 (76 percent) were White and 512 (24 percent) were Minority. Note that this is relatively similar to the race/ethnicity data of the general original dataset. Of the 512 Minority youth, 289 (56 percent) were represented by defense counsel and 223 (44 percent) were not. Of the 1,584 White youth, 910 (57 percent) were represented by defense counsel and 674 (43 percent) were not.

Crosstabulations were conducted to assess the relationship between race and representation. The relationship between race and representation by counsel was weak ($\Phi = .009$) and was not statistically significant ($\text{Chi square} = .159$, $\text{df} = 1$, $p = .69$). This finding was in contrast to the initial assumption that there would be a statistically significant finding.

When comparing districts, no appreciable (statistically strong or significant) relationships between race and representation by counsel emerged. In districts 5, 6, and 8 ALL youth were represented by defense counsel. In District 7 the relationship between race and representation by defense counsel was the strongest, and Minority youth were MORE likely to be represented by counsel than their White counterparts.

Qualitative Analyses of Attorney Interviews

Fifty-two attorneys gave consent to be interviewed for the purposes of this study. They included 29 defense attorneys, 18 prosecutors, and 5 attorneys working for the Attorney General's office. The basic structure of the interview consisted of the following questions:

1. How long have you been a prosecutor or defense attorney in Juvenile Court?
2. In your opinion, do youth require legal representation in the Juvenile Court?
3. Are there instances when youth are not represented?
4. Do minority youth have the same access to counsel as do non-minority youth?
5. Does access to counsel make a difference in the dispositions in the Juvenile Court?
6. In your opinion, are minority youth as adequately represented as majority youth in the juvenile justice system?
7. Are youth represented by more than one attorney? Describe the circumstances and to what extent you think this influences representation.
8. Are there any areas we did not discuss that you feel are important in our assessment of representation of minority youth?

Throughout the interviews, a number of other questions were asked related to access to counsel, the assignment of youth to a particular attorney, the appeals process, the law training and background of the attorney interviewed relevant to juvenile justice and minority issues, factors affecting dispositions, familiarity with juvenile correctional facilities, perceptions of racial bias in charging and referring juveniles, and the percentage of time preparing for particular cases.

Interviews with each attorney were taped, transcribed, and then evaluated for common themes and general results utilizing a qualitative software program (ATLAS-ti). The results of this process were then compared with the quantitative results to develop a cogent model of the processes and issues salient to the legal representation of minority youth in Utah's juvenile justice system.

Attorney Experience

Dates of graduation from law school ranged from 1979 to 2000. The average number of years spent as an attorney was 10.4 years, with a predominance of attorneys working since the year 1990. When asked from which law school they graduated from, the most commonly reported schools were that of the University of Utah and Brigham Young University. However, other schools reported were the University of Idaho, Catholic University, the University of Pittsburgh, the University of Puget Sound, the University of Oregon, Creighton University, the University of Virginia, Gonzaga University, George Washington University, the Pacific McGeorge School of Law, and the Foster Law School of New York.

Areas of emphasis in law school included Criminal Law, Environmental Law, Labor Law, Trusts and Wills, Commercial Law, Constitutional Law, Alternative Dispute Resolutions, Child Advocacy, Business Litigation, Educational Law, Estate Planning, Civil Law, Finance and Tax, Corporate Law, Government Contracts, and Real Property. Of the 52 Attorneys interviewed, only 5 indicated that they had taken a Juvenile Justice course in law school, while 2 others suggested that they had experience during law school working in Youth Corrections and corporate work as a juvenile sex offender

tracker. The remaining attorneys indicated that they had received no training before or during law school related to juvenile justice issues. Similarly, a vast majority of attorneys interviewed commented that they had received no minority law training in their professional education. One attorney seemed to echo most with the statement, “There wasn't a whole lot of minority issues emphasized [in law school].” Only two of those interviewed stated that they had received any training on minority issues.

While the number of juveniles seen ranged from 20 to the tens of thousands, and the number of juveniles tried ranged from 5 to reportedly multiple thousands, the average percentage of cases that were of minority status was 43 percent, with a range of 1 percent to 90 percent.

In reference to familiarity with programs related to juvenile justice, and those agencies that juveniles were often court-ordered to, only 20 attorneys indicated that they were familiar with such programs. One suggested, “I've gone and toured some places...and with our spare time, that's something we've set up is to be able to go and tour different places. It doesn't work out always, but I've gone to see some places, and then familiar with, by word of mouth, and in seeing kids come in and report from different programs...I'm familiar with them that way.” Most of those who reported familiarity suggested that they gained their experience through personal visits with agencies and reports from clients. The remaining 32 attorneys stated that they were not familiar with such programs. One attorney stated some ambivalence with the comment that the perceived familiarity was,

“Not...not...not particularly great, and I wouldn't say I've toured them. I understand the Court, and I understand the Detention facilities...and such as that, and I understand where they're all at, and what you got to do to get from here to there, and some of the programs. But, I wouldn't say I was overly familiar.”

Another pointed out the need for attorneys to become more acquainted with juvenile programs, suggesting, “I'm very interested...that's one of the deficiencies we've had around here. We do have some documentation that's available to us to review those kind of things, but as a Team or as a Division, we really have not done that recently since I've been in the Division.”

Access to Counsel

The issue of access to counsel elicited some very common themes, but also sometimes disparate and contradictory responses. Eleven of those attorneys interviewed indicated that all juveniles were appointed an attorney, regardless of family income or severity of the charges. One attorney commented that, “Juvenile Court's an odd place, though, because the Courts are really trying to appoint counsel in every case.” Another remarked, “...well, by law they're required to be represented, anyway. So, you know, I think every kid is represented, you know, fairly well. I don't see kids, you know, not being represented.” One urban defense attorney stated, “Now again, the Courts will appoint...the Courts appoint lawyers to kids...um...almost out of the shoot. I mean, you know, I don't...lawyers are very accessible to the kids over there. There shouldn't be a concern.” And yet another concurred with the comment,

“I mean...the kids are all represented. There's not a Judge sitting over there that's going to let a kid go through the System unrepresented, whether there's some substance to the charges against them. Certainly, there's not a felony prosecutor over there where a kid's not represented. Um...so...you know, the kids are all represented. If the kids weren't represented, they'd be steam-rolled, because they don't know what's going on. But that doesn't happen over there. At least in my opinion.”

