

**A Place Apart:
Responding to Youth Charged as Adults in a Specialized
New York Criminal Court**

by

CARLA BARRETT

A Dissertation submitted to the Graduate Faculty in Sociology in partial fulfillment
of the requirements for the degree of Doctor of Philosophy,
The City University of New York
2007

UMI Number: 3283208

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This manuscript has been read and accepted for the
Graduate Faculty in Sociology in satisfaction of the
dissertation requirement for the degree of Doctor of Philosophy

April 18, 2007 William Kornblum
 - Chair of Examining Committee

April 18, 2007 Philip Kasinitz
 - Executive Officer

Mitchell Duneier
Michael Jacobson
- Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

A PLACE APART:
RESPONDING TO YOUTH CHARGED AS ADULTS IN A SPECIALIZED NEW
YORK CRIMINAL COURT

by

Carla Barrett

Adviser: Professor William Kornblum

This ethnography investigates how the tensions inherent in trying youth as adults are embodied within day to day practices in one specialized criminal court set aside for “adult juveniles.” Situated within a specific retributive legal structure, this court has developed unique strategies to respond to both the requirements of criminal law and to the real needs of its young defendants. This ethnography reveals that while legally designated as “adults,” most defendants (most of them Black and Hispanic males) are signified as children by paternalistic treatment from the judge, by the importance the court gives to the role of parents, and the use of alternative to incarceration (ATI) programs that privilege staying in school, getting good grades, abiding by curfews and obeying elders. The confusing and often contradictory processes that arise from these tensions are indicative of the court’s attempt to deal realistically, and individually, with defendants who are adolescents, revealing an innovative re-conceptualization of a *parens patriae* style philosophy within the structure of a criminal court.

Acknowledgments

There are many people I would like to thank for helping me complete this project. First, thank you to my brilliant dissertation committee for seeing me through this process. Michael Jacobson originally talked me out of going to law school – thank you. Michael’s knowledge of the New York criminal justice system, as well as his connections in various agencies across the city, were invaluable at many stages of this research. Mitchell Duneier gave serious and detailed attention to early proposals and early chapter drafts and provided excellent advice throughout the project on both research and writing. As committee chair, Bill Kornblum’s unwavering confidence in my abilities, even (especially) when I was doubtful, carried me through the rough spots. It has been an honor to work with you all. If I have achieved any level of skill in the craft of ethnography it is simply because I have been trained by some of the best: Angela Gilliam, Alisse Waterston, Terry Williams, Bill Kornblum and Mitchell Duneier. Thank you all – for doing and for teaching.

Dean Mauro of the New York Division of Criminal Justice Services provided much of the quantitative data on Juvenile Offender indictments (and kindly put up with my repeated requests for more). This work would not have been possible without the help of so many who work in and around the court. Attorneys, ATI representatives, court advocates, and court staff (whom I wish I were able to acknowledge here by name) were overwhelmingly willing to share their time, their expert knowledge and their experiences with a grad student. Judge Michael Corriero (who has kindly allowed me to use his real name) has opened his court to me for over five years. He, and his staff, have been tremendously generous with their time and endlessly patient with my repeated questions and request for still more information. Although the current field research is completed I know I will return to the youth part, partly because the powerful stories of kids in the criminal justice system remain compelling, and partly because I receive sustenance from spending time with those who work so tirelessly, often thanklessly, to try and make a difference.

Two organizations originally inspired my interest in researching court-involved youth. My time with Save Our Sons and Daughters (SOSAD) in Detroit and The Harlem Writers Crew in New York back in the 1990s set me on this path originally. Thanks to Clementine, Terry, Greg, Andy, Avery and all the kids (in Detroit and New York) for sharing your worlds with me.

Numerous colleagues and friends have read early drafts, helped work out theoretical and methodological concerns, commiserated, and inspired along the way. Thank you to Greg Snyder, Rebecca Tiger, Diana Rickard, Jonathan Wynn, Rich Ocejo, Liz Perea, Claudio Benzecry, Carolyn Turnovsky, Michelle Ronda, Nina Aledort, Rabbi Megan Doherty, Rachel Sponzo, Trevor Milton, David Brotherton, Jock Young, Lynn Chancer, Jeff Ferrell, and all the Common Sessions folk. A special thanks to Susan Will for being my “go to” person for the Sociology of Law.

On a more personal note, a special thanks to Jan Cargile and Celeste Donovan – I couldn't have done it without either of you. Thanks to the Tuesday night Tadasana yoga group for helping me keep my feet on the ground (evenly) and for keeping me laughing. Thanks to Lenny, Cristina and Vladimir for being my New York family and for helping me stay healthy these past 10 years. Your friendship is precious to me. Last but not least, thank you to my family – Ronda, Amy, Shirah, Anna, Musa and Miss Loretta for all the unconditional love and continuous support. You are the great heart that stands me by.

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INTRODUCTION

The 1990s witnessed fundamental changes to the legal systems and judicial processes confronted by young persons accused of crimes in the United States – so much so that in 1998, Franklin Zimring wrote that “[T]he years since 1991 have witnessed a larger volume of legislation on the subject of adolescent violence than any previous short period” (15). The most profound change since the early 1990s has been the rapid increase in the practice of trying youth as adults – a practice often referred to as “transfer” in criminal justice parlance because the practice of trying youth as adults usually involves the transfer of certain defendants from the jurisdiction of a juvenile court system to a criminal (i.e. adult) court jurisdiction.¹ In the 1990s, 49 states passed laws making it easier to try youthful offenders as adults (Griffin 2002). As Steinberg and Cauffman (2000) state this decade of criminal court net-widening, “is a fundamental challenge to the very premise on which the juvenile court was founded: that adolescents and adults are different in ways that warrant their differential treatment under the law” (379). Across the country, in the last 15 years, “transfer” has become a preferred response to adolescent offending.

The proliferation of new “transfer” policies over the last decade and a half has created a unique, and growing, category of defendant in courtrooms around the country – that of the “adult juvenile.” This group of defendants, however, is no way homogenous. The point at which a young person ceases to be a child and becomes an adult for purposes of legal prosecution varies vastly across the states. Some states look to

¹ While the terms "criminal" and "adult" are often used interchangeably in reference to non-juvenile court systems, the reader is reminded that both terms are highly problematic. “Juvenile” courts do indeed process and hold accountable persons accused of serious, sometimes violent, criminal activity and “adult” systems are, in some places, handling offenders as young as 10 years of age.

age, some look to the nature of the alleged offense, some examine both. Some states *require* that a youth of a certain age charged with certain offenses be tried as an adult, while some states leave the decision to “transfer” a youth to criminal (adult) court up to the discretion of a juvenile court judge, while still other states put such decision making power in the hands of prosecutors (Sentencing Project 2001; Torbet & Szymanski 1998). Some states use a complex combination of these different “transfer” mechanisms.

In some states you can be tried as an adult as young as 10, while others set the age as high as 15. Some states set no minimum age at all. In Illinois, you can be tried as an adult at 15 for selling drugs near a school or public housing complex, while in New York State you can only be tried as an adult at 15 for a violent felony (National Center for Juvenile Justice 2004; Warner 2004). The result is 52 diverse sets of rules for when and how youth can be tried as adults in the United States.² While all states have recently passed some form of transfer legislation, the diversity of age ranges and jurisdictional conditions are evidence of the persistent tensions in American society over the appropriate legal and social response to adolescent crime and violence and the lack of consensus across the country over when, exactly, a child should become an adult before the law.

Society, and lawmakers in particular, have forever been troubled about what to do with and for young law breakers. The birth of the juvenile court as a concept at the turn of the last century was borne out of a dual motivation consisting of both a concern for the welfare of neglected and abused “children in need” and the desire to quell socially transgressive behavior among young people, especially those from among poor, urban

² The 50 states, the District of Columbia and the Federal justice system. Although we often talk of *the* Criminal Justice System, there are in fact a multitude of criminal justice *systems* operating across the states. See Appendix A for a summary of the laws currently governing transfer laws in each state.

immigrant populations (Feld 1999; Menzel 1973; Platt 1969; Tanenhaus 2004). Debates over what role the state should play in caring for and/or punishing wayward youth have gone on before and since the introduction of the first juvenile court established in Chicago in 1899. Championing a belief in the redemptive power of rehabilitation, the early juvenile court movement touted a philosophy known as *parens patriae*. *Parens patriae* translates literally to "parent of the country," indicating the role of the state as surrogate parent or guardian (Black 1990). Under this guiding principle, the state, in response to lawbreaking children, was to act "in the best interests of the child" in a non-adversarial environment structurally different from the criminal courts.

In the hundred years since the introduction of the first juvenile court, the number of juveniles in the general population has grown or shrunk, arrests rates of young offenders have risen and fallen, fear of crime has waxed and waned and political will has pulled more strongly toward either the retributive or the rehabilitative sides of the ideological arguments. Locked into a prolonged retributive phase in regard to criminal justice policies as the United States currently is, the practice of trying youth as adults, or "transfer," has very quickly become institutionalized practice around the nation. This practice, which removes young people from the jurisdiction of traditionally less adversarial, *parens patriae* based juvenile court systems and places them within criminal court systems, has quickly become an accepted response to youth crime and violence. This practice, firmly entrenched within retributive ideology, has been fueled largely by misguided lawmakers championing so-called "tough on crime" policies, by a media fixated on sensational cases of youth violence, and by a general public largely

misinformed as to the actual amount of crime and severity of violence truly attributable to adolescent offenders (Zimring 1998).

Recent years have seen a proliferation of research on the policy changes that have swept the nation since the early 1990s that either allow for or demand that more youth be tried as adults (Amnesty International 1998; Bishop 2000; Butts & Harrell 1998; Butts & Mitchell 2000; Griffin 2003; Griffin *et al.* 1998; Mears 2003; Myers 2003; Rainville & Smith 2003; Tanenhaus & Drizon 2003; Torbet *et al.* April 2000; Torbet & Szymanski 1998; Zimring & Fagan 2000). In addition, dedicated researchers are beginning to analyze the consequences – both intended and unintended (Merton 1936) – of the hybrid category of offender these policies have created and the impact of these policies on justice institutions, legal practices, and young defendants (Building Blocks for Youth 2001; Gaarder & Belknap 2002; Juskiewicz 2000; Kupchik 2003; Kupchik 2004; Lanza-Kaduce *et al.* 2005; Lemmon *et al.* 2005; Males & Macallair 2002; Mason & Chang 2001; Myers 2005; Redding 2003; Sentencing Project 2001; Snyder *et al.* 2000; Winner *et al.* 1997). Although the literature on trying youth as adults has grown in the past few years, research has been limited and as Torbet *et al.* wrote in 2000, “the real impact of reforms . . . that expose juvenile offenders to adult criminal sanctions is still largely unknown” (45). Qualitative research on the practice of trying youth as adults has been particularly sparse.

This ethnography investigates how the tensions, inherent in the basic concept of trying youth as if they were adults, are embodied within day to day court practices in one of the criminal courts known as Youth Part in the borough of Manhattan in New York

City.³ Created in 1992 as a place apart for youth charged as adults (Lieberman *et al.* 1999; Wise 1992), the Manhattan Youth Part provides an ideal setting from which to investigate the tensions and contradictions that exist around treating young offenders as legal adults while still acknowledging their social status as children. One of the few qualitative studies conducted in regard to trying youth as adults was Kupchik's (2004) work on the role of admonishing within court practices in another one of New York's specialized youth parts. In his study, Kupchik also found court practices reflecting, "two potentially conflicting, long-held ideas about punishment – proportionality and reduced culpability among youth" (158).

As Kupchik suggests the New York City Youth Parts are particularly valuable case studies for research in the criminal prosecution of adolescents for several reasons. First, since 1902 New York State had set the age of criminal court jurisdiction at 16 while most states had set it at 18, so that for decades judicial systems in New York have been involved in the criminal prosecution of teenagers. Secondly, New York State complicated matters in 1943 when it passed a law that allowed criminal courts the option of granting something called Youthful Offender status to certain qualifying defendants between the ages of 16 and 19. Youthful Offender status allowed for the sealing of criminal court records and the removal of the felony conviction from a young person's record, thereby sparing them the negative impact of a lifelong felony record (Fisher 1955; Grinnell 2000). Then, in 1978 New York State passed the Juvenile Offender Law, which mandated that 13, 14 and 15 year-olds charged with certain felony offenses be tried as adults. The first law of its kind in the country, the "JO law" – which was considered quite

³ Courtrooms are called "parts" in New York.

harsh at the time – set an early legislative precedent for policy regarding the practice of trying youth as adults in the United States.

Since passage of the JO law in 1978 the vast majority of young people charged as Juvenile Offenders (those 13, 14 and 15 year-olds charged with certain felonies) in New York State have been in the five boroughs of New York City (Warner, 2004). In 1992 the Manhattan Youth Part was created, brought about largely by the work of an activist judge and other parties interested in addressing the unique legal and social needs of these young defendants. So, just as many states were beginning to pass new transfer legislation in the early 1990s, the Youth Part was creating a unique place apart for “adult kids,” inspired by the acknowledgement of the unique situation and special needs of this category of criminal defendant.

Since its inception the Manhattan Youth Part has occupied what Kupchik (2004) has called “an awkward place between juvenile and criminal justice” (168). Situated within a specific retributive legal structure imposed by the state legislature, this unique court has developed specialized legal strategies and a unique culture for responding to young defendants being charged and tried as adults. By shedding light on the strategies employed by this specialized court to respond to both the requirements of the law and to the very real needs of the young people who come before it, I hope to shed light on the inherent contradictions embodied within the now common policy of trying youth as adults. I hope to show how the Youth Part, operating creatively within a complex set of often contradictory laws and competing values systems serves to challenge the very idea that youth accused of certain crimes should be tried as adults, that the nature of their crimes arbitrarily alters their status from that of children to that of adults.

This study is informed by the earlier research done in juvenile court settings by Emerson (1969), Bortner (1982) and Jacobs (1990) and by Kupchik's (2003, 2003a, 2004) extensive research in New York City. Following Emerson's desire to contribute to the sociological understanding of "the operations of legal institutions" (vii) and to "shed light on some of the processes by which youths come to be identified and officially labeled 'delinquent'" (viii), this ethnography of the Manhattan Youth Part endeavors to shed light on the specific process through, in one institution, youth are prosecuted as adults.

The research questions which drive this ethnographic study are derived from an initial phase of ethnographic courtroom research I conducted between April 2001 and March 2003 in the Youth Part during which I observed 25 court calendar days, the one day a week set aside for general case processing. A calendar day session generally runs three to four hours long and can see anywhere from 15-40 defendants pass before the court. After an introductory meeting with the judge, I was provided a seat in the jury box – which serves as overflow seating for attorneys and social service agency representatives – from which to observe court activities. Since no recording devices of any kind are permitted in the court, I had to rely on extensive note taking while observing.⁴ As Bortner (1982) has pointed out about her own fieldwork, a courtroom is one place where a non-participating stranger can sit scribbling notes without eliciting much attention or suspicion.

On several occasions during this early phase of research the judge engaged me in private discussions and I also meet with him in chambers on a number of occasions. Also,

⁴ In order to take as copious as notes as possible, I developed a detailed short hand system specific to the types of action and dialogue common in the courtroom

during this time I conducted an unstructured interview with a defense attorney active in the court and with a high-level administrator for the New York City's Division of Juvenile Justice (DJJ), which oversees juvenile detention facilities in the city.⁵

The second phase of field research took place between January and December of 2005. During this time I conducted open-ended interviews with various courtroom actors (many of which I was able to record) and I observed an additional 25 calendar days. Open-ended interviews with defense attorneys, alternative to incarceration (ATI) program representatives, a representative from the district attorney's office and the judge centered on the perceived successes and failures of the court to adequately respond to youth charged with felonies in New York City and the various strategies each group of court actors employs for their individual courtroom goals. During the final phase of research I also observed a few court days set aside for the processing of defendants brought before the court for violations of probation (VOP).

Despite well-honed note taking skills, I was often unable to completely document verbatim the sometimes lengthy exchanges that took place between the judge and the defendants and others in the courtroom. For many of these instances I obtained court transcripts in order to provide more accurate renderings of courtroom discourse and interactions. While court transcripts often contained details of exchanges that were not in my notes, I discovered on more than one occasion that my fieldnotes contained parts of conversations that did not make it into the official court transcript version of events. By being able to combine the information in court transcripts with my fieldnote data (which included notes on non-verbal interactions) I am able to provide a more nuanced version

⁵ I was also given a lengthy guided tour of one of the DJJ secure facilities in the city.

of courtroom events than either my notes or court transcripts could have offered alone. Fieldnotes, interview transcripts and court transcripts were coded around a variety of themes that emerged from the field research. In addition, a number of defendants were tracked, as much as was possible, throughout their time with the court, allowing for the development of individual narratives of defendant's experiences within the court.

Although the Youth Part is a criminal court where courtroom proceedings are a matter of public record, I have, nonetheless, taken appropriate measures to protect the identities of the people I write about, especially the young defendants. I have tried as much as possible to represent the look and the feel of actual court room interactions but I have purposely not provided the dates, or even years, of any particular interaction. I have also left out details regarding specifics like the names of schools or specific social welfare programs. Judge Corriero has generously given me explicit permission to use his real name. The names given for all defendants, attorneys, alternative to incarceration personnel and family members are pseudonyms.

The Importance Of Race

The most striking fact one observes after any time spent in the Manhattan Youth Part is the simple fact that nearly all of the kids that come before the court are male and nearly all of them are black and/or Hispanic. While there are girls who come before the court they make up a very small percentage of cases and, in all the days that I have observed the court, I have seen exactly one white kid come before the court. Thus, this ethnography of the Youth Part is, at its most fundamental, an examination of black and/or Hispanic young men and boys, most all of them poor, facing possible incarceration.

The glaring overrepresentation of black and Hispanic youth from poor communities in the Youth Part is reflective of the glaring disproportional representation of poor black and Hispanic men and boys more generally throughout criminal justice systems in the United States. Although no real, satisfactory national data exists on the number of youth tried as adults, a number of studies have documented the disproportional impact of “transfer” laws on non-white youth (Bortner *et al.* 2000; Building Blocks for Youth 2001; Juskiewicz 2000; Liberman 1996; Males & Macallair 2002; Schiraldi & Ziedenberg 1999). The differential impact of transfer laws on non-white youth is consistent with larger disproportional rates of criminal justice system involvement nationwide.⁶ Given this reality, any examination of criminal justice systems must remain cognizant of the fundamental function of race within courtroom settings. One cannot, should not, talk, research or write about criminal justice systems in the United States without talking, researching and writing about race. The very real danger for those of us who do research in criminal justice systems is that we may become so accustomed to seeing the black and brown faces of young criminal defendants and their families that it simply becomes a given, nothing much to note or write home about, simply routine.

It is necessary, here, for me to point out my own white skin and the ways that it, along with gender, positioned me within the court during my research. I dressed in suits or skirts and dress shoes when I went to court. I sat in the jury box along with lawyers and social service agency representatives because it is where I could best observe and stay out of the way. I knew that I was simply there to observe. I knew that I was neither one who worked to prosecute youth nor defend them, nor was I an “officer of the court,”

⁶ Current incarceration/jail rates in the US are: 4,682 per 100,000 black males, 1,856 per 100,000 Hispanic males, and 709 per 100,000 white males (Harrison and Beck 2006).

or an employee of the judicial system. An incident early on in my field research, however, reminded me that such so-called “neutral” positioning is simply not possible – certainly not with such racially charged settings as urban criminal courtrooms.

After observing court one day another white, female researcher who had been in the court and I walked together toward the elevator banks. By the time we reached the elevator bank our conversation had turned to something inane like our favorite hair care products. As we waited for the slow and overworked elevators to stop on our floor, a middle-aged black woman emerged from the bathroom located behind the elevators and I recognized her as the mother of a defendant who had been sentenced to 2-6 years on a first degree robbery charge just 20 minutes earlier. It had been a serious and dramatic moment in the courtroom when the young man was sentenced and I remembered the look of sadness on his mother’s face as he was led out in handcuffs. Out of respect for the seriousness of the woman’s day I attempted, unsuccessfully, to tone down the frivolous conversation with my colleague. I wanted to be respectful, if only in my own mind, of the fact that while for many in the courthouse this may have been just another routine day in court, for this mother it had been the day of an extraordinary event: Her young black son was going to prison, he would emerge in two or four years, a black man with a felony conviction, an institutionalized habit of being and most likely less life chances than he had before he went in.

The black mother hit a button on the elevator panel and turned to look in our direction. She looked us up and down slightly and frowned. Although I can never know what she was thinking, I was stuck by the idea that to her we must have appeared as lawyers, maybe even prosecutors. We were both in suits, we were both white, educated,

carrying bags akin to briefcases. The way I was dressed, the way I conversed with others, my white skin, had perhaps marked me as being a part of the “system” that had sent her son away. Neutrality was not possible.

By Any Other Name

My research in the Manhattan Youth Part reveals that while they are legally designated as “adults,” many defendants in the part (most of them black and Hispanic males) are often signified as children by paternalistic treatment from the judge, by the importance the court gives to the role of parents, and by the use of alternative to incarceration (ATI) programs that privilege staying in school, getting good grades, abiding by curfews and obeying elders. Regardless of the fact that they are technically adults under the law, the young people who come before the court are rarely ever treated as such in day to day courtroom interactions. A fundamental tension is at work in the court between the application of a *parens patriae* (state as surrogate parent) type guiding philosophy in the court’s direct dealing with young people and the need to meet the legal and adversarial mandates of New York State Criminal Law. The confusing and sometimes contradictory processes that arise from these tensions are indicative of the court’s attempt to deal realistically, within the confines of a set of counterintuitive laws, with defendants who are, indeed, kids. The tensions inherent in this process are representative of the tensions that are part and parcel of dealing with adolescent defendants in criminal court jurisdictions – be they in New York or elsewhere.

Chapter One introduces the origins of the historical tensions over appropriate responses to youthful transgressive behavior by providing an overview of the history of legal responses, beginning with the founding of the juvenile court and its dual mission of

child saving and maintaining social order, and then moves on to the impact of constitutional challenges to juvenile court philosophy during the 1960s and 70s, the retributive turn, and the transfer boom of the 1990s. By exploring this 100 year history, this chapter illustrates the historical and ever present tensions regarding legal and societal responses to youthful transgression and provides the background for the later discussion of current and future trends. The chapter concludes with a look to the future for trying youth as adults on a more general level by looking at the implications of recent research in adolescent development, neurobiology and the 2005 Supreme Court ruling which abolished the juvenile death penalty.

Chapter Two chronicles the history and controversy surrounding the passage of the Juvenile Offender Law in New York State in 1978 that required that some 13, 14 and 15 year olds be tried as adults. As the first law of its kind in the country, the Juvenile Offender Law in New York set a precedent for trying youth as adults and provides an excellent case study for the examination of the role that politics, sensational cases, and the media play in the creation of legislative policy concerning young offenders. In addition, this chapter examines existing statistical data on Juvenile Offenders looking at trends by race, gender and offense category from 1984 through 2004 in New York State and New York City in order to reveal the pattern of indictment of youth designated as Juvenile Offenders (JOs).

Chapter Three provides an ethnographic description of the Manhattan Youth Part courtroom and of a typical calendar day, outlining the various participants in the court (judge, defense attorneys, assistant district attorneys, court officers, alternative to incarceration program representatives, young defendants, and their families), the roles

they play and the racial and gender make up of the courtroom. In addition, I explain the various categories into which Youth Part defendants fall (those who are “in,” those who are “out,” the novices, the veterans, the Juvenile Offenders, the co-defendants) and introduce the recurrent themes of delay, routinization, and drama. Further, this chapter describes how the Manhattan Youth Part came into existence and the role that judicial activism played in its creation.

In Chapter Four, I describe in detail the confusing and counterintuitive trick of the law – the granting of Youthful Offender status to those who are eligible – that allows some defendants who have been legally designated as “adults” to basically be legally reclassified as “youth.” In addition to describing how the law on the books works, I describe the complicated process of “earning YO” in the Youth Part. By examining how the mechanisms creatively employed by the court to divert as many “adult youth” as possible away from felony (i.e. adult) records actually operate, I uncover the ways in which the creative use of delay and judicial discretion function to provide an alternative to the retributive goals of legislative policy. I also document the limits of this agency given the retributive structure within which the court is required to operate.

In Chapter Five, through presentation of specific interactions in the court collected in field notes and court transcripts, I illustrate the variety of paternalistic treatments given to the “young adult” defendants by the judge and by the alternative to incarceration (ATI) representatives. By cataloging the various dramatic and discursive strategies employed by the judge with individual defendants, I show how these practices represent a reconceptualization of the original *parens patriae* philosophy of the early

juvenile courts, updated and reinvented to fit within the structural constraints imposed by the legal requirements of the criminal court.

Chapter Six explores more closely the meaningful, yet precarious role that parents, (most often mothers or grandmothers) and others who come to stand for defendants in the part, play in the informal workings of the court. Further, this chapter demonstrates one of the basic tensions underlying the practice of trying youth as adults – that adolescents are non-autonomous actors highly dependant upon the adults in their lives – and the effects of this reality on case processing and defendant’s opportunities to “earn YO.” This chapter also documents another way in which the Youth Part is reminiscent of the *parens patriae* based juvenile courts by showing how the court handles cases where defendants are themselves the victims of abuse or neglect.

The concluding chapter provides a discussion of the age old question for criminal justice researchers, “What works?” as it pertains to the youth involved with the Youth Part. Through an examination of existing quantitative data from state and city agencies and ATIs this chapter confronts the competing definitions of “success” regarding the punishment and/or treatment of transgressive youth. By challenging and problematizing such criminal justice constructs as “recidivism,” “re-arrest,” and “re-offending,” as well as notions of “success” and “failure,” the conclusion seeks to open a more informed dialogue about “what works” or what might work in the punishment and/or treatment of adolescent defendants. By discussing the findings of my ethnographic research within the context of these larger ongoing debates over the degree to which adolescents can or should be culpable to the same degree as adults, I connect the micro-level examination of

the Youth Part practices to the larger contexts of social and legal practices in regard to adolescent crime and violence.

In a 1955 book titled, *Youth and the Law: Handbook on Laws Affecting Youth* Frederick Ludwig offered a simple yet compelling statement:

Serious consideration of what the law ought to be cannot begin without comprehension of what the law is. Existing law cannot be understood merely from collections of statutes in books. It must be explored in action, especially in the light of the exercise of the vast discretion vested in administrators.

Further, as Ulmer and Kramer (1998) suggest, in order to understand the effect of criminal justice policies, we need to understand how they are “embedded in local court contexts” (250). If successful, this ethnography offers an opportunity, in this age of “transfer,” to better understand what the appropriate social and legal response to adolescent offenders ought to be by examining the process of trying youth as adults “in action,” in one particular court within its own local context. In so doing, this study documents a process by which young people are legally constructed as adults, and how they are often resignified as kids. It examines how judicial agency works (or can work) imaginatively within the imposed structure of criminal law. It wrestles with the creative and sometimes problematic strategies dedicated court actors employ to divert many poor, urban, non-white youth away from the full force of felony convictions. Moreover, this ethnography seeks to confront competing notions – within courts, within state law and across the US – about adolescent culpability and the appropriate social, legal and moral responses to youth violence and transgression.

There can be no keener revelation of a society's soul than the way in which it treats its children

(Nelson Mandela)

Fear of violent young offenders is almost always fear of other people's children and has been throughout the twentieth-century history of the United States.

(Franklin Zimring)⁷

CHAPTER 1

Changing Practices: Social and Legal Responses to Adolescent Transgression, 1990 to the Present

The first separate court for juveniles in the US was created in Chicago in 1899 and by 1925, forty-eight states had separate systems for dealing with young offenders (Butterfield 1995). In the 100 plus years since the creation of this first juvenile court, the intent, purpose and the structure of juvenile justice systems have changed considerably. Original juvenile justice conceptions were quite different from the retribution-based model in place today. Conceived originally as a social welfare, rehabilitation-based institution to serve in “the best interest of the child,” we now witness a juvenile justice system often more dedicated to the confinement and punishment of young offenders (Giardino 1996).

Since its legal and ideological conception the institution of juvenile justice in the United States has been wrought with the strain that arises from an ambiguity of purpose –

⁷ (1998).

to help or to control wayward youth (Feld 1999; Giardino 1996; Tanenhaus 2004). Feld (1999) posits that the juvenile justice system may be more susceptible to structural and political factors precisely because of its long history of an ambiguity of purpose. Regardless of the causes, the juvenile court has certainly not remained static over the last 100 years.⁸ As Tanenhaus (2004) states, “American juvenile justice has been a work in progress” with the boundaries of its mission always in flux (xxviii). Changes in the court have often reflected and been informed by changes in American society at large.

This chapter reviews the fluctuations that have taken place in both the structure of juvenile courts and the legal and social philosophies that have guided it. It looks at both social changes in regard to transgressive youth and structural changes in the formal law as applied to transgressive youth including the due process revolution of the 1960s and 1970s, the rise of the law and order state, the retributive turn, the fear of rising juvenile violence rates and the ensuing “superpredator” moral panic of the early 1990s. This overview provides an historical framework for a discussion of the wide-spread practice of trying youth as adults that arose in the 1990s as a preferred method of responding to adolescent offenders. The chapter concludes with a discussion of the latest scientific research on adolescent development and its implications for current discussions of adolescent culpability. As Tanenhaus (2004) states, “Significant changes in the structure, rules, and self-conception of juvenile justice have been a part of its history from the beginning” (xxvii). In order to best understand the current incarnation of legal responses to adolescent transgression and the potential for future change, it is best to know from where it has sprung.

⁸ While for the ease of discussion many authors, including me, use the phrase “the juvenile court” we must be careful to remember “the diversity of practices, procedures, and controversies that have characterized American juvenile justice since the early 1990s” (Tanenhaus 2000, p.15); See also Myers (2005).

The Early History of a Concept

In the early nineteenth century in the United States ideas regarding children and criminal liability were based largely in the traditions of English common law. Under these theories, children under the age of seven could not be found criminally liable because they were not considered capable of “felonious discretion.” Children up to the age of 14 were also “presumed to lack criminal capacity” and were rarely prosecuted.⁹ Persons above the age of 14 were subject to the same level of criminal responsibility as any adult (Butts & Mitchell 2000; Feld 1999; Myers 2005; Sobie 1981; Tanenhaus 2004). The concept of “adolescence” as we understand it today – a distinct phase of physical and social development falling roughly between the ages of 14-19 – had not yet taken hold.

With the rise of modernity came new philosophies regarding the nature of childhood out of which the concept of “adolescence” emerged (Bakan 1976; Kett 1977; 2003). The advent of laws against child labor, the introduction of compulsory education and ensuing attention to age grading altered traditional notions of childhood and contributed to the development of the concept of adolescence as a specific period of human life. These changing notions of childhood and adolescence informed and converged with the theories of Progressive Era social reformers of the late nineteenth century, leading to the creation of the concept of juvenile delinquency, and laying the groundwork for the coming juvenile court (Feld 1999; Kett 1977, 2003; Platt 1977).¹⁰

“The social construction of *childhood* and *adolescence* provided a conceptual rationale

⁹ Although the state could sometimes challenge this assumption in individual cases (Feld 1999).

¹⁰ As Kett (2003) states: “Although historians often disagree about the timing of changes in the history of the family and childhood, there can be little doubt that the period from 1890 to 1920 in the United States witnessed a decisive transformation of ideas about, institutions for, and social experiences of adolescents” (371).

for a separate system of social control for young people” (Feld, 1999, p. 46, emphasis in the original).

Along with addressing issues of poverty, immigration and the myriad new social problems associated with modern urban life and immigration, Progressive Era reformers set out to reform criminal justice and punishment systems. As Feld (1999) writes:

Progressive reformers embraced many child-saving programs to respond to myriad threats to child development: inadequate and broken families, dependency and neglect, poverty and welfare, education and work, crime and delinquency, recreation and play. (34)

At this time, as well, previously held classical theories of criminality were giving way to a new positivist criminology which focused on the ability to “reform and treat rather than to blame and punish” (Feld 1999, p. 46; see also Bortner 1984). Platt (1977) explains that Progressive era “child-savers” combined ideas of social pathology with Darwinism, positivist theories of crime, and “anti-rural sentiments associated with the Protestant, rural ethic” (18).

Students of the Progressive Era are not in complete agreement as to the true intent of the child-saving reformers (Bortner 1982; Feld 1999; Tanenhaus 2004). While commonly, often romantically, portrayed as compassionate champions of benevolent programs of social welfare for children, a number of authors have challenged such simplistic understandings of the intent and purpose of early child-saving programs. Tanenhaus (2004) suggests that the numerous writings on the origins of the juvenile court fall roughly into three categories. First, authors Tanenhaus calls “progressive mythmakers,” who chronicle the child saving movement in all its grand humanitarian benevolence which include early writers involved in the movement themselves such as Sophonisba Preston Breckinridge and Jane Addams along with later historians. The

second group of authors, who Tanenhaus calls the “skeptics,” have largely regarded child-saving reforms as little more than reconstructed mechanisms for the social control of poor urban immigrant populations and their children. These authors include Platt (1969), Ryerson (1978) Rothman (1980) and Feld (1999) among others. Platt (1977) sums up this more skeptical approach in the introduction to the second edition of his book, *The Child Savers: The Invention of Delinquency*:

The child-saving movement was not a humanistic enterprise on behalf of the working class against the established order. On the contrary, its impetus came primarily from the middle and upper classes who were instrumental in devising new forms of social control to protect their power and privilege. (xx)

The third group of authors, who Tanenhaus calls “neoprogressive preservationists” attempt a balanced approach between the first two perspectives in their understanding of a century of juvenile justice and include authors such as Zimring (1982), Fagan and Zimring (2000) and Singer (1996).¹¹

Whether borne out a benevolent desire to care for wayward youth or out of a need to exert control over the unruly offspring of the new urban masses, or from a complicated combination of both, the first juvenile court was created in Chicago in 1899. As Feld summarizes this watershed event,

At the dawn of the twentieth century, Progressive reformers combined these new positive theories about crime causation and social control with the new ideas about childhood and created a social welfare alternative to criminal courts to regulate criminal and non-criminal misconduct by youth (46).

The Chicago court took over jurisdiction of all “dependant and neglected” and “delinquent” children under the age of sixteen. According to Giardino (1996) the Juvenile

¹¹ See Tanenhaus (2004) for a more in-depth discussion of the competing accounts than is possible here. For a more complete history of the social reforms of the Progressive Era movement and the rise of the juvenile courts see Feld (1999), Mennel (1973), Myers (2005), Platt (1977) and Tanenhaus (2000 & 2004).

Court Act of 1899 in Illinois, which established the court, “focused on the same type of care that would be given by the child’s parent as its primary statutory goal” (233). By 1917 many states had instituted a separate court system of juveniles and by 1927 only Maine and Wyoming were without a separate juvenile court (Bernard 1992; Butts & Mitchell 2000; Davis 1981; Feld 1999; Krisberg 1998; Schwartz 1989).

Developed within Progressive Era perceptions of juvenile delinquents to be "childlike, psychologically troubled, and malleable" (Scott & Grisso 1997), these justice systems were conceived of more as social welfare institutions than as punitive criminal justice entities, and were guided by theories of action based on the "best interest of the child" and on the role of the state as a surrogate parent – a philosophy known as *parens patriae* (Butts & Mitchell 2000; Krisberg 1998; Mennel 1973; Schwartz 1989; Tanenhaus 2000). Juvenile courts were most often under civil, not criminal, court jurisdiction and thus required only a “preponderance of the evidence” standard rather than the criminal court standard of “guilt beyond a reasonable doubt.” As a social welfare styled entity, the juvenile system functioned in a much less formal manner than the criminal system and emphasized “individualized justice,” focusing attention on the *offender* rather than the *offense*.

Juvenile courts often dealt largely with status offenses – offenses that would not be considered offenses if committed by adults.¹² The informal nature of the juvenile court allowed flexibility in dealing with young offenders and focused on the rehabilitation of delinquent youth. There were no jury trials and juvenile court proceedings were kept secret. Determinations were made based on the court's (largely the judge's) perceived

¹² Underage drinking, truancy, running away from home, etc.

ability of a child to straighten out or benefit from social welfare interventions. This was in stark contrast to the criminal courts which “emphasized due process and proportionate retribution” (Butts & Mitchell 2000, p. 168). Thus, as Platt (1977) states, juvenile courts were “anti-legal” with “minimum procedural formality and maximum dependence on extra-legal resources” (141).

The very language used in the juvenile court is indicative of its philosophical and structural distance from the criminal courts:

In recognition of their distinct legal standing, juvenile courts developed a new vocabulary. Youths appearing in juvenile court were “delinquents” rather than defendants. They were “adjudicated” instead of being found guilty. Final decisions were “dispositions” rather than sentences. Youths held overnight were “detained” in a juvenile detention center, not jailed. (Butts & Mitchell 2000, p. 173)

Sentencing, under the less formal *parens patriae* conceptualizations of the juvenile courts, was generally indeterminate, with the court having wide latitude to decide the necessary and appropriate sentence or treatment for each offender (Feld 1999; Krisberg 1998). According to Schwartz (1989), the informality of this social welfare approach, while distinguishing youthful offenders from criminal defendants, ultimately denied juveniles “the rights and procedural safeguards accorded to adults” (151), and led to an array of abuses. Out of view of the public, lacking jury oversight and heavily dependant upon broad judicial discretion, the juvenile courts were susceptible to abuse and bias, leading to claims of unbalanced sentencing and racial discrimination.

Due Process and Deinstitutionalization

The informal *parens patriae* model of juvenile justice that had prevailed since 1899, with its potential for benevolence and abuse, was forever changed in the late 1960s and the early 1970s when a number of Supreme Court decisions altered the legal structure

of juvenile courts (Feld 1999; Krisberg 1998; Schwartz 1989; Snyder & Sickmund 2006). These cases directly challenged the informality and “non-legal” nature of juvenile court proceedings and introduced requirements of due process into juvenile court procedures. The initial push to change the informal nature of the court came from civil libertarians and advocates for children's rights (Butterfield 1995; Ferdinand 1991). A system which had allowed judges to deal with youthful offenders or delinquents in flexible, individualized, non-legalistic ways, came to be seen as an arbitrary system in which youth had little, if none, of the legal protections that were available to adults under the constitution. While *In re Gault* (commonly referred to as *Gault*) is the most significant and most cited of these cases, *Kent v. United States* (1966) and *In re Winship* (1967) are also historically significant. Taken together, these three cases brought about what is generally referred to as the “due process revolution” in juvenile justice, which served to formalize procedural guidelines in juvenile court proceedings.

Kent vs. the United States (1966) originated in the District of Columbia over the procedures by which the juvenile court in the District could transfer cases from juvenile court to criminal court jurisdiction. In the *Kent* case, the juvenile court had transferred Morris Kent, age 16, arrested on housebreaking, robbery and rape charges, to adult court without holding a hearing prior to the transfer. Such a transfer hearing, providing a full investigation, was required under District law. The Supreme Court ruled in *Kent* that a transfer without a hearing was not allowable under District law. The Court’s extension of such rights in transfer hearings was limited to the District of Columbia, however. The Court stopped short of extending to juveniles the due process rights available to adults, actually stating in their decision that Kent’s case did not compel them “to rule that

constitutional guarantees which would be applicable to adults charged with the serious offense for which Kent was tried must be applied in juvenile court proceedings” (*Kent v. Washington*). Thus, the Court upheld the right of states not to guarantee a standard of due process rights to persons brought before the juvenile courts. At the same time the Court raised questions as to the constitutional legitimacy of the existing system:

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. (*Kent v. Washington*)

The next year, in hearing *In re Gault* (1967), the Supreme Court addressed these questions. *In re Gault* involved the case of 15 year-old Gerald Gault in Arizona who had been sentenced to a state industrial school until the age of 21 for making an obscene phone call, a misdemeanor offense. The maximum penalty allowed for such a crime if committed by an adult would have been a \$50 fine and a maximum two months jail time (*In re Gault* 1967; President's Commission on Law Enforcement and the Administration of Justice 1967; Stapleton & Teitelbaum 1972). The challenge, first heard in the Arizona Supreme Court, centered on the fact that such harsh punishment had been applied through the informal juvenile court without the defendant having been given the right to counsel, the right to cross-examine witnesses, or the right against self-incrimination – all rights guaranteed to defendants in the criminal (adult) court. The Arizona Supreme Court upheld the lower court’s decision saying that "due process did not require that an infant have a right to counsel" (Stapleton & Teitelbaum 1972, p. 29).

The Supreme Court, however, reversed the lower court ruling stating that a hearing resulting in such stiff penalty required the application of due process rights,

thereby setting guidelines on the right to due process for those brought before juvenile courts. The decision set procedural limits on the legal informality of the court's *parens patriae* model. As Stapleton & Teitelbaum (1972) write, *Gault*,

stated clearly . . . that *parens patriae* was not a useful shield from procedural requirements. While credit was given to the originators of the juvenile court movement for their good motives, it was made plain that reliance upon *parens patriae* was misplaced. (30)

The Court's decision questioned the constitutionality of the *parens patriae* doctrine and instituted for the first time the right to counsel, the right to question and cross-examine witness, and the right against self-incrimination for youthful offenders brought before juvenile courts (Butterfield 1995; Klein 1998). In their review of the relevant case law, the Court stated that "neither the fourteenth Amendment nor the Bill of Rights is for adults alone" (*In re Gault* 1967). In his dissenting opinion, Justice Stewart anticipated the effect that *Gault* would have on the structure of the juvenile court:

I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution. (*In re Gault* 1967)

Gault was a watershed event in the history of juvenile justice in the United States.

Writing in the late 1970s, Rubin (1979a) characterized the decision as having "placed a constitutional blanket upon the youngsters in the juvenile court, and it marked a turning point in juvenile court developments" (281). According to Barry Feld (1999), *In re Gault*, "transformed [the juvenile court] from a social welfare agency into a legal institution" (98).

In re Winship (1970) involved the case of Samuel Winship, age 12, who had been sentenced through a juvenile court to a state training school for allegedly stealing money from a woman's purse in a store. Although there had been "reasonable doubt" of Winship's guilt he was adjudicated delinquent under the civil court standard of "a preponderance of evidence." The lower courts had ruled that because "juvenile courts were designed to 'save' rather than 'punish' children the preponderance standard was all that was necessary" (Snyder & Sickmund 2006, p. 101). The Supreme Court rejected this finding stating, "In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*" (*In re Winship* 1970). Justice Burger, along with Justice Stewart, in his dissenting opinion in *Winship* voiced concern about the blurring of the lines between juvenile and criminal courts: "I cannot regard it as a manifestation of progress to transform juvenile courts into criminal courts, which is what we are well in the way to accomplishing" (*In re Winship* 1970).

The constitutional guarantees of many due process rights brought forth by *Kent*, *Gault* and *Winship* served to legally formalize the juvenile court as it never had been. The legal structure of juvenile courts began to resemble more closely the criminal courts in which adults were prosecuted. These reforms, which corrected the deficiencies and abuses of the early juvenile justice model also served to distance the system from its *parens patriae* mandate. This new formalization paved the way for what has been called the "criminalization" of the juvenile system allowing for the adoption of legal structure that facilitated a reduction in the jurisdiction of the juvenile court (Feld 1999, Singer 1999). As Singer (1999) explains, "The criminalization of juvenile justice has produced a

political legislative agenda that could not have possibly been anticipated by the initial decisions” (227).

Following on the heels of the constitutional changes introduced by *Kent, Gault* and *Winship*, national legislative policy began making challenges to existing conceptions of juvenile justice in the 1970s. In 1974, Congress passed The Juvenile Justice and Delinquency Prevention Act in an attempt to create national standards for dealing with juvenile crime issues. Concerned mainly with the treatment and eventual deinstitutionalization and diversion of status offenders, the act provided incentive funds to states to reform their juvenile justice systems (Ferdinand 1991; Hellum 1979; Krisberg 1998; Schiraldi & Soler 1998; Schwartz 1989). While not concerned to lower the age of transfer, the act did, by further decriminalizing status offenders, mark a distinction between two types of offenders (Hellum 1979; Schwartz 1989). As early as 1979, Hellum warned of the potential impact of such policy changes: “These proposals could result in major challenges to both the philosophy and the intended purposes of current approaches to juvenile justice” (310). With an understanding bordering on prophecy, Hellum (1979) also wrote of the potential unintended consequences of the deinstitutionalization of status offenders saying that it “offered the prospect of a criminalized juvenile justice system closely resembling the model now operating at the adult level” (314).

Constitutional and legislative reforms, which attempted to correct many of the perceived deficiencies and the potential for abuse of the earlier juvenile justice model distanced the system from its *parens patriae* based philosophies and lead to the adoption of legal structures that resembled and often mimicked the adult criminal court, thus

blurring the real and philosophical distinctions between the juvenile and the criminal court.

In addition to these procedural changes, changing demographics, political and social unrest, and the more general turn away from the rehabilitative ideal and towards a retributive model of justice throughout the United States, deeply affected public attitudes about, and institutional responses to, youthful transgression. Public preoccupation with an apparent crime wave perpetuated by juveniles began in 1975, “in the wake of a substantial expansion in both crime rates and the youth population of the previous decade” (Zimring 1998, p. 5). A large demographic shift was taking place in the American populace at this time – the baby boomers were reaching adolescence, thus the percentage of young people in the population increased. The youth population in 1960 was 27 million, by 1971 it had risen to 42 million (Feld 1999). While violent crimes committed by a few violent young people were on the rise turning this time, percentage wise, overall, young people were not particularly more prone to crime or violence than they had been in previous generations (Feld 1999; Krisberg 1998).

