



OJJDP Office of Juvenile Justice and Delinquency Prevention

Shay Bilchik, Administrator

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Due Process Advocacy

by Douglas C. Dodge

Nearly 30 years ago, the Supreme Court established the constitutional right of children to appointed legal counsel in juvenile delinquency proceedings in *In re Gault*, 387 U.S. 1 (1967). In 1974 Congress, concerned about increases in juvenile delinquency and the need to safeguard children's rights, passed the Juvenile Justice and Delinquency Prevention (JJDP) Act (Pub. L. 93-415, September 7, 1974). The Act created the National Advisory Committee for Juvenile Justice and Delinquency Prevention, whose charge included development of national juvenile justice standards. These standards, published in 1980, require that children be represented by counsel in all proceedings arising from a delinquency action, beginning at the earliest stage of the decision process.¹ The Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards developed similar standards in 1980.

A Promise Unkept

Recent studies of legal representation of juveniles have found that despite the constitutional requirements set forth in *Gault* and the juvenile justice standards, juveniles in many regions of the country are still not represented by counsel in proceedings subject to *Gault*. In the most comprehensive study to date, three out of six States surveyed reported that on average less than 50 percent of juveniles charged with delinquency were represented by legal counsel.² This lack of counsel has been attributed to several factors: parents' reluctance to retain an attorney; inadequate public defender legal services in nonurban areas; and judicial ambivalence toward advocacy in treatment-oriented juvenile courts. The latter factor often results in pressure on juveniles and parents to waive counsel.³

The Response of Congress and OJJDP

The 1992 reauthorization of the JJDP Act (Pub. L. 102-586, November 4, 1992) charged the Office of Juvenile Justice and Delinquency Prevention (OJJDP) with developing a program to address legal representation of juvenile delinquents. OJJDP awarded a competitive grant in 1993 to the American Bar Association (ABA) to survey juvenile legal defense services and to develop training and technical assistance to increase the availability and quality of counsel for juvenile offenders. The Youth Law

Center in San Francisco and the Juvenile Law Center in Philadelphia are assisting the ABA on this project. The ABA has completed the national survey and released a report on its findings: *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (1995).

Summary of the American Bar Association Findings

The ABA surveyed all 50 States and heard from 46 juvenile defenders, made intensive visits to 10 jurisdictions, interviewed both professionals in the field and clients, and conducted an extensive literature search. The national assessment focused on public defenders and court-appointed counsel but also examined the role of law school clinical programs and nonprofit children's law centers.

Although many dedicated attorneys follow sound advocacy practices for juvenile offenders, the survey found such representation neither widespread nor common. Problems facing public defenders included (1) annual caseloads of more than 500 cases with up to 300 of these being juvenile cases; (2) lack of resources for independent evaluations, expert witnesses, and investigatory support; (3) lack of computers, telephones, files, and adequate office space; (4) juvenile public defenders' inexperience, lack of training, low morale, and salaries lower than those of their counterparts who defend adults or serve as prosecutors; and (5) inability to keep up with rapidly changing juvenile codes. Consistent with findings in earlier studies,⁴ the ABA also found that a disturbing number of juveniles waive the right to counsel. In 34 percent of the public defender offices surveyed, juveniles "often" waive counsel during the initial court hearing.

Heavy caseloads appear to be the most significant barrier to effective representation. Because of the workload, attorneys often are unable to keep their clients appropriately informed and to adequately develop detention and dispositional alternatives. This may lead to the unnecessary secure detention of youth who are not a danger to themselves or the community. Studies show that securely detaining a juvenile offender increases the likelihood that the juvenile will be found to be involved in an offense and be committed to a secure facility if he or she is found to be involved.⁵

Serious gaps also exist in training for juvenile defenders: 78 percent of public defender offices have no budget for lawyers to attend training programs, and half do not have a training program for all new attorneys, an ongoing training program, or a juvenile delinquency section in the office training manual. About 40 percent do not have a specialized manual for juvenile court lawyers, and a third do not include juvenile delinquency work in their general training unit.

Although the ABA assessment identified significant problems with access to and quality of counsel, project staff also observed many individual defenders effectively representing juvenile clients. Effective defenders worked in offices with the following common characteristics:

- ◆ Supportive structural features, including limited caseloads, ability to enter a case early, and flexibility to represent a client in collateral matters (e.g., special education).
- ◆ Comprehensive training and available resource materials.
- ◆ Adequate nonlawyer support and resources.
- ◆ Hands-on supervision of attorneys.
- ◆ A work environment that values juvenile court practice.

National Training and Technical Assistance Strategy

The ABA is currently providing training and technical assistance, tailored to each jurisdiction's needs, to interested States and localities to improve access to and the quality of juvenile representation. Intensive activities are under way in Louisiana, Pennsylvania, and Tennessee, with additional supportive activities occurring in Kansas, North Carolina, Ohio, Oklahoma, and Virginia. Training focuses on special education and mental health needs of delinquent youth, implementation of juvenile justice standards, enhanced dispositional advocacy, and waiver or transfer to the adult system. The ABA is also helping defenders conduct comprehensive State-based assessments of defenders' needs, examining due process issues associated with assessment and diagnostic centers, working with statewide defender boards to raise the visibility of issues related to juvenile court practice, and exploring the feasibility of an interdepartmental law school clinical program to provide comprehensive legal and other support to young clients. Training and technical assistance site

selection is determined in part by a jurisdiction's need and willingness to support public defenders and court-appointed lawyers in improving legal representation of delinquent youth. Finally, the ABA is developing a comprehensive training curriculum covering detention, waiver, and dispositional advocacy—areas defenders identified as needing improvement. The curriculum is expected to be available from the ABA in the spring of 1997.

For Further Information

To obtain a copy of *A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, contact ABA Project Director Patricia Puritz at 202-662-1515. For additional information about the project or to arrange for technical assistance and training, call Ms. Puritz or Douglas C. Dodge at 202-307-5914.

Endnotes

¹ National Advisory Committee for Juvenile Justice and Delinquency Prevention, July 1980, "3.132 Representation by Counsel—For the Juvenile," *Standards for the Administration of Juvenile Justice* (Washington, DC: Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice).

² B.C. Feld, 1988, "In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court," *Crime and Delinquency* 34: 393-424.

³ Feld, 1984, "Criminalizing Juvenile Justice: Rules of Procedure for Juvenile Court," *Minnesota Law Review* 69: 190; Feld, 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: 1216-17.

⁴ Feld, 1984; T. Grisso, 1980, "Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis," *California Law Review* 68: 1134; Grisso, 1981, *Juveniles' Waiver of Rights: Legal and Psychological Competence* (New York: Plenum Press); G. Melton, 1989, "Taking Gault Seriously: Toward a New Juvenile Court," *Nebraska Law Review* 68: 146.

⁵ K.L. Kempf, 1992, *The Role of Race in Juvenile Justice Processing in Pennsylvania* (Shippensburg, PA: Center for Juvenile Justice Training and Research and Pennsylvania Commission on Crime and Delinquency), 53-54.

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