A sizeable majority, however, cited financial guidelines, criteria, and considerations as the primary factor for the appointment of an attorney for juvenile representation. One bridged the observation that most juveniles were appointed attorneys and the existing criteria for court-appointment with the comment,

“I mean, either they can represent themselves, or they hire an attorney, or if they can't afford one, and of course, they're in Juvenile Court, it's not just the minor's ability to pay for an attorney, but they have the parents fill out a front-entry affidavit, and, you know, if they meet the criteria of indigency, then the Court will appoint them a lawyer. If they don't, I've found out more than not, the Court will still appoint them a lawyer to represent them, because, I mean, I think their theory is, well, you know, the tax. "The people that are paying the taxes, to provide counsel for these people, can do it, and it's a close call, and I'd rather not have the case overturned because I didn't appoint them an attorney, and they were convicted of a crime, or something like that." And so, if it's if they're indigent, meet the requirements of indigency, or close, the Court will have a lawyer represent them. Plus, I've seen a Judge just appoint a Public Defender without them filling out the financial affidavit, which they're really not supposed to do, but they do it anyway. And that's fine with me.”

The feeling that financial concerns were the core issue in access was demonstrated by one attorney's comment that, “And...and...well, his parent's income level, basically. So, that's it. In my case. In other cases...well, it's always going to be income level. Income level whether they qualify for a Public Defender. It's going to be income level if their parents can afford to hire a private attorney. So, access to counsel is based on money.” And while most cited the existing state financial criteria for court-appointed attorneys, some remarked that there were those that fell between the cracks when it came to representation. As one attorney mentioned, “The problem is that there are sometimes in between, then...somewhere in between, then they may not qualify for the Public Defender, but they can't quite afford to hire their own private attorney, and I think that may stop them.” Similarly, another noted, “There are instances where youth are not represented. Either their parents failed to qualify for a Public Defender, or their parents don't make enough to hire private. So sure...there are several that don't get attorneys.” More elaboration on this theme was suggested by the comment,

“I just...the more affluent you are, the money you have, the better the System can treat you. The better deal you can get, the better sentences you

can get, the better everything. And if you're poor, a lot of times those options aren't available, because it costs money, and if you're indigent, and I'm your Public Defender, the only way we can get those things is if the client...or if the County pays for it. Because they're the ones who pay for the Public Defender. Now, if you're talking about...I think there's a certain class of people, that aren't poor enough to get a Public Defender and have the County pay for their expenses, that make just enough money not to be indigent. But they really don't have enough money to hire an attorney, and if you're looking at that class of people, then I think, "yeah," the poor people do get an advantage, because they get a free attorney, and a lot of times, the County can provide...you know, I can request things, and have the Judge sign it, and we can get better representation than what a person...private could pay, cause they don't have the money. But, you still got to go through the Court, you got to go through the County, and there's a big "If" of whether you can ever get it approved and ordered...but, I think there is a classification of people who are...make too much money...and when I say too much...they make enough not to be poverty level, but they don't make enough to hire an attorney, if they want to eat and pay their light bill, and so they're never going to hire an attorney. Those are the people that are truly getting screwed in the System.”

Yet another used similar words to indicate that all those with notably lower socioeconomic status were disadvantaged. “I mean, I...the System screws the poor people. Poor people always get screwed. I mean, if you...in order to get a better plea bargain, or have something, usually it costs money...”

The issue of private versus public counsel in reference to financial considerations and access to counsel was another area of pronounced feelings. On the one hand, a few felt that the ability to procure private counsel was a benefit to those that were more financially advantaged, and seemed to suggest that private counsel offered more quality in representation. This sentiment was offset, however, by a number of those interviewed who suggested that private counsel was often inferior to court-appointed counsel when it came to working within the juvenile justice system. One attorney suggested as much, with,

“The more money you have, the more choices you have, I suppose. Um...you can go out and hire somebody that somebody's recommended, although...you know...getting a Court-appointed attorney is generally a benefit for a number of reasons. One, because...at least I think, because the attorneys are familiar with all of the people that they're going to deal with in the System. They know the Judge, because they're in front of the Judges on a regular basis; they know the Prosecutors, because they deal with them on a daily basis; they know all the Court workers, because they deal with them regularly, they know what kind of experts, and what kind of help, and they know the system and the facilities that are out there for kids, and what kind of services might match up with the kids the best. So, the money helps maybe...maybe helps you with your choice, initially.”

A number of prosecutors, private attorneys, and public defenders concurred with this, as evident by the statement,

“Well, if their parents have money, then they can hire private counsel. And private counsel isn't always willing to try stuff, you know. They're more willing to say, "Hey look..." They'll look and it and say, "Here's the fact." It depends on the counsel, you know, there are attorneys out there wanting to make money, so I want to take this as far as I can and go to trial, and get as much money as I can, regardless of what the facts of the case are.”

Another, too, observed,

“Obviously, wealthy families, who don't qualify for Public Defenders, they'll hire an attorney. But, I think that, you know, it's done...the private attorneys who rarely do juvenile work, they really don't know the System very well, and so I would venture that the [public defenders], or the attorneys who have the contract, who are very familiar with the Juvenile System are almost more suited, you know, I would say... even in the Adult System...LDA Public Defenders...they know the Criminal Law so much more than the occasional private attorneys.”

Six of those attorneys interviewed suggested that a primary factor in access to counsel was the youth's or the youth's guardians' awareness of their right to representation. One of those interviewed commented that this was important even before arraignment,

“Their accessibility to counsel, during times when they're not facing charges, sort of depends on their sophistication. Do they know that they have a right to counsel? It also depends on, you know, whether or not they've had contact with the Juvenile System. I mean, if you're in the Juvenile System, you're going to know you have a right to a lawyer. If you don't have contact with the Juvenile System, or you're not an incredibly sophisticated individual, you're not going to understand that right, and it's an important thing, in my mind, because a lot of kids don't understand. Even if they've been in the Juvenile System, they don't really understand what the 'right to counsel's' all about.”

Or as another stated, “I think a lot of it would be the parents, and how knowledgeable they are about rights that they may have, or their children may have, and of course, financial means would be a factor. But, I think a lot of it would be their parent’s educational background, and their knowledge about how the Justice System works, in general.”

A few of those interviewed pointed to a judiciary investment in making sure that all juveniles were represented or had the option for representation. Some felt that judges erred on the “safe side,” as suggested by the comment, “I think that there are far more kids appointed counsel than actually qualify to have counsel appointed.” Another observed, “well, the Court appoints. I mean, there...there...I think they’re pretty liberal in their appointments. It’s not...if anything, they error on the side of, I mean, giving us to people who probably could afford an attorney. So, I...you know, I think their access to having an attorney is, by the Courts, is certainly more than fair. I mean, I’ve never seen a Judge not give it to a kid that doesn’t want an attorney.” And yet another attorney summed up the feeling of a few with the comment,

“I think that the Judges are awesome about appointing, and they’re awesome about asking, and actually, I think the Judges appoint counsel on a lot of cases where the kid...because, you know, kids don’t know that they need that, you know, and so there’s a lot...I think there’s a lot of cases where the Judge...like my instinct can look out...before a kid’ll even ask, they’ll appoint counsel if there’s like felony charges and stuff like that, and then of course, when they get there, if the kid doesn’t want us, or you know, the parents don’t want us, or they’ve hired private counsel, or anything like that...course they can always refuse us, but I think that the Judges feel, you know, especially with juveniles, cause you don’t understand what’s happening and it’s more complicated...that they would rather have someone there to help them understand the System and understand what’s going on, than proceed without them.”