In addition to these demographic changes and their effect on public attitudes towards youth crime and violence, the social and political turbulence of the 1960s and 1970s produced a society more afraid of itself than ever, one feeling a strong need for “law and order.” Writing in 1979 of the public perception of crime at the time, Helling (1979) claimed that:

The threat of imminent victimization is probably stronger and more widely shared than at any other time in our history. It remains to be seen whether this specter of rampant and still rising criminality is more illusory than real, but for the present it seems that much of the general public believes that fear of crime is warranted. Within this climate, the public concern over the distinction between youth and adult offenders seems to be diminishing. (p. 304)

“Law and order” became a popular political mantra (Tanenhaus 2000). Richard Nixon used a law and order platform to win more than one presidential election (Finckenauer 1978). Prior to this era law and order issues were generally dealt with at the level of local politics, but in the 1970s “law and order” and “public safety” issues became part of the national political dialogue and part of national policy agendas (Parenti 1999).¹³

Fear of violence and unrest after the turmoil of the Civil Right Movement, The anti-war protests, the Black Power Movement, racially and economically charged riots across many major urban cities, and a growing doubt of the potential for rehabilitation to significantly effect recidivism all fueled an apprehensive public's perception of young people run amok (Feld 1999; Myers 2005; Singer & Ewing 1988). Within this turbulent climate “public safety” became a much more cogent rhetorical concern than “saving” wayward youth. “Crime control” rather than “rehabilitation” took priority. Within this period of demographic shift and media saturated perceptions of a racialized juvenile crime wave in a society fraught with civic unrest, treatment based, *parens patriae* style functions of the juvenile court began to appear inadequate (Feld 1999). These forces, combined together, paved the way for the significant increase in the use of transfer that was to come in the 1990s.

The Transfer Boom

In the late 1980s and the early 1990s the conceptualization of juvenile justice became increasingly more punitive, signifying an even sharper theoretical move away from the *parens patriae*/rehabilitation-based models of earlier decades and toward a

¹³ See Parenti (1999) for a thorough analysis of this evolution.

criminalization/retribution paradigm. An analysis of the changes in transfer provisions during this period demonstrates the depth and breadth of this paradigm shift.

In the 1990s several states amended the statutory language of their juvenile justice laws to include more emphasis on the protection of *public safety* and the *punishment* of delinquent youth rather than on rehabilitation goals. In her analysis of the rhetoric of state juvenile codes, Giardino (1996) reports that: “[T]here has been a movement away from placing the primary focus of the juvenile justice system on treatment. Several jurisdictions have included public safety, accountability and punishment as the primary purpose of their juvenile laws” (245). Even more significant is that the 1990s saw a rapid transformation in laws that allow for the transfer of more and younger youth for an increasing list of offenses, including more and more non-violent offenses. While juvenile courts in many states historically have had discretionary rights to transfer delinquents to adult court and have exercised such rights throughout their histories, transfer was largely reserved for particularly heinous offenses or for chronic repeat offenders (Bishop 2000; Klein 1998; Myers 2005; Snyder *et al.* 2000; Tanenhaus 2000).¹⁴ Things were to change dramatically in the 1990s with almost every state (and the District of Columbia) passing laws to make it easier to try youth as adults.

Transfer, or waiver, provisions are those state laws that govern why, when, and how cases that come before the juvenile court can be remanded to the jurisdiction of the criminal court. Transfer provisions are mandated by statute (Klein 1998), and differ considerably from state to state. There are three basic categories of transfer provisions: *Judicial Wavier*, which can be discretionary, presumptive or mandatory; *Prosecutorial*

¹⁴ The first juvenile court in Chicago, however, had no provision for transfer of cases to the jurisdiction of the criminal court (Giardino 1996).

Waiver, also known as *Direct File*; and *Statutory Exclusion* (Butts 1997; Butts 2002; Butts & Mitchell 2000; Griffin, 2003; Griffin, *et al.* 1998; Schiraldi & Soler 1998). Many states use a complex combination of some or all of these provisions. The differences among the various transfer mechanisms are as follows:

◆ **Judicial Waivers** come in three types:

- *Discretionary*: a discretionary judicial waiver provision authorizes, but does not require, a juvenile court judge to transfer a case to criminal court under specific circumstances (generally, the nature of the offense, the number of prior arrests or adjudications, the age of the offender, or a combination of these conditions). Discretionary judicial waivers were by far the most common form of transfer historically. In the 1960s half of the states had some form of a judicial waiver provision. In 1997, forty-five states had some form of discretionary judicial waivers (Butts & Mitchell 2000). Currently, 45 states allow some form of discretionary judicial waivers (Griffin 2003).¹⁵
- *Presumptive*: under a presumptive judicial waiver the juvenile bears the burden of proof as to why the case should *not* be transferred to criminal court. Butts & Mitchell (2000) report that, “between 1992 and 1997 alone, 11 states passed new presumptive waiver provisions” (181) Currently, 15 states allow some form of presumptive judicial waivers (Griffin 2003).¹⁶
- *Mandatory*: a mandatory judicial waiver *requires* a judge to transfer a case under certain criteria. The only role of the juvenile court judge under such provision is to determine if the specific transfer criteria are met. By 1997 14 states had mandatory waiver provisions (Butts & Mitchell 2000) Currently, 15 states require some form of mandatory judicial waivers (Griffin 2003).¹⁷
- Judicial waivers are subject to appeal (Griffin *et al.* 1998)

◆ **Prosecutorial Waiver**, or **Direct File** provisions as they are often called, leave the decision to remand a juvenile offender to adult court to the prosecutor (Griffin *et*

¹⁵ As of end of 2002 legislative sessions. For complete details on which provisions and combinations of provisions prevail in each state see Griffin (2003) and the National Center for Juvenile Justice website at <http://www.ncjj.org/> A summary of current laws trying youth as adults in each state is also available in Appendix A.

¹⁶ Ibid.

¹⁷ Ibid.

al. 1998). Prosecutorial waivers are not subject to appeal (Klein 1998).¹⁸ Eight states had such provisions in the early 1980s. In 1997, fifteen states (including DC) had prosecutorial waivers (Butts & Mitchell 2000). Currently 15 states allow for some form of prosecutorial waivers (Griffin 2003).¹⁹

- ◆ **Statutory Exclusion** laws are those provisions in which transfer is mandated by legislation for a certain set of circumstances. Under statutory exclusions, qualifying juveniles are automatically transferred to criminal court and, in effect, their cases originate in criminal court (Griffin *et al.* 1998). Between 1992 and 1997, two states introduced statutory exclusion laws and 26 expanded existing laws. By 1997, twenty eight states had adopted some form of statutory exclusion provisions (Butts & Mitchell 2000). Currently 29 states have some form of statutory exclusions (Griffin 2003).²⁰

Across the past decade and a half there has been a marked shift in the method of transfer legislated across the states. Winner *et al.* (1997), Griffin *et al.* (1998) and Butts & Mitchell (2000) all document a shift in transfer trends across the country away from a judicial-based discretion system to a system of prosecutorial discretion and legislatively mandated transfer. Essentially, this means that the power to decide whether an alleged offense or an offender is deserving of transfer from the juvenile to the criminal court has been increasingly taken away from the juvenile judiciary. Transfer is now more than ever mandated by legislation – it is automatic – or left to the discretion of a prosecutor whose decision making is not subject to appeal. Changes in transfer policy in Illinois provide an example of this fundamental shift. In 1981 all cases transferred to criminal court in Illinois were discretionary (up to the juvenile court judge). By 1986 only one quarter of all cases transferred were discretionary, the rest being automatic transfers. By 1996 the

¹⁸ “[P]rosecutorial transfer is considered an ‘executive function,’ which is not subject to judicial review and is not required to meet the due process standards established for by the Supreme Court” (Snyder & Sickmund 2006, p. 113)

¹⁹ As of end of 2002 legislative sessions. For complete details on which provisions and combinations of provisions prevail in each state see Griffin (2003) and the National Center for Juvenile Justice website at <http://www.ncjj.org/> A summary of current laws trying youth as adults in each state is also available in Appendix A.

²⁰ *Ibid.*

total number of cases transferred nearly tripled compared to 1986, but only one-third of cases were discretionary transfers (Butts & Mitchell 2000).

It is also important to note the subtle yet distinct difference between *mandatory judicial waiver* provisions and *statutory exclusion* provisions: Griffin *et al.* (1998) explain:

When an offense has been *excluded* by law from juvenile court jurisdiction, the case against a minor accused of that offense originates in criminal court. Under ordinary circumstances, the juvenile court has no involvement and is entirely bypassed. By contrast, although the juvenile court's involvement in a *mandatory* case may be minimal, it receives the case initially, conducts some sort of preliminary hearing to ensure that the case is one to which the mandatory waiver statute applies. (4, emphasis mine)

While these differences may appear subtle, they reflect two divergent trends in legal policy. Under *mandatory waivers*, the existence of the juvenile court is at least acknowledged as the court of first jurisdiction over a youthful offender, whereas under *statutory exclusion*, the juvenile court is deemed unnecessary and bypassed completely. "The dominant trend among state transfer laws during the 1990s was a reduction in the role of judges and a greater reliance on prosecutors" (Butts & Mitchell 2000, p. 180). These policy shifts serve to disempower the juvenile court and expand adult court jurisdiction over youthful offenders. Juskiewicz's (2000) study of 18 jurisdictions across the country indicates the impact of these changes in transfer provisions: It found that 85% of decisions to prosecute youth as adults were made, not by judges, but by prosecutors or legislatures (via statutory exclusion). As Klein (1998) stated, "It is clear that legislatures are seeking to remove judicial discretion in and procedural barriers to the transfer of juveniles" (374).

Two overarching forces help explain why this “transfer boom” took place in the 1990s – the increasing popularity of retributive criminal justice policies in general and the moral panic that ensued in the late 1980s and early 1990s around a feared threat of a generation of young “superpredators.” The transfer boom was part and parcel of the larger trend toward retribution that began across all institutions of social control during the 1970s, continuing through the 1980s and up until today. It is within this larger socio-legal context of the 30 plus year trend toward increased incarceration and the fading of the “rehabilitative ideal” (Jacobson 2005; Myers 2005; Simon 1993) that the normalization of transfer policies was able to take place. Policy responses to youth violence in the 1990s took place within a political and social environment particularly amenable to retributive policies (Zimring and Fagan, 2000).

Parenti (1999) argues that incarceration had become the method adopted to deal with the “rising inequality and surplus populations” (p. xii) that arose in American society after the racial upheavals and political unrest of the 1960s and 1970s and the economic restructuring of the 1980s and 1990s. “Transfer” was just one of many penal trends of the past two decades including three-strikes laws, determinate sentencing, and the abolishment of parole. Indeed, Zimring and Fagan (2000) explain that transfer was simply the last in a long line of retributive trends:

Transferring from juvenile to criminal court was attractive in the 1990s because it meant removing cases from the only courts that had not joined the incarceration boom into a criminal court system that more accurately reflected the punitive temper of the times. (422)

Within this already “get tough” climate a spike in juvenile violence rates in some urban areas in the last 1980s and early 1990s, and the ensuing sensational media attention

it garnered, helped to foment what is best understood as a moral panic. Cohen (2002) first defined “moral panic” back in 1972:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people. (1)²¹

In the late 1980s and early 1990s the United States witnessed an upsurge in violent juvenile crime. The evidence shows that there was, for a time, a marked increase of gun violence among young black urban men. This upsurge in gun violence was localized and limited. Murder statistics, the most reliable of crime statistics, demonstrate that although the rate of murder by juveniles had not changed much in the decade prior to 1985, beginning in 1985, the rate of murders by juveniles with guns rose considerably, resulting in a distinct increase in gun homicides by youth in the years 1985-1994 (Blumstein & Rosenfeld 1998).

Feld (1999) reports that murder by means other than guns among juveniles stayed roughly the same. From 1984-1994, however, the murders committed by juveniles with firearms increased 412 percent. Feld contends that given that non-gun homicide rates stayed the same “virtually all the variance in homicides reflects changes in the gun component of murders” (205). It would seem by these facts that the problem that was plaguing our nation was in fact the proliferation of guns within inner cities surrounding the crack cocaine epidemic of the time.²²

Other researchers have verified the lack of a truly widespread and comprehensive juvenile crime wave (Bernard 1992; Klein 1998; Wilson 1993). Torbet & Szymanski

²¹ The term “moral panic” was first coined by Jock Young.

²² It is worth noting that the majority of gun homicides that occurred during this time involved inner city young black males not only as perpetrators, but as victims as well.

(1998) report that, according to FBI statistics, the percentage of violent crime attributable to juveniles²³ only increased by 4% between 1986 and 1996, the years in which we were supposedly witnessing a youth crime wave.²⁴ In relation to drug offenses juveniles accounted for only 14% of all 1996 drug arrests (Snyder 1997). A spike in overall youth crime is not played out in Butts' (2002) analysis of Uniform Crime Reports. While murder and weapons offenses in 1995 did show some increases over 1980, other crime categories did not show similar increases from 1980 to 1995.

Regardless of the fact that “more than 80 percent of all juvenile law violations are not violent” (Zimring 1998, p. xi), the image of violent youth, most likely black, wielding guns in the streets of our major cities, became the dominant image of the juvenile delinquent during this time. The moral panic that ensued was a racialized response to limited, sensationalized, events. John DiLulio, in his now famous 1995 article struck the loudest alarm bell. In a Chicago Tribune article he wrote:

The youth crime wave has reached horrific proportions from coast to coast . . . on the horizon, therefore, are tens of thousands of severely morally impoverished juvenile super-predators . . . the demographic bulge of the next 10 years will unleash an army of young male predatory street criminals who will make even the leaders of the Bloods and Crips . . . look tame. (31)

Such hyperbole by DiLulio and others was picked up by the media and by politicians across the country. A New York Time article quoted law enforcement officials' concern over a “ticking time bomb” of rampant youth violence (Purnick 1996).

Scott and Steinberg (2003) in their excellent analysis of the times write that,

At one level, the story of the recent policy reforms is a simple one: the rehabilitative model failed, violent juvenile crime increased, and rational

²³ Cleared by arrest.

²⁴ In 1986 nine percent of all violent crime was attributable to juveniles, In 1996, 13% was attributed to juveniles (Snyder 1997; Torbet & Szymanski 1998).

lawmakers responded by narrowing the domain of childhood in order to protect public safety in the face of a growing threat. Closer scrutiny, however, suggests that the recent trend is not simply a coherent response to changing exigencies. Rather, it has features of what sociologists describe as a moral panic. (9)

In his recent book on trying youth as adults, Myers (2005) asserts that, “By 1995, at the height of the superpredator panic, it appeared to many that the only thing that could save society was the further punishment and incarceration of morally depraved youths who were violently taking over the nation’s streets” (96).

Imbedded within this moral panic was the inability of the public, the media, and political leaders to understand and/or make the distinction between “juvenile crime” and “youth violence” (Zimring 1998). The actual, linguistic and symbolic conflation of the vast array of petty juvenile offenses that the system encounters with the very real, but limited, number of violent offenses committed by adolescents was, and is still, annoyingly common. “Youth crime” and “youth violence” became almost interchangeable, undistinguishable from one another, resulting in rhetoric and policy initiatives that, while couched in terms of a response to the perceived threat of youth *violence*, became policy written for all juvenile *crime*.

In addition, although the threatened wave of young “superpredators” never did materialize in the 1990s, opinion polls showed that many Americans had come to believe that youth were responsible for a much larger percentage of crime than the numbers could support. For example, in 1996 violent crimes by juveniles accounted for only 13% of violent crime. Yet a study in California that same year reported that 60% of respondents thought that juveniles were the cause of most violent crime. (Dorfman & Schiraldi 2001). Another study found that in 1998 sixty two percent of Americans believed that juvenile crime was on the rise while, in fact, according to the National Crime Victimization

Survey, violent crime by youth in 1998 was at its lowest point in the 25-year history of the survey (Dorfman and Schiraldi, 2001). This public misconception about the real dangers of youth crime and/or violence were a direct result of a moral panic.

In his analysis of moral panics, Cohen (2002) advises us that, “Sometimes the panic is passed over and is forgotten ... at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way society conceives itself” (1). The superpredator moral panic did not engender legislative responses targeted at the localized problem of youth violence and victimization in central city neighborhoods, but rather spawned legislation dedicated to keeping at bay a new generation of superpredators that would wreck havoc on the nation. A minority of juveniles – mostly black, most in the inner city – were committing more violent crimes, particularly with readily available handguns, in decaying and neglected central cities. Rather than political debates that demanded more stringent gun regulation, treatment for drug addicts, or a war on urban poverty, punitive “law and order” rhetoric carried the day, masking the problems of unemployment, declining central cities, and racism. In the name of staving off the superpredators, politicians wrote a vast array of laws broadly targeting transgressive youth: “[T]he increase in gun homicide by young black males in the late 1980s provided a much broader political impetus to crack down on all young offenders in general and violent minority youth in particular” (Feld 1999, p. 208).

The public, political and criminal justice institutional reactions to a juvenile crime wave believed to be of unprecedented proportion and degree of malice fundamentally rewrote legal and social policy in regard to youth and crime in the last decade. Trying

youth as adults, considered “tough on crime” legislation, became a preferred response by law and order politicians to a supposed new class of juvenile offender – one that was believed to be younger, more violent, more hardened and certainly less amenable to treatment than earlier generations of transgressive youth, regardless of the lack of evidence to support these claims.

Legislative policies regarding transfer in the 1990s were founded in a time of misconception about the amount and percentage of crime attributable to young people, coupled with mounting fear of the urban (non-white) teenager, all set within a larger national mood of retributive justice policy. The increased attention on violent juveniles, and the punishment thereof, created an overemphasis on the allocation of resources for punishment, and tended to stereotype all juvenile offenders as violent predators (Ohlin 1998), which in turn fueled the fire for retribution-base, “tough on crime” policies. As Zimring (1998) states “episodic concerns produce permanent consequences” (4). Within this punitive climate, debates regarding juveniles and crime become limited debates about how to punish violent youth – the minority of juvenile lawbreakers. There was little room for discussions about how best to serve the vast majority of simply delinquent, non-violent juveniles who encountered the juvenile justice system. In so doing, transfer policies in the 1990s both reflected and reinforced the social control aims of the mass incarceration movement.

The 1990s, undoubtedly, have been a time of “net-widening” in terms of the criminal prosecution of juveniles. Legislative transfer initiatives rewrote legal and social policy in regard to youth that, in turn, altered social discourse on the appropriate responses to youth violence, the degree of culpability among the young and their

amenability to treatment. Nearly every state passed legislation that allows for younger and younger youth accused of an ever increasing list of crimes to be tried as adults in a criminal court. This criminalization of adolescent law-breaking “represents a legislative and societal rejection of the *parens patriae* philosophy of the juvenile court” (Fagan 1996, p. 98)

Just how many youth have been tried as adults due to these numerous legal changes is a harder question to answer than one might think. Actual numbers of transferred youth nationally are hard to assess because no national data collection exists on the subject (Butts & Mitchell 2000; Bishop 2000) In the FAQ (frequently asked questions) section of the National Center for Juvenile Justice website (one of the best sources of information on trying youth as adults) the response to the question, “How many juveniles are tried as adults in criminal court in the U.S. each year?” is simple and highly dissatisfying:

An estimated 7,500 cases were judicially waived to criminal court in 1999. However, no national data exist on the number of juvenile cases tried in criminal court under concurrent jurisdiction or statutory exclusion provisions.

According to Howell (2003), “the [total] number of juvenile offenders currently being transferred to criminal courts in the United States is unknown” (qtd. In Myers 2005, p. 47). A few researchers have used various methods to attempt to determine an estimate of the number of juveniles being criminally prosecuted. One estimate put the number of youth under 18 prosecuted in criminal courts in 1996 somewhere between 200,000 and 260,000 (Bishop 2000). Comparing her estimates with juvenile court data, Bishop estimates that “20-25 percent of offenders under age eighteen are treated as adults” (97). Bishop warns, however, that:

[I]t is very risky to try and draw any definitive conclusions about the effects of transfer reforms in terms of the numbers and kinds of offenders transferred through various methods and their movement through the justice system. (97)

Bishop's estimate is for all youth (under 18) criminally prosecuted, not necessarily just those who are "transferred." Definitions can be tricky here. There is a qualitative difference between "transferred youth" and "criminally prosecuted adolescents." The first implies those youth whose cases were *moved* (waived, transferred) from the juvenile to criminal court. The second term is more inclusive, encompassing all judicially *and* prosecutorially waived youth, *as well as* those prosecuted under statutory exclusion laws based on offense and age criteria *and* those youth prosecuted in states where the age of jurisdiction of criminal courts is below eighteen. It is important to include all of these groups when discussing youth tried as adults. As Butts & Mitchell (2000) state, "Lowering the upper age of original juvenile court jurisdictions is often omitted in discussions of juvenile transfer mechanisms, but this method is most likely responsible for the largest number of youths who actually appear in criminal court" (186). The various ways criminally prosecuted youth can be categorized creates great difficulty in quantifying the transfer phenomenon.

In his assessment of more recent data, Myers (2005) estimates that "it would appear likely that roughly 200,000 youths under the age of 18 continue to be prosecuted in adult criminal courts under the various laws, methods and procedures available today" (49). This despite the marked youth crime drop of recent years (Butts 2002).

Recent studies of transfer have indicated an increase in the transfer of juveniles for nonviolent offenses and disproportional representation of nonwhite youth among youth (under 18) tried as adults. Griffin, *et al.* (1998) found that "a surprising number of

such laws authorize criminal prosecution for nonviolent offenses” (13). Males and Macallair (2002), Liberman (1996), *Building Blocks of Youth (Drugs and Disparity* 2001), and Juskiewicz (2000) have all documented racial disparity in the practice of trying youth as adults at all stages in the process and within a variety of transfer mechanisms. In his survey of available data, Myers (2005) found that “Virtually all studies that measure the race of waived offenders find that nonwhites (especially African Americans) are highly overrepresented, usually making up 59% to 95% of transferred youth” (57).

Adolescent Development and Issues of Culpability

Ideas regarding the nature of adolescence and ideas regarding the nature of delinquency are closely linked and change together over time (McDermott & Laub 1987). The very basis for the existence of a juvenile court system separate from adults was built upon the premise that adolescence was a time of “cognitive and social development during which offenders were not as blameworthy as adults” (Grisso 1996, p. 232). As Scott and Grisso (1997) suggest, however, “A perusal of the current landscape of juvenile justice reform suggests a view of delinquent youth as appropriately subject to adult punishment and procedures and thus as indistinguishable in any important way from their adult counterparts” (138).

Research on adolescent development has long contributed to issues of culpability for court-involved youth and as the transfer boom spread a large body of research and writing emerged relating issues of development and adolescent culpability to the efficacy of trying youth as adults (Grisso 1980, 1996, 2005; Grisso *et al.* 1987; Grisso & Schwartz 2000; Grisso & Steinberg 2003; Scott & Grisso 1997; Scott *et al.* 1995; Scott & Steinberg

2003; Steinberg & Cauffman 1996, 2000; Steinberg & Schwartz 2000; Steinberg & Scott 2003).

These researchers have recently argued that the cognitive differences already acknowledged to exist with children and young adolescents, compared with adults, remain even in older adolescents (Steinberg & Scott 2003). Scott and Grisso (1997) along with others (Scott *et al.* 1995; Steinberg & Cauffman 1996) have examined features of adolescent development research that are relevant for understanding the possible efficacy of trying youth as adults, namely psychosocial factors as well as cognitive development as they pertain to adolescent decision making processes. These researchers make the distinction between *cognition* and *judgment*. Judgment includes such factors as peer influence, attitude toward risk and temporal perspective. Scott and Grisso (1997) argue that adolescents, even older adolescents, are more likely to experience direct peer pressure than adults and that adolescents are also more likely to seek the approval of peers than adults are inclined to. In addition, perceptions of risk are different for adolescents than for adults and adolescents are more likely to have a present time orientation and to be less focused on the long term outcomes of actions and decisions. In making the distinction between the development of cognitive abilities and judgment and the relevance for issues of criminal offending, the authors state, “Thus, adolescents on the street, who are making choices that lead to criminal conduct, may be less able than adults to consider alternative options that could extricate them from a precarious situation” (165). These researchers concluded then that, although older adolescents may have “adult-like capacities for reasoning” they may lack the ability to “deploy these capacities” in an adult-like way, especially in “ambiguous or stressful situations” (165). Scott,

Reppucci and Woolard (1996) along with Steinberg and Cauffman (1996) emphasize the importance of examining the interplay between cognition and psychosocial factors in understanding levels of competency in adolescent decision-making. “An individual facing a particular decision may have the cognitive skills to evaluate the costs and benefits of various course of action, but if the individual is especially impulsive, he or she may not make a wise decision” (Steinberg & Cauffman 1996, p. 251). Scott and Grisso (1997) also contend that adolescents’ lack of experience may have a significant effect on decision making capabilities. The distinctions between cognition and judgment are particularly salient given the commonly held belief that older adolescents have reasoning skills similar to adults. This commonly held notion allows for a general acceptance of the concept of trying youth as adults – especially older adolescents. But as Scott and Grisso (1997) point out, “many youths engage in criminal activity during adolescence but do not persist into adulthood – a phenomenon that can be explained most satisfactorily in development and social terms” (153).

Recent advances in neurobiology are beginning to shed new light on the process of adolescent brain development and have important implications regarding adolescent decision making. These new findings tend to support the work of the development research discussed above. Recent neuroscience research is beginning to provide evidence that “brain maturation is going much later in development than people had thought” (Steinberg qtd. in Goode 2003). There is startling new evidence that the prefrontal cortex of the brain, where things like impulse control and other more complex cognitive “executive” functions such as the evaluation of risk and rewards, are housed, is often still

developing throughout adolescence (Spinks 2002; Chernoff & Levick 2005; Coalition for Juvenile Justice 2005). Steinberg and Scott (2003) describe the new research this way,

Patterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving long-term planning and judgment and decision making, suggest that these higher order cognitive capacities may be immature until late adolescence . . . there is good reason to believe that adolescents, as compared with adults, are more susceptible to influence, less future oriented, less risk averse, and less able to manage their impulses and behaviors and that these differences likely have a neurobiological basis. (1013)

While the authors caution that much of the work in this area is still to be done the current findings imply a strong connection between these neurobiological facts of brain development and adolescent, even late adolescent, decision-making abilities. These discoveries of the structural differences in adolescent and adult brains may impact understandings of youth culpability in the future.

The influence of these new scientific findings can be evidenced in the 2005 Supreme Court decision in *Roper v. Simmons*. In a 5-4 decision the Court judged the imposition of the death penalty to those whose capital crimes were committed while under the age of 18 to be unconstitutional. The Court, in the affirm, cited the literature on adolescent development and culpability at length. The Court held three main reasons for its decision: 1) a majority of the states had already done away with a juvenile death penalty, 2) such a decision would bring the United States in line with international standards and practices and 3) there are differences between juveniles and adults. (*Roper v. Simmons* 2005)

The Court recognized three main differences between juveniles and adults. They cited the “comparative immaturity and irresponsibility of juveniles compared to adults,” that “juveniles are more vulnerable or susceptible to negative influences and outside

pressures, including peer pressure,” and that “the character of a juvenile is not as well formed as that of an adult” (*Roper v. Simmons* 2005). In summing up their assessment of the relevant research, the Court stated, “Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults.” Chernoff and Levick (2005) argue that “The Court’s . . . ultimate conclusion – that youth are categorically less culpable than adults – [has] implications for the prosecution, defense, and sanctioning of youthful offenders in the juvenile and criminal justice systems” (209). It remains to be seen whether a line of reasoning similar to that which the Supreme Court used in abolishing the juvenile death penalty will be applied to the concept of trying youth as adults in general.

In reviewing the most current research on cognition, psychosocial factors and neurobiological findings, Steinberg and Scott (2003) concluded that “the developmental immaturity of juveniles mitigates their criminal culpability . . . and should moderate the severity of their punishment” (1010). Further, they argue for “the adoption of, or renewed commitment to, a categorical approach, under which most youths are dealt with in a separate justice system, in which rehabilitation is the central aim” (1016). The idea is not that young people involved in acts of transgression are completely blameless or lack responsibility, but that as adolescents, because they are indeed different from adults in certain significant ways, they have a *diminished* level of culpability and thus courts should act accordingly (Scott & Grisso 1997). The implications of this research, as well as the Supreme Court’s decision in *Roper v. Simmons*, is not that young people should not be punished, but that they should not be punished in the same way as adults (Steinberg & Scott 2003). Such recommendations are a good distance from currently

preferred practices in many courts, juvenile and criminal, that deal with youthful offenders across the country. The view from 2007 finds that despite a continuing overall crime drop, a rather profound decrease in juvenile crime, the general acknowledgement of the superpredator myth to have been just that – a myth – and new scientific evidence showing that adolescents truly are different from adults and therefore may have reduced culpability, the transfer legislation passed in the 1990s remains on the books in all states. What effect such new findings in developmental psychology and neurobiology may have on social attitudes or legal policies regarding transgressive youth remains to be seen. It seems unlikely that such recommendations will adopted any time soon. Decisions regarding transfer policy, and most criminal justice policy in general, we must remember, are rarely based on rational and scientific knowledge (Myers 2005).

The Juvenile Offender Act thus represents an important historical break in the juvenile court movement.
(Merril Sobie)²⁵

CHAPTER 2

A Point of Rupture: New York's Juvenile Offender Law

New York State has often been in the forefront of new policies regarding legal responses to transgressive youth. New York's House of Refuge, established in 1824, was the country's first institution of "reform" for delinquent youth. New York City's Children's Courts followed closely behind the first juvenile court in Chicago. New York State guaranteed a number of due process rights to juveniles even prior to *Gault* and New York State passed new and harsh transfer laws long before the transfer boom of the 1990s. "The history of juvenile justice in New York State includes a great amount of path breaking public policy, often with New York leading the nation" (Singer & Ewing 1988, p. 63). The most important legislation in New York in regard to trying youth as adults came 15 years before the transfer boom of the 1990s. Back in 1978, New York passed the Juvenile Offender law. As the first law in the country that allowed criminal prosecution of youth under 16 without juvenile court oversight, the Juvenile Offender (JO) law was not only an important piece of New York State legal history, it was also a significant moment of rupture in the history of the American juvenile justice system (Collier 1984;

²⁵ (1981, p.12).

Sobie 1981). Fox Butterfield (1995) has called the passage of the JO law “a watershed in American juvenile justice policy” (227).

The Juvenile Offender (JO) law required that 13, 14 and 15 year-olds charged with murder and 14 and 15 year-olds charges with certain felonies be charged as “Juvenile Offenders” in the criminal court. The law was a statutory exclusion law, requiring qualifying cases to be brought before the criminal, adult courts, completely bypassing the juvenile courts, or Family Court as it is called in New York. Juvenile Offender cases were not to be *transferred* from the Family Court – these cases were to *originate* in the adult criminal courts. At the time of its passage the law was considered harsh, even draconian, by many and foreshadowed the types of legislation many states would go on to pass two decades later.

In order to understand why the JO law was passed when it was in New York, we must examine two sets of factors. First, we must place the passage of the law within the context of the long history of New York’s legal responses to adolescent transgression. Second, we must understand the legislation within the social and political context of the time. Nineteen seventy eight was an election year in New York and the issue of juvenile crime and violence became a hotly contested issue in the election campaigns. This social and political attention to juvenile crime was fueled, in part, by two murders committed by a 15 year-old Harlem youth in the spring of 1978 in New York City.

In order to better understand the law upon which the Manhattan Youth Part operates, this chapter reviews the legal history regarding youth in the state that led up to the JO law and documents the political climate in the state at the time. This chapter also examines available data (1984-2004) on those youth legally classified as Juvenile

Offenders showing trends over time and the characteristics of those youth who has been caught in the Juvenile Offender “net.”

Early New York Juvenile Justice History

In 1824, decades before the establishment of the first juvenile court in Chicago in 1899, New York established “the first formal state institution for juveniles” (Singer & Ewing, p. 64), the New York House of Refuge. The House of Refuge was created by the New York State Society for the Reformation of Juvenile Delinquents and provided for separate detention for delinquents under the age of 16 (Singer & Ewing 1988). The act created a "society for the reformation of juvenile delinquents in the city of New York" and courts were allowed to sentence those below 16 to this reformatory organization rather than passing a sentence of imprisonment. Anyone 16 and over was remanded to the jurisdiction of the adult court system (Sobie 1981). In 1840 such differential treatment of those under 16 was mandated state wide:

Whenever any person under the age of sixteen year, shall be convicted of any felony or other crime, the court, instead of sentencing such person to imprisonment in a state prison, or county jail may order that he be removed to and confined in the house of refuge, established by the society for the reformation of juvenile delinquents. (New York Laws of 1840, chap. 1840, qtd. in Sobie 1981, p. 8)

The year 1902 saw the establishment of the first Children’s Court in New York City, a separate part of the Magistrate’s court for those under sixteen. By 1910 many areas of the state had similar institutions of Children’s Courts. Originally, these courts were not a separate court for juveniles but rather just a special part (courtroom) within the criminal court. By 1922 separate juvenile courts had been set up across the state and by 1924 the legislature established formally independent children's courts separate from the existing criminal courts (Singer & Ewing 1988; Sobie 1981). These reforms, as Sobie

(1981) writes, "fully decriminalized delinquency by converting the former discretionary power of the court into a requirement of individualized and separate treatment based upon the need of the child. Criminal punishment was precluded" (9). The age of jurisdiction for these courts was up until a youth had turned 16 years of age. At age 16, all cases were handled in the adult criminal courts. That is, for the purposes of criminal prosecution, you were considered an adult upon reaching your 16th birthday.

The Family Court Act of 1962, which still governs today, combined what had been the Children's Court with the Domestic Relations Court to create the newly named Family Court. The Act maintained the 16 year-old age distinction and "maintained the exclusive jurisdiction over crimes committed" by those less than 16 years of age to the newly named Family Court (Sobie 1981, p. 11). At the time the act was passed New York was one of only four states to set the age of jurisdiction as low as 16 (Singer & Ewing 1988). The Family Court Act also created the category "Persons in Need of Supervision (PINS)" for status offenders, and provided right to counsel and other due process rights to juveniles in New York delinquency proceedings.

New York's Juvenile Justice Reform Act of 1976

In 1975, then New York Governor, democrat Hugh Carey, set up a Panel on Juvenile Violence for the purpose of making changes to the state's laws on juvenile justice (Singer & Ewing 1988). The panel's main recommendation was that "older juveniles found to have committed any one of a certain class of designated felonies would be subject to a separate and somewhat harsher set of penalties" (Singer & Ewing 1988, p. 66). In 1976 the state legislature took up this recommendation with the passage of The Juvenile Justice Reform Act. Essentially the 1976 act created "a new category of

delinquency, the ‘designated felony,’” (Sobie 1981, p. 11) and allowed for certain youth – as young as 14 who had committed certain violent crimes (homicide, first degree robbery) to be detained in secure facilities for longer periods than had previously been allowed by law. The act also required those convicted of class A felonies be committed to secure detention for five years rather than the prior sentence of 18 months (Butterfield 1995; Singer & Ewing 1988). Although creating a new category of serious offenders and increasing sanctions against them, the Juvenile Justice Reform Act of 1976 still kept such individuals under the jurisdiction of the Family Court and all of its governing statutes, “thus maintaining the Family Court's historic authority in dealing with violent youth” (Sobie 1981, p. 11).

The act did however also add new language which instructed the court to consider “the needs and best interest of the respondent *as well as the need for protection of the community*” (Laws of New York 1976, emphasis added). In addition, the act also allowed the criminal court prosecutors to prosecute cases in the Family Court, an action previously only available to the civil county attorney (also known as corporation counsel in New York) (Butterfield 1995; Singer *et al.* 2000). Singer *et al.* (2000) are correct in their contention that the 1976 law was an important legal stop over on the way to the later 1978 Juvenile Offender Law: “To ignore the 1976 act is to assume mistakenly that the 1978 Juvenile Offender Law was a complete and radical shift in New York’s system of juvenile justice” (Singer *et al.* 2000, p. 356). In passing the Juvenile Justice Reform Act of 1976, the New York State legislature was laying the groundwork for easier passage of the Juvenile Offender Law two years later in 1978.

New York's Juvenile Offender Law

Passed in 1978, the JO law was built upon a series of prior “jurisprudential rationale[s]” including the due process reforms, the low age of criminal court jurisdiction that had always obtained in New York and the 1976 Juvenile Justice Reform Act (Singer *et al.* 2000). But why the JO law was passed at the time that it was and with the requirements that it did can only really be understood by looking at a set of larger forces at work in New York and in the nation. The JO Law was passed within a particular national and local climate of fear during a gubernatorial election year where law and order issues were hotly contested. Further, in 1978 two particularly senseless murders committed by a 15 year-old captured the attention of the media, the public and the politicians.

On March 19, 1978, Willie Bosket, then 15, robbed and then shot Noel Perez, a male passenger on a New York City subway. Four days later Willie shot and wounded Anthony Lamorte, a subway motorman when the workman discovered Willie and his cousin in the subway yards illegally. Four days after that incident Willie shot and killed another subway passenger, Moises Perez, again in the course of a robbery. Willie was finally arrested on March 31, 1978 and charged with two counts of murder and one of attempted murder (Butterfield 1995; Kaiser 29 June 1978).

When Willie was arrested, due to existing laws protecting the identity of juveniles, his identity was not released and the facts of the case were to be kept confidential. Information regarding this young, violent perpetrator, however, were quickly leaked to the press. A poor black youth from Harlem with a history in the

juvenile courts, a father in prison and the apparent ability to murder in cold blood, Willie made good press.

To many what was possibly even more outrageous than Willie's crimes was the inability of the Family Court system to punish him in a manner appropriate to his crimes. Had he been 16 years of age, Willie would have faced a possible sentence of life imprisonment but as the law stood in 1978 the stiffest sentence allowable (even under the recently passed Juvenile Justice Reform Act of 1976) was a maximum of five years in a secure juvenile detention facility. In and out of Family Court and juvenile reformatories since he was six, Willie became a poster child for those convinced of the failure of the entire juvenile justice system. The case became ready ammunition for those calling for harsher treatment of violent juveniles and for those who believed the juvenile justice system no longer tenable in the face of a new generation of violent youth.

Adding force to the influence of this sensational case, 1978 was an election year in New York. Democratic governor Hugh Carey was running for a second term in office and even prior to Willie's crimes, crime was an important issue with public worries in New York, as in the rest of the country, of a youthful population run amok. According to Collier (1984), half way through the 1978 New York State legislative session, "128 juvenile justice bills [were] introduced by democrats and republicans" (11). Fabricant (1981) contends that the issue of juvenile crime was one of the most hotly contested issues: "It served to illuminate the difference between the candidates and thus may have had a significant impact on the outcome of the election" (19). Governor Carey had come under attack early in the year when he vowed to veto a death penalty bill being pushed through the state legislature. (Carey gets report, 26 February 1978). Republicans used

Carey's anti-death penalty stance to claim that Carey and the rest of the state's democrats were "soft on crime" (Weisman 14 May 1978).

In a political climate in which no party or politician wanted to appear soft on crime, political positioning quickly fell to the question of whose program was hardest. Having won his veto of the bill to reinstitute the death penalty in New York State, Governor Carey came under increasing political fire as the saga of the Bosket case played out in the headlines. Perry Duryea, Carey's republican opponent sponsored a bill that would later become the Juvenile Offender law, a law which would require transfer of certain juveniles to criminal court jurisdiction.

Willie Bosket was sentenced to the maximum allowable sentence – five years in a secure juvenile detention facility – on June 27th. By this time, the boy's identity and the supposedly confidential sentence were all over the press (Butterfield 1995). On June 29th, just two days after Willie's sentencing, Governor Carey, who had been adamantly opposed to transfer of any kind said that he would consider measures that would allow for some youth to be prosecuted in adults courts. The New York Times reported on its front page: "In an abrupt shift, Governor Carey said today that under certain circumstances, he would support giving prosecutors the discretion to try juveniles in adult courts." The article went on to say, "The Governor made these views known in an interview . . . as he tried to diffuse the political repercussions of a five-year sentence given Tuesday to a 15 year old who had murdered two subway passengers" (Meislin 30 June 1978). Demonstrating the direct connection between his swift turnaround and the high profile case, the governor stated that the new laws would guarantee that Willie Bosket, "never walks the street again" (Meislin 30 June 1978).

By July 14th, in the wake of the Bosket case publicity, Carey compromised fully and accepted the republican version of a bill which called for the statutory exclusion of certain youth from the Family Court altogether. The New York Times article gave the following reasons for Carey's change of heart:

Mr. Carey was willing to make concessions to reach a compromise, according to those familiar with his thinking, because he needed a tough anticrime package to bolster his re-election drive and did not want the Republicans to get political mileage from portraying him as blocking a program that was, in many respects, similar to his own. (Meislin 15 July 1978)

The new regulations were signed into legislation on July 14, 1978 as part of the Omnibus Crime Control Bill. That day the New York Times ran an editorial titled "Criminals Yes, Adults No." While agreeing that some reform of the laws dealing with violent juveniles was in order, the authors wrote that "Given the clamor for stiffer penalties, one would think that New York State is lax on juvenile criminals. Quite the contrary. New York has been in the vanguard of the 'get tough' movement." (Criminals yes, adults no 14 July 1978).

The legislation that created the Juvenile Offender law was signed into law just six days later (Singer & Ewing 1988). The vote in the Republican-led state Senate was 50 to 2 (Dionne 1978), the vote in the Democratic-led state Assembly was 125 to 10 (Meislin 19 July 1978). A sponsor of the bill in the state Senate stated:

A most important purpose of this bill is to deal with juvenile offenders who presently terrorize our communities by placing them on notice that firm sanctions will be applied for their vicious and violent criminal conduct (McGarrell 1989, p. 173).

During the brief debate over the bill in the state Assembly an assemblyman opposed to the new law argued that it was "a war on people, not on crime . . . there is not

one line in this bill to strengthen the family and community structures which we know will bring people away from crime” (qtd. in McGarrell 1989, p. 175). Democratic Assemblyman Arthur O. Eve of Buffalo argued: “We’re putting 13-year olds away for life – for life! That’s unbelievable. I don’t think anyone else is doing anything comparable” (Meislin 19 July 1978). The assemblyman was correct – no one, or rather, no state, was doing anything comparable at the time. The New York Times wrote:

The hard-line anticrime legislators voted for it because it reflected most of their wishes . . . the more liberal legislators with reservations voted for it because, like the Governor, they hoped to counter some of the pressure on them for voting against the death penalty, which is being made a major campaign issue (Meislin 19 July 1978).

The new law required that all 13 year olds charged with murder in the second degree, and all 14 and 15 year olds charged with any of the following offenses be criminally prosecuted in adult courts as “Juvenile Offenders” and if convicted, be sentenced to the following indeterminate sentences (detailed in Table 2.1):²⁶

²⁶ (Laws of New York 1978). See Appendix B for a full description of each of these felony offenses under New York State law.

Juvenile Offender (JO) Offenses and Sentencing Guidelines, 1978		
	Indeterminate sentence Requirements	
	<u>Minimum</u>	<u>Maximum</u>
<u>Class A Felony</u>		
Murder 2	5-9	Life
Kidnapping 1	4-6	12-15
Arson 1	4-6	12-15
<u>Class B Felony</u>		
Assault 1	1-3 $\frac{1}{3}$	3-10
Manslaughter 1	1-3 $\frac{1}{3}$	3-10
Rape 1	1-3 $\frac{1}{3}$	3-10
Sodomy 1	1-3 $\frac{1}{3}$	3-10
Burglary 1	1-3 $\frac{1}{3}$	3-10
Robbery 1	1-3 $\frac{1}{3}$	3-10
Attempted murder 2	1-3 $\frac{1}{3}$	3-10
Attempted kidnapping 1	1-3 $\frac{1}{3}$	3-10
<u>Class C Felony</u>		
Burglary 2	1-2 $\frac{1}{3}$	3-7
Robbery 2	1-2 $\frac{1}{3}$	3-7

Table 2.1 Juvenile Offender (JO) Offenses and Sentencing Guidelines, 1978

The JO law also required that Juvenile Offenders serve their “entire sentences in secure facilities” (Collier 1984; Singer & Ewing 1988).

The sentencing structure for the new category of “Juvenile Offender” established under the JO law was different from that set for over-16 adult offenders. Over-16 adult offenders were also subject to indeterminate sentences at the time, but the maximum and minimum sentencing ranges were higher than those set for Juvenile Offenders. For example, the maximum sentence for a Class B felony for over-16 adults was 25 years and for a Class C felony it was 15 years. So, in 1978, although the state legislature insisted

that Juvenile Offenders be tried as adults and face sentences far longer than juvenile delinquents adjudicated in the Family Court, the legislature also imposed sentencing upon these new under-16 adults that was less than that required for over-16 adults. “The severity of sentence in the 1978 act occupies a middle ground between full criminal court sentences and the juvenile court dispositions” (Singer *et al.* 2000, p. 360).

A few changes to the New York State penal law since 1978 have altered the JO law in a few ways from that shown above. The possible sentence range for 14 and 15 year-olds (but not 13 year-olds) charged with murder 2 has been increased to 7 ½ - 15 to life and two new Class D felonies were added to the list of JO crimes in 1998 – criminal possession of a weapon in the second and third degree when the weapon is possessed on school grounds. The above listed offense of “sodomy 1” has also been renamed “criminal sexual act 1” (Gewirtz 2005; Warner 2004). Changes in legislatively mandated sentencing requirements have served to bifurcate the sentencing structures for JOs and non-JOs (over 16) considerably in the years since 1978. In the late 1990s, New York passed laws requiring determinate sentencing for a number of offenses. Those over 16 charged with “JO offenses” now face a determinate sentencing structure while the sentencing structure set for JOs has not changed much since adoption of the law in 1978 (please see Table 3.1 in Chapter Three for a detailed comparison of current JO and non-JO sentencing structures).

