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Institute of Judicial Administration
American Bar Association

Juvenile Justice Standards

STANDARDS RELATING TO

Prosecution

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Prosecution

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Prosecution

Recommended by the
IJA-ABA JOINT COMMISSION ON JUVENILE JUSTICE STANDARDS

Hon. Irving R. Kaufman, *Chairman*

Approved by the
HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION, 1979

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This book is printed on recycled paper.

Preface

The standards and commentary in this volume are part of a series designed to cover the spectrum of problems pertaining to the laws affecting children. They examine the juvenile justice system and its relationship to the rights and responsibilities of juveniles. The series was prepared under the supervision of a Joint Commission on Juvenile Justice Standards appointed by the Institute of Judicial Administration and the American Bar Association. Seventeen volumes in the series were approved by the House of Delegates of the American Bar Association on February 12, 1979.

The standards are intended to serve as guidelines for action by legislators, judges, administrators, public and private agencies, local civic groups, and others responsible for or concerned with the treatment of youths at local, state, and federal levels. The twenty-three volumes issued by the joint commission cover the entire field of juvenile justice administration, including the jurisdiction and organization of trial and appellate courts hearing matters concerning juveniles; the transfer of jurisdiction to adult criminal courts; and the functions performed by law enforcement officers and court intake, probation, and corrections personnel. Standards for attorneys representing the state, for juveniles and their families, and for the procedures to be followed at the preadjudication, adjudication, disposition, and postdisposition stages are included. One volume in this series sets forth standards for the statutory classification of delinquent acts and the rules governing the sanctions to be imposed. Other volumes deal with problems affecting nondelinquent youth, including recommendations concerning the permissible range of intervention by the state in cases of abuse or neglect, status offenses (such as truancy and running away), and contractual, medical, educational, and employment rights of minors.

The history of the Juvenile Justice Standards Project illustrates the breadth and scope of its task. In 1971, the Institute of Judicial Administration, a private, nonprofit research and educational organi-

zation located at New York University School of Law, began planning the Juvenile Justice Standards Project. At that time, the Project on Standards for Criminal Justice of the ABA, initiated by IJA seven years earlier, was completing the last of twelve volumes of recommendations for the adult criminal justice system. However, those standards were not designed to address the issues confronted by the separate courts handling juvenile matters. The Juvenile Justice Standards Project was created to consider those issues.

A planning committee chaired by then Judge and now Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit met in October 1971. That winter, reporters who would be responsible for drafting the volumes met with six planning subcommittees to identify and analyze the important issues in the juvenile justice field. Based on material developed by them, the planning committee charted the areas to be covered.

In February 1973, the ABA became a co-sponsor of the project. IJA continued to serve as the secretariat of the project. The IJA-ABA Joint Commission on Juvenile Justice Standards was then created to serve as the project's governing body. The joint commission, chaired by Chief Judge Kaufman, consists of twenty-nine members, approximately half of whom are lawyers and judges, the balance representing nonlegal disciplines such as psychology and sociology. The chairpersons of the four drafting committees also serve on the joint commission. The perspective of minority groups was introduced by a Minority Group Advisory Committee established in 1973, members of which subsequently joined the commission and the drafting committees. David Gilman has been the director of the project since July 1976.

The task of writing standards and accompanying commentary was undertaken by more than thirty scholars, each of whom was assigned a topic within the jurisdiction of one of the four advisory drafting committees: Committee I, Intervention in the Lives of Children; Committee II, Court Roles and Procedures; Committee III, Treatment and Correction; and Committee IV, Administration. The committees were composed of more than 100 members chosen for their background and experience not only in legal issues affecting youth, but also in related fields such as psychiatry, psychology, sociology, social work, education, corrections, and police work. The standards and commentary produced by the reporters and drafting committees were presented to the IJA-ABA Joint Commission on Juvenile Justice Standards for consideration. The deliberations of the joint commission led to revisions in the standards and commentary presented to them, culminating in the published tentative drafts.

The published tentative drafts were distributed widely to members of the legal community, juvenile justice specialists, and organizations directly concerned with the juvenile justice system for study and comment. The ABA assigned the task of reviewing individual volumes to ABA sections whose members are expert in the specific areas covered by those volumes. Especially helpful during this review period were the comments, observations, and guidance provided by Professor Livingston Hall, Chairperson, Committee on Juvenile Justice of the Section of Criminal Justice, and Marjorie M. Childs, Chairperson of the Juvenile Justice Standards Review Committee of the Section of Family Law of the ABA. The recommendations submitted to the project by the professional groups, attorneys, judges, and ABA sections were presented to an executive committee of the joint commission, to whom the responsibility of responding had been delegated by the full commission. The executive committee consisted of the following members of the joint commission:

Chief Judge Irving R. Kaufman, *Chairman*
Hon. William S. Fort, *Vice Chairman*
Prof. Charles Z. Smith, *Vice Chairman*
Dr. Eli Bower
Allen Breed
William T. Gossett, Esq.
Robert W. Meserve, Esq.
Milton G. Rector
Daniel L. Skoler, Esq.
Hon. William S. White
Hon. Patricia M. Wald, *Special Consultant*

The executive committee met in 1977 and 1978 to discuss the proposed changes in the published standards and commentary. Minutes issued after the meetings reflecting the decisions by the executive committee were circulated to the members of the joint commission and the ABA House of Delegates, as well as to those who had transmitted comments to the project.

On February 12, 1979, the ABA House of Delegates approved seventeen of the twenty-three published volumes. It was understood that the approved volumes would be revised to conform to the changes described in the minutes of the 1977 and 1978 executive committee meetings. The *Schools and Education* volume was not presented to the House and the five remaining volumes—*Abuse and Neglect*, *Court Organization and Administration*, *Juvenile Delinquency and Sanctions*, *Juvenile Probation Function*, and *Noncriminal*

Misbehavior—were held over for final consideration at the 1980 mid-winter meeting of the House.

Among the agreed-upon changes in the standards was the decision to bracket all numbers limiting time periods and sizes of facilities in order to distinguish precatory from mandatory standards and thereby allow for variations imposed by differences among jurisdictions. In some cases, numerical limitations concerning a juvenile's age also are bracketed.

The tentative drafts of the seventeen volumes approved by the ABA House of Delegates in February 1979, revised as agreed, are now ready for consideration and implementation by the components of the juvenile justice system in the various states and localities.

Much time has elapsed from the start of the project to the present date and significant changes have taken place both in the law and the social climate affecting juvenile justice in this country. Some of the changes are directly traceable to these standards and the intense national interest surrounding their promulgation. Other major changes are the indirect result of the standards; still others derive from independent local influences, such as increases in reported crime rates.

The volumes could not be revised to reflect legal and social developments subsequent to the drafting and release of the tentative drafts in 1975 and 1976 without distorting the context in which they were written and adopted. Therefore, changes in the standards or commentary dictated by the decisions of the executive committee subsequent to the publication of the tentative drafts are indicated in a special notation at the front of each volume.

In addition, the series will be brought up to date in the revised version of the summary volume, *Standards for Juvenile Justice: A Summary and Analysis*, which will describe current history, major trends, and the observable impact of the proposed standards on the juvenile justice system from their earliest dissemination. Far from being outdated, the published standards have become guideposts to the future of juvenile law.

The planning phase of the project was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. The National Institute also supported the drafting phase of the project, with additional support from grants from the American Bar Endowment, and the Andrew Mellon, Vincent Astor, and Herman Goldman foundations. Both the National Institute and the American Bar Endowment funded the final revision phase of the project.

An account of the history and accomplishments of the project

would not be complete without acknowledging the work of some of the people who, although no longer with the project, contributed immeasurably to its achievements. Orison Marden, a former president of the ABA, was co-chairman of the commission from 1974 until his death in August 1975. Paul Nejelski was director of the project during its planning phase from 1971 to 1973. Lawrence Schultz, who was research director from the inception of the project, was director from 1973 until 1974. From 1974 to 1975, Delmar Karlen served as vice-chairman of the commission and as chairman of its executive committee, and Wayne Mucci was director of the project. Barbara Flicker was director of the project from 1975 to 1976. Justice Tom C. Clark was chairman for ABA liaison from 1975 to 1977.

Legal editors included Jo Rena Adams, Paula Ryan, and Ken Taymor. Other valued staff members were Fred Cohen, Pat Pickrell, Peter Garlock, and Oscar Garcia-Rivera. Mary Anne O'Dea and Susan J. Sandler also served as editors. Amy Berlin and Kathy Kolar were research associates. Jennifer K. Schweickart and Ramelle Cochrane Pulitzer were editorial assistants.

It should be noted that the positions adopted by the joint commission and stated in these volumes do not represent the official policies or views of the organizations with which the members of the joint commission and the drafting committees are associated.

This volume is part of a series of standards and commentary prepared under the supervision of Drafting Committee II, which also includes the following volumes:

COURT ORGANIZATION AND ADMINISTRATION
COUNSEL FOR PRIVATE PARTIES
TRANSFER BETWEEN COURTS
THE JUVENILE PROBATION FUNCTION: INTAKE AND PREDISPOSITION INVESTIGATIVE SERVICES
PRETRIAL COURT PROCEEDINGS
ADJUDICATION
APPEALS AND COLLATERAL REVIEW

Addendum of Revisions in the 1977 Tentative Draft

As discussed in the Preface, the published tentative drafts were distributed to the appropriate ABA sections and other interested individuals and organizations. Comments and suggestions concerning the volumes were solicited by the executive committee of the IJA-ABA Joint Commission. The executive committee then reviewed the standards and commentary within the context of the recommendations received and adopted certain modifications. The specific changes affecting this volume are set forth below. Corrections in form, spelling, or punctuation are not included in this enumeration.

1. Standard 2.2 B. was amended to change the criterion for the salary of juvenile prosecutors and their staff from that paid by leading law firms to a range commensurate with other government attorneys, as provided in *Counsel for Private Parties* Standard 2.1 (b) (iv).

Commentary was revised accordingly.

2. Standard 4.3 A. 3. was amended by reducing the minimum age for transfer to criminal court from sixteen to fifteen, adding class two offenses, and limiting the prerequisite of a prior record to class two offenses, to conform to revisions in *Transfer Between Courts* standards.

Commentary was revised accordingly.

3. Standard 4.4 was amended to add brackets to time limits for filing a petition (forty-eight hours if in custody, five days if not in custody).

4. Standard 4.5 A. was amended to permit dismissal of a petition by the court on the juvenile's motion without the prosecutor's consent.

5. Standard 5.1 A. was amended to authorize plea agreements

concerning dispositions in addition to the charges that may be filed.

Commentary was revised accordingly.

6. Standard 6.3 A. was amended to delete the condition that the juvenile be subject to a disposition involving loss of liberty as a prerequisite to the prosecutor having the burden of proving the allegations beyond a reasonable doubt.

Commentary was revised accordingly.

7. Commentary to Standard 4.3 B. was revised to add a cross-reference to *Pretrial Court Proceedings* Standards 3.1 to 3.9, on discovery to the provision covering the prosecutor's duty to disclose.

8. Commentary to Standard 5.3 was revised by adding a note that the standard requiring independent evidence to support a plea does not preclude a reduced charge in exchange for a partial admission.

9. Commentary to Standard 7.2 B. was revised to require prosecutors to make reasonable efforts to notify parents of unsatisfactory implementation of dispositional orders, unless the class is too large for notice to be practicable.

10. Commentary to Standard 8.2 A. was revised by adding a notation that investigations of violations of probation orders should include consultation with the juvenile's probation officer.

Contents

Introduction

The concept of a court whose jurisdiction is limited to matters of juvenile law is an idea of relatively recent origin. Many observers date the implementation of this concept to April 21, 1899, when, by statute, a circuit court judge in Cook County, Illinois, was designated to preside over all cases in which a youth was charged with the commission of antisocial conduct in that county. Handler, "The Juvenile Court and the Adversary System: Problems of Function and Form," 1965 *Wis. L. Rev.* 7 (1965). On the other hand, some observers discount the originality of the Cook County system. Fox, "Juvenile Justice Reform: An Historical Perspective," 22 *Stan. L. Rev.* 1187 (1970). In any event, there has been an almost complete absence in the literature of discussion on the role of the attorney for the state in juvenile court.

One reason for this apparent lack of scholarly attention is that, until recently, appearances by attorneys in juvenile court were infrequent. The proceedings were, for better or worse, informal in nature. The court was not looked upon as a formal tribunal in which the state presented evidence against an individual, seeking to fix liability and determine a sentence that would, at least in part, take into consideration society's interest in seeking retribution. Rather, the juvenile court was viewed as an institution which rendered aid and assistance to a youth whose conduct or circumstances indicated a need for external intervention. A finding by a juvenile court judge that a youth had committed acts or engaged in a course of conduct considered inappropriate by the state was not an adjudication of guilt. Rather, it was a declaration of status; i.e., that the child was "delinquent," or "in need of supervision." This difference in terminology was of greater significance earlier in the twentieth century than it is today. It is indicative, however, of the basic difference of philosophy and purpose of the juvenile court compared to that of the criminal court.

In an effort to accommodate the distinctive goals of the juvenile court and to project an image different from the penal atmosphere of

adult criminal proceedings, the court took on an informal atmosphere. Since the primary goal was the rehabilitation of the child, no need was recognized for greater protection of the child's legal rights. The judge did not act as an impartial arbitrator between two adversaries, but rather as the representative of all parties in interest to the proceeding. It was the judge's responsibility to determine both the best interests of the state and the youth, seeking to reconcile those differences where possible. The juvenile court judge has always exercised an enormous amount of discretion in determining what was in the "best interests" of the youth, especially when it came to determining an appropriate disposition.

One serious disadvantage to the informality of the system, however, was that if the juvenile court judge acted arbitrarily, or abused his or her discretion, neither counsel for the youth nor for the state was present to exercise a restraining influence. The absence of a formal record of the proceedings rendered appellate or collateral review virtually impossible. Increasing legal attacks on the system by aggrieved youths on the grounds that it did not comport with fundamental fairness required by the due process clause of the fourteenth amendment began to bear fruit in the 1960's.

The leading case in this area, and the one most germane to a discussion of the role of the attorney representing the state's interests in the juvenile court, is *In re Gault*, 387 U.S. 1 (1967). In *Gault*, the Supreme Court declared, *inter alia*, that juveniles have a right to counsel in juvenile court, a right to have counsel appointed to represent them if they are indigent, and must be advised of these rights. The informal, nonadversary nature of juvenile court proceedings was necessarily altered by this decision. No longer could an adjudicatory proceeding in the juvenile court be considered nonadversarial. Youthful respondents were now entitled to the vigorous representation of their interests by their own attorney.

It is interesting to note that the *Gault* decision coincided with a federal commitment (the Neighborhood Legal Services programs funded by the Office of Economic Opportunity, part of the "War on Poverty" thrust of the Johnson administration of the 1960's) to expand free representation to indigent juveniles in delinquency proceedings. This fact suggests a prevailing sentiment that indigent juveniles needed protection of their rights. Though a number of states have responded to this need through the introduction of due process guarantees and advocacy for juveniles, these states have been slow to commit an adequate amount of resources for training, developing, and encouraging specialization in juvenile prosecutorial legal procedure and practice. There is a need for expanded court staffs and

training programs to familiarize attorneys with the special problems in the juvenile justice area. The juvenile courts share this problem with the adult courts, where adequate funds are also lacking. Fox, "Juvenile Justice Reform: An Historical Perspective," 22 *Stan. L. Rev.* 1187, at 1238 (1970). This is an unfortunate situation due to the particularly great need for additional resources for the juvenile courts. The current emphasis upon due process guarantees in delinquency proceedings has made the juvenile court proceedings less informal and nonadversarial. This phenomenon has altered many procedures and practices in the juvenile courts, creating a need for guidelines and standards for the juvenile prosecutor.

In addition, many states, slow to abandon the informal, nonadversarial nature of their juvenile court proceedings, have either made no provision for the representation of the state's interests in this court by its own attorney, or have limited the appearance of an attorney for the state to situations in which the juvenile court judge requests his or her presence. The result has been a lack of vigorous, effective representation of the state's interests in the juvenile courts of many states.

The foregoing discussion leads to two basic principles underpinning these standards. First, because juvenile court proceedings are no longer nonadversarial in nature, the interests of the state must be effectively represented; to accomplish this, an attorney for the state should participate in every proceeding of every case in which the state has an interest. Second, the attorney who represents the state's interests (hereinafter referred to as the juvenile prosecutor), while acting as a vigorous advocate, should not lose sight of the philosophy and purpose of the juvenile court (hereinafter referred to as the family court) in insuring the best interests of the youth.

At first glance, it may appear that these two principles are contradictory and that they force conflicting roles upon the juvenile prosecutor, roles that may be impossible to reconcile. This conflict raises issues that challenge the very underpinnings of the juvenile court system, *viz.*, can the best interests of a child be protected within the confines of an adversarial process and can such best interests be accommodated with the state's interests.

While it is not the purpose of these standards to resolve the first issue raised by this apparent conflict, it may be helpful to note that the gulf between the interests alluded to—the child and the state—may not be as wide as feared by some. The interests of the state vary in form and intensity throughout the various stages of proceedings in the family court, so that the vigor with which juvenile prosecutors assert their adversarial posture will vary widely.

Thus, at the intake stage, the role of the juvenile prosecutor is initially limited to advising the intake officer of the appropriate state agency of the legal sufficiency of a complaint, although he or she will make the final decision regarding whether or not a petition seeking an adjudication of delinquency is filed. In making the latter decision, the juvenile prosecutor should develop a consistent policy so that youths in similar circumstances receive similar consideration.

The juvenile prosecutor may engage in plea discussions with the youth and his or her counsel, but to minimize the possible abuse of discretion, the subjects which the prosecutor is permitted to discuss are limited. Thus, he or she is allowed to discuss with the youth (in most cases with the youth's attorney) the charges (petitions) which may be filed. The youth may agree to admit the allegations contained in a petition, in return for which the juvenile prosecutor may decline to seek a formal adjudication of other petitions that could be filed against the youth, or may file a petition having a range of less severe potential dispositions. On the other hand, juvenile prosecutors are not to utilize what may be their most powerful tool to induce a youth to admit the allegations of a petition—their ability to recommend a restrictive disposition. As their most powerful inducement, it is the one most subject to abuse. Thus, the standards do not permit the juvenile prosecutor to engage in what may be termed "disposition bargaining," i.e., promising to recommend a particular disposition if the youth admits the allegations of the petition. Further protection is accorded the youth by requiring the juvenile prosecutor to place in the record of the family court independent evidence tending to prove commission of the acts alleged. Because the state's interests do not encompass encouraging a youth to admit the commission of acts which he or she did not in fact commit, the juvenile prosecutor is required to withdraw from plea discussions when the youth maintains factual innocence, even though the youth and his or her attorney may wish to enter a formal admission to the petition.

It is at the adjudicatory stage of family court proceedings that the adversity of interests between the youth and the state may be greatest. Thus, at this stage, juvenile prosecutors will in most cases assume the traditional adversary role of a prosecutor. They will present evidence in support of the petition, and will vigorously cross-examine all witnesses. However, they must refrain from the use of methods for eliciting the truth which violate ethical norms and accepted standards of practice. This stage of family court proceedings is most akin to a criminal trial. Therefore, the ABA Standards for Criminal Justice, *The Prosecution Function* (Approved Draft

1971) were considered and relied upon where it was thought that they adequately covered the unique interests of the family court system.

The adversity of interests in the dispositional phase need not be as sharp as that in the adjudicatory phase. Here, the juvenile prosecutor is allowed to participate in the disposition hearing to assure that the interests of the state are made known to the family court. However, considerable flexibility is permissible in the juvenile prosecutor's posture. A range of dispositional alternatives may adequately protect the interest of the community in the safety and welfare of its citizens, but some of these alternatives may be better suited to a youth's needs than others. In this situation, juvenile prosecutors may legitimately take into account the best interests of the youth in making a disposition recommendation, as long as the community's interest in safety and order is not endangered. They should not feel that they are under any compulsion to recommend a harsh disposition just because their position is that of a prosecutor.

