

✓ ATTORNEY REPRESENTATION IN JUVENILE COURT: A COMPARISON
OF PUBLIC DEFENDERS AND PRIVATELY RETAINED COUNSEL

Paula Hancock

and

Katherine Teilmann Van Dusen
University of Southern California

U.S. Department of Justice
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INTRODUCTION

This paper is concerned with hearing outcomes obtained for clients by public defenders, private attorneys and court-appointed attorneys in juvenile waiver hearings. Specifically, the research question is: Are there systematic differences in hearing outcomes for clients of these three attorney types?

A waiver hearing (also referred to as a transfer hearing or fitness hearing) is held to determine whether a juvenile is fit to be tried within the juvenile court system, or if s/he should be remanded to adult criminal court. A waiver decision is usually based on the seriousness of the crime alleged, the juvenile's past history with the juvenile court system, and the court's ability to treat effectively or rehabilitate the offender. With the passing of juvenile justice legislation in California in 1977, there has been an increasing incidence of waiver hearings. For example, in 1976, there were 102 such hearings in Los Angeles and 118 in Alameda County. In 1977, these figures rose to 411 in Los Angeles and 187 in Alameda County.

Since in re Gault (1967) there has been discussion of the role of attorneys in juvenile court, but little if any investigation into their effectiveness, which is the focus of this study. Effectiveness, is a rather crucial question and is of special concern in the case of waiver hearings, where the juvenile may be found unfit for juvenile court processing and thus subject to more severe treatment in adult criminal court.

Defendants generally have negative attitudes toward public defenders and court-appointed attorneys, one reason being that they are seen as

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"part of the system" and hence co-opted to act in the best interest of the court (i.e., to take a non-adversarial stance in order to process as many cases in one day as possible) rather than in the best interest of their clients (Duquesne Law Review, 1971; Platt, et al, 1968). When a juvenile is accused of a crime serious enough to warrant a waiver hearing, that person will want the best attorney representation possible; generally, the preference will be for a private attorney. Platt and Friedman (1968) state that "many persons who are marginally or even officially poor prefer to scrape together a token fee rather than accept the free services of a court appointed lawyer." (Platt & Friedman, 1968, p. 1170).

But the question is, are private attorneys really more effective than public defenders and court appointed attorneys in keeping their clients within the juvenile court's jurisdiction? The increasing incidence of waiver hearings, and the almost universal use of attorneys for representation in these hearings calls for an investigation into attorney effectiveness in preventing referral to adult criminal court.

A brief review of the background of attorney presence in juvenile court follows, along with a look at existing research which draws comparisons between the different attorney types in securing favorable trial outcomes for their clients.

LITERATURE REVIEW

The Gault decision of the U.S. Supreme Court in 1967 guaranteed that, although juvenile delinquency proceedings are not criminal in nature, juveniles will be accorded full protection under the Bill of Rights as incorporated in the Fourteenth Amendment, with the exception of the rights

to bail and jury trial. This assures the juvenile, among other things, of the right to counsel. This was the fundamental issue in Gault because exercise of this right assures procedural regularity and the implementation of related principles. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether there is an adequate defense, then to prepare and submit it (Platt & Friedman, 1968).

Concurrent with increasing appearances of attorneys in juvenile court, there has been a substantial growth of public defender systems, and the Gault decision encouraged legal aid and public defender offices to send lawyers into juvenile court. Many such organizations anticipated the Supreme Court's ruling and established special services for juveniles in 1966.

Thus, it is generally agreed that in re Gault established the trend of attorney representation in juvenile court. In this paper the concern is with what kind of attorney gives the best representation in juvenile court.

There is scarce research on this topic, although comparable studies have been done with adult court data; that is, some research has been attempted to assess whether there are quality differences in representation for clients of private attorneys, court appointed attorneys and public defenders in criminal court. The general expectation is that public defenders will obtain less favorable results, one, because they get "tougher" cases, and two, because of case overload. Overall, though, no significant differences are found between the three attorney types in trial outcomes

after controlling for complicating factors such as prior offenses, charge, and pre-trial detention (Hermann, et al, 1977; Lehtinen & Smith, 1974; Oaks & Lehman, 1970; Stover & Eckart, 1975; Wheeler & Wheeler, 1980). In some instances, a client will fare better with a public defender because of the attorney's familiarity with the court system. In addition, private attorneys in criminal court are often marginal practitioners who may provide inadequate representation for their clients, primarily because of financial and time pressures.