The JO law as written in 1978 did provide provisions for the “removal” of certain cases from the criminal court to the Family Court, but the legislature set a number of criteria that must be met before removal can take place. In the case of serious charges such as murder, first degree rape, sodomy or robbery, the statute required that removal

was only allowable if the defendant was a minor participant in the charged offense, if there was “mitigating circumstances that bear directly upon the manner in which the crime was committed” and if there were “possible deficiencies in the proof of the crime.” Removal in these cases also required the consent of the prosecution. Even for less serious charge offenses, removal still required the consideration of a number of factors, including:

(a) the seriousness and circumstances of the offense; (b) the extent of the harm caused by the offense; (c) the evidence of guilt, whether admissible or inadmissible at trial; (d) the history, character and condition of the defendant, (e) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; (f) *the impact of the removal of the case to the family court on the safety and welfare of the community*; (g) *the impact of the removal of the case to the family court upon the confidence of the public in the criminal justice system.* (1978 New York Laws, chap. 481, emphasis added).

As Singer and Ewing (1988) state, the “safety valve” provided by [removal] provisions, however, is... a rather narrow one. In effect, the ‘downward waiver’ scheme implicit in the JO law creates a heavy presumption that ‘a juvenile offender’ should be tried as an adult” (70). Under the JO law “transfer down” decisions were left to the determination of the criminal court. This is in stark contrast to the transfer laws in place across the nation at the time, which left the determination to “transfer up,” if any, to the discretion of the juvenile courts. Sobie, writing on the law in 1981 stated that, “the Juvenile Offender Act reverses the practice found in every other state of initiating delinquency cases only in the juvenile courts” (30). Fox Butterfield (1995), writing on the impact of the Juvenile Offender law asserts that:

The new law represented a sharp reversal of 150 years of American history, dating to the founding of the New York House of Refuge in 1825. It was the first break with the progressive tradition of treating children separately from adults both in special family courts and in juvenile reformatories outside the regular

prison system. The new law also marked a departure from the cherished American ideal of rehabilitation – the notion that kids could be changed and saved. (227)

Since the JO law's passage it has come under criticism from numerous sources. In 1979, the Citizens' Committee for the Children of New York reported its findings of a study the new law: "in our interviews with court personnel, including court administrators and several judges of the various courts, it was suggested that the Family Court be the court of original jurisdiction, with a waiver or transfer to the Criminal Court" (11). In his 1981 analysis of the Juvenile Offender law, Sobie's (1981) number one recommendation was that "every juvenile offender case should be filed initially in the Family Court" (31). In its 1983 report on the JO law, the Juvenile Justice Committee of the Association of the Bar of the City of New York, also stated that the law should be modified:

We believe that the better practice would be to begin all proceedings against juveniles charged with serious crimes in the Family Court, and to permit the Family Court judge to waive jurisdiction to the adult court in appropriate cases. (5)

With the exception of the representative from the Manhattan DA's office that I spoke with – who thought the current system works pretty well – everyone I interviewed (the judge, ATI personnel, defense attorneys) all stated that the age of juvenile court jurisdiction should be raised to 18, and that a judicial waiver system should be put in place which allowed for the transfer to criminal court of those youth deemed inappropriate for the juvenile justice system. Under such a system it would have been possible to transfer Willie Bosket to adult court where he could receive a sentence more in line with his crime while at the same time, less violent, less hardened, more rehabilitatable youth could have their cases handled in the Family Court.

Quantitative Data on Juvenile Offenders

In April 1979, The Citizens' Committee for Children of New York released an interim report on this one of a kind new law titled, "In Search of Juvenile Justice." According to the data presented in the report, in the first six months after the JO law was passed, 754 JO arrests were made, less than 10% of which were of female youth. Seventy nine percent of these early JO arrests were for first or second degree robbery, followed by first degree assault at 5%, first degree rape and attempted murder at 3% each, sodomy and arson in the second degree at 2% each and first and second degree burglary at 1% each. The report also found that 5% of Juvenile Offenders lived in foster care group homes, 76% were black, 21% "had Spanish surnames" and only 3% were white (6). The committee wrote that "The typical Juvenile Offender is a fifteen year old black male who lives with at least one parent" (6). The report also stated that a higher percentage of white JOs had been released on their own recognizance compared with non-whites. Sobie's (1981) study of the new law, reporting on data from the first year of the law's implementation found similar trends – most JO cases were in New York City and the vast majority were for the crime of robbery (in the first and second degree).

Data collected from the New York City Division of Criminal Justice Services (DCJS) for the years 1984-2004 show that these trends in geography, gender, race and offense category have continued over the life of the JO law.²⁷ The remaining sections of this chapter report the data on Juvenile Offender indictments for these years. I have chosen to report data on indictments, rather than arrest, in this chapter for a number of reasons. First, the data on indictments is available for more years than the arrest data.

²⁷ Problems with the DCJS data set for the years prior to 1984 preclude inclusion of numbers for those years.

Second, data on indictments, rather than arrest, more accurately reflect the nature of those youth who are seen in the criminal courts and in the youth parts across the city.

Not all youth who are arrested as JOs will go on to have their cases processed through the criminal courts because arrest charges are dropped, district attorneys decline to prosecute, and grand juries fail to indict. Finally, because this ethnographic study focuses on day to day court practices once youth have been indicted as Juvenile Offenders, the use of indictment data more closely correlates with the reality of my court observations. Arrest data, compiled for 1995-2005 from published New York Criminal Justice Agency (CJA) reports, is included in Appendix C.

Geography

The data reveal that a large percentage of the young people caught in the JO net in New York State have been urban youth. In the first three years after the law's passage, 86% of the 5,298 Juvenile Offender arrests made in all of New York State took place in New York City (Collier 1984). Data on Juvenile Offender indictments for 1984-2004 shows that this trend has held (See Table 2.2). From 1984-1999 New York City accounted for no less than 80% of each year's JO indictments in the state. However, as Table 2.2 shows in recent years (2000-2004), indictments in New York City as a percentage of total JO indictments in the state have begun to decrease.

New York State Juvenile Offender (JO) Indictments by Region 1984-2004							
	<u>STATE TOTAL</u>	<u>NYC TOTAL</u>	<u>Suburban</u>	<u>Upstate</u>	<u>Percentage of State Total</u>		
					<u>NYC</u>	<u>Suburban</u>	<u>Upstate</u>
1984	447	373	47	27	83%	11%	6%
1985	503	402	39	62	80%	8%	12%
1986	428	357	37	34	83%	9%	8%
1987	297	258	16	23	87%	5%	8%
1988	412	353	24	35	86%	6%	8%
1989	504	455	23	26	90%	5%	5%
1990	705	661	25	19	94%	4%	3%
1991	774	681	43	50	88%	6%	6%
1992	801	701	36	64	88%	4%	8%
1993	781	681	46	54	87%	6%	7%
1994	797	666	63	68	84%	8%	9%
1995	660	552	46	62	84%	7%	9%
1996	567	457	50	60	81%	9%	11%
1997	531	434	38	59	82%	7%	11%
1998	488	415	35	38	85%	7%	8%
1999	459	384	32	43	84%	7%	9%
2000	325	244	42	39	75%	13%	12%
2001	304	223	22	59	73%	7%	19%
2002	289	197	41	51	68%	14%	18%
2003	332	237	49	46	71%	15%	14%
2004	389	292	34	63	75%	9%	16%
TOTAL	10793	9023	788	982	84%	7%	9%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.2 New York State Juvenile Offender (JO) Indictments by Region, 1984-2004

Data On Juvenile Offender indictments in New York City for 1984-2004 show a rather even distribution of JO indictments across all boroughs except Staten Island, which has consistently had a much lower percentage of the city's JO indictments than the other four boroughs (See Tables 2.3 and 2.4). This data includes JO indictment as well as Supreme Court Informations (SCIs). SCIs are cases where a defendant has pleaded guilty

prior to grand jury indictment. SCIs are more common in some boroughs than others due to different cultures of prosecution in the different boroughs. As a representative from the Manhattan district attorney's office explained it, in a borough like Queens where the DA has a policy of not plea bargaining once an indictment is filed, SCIs are more common. In Manhattan, where the approach to plea bargaining is different SCIs are rather rare.²⁸

²⁸ The borough of indictment is the borough where the alleged crime was committed not the borough of residence of the alleged offender.

JUVENILE OFFENDER (JO) INDICTMENTS (and SCIs) NEW YORK CITY BY COUNTY, 1984-2004						
	TOTAL NYC	Bronx	Kings (Brooklyn)	New York (Manhattan)	Queens	Richmond (Staten Is.)
1984	373	91	123	96	61	2
1985	402	85	153	96	65	3
1986	357	77	126	84	65	5
1987	258	82	71	50	53	2
1988	353	88	134	82	48	1
1989	455	151	117	118	67	2
1990	661	149	186	157	160	9
1991	681	155	239	130	151	6
1992	701	130	284	136	147	4
1993	681	158	209	127	181	6
1994	666	154	177	145	179	11
1995	552	135	165	100	146	6
1996	457	121	164	87	78	7
1997	434	91	154	83	98	8
1998	415	131	100	92	86	6
1999	384	73	114	105	82	10
2000	244	37	89	63	51	4
2001	223	41	64	55	57	6
2002	197	52	47	60	34	4
2003	237	62	45	54	72	4
2004	292	69	68	59	93	3
TOTAL	9023	2132	2829	1979	1974	109

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.3 Juvenile Offender (JO) Indictments (and SCIs), New York City by County, 1984-2004

JUVENILE OFFENDER (JO) INDICTMENTS (and SCIs) NEW YORK CITY, 1984-2004					
Percentage of Total New York City Juvenile Offender (JO) Indictments (and SCIs) by County					
	<u>Bronx</u>	<u>Kings (Brooklyn)</u>	<u>New York (Manhattan)</u>	<u>Queens</u>	<u>Richmond (Staten Is.)</u>
1984	24%	33%	26%	16%	1%
1985	21%	38%	24%	16%	1%
1986	22%	35%	24%	18%	1%
1987	32%	28%	19%	21%	1%
1988	25%	38%	23%	14%	0%
1989	33%	26%	26%	15%	0%
1990	23%	28%	24%	24%	1%
1991	23%	35%	19%	22%	1%
1992	19%	41%	19%	21%	1%
1993	23%	31%	19%	27%	1%
1994	23%	27%	22%	27%	2%
1995	24%	30%	18%	26%	1%
1996	26%	36%	19%	17%	2%
1997	21%	35%	19%	23%	2%
1998	32%	24%	22%	21%	1%
1999	19%	30%	27%	21%	3%
2000	15%	36%	26%	21%	2%
2001	18%	29%	25%	26%	3%
2002	26%	24%	30%	17%	2%
2003	26%	19%	23%	30%	2%
2004	24%	23%	20%	32%	1%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.4 Juvenile Offender (JO) Indictments (and SCIs), New York City by County, 1984-2004

Gender

In 1979 the Citizen's Committee for Children of New York reported that in the first six months of the JO law only 10% of JO arrests were of female youth. Indictment

data for New York City for 1984-2004 show that this trend has held over time (see Table 2.5).²⁹

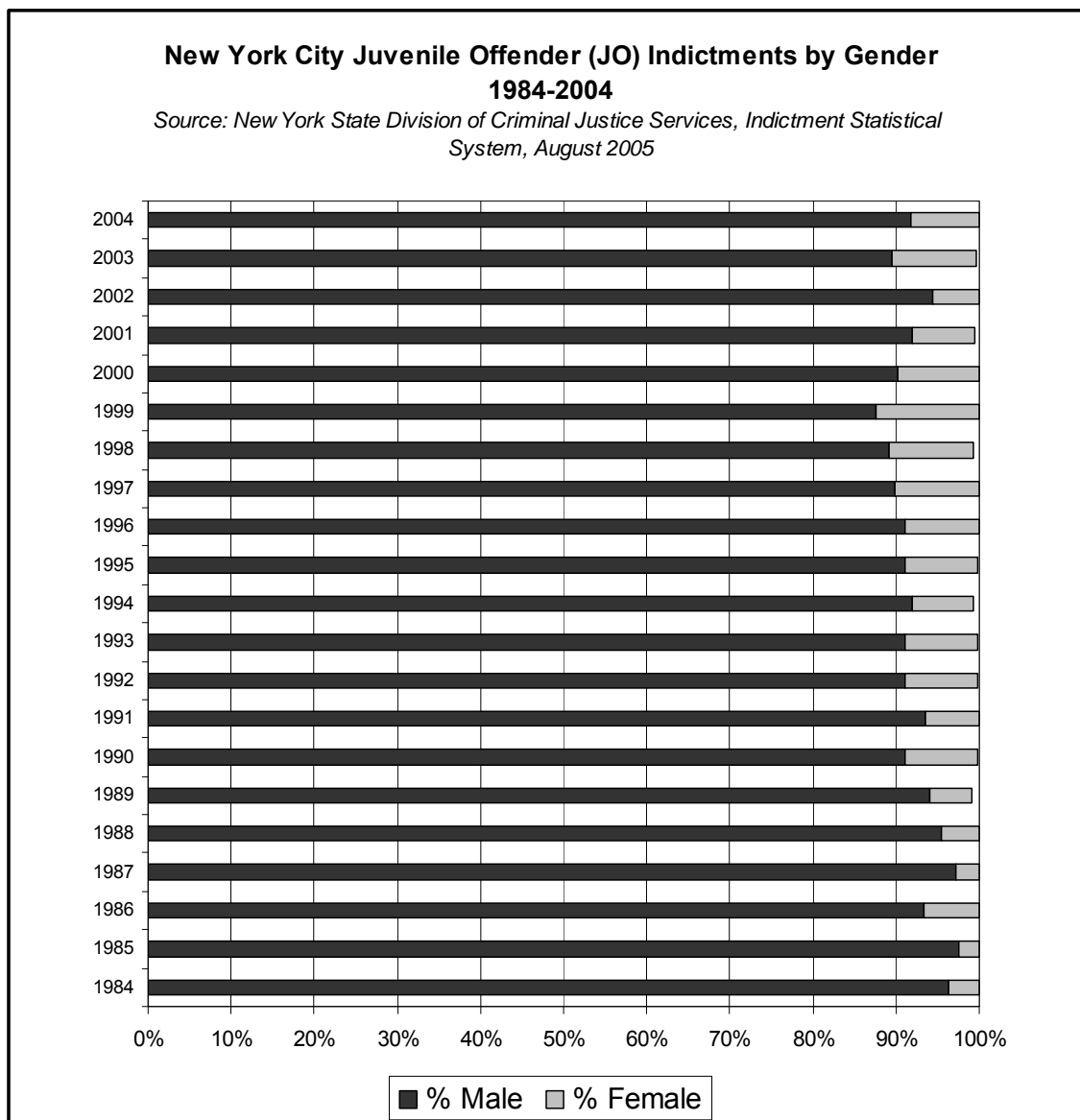


Table 2.5 Juvenile Offender (JO) Indictments by Gender, 1984-2004

²⁹ See Appendix C for tables showing all numbers and percentages of JO Indictments by gender citywide. This “gender gap” in the practice of trying youth as adults is not unique to New York (Dawson 2000). See (Gaarder & Belknap 2002) for a rare discussion of girls transferred to criminal court.

Race

Just as the early data on JOs suggests, black and Hispanic youth have been considerably more likely to be indicted as Juvenile Offenders than white youth. Due to reporting problems with the DCJS data set on JO indictments by race/ethnicity citywide, only data on New York County (Manhattan) is included here (see Tables 2.6 and 2.7). As shown in Table 2.7 black and/or Hispanic youth have accounted for between 86% and 97% of all JO indictments in Manhattan every year between 1984-1995 (the years 1996-2004 were excluded from Table 2.7 due a problematically high percentage of those with race classified as 'unknown' during those years).

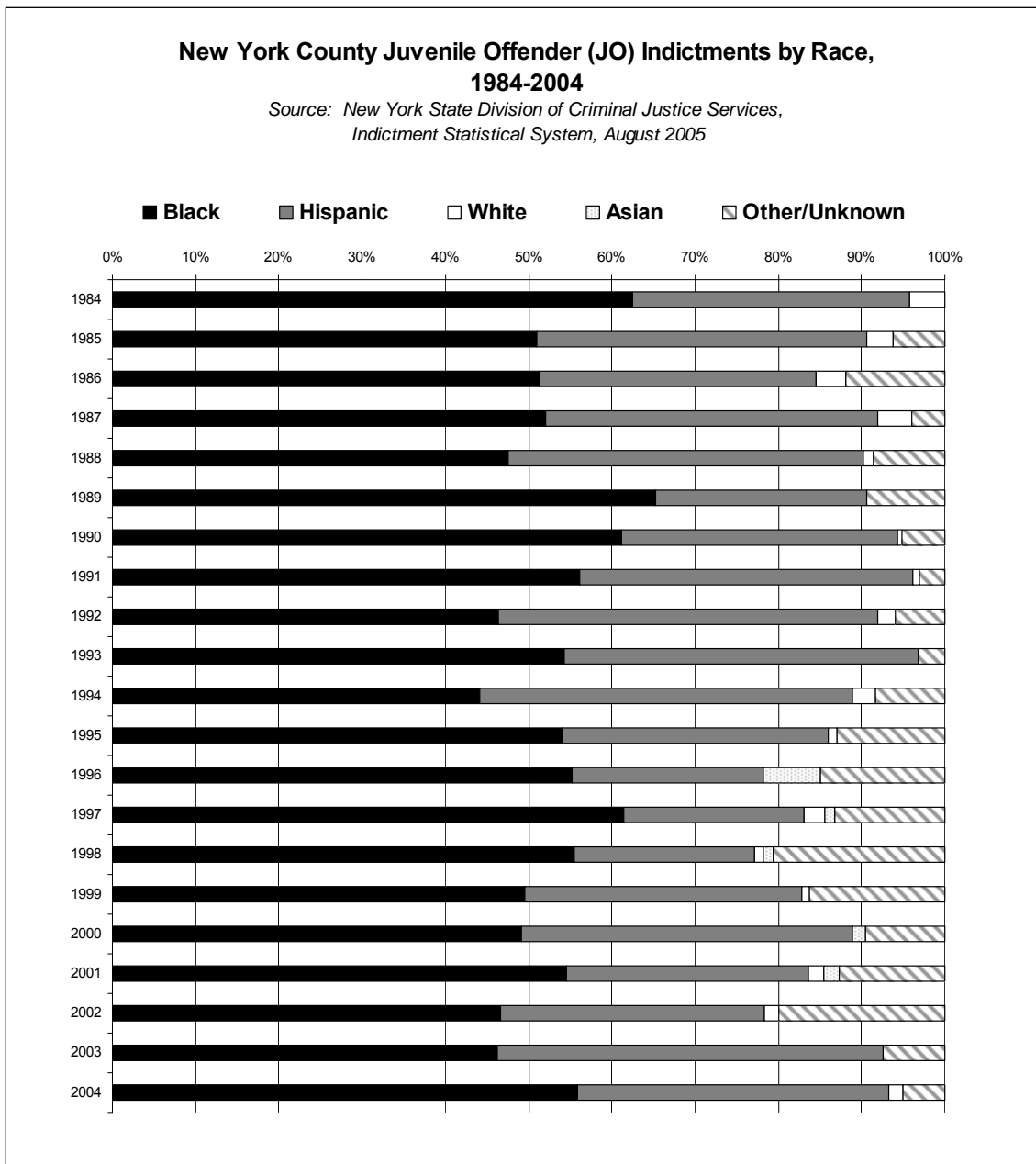


Table 2.6 New York County (Manhattan) Juvenile Offender (JO) Indictments by Race, 1984-2004

New York County (Manhattan) Juvenile Offender (JO) Indictments by Race, 1984-1995							
PERCENTAGES OF TOTAL NEW YORK COUNTY JO INDICTMENTS							
	% WHITE	% BLACK	% HISPANIC	% ASIAN	% OTHER	% UNKNOWN	% TOTAL BLACK & HISPANIC
1984	4%	63%	33%	0%	0%	0%	96%
1985	3%	51%	40%	0%	4%	2%	91%
1986	4%	51%	33%	0%	8%	4%	85%
1987	4%	52%	40%	0%	0%	4%	92%
1988	1%	48%	43%	0%	5%	4%	90%
1989	0%	65%	25%	0%	5%	4%	91%
1990	1%	61%	33%	0%	4%	1%	94%
1991	1%	56%	40%	0%	1%	2%	96%
1992	2%	46%	46%	0%	1%	5%	92%
1993	0%	54%	43%	0%	1%	2%	97%
1994	3%	44%	45%	0%	6%	3%	89%
1995	1%	54%	32%	0%	5%	8%	86%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.7 New York County (Manhattan) Juvenile Offender (JO) Indictments by Race, 1984-1995

The Case of Robbery

Collier (1984) reported that in the first three years of the JO law, 76% of arrest charges were for robbery. The next most common charges were rape and sodomy at 8%. Between 1984-2004 second degree robbery accounted for more than half of all JO indictments in New York City every year except three (42.5% in 1988, 46.8% in 2002 and 49% in 2004) (See Table 2.9). First degree robbery accounts for the second highest percentage of indictments citywide (ranging from 14.9% in 2000 to 27.9% in 2002). Taken together the vast majority of all JO indictments in New York City have been for robbery (first or second degree) across all years – accounting for between 66.1% in 1988 to 82.3% in 1984 (see Table 2.10).

Juvenile Offender (JO) Indictments by Offense Charge, New York City, 1984-2004																		
Indictment Charge	Assault 1	Man slaughter 1	Murder 2	Rape 1	Criminal Sex Act 1	Aggravated Sexual Abuse 1	Kidnapping 1	Burglary 2	Burglary 1	TOTAL BURGLARY	Arson 2	Arson 1	Robbery 2	Robbery 1	TOTAL ROBBERY	Criminal Possession of a Weapon 3	Criminal Possession of a Weapon 2	TOTALS
	1984	7	0	29	9	9	1	0	2	6	8	1	0	96	211	307	n/a	n/a
1985	12	3	31	30	8	0	1	1	6	7	2	1	90	214	304	n/a	n/a	406
1986	13	2	28	22	9	0	0	0	6	6	1	0	76	198	274	n/a	n/a	361
1987	12	0	31	21	4	0	0	1	3	4	0	0	44	140	184	n/a	n/a	260
1988	12	0	62	28	4	0	2	2	4	6	0	1	83	149	232	n/a	n/a	353
1989	11	2	65	32	9	0	0	0	6	6	1	0	91	235	326	n/a	n/a	458
1990	19	3	97	18	18	0	5	2	4	6	2	0	120	368	488	n/a	n/a	662
1991	18	3	96	9	6	6	0	0	3	3	1	1	127	403	530	n/a	n/a	676
1992	24	3	84	24	9	0	0	1	9	10	2	0	102	441	543	n/a	n/a	709
1993	24	3	92	16	4	0	0	0	4	4	0	1	133	401	534	n/a	n/a	682
1994	17	3	78	16	11	1	0	0	9	9	1	0	137	386	523	n/a	n/a	668
1995	21	0	50	14	11	0	1	1	10	11	3	0	112	328	440	n/a	n/a	562
1996	23	2	37	14	5	0	1	7	11	18	2	0	90	264	354	n/a	n/a	474
1997	44	0	30	12	7	0	0	0	2	2	5	0	88	239	327	n/a	n/a	429
1998	30	1	17	12	8	0	1	0	7	7	2	0	65	271	336	0	0	421
1999	38	3	28	7	10	0	0	2	9	11	1	0	72	211	283	0	3	395
2000	25	0	14	8	6	0	0	0	3	3	8	0	36	137	173	3	2	245
2001	35	1	11	7	7	0	0	2	3	5	1	0	42	113	155	1	0	228
2002	21	0	4	5	2	0	1	2	3	5	3	0	56	94	150	7	3	206
2003	26	1	7	6	9	0	0	1	2	3	1	0	51	125	176	1	0	233
2004	40	0	11	4	7	2	0	0	5	5	1	0	75	142	217	0	3	295
Total 84-04	472	30	902	314	163	10	12	24	115	139	38	4	1786	5070	6856	12	11	9102

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.8 Juvenile Offender (JO) Indictments by Offense Charge, New York City, 1984-2004

Percentage of Total Juvenile Offender Indictments by Offense Charge, New York City, 1984-2004															
Indictment Charge	Assault 1	Man slaughter 1	Murder 2	Rape 1	Criminal Sex Act 1	Aggravated Sexual Abuse 1	Kidnapping 1	Burglary 2	Burglary 1	Arson 2	Arson 1	Robbery 2	Robbery 1	Criminal Possession of a Weapon 3	Criminal Possession of a Weapon 2
1984	1.9%	0.0%	7.8%	2.4%	2.4%	0.3%	0.0%	0.5%	1.6%	0.3%	0.0%	25.7%	56.6%	n/a	n/a
1985	3.0%	0.7%	7.7%	7.5%	2.0%	0.0%	0.2%	0.2%	1.5%	0.5%	0.2%	22.4%	53.4%	n/a	n/a
1986	3.7%	0.6%	7.9%	6.2%	2.5%	0.0%	0.0%	0.0%	1.7%	0.3%	0.0%	21.4%	55.8%	n/a	n/a
1987	4.7%	0.0%	12.0%	8.1%	1.6%	0.0%	0.0%	0.4%	1.2%	0.0%	0.0%	17.1%	54.3%	n/a	n/a
1988	3.4%	0.0%	17.7%	8.0%	1.1%	0.0%	0.6%	0.6%	1.1%	0.0%	0.3%	23.6%	42.5%	n/a	n/a
1989	2.4%	0.4%	14.3%	7.1%	2.0%	0.0%	0.0%	0.0%	1.3%	0.2%	0.0%	20.1%	51.9%	n/a	n/a
1990	2.9%	0.5%	14.7%	2.7%	2.7%	0.0%	0.8%	0.3%	0.6%	0.3%	0.0%	18.2%	55.8%	n/a	n/a
1991	2.7%	0.4%	14.2%	1.3%	0.9%	0.9%	0.0%	0.0%	0.4%	0.1%	0.1%	18.8%	59.5%	n/a	n/a
1992	3.4%	0.4%	12.0%	3.4%	1.3%	0.0%	0.0%	0.1%	1.3%	0.3%	0.0%	14.6%	63.0%	n/a	n/a
1993	3.5%	0.4%	13.5%	2.4%	0.6%	0.0%	0.0%	0.0%	0.6%	0.0%	0.1%	19.6%	59.1%	n/a	n/a
1994	2.6%	0.5%	11.8%	2.4%	1.7%	0.2%	0.0%	0.0%	1.4%	0.2%	0.0%	20.7%	58.3%	n/a	n/a
1995	3.8%	0.0%	9.1%	2.5%	2.0%	0.0%	0.2%	0.2%	1.8%	0.5%	0.0%	20.3%	59.4%	n/a	n/a
1996	5.0%	0.4%	8.1%	3.1%	1.1%	0.0%	0.2%	1.5%	2.4%	0.4%	0.0%	19.7%	57.8%	n/a	n/a
1997	10.3%	0.0%	7.0%	2.8%	1.6%	0.0%	0.0%	0.0%	0.5%	1.2%	0.0%	20.6%	56.0%	n/a	n/a
1998	7.2%	0.2%	4.1%	2.9%	1.9%	0.0%	0.2%	0.0%	1.7%	0.5%	0.0%	15.7%	65.5%	0.0%	0.0%
1999	9.9%	0.8%	7.3%	1.8%	2.6%	0.0%	0.0%	0.5%	2.3%	0.3%	0.0%	18.8%	54.9%	0.0%	0.8%
2000	10.3%	0.0%	5.8%	3.3%	2.5%	0.0%	0.0%	0.0%	1.2%	3.3%	0.0%	14.9%	56.6%	1.2%	0.8%
2001	15.7%	0.4%	4.9%	3.1%	3.1%	0.0%	0.0%	0.9%	1.3%	0.4%	0.0%	18.8%	50.7%	0.4%	0.0%
2002	10.4%	0.0%	2.0%	2.5%	1.0%	0.0%	0.5%	1.0%	1.5%	1.5%	0.0%	27.9%	46.8%	3.5%	1.5%
2003	11.3%	0.4%	3.0%	2.6%	3.9%	0.0%	0.0%	0.4%	0.9%	0.4%	0.0%	22.2%	54.3%	0.4%	0.0%
2004	13.8%	0.0%	3.8%	1.4%	2.4%	0.7%	0.0%	0.0%	1.7%	0.3%	0.0%	25.9%	49.0%	0.0%	1.0%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.9 Percentage of Total Juvenile Offender (JO) Indictments by Offense Charge, New York City, 1984-2004

Robbery as Percent of Total Juvenile Offender (JO) Indictments, New York City, 1984-2004			
Percentage of Total JO Indictments			
	First Degree Robbery	Second Degree Robbery	Total Robbery
1984	25.7%	56.6%	82.3%
1985	22.4%	53.4%	75.8%
1986	21.4%	55.8%	77.2%
1987	17.1%	54.3%	71.3%
1988	23.6%	42.5%	66.1%
1989	20.1%	51.9%	72.0%
1990	18.2%	55.8%	74.1%
1991	18.8%	59.5%	78.3%
1992	14.6%	63.0%	77.6%
1993	19.6%	59.1%	78.6%
1994	20.7%	58.3%	79.0%
1995	20.3%	59.4%	79.7%
1996	19.7%	57.8%	77.5%
1997	20.6%	56.0%	76.6%
1998	15.7%	65.5%	81.2%
1999	18.8%	54.9%	73.7%
2000	14.9%	56.6%	71.5%
2001	18.8%	50.7%	69.5%
2002	27.9%	46.8%	74.6%
2003	22.2%	54.3%	76.5%
2004	25.9%	49.0%	74.8%

*Source: New York State Division of Criminal Justice Services,
Indictment Statistical System, August 2005*

Table 2.10 Robbery as Percent of Total Juvenile Offender (JO) Indictments, New York City, 1984-2004

The Case of Burglary

Indictments for first or second degree burglary make up a surprisingly low percentage of JO indictments (see Table 2.11). By looking at this data one might assume that 14 and 15 year-olds in New York City weren't committing many criminal acts that qualified as first or second degree burglary. Back in 1981, Sobie also found surprisingly

low rates of burglary indictments in the first year after the JO law's passage. According to the available arrest data, Sobie discovered that 99% of all burglary charges against 14 and 15 year-olds city wide during this first year had been for *third* degree burglary with only 1% being for first and second degree burglary. The low rates of first and second degree burglary charges among 14 and 15 year-olds pointed, according to Sobie, to discretionary police and prosecutorial practices. "The fact that burglary is the only nonviolent crime that the legislature included as a juvenile offense may be the basis for this development" (Sobie 1981, p.17). Police and/or prosecutors, Sobie argued, did not see burglary as a "JO worthy" offense and therefore simply chose to substitute a non-JO offense such as third degree burglary or breaking and entering rather than entering a JO level charge (Sobie 1981). In the course of my own ethnographic research between 2000-2005 in the Manhattan Youth Part I was struck by the lack of youth charged with burglary that ever came before the court. Conversations with court personnel and defense attorneys supported the existence of practices Sobie identified in the first year of the JO law – that first and second degree burglary were rarely indicted against 14 and 15 year-olds as a JO level offense because there was a sense that as non-violent offenses they were rarely considered worthy of criminal prosecution in the criminal court. A representative from the District Attorney's office agreed that such discretionary practice may be taking place although he insisted that it was not bureau policy. He also contended that the low rates of burglary indictments may be the result of the fact that burglary is a more an adult crime often committed by a lone individual. Even if there is no formal policy at the level of prosecution, informal decision making as well as police discretion may still help explain the low burglary numbers.

These details on burglary are detailed here, in part, to remind the reader of the importance that discretion can play at all levels of criminal justice systems. Even within the mandatory rules of transfer present within a statutory exclusion law like New York's JO law, discretion is a powerful force. In their 1979 assessment of the new JO law, the Citizens' Committee for Children of New York wrote, "we became aware of the fact that a Juvenile Offender's experience differs greatly from borough to borough. We were struck by the different interpretations of the prosecutorial role under the law" (23). In their interim report in 1978 The Citizens' Committee noted that police had the ability to charge a youth with a more or a less severe charge. "Reports have reached us that the police officers have become more conversant with those cases for which the district attorneys at the complaint room level have 'declined prosecution,' and have themselves lowered the charge" (9). This assessment points to the fact that, in addition to the more obvious discretionary practices of judges and prosecutors, there is the discretion of local governmental agencies to allocate scarce resources, the discretion of police departments to deploy limited policing resources in some areas and not in others, the discretion of police in which charges they file, and the discretion of district attorney offices to set charge levels and offer, accept, or refuse plea bargains.

Burglary as Percent of Total Juvenile Offender (JO) Indictments, New York City, 1984-2004			
Percentage of Total JO Indictments			
	First Degree Burglary	Second Degree Burglary	Total Burglary
1984	1.6%	0.5%	0.3%
1985	1.5%	0.2%	0.5%
1986	1.7%	0.0%	0.3%
1987	1.2%	0.4%	0.0%
1988	1.1%	0.6%	0.0%
1989	1.3%	0.0%	0.2%
1990	0.6%	0.3%	0.3%
1991	0.4%	0.0%	0.1%
1992	1.3%	0.1%	0.3%
1993	0.6%	0.0%	0.0%
1994	1.4%	0.0%	0.2%
1995	1.8%	0.2%	0.5%
1996	2.4%	1.5%	0.4%
1997	0.5%	0.0%	1.2%
1998	1.7%	0.0%	0.5%
1999	2.3%	0.5%	0.3%
2000	1.2%	0.0%	3.3%
2001	1.3%	0.9%	0.4%
2002	1.5%	1.0%	1.5%
2003	0.9%	0.4%	0.4%
2004	1.7%	0.0%	0.3%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Table 2.11 Burglary as Percent of Total Juvenile Offender (JO) Indictments, New York City, 1984-2004

Removal

Because of the existence of a removal provision in the JO law New York State is sometimes, rather mistakenly, referred to as a “waiver down” state, with the implication that it is easy or common practice to waive cases back down to the Family Court. This simply isn’t the case. Although the JO law as written does provide for the *removal* of certain qualifying cases from the criminal court back to the Family Court, actual removal, post-indictment, is quite rare in the city. Between 2001 and 2005 cases removed from Supreme Court, citywide, ranged from zero percent to 6.5% of indicted JO cases (Table 2.12).

Percentage of Juvenile Offender (JO) Cases Removed to Family Court, Citywide, 2001-2005					
	<u>Brooklyn</u>	<u>Bronx</u>	<u>Manhattan</u>	<u>Queens</u>	<u>CITY WIDE*</u>
2001	4.5%	0.0%	0.0%	0.0%	1.4%
2002	0.0%	0.0%	0.0%	0.0%	0.0%
2003	2.4%	0.0%	0.0%	5.6%	2.2%
2004	2.9%	1.2%	0.0%	0.0%	1.0%
2005	1.1%	14.3%	0.0%	0.0%	6.5%

* Not Including Staten Island
Source: Gewirtz (2002-2006)

Table 2.12 Percentage of Juvenile Offender (JO) Cases Removed to Family Court, Citywide, 201-2005

While an in-depth analysis of the history of removal provisions within the Juvenile Offender Law is beyond the scope of this study, it is worth noting that in the years just after the passage of the JO law removals were much more common than they are now. In the first six months of the JO Law, 43% of all JO cases were removed to Family Court (Sobie 1981). Part of the difference in these number, compared with recent

years, may have a lot to do with the ways in which certain details of criminal justice practices get labeled and quantified. For example, when prosecution “declines to prosecute” a case as a JO offense but recommends that the case be charged in Family Court on a non-JO charge, that case may be considered “transferred to the Family Court” although it is not technically a removal from criminal court after indictment. Often times these two concepts – transfers to Family Court and removal – are conflated. Whether or not Sobie’s removed cases included pre-indictment transfer is hard to assess. The Association of the Bar of the City of New York, Committee on Juvenile Justice (1983) also discovered that in the very early years after the JO law’s passage removal of cases was quite common but that by the early 1980s this was changing. In the first half of 1982, removals declined from 44% to 26%. Even within the first six months of the JO law’s existence, the Citizens’ Committee for Children of New York (1979) found divergent practices among the district attorneys’ offices throughout the city. The study found that in Queens there was a low rate of removals or declines to prosecute while in New York County (Manhattan) there was a high rate of decline to prosecute and in Kings County (Brooklyn) there was a low rate of decline to prosecute but a high rate of removal.

The decline in removal post-indictment may be explained by the institutionalization of certain practices as prosecutors, judges and defense attorneys developed policies and procedures regarding JO cases. As an example, a representative from the DA’s office stated that as a rule his office likes to indict only those cases for which they have a firm belief in winning and that therefore many transfers to Family Court take place prior to grand jury indictment. Thus, cases that may be susceptible to removal procedures post-indictment may be funneled into Family Court at a much earlier

stage in case processing via prosecutorial discretion. Another reason for extremely low rates of removal may be due in part to the “narrow” nature of the statute in which certain legal criteria put be met.³⁰ While judges, in some cases, can remove without consent of prosecution, judges have limited discretion, under the JO law, for removing cases.

In addition to these factors, the lack of removal in the Manhattan Youth Part may also partially result from the unique culture of the Youth Part wherein it may be felt, either by the court or by the defense that a defendant may get better treatment and have a potentially better outcome to his case if he remains within the criminal jurisdiction of the Youth Part, leading to very few, if any, petitions for removal (see Chapters Four and Five for an in-depth explanation of Youth Part court culture and practices). Regardless of which all, or which combination of, these factors explains low percentages of removal, the fact remains that post-indictment removal of JO cases remains a rarity in criminal court case processing across the city.

As all the quantitative data presented above indicates, the typical Juvenile Offender is, and has been since the implementation of the law, prosecuted in New York City (most likely in the Bronx, Brooklyn, Manhattan or Queens) and is a black and/or Hispanic male charged with either first or second degree robbery, whose case will not be removed to the Family Court. This supports my ethnographic findings regarding defendants in the Manhattan Youth Part.

³⁰ See Appendix B for statutory details on removal under the Juvenile Offender law.

CHAPTER 3

Calendar Days In The Youth Part

Somehow fittingly, the Manhattan Youth Part courtroom isn't located inside the stern-looking Criminal Court building at 100 Centre Street, nor is it in the grand Civil Court building made famous on Law and Order.³¹ The Manhattan Youth Part instead, is housed on an upper floor of an unimpressive, off-white, 12-story building that serves as an annex to the main Criminal Court building. Outside the building there are low cement barricades and chain link fencing that have been in place since September 11th, 2001. Inside, security is the same as for all court buildings – all visitor's bags must be scanned, all visitors must pass through a metal detector, all camera phones and other recording devices must be checked at the front counter.

Two black swinging doors, their small portal style windows blacked out, mark the entrance to the Youth Part courtroom. Inside, the square, compact room is an incongruent mix of richly polished dark woods and bright whites. Just inside the doors is the audience area. Two long hardwood benches fill up each side. Since this particular courtroom is small, the 30 or so seats available in the audience are never enough to accommodate all the kids and family members, lawyers, and program representatives that come to court on

³¹ The hugely popular television show repeatedly depicts criminal court lawyers on the grand courthouse steps. In reality this building is the civil court in Manhattan, but the grandness of the civil court building architecture makes for great criminal justice TV.

any given calendar day.³² On one side two free standing chairs are often placed in what little extra space there is in order to maximize the available seating in the audience area. Kids and family members who can't find space to sit in the audience spill out onto the four or five long wooden benches in the hallway outside the courtroom. Because some folks have to wait in the hall, lawyers often have to go find their clients and their families when a defendant's name is called. To further ease the seating congestion, lawyers, alternative to incarceration (ATI) program representatives and observers are asked to take up seats in the jury box.

A low three-foot high wooden wall in front of the benches in the audience runs the width of the room. Two swinging doors in the center of the low wall provide access to the rest of the courtroom. Another three foot high wood wall, perpendicular to the first, marks off the jury box that occupies the far right side of the room. The jury box has two rows of six seats, the back row raised higher than the front. The chairs in the jury box are flip down, movie theater style seats with maroon leather padding, considerably more comfortable to sit in than the wooden pew-like benches in the audience. Next to the jury seats, four extra free standing chairs have been placed to help accommodate the usual overflow of attorneys, program representatives and observers.

The center of the court room is filled with an arrangement of dark wood tables, chairs and desks. Two tables with padded chairs face the judge and serve the assistant district attorney (or ADA) on the right, the defendant and his or her lawyer on the left.

³² While there are many terms that could be used to describe the young defendants who come before the Youth Part – adolescents, juveniles, children, teenagers – I have chosen to largely use the term “kids” when writing about the court since that is the term most often used among court actors – by the judge, attorneys, court officers, detention facility personnel, program representatives and parents. Also the term “kid” is the one the average person would use if he or she saw one of these kids on the street, as in, “yesterday I saw this *kid* who was wearing a t-shirt that came down to his ankles.”

One ADA is designated to cover all the cases before the part on calendar days, keeping records and providing needed information from the various case files, if it is available. Occasionally the “assigned assistant” (the ADA actually assigned to prosecute a particular case) will appear for a case on a calendar day. At the beginning of a calendar day, the ADA’s desk is covered neatly with legal size expandable folders – one for each case before the court – fanned out across the desk for easy access. A glance at the number of files on the ADA’s desk is a quick way to tell if the day’s calendar is light or heavy.

While the ADA stays the same, and in the same place throughout a calendar day, defense attorneys come and go as their clients’ cases are called – carrying legal size folders in their arms or in briefcases, temporarily taking up residence at the defense table where their client sits. Most defense attorneys in the court are from the public defender agencies in the county – the New York County Defender Services, The Legal Aid Society, and the Neighborhood Defender Services of Harlem – or from the pool of private lawyers that take on indigent cases known as 18B attorneys. In addition to defense attorneys, ATI and other program representatives often step forward when a defendant’s case is called. Since these representatives don’t have an official space to call their own in the court they generally occupy the space in between the defense lawyer’s table and the ADA’s table, and tend to carry all their paperwork in their arms.

Three wood desks in varying sizes along the left wall of the court are home to the head court officer, the court clerk and an assistant to the court attorney. Three padded wooden chairs are available for use by the Spanish interpreter or by one or more of the five or six uniformed court officers whenever they are not escorting, cuffing or uncuffing incarcerated defendants, passing paperwork, or directing traffic.

At the front of the room, raised up about one and a half feet, is the judge's bench. It too is made of dark polished wood. Behind the bench on the left is a flagpole with an American flag, to the right a pole with a flag of New York State. The wall behind the judge's bench is polished wood from floor to ceiling. In between the two flagpoles the words "In God We Trust" are raised in dark wooden letters on the wall. To the left of the judge's bench sits the judge's law clerk at the same height as the judge. Located to the right of the judge's bench is the witness box – which never gets used on calendar days. To the right of the witness box in the far right corner of the room a wooden door sits propped open. About ten feet behind it is a locked metal door through which the court officers bring in and take out the incarcerated kids.

Other than the all wood paneled wall behind the judge's bench the top half of the courtroom's walls are all painted a bright, glaring white. The bottom halves are all a dark polished wood. Overly bright fluorescent lighting creates a glare off of everything: the white walls, the polished woods, the court officers' badges. The floor is not carpeted and the acoustics are less than ideal, resulting in a slight yet constant echo. Summer or winter, the room tends toward the cool side. The jangle of the court officers' keys is an omnipresent sound in the crowded courtroom, as is the frequent clanging of the heavy metal door in the back and the intermittent clicking sound handcuffs make as they are put on and taken off. The shuffling of paper and of people continuously coming and going and moving around the court add to the din of controlled chaos on calendar days.

Days of Mundanity and Drama

Calendar days are those days – usually one day a week – set aside in the Youth Part for control dates and routine processing of cases. On a typical calendar day

anywhere from 15-40 defendants can come before the court between the hours of 10am and 1pm. Some cases on a typical calendar day are new cases before the court for the first time and older cases are sometimes resolved. The majority of cases before the court on a typical calendar day, however, are on for what the court refers to as “control dates” or “updates.” This largely entails the court’s “checking in with” a kid to see how his or her case is proceeding or to see how well a kid is doing (or not doing) in one of the Alternative to Incarceration (ATI) programs into which he or she has been placed. Representatives from the various ATI programs involved with the court are present on calendar days to provide reports on kids’ progress in and compliance with the various programs. Other cases on calendar days involve checking in on the progress of cases of remanded youth – those who have not been deemed suitable for a ATI program yet (or not at all) or who are awaiting the slow progression of legal matters such as the filing of motions, the results of pre-pleading examinations and the like. Calendar days largely consist of this sort of routine court activity. Other days on the court’s calendar are reserved for trials, processing cases of those in violation of probation, conferences with defense counsel and prosecutors, and other court work.³³

Judge Michael Corriero presides over the crowded, controlled chaos that constitutes calendar days with a grace that comes from years of experience. The judge is a trim, fit, Italian-American, with salt and pepper hair, a slightly husky voice and a habit of wearing crisp white shirts and silk ties under the traditional black robe. A New Yorker born and bred, easily evidenced by his accent, Corriero grew up on Mulberry street, the son of immigrants, the first in his family to go to college. As a young person he himself

³³ Most Youth Part defendants take a plea so trials are a rare occasion.

ran with a rather tough crowd. He remembers what it was like to be a teenager, how important the judgments of his peers were, the need to be respected, the potentially dangerous consequences of stupid decisions.

The judge says he prefers the smaller courtroom where the Youth Part is now housed. Whenever anyone suggests that he needs a larger courtroom – which happens often – he responds that although it is overcrowded he prefers the intimacy of the smaller courtroom, believing it to be a more conducive environment for the work of the part. In his desire to make the space more intimate and less intimidating, the judge has dispensed with the formality of having everyone in the court stand when his arrival is announced. Instead the judge begins the court session simply by walking into the courtroom and saying, “good morning everybody,” and taking his seat at the bench.

From the moment he arrives the judge is aware of what is going on and who is present in the courtroom. At the beginning of the day he will often survey the jury seats and the audience to see who is in attendance on that day. Over the course of the day he will notice if Ramon, a 16 year-old Hispanic boy with a case before the court has his girlfriend with him in the audience. Or he will notice if a kid has fallen asleep in the audience while waiting for his case to be called. He might even call out to the kid by name, asking him what time he went to bed last night.