Further opportunities for a reconciliation of what may appear to be, but may not in fact be, conflicting interests of the youth and the state occur in the area of subsequent litigation. Thus, if a youth petitions the family court for a modification of the dispositional order, juvenile prosecutors should not automatically oppose the petition. They should carefully study the matter, and if they decide that the state's interests will not be compromised, and that the modification sought will better suit the youth's needs, they may join the youth in seeking the modification, or decline to oppose it. If, however, they believe that the interests of the state would be compromised by the proposed modification, they should oppose it. When the latter situation occurs, it will be the duty of the family court to resolve the conflict in an adversary hearing.

As noted, it would be less than honest to maintain that there is no conflict between the proposition that the juvenile prosecutor should vigorously represent the state's interests and the proposition that his or her duties are best performed with the judicious utilization of discretion in order to also provide for the best interests of the youth. This conflict is not unique to the juvenile prosecutor. The prosecutor in the criminal justice system must cope with a similar conflict, since he or she also operates within an adversary system but is, at the same time, obliged to protect the innocent as well as to convict the guilty. ABA, "Code of Professional Responsibility," EC 7-13. In order to effect a working reconciliation between these two roles, the prosecutor in the criminal justice system exercises a substantial amount of discretion. LaFave, "The Prosecutor's Discretion

in the United States," 18 *Am. J. Comp. L.* 532 (1970). It is thus out of necessity, as well as conscious choice, that these standards permit juvenile prosecutors to exercise broad discretion in the discharge of their duties. This choice fits well within the prevailing opinion of the United States Supreme Court as expressed in the case of *Imbler v. Pachtman*, 424 U.S. 409 (1976), that in the performance of their traditional prosecutorial duties American prosecutors enjoy absolute immunity. It recognizes fully that the role and function of the prosecutor in American society today is quasijudicial in nature.

The paramount goal of these standards is to provide juvenile prosecutors with a more definite sense of identity and purpose than they have had in the past. It does not, however, purport to be the final word on how their role in the juvenile justice system is best or most properly carried out. Further structuring of the role of the juvenile prosecutor can be accomplished only after years of actual experience. The phenomenon of an attorney representing the interests of the state in family court is relatively recent. Until such time as juvenile prosecutors acquire their own history, it is hoped that these standards will be of valuable assistance to those holding the position.

Statement of General Principles

I. An attorney for the state, called the juvenile prosecutor, should be present at each stage of every proceeding in the family court in which the state has an interest. While his or her primary duty is to fully represent the interests of the state, which consist primarily in the preservation of the safety and welfare of the community, he or she should not lose sight of the philosophy and purpose of the family court in attempting to secure the best interests of the youth. If the interests of the state and those of the youth are in irreconcilable conflict, the juvenile prosecutor is obliged to fully and faithfully represent the interests of the former. However, if the interests of the youth can be advanced without damage to the interests of the state, the juvenile prosecutor should not feel that the inherently adversarial nature of the office requires him or her to oppose the accommodation of the interests of the youth.

II. Where population and caseload warrant, the office of the juvenile prosecutor should be a separate division under the control of the local prosecuting attorney. Both professional and nonprofessional positions in the office should be full time in nature. Juvenile prosecutors and their attorney assistants should be appointed by the local prosecuting attorney, who, in the process of selecting these individuals, should utilize only relevant criteria, such as interest, education, competence, and experience. Irrelevant criteria not to be used in the selection process may include race, sex, ethnic origin, religious beliefs, and political affiliation. The local prosecutor and the juvenile prosecutor should make an affirmative effort to ensure that the latter's professional and nonprofessional staff is representative of a cross section of the community served by the office, including minority groups residing therein. Each member of the office, whether professional or nonprofessional, should receive orientation and training appropriate to the position. Continuing interdisciplinary training relating to the philosophy and purpose of the family court, the problems of young people, and community issues and resources should be developed.

III. In view of the tendency of juvenile proceedings to assume the characteristics of an adversary format, the juvenile prosecutor should strive to maintain correct and proper relationships with other participants in the juvenile justice system. These other participants include counsel for the youth, the court, jurors (where applicable), prospective lay witnesses, expert witnesses, the police, probation officers, and social workers.

IV. At the intake stage of juvenile delinquency proceedings, the juvenile prosecutor should be available to assist the intake officer of the appropriate state agency in determining whether a complaint is legally sufficient. If the conduct alleged to have been committed by a youth would constitute a crime if committed by an adult, the juvenile prosecutor must make the final decision regarding the filing of a petition. The juvenile prosecutor should move to withdraw any petition if he or she subsequently determines that it can not be sustained. The juvenile prosecutor should decide as quickly as possible whether a petition will be filed in any given case. He or she is under a duty to disclose evidence favorable to the youth.

V. Plea discussions may properly be engaged in by the juvenile prosecutor if they relate to the nature or number of petitions which may be filed against a youth, and if the interests of the community and the youth are not compromised thereby. However, juvenile prosecutors should not use their power to recommend a disposition to the family court to induce a youth to admit the allegations contained in a petition. If the youth maintains factual innocence, they should withdraw from plea discussions. Also, if they subsequently determine that they are unable to fulfill any agreement previously reached with the youth and his or her attorney, they should assist the youth to withdraw any admission made and to return to the position he or she was in prior to the initiation of plea discussions. An admission by a youth should not be agreed to by the juvenile prosecutor without the presentation on the record of independent evidence that the youth has committed the acts alleged. Independent evidence means evidence other than an admission or confession of the youth.

VI. When juvenile prosecutors have decided to seek a formal adjudication of a complaint against a youth, they should proceed as quickly as possible. At the adjudicatory hearing, they should assume the traditional adversary role of a prosecutor, presenting evidence supporting the allegations contained in the petition on behalf of the state. If the youth denies the allegations of a petition, and is subject to a disposition involving a loss of liberty, the juvenile prosecutor must prove the allegations of the petition beyond a reasonable doubt.

VII. If juvenile prosecutors choose to do so, they may take an active role in the disposition hearing. If they so choose, however, they should make their own independent recommendation, after reviewing reports prepared by their own staff, the probation department, and others. In making a recommendation, they should consider alternative modes of disposition which more closely satisfy the needs of the youth without jeopardizing the safety and welfare of the community. Also, they should monitor the effectiveness of the various modes of disposition employed in their jurisdiction in order to ensure that they are not recommending dispositions that are ineffective or impossible to implement.

VIII. Juvenile prosecutors may represent the interests of the state in appeals from decisions rendered by the family court, hearings concerning the revocation of probation, petitions by a youth seeking modification of a dispositional order, and collateral proceedings attacking an order or finding of the court. They should expedite all subsequent litigation by deciding as soon as possible whether they will seek the revocation of a youth's probation, and by deciding as quickly as possible what their position will be in response to an appeal, collateral attack, or petition for a modification of a dispositional order.

Definitions

I. *Adjudicatory Hearing:* a judicial hearing held by the family court in which a youth is placed in jeopardy of being found to be delinquent.

II. *Child Abuse:* the act of unwarranted infliction of physical harm or emotional damage upon a youth by one or more of his or her parents, legal guardians, or custodians.

III. *Clear and Convincing Evidence:* the standard of proof employed in a hearing in the family court to determine whether or not that court will waive its jurisdiction over a youth and transfer a petition alleging delinquency to the criminal court for adjudication.

IV. *Detention Hearing:* a judicial hearing in the family court which determines whether or not any restraints will be placed upon the liberty of a youth pending the adjudication of a petition filed against him or her.

V. *Disposition Hearing:* a judicial hearing in the family court, subsequent to the adjudicatory hearing, at which a determination of the disposition appropriate for the youth and the state is made.

VI. *Family Court:* the court whose jurisdiction encompasses the entire range of juvenile and family law matters including, but not limited to, delinquency, neglect, dependency, child abuse, and other intrafamily offenses.

VII. *Nonjudicial Disposition:* the disposition of a complaint by the referral of a youth to a non-court agency or agencies for service.

VIII. *Intake:* the process through which the initial screening of a complaint against a youth is accomplished.

IX. *Interests of the State:* shall include the interest of the community in its safety and welfare.

X. *Juvenile Prosecutor:* the attorney responsible for representing the interests of the state in family court.

XI. *Legal Sufficiency of a Complaint:* the presence of evidence sufficient to establish both (A) the jurisdiction of the family court and (B) probable cause to believe that the youth has committed the

conduct of which complaint is made. The juvenile prosecutor should be able to establish the legal sufficiency of a complaint before he or she approves the filing of any petition against a youth.

XII. *Majority, Age of:* eighteen years.

XIII. *Overcharging:* a practice, proscribed by these standards, under which juvenile prosecutors allege the commission of conduct about which they know that they lack sufficient evidence to obtain an adjudication, or file a type of petition which is not customarily filed in the community for the conduct alleged to have been committed.

XIV. *Waiver Hearing:* a judicial hearing at which the juvenile prosecutor, under narrowly prescribed circumstances, may seek to have the family court waive its jurisdiction and transfer a youth to the criminal court.

Commentary

These definitions will give the reader a concise index of some of the most important words and phrases appearing throughout these standards. It is hoped that they are adequate to give the reader a working knowledge of the meaning of the various words and phrases as they are used in the standards. If the reader finds any of these terms, as defined, to be ambiguous, it is hoped that the context in which the term is used in any particular standard or commentary will resolve the ambiguity.

The term juvenile court appears throughout the standards, but has not been defined in this index. This term is used only when reference is made to a case or statute which itself uses this term, or when reference is made to conditions which either existed in the past or presently exist. The term family court, as defined in this index, is the preferred term to describe the court in which petitions filed against young people will be adjudicated in the future.

While not specifically defined in this index, the term complaint refers to an oral or written allegation of conduct committed by a youth, by any person, to the police or the intake officer of the appropriate state agency. Petition, on the other hand, refers to the formal accusatory instrument, the sworn document which requests the family court to conduct a formal adjudication of the allegations which form the basis of a complaint.

Standards

PART I: GENERAL STANDARDS

1.1 The role of the juvenile prosecutor.

A. An attorney for the state, hereinafter referred to as the juvenile prosecutor, should participate in every proceeding of every stage of every case subject to the jurisdiction of the family court, in which the state has an interest.

B. The primary duty of the juvenile prosecutor is to seek justice: to fully and faithfully represent the interests of the state, without losing sight of the philosophy and purpose of the family court.

1.2 Conflicts of interest.

Juvenile prosecutors should avoid the appearance or reality of a conflict of interest with respect to their official duties. In some instances their failure to do so will constitute unprofessional conduct.

1.3 Public statements.

The juvenile prosecutor should avoid exploiting his or her office by means of personal publicity connected with a case before trial, during trial, or thereafter.

1.4 The relationship of the juvenile prosecutor to the community.

Juvenile prosecutors should take an active role in their community in preventing delinquency and in protecting the rights of juveniles. They should work to initiate programs within their community and to improve existing programs designed to deal with the problems of juveniles.

PART II: ORGANIZATION OF THE JUVENILE PROSECUTOR'S OFFICE AND QUALIFICATIONS OF THE JUVENILE PROSECUTOR AND HIS OR HER STAFF

2.1 The juvenile prosecutor's office as a separate prosecutorial unit.

A. Where population and caseload warrant, in each prosecutor's

office in which there are at least six attorneys, there should be a separate unit or attorney devoted to the representation of the state in family court. The attorney in charge of this unit should be known as the juvenile prosecutor.

B. The juvenile prosecutor should have a professional staff adequate to handle all family court cases in his or her jurisdiction, as well as clerical workers, paralegal workers, law student interns, investigators, and police liaison officers. Such staff should be separate and distinct from persons in the prosecutor's office who handle adult criminal cases.

2.2 The full-time nature of the juvenile prosecutor's office; salary.

A. The juvenile prosecutor should, if possible, be employed on a full-time basis. It is preferred that assistant juvenile prosecutors also be employed on a full-time basis. The clerical staff should, if possible, be employed on a full-time basis. Paralegal workers and law student interns may be employed on a part-time basis.

B. The salary of the juvenile prosecutor and his or her professional staff should be commensurate with that paid to other government attorneys and staff members of similar qualification, experience, and responsibility in the community.

2.3 Methods and criteria for selection of the juvenile prosecutor.

A. The juvenile prosecutor should be an assistant prosecutor, appointed by and responsible to the local prosecutor.

B. The juvenile prosecutor should be an attorney, selected on the basis of interest, education, experience, and competence. He or she should have prior criminal prosecution or other trial experience.

2.4 Methods and criteria for the selection of the professional staff of the juvenile prosecutor's office; minority representation.

A. The professional staff of the juvenile prosecutor's office should be appointed by the local prosecutor, using the same criteria considered in selecting the juvenile prosecutor.

B. The staff should represent, as much as possible, a cross-section of the community, including minority groups.

2.5 Training programs.

A. There should be an orientation and training program for the juvenile prosecutor and for every new assistant before each assumes his or her office or duties.

B. There should be a program of ongoing, inservice, interdisciplinary training of both professional and nonprofessional staff in the philosophy and intent of the family court, the problems of juveniles,

the problems and conflicts within the community, and the resources available in the community.

2.6 Statewide organization of juvenile prosecutors.

Within each statewide organization of prosecuting attorneys there should be a division whose membership is composed of juvenile prosecutors within the state.

A. This division should coordinate training programs and establish and maintain uniform standards for the adjudication and disposition of family court cases.

B. This division should also establish an advisory council of juvenile prosecutors, which should provide prompt guidance and advice to juvenile prosecutors seeking assistance in their efforts to comply with standards of professional conduct.

PART III: RELATIONSHIPS OF THE JUVENILE PROSECUTOR WITH OTHER PARTICIPANTS IN THE JUVENILE JUSTICE SYSTEM

3.1 With counsel for the juvenile.

There should be maintained at all times an atmosphere of detachment between the juvenile prosecutor and counsel for the juvenile. The appearance as well as reality of collusion should be zealously avoided.

3.2 With the court.

There should be maintained at all times an atmosphere of detachment between the juvenile prosecutor and the court.

3.3 With jurors.

A. The juvenile prosecutor must not communicate privately with any person once that person is summoned for jury duty or impaneled as a juror in a case.

B. The juvenile prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

C. After verdict, the juvenile prosecutor should not make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service.

3.4 With prospective nonexpert witnesses.

A. Juvenile prosecutors must not compensate a nonexpert witness. They may, however, request permission from the family court to reimburse a nonexpert witness for the reasonable expenses of attending court, including transportation and loss of income.

B. In interviewing an adult prospective witness, it is proper but not mandatory for juvenile prosecutors or their investigators to caution the witness concerning possible self-incrimination and his or her possible need for counsel. However, if the prospective witness is a juvenile, such cautions are mandatory and should be extended in the presence of the juvenile's parents or guardian. Where a parent or guardian is not available, the family court may, in the exercise of its discretion, appoint a guardian *ad litem* or independent counsel for the juvenile witness to be present at the giving of such cautions.

3.5 With expert witnesses.

A. A juvenile prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, the juvenile prosecutor should explain to the expert his or her role in the trial, as an impartial expert called to aid the fact-finders, and the manner in which the examination of witnesses is conducted.

B. The juvenile prosecutor must not pay an excessive fee for the purpose of influencing the expert's testimony, or make the fee contingent upon the testimony he or she will give or the result in the case.

3.6 With the police.

A. There should be maintained at all times an atmosphere of mutual respect and cooperation between the juvenile prosecutor's office and the police.

B. The juvenile prosecutor should strive to establish an effective line of communication with the police.

C. The juvenile prosecutor should provide legal advice to the police concerning police functions and duties in juvenile matters.

D. The juvenile prosecutor should cooperate with the police in providing the services of his or her staff to aid in training the police in the performance of their duties in juvenile matters.

3.7 With intake officers, probation officers, and social workers.

An atmosphere of mutual respect and trust should exist among the juvenile prosecutor and intake officers, probation officers, and social workers. He or she should be available to advise them concerning any matters relevant to their functions.

PART IV: THE PREADJUDICATION PHASE

4.1 Responsibilities of the juvenile prosecutor and intake officer at the intake stage.

A. The juvenile prosecutor should be available to advise the intake officer whether the facts alleged by a complainant are legally sufficient to file a petition of delinquency.

B. If the intake officer determines that a petition should be filed, he or she should submit a written report requesting that a petition be filed to the juvenile prosecutor. The intake officer should also submit a written statement of the decision and the reasons therefor to the juvenile and his or her parents or legal guardian. All petitions should be countersigned and filed by the juvenile prosecutor. The juvenile prosecutor may refuse the request of the intake officer to file a petition. Any determination by the prosecutor that a petition should not be filed should be final and not appealable to the family court.

C. If the intake officer determines that a petition should not be filed, the officer should notify the complainant of the decision and of the reasons therefor and should advise the complainant that he or she may submit the complaint to the juvenile prosecutor for review. Upon receiving a request for review, the juvenile prosecutor should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final determination as to whether a petition should be filed.

D. In the absence of a complainant's request for a review of the intake officer's determination that a petition should not be filed, the intake officer should notify the juvenile prosecutor of a determination that a petition should not be filed. The juvenile prosecutor then has the right, after consultation with the intake officer, to file a petition.

4.2 Withdrawal of petition upon a subsequent finding of lack of legal sufficiency.

If, subsequent to the filing of a petition with the family court, the juvenile prosecutor determines that there is insufficient evidence admissible in a court of law under the rules of evidence to establish the legal sufficiency of the petition, he or she should move to withdraw the petition.

4.3 Investigation: proper subject for family court jurisdiction.

A. The juvenile prosecutor should determine, by investigating the juvenile's past record with the police and the court, whether he or she is a proper subject for family court jurisdiction.

1. Where the juvenile prosecutor's inquiry into the conduct

alleged and the juvenile's circumstances warrant it, the complaint may be transferred to the intake agency for a preadjudication disposition.

2. If the juvenile prosecutor determines that the state's interest requires the formal adjudicative process of the family court, a petition should be filed as soon as possible with the family court.

3. A motion to transfer the case to the criminal court may be filed with the petition if the youth is at least fifteen years of age but under the age of eighteen at the time of the conduct alleged in the petition, and if there is clear and convincing evidence that

a. the alleged conduct would constitute a class one or class two juvenile offense, and

b. the juvenile alleged to have committed a class two offense has a prior record of adjudicated delinquency involving the infliction or threat of significant bodily injury, and

c. previous dispositions of the juvenile have demonstrated the likely inefficacy of the dispositions available to the family court, and

d. the services and dispositional alternatives available in the criminal justice system are more appropriate for dealing with the juvenile's problems and are, in fact, available.

B. If a petition is filed, the information obtained in the course of this investigation should be made available to the juvenile or to the counsel for the juvenile.

4.4 Speedy decision.

A. If the juvenile is in custody pending the filing of a petition, the juvenile prosecutor should file a petition within [forty-eight] hours after the juvenile has been taken into custody.

B. If the juvenile is not in custody pending the filing of a petition, the juvenile prosecutor should file a petition within [five] days of the time that he or she receives the recommendation of the intake officer.

4.5 Power over dismissal of petition.

A. Once a petition has been filed with the family court it should not be dismissed, except by the court on its own motion or on motion of the juvenile in furtherance of justice, without the consent of the juvenile prosecutor.

B. Once a petition has been filed with the family court, a nonjudicial disposition should not be effected without the consent of the juvenile prosecutor, the juvenile, the juvenile's parents or guardian, and the juvenile's attorney.

4.6 Judicial determination of probable cause at the first appearance of the juvenile in family court.

Whether it be a detention hearing, a hearing on a motion to waive family court jurisdiction, or other preliminary hearing, the juvenile prosecutor should present evidence to establish probable cause that the acts alleged in the petition were committed by the juvenile, at the first appearance of the juvenile in family court.

4.7 Disclosure of evidence by the juvenile prosecutor.

The juvenile prosecutor is under the same duty to disclose evidence favorable to the juvenile in family court proceedings as is the prosecuting attorney in adult criminal proceedings.

PART V: UNCONTESTED ADJUDICATION PROCEEDINGS

5.1 Propriety of plea agreements.

A. A plea agreement concerning the petition or petitions that may be filed against a juvenile may properly be entered into by the juvenile prosecutor.