Some suggested that there were particular Judges that invariably appointed counsel, regardless of family income, and that there were others that were extremely stringent in adhering to the financial criteria.

Another issue related to access to counsel that several of those interviewed mentioned was the perceptions of both the juvenile and his or her guardians, and there interest in “getting the process over with.” Several times parents would refuse counsel under the auspices that either the youth had committed a relatively minor infraction, or that they wanted the youth to experience the consequences of a given action. At times, Judges would still appoint an attorney to a juvenile, regardless of the guardian’s wishes, albeit somewhat rarely. Additionally, youth would refuse appointment of counsel under the assumption that it would lengthen the court process. “They don’t want an attorney. Their parents don’t want an attorney, but it seems like the Juvenile Court Judge is really trying and have every youth represented, if they want to be. They’re explained, in detail, their rights to counsel, and the parent’s right,” one attorney noted, while another simply stated, “There’s a few that like they come in arraignment, and they want to plead, and the Judge asks them, ‘Do you want to have an attorney represent you?’ And they’re like,

‘No.’ And then some of the Judges will ask the parents, ‘Is that okay with you?’ and the parents are, ‘Yes. We just...let him go forward and be responsible.’”

Adequate Representation

After seven of those interviewed observed that most of the juveniles they had seen in the juvenile justice system were not represented by counsel, a much larger minority of attorneys went on to suggest that juveniles are not adequately represented in the juvenile justice system. Part of the problem with inadequate representation was the nature of and resources available to public defenders. One private attorney observed,

“The lawyers, who represent kids as part of the Public Defenders System, do as good a job as they can do, with the resources that they're provided. They're not provided ample resources in the job that needs to be done. And one of the...their caseloads are too high, in my estimation, and they're not given adequate funding for independent psychologists, or investigators, and that is an area that is...that is lacking in their agreement with the County.”

Another, while acknowledging that there was in fact access to representation, stated other concerns with, “Well, they are represented, but the quality of representation is not what I would want to have for myself.” Still others pointed to a lack of representation as a core issue in assessing its adequacy, as suggested by the comment,

I think the System can treat you...If you don't have an attorney, I think the System is more unfair to you, cause you don't know all of your options, and I've seen kids just walk in and plead guilty, and get slammed on things that, with an attorney, that would have never happened, so...I mean, are they adequately represented? I mean, by whom? You know, themselves? No. The Judges aren't representing them. The Probation Officers aren't there to represent them, and so...that's a tough question.”

A couple of those interviewed specifically cited problems with adequate representation in the context of school settings, where they felt juveniles were not informed of their rights beforehand. One expressed concern related to this with the contention,

“Well, I think there are some technicalities that really bother me. Things like the School Systems are very inclined to pull kids out of classes, not inform them that they have the right to have their parents there, or an adult, start talking to them, kids may say something, you know, it's documented by the School System...and then, you know, the parents are brought in after-the- fact, and then there's documentation there, and the whole issue. And I see that happen constantly, I mean I see it happen in cases where children are charged criminally.”

Others noted that private counsel was generally not well-trained when it came to the juvenile justice system, and still others mentioned a built-in systemic obstacle by the very

nature of the juvenile system which, because of the number of juveniles involved and a scarcity of resources, did not give sufficient attention to each juvenile's case.

Roughly half of those interviewed, however, commented that in general youth had adequate representation. "I think that their voices are heard," one defense attorney stated. Several prosecutors stated their concern that juveniles understand the legal processes involved in the system, even if they are not represented. One prosecutor stated,

"I've seen kids do a great job or their parents in representing themselves. Everybody tends to give them more slack. I make fewer objections. I'll even, sometimes, tell the kids, 'You know, don't get intimidated by my objecting. You keep trying to get in whatever you think comes in. That's your job. My job is to let the...you know, raise the matter for the Judge to do a ruling on whether it should come in or not, so don't get intimidated just because I'm standing up.' So we try and make it fair."

The issue of whether minority youth are as adequately represented as majority youth was of particular interest, and there were widely divergent opinions in this regard. Thirteen of those interviewed suggested that minority youth were not as adequately represented as other youth. Some cited cultural or language barriers, as suggested by the comment, "In my opinion, minority youth, like minority adults and everyone else within the System, have some problems now and again with representation, simply because some of us in the System don't understand it. There are cultural issues involved." A few others made a practical connection between minority status and general lower socio-economic status, and suggested that this impacted representation issues. One attorney demonstrated this with,

"I don't think a lot of minorities are aware of their options. Um...And I don't think it's minority, so much as it is 'poor.' I don't think the poor people are aware of their options as much as people who have [private] attorneys. I see the people who come with private attorneys, and they're much more aware of all the options available to them, even in resolving a case."

In contrast, more than half of those interviewed stated that minority youth were as adequately represented as majority youth. As one prosecutor observed, "I will say that I just think that, really, there's no difference between minority and non-minority as far as treatment in the Courts. I've been fairly satisfied with that." Many of those interviewees that held this opinion suggested that while they took into consideration the unique dynamics that may be salient in work with minority youth, they did the same with non-minority youth as well. A defense attorney mentioned,

“I think it's pretty color-blind, as far as I'm concerned. I think sometimes, we'll take into...I think everyone will take into account maybe cultural differences, especially if someone's from a foreign country...things like that. You know, maybe some socioeconomic issues may crop up for defense issues, or to help you understand maybe where your client's coming from or where some of the other people are coming from, but I don't think that...I mean, I look at...I don't really look at the person's color. I...unless you're looking at it to help you understand maybe some of the things that happened, you know...there's something behind it.”

Interestingly, several of those interviewed suggested that minority youth were MORE adequately represented when compared to non-minority youth. Some felt that the Courts were more likely to appoint counsel to minority youth, considering possible unique circumstances. “In my opinion, there's a higher percentage of them having representation than just the normal kids,” one attorney mentioned, “because if there's a language barrier, at all, you know, whether it's the kid or the parents, I think the Courts...at least the Judges that I've been before, are probably more apt and more likely to appoint counsel.” Some suggested that they observed a type of bias in favor of minority youth operating in the juvenile justice system. One of those interviewed commented, “I think it's just my experience that attorneys and the Courts and the prosecutors, for whatever reason, and I don't necessarily think it's fair, give every break to minorities, where they don't to the majority.” Another concurred with the observation, “...there's this feeling among minorities that ‘they’re just doing it to me because I'm Hispanic. Or they're just doing it to me because I'm Black.’ And I have seen it bend...I've seen the Courts bend over the other direction.” Most of those who felt that minorities were better or more adequately represented, however, cited the contention that they generally had more access to public defenders, and that public defenders were more competent in the juvenile justice system than private attorneys, as suggested by the comment,

“I mean, they get the same representation. In fact, probably better, because the attorneys that are appointed...many of the minorities qualify for appointed counsel, and those appointed counsel are so...you know, well trained by the experience they get. They know the cases, they know how to handle them, they know the Judges, they know the Prosecutors, they know the procedures, and they know all the resources available... and whereas many retained counsel, who rarely...if ever, practice in the Juvenile Court, really are at a disadvantage, you know, over appointed counsel.”