On one calendar day the judge was standing in the back entrance way to the court, before taking the bench, and saw a particular young black man sitting in the audience. The judge called across the courtroom to him, “Malik, how are you feeling?” The young man responded, “a little sore but alright.” The judge nodded. About 15 minutes prior to this the law clerk had come into the court, seen the young man and called across the court

to him, also asking him how he was feeling. Later, when the young man's case was called it was revealed that Malik had just recently been released from the hospital after having been shot in the same incident in which his brother had been shot and killed. Both the judge and his law clerk were aware of this fact and had gone out of their way, even before the court session, to ask after his health.

On another calendar day, a Hispanic mother was in the audience with her young daughter who looked to be about 10 or 11 years old. They had both been sitting there for a couple of hours of court proceedings when at one point the mother left the courtroom, leaving the young girl sitting there by herself. Not too long after this, during the down time that often takes place between cases, the judge asked the young girl who she was there for. The young girl sat up straight in her seat and said her brother's name. The judge then asked, "And where is your mother?"

"She went downstairs to get a drink," the girl replied.

"Isn't today a school day?" the judge asked in a steady and patient voice. The young girl nodded yes. "Shouldn't you be in school then?" the judge asked.

"My mom has to find me a school," the girl replied. Given that it was the very start of the school year and many kids were still working out placement with the city's education department, the judge accepted the girl's statement, nodded, said "okay," and went back to the business of the court.

One calendar, my own actions caught the keen attention of the judge. I have always attempted while observing the court to remain as stoic as possible and not telegraph any immediate reactions I might have to any of the activity in the room. On one particularly tough calendar day – a day characterized by emotional ups and downs for

many in the court – the judge saw me inadvertently rub my forehead after a particularly challenging case. The judge noticed this gesture and said aloud, smiling across the courtroom, “that one give you a headache too, Carla?” I smiled, nodded, startled at his ability to keep track of such nuances amidst the borderline chaos that is a calendar day.

Calendar days in the Youth Part are full of mundane legal case processing activity such as the ordering of reports from the probation department or making arrangements for a youth to have an intake appointment with an ATI program, or waiting for the court officers to “bring up” the next remanded kid. There is also the seemingly endless paperwork that surrounds all these court activities. Many of the lawyers and ATI program representatives who must wait through several other cases before their clients are called frequently sit working on the daily crossword puzzle or reading a novel. Waiting is just part of the job, part of the culture of the court. In addition to the normal delays that are part and parcel of the everyday routine of a working court, a calendar day is often marked by episodes of frustrating bureaucratic delays:

- A defendant’s case gets called but his lawyer hasn’t arrived yet so the case has to be recalled.
- A remanded defendant is brought from the back, in cuffs, escorted to his chair, uncuffed, only to be informed that his lawyer is on trial and that the court is putting the young man’s case over for another three weeks, after which he is recuffed and lead back out.
- A case is brought before the court four weeks after a series of reports were ordered only to learn that the department that prepares the reports needs more time. The case is adjourned for a future date.
- A case is called and the defense attorney reports that no movement has been made since the last date because the assistant district attorney assigned to the case has not returned her calls.
- The assigned assistant district attorney on a case no longer works for the district attorney’s office and a new assistant has to be assigned.

Despite the best efforts of the judge and his dedicated staff, these types of delays are the result of systemic malfunctions within the criminal justice system and are largely beyond anyone's control.

The waiting and the routine bureaucratic activity on calendar days is invariably broken up with prevailing episodes of intense human drama. The judge himself has said more than once that calendar days "can be an emotional rollercoaster." These moments, interspersed among the mundanity of courtroom routine, bureaucratic delays and the waiting are sometimes funny, sometimes heartening, sometimes heartbreaking:

- A Hispanic mother explains to the court that she has been kicked out of her public housing because of her son's case before the court and is now living in a homeless shelter.
- The voice of a frustrated and upset black 15 year-old male defendant cracks as he tries to explain to the judge why he hasn't been to the ATI program in two weeks.
- A 14 year-old black boy allocutes as to his role in the robbery of a pizza delivery man while his father looks on, pained.
- The judge takes ten minutes to patiently look through and comment on the pictures a proud black girl defendant has brought in of her prom night.
- The judge delivers a stern lecture to a Hispanic kid who is not doing well in an ATI program and is precariously close to running out of chances: "If you so much as spit on the sidewalk between now and your next court date, I will put you in jail. Do we understand each other?"
- A Hispanic mother and grandmother stand sobbing in the audience as their son/grandson is sentenced to two to six years.
- The two-year old baby brother of a young black male defendant smiles and blows extravagant kisses toward the back of his brother's head as his big brother is lead out of the courtroom in handcuffs.
- A particularly young looking Hispanic defendant breaks out into a huge smile when the judge tells him: "You've been doing everything we've asked of you. We are very proud of you. Keep up the good work."
- A Hispanic mother asks the judge if her just sentenced son can be incarcerated "someplace close." The judge, who has no control in this matter can only frown, shake his head and say softly, "it's not up to me."

Race, Class And Gender In The Court

Manhattan Youth Part defendants and their family members are almost never white. As stated earlier, I have seen one white kid come before the court in all the time I have observed the part. A seasoned defense attorney with 20 years experience defending kids in the county says that in all her years she has had only one white defendant. As shown in Chapter Two, between 1984 and 1995, white defendants made up no more four percent of total JO indictments in Manhattan (Table 2.7). The vast majority of defendants in the Youth Part are also male, although girls do come before the court from time to time (see Chapter Two, Table 2.5)

Although there are few young women defendants in the Youth Part, women make up the bulk of the family members that come to court to stand for the kids. Much more often than not, then, it is black and/or Hispanic women who come to court on behalf of mostly male black and/or Hispanic defendants: mothers, grandmothers, aunts, sisters. There are fathers, grandfathers, step-fathers and uncles that show up for a youth sometimes (and sometimes only them) but the burden of sitting in the Youth Part waiting for your kid's name to be called on calendar days in the Youth Part seems to fall heavily to women.³⁴

In contrast to the predominately black and/or Hispanic kids and family members, defense attorneys, the assistant district attorneys (ADA's) and the alternative to incarceration (ATI) representatives tend more often than not to be white – and by the definition of their jobs, well-educated. While there is diversity among this group of professionals, over the time that I have observed the court they run about 80% white and

³⁴ See Chapter Six for an in-depth analysis of defendants' family members and the role they play within the part.

close to 50% female. There is considerable racial, gender and ethnic diversity among the court's civil servants such as the court reporters, court clerks, the judge's staff and the court officers (COs).

The physical space of the court and the movements of the various people within it reinforce the race and gender dynamics in the court. What most often results in the courtroom is an audience full of low-income, or no income, people of color and a jury box full of predominately white and/or middle class educated professionals. Kids are allowed to pass through the gate that separates the audience from the main part of the courtroom only when their case is called, and then must quickly pass back out. Family members are never allowed to pass through the gate. The predominately white professionals are able to come and go, to move back and forth through the low gate rather freely. In this way the low walls that demarcate the different areas of the courtroom reproduce the lines of separation in class, race and prestige that are to be found outside the courthouse. Because of these physical demarcations of space and the racial and gender dynamics of the court it is not at all uncommon to witness a scene like these from my fieldnotes:

In the inner part of the court, a young [remanded] black male kid is surrounded by three white male court officers, his white female lawyer, a white female ATI rep, a white female district attorney, a white male judge, and a white female law clerk while his black mother looks on from behind the low wall in the audience.

A black male defendant's attorney asked if they could approach as soon as the case was called. The white male ADA, the white female Legal Aid defense attorney, the white female ATI rep and the white female Legal Aid social worker were all huddled around the bench discussing the case with the white male judge and his white female law clerk. The young black kid sat slumped, alone in his chair watching the group of adults huddled around the bench deciding his fate. No family members were standing for him today.

While not all cases before the judge are as racially polarized as the two described above, an overall fact of the court is that it is largely white professionals, along with a handful of non-white middle-class professionals, who decide the fate of poor, black and/or Hispanic young men and boys. This simple fact is so prevalent that if one is not careful the glaring disproportional representation of young black and/or Hispanic adolescents can become all too familiar.

The INs and the OUTs

The largely male, black and Hispanic kids that come before the court on calendar days are either “IN” or “OUT.” OUT is the shorthand term given to those kids who have been released from custody and are usually enrolled in ATI programs. IN defendants are those kids who are remanded, incarcerated. Over the course of their time with the court many kids will spend time both IN and OUT before their cases are resolved, although some never do any time IN and those with the most serious charges, of course, never get OUT.

OUT defendants come to court on their own when they have a control date scheduled and wait outside in the hall or in the audience for their case to be called. Often, but not always, they are accompanied by family members, usually mothers or grandmothers. When their case is called (*“Calendar Number 14, indictment number 9909 of 2004, Jeremy Sanchez”* the clerk will call), kids who have been in ATI programs for a while and “know the ropes,” walk through the low wooden gate that separates the audience from the rest of the courtroom and take their place next to their attorney and ATI representative with the ease and confidence of a regular. After several months of interaction with the court, these kids have learned to look at the judge when he is

speaking to them, to answer loudly enough to be heard, to say “yes” instead of “yeah,” and to not chew gum in court. They know that the judge will ask the parent standing in the audience how the kid is doing at home and that the answer will be important. They know that the report from the ATI program or the drug treatment program, or their report card from school will be scrutinized and that the judge will praise or admonish them accordingly. If a kid is doing well in a program, the judge might say: “Keep up the good work. Keep doing well and you’ll get probation.” Or if all reports are good he might say, with sincerity, “I’m proud of you,” before scheduling the next control date – generally a month away, sometimes longer if a kid is doing particularly well. If the judge wants to keep a close watch on a kid he will schedule a shorter date – one or two weeks away. If an ATI program report reflects problems such as a positive drug test or missed curfews or missed days in school the judge may change his tone: “Do we have a problem here?” he might ask, “Do you want me to have to lock you up? Then do what you are supposed to do.”

When an IN defendant’s case is called, he or she enters the courtroom through the back door, his arms handcuffed behind his back. He is escorted to his seat by two court officers, one in front and one behind. Sometimes, a kid who is IN may be facing more serious charges than those kids who are OUT, but often he is just in the early stages of his time with the court and will be released into an ATI program as soon as all the reports are in, the necessary arrangements are made, and the judge thinks that he has spent enough time IN. Some kids are IN because of mental health concerns, or delays in arranging appropriate program placement or establishing stable living arrangements. Occasionally an IN defendant will be awaiting trial.

The IN kids who are new to being incarcerated are easy to spot because of their body movements, their postures and their responses to those in authority. When escorted into the courtroom by the court officers, these novices tend not to take a single step unless directed to; they wait for instruction from a court officer at every turn. They have to be told by a court officer to sit down once the handcuffs are taken off, they have to be told to pull the chair all the way in toward the table when they sit down. A tinge of fear is often noticeable on their young faces even as they attempt to be stoic. When their case processing is done they again have to be told to stand, be told to put their hands behind their backs for the cuffs to be put back on, be directed where to walk, and when and where to stop. They often appear intimidated, overwhelmed.

Those kids who have been IN a while move through the courtroom with more ease. These more experienced kids appear less intimidated, less overwhelmed. They may not know all the rules yet, but they seem more accustomed to the court officers telling them what to do. They have learned to take their hands out of their pockets when they are standing before Judge Corriero. They know to say “yes” instead of “yeah.” They know to say “no” not “nah.” They know to look at the judge when he addresses them. There is less hesitancy in their movements.

There are also some “veterans” among the INs. Whether new to this court or not, these seasoned young men, and occasionally a young woman, know exactly how and where to walk, how fast to walk, where to stop. They know to pull their chair in and do it unconsciously. They’ll automatically put their hands behind their backs when they stand to go, lifting their right wrist slightly away from their body, which makes it easier for the court officer to slide the first of the cuffs on. Many of these young veterans assume

something of an “prison stance” even when it is not required of them: even when uncuffed, they will automatically put their hands behind their backs whenever they are standing. The posture that cuffing creates – a slightly forward shoulders and chest – becomes the posture into which they naturally fall even when no physical apparatus constricts their movements, their young bodies already shaped by their time spent IN.

The judge is adamant that at any and all times that an IN kid is in the courtroom that the handcuffs are taken off. Even if a kid is being brought in just to be told that his lawyer is on trial and that his case will have to be put over for another time – a process which can take no more than 30 seconds – the judge will make sure that the cuffs are taken off for that brief time period. When I asked why he takes so much care in this regard he explained it this way:

I want to make the point of a treating young person with dignity, even those who may be guilty because they're coming back at some point. And you never know what it is that will ignite that, perhaps, little flicker of consciousness or conscientiousness or whatever. That's me. . . . As a general rule I want the handcuffs off, I want to be able to communicate with them, I want them to feel that - I mean its very hard to communicate with someone where you're the boss and they're in handcuffs. And especially when you think of all the racial aspects of what we're doing, I mean my God, a little sensitivity to that reality.

On those rare occasions when an IN defendant is brought before the court in shackles, the judge will insist that they be taken off in the back room. A Dickens fan, he once said that the rattling of the chains reminds him too much of the ghost in “A Christmas Carol,” and that is what he always thinks of when he hears shackles jangling. When asked directly about the use of shackles by some correctional agencies, he said, that while there are rare occasions when a kid is violent or may have mental health problems when shackles may be necessary, in general:

I think it is totally dehumanizing . . . and what we are really trying to do is uplift so many of these kids, let them get a sense of self respect so that they would respect themselves and respect others. That's what we are trying to do in many ways . . . I mean this is America, you are coming here with a presumption of innocence. I just don't think that's the way to do things in a courtroom where you have kids and families and poor people who always are up against the bureaucracy, always up against the government and I want them to feel that there can be a firm yet compassionate response to the situations that they find themselves in.

The JOs and the NON-JOs

Although not immediately obvious, not all defendants in the Youth Part are Juvenile Offenders (JOs) as defined by New York State Law. The Youth Part handles almost all cases of those 13, 14 and 15 year-olds so designated under law, but the part also handles the cases of older youth as well, because the Youth Part takes all JO cases *and* the cases of their co-defendants, regardless of their age.³⁵ For example, if three young men, one 14, one 17 and one 18 are arrested and indicted for an alleged robbery, all of them would come to the Youth Part even though the 14 year-old is the only Juvenile Offender under the law. Since New York State has long set the age of legal “adulthood” at 16, the other two youths are already technically, legally “adults.” But because one of their co-defendants is a Juvenile Offender (a JO) the 17 and 18 year-olds' cases come to the Youth Part as well. In contrast, if three 17 year-olds were to be indicted for the same crime their cases could end up in any of the all-purpose parts in the criminal

³⁵ Young people are more likely to commit crimes in groups, often others of a similar age (Greenwood *et al.* 1980). See Greenwood *et al.* (1980), Zimring (1998) and McCord & Conway (2002) for an enlightening discussion of how the tendency toward group offending serves to inflate both the amount and severity of reported youth violence and crime.

court.³⁶ “Non-JOs,” the older co-defendants, one sees in the Youth Part generally fall between the ages of 16-21.

Defendants who come before the Youth Part, whether as JOs or non-JOs, are there for indictments for one the JO listed crimes: Murder, Arson, Kidnapping, Aggravated Sexual Abuse, Attempted Kidnapping, Attempted Murder, Burglary, Manslaughter, Rape, Criminal Sexual Act, Robbery, Assault, and Criminal Possession of a Weapon.³⁷ Therefore the cases that come before the Youth Part are for serious felony charges unlike the all-purpose parts of the criminal court where the whole range of criminal indictments might appear including non-violent drug or misdemeanor charges.

The Youth Part is responsible, then, for the cases of some young people 16-21 who have always been labeled legal adults for the purposes of criminal prosecution in the state and for cases of Juvenile Offenders. Thus, the kids that come before the Youth Part judge can be either JOs or Non-JOs and range in age from 13 to 21.³⁸ According to the judge, the Youth Part gets, “on average, although it fluctuates, about 125 new Juvenile Offender cases – individuals who fall into that category – a year. Plus triple that number perhaps for co-defendants.”

To look at a given male defendant standing before the judge on a calendar day one is hard pressed to know whether he is a JO or a non-JO. Although legally labeled as “adults” by state law – either because they are over 16 or are JOs – the black and/or

³⁶ In an even more complicated scenario, if a 12 year-old, a 14 year-old and a 17 year-old were arrested as co-defendants on a Robbery 2 charge, the 12 year-old would be processed as a Juvenile Delinquent in the Family Court, the 14 year-old would be prosecuted as a Juvenile Offender in the criminal court and the 17 year-old would be prosecuted as a “non-JO” adult in the criminal court.

³⁷ See Appendix B for complete listing and description of the JO listed crimes.

³⁸ Thirteen year-olds are a rare sight in the court because the only offense for which a 13 year-old can be charged in criminal court is Murder 2 and as the data in Chapter Two show, JO indictments for murder 2 have accounted for only 4% of all JO indictments citywide from 2000 to 2004.

Hispanic kids that pass through the Youth Part on calendar days mostly fit the stereotype of the young inner-city teenager: They almost all wear much the same baggy street clothes, popular sneaker brands (although some do arrive in suits or shirts and ties) and hairstyles and most all come from distressed communities. Since adolescents mature at varying rates, signs of physical maturity such as height, the presence of facial hair or a deep voice can be highly misleading (Steinberg & Schwartz 2000). Over the years I have repeatedly attempted to guess the age of a kid in the court by his physical appearance – and I have repeatedly been wrong. There are baby-faced 18 year-olds, 14 year-olds with full beards, exceedingly tall, mature looking 16 year-olds, and 15 year-olds who don't look a day over 12.

While it may be hard to tell the JOs from the non-JOs by looking at them, the two groups of defendants have different sentencing structures under the law, are allowed very different plea bargaining options, are housed in different types of detention facilities, and are often diverted into different types of ATI programs. The sentencing structure for those over 16 charged with violent felonies is a determinate sentencing structure in which the court sets a fixed sentence from within the allowable range set by law (New York State 2005; Warner 2004). The sentencing structure for Juvenile Offenders is an indeterminate structure in which the court imposes a sentence of a range of time from within the dictates of the law (Warner 2004). Table 3.1 shows the possible sentences currently allowed by law for JOs and non-JO's for the full list of Juvenile Offender offense categories. As the table shows, the minimum sentence that a JO can receive for a conviction of assault in the first degree is 1 – 3½ years, whereas the minimum sentence that a young person 16 or over can receive for the same conviction is 5 years. The judge's

law clerk explained the difference this way: “JO’s are sentenced to indeterminate sentences – a range such as 1½ to 4 [years] – so parole gets to decide when they get out. Now if you are 16 or over for robbery say, we can sentence you from between 5 and 25 years but we will pick a fixed number of years – say 6.” So although, New York State law designated 13, 14 and 15 year-olds charged with certain crimes as adults, they also mandate a separate sentencing structure from that mandated for those deemed “regular adults” – those 16 and older.³⁹

³⁹ See Chapter Two for details on differences in sentencing structures in 1978. Since the late 1990s, non-JOs have faced determinate sentencing.

JO vs. Non-JO Sentencing Structures for JO Offenses			
JO		CLASS A FELONY	Non JO
<u>INDETERMINATE</u>			<u>DETERMINE</u>
<u>MIN.</u>	<u>MAX.</u>		
5-9	LIFE	MURDER 2 (13 year olds)	15-LIFE
7½ -15	LIFE	MURDER 2 (14/15 year olds)	
4-6	12-15	ARSON 1	15-LIFE
4-6	12-15	KIDNAPPING 1	15-LIFE
JO		CLASS B FELONY	Non JO
<u>INDETERMINATE</u>			<u>DETERMINE</u>
<u>MIN.</u>	<u>MAX.</u>		
1-3⅓	3-10	AGGRAVATED SEXUAL ABUSE 1 ARSON 2	5-25
		ATTEMPTED KIDNAPPING 1 ATTEMPTED MURDER 2 BURGLARY 1 MANSLAUGHTER 1 RAPE 1 CRIMINAL SEXUAL ACT 1 (previously 'sodomy') ROBBERY 1 ASSAULT 1	
JO		CLASS C FELONY	Non JO
<u>INDETERMINATE</u>			<u>DETERMINE</u>
<u>MIN.</u>	<u>MAX.</u>		
1-2⅓	3-7	BURGLARY 2 ROBBERY 2	3½ -15
		CRIMINAL POSSESSION OF A WEAPON 2 (ON SCHOOL GROUNDS FOR JOs)	
JO		CLASS D FELONY	Non JO
<u>INDETERMINATE</u>			<u>DETERMINE</u>
<u>MIN.</u>	<u>MAX.</u>		
1-1⅓	3-4	CRIMINAL POSSESSION OF A WEAPON 3 (ON SCHOOL GROUNDS FOR JOs)	2-7

Table 3.1 JO vs. Non-JO Sentencing Structures for JO Offenses (New York State 2005; Warner 2004)

Due to the way the Juvenile Offender law is written, JOs and non-JOs also have significantly different plea bargaining options available to them. Defense attorneys for non-JOs have all the usual options of bargaining with the prosecuting attorney for pleading guilty to a lesser charge. The nature of the JO Law, however, means that similar

options are not available to JOs because the lesser charges a defendant might plead down to are not within the purview of the criminal court (Collier 1984). The law clerk explained the confusing limits imposed by the JO legislation:

Say you are 16, an adult in the eyes of the law and you are arrested for robbery in the first degree [a B class felony]. A plea offer to a 16 year old can be to a C [lesser] felony. [The DA] can offer a C violent and 3½ years as a minimum. Now, say a JO is charged with Robbery in the second degree [a C class felony]. Now say the DA's office wants to plea him out to an attempted ROB II which is a D felony, they can't do it, they can't do it because he is not criminally liable for attempted robbery in the second degree. If you take away the top charge that makes him responsible in criminal court, then he would be in Family Court. It's very strange, the whole nature of plea bargaining is very different for JOs. Because if they plea down they wouldn't be JO's anymore!

The law as written simply does not allow for JOs to plead down to non-JO charges.

Therefore the types of offers that assistant district attorneys can make and that defense attorneys can negotiate for are different for JOs and Non-JOs, with the younger of the two groups limited in their ability to plead to a lesser charge.

Beyond these complicated differences in sentencing structures and plea bargaining options, JOs and non-JOs are incarcerated in different types of facilities both before and after sentencing (if they are sentenced). JOs (13, 14 and 15 year-olds) are detained at one of the three secure juvenile detention facilities run by the Division of Juvenile Justice of the City of New York paradoxically named Horizons, Crossroads and Bridges. Non-JOs (those 16 or over) on the other hand are held at Rikers Island, the city's jail.⁴⁰

⁴⁰ Further confusing the matter, younger inmates are separated from the full adults at Rikers Island. Sixteen to 18 year olds are housed at the Adolescent Reception and Detention Center (ARDC) complex on Rikers Island, while those 18 and over are held along with the general adult populations on the island (NYC DOC Website). It is important to note that not all states separate younger inmates from older inmates. Laws differ across the states (See Amnesty International 1998); Austin *et al.* 2000; and Juskiewicz 2000).

If and when sentenced to terms of incarceration, JOs and non-JOs are sent to different facilities as well. Non-JOs enter the New York State Department of Correctional Services and are placed in an upstate prison, while JOs are assigned placement to one of the state's secure juvenile detention facilities via the Office of Children and Family Services (OCFS), the agency which places youth from the Family Court.

For those youth deemed amenable to treatment and enrolled in one of the ATI programs, JO status matters here as well. For example, the Youth Advocacy Project (YAP), an ATI run by the Center for Court Alternatives (CCA) is especially designed and funded to handle JO cases while the Center for Alternative Sentencing and Employment Services (CASES) program generally takes older kids. So, while both JOs and non-JO in the Youth Part are legally labeled as adults, in fact they are two distinct categories of adult defendants, and, although there is no immediate or obvious way to tell if a given kid before the court is a JO or not, questions as to where a remanded youth is being held, or a discussion of the possible sentence facing a kid or which of the ATI representatives steps forward on a given case provide useful clues as to an individual kid's status.

Despite the different classifications set by the JO law or by correctional institutions or by ATIs, there is often little real world difference between a 15 year-old or a 17 year-old before the court and, regardless of their age or specific offender status, the kids that come before the court are generally regarded by most of the court actors as the adolescents that they are in everyday life. In general the judge sees all the Youth Part defendants as kids, and the guiding philosophy of how to deal with them is consistent: "We don't discriminate [between JOs and non-JOs] about the concept of offering

alternatives.” At the same time, the judge readily acknowledges that the JO and non-JO classifications do in reality restrict the options of what is possible for any given kid.

Negotiating the complexity of these different layers of legal rules and the sentencing structures created by New York State law is an exceptionally confusing and often daunting task for any and all involved in the Youth Part. The judge himself once likened the navigation of the sentencing structures alone to “landing a 747 in the dark.” Several defense attorneys in the court are seasoned experts on the minutiae of the laws. The Legal Aid Society went so far as to establish a JO Team in the 1990s in order create a group of lawyers with special expertise on the laws that effect Juvenile Offenders and their co-defendants. These specialists are a recurrent presence in the court on calendar days. As one of them said, “Most lawyers don’t understand JO cases....the law is different, its gerry rigged, its bizarre, its very counterintuitive.”

Creation of the Youth Part

Such legal complexities and the need for professionals equipped to negotiate the perplexing legal terrain of trying youth (JO and non) as adults helped drive the creation of the Manhattan Youth Part in 1992. Prior to its creation in 1992, all cases of JOs or of any defendant sixteen or older, were being handled randomly in courtrooms throughout the regular criminal parts in the city. It hadn’t always been that way. From the 1940s up until the early 1980s some of the counties in New York City had youth part courts that were set aside for 16 to 21 year olds (Singer *et al.* 2000). Criminal court judges rotated in and out of these parts on a regular basis. In an extended interview Judge Corriero explained that he has been around long enough to remember when these youth parts were

still in existence and to have worked as a prosecutor in an earlier incarnation of the Manhattan youth part in his early career. He remembers it this way:

Everybody that was a lawyer in my generation remembered the youth parts because they were really kind of like a respite from the rest of the system because you had a different way of approaching cases. Everyone was looking to kind of steer appropriate children, appropriate young people out of the system especially 16, 17, 18 years olds. Everybody had that kind of attitude and that attitude was essentially endorsed at the time by the district attorney. And his attitude was representative of the attitude at the time with respect to young adolescents which was that these kids should be given the opportunity to get a second chance if we could do that. And if you see the old bowery boys movies with the benign judge taking the kid into chambers – it was that approach. It was the belief of that generation that government could solve a lot of problems. We felt empowered, we felt that everything that we were doing was right. It was really like a bright light in a very dark place, in comparison to adults. Everybody, the lawyers, the DA's, the defense attorneys, really felt that they were getting so much out of it.

When he became a judge in 1980, Corriero went to work in one of the two remaining youth parts that existed in Queens. By that time, two years *after* the passage of the Juvenile Offender Law, the idea of youth parts had fallen out of favor. Local politics and administrative changes in the criminal court hierarchy had converged with the general national move away from the rehabilitation ideal and toward a more retributive response to criminal transgression. Within this environment the principles on which the youth parts were based struggled to be viable. The judge explained the result of this shift in focus:

So what happened [is] things started to change, attitudes started to change. You had the crack explosion, the drug explosion, the numbers of 16-21 adolescents coming into the court began to explode exponentially, and there was a shift simultaneously in the administrative philosophy, about how to deal with cases in general away from the idea of specialized parts and to all purpose parts. So it became less politically correct and sound to try and deal with kids in this way.

By 1986 youth parts had been done away with in the city (Corriero 1990; Singer *et al.* 2000). In 1990, Judge Corriero tried a case of a 13 year-old Juvenile Offender accused of

murder. For Corriero the case made salient all the issues that came with prosecuting kids so young as adults:

It was a pretty brutal murder, he was accused of stabbing his next door neighbor with a screwdriver to death multiple times and then setting the body on fire. I tried this case and I saw all the issues that really could evolve from trying a 13 year old, their relationship with their attorney, their capacity to understand the Miranda warnings, their admissions, their understanding the sense of the proceedings and then locked into the statutory sentencing requirements. So after trying the case I had some time in the early nineties to write this article called "Youth Parts: a Constructive Response to the Challenge of Juvenile Crime."

The article was published in the New York Law Journal (Corriero 1990) and became the beginning of the judge's campaign to reestablish some version of a youth part in New York County (Manhattan). In laying out what he imagined a new youth part to be he wrote:

I envision a youth part under the leadership of a motivated judge, with the help of a committed staff, cognizant of the concerns of victim and society, reaching out through the impersonal façade of the court to a youth, his family, his neighborhood and community. A youth part with modest goals, to avoid disenchantment, frustration and despair. Not a panacea, but an apparatus through which imaginative and innovative ideas can be channeled. A part where the atmosphere is such that the presiding judge would be able to recognize and respond to the salvageable youth (Corriero 1990).

The article created considerable interest and along with others Corriero put together a forum on the issue that brought together many people who were behind the idea – people from ATIs and from the office of the city's commissioner of juvenile justice and other agencies invested in the treatment of youth in the system. Grassroots support for the idea of a youth part blossomed. Convincing court administrators proved a little more difficult. As the judge recalled:

There were some judicial administrators that thought that this wasn't a good idea. That we really shouldn't have all cases in one part before one judge, that this was counter to the administrative philosophy of all purpose parts. Perhaps they didn't see the overall view, the concept, or separate the concept from me. It

wasn't me that was saying that we should have youth parts for my benefit – it was that we should have youth parts for the benefit of the system and for the benefit of the young people who were coming into the courts.

Eventually the lobbying efforts of this grassroots movement paid off, Corriero's bosses were persuaded and the Manhattan Youth Part was born:

My immediate administrators said in a sense, okay, you opened your big mouth Mike, it is yours, you do it. So that's what we did and we started in September of 1992 and all that really happened was that they sent an administrative order – a memo actually to the clerks that from here on in all cases involving Juvenile Offenders and their co-defendants are to be sent to this part which became the Youth Part.

An article in the New York Law Journal, dated October 1992, explained the new part and quoted the reasons that then Criminal Term Administrator Peter J. McQuillian cited for creating the Youth Part: the complexity of the JO law; lessening the disparity of judgments when youth are tried before several different judges; the ability to concentrate resources and the goal of reducing the amount of time youth spent in before cases were resolved (Wise 1992). A year after the Manhattan Youth Part was created youth parts were created in King's County (Brooklyn), Queens County (Queens) and Bronx County (The Bronx). To date Richland County (Staten Island) has not set up a youth part. Each county has its own administrative legal structure and political milieu and as Corriero put it, "each one of them embraced [the concept] within their political contexts, so each county has its own [youth part]."

Although it is clear that Judge Corriero was particularly instrumental in the creation of the first Youth Part in the 1990s, he is repeatedly reluctant to associate himself too directly with the Youth Part and its legacy. He insists that he doesn't want the part to be about him, but about what is possible within a criminal court setting:

One of the things I wanted to do – I wanted to try and separate myself from the part as much as possible. People have said, ‘the part works because of your personality,’ or doesn’t work because of your personality. So it is closely connected to me and I didn’t want that because I saw way on in the beginning that to me this is more than one judge’s approach. This was an approach that I thought should become institutionalized and if it became too much associated with my personality then it would be [a problem].

Observing the court, however, it is hard not to associate the work of the part with the judge personally. Whether he likes the association or not the part is largely there because of his own judicial activism. Further, as exactly the type of “motivated judge” he advocated for in his article he sets the tone in every regard in the court. It is his personal dedication to individualized justice for the kids who come before him, his belief that kids should be given second chances wherever and whenever possible, his attention to the details of the kids lives and their cases, along with the respect he shows for families, for lawyers, for agency representatives and for court staff that make the part what it is – a place apart for adolescent defendants.⁴¹ Although he is a uniquely “motivated judge,” Corriero would never dwell on this fact. When I once shared with him a comment I had overheard from a parent (“*he’s different from other judges, you can tell he cares about kids*”) the judge’s response was appropriately humble. He then quickly and skillfully deflected the attention away from him and back to what might be possible in a different criminal court structure:

I don’t think it is a matter of other judges not caring, very often it is just the way the system is structured. I mean if you see 150 cases, 125 cases and you have four of them that are kids, the system is just not geared to deal with them. And I think

⁴¹ Although a comparative analysis of the different youth parts in the city is beyond the scope of this ethnography, discussions with lawyers and others who have spent time in the different youth parts insist that they are indeed not all created equal and that Corriero’s court is significantly unique from the other youth parts in the city. Annual reports on case processing of Juvenile Offenders in New York City also show evidence of significantly unique case processing in New York County (Criminal Justice Agency 1997, 1998, 1999, 2000, 2001; Gewirtz 2002, 2003, 2004, 2005, 2006; Gewirtz & Revere 2005; See also Kupchik 2003, 2003a, 2004).

that happens a lot. It's not so much about individuals choosing to behave in a particular way. It's the way the system is structured, the way you are expected to behave. You're expected to get everyone home by 5 o'clock so if you come in and you take the time to talk to a kid about how they are doing in school and everything, it's time consuming. So you wouldn't ordinarily do that in a part where you just have enormous numbers. So [the kids] get lost and that's why I thought the youth part would be of value in itself in that it would commit us to focus more time on this very very vulnerable category of offender.

I stand by the belief that no adolescent should be incarcerated unless every consideration has been given to an alternative.

(Judge Michael Corriero)⁴²

CHAPTER 4

Earning “Y.O.”: Plea Negotiations, Youth Part Style

Simon, a black boy, came from the audience and took his seat next to his lawyer when his name was called while his aunt waited for him in the audience. He moved with the confidence of a seasoned visitor to the part. The judge announced that the case was ready for sentence.

“How long have you been with us, now?” the judge asked Simon.

“A long time,” the kid replied easily, looking at the judge when he spoke.

“Since April your honor,” Simon’s white female attorney said. Simon had first come before the court eight months prior on a second degree robbery charge. He had done well in the ATI program he had been set up with, had pleaded guilty and, now, after months of monitoring by the program and by the court, was ready to be sentenced as a “Youthful Offender.” The judge first asked Simon if he had learned anything.

“Not to do stupid things or hang around stupid people,” said Simon.

“Okay. That sounds good,” replied the judge nodding and smiling slightly. After a short pause the judge’s tone of voice changed from the conversational one he had just used with Simon to a more formal, official tone.

“The sentence of the court is a sentence of probation for a period of five years. The defendant is declared a Youthful Offender.”

Simon, over the prior eight months, had successfully demonstrated that he was worthy of receiving Youthful Offender (YO) treatment, that he was worthy of getting a chance to avoid a life long felony record. As long as Simon continued to stay out of trouble and didn’t violate the terms of his probation for the next five years, his felonious

⁴² Corriero 1990.

transgression would not have to be declared on job applications or elsewhere. He would have the chance to create a life not hindered by the stigma of being a felon and his criminal records would be sealed. If Simon failed while on probation he could be sentenced to an indeterminate sentence of incarceration of 2-6 years. In “earning YO” during his time with the court, Simon had, essentially, *earned* back his right to be a juvenile in some sense – he was no longer simply a youth who was being sentenced as an adult. He was now, more accurately, a kid who had been charged as an adult who was sentenced as a “youth.”⁴³

A sentence of “YO” is the gold medal prize of the Youth Part, and much of what goes on in the court on calendar days is the process of monitoring eligible defendants as they attempt to “earn” it. Not all defendants before the court are eligible for YO and not all those who are legally eligible are deemed worthy of a chance to prove they deserve it. Further, not all those who do get the chance to try and earn YO actually manage to do so. Earning YO is a complicated process on many levels.

New York’s Youthful Offender Law

The trick of the law that allows for some Juvenile Offenders (JOs) and some non-JOs to be sentenced as Youthful Offenders (YO) is based in legislation passed in New York State in 1943, decades before the legislature ever contemplated the Designated Felony provisions for the Family Court or the Juvenile Offender law. As noted earlier, New York State had long set the jurisdiction of the criminal court at 16. In 1943, however, the state passed legislation that allowed a defendant 16-19 years of age not

⁴³ As described in Chapters Two and Three, JO’s face indeterminate sentences, while non-JOs face determinate sentences. Being designated a Youthful Offender does not remove the case to the Family Court.

charged with a crime punishable by death or life imprisonment and with no prior felony convictions to be convicted as a Youthful Offender at the discretion of the judge (Fisher 1955). Records of those so designated, according to the law, would remain sealed and rather than being charged with a specific crime the defendant was to be charged with being a "Youthful Offender" and sentenced either to probation or to a limited term of incarceration.⁴⁴

Specific guidelines for eligibility for YO have changed somewhat over the years but the main criteria used to determine legal eligibility have largely remained the same over the decades: age, offense and prior criminal record (Chandler 1982). The age requirements have always been the same – 16-19 years of age – and were in effect in 1978 when the legislature passed the Juvenile Offender Law. When the JO law was originally written in 1978, Youthful Offender status was not available to Juvenile Offenders. This meant that in 1978, immediately after the passage of the Juvenile Offender Law, an 18 year-old charged with robbery in the first degree as a first time offense could receive Youthful Offender treatment, but a 14 year-old charged with the same crime as a first time offense was not eligible to receive Youthful Offender treatment. Revisions to the Juvenile Offender Law in 1979 quickly corrected this unconstitutional oversight and made Youthful Offender status available to Juvenile Offenders (Singer *et al.* 2000; Warner 2004).

Since 1979, then, state law has required that certain youth be tried as adults for violent crimes at the same time that it allows for some 14-19 year-olds to be sentenced as Youthful Offenders for these same crimes. The counterintuitive co-existence of these

⁴⁴ Although the specific provisions for YO have shifted over the years the current maximum incarcerative sentence that can accompany a sentence of YO is an indeterminate sentence of no more than one and a third to four years (New York Criminal Procedure Law 720.20).

laws is one of the fundamental contradictions at work in the Youth Part and illustrates the competing notions commonplace around criminal justice responses to adolescent transgression: the idea that some kids should be punished harshly for committing serious crimes and the idea that adolescents are different from adults and are therefore worthy of sentencing alternatives. New York state law provides legal mechanisms to satisfy both sides of this debate (Singer *et al.* 2000).

According to current New York State Criminal Procedure Law a person “charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender” is eligible to be found a Youthful Offender unless the charge to be replaced is for an A-I or A-II felony (such as murder in the first or second degree), rape in the first degree, sodomy in the first degree, or aggravated sexual abuse. Further, a defendant is not legally eligible for YO treatment if he or she is convicted of “an armed felony.” An armed felony is defined by state law as an offense that involves use of a loaded weapon or “display of what *appears* to be a pistol, revolver, rifle, shotgun, machine gun or other firearm” (emphasis added) (New York Criminal Procedure Law 1.20 (41)). The presence of a gun, or something that appears to be a gun, then, often precludes YO, especially for a gun wielder.⁴⁵ The specifics of this statute are important because it is not uncommon to have cases involving fake guns or starter pistols before the court. Further, a defendant is ineligible for Youthful Offender treatment if he or she has a prior felony conviction, a prior Youthful Offender adjudication, or was previously convicted for a Designated Felony in the Family Court (New York Criminal Procedure Law 720.10).

⁴⁵ The law does allow for some leeway if there are found to be mitigating factors in the nature of the offense.

One of the most significant parts of the YO law is the broad judicial discretion it allows in the application of Youthful Offender treatment to eligible youth. The law states that:

If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court, may, in its discretion, find the eligible youth is a youthful offender (CPL 720.20).

This broad judicial discretion is a major factor in the process of “earning YO” in the part for both eligible Juvenile Offenders and non-JOs. Without the trick of the law provided by the Youthful Offender statutes much of the work of the Manhattan Youth Part would not be possible.

Earning YO + 5

“Earning YO” in the part is a complicated and often lengthy process, only the beginning of which is determining a defendant’s legal eligibility for it. A number of mechanisms are employed within the court to assess the initial potential of a YO eligible youth to be successful in earning it. This process begins, for most kids, during their very first time before the court. It is during this first encounter that the court begins to assess the legal eligibility for YO and starts to collect “evidence” – both formal and informal – to determine whether or not a kid is a likely candidate for YO treatment. Many factors play into whether or not a kid will be given a chance to try and earn YO. Often the district attorney’s office will be opposed to the granting of YO, and although the judge can grant YO over the objection of the People, he knows that he has to be careful in doing so. Legally, the People can appeal a decision the judge makes to grant YO over their objection. Although he has stated that that has yet to happen, it is always a concern and more importantly, the judge knows that offering YO too often over the objection of

the People could jeopardize the spirit of cooperation he has sought to cultivate since the inception of the Youth Part. Public safety, too, must always be a primary concern. The potential of a defendant to re-offend must always be carefully considered.

The extent of a defendant's individual role in the alleged crime is a factor carefully considered by the court in assessing potential for YO. As discussed in Chapter 3, youth are particularly prone to committing crimes in groups (Waring 2002) and most kids in the Youth Part have co-defendants. While all three young people involved in a robbery will be charged with the same crime, actual individual involvement in the commission of the crime can vary significantly. New York State law is clear on issues of accomplice liability stating that anyone who "solicits, requests, commands, importunes, or intentionally aids" someone in the commission of a criminal offense is themselves criminally liable for the same offense (New York State Penal Law 20.00). So, while simply being present at the commission of a crime is not a crime, playing any role (e.g. as a lookout, blocking a victim's path, holding property, etc.) makes one fully guilty of the crime.

The court recognizes the real life differences between a young person holding a knife to someone and threatening them and a young person being a lookout for the knife-wielder. An attempt is made, in the court, to understand the actual involvement of each individual defendant in an alleged co-offended crime. The judge explains it this way: "[T]he idea of who is responsible and to what degree they are responsible – this is the real crux of what we are trying to do – how much culpability do you place on an individual kid's shoulders."

In addition to issues of accomplice liability and varying degrees of culpability among co-offending defendants, the court is also interested in the larger context of a defendant's life. When a case is new before the court, the judge, with the consent of defense counsel, will most always order two reports: a pre-pleading investigation (PPI) and a 390 examination. The PPI is conducted by the probation department and reports on a kid's prior court involvement (criminal or Family Court), school attendance, information on living situation, foster care placements and the like. The 390 examinations are mental health evaluations. Legally the judge is not required to order these reports but he almost always does because they provide valuable information on the larger context of a defendant and his life circumstances. This is not standard procedure in many criminal courts but is common practice in the Youth Part.

In addition to the information provided on a defendant through the formal mechanisms of PPI and 390 exams and grand jury testimony and indictments, the court will begin to informally gather information on a kid the first time he or she comes before the court. The judge will talk with the parents or guardians in the audience if they are there and ask a kid where he goes to school. He will attempt to learn something about the kid in the short time he is before court simply by observing his mannerisms, the way he speaks, his presentation of self. The judge has said that he wants to hear their voice, to see, as he says, "if there is potential there."

A defendant's first encounter with the court is also used as an opportunity to impress upon the kid and his family, if they are present, the seriousness of the charges, the potential sentence the youth is facing and the reality of being tried in the criminal

court. While some parents may have had experience in the Family Court, this may be the first time they have had a child involved in the adult system.⁴⁶

Although the handling of each case has unique features, Walter's first day before the court was quite typical. Walter, a short black boy, came from the audience and took a seat in the chair next to his attorney when his case was called. His father stood up for him in the audience. The judge examined the paperwork in front of him.

"This is the first time this case is on before me?" the judge asked.

"Yes," replied Walter's white male attorney.

"How old are you young man?" the judge asked adding, "Stand up." Walter stood up.

"How old are you?" the judge asked again.

"Fourteen," Walter answered.

"What school do you go to?" the judge asked. Walter said the name of his school.

"Are you his father?" the judge asked of the black man standing at the audience railing.

"Yes, sir."

"May I ask what you do for a living?" the judge asked him.

"I work for a home service. I'm a community associate."

"Do you know what your son is charged with?" the judge asked the father.

"Yes, sir," replied Walter's father. The court clerk interrupted to ask if she could arraign the defendant. "Please," the judge replied.

"Walter Russell, the Grand Jury of the New York County has filed with the court indictment # _____, charging you with the crimes of robbery in the first degree and robbery in the second degree. How do you plead to those charges, guilty or not guilty?"

"Not guilty," Walter answered.

"The people are filing and serving copies of the indictment and the voluntary disclosure form," stated the assistant district attorney, handing forms to the judge and to the defense attorney.

"Do you go to school everyday?" the judge asked Walter.

"Yes."

"You go to school *everyday*?" the judge asked again.

"Yes."

"Is that the first high school that you were in?" the judge asked.

"Yeah...yes," answered Walter. The judge reviewed the documents before him for a moment and then said to Walter's father, "your son is charged with placing a knife to somebody's body or throat and stealing their iPod. Is that right, counsel?"

"A PlayStation, I thought it was," answered Walter's lawyer.

⁴⁶ Still other parents have had all too much experience in the criminal court, usually with older children.

“PlayStation.” said the judge, “Has he been in trouble in the Family Court before?”

“My information is, no, your Honor,” said the lawyer. The judge put the question directly to Walter, “Never been in Family Court?”

“No.”

“What was the bail that was set for this young man?” the judge asked, “why was he released without bail on such a serious crime? He can go to jail for as much as ten years. Why was he released without bail?”

“A couple of things,” responded Walter’s lawyer, “One, obviously, he had family contacts. His father was right there in the courtroom when the case was called. He had been waiting in the court for”

The judge cut the lawyer off and asked Walter, “so, you didn’t spend any time in jail?”

“No.”

“How strong is the evidence in this case?” asked the judge.

“The evidence wasn’t so strong,” Walter’s attorney said, “The property at issue was found on another person who wasn’t charged on the same sheet as this.” The judge looked at the paperwork and said the date of the alleged incident aloud. “What day of the week was that?” he asked to no one in particular.

“That was a Thursday, judge,” the court clerk offered.

“That’s a school day,” said the judge, again looking at the indictment, “He’s out at eleven o’clock at night.” The judge looked at Walter’s father, addressing his next question to him, “What is he doing out at eleven o’clock at night on a school day?”

“He was having a basketball tournament and he was coming from a tournament,” the father offered as an explanation.

“At eleven o’clock at night isn’t the basketball tournament over?” questioned the judge.