B. Plea agreements should be entered into with both the interests of the state and those of the juvenile in mind, although the primary concern of the juvenile prosecutor should be the protection of the public interest, as determined in the exercise of traditional prosecutorial discretion.

5.2 Plea discussions when a juvenile maintains factual innocence.

The juvenile prosecutor should neither initiate nor continue plea discussions if he or she is aware that the juvenile maintains factual innocence.

5.3 Independent evidence in the record.

A plea agreement should not be entered into by the juvenile prosecutor without the presentation on the record of the family court of independent evidence indicating that the juvenile has committed the acts alleged in the petition.

5.4 Fulfillment of plea agreements.

If juvenile prosecutors find that they are unable to fulfill a plea agreement they should promptly give notice to the juvenile and cooperate in securing leave of court for the withdrawal of the admission, and take such other steps as may be appropriate and effective

to restore the juvenile to the position he or she was in before the plea was entered.

PART VI: THE ADJUDICATORY PHASE

6.1 Speedy adjudication.

A. When the juvenile prosecutor has decided to seek a formal adjudication of a complaint against a juvenile, he or she should proceed to an adjudicatory hearing as quickly as possible. Detention cases should be given priority treatment.

B. Control over the trial calendar should be exercised by the family court.

6.2 Assumption of traditional adversary role.

At the adjudicatory hearing the juvenile prosecutor should assume the traditional adversary position of a prosecutor.

6.3 Standard of proof; rules of evidence.

A. The juvenile prosecutor has the burden of proving the allegations in the petition beyond a reasonable doubt.

B. The rules of evidence employed in the trial of criminal cases in the jurisdiction of the juvenile prosecutor should be applicable to family court cases involving delinquency petitions.

6.4 Selection of jurors.

A. If juvenile prosecutors are in a jurisdiction affording a juvenile a statutory right to jury trial in family court proceedings, they should prepare themselves prior to the adjudicatory hearing to effectively discharge their function in the selection of the jury and the exercise of challenges for cause and peremptory challenges.

B. If juvenile prosecutors investigate the background of prospective jurors, they should use only investigatory methods which minimize the risk of causing harassment, embarrassment, or invasion of privacy.

C. If juvenile prosecutors are in a jurisdiction that allows them to personally examine jurors on voir dire, they should limit their questions solely to those designed to elicit information relevant to the intelligent exercise of challenges. They should not expose the jury to evidence which they know will be inadmissible, nor should they argue the case to it.

6.5 Opening statement.

In their opening statements juvenile prosecutors should confine their remarks to evidence they intend to offer which they believe in good faith will be available and admissible, and a brief statement of the issues in the case.

6.6 Presentation of evidence.

A. Juvenile prosecutors should never knowingly offer false evidence in any form. If they subsequently discover the falsity of any evidence that they have introduced, they must immediately seek its withdrawal.

B. The juvenile prosecutor should never knowingly offer inadmissible evidence, ask legally objectionable questions, or make impermissible comments in the presence of the judge or jury.

C. The juvenile prosecutor should never permit any tangible evidence to be displayed in the view of the judge or the jury which would tend to prejudice fair consideration of the issues by the judge or jury, until such time as a good faith tender of such evidence is made.

D. The juvenile prosecutor should never tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When there is any doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

6.7 Examination of witnesses.

A. The interrogation of witnesses should be conducted fairly, objectively, and with proper regard for the dignity and privacy of the witness, and without seeking to intimidate or humiliate the witness. When examining a youthful witness, the juvenile prosecutor should exercise special care to comply with this standard.

B. Juvenile prosecutors should not call a witness whom they know will claim a valid privilege not to testify, for the purpose of impressing upon the fact-finder the claim of privilege.

C. Juvenile prosecutors should not ask a question which implies the existence of a factual predicate which they cannot support by evidence.

6.8 Closing argument.

A. Juvenile prosecutors may argue all reasonable inferences from the evidence in the record, but they should not intentionally misstate

the evidence or mislead the fact-finder as to the inferences that may be drawn.

B. The juvenile prosecutor should never intentionally refer to or argue on the basis of facts outside the record, unless such facts are matters of common public knowledge based upon ordinary human experience or matters of which the court may take judicial notice.

C. The juvenile prosecutor should never express his or her personal belief or opinion as to the truth or falsity of any evidence or testimony, or the guilt of the juvenile.

D. The juvenile prosecutor should not use arguments solely calculated to inflame the passions or prejudices of the fact-finder.

E. The juvenile prosecutor should refrain from argument which would divert the fact-finder from his or her duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the juvenile under the controlling law, or by making predictions of the consequences of the fact-finder's decision.

6.9 Comment by the juvenile prosecutor after decision.

The juvenile prosecutor should not make public comments concerning a finding or decision, by whomever rendered, at any stage of the juvenile justice system, from intake through post-disposition proceedings.

PART VII: DISPOSITIONAL PHASE

7.1 Permissibility of taking an active role.

A. Juvenile prosecutors may take an active role in the dispositional hearing. If they choose to do so, they should make their own, independent recommendation for disposition, after reviewing the reports prepared by their own staff, the probation department, and others.

B. While the safety and welfare of the community is their paramount concern, juvenile prosecutors should consider alternative modes of disposition which more closely satisfy the interests and needs of the juvenile without jeopardizing that concern.

7.2 Duty to monitor the effectiveness of various modes of disposition.

A. Juvenile prosecutors should undertake their own periodic evaluation of the success of particular dispositional programs that are used in their jurisdiction, from the standpoint of the interests of both the state and the juvenile.

B. If juvenile prosecutors discover that a juvenile or class of juveniles is not receiving the care and treatment contemplated by the family court in making its dispositions, they should inform the family court of this fact.

PART VIII: POST-DISPOSITION PROCEEDINGS

8.1 Subsequent proceedings to be handled by the juvenile prosecutor's office.

The juvenile prosecutor may represent the state's interest in appeals from decisions rendered by the family court, hearings concerning the revocation of probation, petitions for a modification of disposition, and collateral proceedings attacking the orders of the family court.

8.2 Expediting subsequent litigation.

A. If juvenile prosecutors become aware of the possibility that a juvenile is violating the terms of a probation order, they should investigate the matter promptly and decide as quickly as possible whether they will seek a revocation of probation status.

B. If a juvenile files an appeal, or seeks a modification of the disposition that has been rendered in his or her case, the juvenile prosecutor should decide, as quickly as possible, what his or her position will be in response to the juvenile's action, and then act as quickly as possible to effectuate that decision.

8.3 Facts outside record in post-disposition proceedings.

The juvenile prosecutor must not intentionally refer to or argue on the basis of facts outside the record on appeal, or in other post-disposition proceedings, unless such facts are matters of common public knowledge based upon ordinary human experience or matters of which the appellate court may take judicial notice, or the taking of new evidence is otherwise appropriate in the proceeding.

*Standards with Commentary**

PART I: GENERAL STANDARDS

1.1 The role of the juvenile prosecutor.

A. An attorney for the state, hereinafter referred to as the juvenile prosecutor, should participate in every proceeding of every stage of every case subject to the jurisdiction of the family court, in which the state has an interest.

B. The primary duty of the juvenile prosecutor is to seek justice: to fully and faithfully represent the interests of the state, without losing sight of the philosophy and purpose of the family court.

Commentary

Prior to *In re Gault*, 387 U.S. 1 (1967), the youth's constitutional right to representation by counsel was not recognized. After the Supreme Court declared in that case that a youth not only has a right to retain counsel in juvenile court, but also may have counsel appointed if he or she is indigent and must be so advised, the number of attorneys appearing in juvenile courts on behalf of juveniles greatly increased. However, the interests of the state have generally not been represented and there has frequently been no legally trained person to present the evidence on juvenile court petitions other than the judge. Often, probation officers have been placed in the untenable position of presenting evidence against the youth while, at the same time, counseling him or her as a "friend" before and after the adjudicatory hearing. This role conflict made it difficult, if not impossible, for probation officers to function in an ameliatory capacity with respect to the youth. Almost invariably, probation officers were not trained in the law, and they simply could not match the advocacy of the youth's attorney. They were unable to make or answer motions or objections, and the judge was often forced to intervene, destroying the court's impartiality in the matter, or at least the appearance of impartiality as far as the youth and his or her parents were concerned.

*On July 21, 1976, *Morales v. Turman*, 364 F. Supp. 166 (E.D. Tex. 1973), cited herein, was reversed on technical grounds by the Fifth Circuit Court of Appeals, *Morales et. al. v. Turman et. al.*, 535 F.2d 864.

Until recently, in many states there were either no statutory provisions for a prosecuting attorney in juvenile court proceedings, or prosecuting attorneys simply did not appear. The President's Task Force Report of 1967 discouraged the use of a public prosecutor in juvenile court on the asserted basis that it would be too great a departure from the spirit of the court, and opted for the use of a government attorney who has primarily civil duties, such as a corporation counsel or an attorney representing the welfare department. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967). However, this position was taken at the threshold of a revolution in the juvenile court ushered in by *In re Gault, supra.* In light of the trend toward greater formality as well as expansion of due process rights in the context of the juvenile court, it is doubtful that the 1967 Task Force would take the same position today. The same may be said for other commentators who took the position that the prosecutor in juvenile court should function as something less than an advocate. See, *e.g.*, Fox, "Prosecutors in the Juvenile Court: A Statutory Proposal," 8 *Harv. J. Leg.* 33 (1970); NCCD, "Model Rules for Juvenile Courts," Comment to Rule 24 (1969). One commentator, writing before the full impact of *Gault* was felt, suggested that the prosecutor should merely "assist the court to obtain a disposition of the case which is in the best interest of the child." Whitlatch, "The Gault Decision: Its Effect on the Office of the Prosecuting Attorney," 41 *Ohio B.J.* 41 (1968). It must be recognized, however, that present social conditions and the contemporary view of juvenile court make such a view anachronistic. Among other things, such a view, if presently maintained, would focus upon the rehabilitative role of the juvenile court as a social institution, and would not adequately address the concepts of proportionality, limited discretion, and the least drastic alternatives that are fundamental to the present standards.

Many states that presently make provision for a prosecutor in juvenile court limit his or her appearance to the request of the juvenile court judge—see, *e.g.*, Ala. Code tit. 13, § 359 (1940) (recompiled 1958); Wis. Stat. Ann. § 48.04 (1957); Minn. Stat. Ann. § 260.155 (1971); but see Minn. Juv. Ct. Rules, Rule 5-2; Va. Code Ann. § 16.1-155 (Supp. 1960)—or only when the youth is represented by counsel. See, *e.g.*, Ohio Rev. Code Ann. § 2151.40 (Baldwin 1973); Cal. Welf. & Inst'ns Code § 681 (West 1972).

A survey of sixty-eight major American cities conducted by the Center for Criminal Justice, Boston University School of Law, found that in 38.2 percent of the cities surveyed, public prosecutors repre-

sented the state at a detention hearing; in 11.8 percent they were authorized to file a petition; in 22.1 percent they prepared the petition; in 36.8 percent they reviewed the petition for legal sufficiency; in 8.8 percent they signed the petition; in 76.5 percent they represented the state at pretrial motions; in 73.5 percent they represented the state at probable cause hearings; in 45.6 percent they conducted the pretrial negotiations for the state; in 47.1 percent they could request that a juvenile be bound over; in 76.5 percent they represented the state at bind-over hearings; in 2.9 percent they could request a physical or mental examination of the juvenile; in 22.1 percent they had authority to amend a filed petition; in 44.1 percent they could move for dismissal of a filed petition; in 72.1 percent they represented the petitioner at adjudication hearings; in 48.5 percent they represented the petitioner at disposition; in 67.6 percent they conducted the examination of witnesses; in 8.8 percent they recommended disposition of the juvenile; in 69.1 percent they represented the petitioner on appeal; in 72.1 percent they represented the state in habeas corpus proceedings; and in 30.9 percent they presented the case on an alleged violation of probation. Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future" (1973) Appendix B. When these functions were not performed by prosecutors they were performed at various times by clerks, non-attorney prosecutors, probation officers, or judges.

The need for a prosecuting attorney to present the evidence on the petition and to avoid the judge's conflict in roles was noted in *Matter of Lang*, 44 Misc. 2d 900, 255 N.Y.S.2d 987 (Family Ct. 1965) as a necessary response to the establishment of the law-guardian in the New York Family Court Act (1963). At the national level, a survey of juvenile court judges in the one hundred largest cities in the country found that most favored an active prosecuting attorney "to maintain adversary balance in their courts." "Prosecution in the Juvenile Courts: Guidelines for the Future" *supra.*

While, as noted, many believe that the participation of a prosecuting attorney in juvenile court will destroy the informality of the proceedings, it is doubtful that this would be a serious loss. It has been stated that greater formality in the proceedings may be beneficial to rehabilitation and may impress upon the juvenile the seriousness of the proceeding. Cayton, "Emerging Patterns in the Administration of Juvenile Justice," 49 *J. Urban L.* 377 (1971); Manak, "The Right to Jury Trial in Juvenile Court: A Proposal for the Court, the Juvenile and Society," 4 *The Prosecutor* 325 (1968). The presence of a prosecutor will eliminate, once and for all, the

conflict of roles for the judge, the probation officer, the police officer, and the youth's attorney. His or her presence will help to impress upon the youth the seriousness of the proceeding, should expedite the proceedings through careful investigation and marshalling of evidence, and will also enhance the accuracy and documentation of social and probation reports through timely and effective challenge, when deemed necessary by him or her. Skoler, "Counsel in Juvenile Court Proceedings," 8 *J. Fam. L.* 243, 272-73 (1968). Furthermore, the presence of a skilled professional prosecutor will compel defense attorneys to upgrade the representation of their clients. Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future" 171 (1973).

1.2 Conflicts of interest.

Juvenile prosecutors should avoid the appearance or reality of a conflict of interest with respect to their official duties. In some instances their failure to do so will constitute unprofessional conduct.

Commentary

This standard has been substantially drawn from the ABA Standards for Criminal Justice, *The Prosecution Function* § 1.2 (Approved Draft 1971). Its purpose is to emphasize the importance of maintaining both the reality and the appearance of absolute integrity in the juvenile prosecutor's office in order to preserve the public trust. When it appears that a conflict of interest may arise, the juvenile prosecutor should immediately withdraw from the case and make satisfactory arrangements for the case to be handled by other counsel. The statewide organization of juvenile prosecutors referred to in Part II of these standards may be consulted by a juvenile prosecutor for guidance when such a situation arises. Also, a local association of all attorneys handling matters of juvenile law (both prosecution and defense) may be established to provide guidance on all matters concerning juvenile law, including advice concerning alternative arrangements for handling a case involving a conflict of interest. See Standard 1.5 *infra.*

1.3 Public statements.

The juvenile prosecutor should avoid exploiting his or her office by means of personal publicity connected with a case before trial, during trial, or thereafter.

Commentary

This standard has been substantially drawn from the ABA Standards for Criminal Justice, *The Prosecution Function* § 1.3 (Approved Draft 1971). The rationale of the commentary to the adult standard is at least equally compelling when the subject of prospective prosecution is a juvenile; thus, its most important points will be highlighted here.

The juvenile prosecutors' responsibility to the administration of juvenile justice requires that they do nothing that would impair the right of a juvenile to fair and impartial treatment in every case. Their primary duty is to fully and faithfully represent the public safety interest of the community without losing sight of the philosophy and purpose of the family court in insuring the best interests of the youth and the concepts of proportionality, limited discretion, and least drastic alternative fundamental to these standards. Thus, juvenile prosecutors should not exploit the power or prestige of their office for their own personal aggrandizement. While they should be responsive to the public interest, they should also be vigilant in maintaining independent judgment of what such interest entails and in avoiding merely reacting to prominent expressions of such interest. The very nature of their function as administrators of justice and the nature of the family court require that they scrupulously avoid personal publicity in connection with the cases they are associated with.

Since most family court actions in which juvenile prosecutors are likely to participate are not of an interest-arousing nature, it is expected that they will have little contact with the press concerning pending actions. In rare situations in which the public interest is aroused, they should strive to satisfy this legitimate interest without prejudicing the right of the participants to a fair trial. Compliance by them with the ABA Standards for Criminal Justice, *Fair Trial and Free Press* (Approved Draft 1968), should be considered mandatory. Also, since these standards (see Standard 2.3 *infra*) posit the ideal of an appointed career juvenile prosecutor, the need for publicity which some elected prosecutors feel should be absent.

1.4 The relationship of the juvenile prosecutor to the community.

Juvenile prosecutors should take an active role in their community in preventing delinquency and in protecting the rights of juveniles. They should work to initiate programs within their community and to improve existing programs designed to deal with the problems of juveniles.

Commentary

Juvenile prosecutors are the community's representatives in family court proceedings, but their duties should not be viewed as limited to the courtroom. They should seek to prevent delinquency in addition to trying those young people who enter the formal adjudicative process. They have an obligation to see that justice is done, and that individuals receive fair treatment and due process. They must insure that the law is fair and that the dispositional alternatives available to the family court are functioning. Although the formal adjudicative processes of the family court are currently of low visibility in the community, this need not be true for the participants in the process. The presence of the juvenile prosecutor in the community can lend itself to community support and confidence in the court as an institution. Accordingly, it is appropriate and desirable for the juvenile prosecutor to participate in programs of public education and legislative reform.

One avenue for prosecutors to pursue in encouraging public support for and interest in the juvenile justice system is the publication of information defining the policies and activities of their office and the family court. This information could be included in pamphlets distributed throughout the community. The cost of small pamphlets would not be prohibitive. Providing information to the public serves a useful function in dispelling false notions or stereotypes of the juvenile justice system in general.

PART II: ORGANIZATION OF THE JUVENILE PROSECUTOR'S OFFICE AND QUALIFICATIONS OF THE JUVENILE PROSECUTOR AND HIS OR HER STAFF

2.1 The juvenile prosecutor's office as a separate prosecutorial unit.

A. Where population and caseload warrant, in each prosecutor's office in which there are at least six attorneys, there should be a separate unit or attorney devoted to the representation of the state in family court. The attorney in charge of this unit should be known as the juvenile prosecutor.

B. The juvenile prosecutor should have a professional staff adequate to handle all family court cases in his or her jurisdiction, as well as clerical workers, paralegal workers, law student interns, investigators, and police liaison officers. Such staff should be separate and distinct from persons in the prosecutor's office who handle adult criminal cases.

Commentary

In virtually every state, the attorney who represents the interests of the state in juvenile proceedings is a member of the staff of the local prosecuting attorney, whether the title be state's attorney, prosecuting attorney, district attorney, county attorney, commonwealth's attorney, district attorney general, solicitor, etc. Unless the office is of sufficient size to warrant a separate attorney or division devoted exclusively to juvenile or other family law matters, the attorney usually divides his or her time between criminal prosecution duties, or civil duties, and the juvenile caseload. Some states charge the county or city attorney with the duty to prosecute juvenile cases, rather than the local prosecuting attorney who has primarily criminal duties. See, *e.g.*, Ariz. Rev. Stat. Ann. § 8-233 (Supp. 1973); Iowa Code Ann. § 232.29 (1969); Mont. Rev. Codes Ann. § 10-629 (1968) (repealed 1974).

The President's Task Force Report of 1967 discouraged the use of a public prosecutor in juvenile court on the asserted basis that it would be too great a departure from the spirit of the court, and opted for the use of a government attorney who has primarily civil duties such as a corporation counsel or an attorney representing the welfare department. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967). However, as noted in the commentary to Standard 1.1 *supra*, this position was taken at the threshold of a revolution in the juvenile court ushered in by *In re Gault*, 387 U.S. 1 (1967). In light of the trend toward greater formality as well as expansion of due process rights in the context of the juvenile court, it is doubtful that the 1967 Task Force would take the same position today.

This standard is designed primarily for prosecution offices of at least six attorneys. It assumes that population, caseload, and jurisdiction would warrant specialization of the prosecutorial function in the family court. It is recognized at the outset that the goal of specialization is perhaps unattainable for smaller, i.e., one- or two-attorney prosecution offices in rural areas. Smaller offices, however, are encouraged to adopt such portions of this standard as may be deemed practical. In any event, it should be recognized that the numbers of attorneys mentioned here are flexible and are used only to provide guidance.