Oaks & Lehman (1970) found marked differences in the style of representation favored by private attorneys and public defenders, as well as differences in where they both have their successes and failures. Overall, the differences suggest not that one kind of counsel is better than another, but that they perform somewhat different roles in the overall operation of the criminal justice system. "The various types of counsel have different styles of defense and these styles may be more or less appropriate for different defendants depending on their positions. For example, those against whom the evidence of the law is clear would be ill-served by a lawyer who insists on a full-fledged jury trial, as this may result in a stiffer penalty. Conversely, the defendant trapped in a web of circumstantial evidence will want the full attention of the most able and unharried trial lawyer. So, too, will the one who believes that a jury will never convict him." (Oaks & Lehman, 1970; p. 103).

Other studies have focused on the differing orientations of public defenders and private attorneys and resulting client perceptions of their effectiveness. Despite actual case outcomes, clients generally

are unfavorably impressed by public defenders and court appointed attorneys (Hermann, et al, 1977; Casper, 1978; Wheeler & Wheeler, 1980). Clients feel that they are not as "good" or well trained as private attorneys, else they, too, would have their own practices; that public defenders have less interest in their clients because of case overload; that they are co-opted into the system because they are paid by the State and thus more motivated to get along with the judge and the district attorney than to play a full adversarial role for their clients. Because the clients of public defenders don't pay, they feel that they have no power or control over their attorneys. Defendants' evaluations of their attorneys are also sensitive to the amount of time spent with them and to whether their case was resolved by trial or a plea bargain. More time spent with clients and adversary disposition processes produce the greatest client satisfaction (Casper, 1978). Stover & Eckart (1975), however, found no clear differences in regard to either adherence to the norm of advocacy or to the use of factual investigation. Real differences exist with regard to concentration of workload and court room association, but these differences provide advantages and disadvantages for both kinds of defense attorneys (public and private). There is no hard evidence that the advantages of one group outweigh those of the other (Stover & Eckart, 1975; p. 283).

Attitudes toward the attorney's ability may, in turn, actually affect attorney performance in court. As Casper (1978) notes, "client attitudes" may affect the quality of the defense offered by the attorney. To the extent that the client is highly suspicious of the attorney's motives, the client may not be open with the attorney about various aspects of the case that may affect the defense offered. To the extent that the lawyer-

client relationship is characterized by mistrust and suspicion rather than by trust and cooperation, the ability of the client and the lawyer to consult and make choices about the best strategy to pursue may be impaired (Casper, 1978; p. 3).

To our knowledge, no studies have been done in reference to juvenile court comparable to this research concerning adult criminal court and the relationship between attorney type and trial outcome. There is some literature on the role of attorneys in juvenile court, and on the quality of representation in that arena.

Erickson (1974) looked at court perceptions of the defense counsel's role in juvenile court and found that the importance and need for legal representation was supported in principle by almost everyone in her sample of judges and social workers. However, this acceptance did not apply uniformly to duty counsel (a lawyer provided by the legal aid system to represent all undefended juveniles in any one day's court session) and to private attorneys. The general need for duty counsel was affirmed, although in a restricted role. One of their primary tasks was assumed to be the protection of legal rights, but in a manner that enhanced the social purpose of the court. Duty counsel were to invoke their adversarial skills only in those exceptional cases where abuses seemed imminent. The acceptance of private attorneys, on the other hand, was linked mainly to cases arising out of serious charges or not-guilty pleas. The greater time and effort that the private lawyer could contribute to the juvenile's welfare was welcomed as the "new advocacy" by some. Others saw the private attorney as the embodiment of adversarial tactics that were a threat to the court's social purpose (Erickson, 1974; p. 145).

Similarly, Lemert (1967) notes the precarious position of the private attorney in juvenile court. Attorneys undoubtedly feel pressure to do something for their clients, but if they become contentious in true adversarial style they slow down the proceedings. Insisting on the right to cross examine witnesses adds greatly to the work of probation officers. They, as well as the judges, may become irritated, particularly if they regard the case as open-and-shut and the intended disposition as lenient. But Lemert also cautions us to the possibility of co-optation of public defenders (which was noted as a problem in the literature on public defenders in adult criminal court). Again, the warning is that the court may run more efficiently with cooperative public defenders, but at the expense of fairness to the defendant.