“They have late games,” Walter’s father said.

“Does he live with you?” the judge asked.

“Yes, sir.”

“How many other children do you have?”

“Four.”

“I don’t want him out of the house beyond six o’clock from here on in. That’s the first thing. Look at me,” the judge said to Walter, “do you understand me?,” he continued in a calm, serious, authoritative voice.

“Yes,” replied Walter.

“You are in the house at six o’clock,” the judge said firmly, “and you are to be involved in the Youth Advocacy Project. Walter’s lawyer said, “whatever you wish,” and added that another program had also expressed interest in Walter as well.

“I want him involved with the Youth Advocacy Project,” the judge said and then addressed Walter again with a tone of firm authority, “You better be where you are suppose to be, keeping your curfew. And you are supposed to be in school when school *starts*. Do you understand me?”

“Yes,” said Walter.

“You step out of line with me and I’ll set appropriate bail in this case,” the judge said, tapping his index finger on his desk.

“Yes,” said Walter.

“The defendant is continued on ROR,” said the judge, adding, “he should be involved in the Youth Advocacy Project. Counsel and father will stay here for that to be arranged. Should we order a PPI and a 390 examination for your client?”

“Yes, Your Honor, that would be fine,” said Walter’s lawyer and then asked if he could approach. After a sidebar discussion, the judge asked the father about the basketball league that Walter was involved with. The judge wanted to know that Walter was on a real team in a real league.

“What time does the team play?” the judge asked Walter.

“After six, sometimes,” Walter replied.

“If you are playing basketball.....” the judge said, “he can play basketball, but he’d better come home directly after that. Do you understand me?”

“Yes,” answered Walter once again.

“That’s only if you are in a league, not that you are going out to play basketball. Do we understand each other?”

“Yes.”

Just then the representative from the ATI program walked into the courtroom. The judge said to her, “I want you to interview this young man and his father to see if he’s acceptable to your program.” She nodded. Walter was given an adjourn date one month away, the amount of time generally needed for the PPI and the 390 reports to be completed and for the program to have completed its intake and assessment and to develop a case management plan for Walter.

Like Walter, some defendants, are released on their own recognizance (ROR’d) at their bail hearings and are OUT when they first come before the youth part and immediately get hooked up with ATI programs. Others may have had a relatively low bail set that family members were able to make so they too are OUT when they come before the judge. Others, of course, were not able to make bail and are IN – either at Rikers Island or at one of the Division of Juvenile Justice (DJJ) facilities, depending upon their age. Often those that are IN have more serious charges. Regardless, the process is pretty much the same for IN defendants when they first come to the Youth Part – a PPI and a 390 exam is ordered, the judge talks with the family, if present, and with the kid to try and get a sense of who they are.

The judge has the discretion to set new bail terms for any defendant if he so chooses and he regularly does. This can result in someone who had originally been released on his own recognizance or having originally made a low bail being remanded by the judge on their first visit to the part. It can be a rather surprising moment in the court, not least of all for the defendant, when this happens, even if a kid's lawyer has prepared him for the possibility. Jamar's first time before the court is an excellent example. Jamar had been arrested on a first degree robbery where he and several others were accused of punching someone and taking a PlayStation. Jamar was 16 and had no Family Court history. His mother and his pastor had put up his original bail. He had spent no time in Rikers Island. His mother had come to court with Jamar his first time in the Youth Part. The judge felt the original bail to be inadequate and set new bail at \$25,000 cash, an amount most likely impossible for the family to be able to meet. Two COs moved in to where Jamar was sitting, asked him to stand and handcuffed him and led him out the back to the shock of Jamar, his mother and his pastor.

Such actions by the judge can often appear harsh, even cruel, and on more than one occasion new visitors to the court have conveyed to me their dismay over such actions by the judge, especially when such new bail may not even be requested by the prosecution. The issue of bail is a complex one for Judge Corriero and his motivations are often multilayered: "When it comes to bail you have to recognize the irony of this whole thing of trying kids as adults. Say a 14 year-old gets out on bail. If he were charged in the family court there would only be two choices – remand him or not, because kids under 16 were thought to always be in the custody of someone." The judge's motivation for remand often stems from a concern for a long term outcome of the case:

My experience is that the kids who spend time here who are bailed out on serious matters are – good chance they are gonna be re-arrested before this case is resolved because the impact of being arrested does not exist. The consequence of their behavior is non-existent. And so it's almost in a way counterproductive in the sense that my hands will be tied if this kid goes out and commits another crime while this case is pending. Then how can I justify giving him YO or a non-jail sentence?

In addition to the incapacitation effects of remand, allowing a kid to spend some time in jail will hopefully allow him to grasp the full consequences of his actions.⁴⁷ A long-time ATI worker agreed that sometimes being in jail for a little while may be just what is needed for a kid, something he referred to as “shock incarceration:” “Sometimes these kids need to be there and spend a week and know what is going on in order to maybe reconsider [their actions].” Another program representative agreed: “If you get a taste of jail then you know what you are going through if you screw up. So many of the kids are successful, more so than maybe in other parts. [The judge] knows what he is doing.”

Another of the judge's motivations for setting a higher bail involves a consideration of long range plea bargaining goals. If he has a case in which he might be willing to let a kid have a second chance but he knows that the DA's office will be pushing for a plea to the charge and no YO, the judge may set bail high so that the kid does some time IN and then down the line when it comes time to work out a resolution to the case there can be some leverage – a way to say, “well he's been in for two months.” This can then help to placate a district attorney who may not have originally been so keen on giving a kid a chance to earn YO. The judge explained it this way:

⁴⁷ One study (Myers 2001) found that criminally prosecuted youth were 20% more likely to be released pending outcome than kids processed in the juvenile court

So let's say I have a case and right away I see that in order to give this kid Youthful Offender treatment there has to be a combination of some jail time and probation. So let's say that I see that it is gonna take four months and where is the district attorney on this case, are they gonna object to Youthful Offender treatment for this kid who may have been involved in the Family Court and yet I still want to work with the kid. So all these things go into the basket if you will, of what is the ultimate sentence. So if what comes together is a split sentence and I see a kid is out – how am I gonna get him there.

Sometimes, staying IN may be part of a negotiated plan for a case worked out among the defense, the prosecution and the judge. For example, the DA may agree that a certain high risk defendant can be released into a program and monitored by the court after he or she has done three months, or six months, even a year, IN.

Although the judge can, and sometimes does, give YO over the objection of the people, he prefers to work towards consensus. This is why he often schedules conferences in his chambers with the prosecutor and defense counsel or why he sometimes strategically remands a kid: “All these things ultimately work towards bringing everyone to a consensus about how to deal with a kid and perhaps get more kids out of the system or out of the system without a record than they would otherwise” (Judge Corriero).

Such attempts to reach consensus are a large component of the local culture of the part, a culture not all defense attorneys or prosecutors are used to, or trusting of at first. The judge said of defense attorneys and ADAs, “Some learn the culture of the Youth Part and they pick it up right away and others don't and it is a rude awakening. Or there is a lack of trust. And I understand that and I was a defense lawyer and a prosecutor and I try to be conscious of this.” As Clynych and Neubauer (1981) report such “operating realities of cooperation” have been reported in numerous studies of courts in action often resulting

in “shared decision-making” processes (the most common, of course, being plea bargaining).

The Art of Discretion and Intentional Delay

Generally, in the process of earning YO, a defendant will first plead not guilty and the case will keep being put over while the kid works with an ATI program. After enough time in the program has passed for the defendant to have been deemed worthy of YO, and the case has been conferenced and a disposition that satisfies the prosecution, the defense and the court has been agreed upon, the defendant will usually plead guilty. Often then the case is again put over several more times until the kid is sentenced to YO and five years probation. This whole process can easily take six months, a year, sometimes two years, especially if a kid has struggled to meet the program requirements or had to be temporarily remanded along the way. Many kids who come to the Youth Part can spend months, even years under court supervision working their way toward YO. There is nothing in the law that requires such a long, drawn out journey to YO. In fact, under the law, the judge can sentence a defendant to YO very quickly without ever requiring that he or she be involved with an ATI program or monitoring behavior over time.

The Manhattan Youth Part is known for the long length of time that its cases take, compared with the case processing in any of the other boroughs. Comparing the numbers for Manhattan to other boroughs is enlightening. For calendar year 2003, for example, as shown in Table 4.1, the citywide average median number of days from first supreme court appearance through to sentencing (whatever it may be) for JOs to be 267 days. The

median number of days in Manhattan was 574 – compared with 275 in Brooklyn, 273 in the Bronx, and 78 in Queens.⁴⁸

Median Number of Days from First Supreme Court Appearance Through Sentence for Juvenile Offenders (JO), 1999-2005					
	Brooklyn	Bronx	Manhattan	Queens	CITYWIDE*
1999	249.0	207.5	392.0	70.0	222.0
2000	134.5	252.0	364.0	76.0	241.5
2001	223.0	287.0	458.0	79.0	287.0
2002	171.5	213.5	542.0	34.0	183.0
2003	275.0	273.0	574.0	78.0	267.0
2004	184.5	270.0	476.0	32.5	157.0
2005	210.0	231.0	271.0	34.0	224.0

** Not Including Staten Island*
Source: Gewirtz (2002-2006), Criminal Justice Agency (2001)

Table 4.1 Median Number of Days from First Supreme Court Appearance Through Sentence for Juvenile Offenders (JO), 1999-2005

Judge Corriero is aware of this discrepancy and is not overly concerned by it. Such delay is almost always intentional in his court and is within the allowable exercise of his discretion. The judge explained it by saying, “I use imagination to find spaces within the law. I think it was the first judge Cardozo who said he finds the interstices in the law. So it is not novel to me.” Indeed, Benjamin Cardozo (1921) did articulate a similar understanding about the creative nature of statutory interpretation:

[The judge] legislates only between the gaps, he fills the open spaces in the law . . . none the less, within the confines of the open spaces and those of precedent and tradition, choice moves with a freedom which stamps its action as creative. The

⁴⁸ As is clear from these numbers alone, things are done quite differently in each borough and more than one person involved with the courts has said that each borough is like a completely separate system because of the differences in the culture of the court administration and the culture and agendas of each borough’s district attorney office and judges.

law, which is the resulting product is not found, but made.” (qtd. in Greenawalt 1975)

As scholars of judicial discretion have argued, the law as written on the books, by necessity, is often general in nature and requires interpretation because it is not possible to write laws that account for all the real world contingencies that may be encountered in the actual day to day administration of justice (Albonetti 1991; Cleveland 2004; Feeley 1973; Greenawalt 1975; Moran & Cooper 1983). The manner in which criminal statutes – such as New York’s JO or YO laws – become enacted within courtrooms during the mundane day to day work of a court is dependant upon a number of non-statutory factors such as the variety of goals of various court actors (defense counsel, prosecution, social welfare agents, judges, even defendants and family members), the constraint imposed on judicial discretion by statutory guidelines, and the nature of the local legal culture that emerges within the court as well as the individual creativity of a court’s presiding judge. As Moran and Cooper (1983) state: “Rather than being a system, criminal justice should perhaps be referred to as a process that encompasses many individuals who work their wills within the confines of broad, and often ambiguous statutes and bureaucratic regulations” (preface).

Judge Corriero articulates his own understanding of his right to exercise discretion within the parameters allowed by law when he explains his justification for the practice of delaying case processing:

The idea is that if the law is silent, then I have a right to fill in the gap, theoretically, within the spirit of the law, but that involves an interpretation on my part. Let me give you an example, there is no rule that says I can’t adjourn a case for year until I sentence him. Administrators of course want me to get these cases through, but there is no rule, there is no rule. There might be some question of unreasonable delay but there is nothing to prevent me from doing it. In that sense

that's a space in the law. There is nothing to prevent me from developing, through my imagination if you will, a way of putting a kid in a better position to earn youthful offender treatment than they would otherwise get.

By using his discretion to postpone disposition of a case and allowing time to elapse for evidence to accumulate as to the ability or inability of a kid to be “rehabilitate-able” the judge is in a much better position, he feels, to make an informed and more realistic determination on the best possible disposition for a youth:

I ask, ‘how do you determine a kid’s prospects for rehabilitation?’ Solely on the basis of prior behavior? No. I think we should see what a kid has learned from the interaction and by postponing sentence. [Then] I am in a better position to determine the prospect for rehabilitation and that’s how we justify that.

After months of monitoring by the ATI programs, the judge is no longer limited to making a sentencing decision based solely on a defendant’s behavior prior to indictment. Secondly, by slowing down the whole process, ATI’s are afforded more time to identify issues and provide services for kids and their families. The delay, then is a purposeful exercise of discretion in order to effect sentencing outcomes – namely the earning of YO. Many defense attorneys go along with this intentional delay because it often works toward better outcomes, from a defense point of view, for their clients. As one defense attorney put it, “He’s carved out a space for judicial discretion. Which the YO statute allows for. And I collaborate with him, if it is best for my client.” A representative of the district attorney’s office voiced similar attitudes of acquiescence to Judge Corriero’s way of doing things,

He has developed a way of handling these cases that is probably working out reasonably well – as well as anything else, or better, and he has control of it. He basically puts those kids through their paces and if it works, [then good]. And in many ways we go along with it. Occasionally we might complain a bit but it is not frequent. He keeps those cases for a long time, even after they plead guilty they go on and on and you have to “earn” whatever he is going to give you and that is a good approach so we basically rely a lot on that wisdom of the judge.

In their research on courts, both Feeley (1979) and Kupchik (2003) also found that strategic delay was used as a tactic by court actors for the purpose of improving dispositional outcomes and had become institutionalized practice. As Clynch and Neubauer (1981) assert such “unofficial collaboration” among members of a court workgroup is quite common in the daily administration of criminal justice.

I asked Judge Corriero, “So the irony here is that the delay in the legal system, which is usually criticized, may actually work, in the end to help some of these kids?” His response was a simple “yes” and a smile. When I asked if he ever got complaints from other court actors he said, “We’ve been very fortunate that our judgment hasn’t been overly called into question by granting so many of these kids YO.” This statement reflects the judge’s own awareness of the constraints, both formal and informal, on his judicial agency within the part. While he has considerable power in regard to case processing and procedure, his discretion is not without constraint. He may only operate “creatively” within the parameters established by statute. There is also the threat of appeal and possible reversal of his decisions and the accompanying diminishing confidence in his abilities to judge fairly. In addition, there are the dictates of tradition and precedent as well as ever present political considerations (Easterbrook 2004; Eisenstein *et al.* 1977; Greenawalt 1975; Macaulay *et al.* 1995). Moreover, judicial agency is constrained by the emergence of a set of known standards within the court for the handling of similar cases (Clynch & Neubauer 1981). Consistency builds trust among the various courtroom actors, in which defense attorneys, prosecutors, defendants and parents can know what to expect within the court and from the judge. An established pattern of case processing allows for the smooth operation of the court for all involved.

Stepping too far outside these established parameters might jeopardize the spirit of unofficial collaboration that has been created within the court. All of these factors work to establish reasonable limits on the exercise of judicial discretion within the part. Judge Corriero articulates his awareness of these multiple constraints when he says that:

The Youth Part is an institution that is kind of struggling to go upstream while the current is running downstream... You cannot take for granted the existence of the Youth Part so it was very important for me to try and harmonize the different power structures, the different interests. So that is an essential requirement – to balance the different claims that are going on.

The judge is in no way required by criminal procedure law to place youth in programs and monitor their progress or spend time to get to know them individually, or to allow them space and time to prove themselves redeemable. In doing this he exercises judicial agency and a degree of judicial activism. This sometimes garners him criticism – either that he coddles young people or that he exerts way too much control over them. The judge has written that, “I stand by the belief that no adolescent should be incarcerated unless every consideration has been given to an alternative” (Corriero 1990) and this philosophy guides much of the work of the part. He actively finds “spaces within the law” and creatively utilizes the tactic of delay, generally with the consent of counsel and the acceptance of the prosecution, to divert as many kids as possible away from felony convictions. The tactics of discretion and delay are not unique to this judge or this courtroom, although the particular manifestation of their use is, of course, particular to the local culture that has come to be within this part. Thus, the court, through the establishment of both “formal and informal case processing norms” (Ulmer and Kramer 1998, p. 248) has developed a system for the administration of the law which reflects its own negotiated version of substantive justice (Feeley 1979).

The Importance of ATIs

Alternative to incarceration (ATI) programs are invaluable for the work of the court and it is through them that defendants “earn YO.” ATIs help the court assess and monitor defendants and, most importantly, connect kids and families with much needed social welfare services in the city with the goal of diverting them from further transgressive acts. The exact mandates and program designs of the various ATIs differ. Some are publicly funded, while some are funded only with private monies. Some are mandated to work with only certain populations. The Youth Advocacy Project (YAP), part of the Center for Community Alternatives (CCA), for example, provides six to twelve month long programs for Juvenile Offenders only. The Center for Alternative Sentencing and Employment Services (CASES) offers a six month long program for youth age 16-19. One of the programs available from CASES, called CEP Supreme is described in an agency brochure this way:

Instead of being sent to jail or prison, appropriate youth are allowed to remain in their communities while completing a program comprised of intensive supervision and comprehensive support. By directly addressing the issues that lead young people to criminal justice involvement, such as lack of supervision and support channels (e.g. family, school, social service), CEP Supreme reduces the likelihood of recidivism and equips participants with the tools they need to become self-sufficient and responsible adults (Center for Alternative Sentencing and Employment Services, n.d.)

The Andrew Glover Program (AGYP), a privately funded community-based program provides a variety of services for youth, court-involved or not, who reside in the Lower East Side or in East Harlem. Their website states their mission as providing, “an alternative to incarceration that works. The idea is simple. Instead of sending kids to jail, the court sends them to us.” A statement on their website describes their simple, yet holistic approach:

We help solve the problems that got the kid into trouble in the first place. It could be a family problem. A drug habit. Alcohol abuse. Or illiteracy. The kid may need counseling. Tutoring. Job training. Or rehab. Sometimes they need a place to live. Food. Even Clothing. Whatever the problem we can always find a way to help. And when we do, we solve the problem – something amazing happens. The kid doesn't get into trouble again. (Andrew Glover Youth Program)

The length of programs at AGYP are decided on a case by case basis. While each of the individual programs are structured in their own unique way all of them serve three major functions in regard to Youth Part defendants: monitoring, reporting to the court, and either providing services or referring youth out to other agencies for services. Monitoring of youth generally includes the monitoring and enforcing of curfews through call-in mechanisms, making home visits, conducting school visits to check on school attendance and performance, random drug testing, and verifying that clients are attending all in-house or outsourced programming.

In addition to monitoring, the programs generally assign a case manager to each kid to assess his individual needs and often that of his family as well. After assessments are made kids are linked with needed services that are provided either in-house or by one of numerous agencies around the city. These services include evaluations to determine the presence of mental illness and/or learning disabilities, GED preparation, IQ testing, individual and group counseling, substance abuse counseling, job preparedness training, family therapy, anger management classes, mentoring, tutoring, internships, life skills training, HIV/AIDS prevention education, recreational activities, and residential placement for homeless youth and others who cannot, for whatever reason, return home.

ATIs provide the court with written weekly reports on a youth's attendance and progress in the various programs he or she is connected with, and reports on the results of random drug tests. Program representatives can also contact the court prior to a

defendant's next court date if they feel there is an issue the court needs to be made aware of in order to pre-empt any potential re-offending by a defendant.

Because of the specialization of this court, the judge, his staff and many of the lawyers who frequently represent defendants in the part are familiar with the various ATIs and other program services that are available for the kids. In one case, a defense attorney had connected a defendant with the appropriate program even before the case came before the judge. The judge, who has extensive knowledge of the services available for kids, will often make specific recommendations for service providers for an individual kid: "[I]t is very important to link a kid with the right program because what happens if they fail in the program? Then my back is against the wall – but it may be a program that wasn't suited for them."

The ATIs can't solve all problems in a young person's life in a short six months or even a year, but they do at least begin to identify and attempt to address the issues in a young person's life which may have lead to their alleged offending in the first place. More than one representative told me that one reason most of the services they connect clients to are with outside agencies is so that kids can continue to receive such services and programming even after their allotted time in the ATIs is over.

The program representatives I interviewed expressed a reality-based understanding of the impact they can and can't make in a kid's life in the short time they are involved: "I don't contend that I engage a defendant or a client and tomorrow the magic wand is waved, it takes times, these kids have been living under certain premises and living certain lifestyles and then all of a sudden they have to do something else."

ATI personnel describe several recurrent themes among their clients – lack of a father figure, parents with drug and/or alcohol addiction problems or mental health issues, lack of parental supervision, peer pressure, gangs, distressed communities, and inadequate educational resources. Among the girls there are often issues of rape and sexual abuse.

A defense attorney explained how ATIs play a vital role for the defense as well as for their clients, saying,

You know we are only lawyers, it's not like the kids are coming in and talking to us about what is going with school or in their families on a weekly basis, so it is easier for us to have someone from a program who can vet that information and call us when there is a problem and then we can respond ... it's important to have the role of ATIs to provide that kind of information so then we can act on it.

The judge explained the court's dependence on the ATI programs by saying that "ATI programs are an essential component of what we do. We rely on them – they are extensions of the court in the Youth Part. No kid comes through this part who isn't connected to an ATI program whether you plead guilty or not." The ATIs, the various programs into which they refer kids, defense attorneys and the court work in tandem to monitor the progress of a kid over the months they are in the program. It is not at all uncommon for an ATI rep, the defense team's social worker and a representative from another service agency to all stand up for a kid on a calendar day.

If things are going smoothly with a kid in an ATI, then the judge most often schedules the kids to come before him in person about once a month. If there are any indications that problems might arise he will schedule adjourn dates more frequently. If things are going exceptionally well he will put the case on for two months out. If a problem arises between adjourn dates, programs will notify a defendant's attorney and

the court and a case can be added to an upcoming calendar day if needed. Generally, the judge knows the contents of the ATI reports before a kid steps before him on a Friday, especially if things are not going well. On more than one occasion the judge has greeted a kid about whom he has been alerted by saying, "I'm disappointed in you," when the kid steps before him, even before any reports are given verbally by ATI personnel.

Court Monitoring Of Progress

If a kid is OUT and in a program and all is going well the check in date with the court might only take a few minutes. The case will be called, the ATI representative will report that all is going well or that they are still working on a particular referral or some other detail. If nothing more is needed the next court date will be scheduled and the next case will be called.

For kids who have been doing well in programs, this is a moment for the judge to praise a kid's progress. The ATI representative will say "he is doing very well" or will share with the judge an award he got in the program or relay some other achievement by the kid. The judge will say, "keep up the good work," and schedule the next court date. If a kid is doing particularly well, the judge may extend his curfew or give permission for a family trip out of state.

Not surprisingly, not all kids given the chance to earn YO fair so well and the process of earning YO can be a precarious one for a young defendant. The judge will sometimes remand a defendant who has been OUT for awhile and is not meeting all the requirements set by the program or by the court. For some not doing well might mean a re-arrest on a serious charge which may well be the end of their chances to earn YO. But for others whose mistakes are not so high stakes (not reporting to the program, missing

curfews, etc.), the court may throw them back IN for a while as a reminder of just what the potential consequences are for their actions, to drive a lesson home about the consequences of their actions or lack of responsibility. Such was the case with Lorenzo, a black youth who was OUT at the time.

When Lorenzo's case was called his lawyer asked to approach and after a long sidebar the judge told Lorenzo to stand up and said, "You haven't done what I expected, you've acted irresponsibly, I gave you a chance, just to show up and you didn't show up [to the program]. You haven't acted responsibly in the community. The defendant is remanded."

Lorenzo was handcuffed and escorted out of the courtroom by Court Officers. The judge put the case over for the following week which was also the first day of classes for the city's public schools. On that date Lorenzo was released back to the program and three weeks later the program reported to the judge that he was "doing well, has attended all sessions, testing negative." The judge told Lorenzo to "keep up the good work" and scheduled the next court date for a month away.

Javier's Journey to YO

Although each defendant's experience has its own specifics, Javier's experience provides an excellent case study for many of the issues around earning YO and demonstrates the relationship that he develops with the court over the course of earning YO: the judge getting to know Javier, the process of connecting the youth with services, the second chance given after a temporary remand, and the issues surrounding school and employment.

Javier, a tall, lanky non-JO Hispanic boy had been with the court for few months and had been involved with one of the ATI programs. Javier knew the ropes and walked easily through the gates when his name was called. He had hair almost to his shoulders.

"You are letting your hair grow?" the judge asked as Javier arrived.

"Yes," said Javier.

"Why is that; new look?" the judge inquired.

"No reason," said Javier noncommittally.

"Didn't you have long hair when you were young, judge?" Javier's attorney joked.

"I wasn't criticizing," the judge said smiling, "I wish I could do it. I understand he's doing well."

"Everything is going good," Javier said.

“How about working?” the judge inquired.

“He’s got an application,” Javier’s attorney said.

“Did we follow through on Big Brother?” asked the judge.

“We are awaiting word,” Javier’s attorney answered.

“How old are you now?” The judge asked Javier.

“Seventeen.”

“We ought to get this young man ready for sentence, shouldn’t we? Where is the program representative? Did they show up?” the judge asked looking around the court.

“Not here,” Javier said.

“I would like to sentence the defendant if he’s doing well,” the judge said. “Why don’t we wait and see if the program people are coming.” Javier’s attorney explained that he needed to be in another part and was not able to wait around so the judge put the case over for a month. A month later, when Javier’s case was called, the program representative was there.

“How’s he doing in the program?” the judge asked her.

“He’s been attending, he’s been attending,” she said.

“Who is here with him today?” the judge asked.

“His mother,” Javier’s mother answered from the audience.

“If I can approach?” asked the program representative.

“Yeah,” said the judge and the representative and the judge and the defense and ADA approached the bench.

After their discussion the judge said to Javier, “You’ve been using drugs?”

“No,” said Javier.

“What time did you go to bed last night?” The judge asked his voice shaded with frustration and impatience.

“1:30,” said Javier.

“What were you doing?” the judge said frowning.

“Watching TV,” replied Javier.

“What about school?” the judge asked implying that it was a school night.

“I had court,” said Javier in a matter of fact tone.

“You think it is okay to come in here unfocused?” the judge said, his voice showing more frustration. “STAND UP YOUNG MAN,” the judge said and Javier stood up.

“I DON’T LIKE YOUR BEHAVIOR IN THE PROGRAM. I DON’T LIKE WHAT’S GOING ON. I DON’T LIKE THE FACT YOU ARE WALKING AROUND WITH A KNIFE WHEN YOU ARE OUT ON A GUNPOINT ROBBERY, WHERE I’VE GIVEN YOU A SECOND CHANCE, YOU UNDERSTAND ME? I’M NOT GOING TO TOLERATE THIS. THIS DEFENDANT IS REMANDED AND IT’S NOT JUST FOR TODAY. HE’S REMANDED AND I WILL SEE HIM ON WEDNESDAY.”

The Court Officers handcuffed Javier and led him out the back door. The judge, his voice softening, said to Javier’s mother, “Let me explain to you why, so you fully understand. Walking around with a knife, he’s crossing personal boundaries with people who are trying to work and help him. He’s got an attitude. It seems to me, there is a lot of things going on with him and it can’t be tolerated. He’s only out of jail because I put him in this program. I don’t expect him to get worse and I don’t expect him to disrespect anybody that I connect him with. And until he learns that, he’s going to have to stay

where he is or I am not taking a chance with him and I'm just going to sentence him on the original sentence recommended by the district attorney, alright? Do you have any questions you want to ask me?" the judge asked.

"When is his next court date, Wednesday?" Javier's mother asked.

A week later Javier was ROR'd by the judge and returned to the program, and a month later the same ATI representative gave Javier a positive report. The judge told Javier to "keep up the good work" and adjourned the case for another month. A month later Javier came before the court again, this time with his long hair braided into narrow corn rows.

"I have a report from the program," the judge said and then asked Javier, "Have you finished summer school?"

"No, I'm still in the process of summer school," Javier replied.

"How is he doing at home?" the judge asked Javier's mother who like always was in the audience. "He's doing good," she said, "he stays home."

"He doesn't have to stay home," the judge said.

"No, actually he stays home," said Javier's mother.

"Does he do something when he's home, something positive?" the judge asked.

"He helps me around the house, picks me up from work at times," she said easily.

"When are you expecting to get your report card?" the judge asked Javier. Javier said he would get it in about a month and the judge gave Javier a court date after that time, saying, "We'll put this on for sentence. If you stay out of trouble, continue to do what you are supposed to do, I'll sentence you to probation and Youthful Offender treatment." There was no trace in the judge's voice or demeanor of the frustration or disappointment he had demonstrated two months prior.

"The defendant would like to inform you that he has a job," said the attorney next to Javier who was filling in for Javier's regular attorney.

"What are you doing?" the judge asked and Javier explained that he was working in a restaurant. The judge asked if he worked in the kitchen and Javier said, "No, I'm on the line," and went on to explain the details of what he did at work. The judge listened to Javier's explanation with interest and then said "good, keep up the good work."

On Javier's next scheduled date about five weeks later, the first thing the judge said as Javier walked up to take his seat was "you better be do doing well." Once again the program representative asked to approach and after a short sidebar conversation the judge said, "I want to see your report card, and where have you been working?"

"Same place," said Javier, "But the thing is, I was talking to my mom about it. I had a discussion with my boss of how I was last year – to go back to weekends because school started."

"So you're going to be able to work on weekends?" the judge asked.

"Yes, I'm going to talk to my boss today," answered Javier.

"And you want to work?" the judge inquired.

"Yes, but it is just interrupting with my school."

"This is a good job that you have?" asked the judge.

"Yes."

"You're not going to get in trouble anymore?" asked the judge.

"No," said Javier.

“So what you have to do is make sure the people at the program understand your problems and check in with them,” the judge said. This statement by the judge implied that the program was having some issues with Javier although the representative did not announce them in court and they were not severe enough to jeopardize Javier’s status.

Two and a half months later, the program reported that all was going well with Javier and the judge put the case over for one more month saying, “we’ll put it on for sentence, if all goes well.” A year later Javier was still with the court. He was doing well after a few more bumps in the road and was about to be sentenced and finally earn YO and five years probation.⁴⁹

The Family Court Paradox

In addition to the complicated sentencing structures for the different aged defendants explained in Chapter Three and the complex process of earning YO, many Juvenile Offenders (JO) in the Youth Part have open or pending cases in Family Court as well as their criminal “adult” case in the Youth Part. For example, a kid can have an open charge against him for a non-JO crime, say drug possession, in the Family Court at the same time that he has a JO charge in the criminal court, meaning that he is simultaneously being charged as an adult and as a juvenile, in two separate branches of the court system. This paradox is another one of the inherent contradictions present in the Youth Part, and can seriously complicate the resolution of a case in the court. In order to navigate this difficult terrain defense counsel and ATI personnel need to be fluent in the laws that govern and the cultures that preside in both the Family Court and the Youth Part.

Sometimes Judge Corriero will delay the resolution of a case in the Youth Part until he has had time to see what the Family Court judge has decided on for a defendant. Sometimes Family Court judges will delay disposition until they learn what Judge Corriero is planning, resulting in a JO catch-22 with each court waiting for the other to

⁴⁹ Unfortunately, Javier died from an asthma attack before he was able to receive YO. Although he had apparently been drinking at the time of his death, there was no evidence of drug use.

proceed first. The experiences of Alonzo, Isaac, and Walter, recounted below are emblematic of how this Family Court paradox plays out in the day to day working of the Youth Part and the obstacles it can create for case dispositions.

Alonzo

Alonzo was a black and Hispanic JO who had been remanded by the court.

“I understand he was placed in the Family Court?” the judge asked his attorney when Alonzo’s case was called and he was escorted to his chair by Court Officers.

“Your Honor, the Family Court has sentenced him,” Alonzo’s white male attorney explained. “They want him to do a program. My information is that we are trying to juggle this court’s demands with the Family Court demands and trying to do a program that is acceptable to both of the courts. We need a little more time to find that specific program.”

“What kind of program are you looking?” for the judge asked. The attorney named the programs there were looking into adding that so far they hadn’t heard back about whether or not Alonzo was acceptable to the programs. He asked for more time. The judge put the case over for another two weeks to see if it could be worked out.

Isaac

Isaac, a black JO, had been IN on a second degree robbery case and also had a case open in Family Court (charge unknown). His Youth Part case had been delayed long enough that he had already spent a year IN with DJJ. His attorney had negotiated a deal with the Youth Part whereby Isaac would be released to the Youth Advocacy Project on the understanding that if he failed in the program he would get the maximum sentence allowable – two and a third to seven years.

“He’s going to be sentenced in Family Court on Monday,” reported Isaac’s white male attorney.

“On our case he’s ROR’d,” the judge said, adding, “Family Court will ROR him, I imagine.”

“They were going to sentence him based on what this court did,” the defense attorney said. “I’ll alert the Family Court attorney.” The judge asked the Youth Advocacy Program representative if she was going to be in the Family Court on Monday.

“Yes,” she answered.

“If he’s released, he’s to go immediately into your custody,” the judge instructed. Although Isaac was ROR’d by the Youth Part he was not able to walk out of court because there was a Family Court hold on him and he had to remain in custody for them. The next week, when Isaac’s case came before the court, Isaac was still IN. He hadn’t been ROR’d by the Family Court as Judge Corriero had anticipated but instead had been sentenced to a secure OCFS facility by the Family Court. His case in the Youth Part remained open and the judge continued to monitor Isaac’s progress in the OFCS placement. A month later, OCFS personnel escorted Isaac to the Youth Part for his adjourn date in the criminal court and the judge scheduled another date after the time that Isaac was expected to be released from OCFS – a couple of months away. At such time

the judge would reconsider releasing Isaac to the Youth Advocacy Project like he had originally planned.

Walter

Walter, the black JO whose first visit to the court is recounted earlier in this chapter, had been enrolled in an ATI program for about two months when he was arrested and charged with a non-JO assault in the Family Court (only first degree assault is a JO crime). The Family Court had not remanded him and on his next court date in the Youth Part, his lawyer argued that Walter had been misidentified, which Walter's mother, who was in the audience, confirmed. Uncertain as to the best course of action and lacking needed information, the judge told Walter to wait in the audience while the court tried to call the Family Court to learn more about Walter's new juvenile delinquency case. By the end of the day, the court had not been able to contact the appropriate people at Family Court, so the judge, not knowing the full details of the case, remanded Walter until he could learn more. A week later, when Judge Corriero felt confident that he was well informed about Walter's Family Court case he released him back into his ATI program.

Not Earning YO+5

Not all kids that come before the court will earn YO and five years probation. Some simply aren't eligible, others will attempt to earn it, but ultimately fail.⁵⁰ For those defendants not legally eligible for YO the options are very limited. Most of them take a negotiated plea – sometimes the plea is to a lesser charge, although as discussed in Chapter Three the plea bargaining options are limited for Juvenile Offenders because it is not possible for them to plea down to non-JO charges. Other times a negotiated plea carries a guarantee of a time of incarceration below the maximum allowed by law.

For non-JOs there is the option of pleading to a lesser charge. Sentence length is often part of the plea bargain for non-JOs as well although the sentencing is determinate for non-JOs. A seventeen year-old with a second degree robbery charge, for example, faces a determinate term of incarceration of between 3½ to 15 years. A plea bargain can be for any number between that. Sometimes the willingness of the prosecution to bargain

⁵⁰ There is still another category of defendant – those who are given YO treatment along with a sentence of incarceration. This is allowable under the law and does happen in some cases where probation is not a reasonable option but the judge has determined that in “the interests of justice” YO treatment is applicable once a defendant has served a term of incarceration.

is minimal and they will offer simply a plea to the original charge and a term of incarceration. Occasionally, a case in the Youth Part goes to trial although this is rare. Kids tend to get caught, they tend to confess and evidence is easily gathered and as in every other arena of the criminal court, trials are time consuming and expensive and plea bargaining is the order of the day. Cesar was not eligible for YO while Timo failed to earn it when given the chance.

Cesar

Cesar was not eligible for YO. A Hispanic JO charged with a first degree robbery in which he pointed a gun and threatened to kill someone, his options were limited.⁵¹ The ADA was recommending a sentence of 2-6 years and no YO (the maximum sentence allowable by law was 3½ to 10 years).

When Cesar was brought before the court on his adjourn date (he had been IN since his arrest) the judge said, “I have all your information, I’ve been trying to find a sentence that I think is fair in this case. I don’t know all the answers, I find this case to be extremely difficult. I see a young man before me who doesn’t appear to be capable of the charges against him. But I am limited by the nature of the crime. The DA is recommending 2-6 with no YO. He pointed a gun and threatened to kill someone. It was a real gun and he did this by himself. I have very little choice. I wish I could wave a magic wand.”

The judge then said to Cesar’s attorney that he could go to trial or take the plea. Cesar opted to take the plea. During his allocution Cesar said that he had been with two others but that they hadn’t been caught. When the judge asked Cesar why he had done it he said, “I had to prove myself.” After Cesar had pleaded guilty, the judge put the case on the calendar for sentencing two months later. Several women were in the audience for Cesar – his mother and grandmother and three younger women who were likely sisters or cousins or friends. Cesar’s mother started to cry as he was allocuting and at one point had to sit down she was so overcome. Even as Cesar was cuffed and lead out of the courtroom, his mother just continued to sit in the audience and cry. After the COs led Cesar out, the judge stared hard at the back wall of the court room for a few minutes as he is prone to do after a particularly difficult interaction.

Two months later, with his mother and sister in the audience, the judge sentenced Cesar to one and a half to four and a half years with no YO. The People had requested a sentence of 2-6. The judge explained to Cesar that he was going to have a record saying,

⁵¹ Under the law, the use of a real gun precludes YO unless a case can be made for mitigating factors and the law is very strict about what qualifies as evidence of mitigation. As the court attorney explained, “*unless the judge finds mitigation – and it is not mitigation that you had a terrible childhood, that you were beaten, your parents were drug users or in jail, its not that kind of mitigation. It’s not that kind of mitigation that makes you almost sympathetic toward the defendant. It is mitigation in the manner in which the crime was committed. Which is very difficult, very difficult, it is almost impossible in those kinds of situations to find that kind of mitigation – for the gun wielder.*” There was no mitigation in Cesar’s case.

“it is a hard thing to go through life with a record.” Since his arrest Cesar had been held at a DJJ facility in the city. After sentencing he would be transferred to the Office of Children and Family Services (OCFS – previously the Division for Youth) for placement into a secure juvenile facility outside the city.

Timo

Some of those who are originally set up with ATIs with the prospect of earning YO+5 will get re-arrested on serious charges or fail to meet the requirements of the court. Even after a second or third chance, they will fail and face terms of incarceration with no hope of earning YO. Timo was one of these kids. A Hispanic JO, Timo had been OUT and in a program for about four months, long enough for him to have studied for and taken a GED exam, yet the court was still keeping a close eye on him. As Timo approached the desk one Friday, the white female attorney, who was filling in for Timo’s usual lawyer, said, “As far as I know he is doing well in [the program].”

“Is that right?” the judge asked Timo, “I am not going to hear any bad reports? You are making all your appointments?”

“Yes,” replied Timo.

“How is school coming along?” the judge asked him.

“I am doing okay, I just finished taking the GED,” Timo explained

“What time did you go to bed last night?” the judge inquired seeing something about the kid’s affect that seemed off.

“I didn’t go to sleep.”

“Why not?”

“Because something happened to my sister and I couldn’t sleep,” Timo explained.

“What happened to your sister?” asked the judge.

“She had a miscarriage,” Timo said softly.

“You were up with her?” the judge asked in a soft tone.

“Yes,” said Timo.

“Is she alright now?” the judge asked in a sincere tone.

“She’s okay,” said Timo. After a short pause the judge asked, in a steady, patient tone, “Are you sure that’s the only reason you didn’t go to sleep?”

“That’s the only reason, sir,” Timo replied.

“Okay, see you on the adjourn date.” The judge announced a date five weeks in the future and then stopped himself, “Actually I want to see you sooner than that,” he said and set a date two weeks away. “I want to make sure your report is where it is supposed to be.”

Two weeks later when Timo came before the court again his regular white male attorney was present as was the representative from Timo’s ATI program. When the judge asked for a report from the program, the woman said, “Unfortunately, Timo has been going through a personal issue that has been brought to our attention. A case conference was held yesterday with the new service director, his case manager and me, via the phone with Timo and his mother. I will not present Timo’s personal information to your Honor. If he wishes to share that with you, which I have encouraged him to do, then he can. Hopefully, this will be able to not excuse his actions, but give some sort of understanding as to what’s been going on.”

“What actions are we talking about?” the judge asked.

“He has not made a great effort in calling in for curfew and he moved out of his home with his mother and in with his girlfriend,” the representative explained.

“Where is his mother?” the judge asked.

“He is here by himself,” the representative answered.

The judge directed his next question to the program representative: “He moved in to his girlfriend’s house without asking your permission or mine?”

“Yes.”

“He took it upon himself to do that?” the judge asked, his voice tightening.

“I explained it to him....” the representative started to say.

“While he’s out on a robbery?” the judge interjected with some frustration in his voice.

“He has since moved back home and he understands,” the representative offered, “he had a little derailment and I really.....” She then turned toward Timo and said, “Timo, I want you really to explain to the judge what’s going on.”

Timo attempted to explain: “For the past two weeks, I have been going through arguments with my mother and then I moved in with my girl because..... right now..... my.....my girl.... is one month pregnant so I was staying with her.”

“You are acting responsibly?” the judge asked, frustrated and slightly angry.

“He was trying to act responsible,” the representative said coming to Timo’s defense.

“You say he got his girlfriend pregnant?” the judge asked the representative as if to say, ‘this is acting responsibly?’

“He understands that’s not the best thing to do,” she said, “he has thought that being responsible meant moving in with her and helping to take care of her. I told him that he will not have anybody to take care of if he is sitting in jail and does not take care of his own responsibilities first.”

“This is....” the judge started, “I have to unwind this. Why are you arguing with your mother?” he asked Timo.

“Because me and my moms...” Timo started to explain.

“Your MOTHER, not your ‘moms’” the judge said, correcting Timo.

“Me and my mother . . . whatever I do, she don’t agree with it.”

“Understand that getting your girlfriend pregnant is something I wouldn’t agree with,” the judge interjected impatiently, the adding in a calmer tone, “go ahead, continue.”

“It’s like my mother, she likes to argue for every little thing I do. I don’t like to argue with my mom and disrespect my mom.” The judge’s frustration seems to grow and he said, “I don’t think you are doing anything that I expected you to do. I let you out on a VERY serious case. I don’t expect nonsense like this to interfere with you dealing with the program.”

Again the ATI representative intervened, “If it makes any consolation, up until the past two weeks, Timo has been doing excellent since his release. It’s just recently he found out his girlfriend was pregnant. He has been going through an issue.”

“You should have thought about the issue of getting her pregnant. That’s the issue, not after she’s pregnant,” the judge responded, sounding somewhat exasperated.

Timo's attorney chimed in saying, "Judge, as she said, he has done very well up until the last two weeks and there was a major case conference yesterday involving his mother. I am making a referral to our therapeutic social worker."

While the attorney was speaking the judge was reviewing the paperwork for the case that was before him on his desk.

"This is a real gun used in this case," the judge said, "whether it was on him or not." Although Timo was most likely not the gun-wielder, the very presence of a gun on any co-defendant makes the charges against all more serious. The judge knows that kids involved in such cases need to be watched closely, the stakes are too high – for the defendant, for the community and for himself and the work of the part, for what he can do for other kids in the court. The judge took a moment to look again at the papers in front of him and then, in a stern voice announced, "The defendant is remanded."

Timo turned his head to one side and although he made no real facial expression, I could see the muscles in his jaw clench. Timo's lawyer asked if they could approach and a short bench discussion took place with the attorneys and the ATI representative and the judge. Afterward the judge said calmly, "we'll put it on for next Wednesday. The defendant is remanded until Wednesday."

A court officer moved in to put handcuffs on Timo as he stood. As the COs escorted him past the judge's bench, Timo didn't look at the judge and the judge didn't look at Timo. Instead the judge turned his head a bit to one side and I could see the muscles in his jaw clenching as well.

As Timo was lead out the door, the judge turned to the court reporter and said, in a softer tone, "the record should be clear, he's not being remanded because he got his girlfriend pregnant, but because he didn't do what we asked of him."

Timo's case had not been resolved by the end of the fieldwork for this study but he did eventually get re-released into a program and subsequently failed to meet the program requirements and was again remanded. Nearly a year after he had first been released into a program, Timo remained incarcerated at a DJJ facility. The ADA on the case was asking for a sentence of 2-6 and was opposing YO for Timo. There had been a gun involved in the original case, after all. The option's available for Timo were now quite limited – by the nature of the original case and by Timo's inability to demonstrate his ability to earn YO.

Quantitative Data on Youth Part Practices

Claims often leveled at Judge Corriero – that he is overly lenient or relies too heavily on giving kids YO – are not borne out by the data. Data on JOs who are given YO in Manhattan (Table 4.2 and 4.3) show that, between 1995 and 2004, JOs in Manhattan did not receive Youthful Offender status at significantly higher rates than JOs

citywide.⁵² Both tables also show that YO is almost never given for those JOs charged with A class felonies – in Manhattan or city wide – and that in general a higher percentage of those charged with C and D class felonies receive YO than those charged with B class felonies although for some years is quite similar. I was not able to obtain data on the percentage of non-JOs in the Manhattan Youth Part that receive Youthful Offender treatment, but given that Judge Corriero has indicated that he does not discriminate between JOs and non-JOs in terms of earning YO, it could be expected that similar percentages obtain.