Many reasons exist for encouraging specialization in the prosecution function. First, specialization will lead to the development of expertise by prosecuting attorneys working exclusively in the area of

juvenile justice. Second, there is less likelihood that role confusion will occur if prosecutors devote their time exclusively to family court matters. If prosecutors handle both family and criminal court cases simultaneously, they are less likely to remember that while they represent the interest of the state, they also must not lose sight of the philosophy and purpose of the family court in insuring the best interests of the youth. Third, a more consistent policy of handling juvenile and family matters is likely to evolve if this is accomplished by one unit. Finally, the monitoring of the effectiveness of various modes of disposition (see Part VII of these standards) and the interaction between the prosecutorial authority and the community regarding juvenile justice (Standard 1.4 *supra*) are more likely to occur if a separate unit processes only juvenile and family cases.

Juvenile prosecutors should have staffs of their own, distinct from the staff of the adult prosecutor. It is to be expected that the members of the staff will develop expertise in the processing of juvenile and family cases. While juvenile prosecutors should have at least one investigator at their exclusive disposal, there may be times when their own staffs are inadequate in number or not experienced or knowledgeable in a particular area. When one of these situations arises, the juvenile prosecutor should have access to the local prosecutor's investigative staff. Again, the size of the jurisdiction, the caseload, the prosecutorial office, and the circumstances of the community must be considered.

It is recommended that juvenile prosecutors include on their staffs one or more police liaison officers. Cooperation between the police and the juvenile prosecutor is essential to the successful representation of the state's interests in family court, and it is felt that the utilization of a police liaison officer can help to establish and maintain a smooth working relationship between these two offices. The candidate for such a position should include among his or her credentials experience as a police officer. Once again, it is recognized that in smaller jurisdictions the employment of such a person may be impractical. Nevertheless, juvenile prosecutors in those jurisdictions that can employ such a person are urged to do so. In any event, juvenile prosecutors should strive to establish and maintain smooth working relationships between their offices and the police and to utilize whatever mechanism is open to them to achieve that goal.

2.2 The full-time nature of the juvenile prosecutor's office; salary.

A. The juvenile prosecutor should, if possible, be employed on a full-time basis. It is preferred that assistant juvenile prosecutors also be employed on a full-time basis. The clerical staff should, if pos-

sible, be employed on a full-time basis. Paralegal workers and law student interns may be employed on a part-time basis.

B. The salary of the juvenile prosecutor and his or her professional staff should be commensurate with that paid to other government attorneys and staff members of similar qualification, experience, and responsibility in the community.

Commentary

Both the juvenile prosecutor and his or her professional staff should, if at all possible, be employed on a full-time basis. This will help to avoid conflicts of interest, discussed at Standard 1.2 *supra.* As provided in Standard 2.3 A. *infra*, the juvenile prosecutor should be an assistant prosecutor, appointed by and responsible to the locally elected prosecutor. In jurisdictions in which the local prosecutor is employed on a full-time basis, the juvenile prosecutor should also be employed on a full-time basis.

The use of paralegal workers, and particularly of law student interns, is recommended. Paralegal workers and law student interns are able to perform many of the simpler and more routine tasks in the office, conserving the time of the juvenile prosecutors and their attorney assistants, allowing them to concentrate on complex and major problems. Many states now have student practice rules that permit qualified law students to make court appearances as part of established law school clinical programs, and, in some cases, as part of less structured intern programs run by legal aid, public defender, and government law offices. See National District Attorney's Association, "Final Report: National Law Student Internship and Placement Program" (1975); Council on Legal Education for Professional Responsibility, Inc., "State Rules Permitting the Student Practice of Law: Comparisons and Comments" (1971). Such programs should be encouraged by juvenile prosecutors and they should seek to take part in them, whenever possible. In addition, by using law student interns, interest, concern, and expertise in the field of juvenile justice will be fostered. Graduates of law schools who intern with the juvenile prosecutor's office will contribute significantly to the upgrading of the entire juvenile justice system.

If the premise that the office of juvenile prosecutor is full time in nature is accepted, a logical corollary of this premise is that salaries paid to the juvenile prosecutor, his or her attorney assistants, investigators, and the rest of the staff should be at least at such a level as to encourage the retention of highly qualified individuals. Such remuneration will contribute to the ideal of careerism in the juvenile

prosecutor's office. The salary standard proposed here will equalize the compensation paid to prosecutors and defenders, as well as other attorneys employed by the government, as provided in *Counsel for Private Parties* Standard 2.1 (b) (iv). This compensation scale will attract those who are best qualified for their positions. It will obtain and retain respect for the affected positions throughout the bar and the community as a whole. As noted, it would also aid in maintaining continuity of personnel in the office, and thus serve to preserve in the office the expertise that has been acquired by staff. The drive to accept another position, or to enter private practice, because of the need or desire for an increase in income, will diminish. In summation, the office of juvenile prosecutor should be a professionally desirable position, as should the position of attorney assistant and all other positions in the office, and stability in the staff should be fostered.

2.3 Methods and criteria for selection of the juvenile prosecutor.

A. The juvenile prosecutor should be an assistant prosecutor, appointed by and responsible to the local prosecutor.

B. The juvenile prosecutor should be an attorney, selected on the basis of interest, education, experience, and competence. He or she should have prior criminal prosecution or other trial experience.

Commentary

The office of juvenile prosecutor should, where feasible, be a separate unit or division of the local prosecutor's office. The President's Task Force Report of 1967 expressed the belief that "using a public prosecutor may be too great a departure from the spirit of the juvenile court," and suggested the use of a corporation counsel or an attorney from the welfare department in juvenile court. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967). Some states have charged the county or city attorney with the duty to prosecute juvenile cases. See, *e.g.*, Ariz. Rev. Stat. Ann. § 8-233 (Supp. 1973); Iowa Code Ann. § 232.29 (1969); Mont. Rev. Codes Ann. § 10-629 (1968) (repealed 1974). However, these offices are not truly equipped to handle serious cases since, by and large, their functions tend more toward civil than criminal cases. By making the juvenile prosecutor part of the local prosecutor's office, cooperation and coordination between them will be greatly facili-

tated. Among other things, it will facilitate the handling of cases transferred to the criminal courts.

The criteria to be used in selecting the juvenile prosecutor are based on one overriding consideration—relevance. Based upon this concept, four basic criteria may be identified.

The first criterion—interest—is perhaps the most subjective of the four. The candidate should express an interest in criminal and family law, and in working with children. Beyond this, interest can probably best be evaluated through an examination of the candidate's education and experience.

The second criterion—education—has two facets: legal and general. The juvenile prosecutor should possess a law degree. In addition he or she should possess an undergraduate or graduate degree in a discipline indicating an exposure to and interest in social problems in general, and the problems of children in particular. Thus, a candidate with an undergraduate or graduate degree in psychology or sociology may be preferred over a candidate whose education consists of a course of study of the physical sciences or business administration. A candidate whose educational background indicates a specialization in the problems of children would present even stronger educational credentials than either of the former.

The experience of the New York City juvenile courts is revealing of the educational backgrounds of individuals who are attracted to work in the juvenile courts. In 1962, the New York legislature passed a Family Court Act which provided for counsel, or a law guardian, to be appointed for juveniles in family court. It is reported that the majority of lawyers doing this work are young. Generally, they graduated from lesser known law schools and were not near the top of their class. However, they are described as dedicated individuals whose knowledge of juvenile court proceedings has been greatly enhanced by on-the-job training. It should be noted that in New York City, the yearly income of law guardians is relatively low compared to attorneys in private practice. Paulsen, "The Expanding Horizons of Legal Services—II," 67 *W. Va. L. Rev.* 267, 274 (1965).

The third criterion—experience—springs from the belief that the office of juvenile prosecutor should not be an entry level position into the legal profession. In a large jurisdiction juvenile prosecutors will have attorney assistants working under them so that, as division chiefs, they will possess experience sufficient to enable them to advise their assistants. Even where there is only one attorney handling juvenile matters, that attorney should possess sufficient experience to perform his or her job independently. Ideally, the type

of prior experience for a juvenile prosecutor who is a division or unit chief would be experience as a prosecutor in juvenile court. In any event, he or she should have prior criminal prosecution or other trial experience. In addition, experience in working with children (*e.g.*, teacher, summer camp counselor) is desirable.

The fourth criterion—competence—is basically a function of experience. It is listed independently to underscore the point that the experience which a candidate brings to the position must be *good* experience. The local prosecutor should check the references of applicants to ascertain whether they have performed well in past positions.

As general propositions, these criteria may appear obvious. However, they have been listed here to offer some guidance in the selection process. Their listing is intended to be illustrative rather than exclusive. Depending on the composition of the community, other criteria may be considered equally relevant. For example, the local prosecutor in a small community may feel that length of residence in the community is an important factor to be considered in the selection process, while in a larger community this factor may not be of particular importance. In any event, no attempt has been made here to evaluate the suggested criteria in terms of their relative importance. That judgment is to be made by the locally elected prosecutor responsible for the selection of the juvenile prosecutor.

Other factors may be considered in the process of selecting a juvenile prosecutor if they are relevant to a determination of the needs of the community served by him or her. Examples of such factors are sex, race, religion, and ethnic heritage.

2.4 Methods and criteria for the selection of the professional staff of the juvenile prosecutor's office; minority representation.

A. The professional staff of the juvenile prosecutor's office should be appointed by the local prosecutor, using the same criteria considered in selecting the juvenile prosecutor.

B. The staff should represent, as much as possible, a cross-section of the community, including minority groups.

Commentary

These standards envision the office of the juvenile prosecutor as a unit of the local prosecutor's office and provide that the juvenile prosecutor serve at the pleasure of the local prosecutor. See Standard 2.3 *supra* and the commentary thereafter. It is therefore logical to provide that the professional staff of the juvenile prosecutor's office

also be appointed by the local prosecutor. Since the juvenile prosecutor will be a specialist in the field of juvenile and family law, he or she, rather than the local prosecutor, is more likely to have knowledge of the strengths and weaknesses in the backgrounds of applicants for the various professional staff positions. This would seem to be especially true in the larger jurisdictions. In these situations, the local prosecutor may be content to delegate the making of employment decisions in the juvenile prosecutor's office to the juvenile prosecutor, reserving only a veto power. On the other hand, the local prosecutor may desire to take an active role in the employment decision-making process.

This standard does not take a final position regarding the allocation of the power to employ and dismiss the professional staff of the juvenile prosecutor's office as between the local prosecutor and the juvenile prosecutor. This is a matter to be worked out between these two individuals. The standard does emphasize, however, that the ultimate responsibility for the competence and performance of the professional staff of the juvenile prosecutor's office rests with the local prosecutor. Since local prosecutors are typically elected public officials, giving them the responsibility for the performance of the juvenile prosecutors provides at least indirect community control over their work performance. Since local prosecutors are responsible for the performance of that office, they must have the power to effectively control its operations. Giving them the ultimate control over the employment of the professional staff will allow sufficient authority to discharge the responsibility.

It is recommended that each member of the professional staff have background training in the social disciplines, working with children, and the particular problems of the community served by the juvenile prosecutor's office. This recommendation extends to attorney assistants in the office. Basically, the criteria for the selection of attorney assistants should be the same as those for the selection of the juvenile prosecutor, as previously discussed in Standard 2.3 B. and the commentary thereafter.

These standards assume that the political affiliation of an applicant for any position, of whatever rank, in the juvenile prosecutor's office, is an irrelevant criterion.

The staff, particularly those members of the staff who will come in direct contact with young people and the community as a whole, should include minority groups. This would bring to the office a greater awareness and understanding of the problems of the total community. It might also aid in the prevention of delinquency and the rehabilitation of delinquents among minority children, in that

they may feel that the "system" is not loaded against them if they see that other minority group members have "made it" in the juvenile prosecutor's office.

The term "minority group" includes the major racial, religious, and ethnic groups present within the community. Thus, the existence and composition of these groups will vary from community to community. For example, a substantial number of Mexican-Americans live in many communities in the southwestern states, warranting a recommendation that local prosecutors in those communities make an affirmative effort to appoint persons of such heritage to positions in the juvenile prosecutor's office. On the other hand, a local prosecutor in a community in which no Mexican-Americans live would not be under a duty to affirmatively recruit and appoint persons of Mexican heritage.

2.5 Training programs.

A. There should be an orientation and training program for the juvenile prosecutor and for every new assistant before each assumes his or her office or duties.

B. There should be a program of ongoing, inservice, interdisciplinary training of both professional and nonprofessional staff in the philosophy and intent of the family court, the problems of juveniles, the problems and conflicts within the community, and the resources available in the community.

Commentary

The professional staff of the juvenile prosecutor's office has a special need for legal training because of the specialized nature of juvenile and family law. This entails more than just training in trial techniques and exposure to the latest cases in substantive and procedural law. Staff members should also be trained in the basic philosophy of the court and in the social problems with which they will be dealing. They must know what dispositional alternatives are available in their community and state and the quality of each in terms of care and rehabilitation, to ensure that they can make intelligent dispositional recommendations. In making dispositional recommendations they must also be cognizant of the concepts of proportionality, limited discretion, and least drastic alternative underlying these standards. They should be oriented to their community and should receive sociological and psychological training in the problems of young people.

A portion of this orientation and training can be accomplished by

a statewide organization of juvenile prosecutors, to be discussed in Standard 2.6 *infra* and the commentary thereafter. Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future," § 3.3 at 287–89 (1973). This program should continue throughout the staff member's employment in the juvenile prosecutor's office.

If a state has a state prosecutor training coordinator, both initial and continuing training programs should be administered in conjunction with that person. If possible, all juvenile prosecutors and their attorney assistants are urged to attend courses such as the career prosecutor course offered by the National College of District Attorneys and the juvenile justice institutes sponsored by the National District Attorneys Association and the National Association of Juvenile Court Judges. Professional staff members can also benefit by instruction and information that can be provided by such organizations as the National Council on Crime and Delinquency, the Court Management Institute, the National Association of Juvenile Court Judges, and the International Association of Chiefs of Police. Paralegal personnel can benefit by the training that can be provided by organizations such as the Paralegal Institute (Philadelphia, Pa). These organizations and programs are listed here only as illustrative of what is presently available and may be developed further in the field of training and education. In any event, professional staff members should have access to and be encouraged to take advantage of multidisciplinary educational opportunities.

An example of a forward-looking training program for juvenile court personnel may be found in Summit County, Ohio. The juvenile court center has installed closed-circuit television facilities for taping training aids, training seminars, and a library of books and tapes to supplement staff training. This court has further provided for its staff through the implementation of a management information system which allows immediate access to departmental records and reports. Kratcoski and Hernandez, "The Application of Management Principles to the Juvenile Court System," 25 *Juvenile Justice* 39 at 43–44 (1974).

Each staff member, regardless of his or her position, contributes to the overall effort of the juvenile prosecutor to represent the interests of the state in family court. Therefore, nonprofessional members of the juvenile prosecutor's office should also be exposed to an orientation and training program upon taking their positions, and should also participate in a continuing program of training in the philosophy and purpose of the family court, the problems of young people, the problems and conflicts within the community, and the resources

available in the community. It is hoped that such training will lead to the realization of the importance of the proper performance of the duties of each person, and thus lead to an increase in both job satisfaction and job efficiency. It is also hoped that staff turnover will be reduced. The precise nature and extent of the training to be given to the nonprofessional staff will depend upon the nature of the duties to be performed. However, both the initial and the continuing training that each staff member receives should encompass much more than the nature of the duties of the particular position.

2.6 Statewide organization of juvenile prosecutors.

Within each statewide organization of prosecuting attorneys there should be a division whose membership is composed of juvenile prosecutors within the state.

A. This division should coordinate training programs and establish and maintain uniform standards for the adjudication and disposition of family court cases.

B. This division should also establish an advisory council of juvenile prosecutors, which should provide prompt guidance and advice to juvenile prosecutors seeking assistance in their efforts to comply with standards of professional conduct.

Commentary

This division will be helpful to each juvenile prosecutor in the state, keeping each informed of the activities of others on such matters as the kinds of cases they are handling and how they are handling them, the kinds of dispositions being made and their effectiveness, the kinds of dispositions presently available and those being proposed or tested. To maximize the use of resources that are available in the juvenile justice system, the orientation program discussed in Standard 2.5 *supra* could be partially administered by this division. This could be accomplished either by a central orientation program, or by encouraging each juvenile prosecutor's office to concentrate on one or two areas of a general orientation program and rotating new assistants through each of the programs. In any event, such a division will help to coordinate the best efforts of individual juvenile prosecutors to improve their performance in office, and to aid them in satisfying Standard 1.4 *supra*.

The division should also establish an advisory council of juvenile prosecutors which would render advice and guidance to any juvenile prosecutor within the state who encounters a problem involving compliance with standards of professional conduct. See ABA Standards

for Criminal Justice, *The Defense Function* § 1.4 (Approved Draft 1971); IJA-ABA Juvenile Justice Standards Project, *Counsel for Private Parties* § 1.7. The juvenile prosecutor is as likely as his or her defense counterpart to encounter problems of this nature and should have recourse to an advisory council. Such problems could arise in the areas of publicity or conflicts of interests, previously discussed in Standards 1.3 and 1.4 *supra.* Such problems could also arise in areas to be discussed in subsequent portions of these standards, such as improper conduct in the examination of witnesses and improper argument to the jury (in those states that provide for a jury trial in juvenile court proceedings).

No formal provision for confidentiality has been included in these standards for the juvenile prosecutor.

Confidentiality as an issue arises in the context of the client-attorney relationship. Since the juvenile prosecutor represents primarily the state's interest, there is no "client" in the traditional sense to assert the issue and thus no formal requirement of confidentiality, unless imposed by a statute prohibiting the state from revealing the identity of parties and witnesses in juvenile proceedings. In utilizing such a council, juvenile prosecutors should exercise their discretion to avoid embarrassment or inconvenience to parties, witnesses, and others, and, generally, they should act as if confidentiality were required, whether by statute or the nature of the relationship. The council itself should be willing to render an advisory opinion without requiring identification of parties or witnesses.

PART III: RELATIONSHIPS OF THE JUVENILE PROSECUTOR WITH OTHER PARTICIPANTS IN THE JUVENILE JUSTICE SYSTEM

3.1 With counsel for the juvenile.

There should be maintained at all times an atmosphere of detachment between the juvenile prosecutor and counsel for the juvenile. The appearance as well as reality of collusion should be zealously avoided.

Commentary

Introduction. One of the most pronounced characteristics of the juvenile justice system today is the tendency of the adjudicatory phase to assume the attributes of an adversary proceeding. *E.g., In re Gault,* 387 U.S. 1, 27 (1967); *In re Winship,* 397 U.S. 358 (1970).

While *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971) holds that the states are not required to provide jury trials at the adjudicatory stage of juvenile court proceedings, this holding does not detract from the fact that juvenile court proceedings are becoming increasingly adversary in nature. These standards accept this as an established fact. This fact necessarily affects the relationship which the juvenile prosecutor establishes and maintains with various other participants in the juvenile and family justice system.

There is in fact an organized trend away from the juvenile court as the kind of informal social agency that it has been in the past, to an institution similar to the adult criminal court. Undoubtedly it has been in large part stimulated by a basically unstructured extension of procedural rights for juveniles by the courts. Rubin, "How to Make Criminal Courts More Like the Juvenile Courts," 13 *Santa Clara Lawyer* 104, 105 (1972). To correspond with this change, the juvenile prosecutor's role understandably becomes more analogous to his or her counterpart in the adult criminal court. The increasing similarities between the functions of the juvenile and criminal courts is demonstrated by the discretion vested in the prosecutor to determine whether a child of a particular age who has committed a crime shall be prosecuted in the juvenile or criminal court. In a recent Nebraska case involving a fifteen-year-old boy convicted in a criminal court of first degree murder, the court upheld the constitutionality of the discretionary power vested in the prosecutor to determine whether to prosecute the individual as a juvenile or as an adult. *State v. Grayer*, 191 Neb. 523, 215 N.W.2d 859 (1974). *Grayer* is not held up by these standards as a model for the exercise of prosecutorial charging discretion with respect to juveniles, and, in fact, these standards reject the notion that prosecutors, at their sole discretion, may decide whether a youth will be subject to juvenile or criminal court jurisdiction by merely filing a complaint in the court of their choice and without the necessity of a juvenile court waiver proceeding. See Standard 4.3 and commentary. But *Grayer* demonstrates the inexorable judicial movement to pattern juvenile procedures after the adult model.