Dispositions and Representation

A majority of those attorneys interviewed conveyed the assumption that representation made a difference in the dispositions of a juvenile's case. As one defense attorney summarized, “I think the answer to it is that access to counsel makes a difference in every Court...I would have to say that if a juvenile's not represented by an

attorney, the disposition he gets may not be as good as it would be as if he had an attorney.” “It's having a counsel who knows what the results of a plea can be, makes all the difference in the world,” another attorney suggested. A prosecutor concurred with this, citing his own experience with,

“I mean, I think you're better off with a lawyer. I mean, on the whole, I tend to, you know, give the same offer I would to a pro se client, as I do with somebody that's represented by an attorney, but a lot of times, the attorney, you know, may know some things, or may direct me to some case law that shows me that a particular charge isn't justified, and so I think, you know, on the whole, they probably do negotiate the cases a little bit better for their clients, meaning that somebody without an attorney might admit some charges that maybe would be dismissed if they had a lawyer representing them. But, on the whole, I'd say ...I think you can't go wrong with a lawyer to protect your interest, and you know, who'll protect your rights and stuff like that.”

A minority of interviewees, however, insisted that counsel did not have an impact on dispositions, and that a youth would receive the same disposition regardless of whether he or she had representation.

When asked if there was a perceived difference in the dispositions of minority youth in comparison with non-minority youth, a substantive majority reported that there was not. Many suggested that the dispositions of minority youth were proportionate to those of majority youth. However, some noted a systemic bias in the dispositions of minority youth defendants. One attorney observed, “I just feel the System still...there's a lot of prejudice. I mean, you can have two people charged with the same crime, and they get together and your minority will get a different sentence than your non- minority.” “They're much more severe against minorities,” one defense attorney contended. Another pointed out that, “I think that's...you know, that's just the way the System is, and it's too bad, because they don't appear to look at minorities as individuals. It's the ‘Mexican kid there,’ and they never say, ‘It's the White kid, there,’ you know?” Still another pointed to less overt racism and suggested other cultural issues were more at play:

“My feeling is that our Judges try to be very fair, and as much as humanly possible, probably are fair. If I notice any discrepancy, it's that, you know, people from quote/unquote ‘good, lily-white, together, you know, two-parent families tend to get off easier. I don't think that has anything to do with race, religion, anything else. You know, it's more like they're more willing to believe that they're basically [good]... and from appropriate homes and supportive parents, and that they're much more likely to benefit from a break, and a chance, in more of a learning experience than say other people...But, like when I talk about cultural bias, I mean, one of the things that I think is just stupid to say is when the Judges say, ‘You should have been home playing board games with your parents.’ Well, I mean, obviously, your talking about...you know, you're not talking about poor

families where, you know, parents are out working at night, and the teenager...you know, working two jobs or whatever, and the teenager's watching them...or an aunt, or you know what I'm saying? To me, it's just a stupid thing to say, and...or...I don't know, that gives you a flavor for it.”

And while some echoing this opinion adamantly perceived judges to be fair, they recognized that it was sometimes an implicit dynamic, as suggested by the comment,

“I think the Judges...especially the Judges that I practice in front of...and it includes a lot of Juvenile Judges, but I think they try to be fair. I think what they don't understand is the cultures...the culture differences. I don't think they understand those or appreciate those, and a lot of their decisions or their dispositions...I think they're a hardship on some minority cultures, because they expect...I mean, they're looking at it from, you know, middle-class American, white...you know. And I think sometimes there's a culture difference that create problems, but that would be it. I don't...you know. I think the Judges try to be really fair.”

When it came to discussing the participants' perceptions of whether the dispositions themselves were effective or not in addressing the problems or issues that are presented by youth in general, roughly half of the attorneys interviewed suggested that they were not. Most of the support for this contention came from the perception that dispositions did not address underlying problems, or that the juvenile justice system often served to “criminalize” juveniles further, and introduce them to more disruptive elements. Others suggested that most dispositions did not include environmental and familial considerations, and several noted that it did no good to simply address the juvenile without addressing his or her immediate contexts. Some suggested that dispositions were too lenient, while others contended that they were not lenient enough. The other half of those interviewed, however, felt that dispositions were effective in addressing the needs of juveniles in the justice system.

A few felt that dispositions did not specifically or adequately address the needs of minority youth. Most often this centered on cultural issues relevant to the youth's experience. As one attorney suggested,

“I think they fail to address some of the cultural problems that...that Hispanics have right now, and ah... Well, I think that...you know, and I'm not sure this is a super youth problem, and I don't want to say it is. I think the answer to it is...is that a lot of...some Hispanic juveniles, you know, they have a different family relationship, and various things, and sometimes the Courts don't really necessarily treat those in a way that's helpful to them. That's kind of what I think. I think the Courts generally give a good try at that, but maybe some of them really aren't addressed very well.”

And yet another furthered this argument with the comment, “If I see anything different about the way that the Court actually was dealing with minority youth as opposed to non-minority youth, it would be in terms of how dispositions that are culturally sensitive. There are times that programs (speaking of cultural and language differences) instead of sending everybody to the same place, the child might experience problems.” The nature of the dispositions, to some, did not adequately address the cultural needs of minority youth.

Multiple Representation, Changes in Counsel, and Requests for Different Counsel

The assignment of an attorney to a youth in the public sector was universally straightforward, with the exception of “conflict counsel.” Information from the database had indicated a number of youth with multiple attorneys assigned to them, and when asked why this might occur a vast majority of those interviewed suggested that multiple representation was most often evident in cases where the youth was facing severe charges, particularly those involving potential transfer to the adult system. In these cases, an attorney from the juvenile court as well as the adult court would be present for proceedings. Another instance where multiple representation might occur was the occasional co-defense team from a particular contract agency. This, it was reported, occurred rarely.

When asked if they had observed times when counsel changed in the middle of a cases’ progression through the juvenile justice system, 5 participants reported that it was a common occurrence, while 17 indicated that it occurred only rarely. Two reported that they had never observed a change in representation mid-case. One rationale for this was that of agency or departmental logistics, where one attorney would handle certain hearings and because of time constraints or other conflicts pass it on to another within the same organization. Another reason was suggested by a small number of those interviewed, and expressed with the comment, “And I think that sometimes there are genuine, ethical conflicts, that under the Rules of Professional Conduct, you've got to transfer the case...where there's such personality problems between the lawyer and the client.” Other conflicts were suggested by another’s observation, “We've had conflicts or something like that, where they've had to conflict a case to another attorney...generally, it's because we'll have two or three juveniles who were in the same criminal episode, and one attorney will get two of them, and so he'll have to conflict it out to another attorney, because of...you know, there's certain issues that come up if he represents both juveniles.”