Percentage of Youthful Offender (YO) Conditions of Supreme Court Sentences by Felony Class Juvenile Offenders (JO) in Manhattan 1995-2005						
A=A Class Felony B=B Class Felony C/D=C or D Class Felony						
	A	<i>(N)</i>	B	<i>(N)</i>	C/D	<i>(N)</i>
1995	-		62%	<i>(43)</i>	79%	<i>(23)</i>
1996	20%	<i>(1)</i>	70%	<i>(32)</i>	66%	<i>(14)</i>
1997	-		71%	<i>(36)</i>	65%	<i>(15)</i>
1998	-		64%	<i>(7)</i>	100%	<i>(4)</i>
1999	-		94%	<i>(30)</i>	88%	<i>(15)</i>
2000	100%	<i>(1)</i>	62%	<i>(24)</i>	86%	<i>(12)</i>
2001	-		73%	<i>(36)</i>	75%	<i>(12)</i>
2002	-		93%	<i>(25)</i>	88%	<i>(14)</i>
2003	-		70%	<i>(26)</i>	96%	<i>(23)</i>
2004	-		85%	<i>(22)</i>	89%	<i>(17)</i>
2005	-		57%	<i>(15)</i>	75%	<i>(12)</i>

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Table 4.2 Percentage of Youth Offender (YO) Conditions of Supreme Court Sentence by Felony Class, Juvenile Offenders (JO) in Manhattan, 1995-2005

⁵² See Appendix C for data Citywide and by borough.

Percentage of Youthful Offender (YO) Conditions of Supreme Court Sentences by Felony Class Juvenile Offenders (JO), New York City,* 1995-2005						
A=A Class Felony B=B Class Felony C/D=C or D Class Felony						
	A	<i>(N)</i>	B	<i>(N)</i>	C/D	<i>(N)</i>
1995	17%	(2)	68%	(178)	85%	(90)
1996	6%	(1)	68%	(144)	67%	(60)
1997	25%	(2)	63%	(164)	81%	(63)
1998	-		82%	(109)	96%	(23)
1999	-		83%	(158)	93%	(55)
2000	20%	(1)	74%	(124)	71%	(30)
2001	-		80%	(132)	75%	(30)
2002	-		77%	(80)	78%	(31)
2003	-		71%	(94)	89%	(64)
2004	-		86%	(130)	88%	(63)
2005	-		74%	(104)	90%	(53)

**Not including Staten Island*

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Table 4.3 Percentage of Youth Offender (YO) Conditions of Supreme Court Sentence by Felony Class, Juvenile Offenders (JO), New York City, 1995-2005

Gewirtz and Revere (2005) in their comparison of JO case processing in Queens and Manhattan during 1997-2000, show that in Queens Youthful Offender treatment was given in 85% of the of the cases while only 74% of cases in Manhattan received YO. More general claims of leniency on Correiro's part are also not borne out in the data. In Queens 27% of JOs were not detained at any time during their case processing, while only 11% of JOs in Manhattan were never detained. In addition, among those held at some time, the median number of days held in Manhattan was 204, compared with only 68 days in Queens. Further, when looking at sentencing data, Gewirtz and Revere (2005)

found that despite similar charges and case characteristics coming in, for those youth who receive incarcerative sentences, “sentences in Manhattan tend to be significantly longer than the Queens sentences” (16). The median minimum length of sentence in Manhattan being two years versus only one year in Queens. Gewirtz (December 2005) in a summary of her study’s findings reports that the total processing time was longer, the number of days in detention was more, the likelihood of detention and conviction were greater, the likelihood of getting YO was less and the length of sentence, if sentenced to imprisonment, was longer in Manhattan than in Queens.

These findings support the general understanding of many that work in or around the Manhattan Youth Part: That while the judge cares about the kids in his part and is often sympathetic to their circumstances, this does not translate into leniency. In fact, in many ways, Judge Corriero is harder – requiring long periods of close court and ATI supervision in order to earn YO. As a representative from the DA’s office said about the Youth Part practices, “[Corriero] can be tougher in a sense because he has a great insight into those cases. I think Corriero has a heart of gold, but I think can be tough. He basically puts these kids through their paces.”

If due process values are to be preserved in the democratic state of the last 20th century it may be essential that officials possess passion. The passion that puts them in touch with the dreams and the disappointments of those with whom they deal, the passion that understands the pulse of life beneath the official version of events.

(Justice William J. Brennan, Jr.)⁵³

CHAPTER 5

***Parens Patriae* at Work in a Criminal Court**

The space carved out by the Youth Part and by the judge's creative use of discretion and delay allows a place whereby the court can operate in a manner that is somewhat reminiscent of early juvenile courts with their *parens patriae* style philosophy. One of the main tenets of the early juvenile justice movement was the emphasis on the need for *individualized justice* – the idea that the punishments meted out or the treatment and social welfare interventions prescribed for youthful offenders be based on the circumstances, history and life conditions of each individual child.⁵⁴

⁵³ Brennan (1987). I was first made aware of this statement by Justice Brennan during an interview with Judge Corriero in his chambers. I had been asking him about the respect that I had consistently seen him show to young defendants and their families, such as always making sure that handcuffs were taken off, speaking to defendants directly and allowing them to speak to him, making sure that non-English speaking parents had access to interpreters, etc. His response to my questions was to quote this passage from Brennan verbatim.

⁵⁴ In contrast, criminal law has traditionally been more interested in the nature of the offense than the offender. This emphasis on the offense has only grown stronger in recent decades, as evidenced by the popularity of determinate and mandatory sentencing statutes and three strikes legislation.

The practice of individualized justice is observable in the Youth Part, where the judge takes time to review program reports, takes time to check in with mothers and others in the audience, and takes time to talk with the defendant, and where programs work hard to uncover and respond to the specific needs of their individual clients and their families. The approach the judge uses with each defendant in the court is specific to the individual defendant and the judge's personal interactions with each defendant often reflect the specifics of each case. Over the months that defendants come before the court, the judge and the ATI program personnel get to know the kids and the issues in their family life and the nature of any psychological or learning disability issues. The judge, through the reading of written reports and discussions with kids and families and program representatives over the months, gets to know many defendants as individual kids. The way he interacts with each kid in the court on their control dates reveals his knowledge of the larger context of each individual youth's story. The interactions he has with them on calendar days tend to reflect the unique, on-going relationship that he attempts to form with many defendants.⁵⁵

It is within this attention to the individual that specific opportunities for diversion, for pathways to earning YO can be contemplated, which again was one of the tenets of a *parens patriae* philosophy for responding to transgressive youth – the idea that where and when possible all attempts should be made to rehabilitate youth. While the Youth Part operates within a very different, and comparatively strict, legal structure than that of the early juvenile courts, the guiding philosophy of those early years is still embodied within

⁵⁵ This style of individualized justice is in distinct contrast to Bortner's (1982) findings of a strong depersonalization of juveniles and parents in her study of a *juvenile* court. In her research, Bortner found that juveniles and their parents were mostly reduced to stereotyped roles and "not treated as individuals." Further, she found that while the concept of individualized justice was touted as an organizing philosophy it was rarely enacted in the court.

courtroom interactions and attitudes. What results, I argue, is not the “reproduction” of juvenile justice, as was found by Singer *et al.* (2000) in their analysis, but, rather, a reconceptualization of a *parens patriae* style of justice, redesigned to fit within the context of a criminal court. This chapter demonstrates how this is done by providing an analysis of several accounts of calendar day interactions within the Youth Part. I end the chapter with a comparison of my research findings with those of Aaron Kupchik (2003a, 2004) who conducted similar ethnographic research in another of New York’s youth parts. Kupchik and I report both similar and divergent strategies and discursive tactics employed for resolving the inherent tensions of prosecuting adolescents in criminal court within our respective courtrooms. These similarities and differences are discussed.

Judge as Father Figure, ATI as Mother Hen

The nature of the relationships that the judge develops over the months with most Youth Part defendants is quite paternalistic. He is always looking for an opportunity to get through to a kid, to reach a kid, or to use a situation to teach a lesson in responsibility much like a caring father would. Much like a strict, yet caring, father the judge also praises, lectures, admonishes, reproaches, gets frustrated with and disappointed by his teenagers.

Just as the judge takes on the role of a surrogate father, the ATI program personnel in many ways take on the role of surrogate mothers. Although the ATI programs monitor and surveil they also mentor, counsel, nurture, help problem solve and assist families and kids. In the courtroom on calendar days, ATI personnel often advocate for their clients and frequently come to their defense. Although not unwilling to give a negative report to the court they often seem reluctant to share bad news with the court or

will try to pad the bad new with some good, saying, for example, “he has tested positive for marijuana, but he hasn’t missed any sessions and he always calls in for curfew.”

When a report is particularly negative, ATI representatives will sometimes report ‘just the facts’ without elaboration, such as “he hasn’t been to the program in two weeks, we tried to call but the phone was disconnected.” ATI representatives will often go out of their way to bring to the court’s attention a defendant’s accomplishment (for example, passing the regents exam). They will also offer reports of steady progress with a kid, saying, “he is doing much better, Your Honor.”

In interviews many ATI representatives articulate empathy for their young charges. When talking about the rather frequent use of marijuana among her clients one representative said, “Some of them, just, that’s what they do when they hang out with their friends and you know, some of them, their lives aren’t that great anyway.” Another ATI worker, when discussing the anger management issues many kids face, said, “Yeah, a lot of these kids are angry. A lot of them have reasons to be angry.” Another ATI worker explained how empathy often results in her taking a position of advocacy for a youth in the court:

You know these kids aren’t going to be perfect. But that’s why sometimes I might stand up and beg, or try to convince the judge to not lock them up in some way, because in their own way they are progressing, they have come a step up from where they were before they were arrested. So they might not be the perfect angels that we would hope them to be but no one is and I don’t know if they ever will be. We try to find progress. We forget that we are working with teenagers. I remember what I was like as a teenager and that is hard enough and then they have all this other stuff going on.

By applying a model of justice wherein kids are allowed to develop a relationship over time with the judge and with ATI personnel, by giving these kids “second chances” when allowable under the law, by emphasizing alternative to incarceration program based

models of rehabilitation, by allowing opportunities to “earn YO,” the court in essence has succeeded in many ways in re-enacting the basic concepts of *parens patriae* – updated and restructured to work within the constraints and “spaces” allowable under criminal statute.

Moreover, Youth Part defendants are repeatedly treated in day to day courtroom interactions in a manner which reinforces their social status as adolescents. The examples of court interactions provided below come from fieldnotes and court transcripts and demonstrate the variety of paternalistic treatment received by many youth in the court and the maternal role played by the ATIs. Also, these examples show the type of individual attention youth are given within this specialized court. In this process the judge often assumes the role of a concerned father, showing pride, demonstrating patience, lecturing, reprimanding, delivering swift and sometimes serious punishment. ATI programs, in turn, attempt to fix problems, monitor, mentor and nurture troubled kids.

Parens Patriae in Action

The accounts of calendar day interactions that follow demonstrate how an individualized form of justice is enacted within the court and illustrate the variety of paternalistic discursive strategies the judge utilizes in his encounters with young defendants. In addition, these accounts depict how the nurturing and advocating role often taken on by the ATI personnel is enacted within their particular speech forms within the court. These accounts illustrate the dedication to diversion, the empathy, the paternal and maternal treatment, and the array of discursive and dramatic tactics used in the court to teach lessons, build trust, admonish and punish errant behavior.

The accounts below have been organized by defendants rather than around particular themes or discursive techniques. There are a number of reasons for this unique organization of data. First, often more than one discursive technique is employed with each defendant, sometimes within a single calendar call. Second, although many of the discursive strategies utilized by the judge – praising, cautioning, counseling, admonishing, lecturing – are used consistently across defendants, these strategies are regularly tailored to the specific circumstances and personality of the individual defendant. The judge’s patience, or impatience, his selective use of a particular cautionary tale, the type of lesson he may try to drive home, the exact “deal” he makes with a defendant regularly reflect the knowledge the judge has of the larger context of the particular kid and the details of the case. By showing, in the accounts below, how the judge lectures Jeffrey differently than he lectures Ernesto, for example, I am able to demonstrate how the discursive strategies used in the court are individualized.

Further, each defendant in the Youth Part, indeed each of the court actors, has a personal style, a particular pattern of speech, a courtroom persona unique to them. All names given for defendants below are pseudonyms and many identifying descriptors have been left out in order to protect their privacy, however, by organizing these accounts around individual kids, I endeavor to allow each of them to exist, on the page, as individuals, not just members of a generic group labeled ‘defendants.’ Since they are not treated as such within the part, I would not want to do so here. In order to understand how the individualization of treatment is enacted within this criminal court, it is necessary to recognize the individuality of each defendant. By organizing the accounts below by defendant I hope to honor that practice.

Lazaro

Lazaro was a 14 year-old Hispanic JO who had been arrested on a criminal weapons possession charge and was currently IN. Lazaro had been released on a low bail that had been set at arraignment, but Judge Corriero had remanded Lazaro on his first appearance in his court. Lazaro had no family court record and his mother, who required the services of the court's Spanish interpreter, was present for all his court dates. A month after Lazaro's first appearance the court was still gathering information on his case. The judge used Lazaro's second court appearance to try and determine something about his character, to see if he could be responsible enough to be given a chance to earn YO. After learning that Lazaro had read the first of the Harry Potter books, the judge started a discussion with Lazaro about the book to make a point.

"How long have you been in jail now?" the judge asked Lazaro after the court officers had escorted him to his seat and taken the handcuffs off.

"A month."

"Well I just got the PPI this morning. I haven't read it yet. I'd like to read it as well as the 390 report," the judge said to the attorneys. "My suggestion is that we put it over for conference." Then the judge asked Lazaro how he was doing in the school at the detention facility.

"What's your best subject?" the judge asked.

"We just started yesterday," said Lazaro.

"You didn't go to school over the summer?"

Lazaro's white female attorney interjected, "They didn't have summer school."

"And when you went to school, what was your favorite subject?" the judge asked Lazaro.

"English," answered Lazaro.

"And what was your worse subject?"

"Math."

"What about History, do you know anything about History?"

"No, sir."

"What was the last book that you read?"

"Harry Potter."

"Which one?"

"The first one."

"What happened at the end with the book?," the judge asked.

"I don't really remember."

"Do you remember when they are getting awards for who had the best house? Do you remember why Harry Potter's house got the most points at the end?"

"I know that his mom and his dad died."

"And who is the redhead fellow that got the points in Harry Potter? Who was it? Do you remember?" Lazaro couldn't remember.

"Ron," offered the ATI representative, coming to Lazaro's aid.

"Right," said the judge, "and you know why he got the most points? Because, who was it, it was Dumbledore, right? He said something like 'it takes great courage to stand up to your enemies.'"

“Yes,” said Lazaro remembering that part of the book.

“But even more to stand up to your friends,” the judge said seriously, “do you understand what I’m saying to you?”

“Yes.”

“You want to be a tough guy? You want to be a gangster?” the judge asked in an accusatory tone.

“No,” Lazaro answered quickly.

“You can’t do that in your world,” the judge continued. “You are gonna have to walk alone.”

“Yes, sir.”

“And if you want me to take responsibility for you for the next five years, you better fully understand what’s at stake here. Do you understand?”

“Yes, sir.”

Four and a half months after his original appearance before the judge, Lazaro pleaded guilty to the weapons possession charge and was released into an ATI program. Sentencing was then delayed in order to monitor Lazaro’s progress in the program.

Vashon

Vashon, a black youth, was not doing too well in the residential program outside the city into which he had been placed. Reports had indicated that Vashon had serious issues controlling his anger. During Vashon’s court date the judge sought to learn more about the issues and to counsel Vashon on how to deal with his anger issues. The judge also found an opportunity to reiterate to Vashon the seriousness of the situation he was in. We also see, in this account, the program representative testify that the program was willing to give Vashon another chance.

“Let me tell you what my reaction originally was, Vashon,” the judge said. “I am losing patience. And I know that the staff and everybody at [the program] – this is the second time you have broken the rules. They still want to work with you. Am I correct?”

“Correct,” said the representative from the residential program who had traveled to the part for Vashon’s court appearance.

“I think you are very fortunate to have [the representative] and others who are taking an interest in you and seeing that you succeed and not want to give up on you. Their interests and mine are different. Do you understand?”

“Yes, sir.”

“If I have to send you to prison or set aside this way of dealing with it, you face serious, serious consequences. Do you understand me? I’m finding it difficult understanding why you can’t balance the consequences of your misbehavior or use the knowledge of the consequences of your misbehavior to prevent you from losing your temper. Why do you feel you can’t do that?”

“When I usually get angry,” Vashon attempted to explain, “I usually talk to Miss _____. But she was on vacation. I didn’t have nobody else to talk to. I can’t get in touch with my family. My sister, she was pregnant and my mother was running, like, around for my sister.”

“But sometimes things that are going to get you angry happen quickly and you don’t have time to go conference your anger with somebody else. You are

going to have to find a way to ignore what it is that gets you angry,” the judge advised.

“Me and a resident had an argument and I was ignoring him,” Vashon continued explaining.

“Why did you have the argument in the first place?” the judge asked.

“Like, he felt that I was being cocky about my attitude in sports and that he was the captain of the team at the time. And he felt that I was being, like, cocky and everything. And I was talking to everybody else on the court. So like, he was, like, he don’t want me playing at the time if I’m telling people that they can’t hold me and stuff like that. So I was like, if you don’t like my attitude you can cut me from the team and I can try for another one. The staff intervened. They was like, ignore him. So, like, we have our differences and he don’t like people talking trash. He was, like, you think you are the big time, showing off and everything and he was provoking me and everything. And I was like, just leave me alone and mind your business because this don’t have nothing to do with you. I was, like, angry, so I just started yelling.”

“What did I tell you the last time when you start to get angry?” the judge asked.

“Excuse myself, because, like, if I get into a serious problem, I could.....”

“What do you want me to do the next time you raise your temper?”

“I don’t really know what you ought to do. I would say that you’d probably send me off to jail.”

“What were you playing, basketball?”

“Yes.”

“How may fouls are you out of the game?”

“Six.”

“Do you play baseball?”

“Yes.”

“How many strikes and you are out?”

“Three.”

“How many strikes do you have now?”

“This will be my third one. This will be my third incident like verbally. I try my best to take a lot of detours.”

“Three strikes and you’re out, you have no more pitches. I’ll give you one more chance but this is the only one. Do you understand?”

“Yes.”

“You have to find a way to control your temper. I’m sure Miss _____ will help you do that, give you all the tools and methods that you need to do it.”

“Yes.”

“But you are going to continue to do it yourself. You can’t rely on Miss _____, because she’s not always going to be there. And you can’t rely on other excuses. Do you understand me?”

“Yes, sir,” replied Vashon in a serious tone. Vashon’s case was put over for three months and at that time was doing well and had had no more incidents at the program.⁵⁶

Isaac

Isaac, who was mentioned in the previous chapter was a black JO who had already spent a year IN on a negotiated deal. When the time came for him to be released to the ATI program, the judge used the occasion to see what, if anything, Isaac had learned during his time IN and to see how he says he would handle a situation that might lead to Isaac getting into trouble. In Isaac’s case we can also see the complications that arise when a defendant has open cases in the Family Court as well as in criminal court.

“How long have you been with me altogether?” the judge asked.

“About 12 months,” answered Isaac.

“What have you learned in those twelve months?”

“I’ve learned that I made a mistake, but nobody is perfect. I want to turn around my life. And I know what I want to do with my life.”

“What do you want to do?”

“I want to go to school and live like a regular teenager.”

“The next time you’re walking down the street, on the street with your friends, and they want to do something foolish, what are you going to do?”

“I’m going to leave them alone. I have to do other things.”

“And you’re able to do that?,” the judge questioned.

“Yes. I’m not going to let anyone manipulate me again.”

“I understand the program has been persuaded to give the defendant a second chance to work with your project,” the judge said to the ATI representative. “If you do that, we’ll give you probation and YO treatment. On the other hand, if you don’t do that, I’m going to put you in jail for two and a third to seven years. Do you understand that if you commit any other criminal acts or get involved in any other criminal behavior, I’ll give you as two and a third to seven years in jail? Do you understand?”

“Yes.”

The ADA spoke up, “the People are recommending probation and YO treatment in light of the fact that he has now been incarcerated for a year. But we do ask that the court impose maximum jail alternative if he fails probation. We have photos of the bruises. This is a serious crime. For that reason we ask for the maximum jail alternative.”

“Let him see the photos,” the judge said, “He should see what he did.”

The ADA handed a series of photos to Isaac’s attorney who laid them out on the table in front of Isaac who looked at them and frowned.

“What do you think of that?” the judge asked Isaac.

“It’s bad. I feel sorry. I had no reason to do what I did. I wish I didn’t do it.”

⁵⁶ Often, when kids are placed in residential programs, particularly those out of the city or state, control dates are scheduled two, three, even six months apart, reducing the hardship on the programs to transport kids to court. As in any case, if issues arise, the judge will advance the case if needed.

“You understand if you step out of line with me you’re looking at two-and-a-third years in prison?” the judge said, making the point again.

“Yes.”

The judge set Isaac’s next court date and added “I expect to hear that you’re doing everything that you’re supposed to do, keeping a curfew and going to school every day.”

Isaac wasn’t actually released that day as had been planned because he still had an open case in Family Court. The judge had expected that the Family Court would release him but instead the Family Court placed him with OCFS and a month later Isaac arrived in the Youth Part in the standard red t-shirt and khakis, handcuffs and shackles that OCFS uses when transporting kids from OCFS facilities. Judge Corriero left Isaac’s criminal case open and continued to monitor Isaac until his Family Court placement ended two months later. At that time, if all was well Isaac would then be released into the ATI program as originally arranged.

Ramiro

Ramiro, a Hispanic JO, had been working with an ATI program for awhile when the following exchange took place on a calendar day. Ramiro had been doing well, meeting the requirements of the program but was struggling in school. The program was working on finding him a more appropriate educational placement. In this interaction we see the judge counseling Ramiro on how to be patient with educational bureaucracies, how to make the most out of a not so great situation.

“How are you?” The judge asked.

“Fine,” answered Ramiro.

“Good,” the judge said and turned to ATI representative, nodding for her to start her report.

“He is doing well in our program,” she said. “He has attended all his groups, except one, that was an excused absence to go to a funeral. We’re trying to get his credits transferred from Passages,⁵⁷ he is supposed to be in 11th grade. Right now he is in the 10th grade at _____.”

“How do you feel about that?,” the judge asked Ramiro.

“I don’t want to be there.”

“Why?”

“I feel like.....” Ramiro’s voice trailed off.

“You are too big?” the judge asked.

“Yeah.”

“Everyone else is smaller than you,” the judge said nodding to indicate that he understood the situation. He then turned to the program representative and asked when new educational arrangements would be made.

“We’re working on that right now, it takes a little time to get the credits transferred. I told Ramiro that he needed to do his homework so there wouldn’t be any problem moving him from the 10th to the 11th grade,” the representative explained.

⁵⁷ Passages is the name of the NYC education department program inside the juvenile detention centers.

“You think you know everything already?,” the judge asked Ramiro, smiling.

“I don’t think I know everything.”

“I know you don’t,” the judge said in a soft tone to indicate that he wasn’t implying a know-it-all-attitude on Ramiro’s part.

“I know most of the stuff,” Ramiro said.

“Well, that’s okay,” the judge said in an encouraging tone, “because if you are going over it again that means you are going to learn it more so you can probably do much better because they put you in a class where you know everything already, look at it that way. Don’t be embarrassed. Do the kids bother you?”

“No.”

“They probably look up to you.”

“Maybe.”

“Just be patient, and don’t create a situation where you have to go back [to jail]. Nothing is, nothing can be that difficult that would warrant you going back. Right?”

“Right.”

“It’s a horrible place, isn’t it?”

“Yes.”

“So, you put up with being with little kids and you put up with all of this until we get this straightened out.”

Ramiro nodded in agreement.

Terell

Terell was a black youth who had allegedly been involved, with others, in a robbery with a fake gun. He had been involved with an ATI for a few months and the judge had gotten advanced word that Terell was struggling in the program. In this short account we see the judge use a dose of drama to drive home his point. In so doing he fires off a warning shot to let Terrell know what harsh consequences are awaiting him if he doesn’t get it together and sends a message to all the defendants waiting in the audience about what they too can expect.

“You need to cooperate with the project, you understand?” the judge said to Terell in a stern voice when the 15 year-old’s case was called. “And you need to cooperate with school authorities. And his curfew will remain at 7pm,” the judge added, his voice getting more terse.

“Now listen to me young man. You need to cooperate with these people and do what they say, you understand?”

“Yes,” the kid answered. The judge then looked Terell directly in the eyes, and raising his voice to just below a full yell, said: “If you so much as SPIT ON THE SIDEWALK I’ll put you in jail. Do we understand each other?”

“Yes,” the boy answered. The judge then put the case on for a “short date” – wanting to see Terell again in two weeks to make sure he was doing everything he was supposed to be doing.

Roger

Roger, a 15-year old, black JO had been OUT and in an ATI program for awhile. His mother had been active in his progress in the ATI, even advocating for better services when she thought Roger needed better programming. The judge had recently extended Roger's curfew because he had been doing well and was trying to get a summer job. On his next court date, recounted below, however, Roger had tested positive for marijuana, an infraction of the terms of his agreement with the court. Here, we see the ATI representative stick up for Roger and we see the judge using the minor infraction not as an excuse to punish Roger but as an opportunity for the judge to catch what he calls a "teachable moment," to reiterate the potential consequences of any future infractions. We also see the judge attempt to understand the circumstances around the marijuana smoking, to try and understand, and help Roger understand, why he had smoked it.

"How are you, Roger?" the judge asked when Roger walked up.

"There has been a minor slip, judge," Roger's white male attorney said.

"What is that?" the judge asked.

"There was a positive test for marijuana," the attorney answered.

"Is this the first time he's tested positive?" the judge asked the white female ATI representative without any anger in his voice.

"Yes," she said. The judge then turned to Roger and asked, "what was the occasion of that?"

"It was a mistake," Roger said.

"We all make mistakes," the judge said, "But what was the *reason* for the mistake?"

"I wasn't thinking at the moment."

"You mean when your friend passed you a joint?"

"Yes."

"You weren't thinking. Were you in a dream?" the judge asked, still with no hint of anger or frustration in his voice.

"I feel that I'm not trying to get out of line. There's no excuse."

"You wanted to smoke marijuana. That's understandable. But what was the occasion? Were you having a party or were you hanging out on the corner? What?"

"There was no occasion."

"So, you were just standing around smoking marijuana?"

"I was just hanging out."

"Hanging out, smoking marijuana?"

"Um-hum."

"Do you know what the problem is with that?," the judge asked. "I make no judgments as to the medicinal value. The problem is that you are out on a robbery case and we placed you in a program. If you continue to smoke marijuana, I'm going to have no choice but to put you in jail. Do you understand that?"

"Yes," said Roger.

"What's going to happen the next time your friends are hanging out and they want to pass you a joint?" the judge asked

“Nothing, because I’ll be going back in,” explained Roger.

“So, you’ve been warned. Do you understand me?”

“Yes.”

“Otherwise, how is he doing?” the judge asked turning to the ATI representative.

“He comes to every appointment, individual group,” she offered.

“How is he doing at home?” the judge asked Roger’s mother who was standing in the audience.

“He’s doing good,” she responded.

“He listens to you?” the judge asked her.

“I have no problems, maybe just an attitude,” she said.

“What kind of attitude? He talks back?” the judge inquired.

“He talks back,” Roger’s mother said, “Other than that, he’s going to the programs and doing what he’s supposed to.

The judge looked back to Roger and said, “you have to respect your mother. Do you understand me?”

“Yes.”

Six weeks later, when Roger was again before the court the ATI representative reported that he was doing well and had continued to test negative. When the judge asked his mother how he was doing at home, she replied, “since you spoke with him I’ve had no problems.” Another month later Roger was still testing negative and doing well at home. The judge used Roger’s time before the court to engage him in a discuss of his schooling and to praise his progress. Here we also see the judge allowing time for Roger to speak about his positive progress in school and using self-deprecating humor to praise Roger’s hard work.

“How are you, Roger?” The judge asked.

“Fine. And yourself?” The Roger answered.

“I’m not bad, but I am struggling to be good,” said the judge who had had several difficult cases that morning. Roger’s mother also reported that he was doing well at home.

“He is doing excellent,” the ATI representative reported, “He is doing excellent with our program at the center, he is an active participant. He attends all sessions.”

“Good, I’m proud of you,” the judge said to Roger, “How are you doing in school?”

“I like it.”

“You passing everything?” the judge inquired with an interested tone.

“Yes, they said I should finish in February.”

“What’s your best subject?”

“I am starting to get good at fractions,” Roger replied.

“Give me an example,” the judge said with enthusiasm.

“Like, I’m taught how to reduce them. Before I never used to know how to do fractions like that. But my teacher takes time to break it down and help me,” the boy said.

“Good,” the judge said, adding with a smile, “I still don’t understand fractions.” Several people in the courtroom chuckled. Roger laughed.

“Keep up the good work,” the judge said, adding, “we will see how he does on the next adjourn date and we will get closer to sentencing him to probation and Youthful Offender treatment.”

David

David was a black JO who had been working with an ATI program. He was only doing so well in the program. Here we see the judge providing fatherly advice about what not to wear to a job interview, explaining to him why testing positive for marijuana was problematic and using David’s interest in boxing for a quick lesson on anger management.

“How is he doing?” the judge asked David’s mother who was standing at the audience railing.

“He is....” David’s mother started to answer.

“I got a desk appearance ticket,” David told the judge.

“For what?” the judge asked.

“A clip of marijuana.”

“What’s a clip? The judge asked.

“It’s a roach,” David’s white male attorney explained.

“You mean a roach. The lingo. Now, a clip is a small one – as opposed to your generation’s lingo of a roach?” the judge asked the attorney.

“I think so,” David’s attorney answered.

“I was cutting class in school,” David also confessed.

“Why are all these things happening?” the judge asked calmly.

“The class I felt was a little too hard,” David said.

“It will only get harder if you don’t go,” the judge said.

“I know and the marijuana – I was with a kid and he was flipping a knife and the cops rolled up on him and they checked me.”

“And you had a roach clip in your pocket?, the judge asked.

“Yes.”

“Because you smoke marijuana regularly?,” the judge asked.

“Not regularly. Just at that time.”

“This creates a problem, right?,” the judge asked.

“Yes.”

“Keep smoking marijuana, how am I going to explain to the District Attorney that I should let you stay – what could I say to the District Attorney? They say, ‘judge, you know, you placed him in this program and he is still violating the law. Marijuana is a drug.’”

“Ever since then, I haven’t touched it. I wouldn’t touch it,” David insisted.

“I have your word?”

“You have me word?”

“If you break your word?”

“Do what you please,” David said.

“What do you think?” the judge asked the program representative.

“I think David has a lot of self esteem issues,” she said. “He needs to figure out what his goals are and how to fulfill them.”

“How old are you?,” the judge asked David.

“Sixteen.”⁵⁸

“We are concerned,” continued the program representative, “we are greatly concerned because we are trying to work towards getting him back to the community. He seems to be doing a lot to keep himself out of it.”

“You are not thinking clearly,” the judge said to David, “You have one goal. Your goal is to get back into the community. Get a job. Straighten your life out and live well. You understand that?”

“Yes.”

Several months later after David had been doing well, the judge counseled him about preparing to look for a job.

“David, how are you?,” the judge asked when David’s case was called on a calendar day in the summer.

“Good, how are you doing?” David answered.

“What are you doing? Are you working?,” the judge asked.

“I’m about to work.”

“What kind of job?”

“I’m trying to get a job at McDonalds.”

“What do you think you will do there?”

“Probably clean, mop,” David said.

“You are willing to do that?,” the judge asked.

“Yes, sir,” answered David.

“Are there any openings in McDonalds?,” the judge inquired.

“Around my way, yeah.”

“How are you going to go for the interview?”

“A tie.”

“A shirt and tie, long pants, right?”

“Yes, sir.”

“And a belt?,” the judge asked.

“Of course,” David answered.

“Around the waist, not below the waist,” the judge counseled. Then turning to the ATI representative who was waiting patiently for her turn to speak, he asked, “How is he doing?”

“He has missed three times for curfew. He explained that he was at a picnic with his mother. He’s attended his individual sessions. His last urine sample was negative. We are referring him to [a program] for anger management and also extracurricular activities. He says he likes to box.”

“That’s good anger management,” the judge said to David, “You have to control your anger to be a good boxer. What happens when you lose your temper when you box?”

“You get out of the ring,” David said.

⁵⁸ Although he was now 16, he was under 16 at the time of the alleged crime so is therefore a JO.

“You get dropped,” said the judge. “Why? Because you become wild, right? You lose your focus, right?”

“Mm-hmm.”

“And somebody can whack you on the jaw, right?”

“Yeah.”

“The fact that I say it’s okay for you to box doesn’t mean you can do it outside of the ring. Do you understand what I am saying?”

“Yes, sir.”

“Your Honor,” David’s attorney interjected, “he wanted to ask, if he gets a job in this evening, can he have an extension on his curfew?”

“Absolutely,” the judge said. “If you are working I don’t have a problem.”

Jeffrey

Jeffrey was small in stature, shy and soft-spoken. It was hard to ever imagine that this young Hispanic boy could ever have been involved in a robbery. The judge’s numerous interactions with Jeffrey demonstrate an extraordinary amount of patience. During his nearly two years with the court Jeffrey never got into any more trouble, but at the same time he had a really hard time doing well in the programs. Jeffrey’s progress was slow going. In the accounts below we see the judge addressing a number of different issues with Jeffrey and trying hard to draw the youth out and to understand the struggles that Jeffrey was having. We see Jeffrey’s talent for drawing being used by the judge as a way to connect with Jeffrey, to draw him out. We also see Jeffrey’s attorney and the program representative coming to Jeffrey’s defense regularly. We can see, in the program representative’s choice of words and phrasing that she is reluctant to report anything negative about Jeffrey’s progress.

Jeffrey had been in an ATI program for a while when the following exchange took place in the court:

The judge looked over the copy of Jeffrey’s report card that was attached to the ATI program’s report.

“Not doing well at all,” the judge said.

“Not that great,” admitted the white female program representative.

“Why is that?, the judge asked Jeffrey, “still on the phone two, three hours with your girlfriend?”

“Not really,” answered Jeffrey in a soft voice.

“Why is it that you are not doing well?”

“I haven’t been doing my homework,” Jeffrey admitted easily.

“What do you do when you are home?”

“I just watch TV and talk on the phone,” said Jeffrey.

“He stays home alone?” The judge asked Jeffrey’s mother who was standing with an older gentleman in the audience.

“I get him up at six, tell him to get ready for school,” she said in a thick Spanish accent.

“Then you have to go to work?” The judge inquired.

“Yes, because I have to go at 8:30.”

“What time do you come home?” The judge asked.

“Four o’clock,” said Jeffrey’s mom

“And this is his grandfather?” The judge asked

“Yes.”

“Does he live with you?” The judge asked.

“No.”

“There in no excuse for this young man doing what he is doing,” the judge said to no one in particular, with a hint of frustration in his voice. “If he is going to go home and be on the phone and be watching TV, I’d rather he be at [the program] in all his spare time, reading a book, doing his homework.”

“So you want him to report Monday through Friday?” The ATI representative asked.

“Absolutely,” the judge said emphatically. The program representative explained to the judge that Jeffrey had brought some of his drawings to show the judge. A court officer handed up the collection of papers to the judge. The judge looked through each of the drawings, examining them closely. Jeffrey had depicted himself in some of the drawings.

“Do you smile?” The judge asked Jeffrey.

“Yes,” he said shyly, a slight smile on his lips.

“How come you didn’t do a portrait of you smiling?” The judge asked.

“I didn’t want to,” said Jeffrey softly. The judge took a few more moments to look over the drawings.

“This is really terrific,” the judge said, “How do you feel when you are home all by yourself? Do you listen to music?”

“Yes.”

“You like music?”

“Yes.”

“How does it make you feel?”

“Some music, I could relate to. I just feel.” Jeffrey’s voice trailed off.

“Do you have friends, close friends?” The judge asked.

“Yes.”

“Boys or girls?”

“Boys.”

“And you get along well with your friends?”

“Yes.”

“Are you sad about something?”

“No.”

“Are you scared about something?”

“No.”

“Okay,” the judge said.

The ATI representative offered that Jeffrey had an appointment in two weeks at a mental health center “His mother really wants him to get counseling,” she said.

“Why?” the judge asked.

“She feels that he needs individual counseling, maybe someone to talk to.”

“Why?” the judge asked Jeffrey’s mom directly.

“Because everyday, I tell him you have to get up. You have to go to school and that worries me,” she said.

The judge looked back to Jeffrey and asked “are you smoking marijuana?”

“No.”

“He’s not,” chimed in the ATI representative, “Urine analysis are all negative.”

The judge paused for a moment and then said, “I’m running out of questions. I need answers. I am running out of questions.”

Jeffrey’s white male attorney said, “I think there is a psychological component to Jeffrey’s situation that hasn’t been explored. He definitely has very strong motivational problems.”

“He has great talents,” the judge said pointing to the drawing still sitting in front of him.

“He has great talents,” the attorney agreed, “He is intelligent. He is able to comply with the curfew. He is good at doing passive compliance. The problem is he has a lot of difficulty getting himself out the door in the morning and to school on time and doing his homework and things that require effort. It’s not that he’s doing bad things. It’s just that”

“How do you feel physically?” The judge asked Jeffrey.

“Fine,” the boy said.

“Sometimes he doesn’t want to eat,” Jeffrey’s mother offered from the audience.

“You love your mother?” The judge asked Jeffrey who nodded.

“That’s very very good. That’s what young boys should do, take care of their mothers. All right. Keep up the good work. I want you to do better in school. I want you in the program. I want you to talk to people. You understand me?”

“Yes, Your Honor.”

“Tell them what’s on your mind. There is no reason why you can’t be terrific at whatever you want to do. I can’t even write my name and look at this wonderful work that you can do. You’re talented. You want them back?”

“Yes,” said Jeffrey and the judge passed the drawings back to one of the court officers who handed them back to Jeffrey.

On the next date a month later the judge was still being patient with Jeffrey.

“How is he doing at home?” the judge asked Jeffrey’s father who was in the audience this time.

“Good,” he replied.

“How is his homework coming, better?” the judge asked the program representative.

“I wish I could give you a positive answer for that,” she said, “unfortunately, no.”

“Why do you think that is?” the judge asked patiently.

“I believe he is not applying himself to his fullest potential in school,” the representative answered. The judge looked at Jeffrey and asked, “Why do you think that is?”

“Because I....” Jeffrey was at a loss for words.

“Are you distracted at school?” the judge inquired.

“I have a lack of motivation.”

The judge responded softly and slowly, “How about jail, would that motivate you?”

“No,” Jeffrey said in a whisper.

“Why do you have a lack of motivation?” the judge inquired.

“I don’t know.”

“He is in the process of being evaluated,” the ATI representative offered.

The judge addressed Jeffrey again, “You don’t like studying?” The boy shook his head no.

“Nobody likes studying,” the judge said. “You like to read?”

“I do,” said Jeffrey.

“You like to read about artists because you like to draw, right?” the judge asked.

“Yes.”

The ATI representative then came to bat for Jeffrey: “Despite not doing well at school he is doing well at the program. He is on time. He was in the photography group. We also enrolled him in a portfolio class, if he doesn’t have to go to summer school.”

“So you are failing?” the judge asked Jeffrey, who nodded ‘yes.’

“How many grades are you failing?” the judge asked.

“All of them,” admitted Jeffrey.

“All of them?” the judge asked with surprise in his voice. This time Jeffrey’s attorney jumped to his defense, “I mean, I think part of the issue was that he kind of missed the first half of the school year because he was incarcerated, he was behind. I think you know....”

“What about the tutoring he is getting, the individual tutoring?” the judge asked the program representative. “I thought he was there everyday?”

“You told him to come everyday,” the representative said.

“Has he come everyday?” the judge asked her.

“No, he has not. He reported on three days.”

“Why did you do that?” the judge asked Jeffrey, still not losing his patience or raising his voice. Jeffrey shrugged and said, “I went to home instead of going to the program, I got real lazy.”

“You are lazy?” the judge asked.

“Yes.”

“So, Because you are lazy, you don’t follow my rules?”

“No.” Still not losing patience or raising his voice the judge said, “Do I have to put you in jail to make sure that you understand what I mean?”

“No,” Jeffrey replied quickly, yet softly.

“Well, it seems that I do because you don’t follow my rules.”

“I don’t think so, your honor. I think I could fix myself.”

“If I put this on for one more week, will you make every appointment at the program?” the judge asked.

“Yes,” said Jeffrey.

“Even if you get lazy?”
 “Yes.”
 “Even if you are not motivated to go?”
 “Yes.”
 “And if you don’t go?” the judge asked.
 “Then I get locked up,” replied Jeffrey.
 “So, we understand each other?”
 “Yes.”
 “See you next Friday.”

Over the next few weeks Jeffrey’s attendance in the program improved and he started getting individual counseling. But progress was still slow with Jeffrey.

“Is Jeffrey doing what I expect of him?” the judge asked when Jeffrey came before him a couple of months later.
 “He has been coming in for group and individual,” the ATI representative reported, “It’s not 100 percent attendance. The issue that we have now is summer school.”
 “How is he doing at home?,” the judge asked Jeffrey’s father who was standing in the audience, “He listens to you?”
 “He’s doing things well,” Jeffrey’s father reported, “but we try to get him to do things in the program.”
 “And he doesn’t want to cooperate?”
 “I want him to cooperate, but you, because it’s for his own good, but...”
 “How about the counseling?” The judge asked, “is he going for counseling?”
 “He has been attending every Monday,” the program representative said, “there might be an issue with the medication that he’s on. It might be causing depression.”
 “What kind of medication?”
 “It’s a growth hormone,” the representative said.
 “He has been taking it for awhile,” offered Jeffrey’s attorney, “It’s been medically prescribed. Judge, I think there is an issue that Jeffrey has with his motivation. I don’t know if it’s depression. And I am glad that he’s now receiving therapy. However, I was wondering if you would consider allowing me to retain a social worker to work directly with him through me.
 “Absolutely,” the judge said, “I’ll sign it. Jeffrey, what have you got to say for yourself?”
 “I’m doing good. I’m not doing perfect but I’m going to try and do my best.”
 “Are you unhappy?” The judge asked.
 “No, I’m not, I’m not unhappy.”
 “So, you are happy?”
 “Yeah.”
 “You still have a girlfriend?” The judge asked.
 “Yeah,” said Jeffrey smiling.

“That puts a smile on your face. Are you getting along with your girlfriend?”

“Yeah.”

“You talk to her?”

“Yeah.”

“Do you have a good relationship with her?”

“Yeah.”

“Do we understand each other?”

“Yes.”

“How old is your girlfriend?”

“Fifteen.”

“She’s able to talk to you and have a good relationship with you?”

“Yes.”

“Why can’t you do that with other people? The judge asked.

“I could do that,” said Jeffrey

“Except that you like her and that’s why it’s easier for you to do that?” the judge asked smiling.

“How is he doing at home?” The judge asked Jeffrey’s father in the audience, “does he go out late?”

“No.”

“Do you know of his girlfriend?”

“Yes.”

“Is she a good influence?”

“Yes.”

Then looking at Jeffrey the judge said, “you have to be smart. You better not do anything inappropriate. Do you understand what I am saying?”

“Yes, sir.”

“I’ll see you on the adjourn date.”

Two months later Jeffrey’s mother and grandmother were with him when he came to court.

“Did you get a new haircut?” The judge asked as Jeffrey walked up from the audience.

“Yes.”

“How’s school coming,” the judge asked.

“Fine, your honor.”

“You still painting and drawing?”

“Yes.”

“What are you painting and drawing?”

“In school I’m not painting.”

“Don’t they have any kind of art?” The judge asked.

“I was in the art program but they had – see, I wasn’t attending the class before. They switched me to a class that has like, like no credentials. See, I could draw better. They put me in a class where they’re learning how to draw.”

“And why is that?” the judge asked. “In other words, they put you in a class where you’re not being challenged.”

“Yeah.”

“Why is that? Because he wasn’t going to class before? You see what happened now? You like to create things, right?”

“Yes.”

“Now you lost that opportunity because you didn’t go.”

“Yes.”

“Jeffrey has been improving in our program,” the ATI representative reported, “He has not missed any groups. He’s only missed two out of five sessions. He has been calling in for his curfew every night. He’s been testing negative. He has also been cooperating with the [mental health center]. He’s been going to his appointments.”

“Now,” the judge asked Jeffrey, “If you got into the other class, the advanced class, would you go now?”

“Yes, Your Honor.”

“You sure?”

“Yes.”

“Why don’t we do this,” the judge said to the program representative. “Why don’t we contact the school and see if we can get him transferred. If they have a problem let them call me or his lawyer.” The representative nodded yes.

“The family want to ask any questions?” the judge asked, looking up at Jeffrey’s mother in the audience.

“No.”

“How’s he doing at home?”

“He’s doing well.”

“Is he happy at home?”

“Yes, but he’s barely eating. He doesn’t like to eat. He’s not eating breakfast.”

“Why not?” Asked the judge.

“I don’t know. Sometimes he says he doesn’t want it. I’m worried about him because he has to go to school and that’s necessary for his health.”

“Absolutely,” the judge concurred. The judge then asked Jeffrey what he liked to eat for breakfast (cereal and frozen waffles) and suggested that Jeffrey eat breakfast because he did look like he had lost some weight.

“I want you to eat breakfast every morning, you understand me?” the judge said, “we’ll see if we can get you back into that other class. And we’ll put him on for sentence.” The judge then looked up to Jeffrey’s mother saying, “you let me know if he doesn’t eat his breakfast.”

“I want to let you know,” Jeffrey’s mother said, “that if you don’t see me that the father may be here because I have to punch a time card and his father doesn’t have to punch a time card. His father may be here not me.”

“That’s no problem,” the judge reassured her, “I know you well.”

“Thank you,” said Jeffrey’s mother.

A month later Jeffrey's case was on for sentencing; he was to finally get YO + 5 years probation. He had been with the court over a year now but had made steady, albeit slow progress and hadn't gotten into any kind of trouble. Although he was doing well his attorney and the ATI program had been working to find him a more suitable educational placement. This was still in progress and if the judge sentenced Jeffrey then he would no longer be monitored or assisted by the ATI program and would move over to supervision by the probation department. The ATI representative explained where they were in the process.