As the adjudicatory phase assumes the qualities of an adversary proceeding, the relationships of the juvenile prosecutor with other participants in the juvenile justice system necessarily become more formal. Formality will exist not only in the adjudicatory phase, but throughout the entire system. To emphasize this fact, a catalogue (albeit incomplete) of recommended relationships that a juvenile prosecutor should have with other participants in the juvenile justice system has been compiled here in one place, rather than spreading

the description of these relationships throughout other parts of the standards, *e.g.*, ABA Standards for Criminal Justice, *The Prosecution Function and The Defense Function* (Approved Draft 1971).

Relationship with counsel for the youth. The standard proposed for this relationship is a logical outgrowth of the proposition that the adjudicatory phase of the juvenile justice system is adversary in nature. If the youth is to perceive the reality of fair treatment, it is necessary that he or she also perceives its appearance. A cornerstone for this is the concept of counsel for the youth who is truly independent of the juvenile prosecutor. This necessitates a detached relationship between the juvenile prosecutor and the attorney for the youth. However, it is not envisioned that this relationship should be so strained that the two attorneys would lack respect for each other or fail to communicate concerning matters of common interest, nor should the relationship be so detached as to prevent plea discussions, to be further discussed in Part IV of these standards. Nevertheless, the relationship should be sufficiently detached so that the youth knows that his or her attorney is representing him or her zealously within the bounds of the law. ABA, "Code of Professional Responsibility," Canon No. 7.

The juvenile prosecutor may also represent the state's interests in other types of proceedings in family court (*e.g.*, neglect, dependency, or intrafamily criminal offenses). If so, his or her relationship with counsel for other respondents should be identical with that here proposed for the relationship with counsel for the youth.

3.2 With the court.

There should be maintained at all times an atmosphere of detachment between the juvenile prosecutor and the court.

Commentary

Much of what is written in the commentary to Standard 3.1 is also applicable to the relationship between the juvenile prosecutor and the family court. With the increased formality of juvenile and family court proceedings must come a recognition of the proper relationship between the court and the juvenile prosecutor. As officers of the court in the course of performing their duties, juvenile prosecutors will become well acquainted with all the family court judges in their jurisdiction. They may work together with the judges in accomplishing those goals recommended in Standard 1.4. Nevertheless, they must guard against the possibility that they may be viewed by

the community as being associates of family court judges. Such a perception on the part of the community would weaken the effectiveness of both the juvenile prosecutor and the family court. Both inside and outside of the courtroom, an atmosphere of detachment should be maintained between the juvenile prosecutor and family court judges. Of course, this atmosphere is not meant to be so stifling that a judge and the juvenile prosecutor are prevented from speaking to each other outside of the courtroom. If they happen to meet, *e.g.*, on the street or at a social function, they may, of course, converse with each other. In essence, the correct relationship is the same as that proposed for the prosecutor and the court in the criminal justice system, so that ABA Standards for Criminal Justice, *The Prosecution Function* § 2.8 (Approved Draft 1971) and the commentary thereafter, may be considered equally applicable to the juvenile prosecutor.

3.3 With jurors.

A. The juvenile prosecutor must not communicate privately with any person once that person is summoned for jury duty or impaneled as a juror in a case.

B. The juvenile prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

C. After verdict, the juvenile prosecutor should not make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service.

Commentary

The number of states presently providing for a jury trial in juvenile proceedings is relatively small,[1] so that this standard presently has a very limited application. However, since these standards take the position that a youth has a right to a jury trial in the family court (see the *Adjudication* volume), this standard will become applicable in an increasing number of jurisdictions in the future. Also, this standard may have applicability to other types of proceedings in family court (*e.g.*, neglect, dependency, intrafamily criminal be-

[1]McKeiver v. Pennsylvania, 403 U.S. 528, 549, n.9 (1971), listed ten states which provided for a jury trial in juvenile proceedings under certain circumstances. At least two more states now provide for a jury trial: New Mexico, by statute—*N.M. Stat. Ann.* § 13-14-28(A) (Supp. 1973); and Alaska, by court decision—R.L.R. v. State, 487 P.2d 27 (Alaska 1971).

havior) in which the juvenile prosecutor may become involved. This standard has been adapted from ABA Standards for Criminal Justice, *The Prosecution Function* § 5.4 (Approved Draft 1971), and the commentary thereafter.

Basically, the three subsections of Standard 3.3 spring from a concern for the integrity of the system of trial by jury.

Subsection A. prohibits contact with a juror by the juvenile prosecutor outside the regular channels of the adversary process. No matter how innocent the purpose or intent of a contact between the juvenile prosecutor and a juror outside the confines of the regular courtroom process may be, the motives of the prosecutor will automatically be suspect and the contact will affect adversely the integrity of the verdict. See Annot., 62 *A.L.R.* 2d 298, 310–22 (1958).

Subsection B. prohibits the juvenile prosecutor from attempting to secure a verdict by means irrelevant to the issue in a case. Showing undue solicitude for the comfort or convenience of a judge or jury obviously evokes the thought that such action is taken to curry special advantage or consideration. It is discouraged by ABA, "Code of Professional Responsibility," EC 7-36, and should be considered proscribed conduct for the juvenile prosecutor.

Subsection C. prohibits the juvenile prosecutor from harassing jurors to color their views regarding future jury service. Since the juvenile prosecutor bears a duty under Standard 1.1 *supra* to be cognizant and reflective of the philosophy and purpose of the family court and would bring into question his or her fitness to serve in that fairly representing the interests of the state, compliance with this standard must also be considered mandatory. The failure to comply with any portion of this standard would indicate that the juvenile prosecutor has lost sight of the philosophy and purpose of the family court and would bring into question his or her fitness to serve in that capacity. It should be noted that the ABA Special Committee on Evaluation of Ethical Standards, in the "Code of Professional Responsibility" (Final Draft 1969) DR 7-108, adopted a standard to the effect that after the discharge of the jury from further consideration of a case, counsel shall not ask questions of or make comments to a juror calculated to harass or embarrass the juror or influence his or her actions in future jury service.

3.4 With prospective nonexpert witnesses.

A. Juvenile prosecutors must not compensate a nonexpert witness. They may, however, request permission from the family court to

reimburse a nonexpert witness for the reasonable expenses of attending court, including transportation and loss of income.

B. In interviewing an adult prospective witness, it is proper but not mandatory for juvenile prosecutors or their investigators to caution the witness concerning possible self-incrimination and his or her possible need for counsel. However, if the prospective witness is a juvenile, such cautions are mandatory and should be extended in the presence of the juvenile's parents or guardian. Where a parent or guardian is not available, the family court may, in the exercise of its discretion, appoint a guardian *ad litem* or independent counsel for the juvenile witness to be present at the giving of such cautions.

Commentary

This standard has been drawn, in part, from ABA Standards for Criminal Justice, *The Prosecution Function* § 3.2 (Approved Draft 1971). That standard recognizes that if witnesses are compensated by the parties for their testimony, there may be subornation of perjury, or at least the appearance of it. This does not, however, preclude the payment of ordinary witness fees. See ABA Standards for Criminal Justice, *Trial by Jury* § 3.2 and commentary (Approved Draft 1968). Nor does it preclude the payment of actual expenses and loss of income. An important caveat, however, is that there must be no attempt to conceal reimbursement of a witness's expenses. See ABA, "Code," DR 7-109 (c); ABA, "Informal Opinions" No. 847. Since the duty of the juvenile prosecutor includes some solicitude for the best interests of the youth, compliance with this standard is even more compelling than it is for the criminal prosecutor.

Particular attention should be paid to subsection B. of this standard. In many cases it can be expected that a prospective witness will be a young person. In such situations, the juvenile prosecutor should caution the witness as to the possibility of self-incrimination and the possibility of the need for counsel. This difference in treatment is deemed necessary because of juveniles' lesser sophistication in being able to recognize the possibility that their testimony may ultimately be damaging to their own interests. In many cases the proper exercise of prosecutorial discretion will include a request by the juvenile prosecutor that the court appoint a guardian *ad litem* or independent counsel for the youthful witness. This, however, would be discretionary with the family court.

3.5 With expert witnesses.

A. A juvenile prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek

to dictate the formation of the expert's opinion on the subject. To the extent necessary, the juvenile prosecutor should explain to the expert his or her role in the trial, as an impartial expert called to aid the fact-finders, and the manner in which the examination of witnesses is conducted.

B. The juvenile prosecutor must not pay an excessive fee for the purpose of influencing the expert's testimony or make the fee contingent upon the testimony he or she will give or the result in the case.

Commentary

This standard has been drawn from ABA Standards for Criminal Justice, *The Prosecution Function* § 3.3 (Approved Draft 1971). It has been included here to emphasize the necessity of preserving the integrity of family court proceedings. The goal of the juvenile justice system is to insure the best interests of the youth consistent with the public interest as it appears in a given case, as well as to advance the concepts of proportionality, limited discretion, and least drastic alternative fundamental to these standards. To accomplish this goal, it is necessary to assure that the opinion of the expert is his or her own, that it is truly independent, and that it has not been influenced by the juvenile prosecutor. Thus, attempts by the juvenile prosecutor to influence the opinion of the expert are absolutely proscribed.

Subsection B. of this standard is designed to regulate the manner in which the juvenile prosecutor may compensate expert witnesses for the expenses they may incur and the income they may forego by testifying in the family court. The size of the fee should in no way be contingent on the testimony which the expert gives at trial. Additionally, the fee itself should not be excessive in size, and it should be measured in a manner (*e.g.*, per hour, per diem, flat fee) that comports with the method of compensation that the expert usually employs in the regular course of his or her practice or business. The point is that the fee should not operate as an inducement for the testimony the expert will give. This conduct is proscribed by ABA, "Code" DR 7-109 (c) (3). In addition, both the size of the fee and the method of its calculation should be disclosed to the family court and to counsel for the youth, so that there will be no question that the standard has been complied with.

In summation, any fee paid to an expert witness should not be considered as payment to "purchase" the testimony of the expert. Rather, a fee is properly payable to experts only to compensate them for the expenses they may incur and the income they may forego because of their appearance as witnesses in family court. This will aid in preserving the integrity and independence of the expert witness.

3.6 With the police.

A. There should be maintained at all times an atmosphere of mutual respect and cooperation between the juvenile prosecutor's office and the police.

B. The juvenile prosecutor should strive to establish an effective line of communication with the police.

C. The juvenile prosecutor should provide legal advice to the police concerning police functions and duties in juvenile matters.

D. The juvenile prosecutor should cooperate with the police in providing the services of his or her staff to aid in training the police in the performance of their duties in juvenile matters.

Commentary

Cooperation between the juvenile prosecutor's office and the police will facilitate the investigation of cases necessary to successfully adjudicate and dispose of those cases reaching the stage of formal proceedings. In order that the members of the juvenile prosecutor's office have an appreciation of the way in which the police investigate and informally dispose of cases by way of "stationhouse adjustments," they should participate in police training, especially as it relates to police contact with young people. The juvenile prosecutor should keep police agencies in his or her jurisdiction informed of changes in the law that may affect their method of handling young people. Such action on the part of the juvenile prosecutor will help to insure that young people are accorded the rights to which they are entitled, and also help to prevent the loss of cases because of the deprivation of those rights.

Traditionally, the prosecutor has acted as legal advisor to the police and has been a major source of programs and staff for police training programs. Nowhere in the American justice system is this role more critical than in juvenile matters today, where the substantive and procedural rights of juveniles have undergone such dramatic change and development in the last several years.

ABA Standards for Criminal Justice, *The Prosecution Function* § 2.7 (Approved Draft 1971), which deals with the relationship between the adult prosecutor and the police, may be consulted for further guidance.

The appointment of a police liaison officer, as discussed in the commentary to Standard 2.1 *supra*, should be seriously considered by those jurisdictions that are large enough to effectively use such an official. The use of such an office will greatly enhance the coordination of mutual efforts between the two agencies.

3.7 With intake officers, probation officers, and social workers.

An atmosphere of mutual respect and trust should exist among the juvenile prosecutor and intake officers, probation officers, and social workers. He or she should be available to advise them concerning any matters relevant to their functions.

Commentary

Part IV of these standards, The Preadjudication Phase, requires juvenile prosecutors to be available to advise the intake officer of the appropriate state agency concerning the legal sufficiency of delinquency petitions. They obviously must work closely with the intake function to carry out their duties at that point in the process. An atmosphere of mutual respect and trust will facilitate the smooth carrying out of the respective roles of each participant in the process.

These standards, Parts I and VII, impose a duty on juvenile prosecutors to monitor the success of particular dispositional alternatives that are utilized in their jurisdiction. One way in which they can carry out this duty is to seek the opinion of probation officers and social workers on these subjects. Both of these groups will ordinarily be more familiar with the success or failure of each individual case and the success of various dispositional alternatives than the juvenile prosecutor. They may also be of assistance to the juvenile prosecutor in deciding which particular disposition to recommend to the family court after an adjudication of delinquency has occurred. Thus, the juvenile prosecutor should endeavor to establish an atmosphere of mutual respect and trust with these two groups.

Juvenile prosecutors should be available to render advice to both probation officers and social workers. Such advice may take the form of responding to questions concerning the character of certain acts by a youth as possible violations of probation. Juvenile prosecutors should also advise them of the extent, consistent with their discretion, that they will insist upon literal compliance with the terms of a juvenile probation order.

PART IV: THE PREADJUDICATION PHASE

Introduction. The primary thrust of the preadjudication phase of juvenile court proceedings involves the interface of two distinct agencies of government: the intake function (whether that be an executive branch or a judicial branch function) and the prosecution function (as an executive branch function).

The primary issue is basically one of responsibility for making the final decision whether a petition shall be filed seeking an adjudication in family court or whether the juvenile shall be diverted from the formal adjudicatory process. Related issues include the ultimate responsibility for simply taking no action on a complaint and the question of who may withdraw a petition once it has been filed. Choices include vesting responsibility in an intake function not related to the juvenile prosecutor (such as the probation department, various social service agencies, an intake arm of the family court, etc.) or vesting it in the juvenile prosecutor. If the latter choice were made, the procedural aspects of the process (interviewing, statements, preparation of petition, etc.) could be carried out by an intake agency independent of the juvenile prosecutor while the latter retains the ultimate responsibility for filing, amending, withdrawal, etc.

On the question of who is to perform the procedural aspects of intake, these standards create an intake agency separate from the court, the juvenile prosecutor, and existing probation agencies. See *The Juvenile Probation Function: Intake and Predisposition Investigative Services*, Standard 4.2, Executive Agency Administration vs. Judicial Administration. This agency is to be an executive branch office created and staffed specifically for the purpose of performing the intake function. On the vital question of responsibility, the standards have chosen a middle ground between exclusive decision-making authority lodged with the intake agency or lodged with the juvenile prosecutor. Under the procedure adopted by the standards there are two levels of intake. The initial decision is made by an intake officer, while the final decision is made by the juvenile prosecutor. The decision of the juvenile prosecutor is final and cannot be appealed to the family court, although great care should be taken to give the complainant who receives a negative decision every opportunity to participate in that decision and to understand it, since public confidence is an important issue.

Initial intake is performed by an intake officer of an appropriate state agency. This officer makes a preliminary determination as to whether the facts alleged by a complainant are legally sufficient to warrant the filing of a petition. The role of the juvenile prosecutor at this stage of intake is limited to advising the intake officer as to the legal sufficiency of the facts alleged.

The term legal sufficiency involves a two-pronged test: A. whether the facts as alleged are sufficient to establish the court's jurisdiction over the youth, and B. whether the competent and credible evidence available is sufficient to support the petition. The first part of the test is concerned with such matters as the age of the

juvenile and the nature of the conduct which he or she is alleged to have committed. The second part of the test is essentially equivalent to a determination of probable cause. Both parts of the test should be met before a petition is filed.

If the intake officer decides that the facts are legally sufficient to file a petition, he or she may recommend to the juvenile prosecutor that the latter file the petition.

If the intake officer finds that behavior which, if committed by an adult, would constitute a crime, is legally sufficient to file a petition, but determines that the interests of the juvenile and of the state will be best served by providing the youth with care or treatment voluntarily accepted by the youth and his or her parents or legal guardian, he or she may refer the youth for such care or treatment, if the complainant does not seasonably appeal this decision to the juvenile prosecutor and the latter does not exercise his or her right to file a petition.

If the intake officer declines to request that a petition be filed, he or she must then notify the complainant of this refusal and of the reasons therefor, and must advise him or her of the right to obtain a review of this decision by the juvenile prosecutor. Upon receiving a request for review, the juvenile prosecutor should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final decision as to whether or not a petition shall be filed.

Under the procedure chosen by the following standards, therefore, the intake officer makes an initial investigation to determine whether or not a child is a proper subject for family court jurisdiction. This investigation, however, should not preclude the juvenile prosecutor from making an independent investigation of the facts. Although the intake officer makes a recommendation to the juvenile prosecutor to file a petition, the juvenile prosecutor must make the final decision. Therefore, under such a procedure the juvenile prosecutor should have authority to make an independent examination of the facts. In addition, since in the more serious cases it would be the responsibility of the juvenile prosecutor to decide whether or not to seek a transfer to the criminal court, he or she should have the ability to investigate the desirability of such a course of action.

Once the juvenile prosecutor is satisfied that legal sufficiency can be established, three possible courses of action are available: A. a preadjudication disposition through the intake office; B. a formal adjudication in the family court; and C. transfer of the case to the criminal court if the conditions required by Standard 4.3 A. 3. are met.

Where the investigation indicates that the nature of the conduct

alleged and the youth's particular circumstances warrant it, the juvenile prosecutor should transfer the case to the intake officer for a nonjudicial disposition, assuming also that the public interest is not compromised. The use of this alternative is strongly encouraged by these standards, as it avoids the stigma of official action by the family court, where such action is not necessary to further the goals of rehabilitation, proportionality, and the public interest.

On the other hand, if the juvenile prosecutor believes that the public interest would be sacrificed by a nonjudicial disposition at the intake stage, and legal sufficiency exists, he or she should promptly file a petition with the family court to initiate the formal adjudicative process. This action would still leave open the option of subsequently entering into plea discussions with the juvenile's attorney which may result in dismissal of all or part of the petition.

4.1 Responsibilities of the juvenile prosecutor and intake officer at the intake stage.

A. The juvenile prosecutor should be available to advise the intake officer whether the facts alleged by a complainant are legally sufficient to file a petition of delinquency.

B. If the intake officer determines that a petition should be filed, he or she should submit a written report requesting that a petition be filed to the juvenile prosecutor. The intake officer should also submit a written statement of the decision and the reasons therefor to the juvenile and his or her parents or legal guardian. All petitions should be countersigned and filed by the juvenile prosecutor. The juvenile prosecutor may refuse the request of the intake officer to file a petition. Any determination by the prosecutor that a petition should not be filed should be final and not appealable to the family court.

C. If the intake officer determines that a petition should not be filed, the officer should notify the complainant of the decision and of the reasons therefor and should advise the complainant that he or she may submit the complaint to the juvenile prosecutor for review. Upon receiving a request for review, the juvenile prosecutor should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final determination as to whether a petition should be filed.

D. In the absence of a complainant's request for a review of the intake officer's determination that a petition should not be filed, the intake office should notify the juvenile prosecutor of a determination that a petition should not be filed. The juvenile prosecutor then has the right, after consultation with the intake officer, to file a petition.

Commentary

This standard deals with the scope of the intake officer's dispositional decisions, the review of those decisions by the juvenile prosecutor, and the scope of the juvenile prosecutor's final decision-making authority. The standard has been derived in large part from the Florida Juvenile Court Act. Fla. Stat. Ann. § 39.04 (Supp. 1973).