Twelve of those interviewed stated that they had not experienced or observed a request for different counsel in the juvenile justice system, while 30 attorneys indicated that they had experienced a request for different representation from either the juvenile or his or her guardians. The rationale for such requests varied, but predominantly centered on a perception on the part of the juvenile that other counsel would be more effective. Whether or not this request was granted by the Judge varied. Some reported that judicial discretion almost always erred on the side of maintaining the original appointed attorney, while others suggested that several Judges did in fact grant such requests commonly. Most of those interviewed agreed that the option for requesting a change in counsel was available to juveniles, although most often had to be accompanied by a valid and cogent explanation of why the change was needed.

Racial Bias in Charging/Referring

Approximately half of those interviewed indicated that they felt there were no racial bias in the charging or referral process. Several of these participants noted that while they had experienced clients who reported racial bias and discrimination in law enforcement charging practices, there did not seem to be a factual basis for these claims, and in the estimation of many attorneys this “excuse” was often used by clients to detract from legitimate guilt. The other half of attorneys interviewed, however, reported that they did in fact observe racial bias in charging and referring. As one attorney cited,

“What I see is a disparate enforcement of the law. You get police officers that focus on minority youth, and it's easy to do in [deleted], ‘cause the majority of [deleted] is minority. I mean, you get the Hispanics and Hispanic-Americans and African-American's all over the place. But, outside of [deleted], you really don't. So, the police focus their patrols on those areas...with the lawyer thing, there aren't a whole lot of minority attorneys in [deleted], much less the State of Utah. Utah is still predominately white, and the result is you get children, who have attorneys like me, who...I mean, we do our best to try and relate to someone on a minority level, but the fact is, a minority experience is different from a majority experience. I can walk into a restaurant and get a seat. I've watched Blacks treated differently. I've watched Hispanics get treated differently. Having grown up with Hispanics, I've watched how they get treated. I'm not...it ticks me off. It makes me mad. I've watched...I've heard cops say things like, ‘Dirty little Mexican,’ and there comes a point there where you say, ‘Geez, how's this affecting the System as a whole?’ I've made the argument several times, and it works fairly well, that, ‘Hey, he's being treated differently, because he's black.

Others suggested that racial bias was less evident in the actual charging and more in the language used to justify a charge or a referral to trial. As one pointed out,

It's not really how they're charged, but the evidence that's used against youth, you know, minority youth, um...and it really surprised me, because you look at the statements of other...let's say something happened in the school...so you get statements from a bunch of kids who saw the incident, um...instead of naming minority youth by their name, they say, ‘This Mexican kid, or this...you know,’ but if their name is...if it's a Caucasian kid, I've noticed that they actually put their name down, like you know ‘John Doe did this.’ But, if they're referring to a minority, it's more of, you know, ‘Three Mexicans came up to John Doe, Joe Smith, and you know...da, da, da.’ I see it in evidence that they compiled to charge. It's bothersome to me, you know, that it's actually still out there in the School System that kids refer, you know, that kids still have that stigma of placing names. I mean, if it was consistent. If it was like, ‘These three Mexicans come up to these three White kids,’ but it's not. ‘These three Mexicans came up to...’ and then they name the specific people, you

know, and I don't know. And I've seen gang-enhancements charged on minority youth a lot more than the majority youth in Utah.

A few others suggested that the bias was less racial in nature and more socioeconomic, although two of those interviewed made a connection between low socioeconomic status and minority status in general terms.

Appeals

A little under half of those attorneys interviewed reported that they had no experience with any cases being appealed. The remaining portion reported appeal experience, although a majority of these indicated that it was a rarity. The primary rationale for an appeal was that based on legal issues, as demonstrated by a private attorney's statement, "The appeal is only going to deal with legal issues, and whether the Judge made some kind of legal mistake. And frankly, that doesn't usually happen. If they're just angry because of what a witness said, they're not going to be able to appeal that, and lawyers know that, people don't..." "Well, every child has the right to ask for appeal of decision, just like every criminal defendant," another attorney commented, "Whether they do or not has a lot to do with what the...again, a whole number of things, whether they think they were fairly treated, whether there's any issue to base an appeal upon, whether they have an interest in sticking that out, because it takes more than a year...whether the disposition...you know, whether they're bothered by the disposition or not, and so there's all sorts of things that go into it." These perspectives were in contrast to the minority opinion that suggested if a youth simply asked for an appeal, they were granted one. The fiscal cost of an appeal, the inordinate amount of time spent in the appellate process, and the perception of parents/guardians were other factors that some cited as influencing the decision of whether to appeal a court's decision.

Time Spent Preparing for Juvenile Cases

Preparation time was most often influenced by the complexity of the case and the type of hearing. A vast majority of those interviewed indicated that they most often only had time to meet with the juvenile at the point of arraignment or an initial hearing. Most public defenders also reported that they only received the files on a particular case one to three days prior to an initial hearing. This, it seemed, placed an added strain on the perceived ability of defense counsel to prepare an adequate defense strategy for the juvenile. For public defenders, caseload was an additional factor that affected preparation time. No distinction was made between the time spent preparing for minority and non-minority cases.

Qualitative Analyses of Youth Interviews

Youth interviews were conducted to examine the availability of attorneys in the Juvenile System and the disproportional racial representation. These interviews investigated how a youth's minority status influenced the process of getting representation and the youth's perceptions of the impact that representation had on the disposition of their case. An additional objective of conducting youth interviews was to examine if youth involved in the Juvenile Justice System perceive bias based on ethnicity.

Sample

Interviews were conducted with 21 youth who are currently involved in the Juvenile Justice System and are on probation or in the custody of the Division of Youth Corrections or the Division of Child and Family Services. Parent consent forms were obtained from youth on probation, and Case Manager consent forms were obtained from youth in state's custody. All youth who participated in the study completed participant consent forms as well. Youth contacts were made through probation and Youth Corrections and DCFS Case Managers. Youth were interviewed at placements including Decker Lake, Genesis, ARTEC, Observation and Assessment, Group Homes and at the probation office.