In these two studies, then, the viewpoint is expressed that public defenders and private attorneys are different, both in the roles they play (one compliant, one adversarial) and the types of clients they should represent (the "usual" case as opposed to the serious offender). The implication is that the private attorney is the true advocate of the juvenile, whereas the public defender is just another member of the court community. Thus, juveniles accused of serious crimes should have private attorneys who will defend them in true adversarial style.

Platt & Friedman (1968) focused on the quality of representation in juvenile court, and concluded that juveniles are probably better off with a public defender. Their study of the Cook County (Chicago) juvenile court showed that lawyers in the upper echelons of their profession came into contact with the juvenile court by accident only. Corporate lawyers and influential trial lawyers had little interest

in the minor criminal courts. Over 80 percent of the lawyers surveyed who had represented clients in juvenile court were "small fee" lawyers. These lawyers found that the juvenile court had generated its own "system of complicity" which did not encourage the kinds of informal bargaining arrangements that are found in criminal courts. Further, without any contacts in juvenile court, private lawyers in general are denied preferential treatment consistent with their status in other courts. Over three-quarters of the lawyers interviewed complained that they had to wait an unreasonable amount of time before their cases were called. The public defender, on the other hand, was granted immediate access as a member of the court community (Platt & Friedman, 1968; p. 1174). Here, then, public defenders, as members of the court community, are seen as having an important advantage over private attorneys and, by implication, are better able to serve their clients (which is the opposite conclusion of that drawn by the previous two studies mentioned).

Again, the research question is, are there systematic differences in the trial outcomes of juveniles represented by public defenders, court appointed attorneys and private attorneys? If such differences exist, are they due to systematic differences in the types of clients the attorneys represent, or are they due to real differences in the characteristics of the attorneys themselves, such as skills, mode of operation, and familiarity with the court?

METHODS

Our special concern is with waiver hearings, where the privileges and other considerations of juvenile status are at risk of being taken away with remand to adult criminal court. In this study we compared

differences in outcomes of such hearings for clients of private attorneys, court appointed attorneys and public defenders. Outcome refers to whether the juvenile was found fit or unfit for handling in juvenile court. A fit outcome is generally desirable from the client's perspective since juvenile court processing usually results in less severe treatment than remand to adult court (Van Dusen, 1981). A private attorney is defined as one who has been privately retained and paid by the client. A court appointed attorney also maintains a private practice, but periodically serves in a pool of eligibles for representing certain clients and is paid by the County or State to do so. A public defender is an attorney who works exclusively for a public defender organization, supported by the State or County, and whose services are free to the client.

The data for this study came from a larger study that was concerned with the impact that juvenile justice reform legislation (AB3121) had on the transfer process in California. The data came from two counties in California, Los Angeles and Alameda. These counties were selected because they experienced the largest post-legislation increase in waiver hearings; their data, however, cannot be assumed to represent the entire State of California. All cases subjected to waiver hearings in these counties in 1976 and 1977 were part of the cohort. This amounted to 566 cases in Los Angeles and 339 cases in Alameda County.

For this particular study, the total number of cases was 513 in Los Angeles and 305 in Alameda, as there were some cases with no attorney information, and thus were excluded from the analysis. Further, juveniles who had previously been found unfit for juvenile court would, by court order, be remanded to adult court. These cases were also excluded

from the study.

At the discretion of the court, a waiver hearing could be held and a juvenile found unfit if s/he is 16 or 17 years of age, and was judged unfavorably by the following criteria: 1] degree of criminal sophistication; 2] possibility for rehabilitation; 3] previous delinquency history; 4] success of court's previous rehabilitation efforts; 5] circumstances and gravity of the offense alleged. Further, with new legislation in 1977, in addition to these criteria, the district attorney has automatic grounds for initiating a waiver hearing if the juvenile is accused of one of eleven violent offenses¹.