In some jurisdictions an intake officer is not statutorily authorized to file a petition, and an intake officer's determination that a petition should be filed must be reviewed by the prosecutor, who is statutorily authorized to file a petition. See, *e.g.*, Ariz. Rev. Stat. Ann. § 8-233(A)(2)(1974); Fla. Stat. Ann. § 39.04 (Supp. 1973). In other jurisdictions an intake officer is statutorily authorized to file a petition, and the officer's determination can not be overruled by the prosecutor. See, *e.g.*, Cal. Welf. & Inst'ns Code § 653 (West 1969); Iowa Code Ann. § 232.3 (1969).

Although there is authority to the contrary, the better view is that an intake officer's determination with respect to the filing of a petition should be subject to review by the prosecuting attorney, who should make the final decision on whether to file a petition. *Cf.* Sheridan, United States Children's Bureau, "Legislative Guide for Drafting Family and Juvenile Court Acts" § 13 and commentary (1969) [hereinafter cited as Sheridan, "Legislative Guide"] with National Conference of Commissioners on Uniform State Laws, "Uniform Juvenile Court Act" § 21 (1968). The Legislative Guide for Drafting Family and Juvenile Court Acts summarized the reasons for such a procedure as follows:

> First, he [the prosecutor] is the person with the expertise concerning the person responsible for conducting the proceeding and for representing the State. It is not the intention, however, to limit the prosecuting official's review to the legal sufficiency of the complaint. He should also be concerned with the need to protect the child and the community. Studies have shown that the highly therapeutic approach of some intake personnel has resulted in the filing of petitions merely on the basis that the child needed service—service which could be provided by community agencies without court intervention. On the other hand, studies have also shown that petitions have been denied in cases of serious offenses where there was reason to believe that court action was necessary to protect the community. Sheridan, "Legislative Guide" 15.

Accordingly, the standard provides that an intake officer shall make an initial determination as to how a complaint should be

handled, which should then be subject to review by the juvenile prosecutor. Under this procedure, intake officers are not authorized to file a petition. If they determine that a petition should be filed, they must make a recommendation to that effect to the juvenile prosecutor who then reviews the matter and makes the final decision. Conversely, if the intake officers determine that a petition should not be filed, they must notify the juvenile prosecutor who may overrule them and file a petition.

Statutory provisions also differ with respect to the authority of a complainant to file a delinquency petition or obtain review of an intake officer's dispositional decision. There are only a few jurisdictions in which a complainant has an absolute right to file a petition. See, *e.g.*, Ill. Ann. Stat. ch. 37, § 704-1 (Smith-Hurd 1972); N.Y. Family Ct. Act § 733 (McKinney 1975). In most jurisdictions a complainant is not statutorily authorized to file a petition and can not overrule an intake officer's decision not to file or not to recommend the filing of a petition, but the complainant can obtain prosecutorial or judicial review of the intake officer's decision. See, *e.g.*, Fla. Stat. Ann. § 39.04 (Supp. 1975); Md. Ann. Code § 3-810 (1974).

The preferable procedure is to give a complainant the right to obtain prosecutorial review of an intake officer's decision not to file or not to recommend the filing of a petition. Olson and Shepard, U.S. Department of Health, Education and Welfare, "Intake Screening Guides" 55 (draft undated); Sheridan, "Legislative Guide" § 13 and comment. See also National Advisory Commission on Criminal Justice Standards and Goals, "Corrections Task Force Report" 254 (1973); Ferster and Courtless, "The Intake Process in the Affluent County Juvenile Court," 22 *Hastings L.J.* 1127, 1131-32 (1971). The review of an intake officer's decision with respect to filing at the request of the complainant provides a useful check on the intake officer's discretion, which may be exercised in an impermissible or undesirable manner. At the same time this approach prevents the complainant's filing of a groundless or ill-advised petition.

Under the standard a complainant is not authorized to file a petition and can not overrule an intake officer's decision not to recommend the filing of a petition. In the event that an intake officer decides not to recommend the filing of a petition, however, the officer must notify the complainant of this decision and of the reasons for the decision, and the complainant can then obtain a review of the decision by the juvenile prosecutor.

Obviously, this standard requires the juvenile prosecutor to exercise a great deal of discretion in deciding the appropriateness of the

filing of petitions, given legal sufficiency. It is unlike the main thrust of many other standards dealing with the prosecution function that seek to limit the scope of discretion.

Chief among the decisions the juvenile prosecutor must make is what is the state's interest at stake in choosing the formal adjudicative process rather than a nonjudicial disposition. These standards do not define the concept of the state's interest because such term is largely indefinable and is and should remain an ingredient in the prosecutor's traditional charging discretion. Such discretion flows from the quasijudicial role of the prosecutor in the American justice system, a role recently enhanced by the United States Supreme Court in *Imbler v. Pachtman*, 424 U.S. 409 (1976), where the Court ruled that prosecutors enjoy absolute immunity in civil rights act litigation (18 U.S.C.A. § 1983) for duties performed within the scope of their traditional prosecutorial role.

In this role of quasijudicial "minister of justice"—see the commentary to ABA Standards for Criminal Justice, *The Prosecution Function* § 1.1 (Approved Draft 1971)—the American prosecutor exercises a vast amount of discretion. See, *e.g.*, LaFave, "The Prosecutor's Discretion in the United States," 18 *Am. J. Comp. L.* 532 at n.1 (1970); K. Davis, *Discretionary Justice* 4 (1969); Pound, "Discretion, Dispensation and Mitigation; The Problem of the Individual Special Case," 35 *N.Y.U.L. Rev.* 925 (1960); Baker, "The Prosecuting Attorney; Legal Aspects of the Office," 26 *J. Crim. L.* 647 (1936); Kaplan, "The Prosecutorial Discretion—A Comment," 60 *Nw. U.L. Rev.* 174 (1965).

Prosecutorial discretion derives from the common law, not from statutes. See *Imbler v. Pachtman*, 424 U.S. 409 (1976); *United States v. Thompson*, 251 U.S. 407 (1920); *The Confiscation Cases*, 7 Wall. 454, 19 L. Ed. 196 (1868); *United States v. Brokaw*, 60 F. Supp. 100 (S.D. Ill. 1945); *Fay v. Miller*, 183 F.2d 986 (D.C. Cir. 1950). Underlying this immunity is a recognition of the need for leniency in particular cases and a flexible procedure necessary to effectuate that end. Implicit in the attitude of the courts is a basic recognition that the nature of the decision to process criminal and juvenile cases *requires* that the charging process be discretionary with the prosecutor, for the decision to prosecute involves a delicate balancing of a myriad of subjective and objective factors. As noted by Kadish, "Legal Norm and Discretion in the Police and Sentencing Process," 75 *Harv. L. Rev.* 904, 913 (1969): "discretionary judgment is the product of the inevitable need for mediation between generally formulated laws and the human values contained in the varieties of particular circumstances in which the law is technically violated."

It is thus out of necessity, as well as conscious choice, that these standards leave untouched the traditional common law concept of prosecutorial discretion as imported into the juvenile justice system.

4.2 Withdrawal of petition upon a subsequent finding of lack of legal sufficiency.

If, subsequent to the filing of a petition with the family court, the juvenile prosecutor determines that there is insufficient evidence admissible in a court of law under the rules of evidence to establish the legal sufficiency of the petition, he or she should move to withdraw the petition.

Commentary

Standard 4.1 provides for the intake officer to make the initial determination of the legal sufficiency of the evidence, with the juvenile prosecutor being available to advise on the matter. It is anticipated that in the majority of cases this procedure will prevent the filing of a petition lacking probable cause to believe that the subject of the petition committed the act(s) alleged, or alleging facts in which the family court would lack jurisdiction. Isolated instances may arise, however, in which a petition is filed and it subsequently becomes apparent to the juvenile prosecutor that it lacks legal sufficiency. For example, new evidence may be discovered subsequent to the filing of the petition which indicates that the subject of the petition did not commit the act alleged. Or the juvenile prosecutor may discover that the youth is either too old or too young to satisfy the jurisdictional requirements of the family court. When such a situation arises, the juvenile prosecutor should move to withdraw the petition. Both fairness to the youth and conservation of family court resources dictate that this course of action be followed.

This recommended procedure varies somewhat from existing practice. According to a survey of sixty-eight major American cities conducted by the Center for Criminal Justice, Boston University School of Law, in only 36.8 percent of the cities surveyed did prosecutors review juvenile court petitions for legal sufficiency; in 22.1 percent they had authority to amend a filed petition; and in 44.1 percent they could move for dismissal of a filed petition. Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future" (1973) (Appendix B). Given the fact that in only 11.8 per cent of these cities was the prosecutor authorized to file a petition in the first instance, these

figures are somewhat understandable. Since the present standards give the juvenile prosecutor final authority to file the petition, it is necessary that he or she have similar authority to move to amend and to dismiss.

4.3 Investigation: proper subject for family court jurisdiction.

A. The juvenile prosecutor should determine, by investigating the juvenile's past record with the police and the court, whether he or she is a proper subject for family court jurisdiction.

1. Where the juvenile prosecutor's inquiry into the conduct alleged and the juvenile's circumstances warrant it, the complaint may be transferred to the intake agency for a preadjudication disposition.

2. If the juvenile prosecutor determines that the state's interest requires the formal adjudicative process of the family court, a petition should be filed as soon as possible with the family court.

3. A motion to transfer the case to criminal court may be filed with the petition if the juvenile is at least fifteen years of age but under the age of eighteen at the time of the conduct alleged in the petition, and if there is clear and convincing evidence that

a. the alleged conduct would constitute a class one or class two juvenile offense, and

b. the juvenile alleged to have committed a class two offense has a prior record of adjudicated delinquency involving the infliction or threat of significant bodily injury, and

c. previous dispositions of the juvenile have demonstrated the likely inefficacy of the dispositions available to the family court, and

d. the services and dispositional alternatives available in the criminal justice system are more appropriate for dealing with the juvenile's problems and are, in fact, available.

B. If a petition is filed, the information obtained in the course of this investigation should be made available to the juvenile or to the counsel for the juvenile.

Commentary

These standards, as indicated in Standard 4.1 *supra*, provide for a system in which intake officers make an initial investigation to determine whether a child is a proper subject for family court jurisdiction. This investigation, however, does not preclude the juvenile prosecutors

from making their own independent investigation of the child's circumstances. Although the intake officers will make recommendations to the juvenile prosecutors on the filing of a petition, it is the juvenile prosecutors who have the final decision concerning whether a petition will in fact be filed. Therefore, the juvenile prosecutors must have authority to make their own independent examination of the alleged facts and circumstances. In addition, since in the more serious cases, it is the responsibility of the juvenile prosecutors to decide whether a transfer to the criminal court should be sought, they must have the ability to investigate the desirability of such a course of action.

It is to be anticipated that in the overwhelming majority of cases, the juvenile prosecutors will follow the recommendation of the intake officers concerning whether a delinquency petition should be filed. Subsection A. of this standard merely seeks to preserve to the juvenile prosecutors the ability to undertake their own independent investigation whenever they believe that such is necessary to make a considered judgment on the recommendation to file.

Once the juvenile prosecutor is satisfied that legal sufficiency can be established, three possible courses of action are available: A. a preadjudication disposition; B. a formal adjudication in the family court; and C. transfer of the case to the criminal court.

Where the investigation indicates that the nature of the conduct alleged and the youth's particular circumstances warrant it, the juvenile prosecutor may transfer the case to the probation department for a nonjudicial disposition, if the state's interest is not compromised. What is the "state's interest" can only be determined by the prosecutor in each case in the exercise of his or her unique prosecutorial discretion. *Imbler v. Pachtman*, 424 U.S. 409 (1976); see the commentary to Standard 4.1 *supra*. The use of nonjudicial alternatives in general is strongly encouraged, as it avoids the stigma to the youth of official action by the family court, where such action may not be necessary to further the goals of rehabilitation, proportionality, and least drastic alternative.

On the other hand, if it is believed that the state's interest would be sacrificed by a nonjudicial disposition at this stage, and legal sufficiency exists, the juvenile prosecutor should promptly file the petition to initiate the formal adjudicative process. It should be noted here that this action on the part of the juvenile prosecutor still leaves open the option of subsequently entering into plea discussions with the youth's attorney which may result in dismissal of all or part of the petition. This option is more fully discussed in Part V *infra*.

Finally, if legal sufficiency for the complaint exists, and the youth

is at least fifteen at the time of the conduct alleged in the complaint, and if there is clear and convincing evidence that A. the alleged conduct would constitute a class one or class two juvenile offense, B. the youth accused of a class two offense has a prior record of adjudicated delinquency involving a threat of bodily injury to others, C. previous dispositions of the juvenile have proved inefficacious, and D. the services and dispositional alternatives available in the criminal justice system are more appropriate for dealing with the youth's problems and are, in fact, available, the juvenile prosecutor, in addition to filing the petition, may file a motion seeking transfer of the case to the criminal court. It should be noted that this standard recommends that the motion to transfer the case accompany the petition. This will put the youth and his or her attorney on notice as soon as possible that transfer is being sought. Also, the juvenile prosecutors will be able to transfer their files to the prosecuting attorney at an early stage, which may expedite processing of the case in the criminal court.

An inherent premise of these standards is that a youth should have the benefit of a waiver hearing before he or she is subject to the jurisdiction of a criminal court. Thus, the result reached in *State v. Grayer*, 191 Neb. 523, 215 N.W.2d 859 (1974)—that prosecutors could, at their sole discretion, decide whether a youth will be subject to juvenile or criminal court jurisdiction by merely filing a complaint in the court of their choice—is rejected by this standard.

At waiver hearings, juvenile prosecutors must be able to establish to the satisfaction of the family court that all four elements exist, including that the facilities and dispositional alternatives available in the family court have been inadequate to deal with the particular problems of the youth, and that the services and dispositional alternatives available in the criminal justice system are more appropriate, and are, in fact, available. If they are unable to establish any of these elements by clear and convincing evidence, they should not seek waiver.

Quite obviously it should not be difficult for the juvenile prosecutor to establish the first three elements by substantial evidence. It may be more difficult to establish the last element, *i.e.*, appropriateness of criminal sanctions, but such a standard is clearly attainable. For a more extensive discussion of the waiver of juveniles into criminal court, see the *Transfer Between Courts* volume.

Subsection B. of this standard requires the juvenile prosecutor to make available to counsel for the youth the information that has been obtained in the course of investigation under this standard. If the youth has waived his or her right to counsel, this information should be made available to him or her and the parent or guardian.

This duty of disclosure is similar to that contained in Standard 4.7 *infra.* The juvenile prosecutor's duty to disclose is described in greater detail in *Pretrial Court Proceedings* Standards 3.1 to 3.9, on discovery.

4.4 Speedy decision.

A. If the juvenile is in custody pending the filing of a petition, the juvenile prosecutor should file a petition within [forty-eight] hours after the juvenile has been taken into custody.

B. If the juvenile is not in custody pending the filing of a petition, the juvenile prosecutor should file a petition within [five] days of the time that he or she receives the recommendation of the intake officer.

Commentary

The time limits specified in this standard should be regarded as the maximum allowable to the juvenile prosecutor for filing a petition in the family court. The juvenile prosecutor should reach a decision regarding the disposition that he or she will seek with maximum dispatch. This will clarify the youth's status as quickly as possible and the state's resources will be efficiently utilized.

The practice of delaying action on a complaint until the youth has reached an age beyond the jurisdiction of the juvenile court, and then proceeding in the criminal court system without the benefit of waiver proceedings, is disapproved, *e.g., Dillard v. State,* 439 S.W.2d 460 (Tex. Civ. App. Ct. 1969). See Purdom, "Juvenile Court Proceedings from Standpoint of the Attorney for the State," 1 *Texas Tech. L. Rev.* 269-94 (1970).

4.5 Power over dismissal of petition.

A. Once a petition has been filed with the family court it should not be dismissed, except by the court on its own motion or on motion of the juvenile in furtherance of justice, without the consent of the juvenile prosecutor.

B. Once a petition has been filed with the family court, a nonjudicial disposition should not be effected without the consent of the juvenile prosecutor, the juvenile, the juvenile's parents or guardian, and the juvenile's attorney.

Commentary

The juvenile prosecutors' paramount duty is to represent the best interests of the state. As such, they should have the authority to

refuse to dismiss a petition, unless dismissed by the court, if they believe that it is in the public interest to prosecute the case.

A nonjudicial disposition is generally utilized in cases in which the conduct of the youth is of a minor nature, and it is the youth's first contact with the juvenile justice system. Such dispositions are strongly encouraged since the youth is spared the stigma of formal family court action. Such dispositions further one of the important goals of these standards, *i.e.*, effectuating the least drastic alternative for the youth. However, dispositions of this sort should be utilized only with the consent of all parties concerned. Thus, the juvenile prosecutor, the youth, the parents or guardian, and the youth's attorney, should all be willing to forego the formal adjudicative process before an informal disposition of a complaint is made.

4.6 Judicial determination of probable cause at the first appearance of the juvenile in family court.

Whether it be a detention hearing, a hearing on a motion to waive family court jurisdiction, or other preliminary hearing, the juvenile prosecutor should present evidence to establish probable cause that the acts alleged in the petition were committed by the juvenile, at the first appearance of the juvenile in family court.

Commentary

In criminal cases, neither an arrest warrant nor a search warrant can be obtained without establishing probable cause. An adult cannot be detained without probable cause except for brief investigatory stops, and probable cause is required to hold a defendant for the action of a grand jury. It is also required to be established soon after a warrantless arrest as a basis for continued incarceration of a defendant. *Gerstein v. Pugh*, 420 U.S. 103 (1975). Although the Supreme Court has not spoken directly to the question, this standard declares as a matter of policy that the juvenile prosecutor should establish probable cause at the initial appearance of a youth before the family court, whether in a detention hearing, waiver hearing, or other preadjudicatory hearing. At least one U.S. Court of Appeals has applied *Gerstein* to juvenile proceedings. *Moss v. Weaver*, 525 F.2d 1258 (5th Cir. 1976).

Although some states do require a showing of probable cause at detention or waiver hearings—*e.g.*, Kan. Stat. Ann. § 38-823 (1973) (detention) as amended Kan. Stat. Ann. § 38-823 (Supp. 1975); N.D. Cent. Code § 27-20-34 (1974) (waiver)—others specifically

state that it is not necessary at the initial appearance to establish probable cause that the allegations contained in the petition are true. Wyo. Stat. Ann. § 14-115.27 (Supp. 1975); D.C. Code Encycl. Ann. § 16-2308 (1968). Where probable cause is not required by statute, the juvenile prosecutor should require it as a preferred standard of professional responsibility. See Standard 4.2 *supra.*

4.7 Disclosure of evidence by the juvenile prosecutor.

The juvenile prosecutor is under the same duty to disclose evidence favorable to the juvenile in family court proceedings as is the prosecuting attorney in adult criminal proceedings.

Commentary

The primary duty of juvenile prosecutors, like their counterparts in adult criminal court, is to see that justice is done. If they possess evidence that would be favorable to the youth, they are under the same obligation as prosecuting attorneys to disclose such evidence. ABA, "Code of Professional Responsibility," Canon No. 7, DR 7-103 (B); see also ABA Standards for Criminal Justice, *The Prosecution Function* § 3.11 (a) (Approved Draft 1971). As in the case of criminal prosecutors, the building of a record of successful adjudications (sustained petitions) is not a proper goal, in itself, for juvenile prosecutors. ABA Standards for Criminal Justice, *The Prosecution Function* § 3.9 (c) (Approved Draft 1971). Juvenile prosecutors should not seek a particular disposition in any case in which they are in possession of evidence of mitigating circumstances indicating that such disposition is not necessary to vindicate the interests of the state. To do so would be a violation of their duty to seek justice. See Standard 7.1 *infra.*

PART V: UNCONTESTED ADJUDICATION PROCEEDINGS

5.1 Propriety of plea agreements.

A. A plea agreement concerning the petition or petitions that may be filed against a juvenile may properly be entered into by the juvenile prosecutor.