Interview Tool

The interview tool was a semi-structured interview created by the researchers in an effort to initiate dialogue and provide some consistency to the interview process. The interview tool consisted of 12 questions and youth were encouraged to add any additional perspectives that they had on legal representation. The interview tool addressed questions concerning the following topics:

- Age
- Neighborhood
- Race/Ethnicity
- Classification of the offenses (misdemeanor or felony)
- Legal representation
- Disposition
- Perceptions of ethnicity on the disposition

Results

Youth ranged in age from 13 to 18, with the average age being 15.2 years. Of the 21 youth interviewed, 17 were male and 4 were female. Youth interviewed were from multiple ethnic and racial backgrounds including; Hispanic, Hispanic/Caucasian, Caucasian, Pacific Islander, Asian and African American. Additionally, youth were identified as being from neighborhoods throughout Salt Lake and Summit County, including; West Valley, Salt Lake City, Kearns, Magna, Park City, Rose Park, Taylorsville and West Jordan. The following tables identifies the ethnic makeup of the sample by race as identified by the youth themselves and the youth's neighborhood of residence.

Racial Makeup of Youth Interviews

Hispanic	6
Half Hispanic/Half Caucasian	3
Caucasian	3
Pacific Islander	4
Asian	2
African American	2

Neighborhood

West Valley	5
Salt Lake	2
Kearns	4
Magna	2
Park City	1
Rose Park	3
Taylorville	1
West Jordan	3

Charges

When asked to identify the status of their charges, 10 youth reported felony charges, 10 youth reported misdemeanor charges and one youth was unaware of the classification. The types of offenses ranged from attempted homicide to truancy. The following table identifies the types of offenses by category.

Types of Offenses

Attempted homicide	1
Assault	4
Car theft	3
Probation violation/contempt of court	3
Drug related charges	3
Burglary/Robbery	3
Possession of a firearm	1
Hit and Run/DUI	1
Truancy	2

Seventeen youth were ordered to placements including secure care, Observation & Assessment, Inpatient Substance abuse counseling (Odyssey House), Genesis, Wilderness, Group- Homes and Proctor placements in addition to restitution hours. Three youth were ordered only restitution. All youth were on probation or in the Division of Youth Corrections or the Division of Child and Family service custody.

Legal Representation

Nineteen youth who participated in the study identified having a court appointed attorney, one youth had a private attorney and one youth was not provided the opportunity for legal representation, either state appointed or private. Fourteen youth could not remember the name of the attorneys who represented them, four youth were represented by Papas & Associates, 1 youth was represented by Steve Miller and one youth received no representation.

The majority of youth (twelve) had only one attorney assigned to represent them, and six youth had two attorneys assigned to their case. Of the six who had two attorneys, four youth felt that this dynamic was positive as it provided them increased representation. Two youth felt that having two attorneys was confusing and did not help to mitigate their charges. It is important to note that only one youth had any contact with their attorney prior to the day of their arraignment or trial. All of these contacts occurred a few minutes before court in the holding cell at the courthouse. The only youth who had contact with his attorney prior to trial and sentencing had four felony homicide charges and was sentenced to secure care.

Youth Perception of the Effectiveness of Legal Representation

When asked if they felt their attorneys provided adequate legal representation, the majority of youth (eleven) felt that their attorneys assisted them in understanding the legal process, giving helpful advice concerning plea bargaining and mitigating charges, but that the youth would have also received harsher dispositions if they had not had legal counsel. The following quotes demonstrate the youth's positive viewpoints on state appointed legal representation:

“I think it was good. He just kept on telling me to just take it down...take a plea...so, he'll plea bargain me, so...then I just said, 'All right. I'll just plea bargain it,' so I wouldn't have to keep going to DT and stuff like that, so I just plea bargained it, and got it down. Q: So, that was his advise was to plea bargain it? A: Yah. Q: Do you think that was good? Good advice? A: Ya”

“Q: If didn't have a lawyer at all, do you think the sentence would have been different? A: In a way, yah. I do believe that, cause...they're all my...like going to Court, you know...my cases and all...I've been having lawyers, and they helped me out every single charge I had, and having this lawyer too, you know, this is a bigger charge, you know...it helped...it was better...I just like having lawyers and...because if I didn't have a lawyer, I know I would've went to Wasatch...to Secure Care...cause the D.A. said that's where he was going to send me. He said, 'I'm a risk to the community, so I think she deserves to be in Secure Care.' Luckily, I had a lawyer to tell him that even though I am a risk to the community (inaudible) it's not worth it to be locked behind the bars, when she could start working on her restitution hours and everything else.”

However, seven youth felt that while their attorneys were helpful in mitigating their sentences, they were not helpful enough in that they did not inform the youth of all their

options or pressured them to plead guilty in order to get a reduced sentence. When asked if his legal representation was effective, one youth commented:

“Somewhat...cause I wasn't getting like full answers. He didn't tell me everything, so...I was kind of confused, so I went with some stuff that I didn't know everything about.”

Another youth commented that while his attorney was somewhat helpful, it was not adequate representation:

“Well, he didn't do...he didn't really put into it, you know. But, he did help me a little bit, but...you know, there are some other attorneys that they could really help you out, you know. He didn't really get into my case, but he did help me a little bit.”

Three youth felt that having an attorney did not help to reduce their sentences, and were more confused concerning the court process, then if they would have hired private representation. One youth commented that, “I hope that everybody that goes to Court, gets their own lawyer, that's all I can say. Hire their own lawyer, ‘cause you have better representation when you hire your own.”

When asked about the effectiveness of his attorney, the following youth reported that his representation only served to confuse him.

“It could have been better. Q: In what way? A: Oh, like he told me to admit to some stuff and not this, and then we got all mixed up in the Court, and so... Q: Hmmm. So, did you end up admitting to the wrong charges? A: Yah, at first, and then I was like, ‘Oh, no.’ Then I understood what he was saying.”

As previously mentioned one youth was not offered the right to legal counsel at all, and one youth had a court appointed attorney who failed to attend her court arraignment. When asked about her attorney she reported the following:

“I remember that day. I didn't have a representative. Q: They didn't show up? A: Uh-uh. (No) Q: So, the Judge appointed one, but they didn't even show up? A: Uh-uh. (No) They just asked me if I wanted to go on, or wait until another date, and I said I wanted to go on, cause I didn't want to go back to Court again.”

Another youth reported that he felt his representation did not provide him adequate defense:

“I was definitely not, I think. He was trying to convince me to do things I didn't really want to do. It was just...he really wasn't trying really hard, you know. I, basically, didn't get really anything from them. He didn't really do anything. I could've been talking and it wouldn't have been different. Q: So, what did he want you to do that you didn't...? A: Well, at first, he wanted me just to...just admit it, and nothing would happen,

and I said, "Well, wouldn't I get like a plea bargain or something?" And he said, 'Oh, I'm going to ask them.' And then after he came back, he said that they wouldn't drop the robbery to 'attempted robbery.' They'd keep that, but they dropped the misdemeanor I had on me, too... fleeing from the crime scene. Then...then he wouldn't believe me that I was telling the truth...when I was telling him what happened, he would not believe me. He said, 'Are you sure that's the truth?' You know, and he just totally doubt me...like... this is when we were at the holding cell, you know, he would talk to me, and then he would...like I would be talking to him, and he was like, 'Well, why should I put you on probation?' You know, that's exactly what he said. 'Why should I try to get you on probation? I mean, it looks like you may just do it again.' I'm like...it just really offended me just to even...hear him say something like that. I thought he would be defending me, instead of kind of attacking me a little bit."