Thus, the criteria for initiating a waiver hearing, and by implication, the criteria for rendering a judgment of "fit" or "unfit" for juvenile court, involve characteristics of the juvenile, characteristics of the alleged offense, and the ability of the court to reform the juvenile. We selected operationalizations of characteristics of the juvenile and characteristics of the offense to serve as control variables which may explain any relationship between outcome and attorney type. (Unfortunately, we were unable to operationalize ability of the court to rehabilitate the offender). In brief, the analysis consisted of:

¹the offenses are; murder, arson of an inhabited building, armed robbery, forcible rape, kidnapping for ransom, kidnapping for robbery, kidnapping with bodily harm, assault with intent to murder or attempted murder, assault with a firearm or destructive device, assault likely to produce great bodily injury, discharge of a firearm into a inhabited or occupied building.

1. Crosstabulating attorney type by waiver hearing outcome in order see the distribution of fitness outcome across attorney type.
2. Crosstabulating waiver hearing outcome with juvenile (client) characteristics and with crime characteristics to determine which variables may influence the court's fitness decision.
3. Crosstabulating attorney type by client and crime characteristics to see if attorneys differed significantly in the types of clients they represented.
4. Based on the results of the crosstabulations, dummy variable regression analysis was used to sort out the effects of client characteristics, crime characteristics and attorney type on fitness outcome.

Our operationalizations of client characteristics were: number of prior contacts with the police; number of prior probation contacts; probation status; gender; ethnicity; school attendance; gang status. Crime characteristics were operationalized by: number of charges brought against the juvenile; the most serious charge; weapon use; instigator of the alleged incident; amount of personal injury inflicted; the dollar value of any damage to property committed; the degree of premeditation; source of referral to the court.

The bivariate relationships between outcome and attorney type, between outcome and client/crime characteristics, and between attorney type and client/crime characteristics, for each county, are described below.

RESULTS

Crosstabulations

Los Angeles County

Crosstabulating outcome by attorney type shows that there is a relationship between these variables that is significant at the .0001 level. Public defenders are much more successful in keeping their

clients within the juvenile court, especially as compared to private attorneys:

| Attorney Type | Outcome | | |
|-----------------|--------------|--------------|-------------|
| | Fit | Unfit | |
| Private | 11 26% | 32 74% | 43 8% |
| Court Appointed | 121 47% | 136 53% | 257 50% |
| Public Defender | 127 60% | 86 40% | 213 42% |
| | 259 50.5% | 254 49.5% | 513 100% |

Chi Square = 18.98 Significance = .0001

Client/crime characteristics will serve as control variables in the regression analysis to interpret this relationship. Of these variables, the following were associated with outcome:

- *1. Prior police contacts - $r = .2802$ with unfit outcome
- *2. Prior probation contacts - $r = .2143$ with unfit outcome
3. School attendance - school absence is associated² with an unfit outcome
4. Most serious charge - homicide and rape are associated with an unfit outcome
5. Gang status - gang membership is associated with an unfit outcome
6. Weapon use - gun use is associated with an unfit outcome

²Variables are considered associated if the Chi Square probability is .2 or less. Where the Chi Square is uninterpretable because of low cell entry, the criteria for significance is a 10 point difference in percents between cells. These lenient criteria are used because we are selecting control variables for the regression, and want to allow as many variables as possible which may reasonably be expected to aid in controlling the relationship between outcome and attorney type

*where there is interval level measurement, a correlation coefficient was calculated.

7. Personal injury inflicted - the greater the amount of injury inflicted, the greater the percentage found unfit
 8. Probation Status - New status and non-criminal status are associated with a fit outcome, criminal status with an unfit outcome
 - *9. Number of charges - $r = .2342$ with unfit outcome
- Of these variables, the following were associated with attorney type:
1. Prior police contacts - $r = -.1368$ with private attorney
 2. Prior probation contacts - $r = -.1417$ with private attorney
 3. Weapon - Court appointed attorneys had the greatest proportion of clients using a gun.
 4. Most serious charge - private attorneys overrepresented homicide cases; private attorneys and public defenders had a high proportion of rape cases
 5. Personal injury inflicted - private attorneys had the greatest proportion accused of inflicting serious injury
 6. Probation status - public defenders had the greatest proportion of clients on criminal probation status. Private attorneys overrepresenting cases on non-criminal probation status, as compared to public defenders
 7. Number of charges - correlation is negligible. But because it is negatively correlated with private attorney and public defender, and positively correlated with court appointed attorney, it was used in the regression analysis.