B. Plea agreements should be entered into with both the interests of the state and those of the juvenile in mind, although the primary concern of the juvenile prosecutor should be the protection of the public interest, as determined in the exercise of traditional prosecutorial discretion.

Commentary

One of the most troublesome problems in the adult criminal justice system today concerns the propriety of plea discussions. Opponents of the process contend that A. it gives the prosecuting attorney an incentive to "overcharge," B. it allows jurisdictions an opportunity to disguise the fact that their judicial and correctional systems are inadequately staffed and financed, C. it results in the reduced rationality of the processing of criminal defendants, and D. it discourages defendants from exercising their constitutional rights. For these reasons, the National Advisory Commission on Criminal Justice Standards and Goals, "Report on Courts" § 3.1, advocated that the practice of plea discussions in the criminal courts be abolished as soon as possible, but in no event later than 1978.

On the other hand, defenders of the process of plea agreements cite positive effects that spring from the judicious employment of the process. Some of these effects are said to be: A. the defendant receives the benefit of a prompt and certain application of correctional measures; B. psychologically, the rehabilitative process begins more quickly if the defendant admits his or her guilt; C. alternative correctional measures better suited to achieving rehabilitation may be available to the defendant if he or she admits to the commission of a lesser offense than that originally charged; and D. the trial process is limited to deciding real disputes. For these reasons, the ABA Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968), Introduction and § 3.1, sanction the process of plea discussion.

Doubtless the entire process of plea discussions and the nature of plea agreements has by now been thoroughly clouded in confusion and misunderstanding by the needless rhetoric that has filled the news media since the debate ushered in by the National Advisory Commission position. Yet it must be admitted by even the staunchest critics of the process, that plea agreements in the criminal justice field are the established norm and that responsible elements of the criminal justice system, including the ABA Standards, endorse the process and have sought to apply reasonable regulatory restraints upon it to avoid any possible abuses. See ABA Standards for Criminal Justice, *The Prosecution Function* (Approved Draft 1971), introductory note to Part IV, Plea Discussions; J. Skolnick, *Justice Without Trial* (1966). The Advisory Committee on the Criminal Trial of the ABA Standards Project, as noted above, sanctioned the process and recommended the following standard concerning plea discussions and agreements, doing so not merely to acknowledge an existing practice, but also to approve it in principle as *desirable* and

in the *public interest:*

> Propriety of plea discussions and plea agreements.
> (a) In cases in which it appears that the interest of the public in the effective administration of criminal justice (as stated in section 1.8) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. He should engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.
> (b) The prosecuting attorney, in reaching a plea agreement, may agree to one or more of the following, as dictated by the circumstances of the individual case:
> (i) to make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or nolo contendere;
> (ii) to seek or not to oppose dismissal of offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to defendant's conduct; or
> (iii) to seek or not to oppose dismissal of other charges or potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.
> (c) Similarly situated defendants should be afforded equal plea agreement opportunities.

ABA Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968).

The extent of plea discussions and plea agreements in juvenile cases is not clear, but as noted in the *Adjudication* volume of these standards, it is known that the process exists in some metropolitan juvenile courts. It should not be assumed, however, that the criminal justice model for plea discussions and plea agreements would be appropriate in its entirety in the juvenile court. There are sufficient substantial differences between the two systems of justice to warrant a different approach. The standards presented here recognize the peculiar interests and concerns of the juvenile justice system.

This standard permits plea discussions in the context of the family court, but restricts the number of factors that may legitimately be considered in the process. It does so in part to ameliorate the harshest effects of the plea discussion process. The basic position of this standard is that juvenile prosecutors may properly engage in plea discussions concerning the *charges* that may be filed against a youth and that they could use their power to recommend a disposition in the process of plea discussion with the youth and his or her counsel.

Thus they may engage in what approximates the charge discussions that take place in the criminal trial arena, and the "sentence bargaining," or disposition recommendation discussions, that often take place there. In short, they can promise that they will recommend a particular disposition to the family court judge.

The position that plea discussions relating to charge are permissible is premised on an analysis of the advantages and disadvantages that may flow from the process to the parties concerned. Because juvenile prosecutors are under a duty not to lose sight of the philosophy and purpose of the family court, while fully and faithfully representing the interests of the state, it is to be anticipated that they will resist the temptation to engage in the practice of "overcharging" (*e.g.*, charging a youth with an offense not customarily charged in the jurisdiction for the conduct in which the youth has allegedly engaged, or charging the youth with an offense where the state lacks sufficient evidence). In addition, the adjudicatory hearing is limited to deciding real disputes among the parties in interest, and the rehabilitative process will begin more quickly once the youth admits culpability.

As originally drafted, the standards did not permit plea negotiations to include the disposition to be recommended by the prosecutor. Responding to the views expressed by the ABA Sections of Criminal Justice and Family Law and others, the executive committee extended plea agreements to dispositions.

It should be noted that this standard would allow the juvenile prosecutor to engage in plea discussions with the youth or his or her attorney in which the juvenile prosecutor may agree *not* to move for a transfer of the case to criminal court in return for the youth's admission to a petition filed in the family court. Because the conditions which must be present before the family court can waive its jurisdiction are strict (see Standard 4.3 *supra*), the use of this factor in the course of plea discussions is not likely to be subject to abuse. As a safeguard, however, it is recommended that the juvenile prosecutor disclose to the youth or his or her attorney during the course of plea discussions the conditions that he or she will be required to meet for waiver under Standard 4.3.

In summation, many states will provide for disposition alternatives according to the type of petition filed against a youth and the underlying conduct alleged in the petition. The juvenile prosecutor can discuss with the youth or his or her attorney the type or number of petitions that can be filed, a modification of a petition already filed, etc., in exchange for an admission to the allegations of an agreed petition. Or, the juvenile prosecutor may decline to seek transfer of

the case to the criminal court in return for an admission to a petition. However, neither the interests of the state, as determined by the juvenile prosecutor in the exercise of traditional prosecutorial discretion, nor the best interests of the youth should be sacrificed. The juvenile prosecutor should weigh the same basic elements as the prosecuting attorney in an adult criminal case, with the additional aspect of the youth's unique needs and the peculiar goals of the family court as a social institution.

5.2 Plea discussions when a juvenile maintains factual innocence.

The juvenile prosecutor should neither initiate nor continue plea discussions if he or she is aware that the juvenile maintains factual innocence.

Commentary

Since the accumulation of a record of affirmative adjudications is not a proper goal, in itself, for the juvenile prosecutor (see commentary to Standard 4.8 *supra*), neither should be a record of accumulating a large number of dispositions by admissions. Undoubtedly, many youths confess to the allegations contained in petitions filed against them, yet many of them probably do so because they are threatened—to them the juvenile justice system seems formidable—or they think that they will "get off" with a lighter disposition. It is obviously the duty of the youth's attorney to see that the plea of his or her client is voluntary in fact. As part of their duty to seek justice, however, juvenile prosecutors must also insure that the youth's rights are not violated. If a youth maintains factual innocence, it is doubtful that a formal admission to the petition will be voluntary. In such situations, the juvenile prosecutor should immediately withdraw from plea discussions. Not to do so may ultimately result in the perpetration of a fraud upon the family court. This standard recognizes the unique vulnerability of young people to the pressures that can be brought to bear upon them by parents, friends, relatives, and even their own attorneys. It requires the juvenile prosecutor to share the responsibility of the youth's attorney in protecting the youth's privilege against self-incrimination. It declines to apply, in the family court context, the rule of *North Carolina v. Alford*, 400 U.S. 25 (1970), to the effect that a plea of guilty is constitutionally acceptable, though joined with protestations of innocence, where the defendant persists in the plea after full warning of rights and consequences and an independent factual basis therefor appears in the record. IJA-ABA Juvenile Justice Standards Project, *Counsel for Pri-*

vate Parties, Standard 6.4(b) imposes a somewhat similar duty on counsel for the youth, but its restriction is limited to preventing the submission of the youth's admission, rather than the cessation of plea discussions.

5.3 Independent evidence in the record.

A plea agreement should not be entered into by the juvenile prosecutor without the presentation on the record of the family court of independent evidence indicating that the juvenile has committed the acts alleged in the petition.

Commentary

The juvenile prosecutor's responsibility in the area of plea discussions and agreements is not fulfilled merely by ascertaining that the youth's plea is voluntary in fact. Because of the youth's special vulnerability, the responsibility of the juvenile prosecutor exceeds that of the criminal prosecutor in the plea discussion context. Thus, no youth should be found delinquent based solely upon his or her own confession or admission. There must be other, independent evidence to establish the facts alleged in the petition, and this standard requires the juvenile prosecutor to present such evidence on the record of the family court. Since Standard 4.2 *supra* requires the juvenile prosecutor to establish the legal sufficiency of a petition before it is filed, compliance with the present standard should not prove burdensome. However, it should be noted that this standard does not bar the prosecutor from offering a reduced charge in exchange for a partial admission by the juvenile.

5.4 Fulfillment of plea agreements.

If juvenile prosecutors find that they are unable to fulfill a plea agreement they should promptly give notice to the juvenile and cooperate in securing leave of court for the withdrawal of the admission, and take such other steps as may be appropriate and effective to restore the juvenile to the position he or she was in before the plea was entered.

Commentary

This standard has been adapted from ABA Standards for Criminal Justice, *The Prosecution Function* § 4.3 (c) (Approved Draft 1971). It is anticipated that in the great majority of cases juvenile prosecutors will be able to fulfill their end of the agreement reached with

the youth and his or her attorney regarding the nature of the petition(s) that will be filed, amended, etc., in the family court. Occasionally, however, this may be rendered impossible. A new complaint may be brought against the youth, indicating perhaps that the original agreement is no longer in the state's interest or in the best interests of the youth. Or, new evidence may have been discovered by the juvenile prosecutors indicating that more serious acts have been engaged in by the youth. Also, the juvenile prosecutors may become aware of facts indicating that an admission made or about to be made by a youth is involuntary in nature, or that the independent evidence underlying the admission is no longer accurate or persuasive. When situations such as these arise, and juvenile prosecutors find that they are no longer able to fulfill their plea agreements, they should promptly notify the youth and his or her attorney and render their assistance to return the youth to the position he or she would have been in had the agreement not been reached. See *Santobello v. New York*, 404 U.S. 257 (1971).

PART VI: THE ADJUDICATORY PHASE

Introduction. These standards draw heavily upon the ABA Standards for Criminal Justice, *The Prosecution Function*, Part V, The Trial (Approved Draft 1971). The ABA standards should be consulted, along with their respective commentaries, by juvenile prosecutors as guidelines for their conduct in the adjudicatory phase. The standards presented here focus only upon those aspects of the family court trial process, and the role of the juvenile prosecutor therein, that are distinctive.

6.1 Speedy adjudication.

A. When the juvenile prosecutor has decided to seek a formal adjudication of a complaint against a juvenile, he or she should proceed to an adjudicatory hearing as quickly as possible. Detention cases should be given priority treatment.

B. Control over the trial calendar should be exercised by the family court.

Commentary

The emphasis on speed that permeates all of these standards is stressed here. Detention cases should be given priority treatment. The priority assigned to cases involving detention operates on two

levels. First, if a youth is held in custody pending the holding of a detention hearing, his or her liberty is being restrained without even so much as a probable cause determination. It is imperative that the juvenile prosecutor act promptly either to establish at a detention hearing the grounds necessary to justify the continued confinement of the youth, or to decline to seek continued formal detention pending adjudication of a complaint. On the second level, if detention of the youth is ordered by the family court after the holding of a detention hearing, his or her liberty is being restrained, while a youth who is not detained is essentially at liberty, pending adjudication of the petition filed against him or her. Thus, because of the imposition on the liberty of the youth who is in custody pending adjudication, there is a more pressing claim to the prompt adjudication of the petition that has been filed against him or her.

Of course, prompt adjudication of all delinquency petitions is required. Juvenile prosecutors should organize their offices so that this can be accomplished. Where their offices are a division of the local prosecutor's office, sufficient manpower and resources should be allocated by the local prosecutor to ensure a speedy disposition of all filed petitions.

It is anticipated that the family court will exercise control over its trial calendar. In order to insure that juvenile prosecutors are fulfilling their duty to seek a speedy adjudication of each and every petition, it should establish a maximum time period in which petitions should reach the adjudicatory hearing. It should require juvenile prosecutors to account for any petition that has not reached formal proceedings within this time period and it should require periodic reports from the juvenile prosecutors on the condition of their caseloads. Subsection B. of this standard was adapted from the ABA Standards for Criminal Justice, *Speedy Trial* § 1.2 (Approved Draft 1968) and ABA Standards for Criminal Justice, *The Prosecution Function* § 5.1 (Approved Draft 1971).

6.2 Assumption of traditional adversary role.

At the adjudicatory hearing the juvenile prosecutor should assume the traditional adversary position of a prosecutor.

Commentary

The juvenile court acts of several states specifically declare that under no circumstances should the adjudicatory hearing be adversary in nature. See, *e.g.*, Ark. Stat. Ann. § 45-215 (1964) (repealed 1975): the proceeding ". . . shall at no time assume the form of an

adversary suit, or a legal combat between lawyers . . ."; Ill. Rev. Stat. Ann. ch. 37, § 701-20(1) (Smith-Hurd 1972): the proceeding is ". . .not intended to be adversary in character. . . ."

For those who view the role of the prosecutor in juvenile court as less than an advocate—see, *e.g.*, Fox, "Prosecutors in the Juvenile Court: A Statutory Prosecutor," 8 *Harv. J. Leg.* 33 (1970); NCCD, "Model Rules for Juvenile Courts," Comment to Rule 24 (1969); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967)—there may seem to be no need to stress the assumption of an adversary role. For example, one commentator has suggested that the prosecutor should merely "assist the court to obtain a disposition of the case which is in the best interest of the child." Whitlatch, "The Gault Decision: Its Effect on the Office of the Prosecuting Attorney," 41 *Ohio B.J.* 41 (1968). But for those who view the prosecutor as an advocate essentially in an adversary system, albeit not the traditional criminal adversary model, and as having the interests of the state as his or her primary goal, this statement is necessary. It expresses the proper role definition for the juvenile prosecutor that underlies all of these standards.

With the advent of counsel for the youth, counsel for the state has become a necessity. For counsel to be effective and useful, and to effectively represent his or her client—the state—an adversary hearing is all but inevitable. An adversary hearing is also necessary to insure due process and fair treatment not only in actuality but in appearance, for the youth, his or her parents, the complainant, and the public. It will help to impress upon the youth and others the seriousness of the proceedings, and gain respect and understanding within the community for the family court.

6.3 Standard of proof; rules of evidence.

A. The juvenile prosecutor has the burden of proving the allegations in the petition beyond a reasonable doubt.

B. The rules of evidence employed in the trial of criminal cases in the jurisdiction of the juvenile prosecutor should be applicable to family court cases involving delinquency petitions.

Commentary

In re Winship, 397 U.S. 358 (1970), held that due process requires the use of the standard of proof beyond a reasonable doubt at the adjudicatory stage of juvenile court proceedings. Thus, the juvenile prosecutor is required to adduce proof beyond a reasonable doubt

that the youth has engaged in delinquent conduct when the youth has denied the allegations of the petition. See the *Adjudication* volume § 4.3. In addition, owing to the increased formality of proceedings and their adversary nature, the use of criminal rules of evidence is deemed advisable. See *Adjudication* § 4.2.

6.4 Selection of jurors.

A. If juvenile prosecutors are in a jurisdiction affording a juvenile a statutory right to jury trial in family court proceedings, they should prepare themselves prior to the adjudicatory hearing to effectively discharge their function in the selection of the jury and the exercise of challenges for cause and peremptory challenges.

B. If juvenile prosecutors investigate the background of prospective jurors, they should use only investigatory methods which minimize the risk of causing harassment, embarrassment, or invasion of privacy.

C. If juvenile prosecutors are in a jurisdiction that allows them to personally examine jurors on voir dire, they should limit their questions solely to those designed to elicit information relevant to the intelligent exercise of challenges. They should not expose the jury to evidence which they know will be inadmissible, nor should they argue the case to it.

Commentary

As previously noted in the commentary to Standard 3.3 *supra*, while only a very limited number of states presently provide for a jury trial in the adjudicatory hearing of the family court, these standards take the position that a youth should have the right to a jury trial (*Adjudication* § 4.1). Thus, this standard will be applicable to an increasing number of jurisdictions in the future. It is drawn from ABA Standards for Criminal Justice, *The Prosecution Function* § 5.3 (Approved Draft 1971) which, together with its commentary and precedents, should also be consulted.

Few, if any, family court cases should require extensive examination into the background of potential jurors. The purpose of the examination should be simply to uncover statutory disqualifications, and to permit the juvenile prosecutor to make intelligent use of his or her peremptory challenges. It is preferred that the examination be conducted by the family court with a right for counsel to ask additional questions in the discretion of the court. This will avoid the recurring spectre of counsel making statements on voir dire examination calculated to influence prospective jurors that would be violative

of ABA, "Canons of Professional Ethics" No. 22 (1968), which provides that a lawyer should not "introduce into an argument, addressed to the court, remarks or statements intended to influence the jury or bystanders." If the juvenile prosecutor feels that an investigation into the backgrounds of prospective jurors is necessary, he or she should conduct it in such a manner as to minimize potential embarrassment and inconvenience to them. The privacy of prospective jurors should be invaded as little as possible.

The task to be accomplished at the voir dire is the selection of a jury. As noted, it is not the proper time to present argument. Any attempt by the juvenile prosecutor to accomplish improper objectives is specifically disapproved by this standard. The juvenile prosecutor should prepare for the voir dire in a manner that will insure that nothing objectionable is even accidentally introduced during the selection of the jurors.

6.5 Opening statement.

In their opening statements juvenile prosecutors should confine their remarks to evidence they intend to offer which they believe in good faith will be available and admissible, and a brief statement of the issues in the case.

Commentary

This standard has been drawn from ABA Standards for Criminal Justice, *The Prosecution Function* § 5.5 (Approved Draft 1971). The opening statement is designed to be informative, not argumentative. Thus, it should be limited to a statement of the issues that will be presented for the consideration of the finder of fact, and a statement of the evidence that will be offered in support thereof. Juvenile prosecutors should not allude to evidence in the opening statement which they have reason to believe may be found inadmissible by the family court. Neither should they attempt to argue the case in their opening statement. These objectives apply equally to the trial of issues to the court or to a jury.

6.6 Presentation of evidence.

A. Juvenile prosecutors should never knowingly offer false evidence in any form. If they subsequently discover the falsity of any evidence that they have introduced, they must immediately seek its withdrawal.

B. The juvenile prosecutor should never knowingly offer inadmissible evidence, ask legally objectionable questions, or make

impermissible comments or arguments in the presence of the judge or jury.

C. The juvenile prosecutor should never permit any tangible evidence to be displayed in the view of the judge or the jury which would tend to prejudice fair consideration of the issues by the judge or jury, until such time as a good faith tender of such evidence is made.

D. The juvenile prosecutor should never tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When there is any doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

Commentary

As previously noted in Standard 6.2 *supra*, the adjudicatory hearing in the family court is to be adversary in nature. The basic assumption of the adversary system is that the truth will emerge from the vigorous assertion by the parties in interest of their respective positions. However, if any of the parties present false or inadmissible evidence to the court, doubt is cast on the integrity of the system. As an officer of the court, the juvenile prosecutor is bound to maintain the integrity of the adversary system. See ABA, "Code of Professional Responsibility," DR 7-106. Also as noted in the commentary to Standard 1.4 *supra*, juvenile prosecutors should conduct themselves so as to marshal community support and confidence in the family court as an institution. The presentation of false or inadmissible evidence by them would undermine, rather than marshal, community support and confidence in the court. Thus, this standard presents a course of conduct that the juvenile prosecutor should follow closely in the presentation of evidence to the family court. It has been adapted without significant change from ABA Standards for Criminal Justice, *The Prosecution Function* § 5.6 (Approved Draft 1971). The commentary to that standard is exhaustive and should be consulted for further guidance. However, its main points will be summarized here.