"We are in a state where we are trying to get him into a new school. He is going to school now. It's just him going to his classes and I think he is just struggling, he is not in an appropriate setting. We have a school conference next week to meet with the guidance counselor. His parents will meet with his therapist next week on some personal issues that have come about as to why he might be feeling the way he is feeling now. He is in the program, he calls in every night for curfew. He also tested negative."

"Never been in trouble since he has been detained?" The judge asked.

"No," said Jeffrey.

The judge decided to put the case over for a long date to try and get everything in order and then he would sentence Jeffrey to probation.

On the next adjourn date Jeffrey was still doing well, but the educational arrangements were still being worked out. The judge put the case over yet again, saying "I wouldn't dream of putting this in the hands of probation." Delay, potentially excessive delay, was being used strategically to find the best possible educational placement for Jeffrey. A year and half later I learned that Jeffrey was still with the court and still working with the ATI. Although he had not re-offended he continued to struggle with school and mental health issues and the court and the ATI continued to patiently work with this young man.⁵⁹

Rafael

Raphael was a slender non-JO Hispanic youth who was being held at Rikers Island on a first degree robbery charge. He had prior misdemeanor charges and open burglary charges as well. The DA's original offer on the case was a three and a half year prison sentence plus five years post-release supervision with no Youthful Offender treatment. A couple of weeks later the prosecution was offering a plea to a second degree robbery with three and a half to five years, but was still opposing YO. Rafael's case was a hard one. The PPI and 390 reports had revealed that Rafael had serious issues. Rafael's mother had been present for all his court dates. A representative from the community based ATI program had had prior involvement with the family and one of Raphael's older siblings. In the calendar day account below we see the ATI representative advocating and testifying as to Raphael's "redeemability," in spite of the fact that on paper Rafael did not look to be amenable to treatment. We see the judge relying on the trust that has been built up over the years between the court and the ATI personnel and also engaging Raphael's

⁵⁹ Cases like Jeffrey's which go on for a particularly long time may have an impact on the average and median number of days for case processing reported by the Criminal Justice Agency.

mother in an attempt to learn more about Raphael's situation. We also see the judge patiently navigating legal bureaucracies to try and work out an appropriate arrangement for Raphael.

"How are you young man?" the judge asked Raphael after the court officers had uncuffed him.

"Good," answered Raphael.

"What's happening with the burglary case? Is that resolved?" The judge asked.

"No, Judge," said the male Hispanic ATI's court advocate. "I believe that was the question. I had defense counsel suggesting that maybe we need to get all these things together."

"Was this a real gun that was used in the robbery?" the judge asked.

The ADA asked for a moment to look through her files.

"Judge," interjected Raphael's attorney, "while the People are looking, my understanding is that when the three young men were arrested, recovered nearby was an imitation pistol."

"Your client is not alleged to be the gun wielder?" The judge asked.

"No, he's not alleged to be the gun wielder in any event," the attorney said.

"Your honor, that's correct," said the ADA, "an imitation pistol was recovered."

"Any offer by the people?" the judge asked.

"The top charge is rob one," said the prosecutor, "so there is an offer of rob two, with three and a half to five years. No YO."

"My suggestion is this," the judge said, looking at the ATI advocate, "I understand that you're interested in getting this young man appropriate treatment to deal with his issues."

"Yes, Judge," said the advocate, adding, "I'm not looking to bring this young man home at this time. There's been a lot of issues. Obviously, I have some control, Your Honor, and after discussion with his mom who is very open and honest with me I discussed it with him as well. I also spoke this morning – just to say that I'm at a stage so see whether in the immediate future as we can work this out this young man can be released with a condition of the court into [a residential program]. It has a juvenile program where he can go to school and hopefully change a lot of his behavior and give him a second chance."

"Is he acceptable to that program?" the judge asked.

"I believe – I spoke to a boss from the program and we'll put an interview on for this Friday."

"Why don't we put it on the following Friday," the judge said, "why don't we conference it on the Thursday before which would be –"

"The sixth," Raphael's attorney said.

"We could do it on the sixth," the judge said, "You just want to speak to the DA first? I don't want a situation where I don't have the actual DA here."

"I believe that Raphael has the trespass case pending next Friday," said the ATI representative.

“So do the following Friday,” said the judge.

“I’m in arraignments,” Raphael’s attorney said, “Can we do the conference on the sixth? Maybe we can quickly get everything done.”

“We’ll try for that,” the judge said and then looked up to Raphael’s mother who was standing in the audience with another teenage boy.

“Who’s this young man with you?”

“That’s my other son.”

“Older than your son here?”

“Yes.”

“Where do you go to school?” the judge asked the young man in the audience.

“I don’t go to school, I go to CASES.”

“I’m setting up a meeting with him too,” the ATI advocate offered.

The judge asked Raphael’s mother if she was working.

“I’m a housewife,” she replied.

The judge looked at Raphael and asked, “you care about your mother?”

“Yes,” the young man responded.

“How much do you care about your mother?”

“A lot.”

“Enough to stay out of trouble?”

“Yes.”

“When did this realization come to you?” the judge asked in a somewhat irritated tone, “When did all of a sudden you realize that you cared so much about your mother that you wouldn’t get involved in any kind of criminal behavior?”

“When I walked through the Rikers Island doors,” Raphael responded.

“You were never in Rikers Island before?” the judge asked.

“No.”

“What do you think of it?”

“No good.”

“What’s not good about it?”

“Being there.”

“Didn’t anybody ever tell you that you could be in Rikers Island?”

“No.”

“Judge,” the ATI advocate said, “he has problems at Rikers. He has a problem with a Blood, an older Blood, and the action that was taken, he’s been in a box. He hasn’t been able to make a phone call. They’ve taken away his commissary privileges. Mom hasn’t been allowed to see him because of something that happened.”

“Have you worked with this family before?” The judge asked the advocate.

“Yes.”

“And his brother here?”

“Actually the brother was young when I was involved with the sister who went through our program and got through five years probation and has been fine. I wish that this young man would’ve been directed to me before.”

“What do you think of him?” the judge asked.

“I’ve know him since he was very young, possibly eight,” the advocate said. “I believe in the last two years is when he lost his way. Like I said I wish he would’ve been brought to me before but I think coming out as a young teenager, in that community, and obviously with the wrong people is the problem. When I see him it’s more as a father than that he is a bad guy. But again the same penalties apply to the followers as it is to anybody else. But I think it can be solved, Judge.”

The judge listened carefully to the advocate’s comments and then said. “Let’s try to get those other cases resolved so there’s nothing else in the way, see if we can work those cases out.”

Trying to find a alternative to a sentence of incarceration for Raphael would be difficult. The first step in that near impossible process would be to clear the non-violent cases that Raphael still had pending in other courts. A month later on Raphael’s next control date, the ATI advocate told the court that the program that had interviewed him had deemed Raphael unacceptable. The representative speculated that it was because Raphael didn’t “look good on paper.” The judge said that he would contact the program himself to see if he could persuade them to take Raphael. In the meantime, the representative pledged to keep looking for other suitable residential programs as well for Raphael. Meanwhile he remained IN at Rikers Island.

Salvador

Salvador was a Hispanic JO who was IN. Salvador had been in trouble with the Family Court and had been placed in a residential program (considered one of the best available) and had still managed to end up before Corriero. The DA’s office was pushing for a plea to the charge and time, although they were not opposing YO. The options available for Salvador were limited, but the court and Salvador’s dedicated attorney worked hard to find a workable solution to Salvador’s situation – placement into another residential program. Without such dedication, without the attention to the details of the case and without the expertise of all the experienced folks that worked on the case it would not have been possible. It is not required that the court or attorneys go to the lengths that they did in Salvador’s case. It is the culture of the Youth Part, however, to do all that is possible, to pay attention to the details surrounding a youth, to respond to the defendant not just the offense. At the same time, in Salvador’s case we see the judge having to carefully weigh the need for public safety with what might be possible to help divert Salvador from a felony record.

Salvador’s white female attorney asked to approach and after a long sidebar discussion the judge asked Salvador, “Why is it that I should give you this opportunity to go into the program?”

“Well, Your Honor, I know what I did was wrong,” Salvador said.

“Well, let me tell you what worries me. You’re in the Family Court for what was originally charged as a robbery. And, according to my understanding, what happened is that you and your co-defendant were surrounding and intimidating somebody. You weren’t getting along with your mother. You were an angry young man. You were given the opportunity to go to [residential program] which is a terrific place. Obviously, you weren’t ready to take advantage of what happened..... You see from my reading of the papers – if I

didn't see you or talk to you – I've read your probation report. I would be very worried about leaving you in a community setting. I have an obligation to the community, as well as to you. Sometimes, the options that are available, the choice that is available to me, are not the ones I'm very happy about. But I have to make them. Now, I'm worried you simply want to get out earlier than your crime warrants. You don't fully appreciate what's at stake; what's at stake for you and your family. What did you want to tell me, to make me feel that I'm serving the community by giving you this additional choice?"

"I just wanted to tell you I feel like better more from this program than going to a lock-down facility," Salvador said.

"When you went to [the residential program] did you have a marijuana problem?"

"I still have it," Salvador said, "They ain't really help me with it."

"Why do you think you have this marijuana problem?"

"I don't know. I just don't know."

"You know the program is not the solution; you have to find a solution within yourself."

"Yes."

"There's not going to be any magic that happens in these programs. You are going to have to work."

"Yes."

"To deal with your problems and then when you're finished with the program, you're going back home. And I'm worried that you're going to forget what it was that brought you here in the first place and then go out and rob somebody else or hurt somebody."

"I'm not."

"And then, in a way, I'm responsible for that because if I look at your record – I look at the paper – it's very hard for me to give you this choice.

But your honor, I'm not going to forget this experience," Salvador pleaded. "I made a mistake I know. I learned my mistake."

"Well, what I would suggest," the judge said to Salvador's attorney, "is that if he were to remain in right now, the district attorney is opposed to me – the only way he can get to this program is for me to release him without bail. And eventually, in order to serve a non-jail sentence, he has to be granted Youthful Offender treatment. That makes that very difficult, given the nature of his crime. So, I'd suggest, that he remain in for approximately what I would have sentenced him to, on an indeterminate sentence – let's say one and a third to four. That he remain in for a year and then I will place him in this program. But, if he doesn't cooperate, if he leaves the program, or does anything in violation of their rules, I would sentence him to three to nine years in prison."

"So, it's important for you to appreciate that this is a serious matter," the judge said to Salvador. "There is no room for you not to cooperate with the residential program. They're not easy – they have rules that sometimes don't appear to make sense. Also it's not an easy thing to be in a drug rehabilitation program. Usually they require 18 months. You fully understand that?"

"Yes."

“So we are going to need an adjournment. [Your lawyer] will speak to the district attorney. If that’s something we can all agree on, then that’s what we’ll do.”

“Judge,” said Salvador’s attorney, “I will speak with Salvador and make sure this is really what he wants.”

A month later Salvador’s case was again before the court.

Salvador’s attorney said “I don’t know if [the assigned assistant on the case] sent a note, but in my talks with him, he refused what was the court’s offer of a compromise solution. In other words, he refuses to allow Salvador to go into a drug treatment program after being incarcerated for a year. I don’t know if his note indicates anything different.”

“Your Honor,” the ADA said, “the note indicated his recommendation – a plea to the charge. Although he consents to YO, his recommendation is for one and a third to four years. He does not believe probation is appropriate for this defendant.”

“Judge,” said Salvador’s attorney with a note of frustration in her voice, “when I spoke briefly to the assigned assistant, he said, ‘well this young man had the benefit of [a residential program] and didn’t do well so he won’t do well in any other program.’ I said that I believe that this is a longer conversation. I have not heard back from him. I’ve made several attempts to talk to him. I would certainly be happy to meet with the court and with the prosecutor.”

“Why don’t we do that once more,” the judge said suggesting that they conference the case again. “What I would like you to do is articulate your argument as to why [this program] would be more appropriate than the recommendation of the district attorney, given the fact that the defendant did have the benefit of placement in [the residential program]. So, if you could give your rationalization for that.”

“I can tell you again,” the attorney said.

“You can tell everyone,” the judge said, smiling.

“I’d be happy to do that,” said the attorney, “tell me when.” The judge picked a date for a case conference.

“Do you have any questions, young man?,” the judge asked Salvador.

“No.”

“What have you got to say for your lawyer’s argument that you should go into [the program] as opposed to getting a sentence of one and a third to three? Do you have anything to say about that? Sit up straight, first of all. How old are you now?”

“Sixteen.”

“You want to be a gangster?” the judge asked in a confrontational tone.

“No.”

“You want to be a tough guy? Did you graduate from high school?”

“No.”

“Did you go to school everyday? NO. Your lawyer wants me to give you another chance. I have to hear from you. When I look at you, I see a kid who acts and walks and talks like a tough guy!”

“I don’t want to be no tough guy. I’m not trying to be no tough guy. I just feel that I deserve another chance”

“Why do you deserve it?” the judge pushed.

“Because from my behavior, how I was before, and now I think – a big changed happened.”

“The change didn’t happen when you were in [the residential program].”

“They didn’t really help. Because they just had a little program in there to try and help me. But the rest of the time, it was just a placement.”

Salvador’s attorney interjected, “I talked with the people from [the first residential program], what they said to me and what their records reflect, that he had a drug problem, that the drug problem continued through his stay, that it was not addressed, and that he was discharged, nevertheless, to outpatient whatever.”

“What drugs were you using?” The judge asked Salvador.

“Marijuana.”

“How much?”

“I don’t know. I can’t say.”

Two months later, Salvador was again before the judge:

“So young man, you want an opportunity to deal with your marijuana problem?,” the judge asked Salvador.

“Yes.”

“You understand that if I give you this chance there’s no room – there’s NO room for you not to do everything that you’re supposed to do. You understand me?,” the judge asked sternly.

“Yes, sir.”

“Because you’ve had chances like this in the past. You’ve had opportunities to deal with your problem and you haven’t resolved it. Now I cannot tolerate, I cannot permit you to take advantage of the offer that we’re giving you and then to fall down on the job. You understand what I’m saying?”

“Yes, I understand.”

“You understand if you fowl up with me I put you in jail for two to six years?”

“Yes.”

“I understand the district attorney is opposed to me giving you this opportunity because from their point of view you had opportunities in the past. So have you thought this through?”

“Yes.”

“Are you really ready to deal with this issue?”

“Yes.”

“The district attorney is recommending one and third to four – am I correct – as a sentence?”

“That is correct, Your Honor,” said the ADA

“Now how long have you been in?”

“Like eleven months,” said Salvador.

“We’ll put this on the calendar one more month,” he judge said to Salvador’s attorney, “in the interim you will reach out to [the program] where I think you suggested there’s a possible program and if you’re acceptable to them I’ll release you to their custody. If you don’t do everything you’re supposed to do, if you don’t, I’ll give you a sentence that is more than the People are recommending and you’ll have a felony record for the rest of your life. Do you understand me?”

“Yes.”

The judge then realized that Salvador had not yet plead guilty. The judge took Salvador’s plea in which he admitted participating in a robbery wherein a fake gun was used.

“Why did you do this?” the judge asked.

“I really don’t know.”

“What do you mean you don’t know?”

“I just....”

“What was your reason for doing this?” the judge pushed.

“Get money,” said Salvador

“What did you do with the money?”

“I wasted it on marijuana.”

“Is that the way you want to lead your life? Every time you need Marijuana go out and rob people for it?”

“No.”

“You’re 15?” The judge asked

“Sixteen.”

“In the 16 years since you were born do you realize the trouble you’ve put on your mother’s shoulders?”

“Yes.”

“Does she deserve this?”

“No.”

“THIS BETTER BE THE END!” the judge yelled. “You understand me?”

“Yes.”

“You BETTER not just be yessing me,” the judge yelled again, “because I’m going to be all over you, because I’m doing this over the objection of the district attorney. Do you understand what that means? It means that they don’t agree with my judgment with respect to you.”

“Judge,” said Salvador’s attorney, “I would just like the court to be clear that Salvador understands that if he were to accept the prosecution’s offer it’s very likely that he would be out of custody sooner.

“That’s true,” said the judge.

“And that he has chosen to stay in a drug treatment program in hopes that he can turn his life around,” the attorney added.

“That’s one of the reasons that leads me to believe that he’s sincere,” responded the judge. “But this is not going to be easy. You understand me?” Salvador nodded.

A month later Salvador's attorney told the court that the drug treatment program that they were trying to get Salvador into was not willing to accept him. The judge said he would speak to the program directly to see what the problem was. Meanwhile, Salvador remained remanded in the juvenile detention facility.

Ernesto

Ernesto was a tall slender, proud, older Hispanic youth, who had already spent considerable time IN at Rikers Island. Ernesto had been in a community based ATI at one time but had ended up back IN when he was re-arrested on a new charge which had subsequently been dismissed. Ernesto had adamantly maintained his innocence on this second charge. While he was IN his family had moved to a different borough so that the community based ATI he had originally been working with was no longer available to him. A new program needed to be decided upon before the judge could consider releasing him. The judge engaged Ernesto in a discussion of what he had learned and what he would take away from the experience. The judge also used his knowledge of Ernesto's little brother to remind Ernesto that he had responsibilities beyond himself. Also, we see the judge raise the stakes for Ernesto, increasing the sentence he would face if he were unsuccessful his second time out, knowing this was Ernesto's last chance to avoid incarceration.

"Stand up, Ernesto," the judge said after the court officers had escorted him into the courtroom.

"How long have you been in jail now altogether?" the judge asked. "How much of your life have you spent in jail?"

"Almost three years, Your Honor," Ernesto said in a confident calm voice.

"How old are you now?"

"Nineteen."

"Do you want to spend the rest of your time in places where you had to come from today?"

"No, Your Honor."

"Why is it that you seem to get yourself into trouble?"

"I have no explanation for that, Your Honor."

"Why not? How am I to trust you if you don't seem to know why you were in trouble?"

"I was younger then," Ernesto said.

"Excuse me?"

"I had bad vibes. I was young then."

"Just by getting old you get better? Sometimes when you get older you get worse?," the judge challenged.

"Jail, basically, taught me things in life that I didn't have and things I did have, and things I took for granted."

"What do you need in life?," the judge asked Ernesto.

"I need my family, and I need – I need to get myself in order."

The judge asked Ernesto's mother – who as always was in the audience – how many other children she had.

"I have a seven year old."

"Boy or girl?" The judge asked.

“A boy also,” Ernesto’s mother answered.

“Is he in school?”

“Yes.”

“How is he doing in school?”

“Great. Great.”

“Does he look up to Ernesto?”

“Yes, he does. He asks about him all the time.”

“So you want him to be this young boy’s role model?” Ernesto’s mother nodded yes.

“Is his father with you?,” the judge asked.

“No.”

Looking back to Ernesto the judge asked him, “Do you care about your seven year old brother?”

“Yes, Your Honor, I do,” Ernesto said in a strong, solid voice.

“And you want him to be standing where you are in seven years?” the judge pushed.

“No, I don’t,” Ernesto said emphatically.

“How do you think that’s not going to happen if he admires you and all you do is seem to get into trouble?”

“By having him see me doing good,” Ernesto said with confidence.

“Precisely,” the judge said, “so you’re not only responsible for yourself, you’re responsible for your brother, and you’re responsible for your mother’s well being. You understand that?”

“Yes.”

“We’ll revise our understanding,” the judge said. “When he plead guilty he plead to a crime where I found if he got into trouble I would give him three to six years, right? We’ll make that five to ten years. Do you think you could stay out of trouble?”

“Yes, Your Honor.”

“Because if you don’t I’m going to give you five to ten years in prison. You understand that?”

“I understand that,” Ernesto said.

“You understand that?” the judge asked again.

“Yes.”

“There’s no room here for any misunderstanding,” the judge said, his voice taking on a lecturing tone. “There’s no room here for violence. There’s no room for shedding blood. And if you’re abused by someone in the sense either verbally, or if you manhood, from your point of view is attacked, you have to walk away. You understand that?”

“Yes, Your Honor.”

“There is no room here for you to react in any other way other than walking away. We understand each other?”

“Yes, Your Honor.”

“Do you think you’re strong enough to do that?” the judge asked.

“I know I’m strong enough,” answered Ernesto.

“What do you think a man is?,” the judge asked.

“A man is taking care of responsibilities.”

“Do you think someone can take your manhood away by calling you a name?”

“No.”

“Do you think someone can take away your manhood because they’re bigger than you and punch you?”

“No. A man is a person who walks away from something like that,” said Ernesto.

“You believe that?”

“Yes.”

“You want me to believe you?”

“I believe it, Your Honor.”

“All right, we’ll see if you can prove that and we’ll give you that opportunity. The defendant is being released without bail with the understanding, counsel, that if he doesn’t do what he’s supposed to do and he gets himself involved in any other criminal behavior, the new understanding, in terms of the sentence, will not be three to six years. It will be five to ten. We understand each other?,” the judge said one last time to Ernesto.

“Yes, sir,” he answered.

“Listen to me, Ernesto. I’m checking up on you every week. There’s no room here for a misunderstanding. If you don’t do what you’re supposed to do you’ll find yourself back in jail.”

Such discussions in the courtroom are not only for the purpose of driving home a point to Ernesto or his family. They also serve an educational purpose for all those defendants and family members who are waiting in audience. Such ‘public’ discussions in the court are often intentional by the judge, as a means of educating other young people and families about what is at stake and what they can expect of this judge, both when they do well and well they don’t.

Wesley

Wesley Beckett was a black youth who was IN on two cases before the court – two separate indictments, one for a first degree robbery and one for a second degree robbery. The alleged crimes had taken place about two weeks apart. He was a JO when arrested although he was 16 at the time of the following account. A plea deal had been worked out in the court where Wesley would receive a sentence of incarceration and still get Youthful Offender treatment (placement with an ATI having been deemed inappropriate in Wesley’s case). In this account we see the judge using Wesley’s allocution as an opportunity to advise and counsel him about not getting into trouble in the future, and how to try and create a better future for himself.

The judge asked Wesley’s Legal Aid attorney, “I understand the district attorney is offering a sentence that would include Youth Offender treatment for both of these cases with an understanding that he would be sentenced to one and a third to four years.”

“That is correct.” said Wesley’s white female attorney.

“I think that is a fair disposition,” said the judge.

“We do too,” said the attorney.

“So we have a meeting of the minds?” the judge asked.

“Yes” said the attorney, “At this point Mr. Beckett is interested in entering a plea to both incidents.

“Stand up young man” the judge said to Wesley, “How old are you now?”

“Sixteen years old,” said the youth.

“You understand that by pleading guilty you give up some very important rights?”

“Yes.”

“You give up your right to a jury trial – do you understand that?”

“Yes.”

“And you give up your right to face and confront the witnesses against you. Do you understand that?”

“Yes.”

“You give up your right to remain silent. That means you have to tell me the truth about what happened. You understand that?”

“Yes.”

The judge then read the date, time and location of the first incident and said, “it’s charged that you and another individual surrounded a person and you threatened them, told them that that you had a gun, and stole property from them, is that true?”

“Yes.”

“Why did you do that?”

“Because I needed the money.”

“You needed the money? What does that mean? When you need money again what are you going to do?”

“I’m not going to do that.”

“Why?”

“Because I’ll try to get a job.”

“What if you can’t get a job?”

“I have some parents.”

“What if your parents can’t give you money?”

“I’m not going to have it.”

“Where are you now, Horizons or Crossroads?”

“Horizon.”

“You like being locked up?”

“No, I do not.”

“What do you not like about it?”

“Everything.”

“Give me an example.”

“The food.”

“Food. Freedom,” the judge stated. “The next time you think about doing something like this think about the fact that you’re going to lose both of them, lose the ability to eat the way you would like to eat. You’re going to have to smell the kinds of smells that you have to smell. You’re going to have to be surrounded by people who want to hurt you. You have to walk around in chains. Is that the way you want to live the rest of your life?”

“No.”

“You’re being offered now an opportunity not to have a record. If you want to, do whatever you want to do in life and not be hindered in anyway by this, not be held back by this even though these are two serious matters. You understand that?”

“Yes.”

“So you better educate yourself while you’re in the institution. You better learn something that you like to do and stick with it. Did you graduate school?”

“Not yet.”

“You didn’t go to school regularly when you were out, did you?”

Wesley shook his head ‘no.’

“You’re a bright young man. I know that. And if you can read and learn, there’s no reason why you can’t get a job and do the right thing in life. And if you want to give up on yourself and think this is the way, the easy way to get money, you’ll find yourself back before me and you’ll spend the rest of your life in institutions. That’s just the way it is.” The judge then continued with the allocution, “It is also charged that [on another date] you forcibly stole property and during the course of that one of the people you were with, if not you, displayed a pistol. Is that true?”

“Yes.”

“Did you have a gun?”

“No, not me.”

“Someone else that was with you?”

Wesley nodded. Then the clerk took Wesley’s guilty plea: “Wesley Beckett, do you now withdraw your previously entered plea of not guilty and do you now plead guilty to the crimes of robbery in the second degree to cover and satisfy indictment # _____? And do you plead guilty to robbery in the first degree to cover and satisfy indictment # _____? Are those your pleas?”

“Yes,” Wesley answered.

“I think we can sentence this young man today,” said the judge, “does he want to be sentenced today?”

“Yes,” said Wesley

“Anything further the People would like to say before sentencing?” the judge asked the ADA.

“No, Your Honor,” said the ADA

“Anything further? The judge asked Wesley’s attorney.

“No,” she said.

“Is there anything you want to say to me before I sentence you?” the judge asked Wesley?

“Thank you for giving me the chance,” the young man said.

“The way you thank me is by leading the best life you can lead and not hurting anybody in this life. You understand?”

“Yes.”

“The sentence of the court is as promised, the sentence of one and one third to four years and the defendant is declared a Youthful Offender on each of

those cases and the term is to run concurrent. So the total sentence is one and a third years to four years,” the judge announced.

Marvin, Tameron and Jalen

In contrast to the seriousness of the above scene light-hearted moments take place when the judge and defendants sometimes chat or joke with one another. The following accounts of Marvin, Tameron and Jalen each depict just such light hearted, even humorous, moments in the court.

Marvin was a black JO who had been doing well in the program. When his case was called on this particular summer day, Marvin walked up wearing long denim shorts and a long red t-shirt.

“Why are you wearing red?” The judge asked with concern and surprise in his voice. Red is the color of the Bloods street gang.

“Because it matches my sandals,” Marvin said innocently. The judge stood up and leaned over his bench so that he could see Marvin’s sandals. They were indeed red.

“Good answer,” the judge said smiling and everyone in the court had a good laugh.

Tameron was a black JO who had been doing well in the ATI program. The representative told the judge that Tameron was interested in having his curfew extended.

“Why?” The judge asked.

“Because I want to go to the movies,” Tameron said.

“What kinds of movies?” The judge asked.

“Scary movies,” Tameron told him.

“Have you seen *The Grudge*?” The judge asked him, “it is very scary, very.” You could see by the judge’s expression that his memory of the film was still with him. Several of the young people in the audience found this entertaining – that Judge Corriero was frightened by a scary movie, that Judge Corriero had even watched a scary movie.

Tameron said he had not seen it but that he wanted to. The judge extended Tameron’s curfew to 8:30.

Jalen was a black JO who was now 16 years old. He had been with the court for awhile. He was doing well in the program and his appearance on this calendar provided an opportunity for a little light hearted conversation with the judge.

Jalen had a walkman in his hands when he approached the defense table.

The judge asked him who he liked to listen to.

“I like Cameron and Mace,” Jalen answered.

“Do you like Wu Tang Clan?” The judge asked.

“No, not really,” said Jalen. This made the judge laugh and he said, “some of them have been in and out of here, you know?”

Then the judge asked Jalen, “Snoop Dog’s new song, ‘Drop It Like Its Hot,’ what does that mean?”

“I don’t know,” said Jalen.

“Someday someone will tell me what that means,” the judge said smiling. There were chuckles all around the courtroom, especially among the young defendants waiting their turn in the audience.

Jackson

Jackson, a 14 year-old black JO had been in doing well in an ATI program for awhile. In this account we see the judge advising Jackson on anger issues and we see the judge granting privileges to Jackson for his good progress.

“Jackson, how are you?” the judge asked when Jackson walked up.

“Fine,” he said.

The ATI representative reported that Jackson had “been very compliant with curfew, he’s been attending all life skill course, he’s doing pretty well in school.”

The judge looked over the written report in front of him and asked, “why did he get assigned anger management classes?”

“He requested it your honor,” the ATI representative answered.

“Why?” The judge asked Jackson.

“Because I get mad,” he answered.

“Well, you know getting mad is not the problem, we all get mad. It’s what you do with your anger that is important.”

“Yes.”

“So maybe they can help you with that, right?”

“Yes.”

Then ATI representative, advocating for Jackson, asked if his 6:00 curfew could be extended.

The judge asked Jackson, “what time should we make it?”

“7:30?” asked Jackson.

“Okay, I can trust you until 7:30?”

“Yes.”

“Okay, keep up the good work.”

Two months later on Jackson’s next court date, the judge engaged Jackson in a discussion of what he had learned in his anger management classes.

“What have you learned?”

“How to control my temper and just walk away.”

The judge told Jackson to “keep up the good work” and set his next court date for months two out. On that court date Jackson was still doing well.

A month later, however, the situation had changed:

When Jackson and his lawyer took their place before the court Jackson’s attorney told the judge that Jackson was not doing great. The judge called for the ATI representative who had stepped into the hallway. When she came in she explained that there was a situation at school and that Jackson had been subjected to threats and that his mother was keeping him from going to school because she believes it is too dangerous for him.

“Your Honor,” Jackson’s attorney interjected, “two of Jackson’s older siblings have been killed and Jackson’s mother is very frightened about this situation.”

The judge asked where Jackson’s mother was and Jackson’s attorney explained that she was agoraphobic and had never been able to come to court. The ATI representative explained that they were trying to get Jackson into a different school setting – maybe something more vocational. She added that “otherwise he is doing well in the program, although he did admit that he would test positive for marijuana.”

The judge put the case over for six weeks, telling the ATI representative to try and work out the school situation by then.

“I’m not gonna force him to go to that school, maybe [the program] can bring in some tutors or home instruction until they can get all things worked out.”

Because Jackson had been coming to the court regularly, because he had developed relationships with his attorney, the ATI personnel and with the judge, the fact that Jackson had been missing school (a clear violation of release) could be understood within the larger context of the reality of Jackson’s life. Because the judge had witnessed Jackson do well over the months, even requesting services for himself, the judge was able to evaluate the infraction in light of all the good work that Jackson had been doing and within the family circumstances in which Jackson was trying to deal, rather than just punishing Jackson for breaking the rules.

Zayne

Zayne was an older, non-JO black youth, who was OUT. In this account we see the judge express genuine sympathy for Zayne when he discovered the reason why he hadn’t not shown up for court the day before as he was scheduled. Had the judge not have built a relationship with Zayne over his time with the court he may have reacted very differently when Zayne failed to show the day before, possibly even issuing a bench warrant for his arrest. Further, he may not have given Zayne the benefit of the doubt or given him a chance to explain.

Zayne walked in and sat down in the audience somewhere in the middle of a calendar day. The judge saw him come in and said, across the court, “Zayne, you were supposed to be here yesterday.” Zayne nodded ‘yes’ but said nothing else. The judge, who realized that Zayne’s Legal Aid attorney was not in court called to one of the other attorneys from the same office who was sitting in the jury box.

“Henry, can you take Zayne’s case?” the judge asked, “Ms. Bryant is his attorney and she’s not here, can you take it?”

“Yes,” said the attorney who then walked out into the hallway to meet with Zayne. At the end of the day, after all the other cases were done, Zayne’s case was added to the calendar and his name was called.

“Where were you yesterday?” The judge asked. Zayne had been involved with the court for over two years with some ups and downs.

“The hospital,” was all Zayne said.

“Everything okay?” the judge inquired with sincere concern. Zayne remained stoic.

“His brother was shot, Your Honor,” offered the attorney solemnly, “He is in the ICU.”

“I’m sorry,” the judge said to Zayne, “what happened?”

“He started up trouble,” Zayne said stoically. The judge told Zayne that he was very sorry and that he hoped his brother would be okay. Zayne had been scheduled to be sentenced and the judge asked if he wanted to go ahead. Zayne said yes. The judge gave Zayne the agreed upon sentence: YO + 5. Then the judge said to Zayne, “I know you have some problems but I hope you stay out of trouble on probation.” Zayne nodded. After Zayne left the courtroom the judge stared hard at the back wall of the courtroom for a few moments like he often does after such difficult and poignant moments.

“They Adore Him”

Being concerned about defendants, feeling sympathy for their pain, feeling betrayed and frustrated by them, being emotionally exhausted come the end of the week are all part of the price of caring for and about the troubled kids that come into Youth Part. Judge Corriero is not alone in his genuine concern for the young people that come before him. Many Family Court judges and some criminal court judges as well do their best to attempt to divert young defendants, aiming more for rehabilitation, rather than retribution, when and how the law allows.

That said, Judge Corriero’s unique personality and exceptional personal dedication in the court are also obvious. The judge’s exceptional dedication to and respect for the youth that come before him was explained by his court attorney this way:

I am amazed, because he has so many kids coming in and out of here and he remembers their face and he remembers their stories and he’ll remember things about them that I never wrote down in the file, but he knows it.

The judge has a framed black and white photo in his chambers which shows him hanging out with some of his teenage friends. In the photo, Corriero looks a bit like a tough guy with a cigarette hanging out of his mouth. When I asked just how rough and tumble he was as a young person he gestured toward the photo and said, “I looked rough

and tumble, but . . . I walked with some very tough kids, let's put it that way. But I was never – I was who I am. They always said I was gonna be a lawyer, a negotiator.”

It is clear in talking with him and reading articles that he has written that the memories of being a young man in a tough neighborhood are still vivid in his memory – the struggles to do good, the temptations to do bad, the need to protect one's honor, one's manhood, to not appear weak. The judge strongly identifies with the character of “C” in Robert DeNiro's film *A Bronx Tale* and if you spend any time with the judge he will most likely suggest you watch the film. In the movie, the character “C,” a good kid hanging out with some not so good kids in a tough neighborhood is saved from destroying his life when an adult, who sees his potential to do well in the world, pulls him out of a car headed for violence and disaster. Judge Corriero has said that he identifies both with “C” and with the one who pulls “C” out of the car, the one that gives the kid a second chance.

In talking with defense attorneys and ATI personnel many feel that most defendants in the Youth Part respect and even like the judge and that they may be willing to go above and beyond for him because they feel that he respects them and that they can trust him. In observing court interactions on calendar days it becomes obvious that many of the kids do, over time, come to respect the judge, even when he must be stern with them or has to remand them. As stoic as most teenage boys attempt to be, their body language and facial expressions often give them away. I have repeatedly witnessed pride showing on a boy's face when the judge has praised a report card, an award or some artwork they have shared with him. I saw one girl absolutely beam with pride when the judge took 10 minutes of court time to look through the pictures she had brought in of your prom night, an action which made the ADA on that day roll her eyes. I've seen more

than one kid walk out of the court smiling with a bounce in his step after the judge had told him, “keep up the good work, I’m proud of you” or “this is great, you’ve made my day.” I have seen kids fidget nervously in the audience waiting for their turn when they knew that the report on them wasn’t good. I have seen regret slump a young boy’s shoulders when he has disappointed the judge. I have seen defendants give the impression of being impatient when he lectures them and I have seen them struggle to hide their reactions at times. I have seen them look sad, even hurt, when they have been reproached by the judge. I have also seen kids laugh and joke and appear to be at ease with the judge. Moreover, I have seen kids, who at first appeared to be nothing but intimidated, over time, develop the confidence to speak aloud, to have a voice, in the court.

The parameters of the current research did not allow for the interviewing of defendants directly so I can only offer my observations of them in court and second hand accounts of their attitudes toward the judge. I asked several of the people involved with defendants in the court about their own impressions of what the kids thought of the judge and the ways in which he interacts with them. One ATI representative told me:

The kids want to do well for him, they want to do well for him, they do, they almost kinda see him like as a father figure and they want to do well for him . . . I think that there is a sense of wanting to do well for him because he puts his faith in them and he tells them that, so they want to show him he made the right decision and that also goes back to the fact that they know him better because he can spend more time with them.

Although most people I spoke with stated that there are caring and compassionate judges to be found throughout the Family Court and criminal court systems, many indicated that Judge Corriero is a special case. As one ATI representative put it, “I don’t want to single out Corriero but he seems to have a particular attention to the issue of respect.” A defense

attorney said, “he has a certain empathy that many judges lack.” Another defense attorney explained it this way:

[The judge] comes from a conventional catholic working class family so issues of family and traditional values are very important to him and in a way it is a very good thing because it represents, like, stability to a kid, you know, and also what the kids see, the kids adore him because they see that he likes kids. They do, the kids know – it is an empathic thing – the kids respect him and adore him and it’s because in his heart he really likes kids and remembers what it is like to be a teenager and kids appreciate him.

When I asked her if they still feel that way when he puts them back in jail, she replied, “Yes. They adore him, they adore him, and they understand that it is fair for the most part.” Another seasoned defense attorney shared a story to illustrate how many kids in the Youth Part feel about the judge. She explained that she had a defendant whose mother was mentally ill and the boy couldn’t get fare to come to court:

So he walked – from the Bronx! The judge was screaming ‘I’m gonna issue a warrant’ and the kid showed up at two [o’clock]. I don’t think he would have walked for most other [judges].

Comparisons with Kupchik’s Research

As qualitative research on the case processing of adolescents in criminal courts has been quite sparse, the opportunity to compare the rich findings of Kupchik’s (2003a) in-depth research in another New York youth part with my own represents a rare occasion to understand the varied mechanisms court actors employ to manage the tension inherent in the criminal prosecution of adolescents. Operating under the same criminal statutes, the two courts exhibit many similarities and yet at the same time, the two courts have evolved distinct strategies and courtroom cultures for responding to the kids that come before them. The ability of two similarly structured courts operating under the exact same statutes to have evolved different modes of operation speaks to the significant influence of judicial discretion and the importance of courtroom workgroup culture in

understanding any and all court settings (Eisenstein & Jacobs 1977; Clynych & Neubauer 1981).

Just as in the Manhattan Youth Part, the court where Kupchik (2004) did his research “straddles the boundaries between juvenile and criminal justice” (151) and utilizes specialized tactics – admonishing discourse, utilization of sentencing alternatives and delayed sentencing – to reconcile the tensions of trying youth as adults. Further, both judges have openly declared their personal dedication to the basic rehabilitative ideal of the juvenile court and both express a general belief in the reduced culpability of young offenders. Further, Youthful Offender treatment is utilized within both courts as a method for reducing sentencing severity for many “deserving” kids.

How this process is enacted in each of the courts, however, is unique, and I would argue results in two distinct styles of justice and case processing employed in each court. First, there are distinct differences in personal style between the two judges and the resulting culture of the two courts. For example, Kupchik (2004) reports that the judge in his study always refers to all court actors, including defendants, by their last name (i.e. Ms. Jones, Mr. Wilson, etc). Judge Corriero will often address attorneys and court personnel by their first names and he almost always refers to the young defendants before him by their first names.⁶⁰ As the accounts above show, he often greets defendants by first name (“How are you, Roger?”) in a purposefully conversational style.

Secondly, in Kupchik’s account the judge rarely, if ever, smiles in the courtroom. In contrast, Judge Corriero often smiles in the courtroom, and even jokes and laughs sometimes, with court personnel and even with defendants: “I try to bring out the best in

⁶⁰ He most often uses last names (Mr. Gonzalez, Ms. Tate) when addressing court or agency personnel or attorneys he does not know and always uses last names when addressing defendant’s parents, grandparents or guardians.

all the lawyers, to relax everybody. To try to use humor in a constructive way.” There is a purposeful intent by Judge Corriero to create a somewhat relaxed environment, to speak and act in a way which attempts to ease tensions in the court and create a relatively non-adversarial, less formal atmosphere in the courtroom.

Third, Kupchik reports that the judge in his study *demand*s reports and “assumes priority for his case” over other demands on court actors time (155). Again, Corriero works in a much more collegial manner, placing himself in a position of being “first among equals” (Clynch and Neubauer 1981), often being willing to re-schedule cases around attorney’s schedules or being willing to move a case to the top of the list on a calendar day if an attorney needs to be elsewhere on the same day.

While these differences in personal style may seem small or insignificant I would argue that they are neither since they result in two distinct modes of operation in the two courts. Such differences can have significant impact on case processing as well as the disposition of cases and should not be disregarded as incidental. As Clynch and Neubauer (1981) suggest the guiding philosophies of the two judges, the different culture of prosecution in the two jurisdictions as well as the various nature of the informal cultures that exist in each setting can help explain the differences in case processing in courts operating under the same set of laws. The personal style of each judge, who by the nature of his position functions as the workgroup leader (Eisenstein and Jacobs 1977) impacts the informal culture of each part in significant ways.

Kupchik (2003a) reports a hybrid model of justice at work in the court where he did research. Prior to a defendant’s sentencing, Kupchik reports a style of justice at work in the court more akin to that of a criminal court with attention on the offense and

emphasis on formal cases processing. In contrast, at sentencing, Kupchik reports that a style of justice more akin to a juvenile court is enacted with attention to the offender and the nature of his life circumstances. Kupchik refers to this as a “sequential justice model” and demonstrates that in the early phase (the one more like the criminal court) the climate of the interaction is formal and adversarial, in which defendants are “not allowed” to speak and the language of all court actors is largely formal and ceremonial.

In the later phase (the one more like the juvenile court) Kupchik shows that the style of interactions are more informal and collegial and ATI personnel are more involved. Further, it is during this phase that the judge interacts directly with defendants and where defendants are finally allowed to speak. It is in this phase that Kupchik’s judge, “talks to defendants in ways that communicate both responsibility and youthfulness,” attaching a “rhetorical punitiveness to a relatively lenient sentence” (157).⁶¹ In this phase the judge might engage a youth in a discuss of the “why” of his criminal act, or lecture him – what Kupchik refers to as “admonishing discourse.”

In contrast to the “bifurcated model” described by Kupchik, the culture of the Manhattan Youth Part represents a more juvenile justice based model during all phases of case processing – from first appearance through to final case disposition. This is evidenced in the non-adversarial, collegiate atmosphere that exists in the court most all the time. While always attentive to the formal requirements of the law and the due process protections of defendants, Judge Corriero has created a much less formal

⁶¹ The “lenient” sentence in this case being YO treatment. While case processing of JO and YO cases is quite different across the New York boroughs I would argue that, at least within the Manhattan Youth Part, which can sometimes keep a kid under court supervision for up to two years *prior* to a sentence of YO+5, the resulting total court, ATI and probation supervision (7 years, for example) while “relatively lenient” in comparison to the full non-YO felony sanctions allowed under law, comes with it own degree of punitiveness – namely years of criminal justice system supervision.

environment than that described by Kupchik. Further, in Corriero's court ATI personnel are often involved with a case from the defendant's very first appearance in court.

More importantly, in contrast to Kupchik's judge, Judge Corriero almost always engages directly with defendants upon their first or at least, second time before him, asking about school or about the last book a defendant has read.⁶² This attempt to assess a youth's attitude and demeanor through verbal engagement was also standard practice in Bortner's (1982) study of a juvenile court. At his first interaction with a defendant, Judge Corriero attempts to learn about the kid, his family, and the nature of his life circumstances by ordering PPI and 390s, by immediately connecting OUT defendants with ATIs and by speaking directly with kids and their families. This represents a mode of justice much in line with the individualized, *parens patriae* style of the juvenile court. Whereas Kupchik reports that the juvenile justice model emerges within his court only when the judge believes a defendant to be deserving of leniency, the Manhattan Youth Part employs such a model from the very beginning of most case processing.

Thus, I would argue, that while Kupchik's research reveals a bifurcated model of justice at work in his court, the same is not true of the Manhattan Youth Part. Thus, rather than fashioning a "hybrid" model of justice, the Manhattan Youth Part has evolved a culture wherein the juvenile justice model has been re-imagined, revised if you will, to fit within the constraints imposed by the criminal law, a process Singer *et al.* (2000) call the "specialized reproduction of juvenile justice" (368) in a criminal justice setting:

⁶² The rare exceptions are those very few cases in which the case will undoubtedly go to trial, or when sentencing alternatives are simply out of the question, such as when a defendant is charged with murder, or is a chronic repeat violent offender. In these instances the court may maintain a much more formal climate in which the judge will not engage a defendant directly. Such cases are few and far between, namely because few of the cases before the court are such "hard" cases.

The specialized treatment of juveniles in a youth court reproduces the progressive vision of juvenile justice within the jurisprudential framework and operational boundaries of the criminal court. (367)

Additionally, in comparing Kupchik's study to my own I find that Judge Corriero employs the types of "admonishing" techniques Kupchik reports much less often, opting, when possible, to try and establish a relationship of trust and mutual respect with many defendants – more of a paternal bonding – rather than merely employing authoritative admonishing techniques. We can find instances of similar admonishing discursive tactics in both settings (both accounts quote the judge asking a defendant a very similar question: "You want to be a tough guy? You want to be a gangster?" asked by Judge Corriero and "You're some kind of tough guy, Mr. [last name]?" (2004, p. 167) asked by Kupchik's judge). Nonetheless, I would argue that the discursive style used by Judge Corriero, when he is engaged in admonishing discourse, is considerably less demeaning in character than that reported by Kupchik. Kupchik (2003a) also reports that his judge often employs "judgmental discourse" such as saying to a defendant "you're stupid if you want to be in a gang" (454). Judge Corriero's style of discourse with defendants as depicted in the accounts above, while sometimes containing occasional moments of judgment, is, in general, much more paternalistic than authoritarian in manner.