Youth Perception of Judges

While the interview tool did not include questions pertaining to the judges, several youth commented that they felt the judges sentenced youth equally across race and several youth felt that there was racial bias within sentencing patterns. Two youth who commented on their judges providing equal treatment regardless of race:

"I don't know if my Judge was racist, but you know, I think...I think he's a cool Judge, cause everybody tells me he's a right Judge, you know. He gives you the right consequence, you know. He sends you to, you know, good programs. He knows what to do for your case, so I think, you know, it don't matter if you're White, Hispanic or Black or whatever, you know. You'll always be treated the same as other people. You commit a crime, you're going to get a consequence, you know. But...yah...everybody gets treated the same."

"Q: Do you think that the sentence would be different if you weren't a minority? So, if you weren't African- American, do you think that the sentence would be easier, or harder, or the same? A: The same. Cause with Judge [deleted], he doesn't care what race you are. He treats you all the same."

However, several youth commented that they felt there was bias within the Juvenile Justice System by depending on the Judge. The following quotes demonstrate this dynamic:

“Do you think your sentence would have been different if you weren't a minority? A: On one Judge. Yes. Q: How's that? A: Just because, he tells me stuff like that ‘My own race and stuff like that...’ give me my motivation and stuff like that, so...I think maybe if I'd been White or something, he would've gave me a little bit better chance, cause I never been to Genesis from all the other programs...like he just sent me straight to Secure Care, and I know a bunch of others...other races and stuff...they just get all kinds of chances. They'll go to O & A, Wilderness, Genesis...anywhere besides Secure Care, so...”

“Do you think your sentence would have been different if you weren't a minority? Well I think it exists on the Judge...like I hear [deleted], you know, he's the Judge who's like just strict and it's not worth it, cause look...they keep coming back, you know. So, I don't know what the reason why he does that stuff if they're going to keep doing it...cause trying to get back at him. That's just what I even know from the peers that I get locked up with.”

“Considering I had Judge [deleted], I don't know. I mean, to most people I don't really look like a minority, per se, like you could tell, but...maybe there's somewhere, I mean, in some other people's shoes, I definitely believe that it happens. But, mine...I can't necessarily say it was. Q: So, do you think, in general, that minority kids get harder sentences? A: For sure.”

Conclusion

When asked their overall perceptions of racial bias in the Juvenile Justice System, fourteen youth perceived treatment to be equal across race, three youth perceived treatment to be unequal across race, and two were unsure. No youth perceived racial bias by their court appointed attorneys, although a substantial number of youth felt that state appointed attorneys did not adequately fulfill their obligations to the youths as their clients. Of the three Caucasian youth, two perceived no bias, and one felt that minorities receive harsher sentences. Further research is needed to understand the relationship between the judges and sentencing of racial minority youth.

Recommendations

Some of the limitations of this study centered on deficits in the initial database received from the Administrative Office of the Courts. One recommendation is for the Administrative Office of the Courts to continue its efforts to enhance the recording quality and accuracy in regard to legal representation and race/ethnicity of juvenile offenders. Additionally, it is recommended that these data be revisited to monitor ongoing progress.

The juvenile justice system in Utah needs to determine if legal representation will be provided for each youth. The traditional *Parens Patria* concept of the juvenile court has not required such legal representation and the current system is not consistent in its approach to representation. More attention needs to be placed on minority youth's access to legal representation. Particular emphasis should be given to the discrepancy across judicial districts when it comes to implicit or explicit policies and practices regarding appointment of counsel. Further research should delineate the practices and policies in Districts 5, 6, and 8 that allow for all juveniles to be represented, and District 7 where minorities were represented at a higher frequency than non-minorities. Attention should also be given to the apparently unrecognized but substantial group of individuals who do not qualify for public defense yet cannot afford private counsel. Socioeconomic factors as they relate to minority status should be given attention at a systemic level.

In an effort to assist in determining the benefit of legal counsel a mechanism for assessing dispositions should be developed (with an emphasis on minority representation) and implemented for ongoing monitoring purposes. Research should be implemented that addresses youth who commit minor offenses but are not represented versus those that are and their relative dispositions and trajectory in the juvenile justice system

Many of the recommendations elicited from the interview materials had to do with increasing the resources available to public defenders. As one attorney put it,

“Public Defenders are highly under-funded. The State's only willing to pay so much, and the amount they pay to cover their own calendar...and keep in mind, they have their own police force that gathers the evidence, they have all their own professionals that analyze the evidence, they have a huge budget for that sort of thing. So, the challenge is in the defense, because the Defense Attorney rarely has the same resources that the State has, so what the State has essentially done is say, ‘Okay, look, we're going to provide you counsel, but we're going to do it for a lot less than what we paid to collect the evidence.’ Makes it very difficult. There's a great disparity between the amount of money they pay to prosecute a person, and enforce the laws, vs. what they pay to have someone defended, if they can't afford an attorney. That's a problem. They pay the public...even if the Public Defenders and Legal Defenders down in Salt Lake earn a lot less, from what I understand, than do the full-time attorneys...the Prosecutors.”

Still another private attorney suggested, “The Public Defense...although the lawyers are good, they're way over worked, particularly up here. I mean, there's a lot of cases, so

they have to really meter their time a little bit, which I think may be a disadvantage. I think they're good, and I think they do a great job with their...with the amount of time and the number of cases they have, but it's great...it's basically a 'over-worked, under-paid, over-cased' situation for most of them."

There were several additional recommendations that would enhance the representation that juveniles currently receive in Utah. It was recognized, in the process of this study, that the education of attorneys to practice law in the juvenile court could be substantially enhanced. Such things as the provision of continuing legal education (CLE) hours for those who practice in juvenile court, the certification of those who practice in juvenile court by the Utah Bar Association, and the addition of juvenile law classes to the current curriculum in the states colleges of law.