The state has no legitimate interest that would ever justify the use of false evidence, regardless of the nature of the case or proceeding. Thus, juvenile prosecutors are prohibited from offering false evidence of any kind. If they become aware that evidence which they have introduced in a case is false, they are under a duty to immediately seek its withdrawal.

Juvenile prosecutors are also prohibited from offering evidence that, for whatever reason, is inadmissible. To offer such evidence would be to disregard the policy reasons behind its inadmissibility. Since juvenile prosecutors represent the state's interests, they must adhere to the state's policy behind excluding certain types of evidence.

Finally, the interests of the state in a family court proceeding are never so strong as to permit an adjudication by means other than relevant evidence and argument. Thus, juvenile prosecutors are prohibited from displaying or offering into evidence tangible evidence of an emotional or prejudicial nature, unless they genuinely believe that there is a reasonable basis for its admission and until they are ready to tender it to the family court. If there is any doubt in their minds regarding its admissibility, a formal offer of proof should be made. If the facts are being heard by a jury, such offer should be made outside its presence.

6.7 Examination of witnesses.

A. The interrogation of witnesses should be conducted fairly, objectively, and with proper regard for the dignity and privacy of the witness, and without seeking to intimidate or humiliate the witness. When examining a youthful witness, the juvenile prosecutor should exercise special care to comply with this standard.

B. Juvenile prosecutors should not call a witness whom they know will claim a valid privilege not to testify, for the purpose of impressing upon the fact-finder the claim of privilege.

C. Juvenile prosecutors should not ask a question which implies the existence of a factual predicate which they cannot support by evidence.

Commentary

This standard has been drawn from ABA Standards for Criminal Justice, *The Prosecution Function* § 5.7 (Approved Draft 1971). Once again, the commentary to that standard should be consulted for further guidance, but its main points will be summarized here.

The fair and proper treatment of witnesses is necessary in all courts, and the family court is no exception. Unfair treatment or harassment of a witness in the family court will lead to a lessening of respect for the juvenile justice system in the minds of the witness and other spectators. It will also discourage the witness from voluntarily testifying in any court in the future, and may influence him or her to discourage others from voluntarily coming forward with knowledge

and information that they may have concerning occurrences which should come to the attention of the public authorities. In addition to the disadvantages to society that may result from the improper treatment of witnesses, the juvenile prosecutor must also remember that it is plainly unfair to the witness.

When the witness to be examined is a juvenile, the reasons for treating him or her properly and fairly are even more compelling. Juvenile witnesses are likely to be especially vulnerable to improper direct and cross-examination. They are less likely to be able to rationalize away the harsh treatment that they have received. They are also likely to lose respect for the juvenile justice system as a whole if their perceptions are adversely colored by sharp practices. For these reasons, the standard imposes a special duty on the juvenile prosecutor to deal fairly with the juvenile witness.

In line with the standards recommended in the adult criminal system, juvenile prosecutors are precluded from calling a witness to the stand who they know will claim a valid privilege. Since the "stakes" in a family court proceeding are presumably not so high as in a criminal trial, the policy reasons behind this standard are even more compelling. For the same reason, the juvenile prosecutor is precluded from asking a witness a question that contains an implicit assumption for which the juvenile prosecutor has no underlying evidence or reasonable belief.

6.8 Closing argument.

A. Juvenile prosecutors may argue all reasonable inferences from the evidence in the record, but they should not intentionally misstate the evidence or mislead the fact-finder as to the inferences that may be drawn.

B. The juvenile prosecutor should never intentionally refer to or argue on the basis of facts outside the record, unless such facts are matters of common public knowledge based upon ordinary human experience or matters of which the court may take judicial notice.

C. The juvenile prosecutor should never express his or her personal belief or opinion as to the truth or falsity of any evidence or testimony, or the guilt of the juvenile.

D. The juvenile prosecutor should not use arguments solely calculated to inflame the passions or prejudices of the fact-finder.

E. The juvenile prosecutor should refrain from argument which would divert the fact-finder from his or her duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the juvenile under the controlling law, or by making predictions of the consequences of the fact-finder's decision.

Commentary

This standard has been adapted from ABA Standards for Criminal Justice, *The Prosecution Function* §§ 5.8, 5.9 (Approved Draft 1971). The commentary and precedents to those standards should be consulted for further guidance. One point to be kept in mind is that the present standard is intended to apply to both jury and court trials. While a judge presumably is less easily influenced by the conduct that is proscribed by this standard, the fact remains that he or she is a human being and may be influenced by improper argument. Of course, vigorous objection by counsel for the youth can be expected to minimize this kind of conduct, but one cannot presume that this will be sufficient in every case to ameliorate the prejudicial effect of such conduct.

Juvenile prosecutors should be their own best critics concerning the propriety of their closing arguments. Thus, while they are entitled to argue all reasonable inferences from the evidence in the record, they are prohibited from referring to or arguing on the basis of facts outside the record. Since the interests of the state are actually subverted by the intentional misstatement of evidence, juvenile prosecutors are also prohibited from engaging in such conduct.

Juvenile prosecutors are also prohibited from expressing their personal opinions as to the reliability of any testimony or evidence of guilt of the youth. The duty of rendering a decision on these issues is entrusted to the fact-finder and the expression of an opinion by the juvenile prosecutor would be tantamount to an attempt to usurp the function of the fact-finder. Thus, this standard prevents juvenile prosecutors from expressing their personal opinions concerning these issues during their closing arguments.

Finally, juvenile prosecutors are restricted to limiting their comments to issues that are relevant in the case. Thus, arguments solely calculated to incite the passions or prejudices of the fact-finder are prohibited, as are arguments designed to predict the impact on the community of a verdict in a given case. Neither of these kinds of argument is relevant to the ultimate issue in the proceeding—whether the youth has engaged in conduct constituting a law violation.

6.9 Comment by the juvenile prosecutor after decision.

The juvenile prosecutor should not make public comments concerning a finding or decision, by whomever rendered, at any stage of the juvenile justice system, from intake through post-disposition proceedings.

Commentary

Juvenile prosecutors are committed to upholding the integrity of the juvenile justice system. Thus, it is imperative that they refrain from making public their personal opinions of a finding or decision if they disagree with it. They must remember that they lack a certain objectivity in the matter, and that they have a duty to instill, rather than destroy, public confidence in the system, especially in view of the emerging visibility of that system in our society. They have more important and constructive tasks to accomplish, and should not waste valuable time commenting on a finding or decision. A parallel provision to this standard can be found in ABA Standards for Criminal Justice, *The Prosecution Function* § 5.10 (Approved Draft 1971).

This standard was placed in the section of these standards dealing with the adjudicatory hearing because it is after this hearing that prosecutors have, in the past, been most prone to issue public statements critical of a finding or decision. However, it should be noted that the standard is applicable to each and every stage of family court proceedings. Thus, public comments by a juvenile prosecutor concerning intake, waiver, disposition, appeal, or revocation of probation decisions are also disapproved.

PART VII: DISPOSITIONAL PHASE

7.1 Permissibility of taking an active role.

A. Juvenile prosecutors may take an active role in the dispositional hearing. If they choose to do so, they should make their own, independent recommendation for disposition, after reviewing the reports prepared by their own staff, the probation department, and others.

B. While the safety and welfare of the community is their paramount concern, juvenile prosecutors should consider alternative modes of disposition which more closely satisfy the interests and needs of the youth without jeopardizing that concern.

Commentary

In the past, prosecutors in juvenile court were not viewed as participants in an adversary system. See, *e.g.*, Fox, "Prosecutors in the Juvenile Court: A Statutory Proposal," 8 *Harv. J. Leg.* 33 (1970); NCCD, "Model Rules for Juvenile Courts," Comment to Rule 24 (1969); President's Commission on Law Enforcement and Adminis-

tration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967). Therefore, they did not participate to any great extent at the dispositional phase of the proceedings. In particular, it was thought that their role was purely supportive of the court itself. For example, one commentator suggested that prosecutors should merely "assist the court to obtain a disposition of the case which is in the best interest of the child." Whitlatch, "The Gault Decision: Its Effect on the Office of the Prosecuting Attorney," 41 *Ohio B.J.* 41 (1968).

These standards, however, view the prosecutors as advocates essentially in an adversary system, albeit not the complete criminal adversary model, and as having the interests of the state as their primary goal. Therefore, the standards give them a clear voice in the dispositional phase in order to make certain that this role is carried out effectively.

A survey of sixty-eight major American cities conducted by the Center for Criminal Justice, Boston University School of Law, found that in only 8.8 percent of the cities surveyed did the prosecutor make a recommendation concerning disposition. In 60.3 percent of the cities a disposition recommendation was made by the probation officer. Center for Criminal Justice, Boston University School of Law, "Prosecution in the Juvenile Courts: Guidelines for the Future" (1973), Appendix B, p. 317.

Owing to the negative view toward a traditional adversary position for the prosecutor in juvenile court espoused by the President's Task Force Report of 1967—President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 34 (1967)—and the NCCD "Model Rules for Juvenile Courts," Comment to Rule 24 (1969), it is unlikely that either body would have endorsed the concept of giving the prosecutor an active role at the dispositional phase of juvenile court proceedings. However, these positions were taken at a point when the juvenile court was undergoing substantial change and the roles of the participants were being irrevocably reshaped. It is at least doubtful that either body would take the same view of the appropriateness of the adversary model in juvenile court today.

Many states still make no provision for permitting a dispositional recommendation by prosecutors in juvenile court proceedings, although this is the stage in which the interests of the state may be most urgent. Juvenile prosecutors should be permitted to make their own, independent dispositional recommendations in order to insure that the public interest has been taken into account by the family court. Giving juvenile prosecutors the option to participate in the

dispositional hearing will enable them to assure the community that its safety and welfare are protected, especially in view of the traditional confidentiality of the proceedings.

If juvenile prosecutors choose to take an active role in a dispositional hearing, any recommendation that they make should be independent of that of the probation department or counsel for the youth, although they may all reach the same conclusion. While juvenile prosecutors are the representatives of the community, they need not seek the most severe disposition allowable under the facts and the law of the case, but should consider the desirability of the least drastic disposition. They should also take into account the interests and needs of the youth and his or her prospects for rehabilitation in different dispositional programs. In doing so, they should consider all social and medical reports concerning the youth prepared by their own investigators, the probation department, and other agencies. They should also consider the youth's police and family court record. In addition, juvenile prosecutors must be mindful of selecting a dispositional alternative that is proportional to the offense committed by the youth. In order to effect a greater uniformity in the administration of juvenile justice, juvenile prosecutors should consider dispositions that have been made in similar cases. While they may decide to recommend the same disposition that the youth's counsel seeks, they should do so only if the youth's short and long term interests are not damaged.

Implicit in the recommendation of a particular disposition is the recommendation of a time limit for the disposition, whether it be institutionalization or probation. Presently, in many states, if a youth is placed in an institution or training school, he or she will likely remain there until reaching majority. In many instances, the safety and welfare of the community have not required so long a detention, and frequently this has not been in the youth's best interests. Often, there has been a failure of the juvenile correctional system to monitor the youth's progress after he or she has been institutionalized. By including a time limitation with each dispositional recommendation that they make, juvenile prosecutors will at least be able to sound the warning that the youth is not to be forgotten after his or her day in family court.

7.2 Duty to monitor the effectiveness of various modes of disposition.

A. Juvenile prosecutors should undertake their own periodic evaluation of the success of particular dispositional programs that are used

in their jurisdiction, from the standpoint of the interests of both the state and the juvenile.

B. If juvenile prosecutors discover that a juvenile or class of juveniles is not receiving the care and treatment contemplated by the family court in making its dispositions, they should inform the family court of this fact.

Commentary

Juvenile prosecutors must be in a position to make intelligent dispositional recommendations under Standard 7.1 *supra*. As an aid to doing so, they should periodically assess the success of each mode of disposition utilized in their jurisdiction. If they find that a particular mode of disposition fails to meet either the youth's need for care and treatment or the community's interest in its safety and welfare, they should so inform the family court and the department or organization that has custody of the youth, and cease recommending that particular mode of disposition. In addition, juvenile prosecutors should exert reasonable efforts to notify the parents of juveniles receiving ineffective, inadequate, or improper care, unless the class affected is too large for such notice to be feasible.

This standard does not contemplate that juvenile prosecutors will review individually each disposition that is made by the family court. Their primary duty in this area is directed toward the efficacy of various modes of disposition employed by the courts, rather than toward individual cases. However, either in the course of their periodic evaluations of various modes of disposition, or through the receipt of complaints from a youth or his or her parents or guardian, juvenile prosecutors may become aware that in a particular disposition or class of dispositions, the dispositional program contemplated by the family court is being frustrated by official action or inaction of correctional agencies. When this occurs, they should so inform the family court so that—at least in those states in which the court retains jurisdiction over dispositional matters—it may take such action as may be deemed necessary.

While some may feel that the duties of juvenile prosecutors should not encompass the monitoring of the effectiveness of various modes of disposition, sound reasons exist for their involvement in this phase of the juvenile justice system.

First, since the parents of many young people who enter the formal processes of the juvenile justice system are indigent, it is unlikely that counsel for affected youths will monitor the effectiveness of the disposition made by the family court. Yet, young people

have a right to effective monitoring of a dispositional order. *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) *cert. denied* 417 U.S. 976; *Morales v. Turman*, 364 F. Supp. 166, 175 (E.D. Tex. 1973); *Martarella v. Kelley*, 349 F. Supp. 575, 585 (S.D.N.Y. 1972). Someone must be active in assuring that the various modes of disposition employed by the court are, on the whole, accomplishing what they purport to accomplish. While probation officers or social workers will be monitoring the effectiveness of the various programs, they may not have the authority to compel the attention of the proper officials; also, their interests, as a practical matter, do not always coincide with those of the youth. Juvenile prosecutors, by virtue of the power and prestige of their office, should be able to compel such attention.

Second, by virtue of their activity in this area, juvenile prosecutors are more likely to command the respect and cooperation of the entire community, and will be better able to fulfill their responsibilities under Standard 1.4 *supra*. Finally, the rehabilitation of young people remains a goal for the juvenile justice system. Much of the effort expended by juvenile prosecutors and other participants in the system is rendered ineffective if dispositional programs are unsuccessful. As the representative of the state's interests, the juvenile prosecutor should insure that such programs are effective.

PART VIII: POST-DISPOSITION PROCEEDINGS

8.1 Subsequent proceedings to be handled by the juvenile prosecutor's office.

The juvenile prosecutor may represent the state's interest in appeals from decisions rendered by the family court, hearings concerning the revocation of probation, petitions for a modification of disposition, and collateral proceedings attacking the orders of the family court.

Commentary

The juvenile prosecutor, rather than the local prosecutor or other government attorney, may handle all appeals from judgments of a family court. Juvenile prosecutors will be more familiar with the applicable law, and thus more capable of representing the state's interest in appellate litigation. If they have previously handled the case in the family court they will be familiar with the record. They will be better able to formulate and administer a uniform prose-

cutorial policy in juvenile matters if they control appellate litigation.

Similar policy reasons are at least equally compelling when applied to hearings concerning the revocation of probation, the modification of disposition orders, and all subsequent collateral attacks allowed by the rules of procedure of the particular jurisdiction. For the same reasons, the juvenile prosecutor may represent the state's interests in any appeal from a decision concerning the waiver of family court jurisdiction. The standard recognizes that present lines of jurisdiction and authority among government counsel may have to be adjusted to permit the juvenile prosecutor to engage in post-disposition proceedings.

It is recognized that smaller jurisdictions may not be able to effectuate such a localization of functions in their offices. These jurisdictions may prudently elect to have all appellate and other post-disposition litigation handled by a statewide office (*cf.* Standard 2.6 *supra*). Possible advantages to the centralization of such litigation include a uniformity of the quality of appellate and other post-disposition advocacy throughout the state, and the institution of a centralized system of research collection to minimize the present wasteful duplication of research. National Association of Attorneys General, "Recommendations on the Prosecution Function" § 13 (1971). A jurisdiction may properly conclude that, given its particular circumstances, a centralization of appellate and other post-trial litigation may be better suited to its needs and resources. In other cases, the use of a regional system of handling appellate and other post-trial litigation may enable a jurisdiction to obtain some of the benefits of centralization without losing all of the benefits of localization. Thus, while this standard expresses a preference for the localization of post-disposition litigation in the juvenile prosecutor's office, each state must consider its own needs and resources, and may adopt the model that seems most appropriate.

8.2 Expediting subsequent litigation.

A. If juvenile prosecutors become aware of the possibility that a juvenile is violating the terms of a probation order, they should investigate the matter promptly and decide as quickly as possible whether they will seek a revocation of probation status.

B. If a juvenile files an appeal, or seeks a modification of the disposition that has been rendered in his or her case, the juvenile prosecutor should decide, as quickly as possible, what his or her position will be in response to the juvenile's action, and then act as quickly as possible to effectuate that decision.

Commentary

The importance of the speedy disposition of cases in the juvenile justice system cannot be overemphasized. The youth, his or her parents, the complainant, and the public are all interested in and benefit from a speedy disposition. This standard reminds juvenile prosecutors that speedy response to post-adjudication matters is required of them.

Subsection A. of this standard, dealing with the possibility of revocation of probation, imposes on the juvenile prosecutor a duty to act as quickly as possible. Because juvenile prosecutors do not have a duty to follow up on each individual disposition, they may not become aware of a violation of the terms of a youth's probation order until some other party brings the matter to their attention. However, once they become aware of the situation, they should investigate the matter as quickly as possible and decide on a course of action. The investigation should include consultation with the juvenile's probation officer.

Subsection B. of this standard, dealing with the response of the juvenile prosecutor to appellate and collateral litigation initiated by the youth, reinforces the general theme of speedy decision and action on the part of the juvenile prosecutor. In this area it is to be expected that statute and court rules will regulate the maximum amount of time that the juvenile prosecutor will have to respond to a youth's initiatives. Once again, however, the juvenile prosecutor should endeavor to respond to appellate and collateral litigation in as short a period of time as possible.

The juvenile prosecutor need not automatically assume a stance in opposition to that of the youth in subsequent litigation. If, for example, the youth seeks a modification of the dispositional order, the juvenile prosecutor should study the matter to see if the requested change would be beneficial to the youth and not detrimental to the public interest. If these two criteria are met, the juvenile prosecutor may even join the youth in seeking a modification of the order. Juvenile prosecutors should not mirror the position of the correctional authorities, but should reach their own decisions based upon their independent review of all facts and circumstances. However, whatever course of action they ultimately decide to take, juvenile prosecutors should make and implement their decisions as quickly as possible.

Juvenile prosecutors should never file a frivolous appeal. Also, while a prospective appeal may possess some legal merit, juvenile prosecutors should not file it unless they believe that the family

court's decision compromises the community's interests in its safety and welfare. If juvenile prosecutors file an appeal but subsequently determine that its further prosecution will not advance the community's interests, they should withdraw the appeal.

8.3 Facts outside record in post-disposition proceedings.

The juvenile prosecutor should not intentionally refer to or argue on the basis of facts outside the record on appeal, or in other post-disposition proceedings, unless such facts are matters of common public knowledge based upon ordinary human experience or matters of which the appellate court may take judicial notice, or the taking of new evidence is otherwise appropriate in the proceeding.

Commentary

The necessity of staying within the record at the trial level has been addressed in Standard 6.8 B. *supra.* When a case is in a post-disposition posture, this need is equally pressing, because such courts may have less flexibility in dealing with the problem of enlarging the record. Thus, juvenile prosecutors must not intentionally refer to facts not within the record, unless new evidence is properly received in the proceeding (such as a collateral proceeding). Juvenile prosecutors should be scrupulously familiar with the record, so that they do not inadvertently refer to a fact not within it.

Permissible exceptions to this rule exist where a fact is a matter of common public knowledge based on ordinary human experience, or is a matter of which a court may properly take judicial notice. In the case of subsequent proceedings, such as probation revocation proceedings, modification proceedings, and collateral proceedings such as *habeas corpus*, where new evidence may be received, the problem does not arise. For further guidance in this area, the juvenile prosecutor should consult ABA Standards for Criminal Justice, *The Prosecution Function* § 5.9 (Approved Draft 1971); *Id.*, *The Defense Function* § 8.4.

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