These variables, because of their association with both outcome and with attorney type, were used for the multivariate regression analysis.³

³Prior police contacts and prior probation contacts were correlated at about .9. Because prior police contacts was a less exclusive category, and because probation status is in the equation, prior police contacts was kept in the analysis and prior probation contacts was excluded. Because injury resulting in death and homicide are the same facts with different labels, homicide was excluded from the equation. This also applies to Alameda data.

As can be seen in the crosstabulations, there is a mix of client and crime characteristics working for and against the attorney types in the clients they represented. Thus, the regression analysis is needed to sort out the effects of attorney type over and above the effect of these client and crime characteristics.

Alameda County

The crosstabulation of outcome by attorney type shows an association only at the .2 probability level. In this case, court appointed attorneys are more successful in keeping their clients in juvenile court.

| <u>Attorney Type</u> | | <u>Outcome</u> | | |
|------------------------|--|----------------|--------------|-----|
| | | <u>Fit</u> | <u>Unfit</u> | |
| <u>Private</u> | | 42 | 35 | 77 |
| | | 55% | 45% | 25% |
| <u>Court Appointed</u> | | 34 | 22 | 56 |
| | | 61% | 39% | 18% |
| <u>Public Defender</u> | | 82 | 90 | 172 |
| | | 48% | 52% | 56% |

Again, as in Los Angeles County data, client/crime characteristics will serve as control variables in the regression analysis. Of these variables, the following were associated⁴ with outcome:

1. Gender - females associated with unfit outcome

⁴Same criteria for association as used with the Los Angeles data.

2. Prior police contacts - $r = .2543$ with unfit outcome
3. Prior probation contacts - $r = .2483$ with unfit outcome
4. School attendance - absence associated with unfit outcome
5. Probation status - criminal probation status associated with unfit outcome. Non-criminal and new status associated with fit outcome
6. Most serious charge - homicide, rape, property crimes, strong arm robbery, assault with a deadly weapon (gun), and victimless crimes associated with unfit outcome. Burglary associated with fit outcome.
7. Personal injury - injuries resulting in death and requiring medical attention associated with unfit outcome.
8. Source of referral - police referral associated with unfit outcome.

Of these variables, the following were significantly associated with attorney type:

1. Gender - public defenders had the greatest proportion of female clients
2. Prior police contacts - $r = -.2094$ with private attorney
3. Prior probation contacts - $r = -.1892$ with private attorney
4. Probation status - Court appointed attorneys had the greatest proportion of clients on criminal probation status
5. Most serious charge - private attorneys had the greatest proportion of homicides; Court appointed attorneys had the greatest proportion of strong arm robberies and burglaries; Public defenders had the greatest proportion of victimless crimes
6. Personal injury - private attorneys had the greatest proportion of clients accused of causing death and serious injury
7. Source of referral - public defenders overrepresented cases referred by police

As with the Los Angeles data, these variables that are both associated with outcome and with attorney type will be used as control variables in the regression equation to help interpret the relationship between attorney type

and outcome. However, in Alameda, the relationship between attorney type and outcome is not strong, so we cannot expect as much reduction in the association after controlling for client and crime characteristics as we might expect with the Los Angeles data.

Regressions

Dummy variable regressions were performed for each county, where outcome (fit or unfit for juvenile court) was the dependent variable, attorney type (private attorney, court appointed attorney or public defender) was the independent variable, and all variables that were associated with both outcome and with attorney type in the crosstabulations served as control variables.

For each county, two analyses were performed. In the first run, attorney type was entered into the equation first, in order to see its contribution to predicting outcome by itself, with no controls. In the second analysis, all control variables were entered in a stepwise fashion, where the order of inclusion into the equation was determined by the respective contribution of each variable to explained variance. Attorney type was then forced into the equation last, in order to see what variance it could explain after the control variables had accounted for as much of the variance as they could.