References

- Ainsworth, J. E. (1991). Re-imagining childhood and reconstructing the legal order: The case for abolishing the juvenile court. *North Carolina Law Review*, 69, 1083-1133.
- Bernard, T. J. (1992). *The cycle of juvenile justice*. New York: Oxford University Press.
- Bishop, D. M., Frazier, C. E., Lanza-Kaduce, L., & Winner, L. (1996). The transfer of juveniles to criminal court: Does it make sense? *Crime & Delinquency*, 42: 171-191.
- Bortner, M. A. (1982). *Inside a juvenile court: The tarnished ideal of individual justice*. New York: New York University Press.
- Butts, J. A. & Mitchell, O. (2000). *Brick by brick: Dismantling the border between juvenile and adult justice*. Washington, D.C.: Urban Institute.
- Bureau of Data and Research (1999). *Dispositions of cases transferred to adult court: Report of the Classification Work Group*, Florida Department of Juvenile Justice: Author.
- Costello, J. C. (1980). Ethical Issues in Representing Juvenile Clients: A Review of the IJA/ABA Standards on Representing Private Parties, *New Mexico Law Review* 10, 263-264.
- Criminal Justice Statistical Center. (1984). *How Today's Juvenile Justice Trends Have Affected Policy*. Sacramento, CA: Author.
- Fagan, J. (1995). Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. In J. C. Howell, B. Krisberg, J. D. Hawkins, and J. J. Wilson (Eds.) *Sourcebook on serious, violent and chronic juvenile offenders*. Thousand Oaks, CA: Sage Publications.
- Feld, B.C. (1999). *Bad kids—Race and the transformation of the juvenile court*. New York: Oxford University Press.
- Feld, B.C. (1989). The right to counsel in juvenile court: An empirical study of when lawyers appear and the difference they make. *Journal of Criminal Law and Criminology*, 79, 1185-1346.
- Feld, Barry C. (1988). In re Gault revisited: A cross-state comparison of the right to counsel in juvenile court. *Crime and Delinquency*, 34 (4), 393-425.
- Feld, B.C. (1993). *Justice for children: The right to counsel and the juvenile courts*. Boston, MA: Northeastern University Press.
- Feld, B.C. (1991). Justice by geography: Urban, suburban, and rural variations in juvenile justice administration. *Journal of Criminal Law and Criminology*, 82, 156-210.

- Feld, B.C. (1990). The punitive juvenile court and the quality of procedural justice: Disjunctions between rhetoric and reality. *Crime and Delinquency*, 36 (4), 443-467.
- Feyerherm, W. H. (1995). The DMC initiative: The convergence of policy and research themes. In K. K. Leonard, C. E. Pope, and W. H. Feyerherm (Eds.) *Minorities and juvenile justice*, (pp. 1-15). Thousand Oaks, CA: Sage.
- Finkelstein, M. M. (1973). *Prosecution in the juvenile courts: Guidelines for the future*. Washington DC: U.S. Government Printing Office.
- Flicker, B. (1983). *Providing Counsel for Accused Juveniles*. New York: Institute of Judicial Administration.
- Hamperian (1982). *Youth in adult courts: Between two worlds. Major Issues in Juvenile Justice Training and Information*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (Publication No. 80823).
- Howell, J. C. (1997). *Juvenile justice and youth violence*. Thousand Oaks, CA: Sage.
- Huerter, R., & Saltzman, B. (1992). What do they think? The delinquency court process in Colorado as viewed by the youth. *Denver University Law Review*, 69, 345-358.
- Hueser, J. P. (1984). *A statistical study of juveniles arrested for serious felony crime in Oregon and "remanded" to adult criminal court*. Salem, OR: Oregon Department of Justice, Crime Analysis Center.
- The Illinois Supreme Court Special Commission on the Administration of Justice (1993). *Final Report* (Part II 7-11). Chicago, IL: Author.
- Knitzer, J., Sobie, M. (1984). *Law guardians in New York State: A study of the legal representation of children*. New York: New York State Bar Association.
- Mack, J. (1909). The juvenile court. *Harvard Law Review*, 23 (104), 119-120.
- Manfredi, C. P. (1998). *The Supreme Court and juvenile justice*. Lawrence, KS: University Press of Kansas.
- McGarrell, E. F. (1993). Trends in racial disproportionality in juvenile court processing: 1985-1989. *Crime & Delinquency*, 39 (1), 29-49.
- McNulty, E. W. (1996). The transfer of juvenile offenders to adult court: Panacea or problem? *Law & Policy*, 18, 61-75.
- Office of Juvenile Justice and Delinquency Prevention (1993). *America's children at risk: A national agenda for legal action*. Washington, DC: Author.

- Platt, A. M. (1977). *The child savers: The invitation of delinquency*. Chicago, IL: University of Chicago Press.
- Podkopacz, M. R., & Feld, B. C. (1996). The end of the line: An empirical study of judicial waiver. *Journal of Criminal Law and Criminology*, 86, 449-492.
- Pope, C. E., & Feyerherm, W. H. (1992). Minorities and the juvenile justice system: Final report. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- Puritz, P. (1995). *A call for justice: An assessment of access to counsel and quality of representation in delinquency proceedings*. Washington, D.C.: American Bar Association, Juvenile Justice Center.
- Rothman, D. J. (1980). *Conscience and convenience: The asylum and its alternatives in progressive America*. Glenview, IL: Scott, Foresman and Company.
- Singer, S. I. (1996). *Recriminalizing delinquency: Violent juvenile offenders and juvenile justice reform*. New York: Cambridge University Press.
- Singer, S. I., & McDowall, D. (1998). Criminalizing delinquency: The deterrent effects of the New York juvenile offender law. *Law & Society*, 22, 521-535.
- Schlossman, S. L., & Wallach, S. (1978). The crime of precocious sexuality: Female juvenile delinquency in the Progressive Era. *Harvard Educational Review*, 48, 65-94.
- Shepard, R. E., Jr., Volenik, A. (1987). Juvenile Justice. *Criminal Justice Journal*, 33, 2-20.
- Smith, D. D. (1980). *Young female offenders: Analysis of differential handling based on sex*. Pittsburgh, PA: National Center for Juvenile Justice.
- Snyder, H., & Sickmund, M. (1999). *Juvenile offenders and victims: 1999 National Report*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (NCJ Report No. 178257).
- Snyder, H., Sickmund M., & Poe, E. (1999). *The conversion of juvenile delinquents to adult criminals: Four studies of juvenile transfers to criminal court in the 1990s*. Pittsburgh, PA: National Center for Juvenile Justice.
- Stuart, J. M. (1991). Right to counsel: The unkept promise to our juvenile accused. *Bench & Bar of Minnesota*, 48, 27.
- Sutton, J. R. (1988). *Stubborn children: Controlling delinquency in the United States*. Berkeley, CA: University of California Press.
- U.S. General Accounting Office. (1995). *Juvenile justice: Juveniles processed in criminal court and case dispositions*. Washington, D.C.: Author.

Watkins, J. C., Jr. (1998). *The juvenile justice century*. Durham, NC: Carolina Academic Press.

Winner, L., Lanza-Kaduce, L., Bishop, D. M., & Frazier, C. E. (1997). The transfer of juveniles to criminal court: Reexamining recidivism over the long term. *Crime & Delinquency*, 43, 548-563.

Wordes, M., & Bynum, T. (1994). Locking up youth: The impact of race on detention decisions. *Journal of Research in Crime & Delinquency*, 31 (2), 149.