Los Angeles

Allowing attorney type to enter first, the coefficients are:

| <u>Variable</u> | <u>B</u> | <u>Beta</u> | <u>R² increment</u> |
|--------------------------|----------|-------------|--------------------------------|
| Court Appointed Attorney | .11897** | .11899 | .00444 |
| Private Attorney | .32706** | .17789 | .02890 |

As expected from the crosstabulation of outcome with attorney type, private and court appointed attorney significantly predicts outcome, compared to public defenders. Both are associated with an unfit outcome (p less than .01).

Their combined R² is .03334.

The final equation of the analysis is presented below. Here, the coefficients represent the effect of that variable on outcome, with all other variables in the equation held constant. As we can see, both private attorney and court appointed attorney still predict outcome at a statistically significant level, over and above the effects of type of client represented. That is, even when controlling for characteristics of the offense and characteristics of the clients, public defenders are still more likely to obtain fit outcomes for their clients in juvenile waiver hearings than are private attorneys and court appointed attorneys. However, at a more substantive level, looking at each variable's contribution to total R², the effect of private attorney representation on unfit outcome is more than the effect of representation by a court appointed attorney. Private attorney representation explains over two percent of the variance in unfit fitness, whereas court appointed attorney representation contributes less than nine-tenths of a percent. Thus, even though both variables are statistically associated with outcome, based on their contribution to the total R², the more important contribution to an outcome of unfit fitness is from private attorneys.

| <u>Variable</u> | <u>B</u> | <u>Beta</u> | <u>R²</u> |
|-------------------------------|------------|-------------|----------------------|
| # Prior Police Contacts | .02185*** | .29721 | .07615 |
| Injury=Death | .34792*** | .24918 | .07615 |
| # of Charges | .05277*** | .15989 | .03639 |
| Injury=Hospitalization | .15526*** | .10558 | .00855 |
| Weapon use other than gun | -.10786*** | -.09542 | .00423 |
| Injury=medical attention | .07694* | .05681 | .00327 |
| Non-criminal probation status | -.09258* | -.05744 | .00236 |
| Charge=Rape | .07689 | .04135 | .00183 |
| Gun Use | -.01772 | -.01770 | .00002 |
| Private attorney | .32281*** | .17558 | .02070 |
| Court appointed attorney | .01833*** | .09874 | .00865 |
| Constant | = .01833 | | |
| Total R ² | = .22449 | | |

* p = .05; ** p = .01 *** p = .001

Alameda

Allowing attorney type to enter the equation first the coefficients are:

| Variable | B | Beta | R ² |
|--------------------------|-----------|---------|----------------|
| Private Attorney | -.09294 | -.07934 | .00266 |
| Court Appointed Attorney | -.19899** | -.10627 | .01052 |

* p = .05

As expected from the crosstabulations, private attorneys and court appointed attorneys are negatively associated with an unfit outcome, however, the association is not strong with private attorneys. The outcomes that these private attorneys obtained for their clients are not substantially better than the outcomes obtained for clients of public defenders.

The final equation of the stepwise analysis is presented below. Again, the coefficients represent the effect of that variable on outcome with all other variables held constant. With client/crime characteristics as control variables, the effect of attorney type on outcome is not profound. Private attorneys, court appointed attorneys and public defenders are approximately equal in obtaining fit outcomes for their clients in court. Compared to public defenders, court appointed and private attorneys have a negative effect on unfit outcomes. Even though this effect is statistically significant for court appointed attorneys at the .05 level, substantively we can't really make a case for their effect on outcome, because this variable explains only five-tenths of a percent of the variance in outcome. Even before the control variables were entered, attorney type explained just a little more than 1 percent of the variance.

Thus, for this county, there does not seem to be any systematic relationship between attorney type and fitness outcome.

| Variable | B | Beta | R ² |
|---------------------------|-----------|---------|----------------|
| # Prior police contacts | .01708*** | .20341 | .06014 |
| Charge=Victimless Crime | .26869*** | .11909 | .02728 |
| Injury=death | .30619*** | .14345 | .01751 |
| # of charges | .03518*** | .11344 | .01663 |
| Injury=medical attention | .23659*** | .10171 | .00971 |
| Female offender | .12630** | .09228 | .00553 |
| Charge=strong arm robbery | -.15680 | -.07346 | .00553 |
| Charge=burglary | -.06717 | -.04908 | .00478 |
| Criminal probation status | .08126 | .08015 | .00284 |
| Source of referral=police | .06336 | .05075 | .00233 |
| Injury=hospitalization | .03478 | .02205 | .00034 |
| Court appointed attorney | -.10685* | -.08175 | .00531 |
| Private attorney | -.02941 | -.02511 | .00053 |
| Constant = | .18300 | | |
| Total R ² = | .15865 | | |

* p = .05 ** p = .01 *** p = .001

SUMMARY AND CONCLUSIONS

It is important to look at the effectiveness of different attorney types representing juveniles in waiver hearings because of, 1) the increasing incidence of waiver hearing, 2) the overwhelming presence of attorneys at these hearings, and, 3) the unfavorable public image of public defenders.

This paper began with the question, "Are there systematic differences in fitness outcomes obtained for clients of private attorneys, court appointed attorneys and public defenders?" Based on zero-order crosstabulations it was found that, for this cohort, there were significant differences in outcome among attorney types in Los Angeles County, and differences to a lesser degree in Alameda County.

The next question was, "What can account for these differences?" Can differences in outcome be explained by differences in the types of

clients the attorneys represented? Or, are there real differences among the attorney types themselves in training, mode of operation within the juvenile court (adversarial as opposed to cooperative) or in familiarity with the juvenile court process?

This research tested the possibility that differences in types of clients represented could explain differences in successful outcomes among the attorney types. After controlling for client and crime characteristics, the basic relationship as found in the zero-order tables between outcome and attorney types remained essentially the same in Los Angeles County; that is, public defenders were still more successful in keeping their clients in juvenile court than were private attorneys, especially, and court appointed attorneys, to a lesser extent. In Alameda County, the differences among attorney types as found in the zero-order tables, which were slight, were diminished after controlling for client and crime characteristics, to the extent that we can now say there were no systematic differences in outcome among the attorney types in that county. Considering the types of clients represented and the offenses with which they were charged, public defenders were just as effective in preventing remand to adult court as were private and court appointed attorneys.

Considering the regression analysis results, even though the variance explained by attorney type is only three percent in Los Angeles County and less than one percent in Alameda County, we still feel that this is a "significant" finding for the following reasons:

1. If the system of attorney representation was working as intended,

attorney type would not explain any of the variance in outcome. This is clearly not the case with the Los Angeles data, though in Alameda attorneys do seem to be on more of an equal footing.

2. The direction of the relationship between attorney type and hearing outcome is the opposite of what we would expect based on popular belief. Court appointed attorneys and public defenders are associated with successful hearing outcomes, whereas private counsel are less successful in keeping their clients within the juvenile court's jurisdiction.

These results lead to the conclusion that the unfavorable image of the public defender is an unfortunate misconception. When a juvenile is accused of a crime serious enough to call for a waiver hearing, that person will want the best attorney representation possible. If the juvenile's family hires a private attorney with the expectation of better representation, then they are probably wasting their time and money. More importantly, juveniles may be lowering, rather than raising their chances for a favorable hearing decision by rejecting the services of the public defender or court appointed attorney.

These results also leave us wondering why public defenders in Los Angeles County are more successful in juvenile waiver hearings than the other attorneys, especially private attorneys. Familiarity is a plausible answer, though we have no data to test this. The presence of defense counsel in juvenile court has made juvenile proceedings more and more adversarial in nature and thus more similar to adult criminal proceedings. However, important differences still remain, such as the absence of a right to jury trial, differences in rules of procedure and differences in rules of evidence. The client of an attorney not familiar with the peculiarities of a system may suffer because of it.

Public defenders are generally assigned to a specific court for a given length of time and thereby come to know the procedures quite well. In both Los Angeles and Alameda Counties, the Public Defenders' Office has a separate juvenile division; thus, the attorneys assigned to that division are working exclusively within the juvenile court.

Private attorneys in Los Angeles County, on the other hand, appear to be making only sporadic appearances in juvenile court. They represented only 8 percent of all cases in this study. By contrast, in Alameda County, the private attorneys represented only 25 percent of all cases, indicating that private attorneys, as a group, were making regular appearances in juvenile court, and thus were probably familiar with the proceedings.

Again, we have no data to test this "familiarity hypothesis", but suggest that this may be an area for investigation in future studies of attorney representation in juvenile court.

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