These differences in style can best be understood by looking at the issue of "respect" – which is highly valued and accentuated within the culture of the Manhattan Youth Part, in a manner that distinguishes it from Kupchik's court. A simple yet important example can be found in the different practices within the two courtroom regarding the identification of co-defendants during allocution. In Kupchik's account we see the judge naming co-defendants and asking questions of the defendant regarding

specific co-defendants and their actions. Judge Corriero, in contrast, almost never requires the naming of co-defendants out loud in court. Corriero's vagueness in identifying co-defendants is not by accident. He has stated that he understands the possible embarrassment, ostracization and/or real danger a youth may face if he names a co-defendant(s) in open court. Since such information is generally contained within written statements and other official court documents the need for such details to be spoken aloud in open court is not necessary. Attention to such detail is just one example of the special attention given to the issue of "respect" for all court actors, particularly defendants and their families, within the Manhattan Youth Part.⁶³ Thus, I would argue that the overall atmosphere of the Manhattan Youth Part, informed by the personal style of Judge Corriero, and his emphasis on a culture of respect, represents a courtroom culture, that while having many commonalities with the court where Kupchik's study took place, is also quite unique.

Thus, although working within the same statutory structure and utilizing often similar rhetorical techniques, diversionary mechanisms and creative use of discretion and delay in the service of "child-saving," the culture of the two courts that emerges is indeed quite different. Working under the same legal statutes the two courts have each developed particular legal cultures and strategies for mediating the tensions inherent in the criminal prosecution of adolescents. In one court, we see the emergence of a bifurcated model, while in the other we see the re-conceptualization of the juvenile justice model within the boundaries of a criminal court – a model more firmly and continuously rooted in the philosophy of *parens patriae*.

⁶³ See Chapter Six for a further discussion of the treatment that family members are given in the Manhattan Youth Part.

In real life . . . offenders do not exist as exclusive objects. They are connected in relationships with other people, a major portion of whom are women.

(Danner and Landis, 1990)⁶⁴

CHAPTER 6

Mothers And Others: Family In The Youth Part

Earlier research in court settings (Bortner 1982; Emerson 1969; Jacobs 1990; Kupchik 2003) has demonstrated the importance of the family within juvenile court settings where family members of young defendants are often active participants in case processing with considerable influence on case processing and outcomes. The inclusion of parents and/or guardians in case processing is generally believed to be appropriate in juvenile court settings where parents were believed to have a special role – that of advocating for their child and assisting in decision making (Barnum 2000; Rubin 1985). But how important are parents, and more importantly, how important should parents be in the *criminal* prosecution of adolescents? What is the appropriate role of parents in a criminal court setting where children are prosecuted as adults?

In criminal court settings in general, family sometimes plays an important role in case processing. Courts often express interest in a defendant’s “family ties” or his or her “ties to the community” when making bail or sentencing decisions. Familial relationships

⁶⁴ Quoted in Danner 1998.

are often factors considered by courts in their decisions to utilize community based treatment programs for adult defendants.

In the place apart that the Manhattan Youth Part occupies, families are considered important in a unique way. Because the court acknowledges the reality of the adolescence of its legally “adult” defendants, families are seen to play a vital role in their case processing – a role similar to what one might traditionally expect within a juvenile court system. The importance of the role of parents and other family members in the Manhattan Youth Part is evidenced by the attention given to their presence in the court and by the many opportunities they are given to address the court. Such attention is not part of a set of legal regulations but yet another instance of the exercise of judicial discretion within the part and the result of the evolution of a unique culture within the part.

In contrast, Kupchik (2003) found limited participation among family members in the criminal court proceedings he observed. In the bifurcated model he encountered (criminal court-like procedures prior to sentencing and juvenile justice-like procedures at sentencing), parental involvement only came into play at the sentencing phase of case processing: “Until guilt is established and sentencing discussions begin, proceedings in the criminal jurisdiction include participation by legal professionals only” (95). The procedures Kupchik observed are distinctly different from what I observed in the Manhattan Youth Part where family members are often asked to speak during a young defendant’s very first appearance before the court. Indeed, the type of family participation I observed in the Manhattan Youth Part is more similar to what Kupchik (2003) observed in the juvenile court jurisdiction in New Jersey that he studied than in

the New York criminal jurisdiction he observed. In regard to role of parents in the New Jersey juvenile court, Kupchik (2003) states that,

Parents' and defendants' participation introduces peripheral issues that would be considered irrelevant in a *criminal* jurisdiction prior to the sentencing phase. These issues provide the courtroom workgroup with personal, extra-legal information about defendants, and arm the court with greater knowledge of the defendant and her personality beyond legal issues related to the alleged offense. (113, emphasis added)

In the Manhattan Youth Part such “peripheral issues” are not considered irrelevant prior to the sentencing phase and in fact, become vital information upon which the court, in coordination with ATI programs, devise case planning toward the earning of YO.

The enhanced role that family members have in the Manhattan Youth Part provides further evidence of the re-conceptualization of a *parens patriae* style of justice at work within this unique criminal court setting. This chapter documents the ways in which family members assume a meaningful, albeit precarious, role within the informal workings of the court, how they learn to claim a presence in the court, how they testify and advocate for their children and how they sometimes call upon the court to assist them in parenting. The remainder of this chapter demonstrates two more of the basic tensions that underlie the practice of youth being tried as adults:

- 1) The fact that adolescents are most often non-autonomous actors highly dependant upon the adults in their lives. The effect of this reality on case processing and defendant's opportunities to “earn YO” is examined.
- 2) The reality that some adolescent defendants are both alleged perpetrators and the victims of abuse and/or neglect by parents in the home – a subject traditionally handled within Family Courts. Echoing the essence of the Progressive era reformers' goal of ‘child saving,’ this section provides examples of Youth Part defendants for whom parents were a main source of problems and shows how the court responded to the circumstances of these dependant defendants.

As we have already seen in the accounts of court interactions in previous chapters, parents are important for the court, especially in the process of kids earning YO. We've already seen that, when first getting to know a kid in the court, the judge will speak with the parent, asking about what kind of work they do and how many other children they have. All of this is done in an attempt to understand the larger contexts of a defendant's life circumstances. A kid cannot be released into an ATI program unless there is a stable place for him to call home and there is a better chance of success in the program if a parent or guardian is willing to cooperate with the program. Cooperative family members represent stability and structure to the court and family members become important members of the informal workgroup of the court. Parents also can assist adolescents in navigating institutional systems – keeping appointments, getting back to court when due, filing paperwork, negotiating bureaucracies, etc. (Tobey *et al.* 2000). In addition, parents are an excellent source of information for the court and for the ATI programs and are important partners in the process of alternative sentencing and treatment (Barnum 2000).

The Waiting

The chairs in the courtroom – those in the jury box, those for the attorneys and defendants, those that serve the court officers and the IN defendants waiting in chairs – are all padded. The benches in the audience area are not. They are hard wood benches similar to wooden church pews. They are hard and uncomfortable and almost always over crowded on calendar days. It is in these hard seats that the families of Youth Part defendants wait for their turn to stand up for their son, daughter, brother, sister, cousin, nephew, niece, or grandchild. Some defendants have dedicated family that show up at every court appearance, while some families only show up sporadically. Sometimes it is

just one family member (often a mother) who is present, or two parents, or another family member or two. Occasionally seven or even ten members of an extended family network will be in the audience. On the other hand, some kids never have anyone show up for them at all.

More often than not it is women who show up for the mostly male defendants: mothers, grandmothers, aunts, sisters. There are fathers, grandfathers, step-fathers and uncles who show up for a youth sometimes (and sometimes only them) but the burden of sitting on a hard bench in the Youth Part waiting for your kid's name to be called on Friday mornings seems to fall heavily to women. Many youth before the court come from poor minority communities with high rates of female headed households. The Legal Aid Society's profile of the JOs that it has served found that 77% of their JO clients come from families with one adult or guardian (50% a parent, 27% a non-parent) (Legal Aid Society n.d.). For these primary family caretakers, most often women, many of whom are already struggling to keep families together, the added burden of traveling to court, taking time off of work, finding child care for younger children, and making the necessary appointments for their kid and themselves with the social welfare institutions initiated by ATI programs can be onerous.⁶⁵

The burden of having a kid in the Youth Part can be doubled or even tripled for some families. It is not uncommon for Youth Part co-defendants to be brothers or sisters or cousins. One calendar day the same Hispanic woman in the audience stood up for three different defendants over the course of the morning (one son, two nephews). The third time, as she was standing up she said to the woman sitting next to her, "I have three of

⁶⁵ See Richie (2002) for a discussion of the effects of mass incarceration on women – both as offenders and as family and community caretakers.

them in here, it's embarrassing." Families often also have other family members, including other children, involved in other parts of criminal justice systems – jail, prison, probation or parole – or have younger children with open cases in the Family Court.⁶⁶

As described in Chapter Three waiting is simply part of the culture of the court for all court participants. While waiting in the hard benches in the audience some family members read the free newspapers that are handed out at the subway stations or they whisper among themselves. Younger children often fall asleep on shoulders or in laps or tucked up under a mother's or grandmother's arm. There is often a good deal of yawning and some napping.

In general, for family members the waiting in court comes in two main forms: Waiting *with* and waiting *for*. Family members of OUT defendants arrive with their kids at the start of the morning and wait *with* their child for his or her case to be called. Family members of IN defendants arrive in court and wait *for* their kid to appear in court. For those whose kids are IN, family members wait for a chance to simply see their son or daughter. Sometimes the waiting is in vain. Mothers and others can sometimes sit and wait in the audience for two or even three hours just to learn, when their son or daughter's case is called, that for some unknown reason their incarcerated child had not been produced from Rikers or from DJJ or that the defense attorney could not be there, so the case was postponed, information that somehow never made it to the family members.

Intimate Moments in Public Space

Incarcerated defendants' brief time in the courtroom on calendar days are often marked by creative attempts to communicate with family members in the audience. IN

⁶⁶ Or as discussed in Chapter Four, sometimes, JO defendants in the Youth Part can also have open Family Court cases as well – for non-JO charges such as trespassing or drug possession.

defendants and their families are not allowed any physical contact in the courtroom, and direct verbal communication is also forbidden. Despite these restrictions, an amazing amount of communication takes place between IN defendants and those who come to stand for them.

As IN defendants are being lead in and back out after their turn before the judge, they have a brief opportunity to make eye contact with family members. As young defendants are being lead out after their time before the court, mothers, grandmothers, aunts will often say out loud short phrases such as “I love you” or “Te Amo” or nod or smile as their son is being lead out of the courtroom in cuffs. Often the kid will make eye contact and nod by throwing his head back a bit and jutting his chin forward a little. Sometimes he will say out loud, “I love you” or “call me” or “mama don’t cry” as he is being led out. Sometimes he will simply mouth the words “I love you” or blow a quick kiss back to a family member. Sometimes family and kid simply hold eye contact for as long as they can. Sometimes there are smiles, sometimes there are tears, on one or both sides. By the time a defendant has reached the metal door in the back of the room his eyes are forward again, minding the directions of the court officers. Family members will often linger, watching until the last moment they can possibly see the back of their child’s head, sometimes a little while longer, staring into the space where the child had just been. Younger brothers, sisters, nieces, nephews or cousins, less inclined to restraint, will often smile and wave energetically to an IN defendant as he is brought in or out of the courtroom.

Family members who have had kids IN for awhile come to learn that if they sit off to the right side of the audience they will be able to have eye contact with their kid when

he is sitting in the chairs by the back door. By positioning themselves in a particular section of the audience they can then be in the line of sight with the hallway where IN defendants wait for their turn before the court. From this vantage point families can see and “converse” with the kids non-verbally for much longer. The space I normally occupied when observing court, located in the back row of the jury box, often put me directly in this line of sight and I often had to be mindful of not blocking it.

Despite the constant presence of at least two court officers in the area where IN defendants wait, folks seated where they can see their kid will smile, sometimes wave. Some court officers will shift their position slightly in one direction or another so that a kid and family can see each other. Others do not. As the defendants are still cuffed when they are in the chairs they have only their facial expressions, the set of their shoulders, a tilt of the head, or the mouthing of short phrases to convey information. Defendants usually smile back to their families, or sometimes frown as if asking a question that only a family member can comprehend. Many family members, especially mothers, are inherently adept at reading their own kids; meanings I could only guess at often appeared clear as day between a mother and her son.

Sometimes a family member will mouth the words “how are you?” to which a kid will nod his head up and down as if to say “I’m OK.” Twice I’ve seen a mother question the bruise on a young defendant’s face by raising her hand up to her own face, brushing it along her own eye or cheekbone with a questioning expression on her face. Both times, in an unsuccessful attempt to alleviate his mother’s concern about an injury or danger, the kid shook his head back and forth as if to say, “don’t worry about it, I’m fine.” Gestures

of reassurance are common and work both ways – family reassuring kids, kids reassuring family.

Occasionally a youth will not make any eye contact with his people at all at any stage during his visit to court – purposefully not looking up when brought in and keeping his eyes straight ahead or aimed at the floor as he is led out. Sometimes family members will leave quickly before their kid has left the courtroom. Sometimes there is only a long stare between family and kids, or a frown, or a quick glancing away, evidence of anger, disappointments, frustrations, loss of hope, hardenings.

All these personal, familial exchanges of love, joy, sorrow, anger, worry, or resignation take place with little or no words, without privacy, in the glaring light of this very public, institutional space. Here in creative, adaptive ways, both IN kids and family engage in an abundance of “conversation” in a place where they are not really allowed to speak to one another. In so doing they attempt to maintain familial ties and human connection – to claim, if only momentarily, a space for their family within the court.

Observant as he is about what takes place in his courtroom, Judge Corriero often witnesses these various non-verbal exchanges that routinely take place within his courtroom. One Friday, the judge seized upon a family’s non-verbal interaction as an opportunity for a “teachable moment.”

Calvin

Calvin, a 14 year-old black boy who was being held at one of the juvenile detention facilities was waiting in chairs by the back door of the court for his turn in front of the judge. His mother, seated within his line of sight in the audience, held up a very newborn baby, dressed in blue for her son to see. Calvin, still in handcuffs, grinned widely. When Calvin’s case was called the judge asked him about the newborn.

“Is that your baby brother?” The judge asked.

“Yes,” Calvin answered.

“Fourteen years from now do you want him to be standing where you are?” The judge asked in a slightly stern tone.

“No,” the boy said.

“Well, who’s gonna teach him?” the judge asked. “You’re gonna have to be a role model for him. You see this isn’t just about you. You think it’s easy for your mother to have to come down here after just having had a baby? You think it is good that this is where your baby brother has to come in his first days of life, with you in hand cuffs? You think that is a good thing?” the judge asked, his voice growing louder as he spoke.

“No!” Calvin whimpered.

“I want you to think about that,” the judge said before scheduling the next control date for the young man and moving on to the next case. Court officers then put the handcuffs back on and Calvin was lead out of the courtroom with his mother, the newborn in her arms, looking on.

Finding Their Voice: Testifying, Advocating, and “Telling On”

Family members familiar with the culture of the court will take their place standing at the railing just off to the right or left side of the swinging gate when their child’s case is called. Those new to the court often need to be directed where to stand by the judge or by court officers. Family members often appear nervous or unwilling to speak in the early weeks of coming to court but as a case is handled over the months, most become more comfortable speaking aloud in court. Speaking, for family member in the court, generally comes in three forms: testifying, advocating, and “telling on.” Family members often “testify” as to how their child is doing at home or to the changes he has gone through or the struggles he is facing. Sometimes they advocate for their child, requesting extra services or an earlier or later curfew, or requesting protective custody for an incarcerated son. Still others will “tell on” their child if they think the court should know about some errant behavior, or if they feel the court can assist them in their parenting struggles.

There is a precariousness in all these interactions in the court. Family members do not have attorneys at their side, their place in the court is not well defined and the boundaries of acceptable speech and appropriate information for sharing are often

uncertain. Defense attorneys sometime frown or flinch when a family member says something out loud in court they would have preferred wasn't and I have occasionally seen an attorney raise a hand as if to indicate to a family member that they should stop talking. Yet, other times an attorney may want a family member to speak and will let the court know that a mother or grandfather would like to address the court.

Testifying, for families in the court, may come in the form of simple short answers to questions by the court, such as "how is he doing at home?" or "is he following your rules?" These types of questions tend to solicit simple yes or no answers. Other times testifying, advocating and "telling on" may come more in the form of short speeches or in conversation with the judge. The following accounts from fieldnotes and court transcripts depicts the various ways that family members find their voice in court.

Testifying: Salvador's Mother and Sister

Salvador's case was first discussed in Chapter Five. He had been given several chances and was working on his last one. His dedicated attorney had worked out an option whereby Salvador would attend a residential drug treatment program. After the judge had talked with Salvador, asking him why he should be given another chance, he then spoke with Salvador's mom and sister who were in the audience. The sister appeared to be about eighteen years old or so.

"How do you feel about this?" the judge asked Salvador's mom.

"Me, Your Honor? I'll tell you, him being where he is now and when he gets out, I feel he has changed a lot. I see a lot of improvement in your giving him the chance. He would be a better person. I do see that." Then the judge turned to Salvador's sister and asked her what she thought.

"I don't condone what my brothers have done," she said, "but I believe that Salvador has potential to change. He has potential to change. He's always talked positive. I never thought I was going to see the day my brother speaks the way he does. Sometimes, people that are bumped on the head a couple of times before they learn and see what they've done is wrong. I know most of the things he's done is because he has emotional problems. That's when the marijuana gets put in, and everything falls out of place. I feel if he does get this opportunity, he will change, he will become a good citizen to society."

Advocating: Samuel's Mother

Samuel was a black and Hispanic 17 year-old male defendant who had been IN for nine months. On one of his visits to the court Samuel's attorney reported to the court that they were trying to get the boy into a particular residential program. Samuel's mother raised her hand in court and said that she wanted her son to go into a different program from the one the lawyer had mentioned. The woman appeared nervous, couldn't remember the name of the program, and stumbled over her words, but the judge waited patiently for the woman to remember and to find the piece of paper on which she had written the information down. She finally remembered the name and the judge told the boy's attorney to look into the requested program and see if Samuel was acceptable.

Advocating: Ellis's Mother

Ellis, a black IN defendant came before the court for the first time. After the DA and the attorney told the judge about the case – an alleged second degree robbery charge – Ellis' mother, who has been standing at the railing, appeared agitated. The judge asked her if she had any questions.

“Those other two are boyfriend and girlfriend,” the mother said in a frustrated tone, “they stick together, I don't know why this whole thing is being put on MY child.”

The judge said, “your son has a great lawyer and if he wasn't responsible they we will get to the bottom of it and if he is guilty then we have to find a way to make sure it never happens again. But it might take some time. I need you to keep an open mind, I know you love your son, but I want you to try and keep an open mind so that we can make sure this never happens again.” The mother nodded quietly and appeared to calm down a bit.

Advocating: Roger's Mother

Roger was an black defendant, OUT, who was doing well in his ATI program. Roger's attorney explained to the court that the program to which Roger had been referred out to for drug treatment and other services wasn't providing the right kinds of services for the boy. The ATI program representative reported that Roger was complying with all of their requirements even though he and his family were not so happy with the outsourced services. As the lawyer and the ATI representative and judge were discussing this, Roger's mother raised her hand.

“Okay, Yes, ma'am,” the judge said acknowledging her.

“In reference to [the program],” Roger's mother started, “he's been doing everything they've required him to do. The only problem I'm having with him, he's been in there a month with them, and they've not provided him – I don't have the funds, so he's walking. It takes him 45 minutes to get there and 45 minutes to get back. I constantly am speaking with these people, and they're supposed to give him a metro card.

“Are they supposed to give him?” The judge asked.

“Yes, he's supposed to have it,” Roger's mother answered.

“If he doesn’t get a metro card, he doesn’t have to go there anymore,” the judge said, “and you tell them that the judge is quite concerned that a month has expired and they are requiring him to be there.”

“Everyday,” mom said, “when I call them in reference to the problem they tell me they’re going to get in touch with me. I’ve spoken to the director and the supervisor in reference to the working papers. They won’t even give him the working papers.”

“Who’s they?” The judge asked.

“[The treatment program]. They’re supposed to give him working papers and take care of all of that. He went for the physical before. [They] said he had to be examined, have a physical through their school. He had it. He had the TB test. They sent me over to the Bronx because it didn’t come out right. When he took the chest x-ray, everything came back fine, where he was able to work. [They] still hasn’t gave him working paper or anything and then, what they have him doing for one to five o’clock? He’s sitting inside a classroom with other kids with drug problems of cocaine, weed or whatever. He’s not doing nothing since. He’s been in this school and has not brought home a piece of paper saying, ‘Mom, look, they gave me work.’”

The judge asked the ATI representative about the options.

“I believed we referred him there because it was preventative,” she said, “but I don’t think...”

“Well it doesn’t seem like there is anything being prevented,” the judge responded.

“We see it’s not beneficial to him,” the representative said, “we’re asking that if he can – if we can go ahead and find him a new GED program?”

“Yes,” said the judge, “make sure he gets working papers.”

“One more question,” said Roger’s mother. “They had said he would have to do summer school. Where is he going to do summer school?”

“Well,” the judge responded, “I know [the ATI program] can follow up with the necessary arrangements.”

While motivations for parents or guardians to “tell on” their child can be multiple and complex – genuine concern for the well being of their child, frustration over a lack of control, revenge – some parents appear to utilize the influence the judge may have over their child to supplement their own parenting. In this way the court, in particular the judge, is sometimes called upon to literally assume the role of surrogate or co-parent. We see the different ways that “telling on” occurs in the court in the examples below of the experiences of Charles, Lazaro and Ramiro.

Telling On: Charles' Grandmother

Charles' grandmother didn't hesitate a minute to tell on her grandson when the judge asked how the black youth was doing at home.

"He got to come in early" she said, "when I tell him to come in I want him to come in," she said. Given this information and the positive marijuana test the ATI representative had reported, the judge moved up Charles' curfew and let him know that he was running out of patience.

"Next time you test positive for marijuana," the judge said firmly, "the next time you miss a curfew you are going straight to jail. Your curfew is going from 6:30 to 5:00 now. You're out later than five you are going to jail. I have a DA who wants to put you away for ten years. Do we understand each other?"

Telling On: Lazaro's Mother

Lazaro (first mentioned in Chapter Five) was a Hispanic JO who had been arrested for criminal possession of a weapon and had been released without bail at arraignment. Lazaro's mother stood in the audience when Lazaro's name was called on his first time in the Youth Part. The judge asked if she spoke English and when she said no he asked the interpreter to assist her. Through the Spanish interpreter the judge asked her, "where are you from originally?"

"Dominican Republic," Lazaro's mother answered, through the interpreter.

"You know your son is charged with possessing a real gun?" the judge asked.

"Yes."

"You know he can go to jail for ten years?"

"Yes."

"Do you know that I can't even give him a sentence of probation because of the nature of the charge, that he has to be in jail? Do you understand that?"

"I didn't know," she responded. The judge reviewed the facts of the case and discussed the varying details with the defense and the prosecution and then addressed Lazaro directly.

"Were you born here?" the judge asked Lazaro.

"Yeah."

"YES. No 'yeah' in this courtroom."

"Yes," said Lazaro.

"Your mother came here from the Dominican Republic?"

"Yes."

"Is your father with you?"

"No."

"Why do you think she came here?" the judge asked. Lazaro didn't answer.

"Why did you come from the Dominican Republic?" the judge asked Lazaro's mother directly.

"To make a better living," she said.

“To make a better life for her son,” the judge said, “And this is how you repay her? Tough Guy.” He then spoke to Lazaro’s mother again

“Your son give you any trouble at home?” he asked.

“Yes,” she replied.

“He gives you trouble?” the judge asked again.

“Yes.”

“He doesn’t listen to you?”

“No.”

“Do you want me to put him in jail today?” the judge asked.

“Yes,” said Lazaro’s mother through the interpreter. The judge looked back at Lazaro. There was a moment of silence in the court.

“Because you are a tough guy,” the judge said. “You put your mother in this situation. You need not worry, mother. I was going to put him in jail anyway. The evidence against him seems to be relatively strong. I don’t think the bail is adequate. He’ll have to stay with me for a while until we figure out what we’re going to do with him.”

Exactly what had motivated Lazaro’s mother to advocate for the jailing of her own son was not made clear but she did not appear sad when she said it. The judge then reset the bail, had Lazaro remanded, ordered the PPI and the 390 examination and asked an ATI representative to interview him to see if he was acceptable to the program. Although the judge would most likely have remanded Lazaro regardless of what his mother had said, her statement was a powerful confirmation for the court.

Telling On, Sort of: Ramiro’s Mother

Ramiro, first introduced in the last chapter was a Hispanic JO, who had been doing well in the ATI program, although he was struggling with school. The judge had taken time to talk with Ramiro about it and then after this conversation the lawyer requested that Ramiro’s curfew be extended. In the exchange that followed we see Ramiro’s mother not so much telling on Ramiro but rather relying on Judge Corriero to help her better parent her son. When Ramiro’s attorney asked if it would be possible to change Ramiro’s curfew the judge asked, “What time is it now?”

“6:00.” Ramiro answered.

“That’s pretty early,” the judge said, “what would you like to see it?”

“Any time,” answered Ramiro.

“Well, what time, like what?” The judge pushed.

Ramiro shrugged and said, “a time to hang out.”

“Hang out? with whom?” The judge asked.

“My girl,” said Ramiro.

“With your girl?” the judge said in a curious tone, “how long do you have this relationship with your girl?”

“Two years.”

“Two years? While you were incarcerated she, you still remained with your girl?”

“Yes.”

“You care about her?”

“Yes.”

“How did she feel when you went to jail?” the judge asked.

Ramiro’s answer was interrupted by the Spanish interpreter.

“Excuse me, Your Honor, the mother would like it to be no more than 9:30 at night.” The judge looked at Ramiro and said, “She is very generous, you should thank your mother for 9:30. I can trust you till 9:30?”

“Yes.”

“Where does your girl go to school?” the judge asked and Ramiro told him the name of her school.

“What grade is she in?”

“Twelfth”

“She is a little older than you?”

“Yeah.”

“Is she smart?” the judge asked and Ramiro nodded yes.

“She get into any kind of trouble herself?” the judge asked.

“No.”

The judge got a serious look on his face and said, “as long as you are responsible.”

“Yes,” said Ramiro.

“You don’t do anything that is going to create problems for her,” the judge said in a cautionary tone. He then asked the program representative “what kind of education is he getting in the program?” The program representative understood the implication of the judge’s question – whether or not sex education was a part of the program curriculum.

“We can set him up,” the representative said with a smile.

“Set him up,” the judge said quickly, “set him up.”

Again the Spanish interpreter interrupted, “Your Honor, the mother would like to say that she doesn’t oppose the curfew but she wants the girlfriend’s phone number, she doesn’t even know who this woman is.”

The judge looked at Ramiro with surprise and asked, “you haven’t introduced this young lady to your mother?”

“I have,” answered Ramiro sheepishly, “but she doesn’t know which one.”

The judge raised one eyebrow and said, “she doesn’t know which one?” He paused for a moment and then added, “Well, that is important, your mother should know where you are and what her telephone number is. You understand that?”

“Yes,” said Ramiro.

“Thank you,” said Ramiro’s mother through the interpreter.

If a parent has been involved over the months and has been coming to court fairly regularly the judge prefers they be present when he sentences their kid. On several occasions I observed him postponing final sentencing and application of Youthful

Offender treatment to a later date until a mother or other family member could be present. This inclusion of parents and other family in the process of the work of the court is just one example of the attention and respect paid to families. This attention to family members is illustrated by the following statement Judge Corriero made when I asked him directly about the respect he extended to parents in the court:

To me you know these are human beings who are very concerned about their children and they have had their own problems in their own world and they may not be articulate, they may not be educated, they may be angry at times, but they are still parents. And it is important for me to give them the opportunity to express themselves, it is important for me to get an idea of what they are capable of doing to help us. And the dynamic of it. I would hope in and of itself that would be part of the value of the Youth Part – you know just the experience of giving people who feel hopeless and powerless an opportunity to express themselves and when appropriate to listen to them. It is to me part of the value of the experience of coming through the Youth Part, even though I may have to send their child to jail.

Here the judge not only expresses his reasons for wanting to treat parents and other family members with a respect they may not always encounter in large bureaucratic systems of social control, he also articulates his awareness of the role that parents can play in the process of helping kids earning, or not earning, YO and/or their success in an alternative to incarceration program. His approach to parents is thus both instrumental and philosophical, an extension of his overall philosophy about the proper treatment of defendants in his court:

I mean I represent society to them. If I appear biased or prejudiced or arrogant or mean or uncaring then what do they owe society? You know, again, I could be completely delusional, but I don't think so. And in any event this is the way I'm going to live my life, this is the way I would want people who are in government, in bureaucracies, to behave when they're dealing with people who come into the system... Do they ultimately feel that they have been treated fairly. Even the kids that we send away. If I try to make an effort to make them feel that this is the only thing I can do, that this is fair and you have to understand that you violated the rules and there is a consequence for it. Why? Because I don't want them to come out any angrier than they went in.

Kids as Non-Autonomous Actors

Although charged as “adults” the kids that come before the court are teenagers in their day to day lives and as such most of them do not pay rent, many of them do not have jobs and most are dependant upon parents or guardians for food, shelter, clothing, subway fare, etc. As teenagers who are still expected to live by their parents’ rules and attend school they are much less independent actors than they would be if they were actually adults (Barnum 2000). Further, parents may or may not always act in the best interests of their children and can have significant impact on legal outcomes (Tobey *et al.* 2000). The boy, discussed on Chapter Five, who had walked to court from the Bronx because his mother wouldn’t give him subway fare, was dependant upon his mother’s cooperation to meet the requirements set by the court in conjunction with the ATI program. As one defense attorney articulated, in order to respond appropriately to the kids that come before the court, the family almost always needs to be taken into consideration:

They are teenagers, and they are almost always teenagers that are very troubled, in fact I have never worked with one that wasn’t very troubled, and whose family situation isn’t difficult and so you need to deal with that teenager and a teenager is very difficult and a troubled teenager and a troubled family – you need to be able to deal with the family, with the kid’s social setting.

Although brought before a criminal court to be tried as adults the reality of the Youth Part defendants’ dependant status is taken into account during their case processing in the court. The following accounts, of Kendrick, Randal and Jorge, demonstrate the various ways that circumstances beyond the control of non-autonomous adolescents can significantly impact their abilities to comply with and/or be successful in the process of earning YO. These accounts also document the court’s awareness of this

reality of trying youth as adults and demonstrate the court's individualized responses to these circumstances.

Kendrick

Kendrick was not present in the court one Friday when his name was called and the judge was ready to issue a bench warrant for him. Kendrick's attorney said that he had just received a call from the boy from a pay phone saying that his mother wasn't letting him come to court. The judge instructed the attorney to tell the mother that he would hold her in contempt of court if she held up the boy. Before the day was over Kendrick showed up to court and the judge did not hold the matter against him.

Without the awareness by the court of Kendrick's dependence on the adults in his life he might easily have been remanded for not having arrived on time for his court date or, if he hadn't shown up, the judge might have issued a bench warrant. However, because the court was cognizant of the fact that kids – even if legally adults – are often dependant upon the actions of the adults in their lives, Kendrick's lack of compliance was not seen as a mark against him but as the actions of an uncooperative parent. In fact, the court may have been impressed by Kendrick's sense of responsibility in contacting his lawyer so quickly to let him know of the situation and eventually finding his way to court. Without the individualized attention provided within the climate of the Youth Part, Kendrick may well have been punished for something beyond his control.

Randal

Randal, a 14 year-old Hispanic youth, first came before the court one summer charged with a robbery during which he and another youth allegedly hurt a 15 year-old girl and stole her cell phone. Randal's father was in the courtroom that day. During the course of his first appearance before the court it was revealed that Randal was a good student who had been attending school regularly. He was assigned to an ATI program and a month later it was reported that he was doing well in the program, although he had tested positive for marijuana. Randal claimed that he really didn't smoke on a regular basis and this it would be no problem not to do it again. The judge said he would hold him to that. Two months later things were not going well for Randal at all. He returned to the court as a voluntary return on a warrant. He had missed his earlier scheduled court date and the ATI program did not know where he was. Randal was non-compliant in just about every manner possible. When his case was called his attorney explained to the court that

Randal's family had been evicted and had been moving to and from different shelters every two to three days for the past two to three weeks and that was why Randal had missed his appointments with the program and was unable to call in and why he had missed his scheduled court date. The judge decided not to remand Randal and a month later the ATI program reported that they had had some problems keeping track of the family but that the family was now in a shelter where they could stay for awhile.

In this case the judge could have easily remanded Randal or denied him any more chances to succeed in the ATI program given his track record those first few months. Rather, the judge chose to be informed as to the actual situation that Randal was dealing with – his family's homelessness – and chose not to hold it against him immediately. Randal, the court had assessed, seemed to be a good candidate for rehabilitation stuck in a bad set of circumstances largely beyond his control.

Defense attorneys, ATI personnel and the judge must all attempt to assess what situations and problems the kids are responsible for and what ones are the result of non-cooperative, unwell, or overwhelmed parents. Sometimes this can be very difficult to ascertain and dedicated court actors must work to find a balanced way to hold a young defendant, still so dependant upon adults in his life, accountable for his actions while at the same time not arbitrarily punishing him for something that is really out of his hands.

In Jorge's case it was harder to determine the true source of his problems. Was Jorge himself failing in the program, was he not being allowed to be successful by the adults around him, or was it a combination of both? Jorge's mother rarely made it to court and early on during Jorge's time with the ATI program there had been issues with his mother not cooperating. For example, the ATI representative had reported that they were trying to get Jorge evaluated to see if he was in the appropriate educational setting but his mother was very opposed to the testing and had not cooperated with the program.

Jorge

Jorge was a Hispanic youth who was OUT. On the court date detailed here his mother was present in the court and the representative from the program reported to the court that Jorge's mother had told them that Jorge had been leaving the house after he had called in for curfew – a clear violation of his release. The representative confirmed that they had done a site visit one night and that in fact Jorge was not home after his curfew.

“I'm afraid he is gonna have to stay with me,” the judge said. Jorge turned around in his seat just long enough to look at his mother with what appeared to be a scowl before turning back around. The ATI representative came to Jorge's defense saying that he was doing fine otherwise. Jorge added, “I was there, I was sleeping and my sister didn't know.” The judge decided not to remand Jorge that day after all.

A month later Jorge's attorney told the court that the day after his last court date Jorge and his siblings had been put into foster care. Jorge's foster mother didn't know about all the requirements of the court and the program so Jorge hadn't been going. The ATI program was in the process of sorting all this out.

“Jorge,” the judge asked when the boy took his seat, “are you doing everything I expect of you?”

“Yes,” answered Jorge. Jorge's white female attorney explained Jorge's circumstances to the court.

“The family has broken apart because of his placement in foster care. Jorge is having a little bit of a hard time with that,” she said.

“Where are you now?” the judge asked Jorge.

“I'm not sure of the exact address, but I'm on [street],” answered Jorge.

“You are in a foster care group home?” the judge asked.

“No, a foster home,” Jorge said.

“When did this happen?” the judge asked.

“On the day after my last court date.”

“And the family that you are with, how are you getting along with them?”

“I got two of my sisters with me,” Jorge said.

“How is he doing in the program?” the judge asked the program representative.

“Since his last court date, Jorge has not been to our program or called in for curfew. I think his new foster mother doesn't know about our program. We did do a home visit this week and we gave her all the information, let her know about Jorge's curfew, that he needs to come once a week for individual and group. So I just think the foster mother did not know.”

“Are you going to be able to do that?” the judge asked Jorge.

“Yes,” replied Jorge.

The representative then explained that Jorge's new foster home was a good distance from the program so there would be some details to work out around scheduling and school and all that. The judge instructed the program to do their best to work it all out and then said to Jorge, “You have to make the best of the situation, all right?”

Jorge nodded and said, “Mm-hmm.”

“Especially if you have younger sisters.”
 “Mm-hmm.”

On his next court date Jorge wasn't doing everything that was expected of him. The judge remanded him. Three weeks later on his next court date, Jorge was brought from the back in handcuffs and escorted to his seat. Jorge's attorney asked if they could approach. While the attorneys and ATI representative were talking with the judge at his bench, Jorge turned around a little in his chair and mouthed a few words to a young woman in the audience. Normally defendants are not really allowed to turn around in their seats but the court officers weren't being too strict with Jorge. The judge noticed this and stopped the bench discussion and asked Jorge who she was.

“My sister,” answered Jorge.

“You are his sister?” the judge asked, “How old are you?”

“Seventeen,” the girl replied.

“Is today a school day?” the judge asked.

“Yes,” the girl replied.

“Shouldn't you be in school?”

“I have permission to be here,” the girl said.

“From whom?” the judge asked.

“From my mother,” she answered. The judge thought for a moment and then asked the girl, “you love your brother?”

“Yes.”

“What should we do?” the judge asked her.

“I want him to come home,” the girl said. The judge thought for another moment and then started up the bench discussion again with the attorneys and the program representative. After the approach the judge spoke.

“The defense counsel as well as the social worker, as well as the program representative have indicated that they are prepared to continue to work with the defendant. Up to a certain point you were doing well but then, you stopped cooperating. And when I learned that I remanded him. How long have you been in now, Jorge?”

“Present?”

“Yes.”

“Two weeks and three days.”

“What do you think of that?” the judge asked.

“Not where I want to be,” replied Jorge.

“Why isn't it where you want to be?”

“Because it's not going to get me nowhere, it's going to bring me down.”

“Why do you think you are in there?” the judge asked.

“Because I did stuff to help bring me down.”

“Right and you didn't cooperate with the program and where did you wind up?”

“In Rikers Island,” answered Jorge.

“That where you want to be? Your sister who cares about you, who is worried about you, with tears in her eyes, you want to make her cry, you want to make her unhappy, make your family unhappy?”

“No.”

“Why don’t you listen to me?” the judge asked.

“Because my family and stuff started happening and I just, I don’t know. I just, I just don’t deal with it.”

“You have to deal with it. You don’t have a choice. You have to deal with it in a right way. The way it’s not going to make your family upset. You understand?” Jorge nodded.

“The People are opposed to my releasing him?” the judge asked the ADA.

“Yes, Your Honor,” she replied, “the District Attorney is requesting jail because of the defendant’s failure to comply with the program.”

“You see?” the judge asked Jorge, “Do you see the situation or not?”

“I see the situation,” Jorge replied.

“What is the situation?” the judge asked.

“That if I do be released, that I go home and do what I am supposed to do and that I try not to come back here.”

“If you don’t do what you are supposed to do and I do this, even though the District Attorney doesn’t want me to do it, what does that mean?”

“Then I go to prison.”

“What does that mean for the next young man like you that wants a chance to go to the program?”

“This, to me, it’s messed up for him, I probably messed it up for him too.”

“What I am trying to say,” the judge said, “is that I am willing to give you this chance, but I am taking that responsibility, over the objection of the District Attorney. You understand that?”

“Yes.”

“Because I am accepting what you say as being truthful, as being sincere. You know what those words mean?”

“Yes.”

“And I expect your lawyer, I expect the program, I expect your social worker, I expect everyone that you deal with, your sister, to make sure that you do the right thing. Understand me?”

“Yes.”

“Over the objection of the People we will put this on for one week. I’m releasing him. See you in a week.”

The judge in this case had chosen to give Jorge the benefit of the doubt and believe that the nature of Jorge’s failures to comply with the program requirements were not evidence of a hardened, unredeemable delinquent, but the result, at least in some part, of problems at home and the upheaval caused by being removed from his mother and placed in foster care. Several months later, Jorge was arrested for robbery in another borough before he was able to earn YO in the Manhattan Youth Part. He remains remanded. Judge Corriero is waiting to learn the outcome of the new case before making any further decisions regarding Jorge’s case in his court.

One great irony of the Youth Part is that Jorge was 16, was not a Juvenile Offender and had only found himself before Judge Corriero because one of his co-defendants was under 16 years of age. Had this not been the case, Jorge could have ended up before any criminal court judge in the adult system. It is not know if any of those other judges would have put Jorge in an ATI or given him the benefit of the doubt because of his family problems and foster care placement. Under the law Jorge was an adult, in terms of criminal prosecution, while at the same time still a child in terms of qualifying for foster care placement. Because of the age of a co-defendant Jorge's case was handled in the Youth Part, which is uniquely equipped to deal with just such complex and often counterintuitive set of circumstances.

When Parents are the Problem

Jorge's situation points to another set of circumstances that the Youth Part is sometimes forced to confront, issues that were traditionally handled within the juvenile or Family Courts – protecting youth from neglectful or abusive parents or guardians. The Youth Part's handling of such cases demonstrate another way in which the court takes on a *parens patriae* style of justice. The task of acting as guardian for neglected and unwanted children is still very much in the jurisdiction of the Family Court, but we find that the Youth Part, a criminal court not particularly designed to handle such situations, nevertheless confronts these issues with some of its young dependant defendants. In their profile of the Juvenile Offenders (JOs) it has served, The Legal Aid Society estimates that 19% of their JO clients have suffered neglect, 33% have been or are in foster care, 11% have a family history of domestic violence, and 28% are in families with parental substance abuse involving “regular abuse indicating addiction” (Legal Aid Society, n.d.).

Again, because of the place apart that it occupies, the Youth Part has devised ways of coping with situations in which a youth that is charged with a felony in the court is also the victim of child abuse or neglect. Kendrick's and Dario's situations demonstrate how the court deals with this aspect of prosecuting adolescents in a criminal court.

Kendrick, Part Two

Kendrick's parental issues were much more complicated than just his mother not cooperating with the court. As his months with the court unfolded the reality of Kendrick's home situation was revealed. He reported to the ATI program that he was abused in his mother's home – going so far as to tell the program personnel that he would rather go to jail than go home to her. The ATI program had contacted Administration for Children's Services (ACS), the child protective agency in the city and they had evaluated the situation and found no reason to remove Kendrick from his mother's home. Until the situation could be worked out the judge chose to remand Kendrick. He was later released and returned home only to report more abuse to the ATI program. Again, ACS investigated and found no reason to remove him from the home. The court and Kendrick's attorney and the ATI personnel and concerned personnel from ACS all worked together to try and find an appropriate residential facility for Kendrick which would get him out of his mother's home and also satisfy the court's supervision requirements. Eventually such arrangements were made and on the day that all this was worked out in court the judge said, "I want to thank everyone for doing everything they have for this young man." Then he looked directly at Kendrick and said, "I'm going to watch you very carefully. You're a bright young man with great potential."

On a later court date the ATI representative and the representative from the residential program both reported that Kendrick was doing well. The judge asked him why he was doing so well.

"I made a promise," answered Kendrick.

"And I made a promise to you," responded the judge.

Several people from several institutions had gone out of their way to find a workable solution for Kendrick – who was both an alleged perpetrator and, apparently, a young victim.

Dario

Dario was a tall and physically mature OUT Hispanic youth who had been in an ATI program for a few months. The first time I observed him in court he appeared rather disheveled, unshaven and in less than clean clothes.

"Who's here?" The judge asked.

"My dad and sister," answered Dario. On one side of the courtroom an older Hispanic man stood at the railing. A Hispanic woman who looked to be in her twenties was also standing up, but on the other side of the audience.

“How is Dario doing?” The judge asked the ATI representative.

“As of Sunday he ran away from this father’s home,” the representative reported, “and he’s been staying with his sister in [another borough]. We had an appointment for him for a residential at [local facility], however, he didn’t go. He has been going to the center for therapy sessions. He had been testing negative. He has a lot of missed curfews.”

“Why did he leave?” The judge asked.

Dario’s father answered from the audience, “The last few months it’s been difficult. He hasn’t been complying with his curfew. He’s been missing many days in school. I had him signed up for a drug treatment program at the center and he missed ninety percent of those sessions. We agreed to put him in a residential program this weekend. He was very adamant and defiant of not going, and has every intention of not going. He’s violated his curfews repeatedly. Things are very difficult at home. He cannot be controlled.” The father sounded frustrated and somewhat angry.

“Order a 390,” the judge said, “He may have to...”

“Can I say something?” Dario interrupted.

“I would like to take him with me,” Dario’s sister interjected from the audience.

“I disagree with that,” Dario’s father said his voice sounding angrier “I have custody of this child.” A court officer moved near the father and told him to “hold on” in an attempt to calm the man down.

“What do you have to say?” the judge said to Dario.

“The reason why I left on Sunday is because my father hit me. He was going to beat me up. I had to leave the house.”

“That’s not true!” Dario’s father insisted from the audience. Dario continued to tell his story to the court.

“At my house there’s eight people living there. I have no space. No privacy. He lives with his mother. I been going back and forth to his mother and grand aunt, and that’s not helping me out. I figure if I lived with my sister that would be better. And I lived with her before but there was an issue where they were going to file neglect charges against my father so he had to take me back. I feel my sister’s is the best thing for me.” The judge listened carefully and gave Dario the time he needed to say what he needed to say.

“What’s your name?” the judge asked Dario’s sister. She told him and then added, “I’m 21, I have three kids, they always have food, shelter. I have no problems with them. I feel if he comes with me he’ll do better. I think if he goes to another place that’s going to mess up his head.”

“What does the program say?” the judge asked the ATI representative.

“I don’t know what to do at this point,” she admitted. “There’s an open ACS [Administration for Children’s Services] case now as of Sunday when the altercation happened with his father so they’re investigation that.”

“May I speak?” asked Dario’s father.

“One second,” the judge said and asked the ATI representative another question.

“What about his curfew? Has he missed his curfews?”

“Yes,” she replied.

“How many curfews?”

“Prior to his leaving his father’s house he had five missed curfews.”

“What was the explanation?” the judge asked.

“I just called in late,” Dario answered. The representative agreed.

“How late?” the judge asked.

“I think it’s about an hour late,” the representative replied.

“What is your recommendation? Are you recommending a residential drug treatment program?”

“Yes. Either that or see how it goes at this sister’s,” the representative replied.

“Why are you recommending drug treatment?” the judge asked.

“He tested positive for marijuana. His father indicated he was drinking in the home.”

“And he tested positive for marijuana?”

“Not since the last court appearance. He has tested negative, but prior to that he was testing positive. Dario’s father raised his hand.

“Yes sir?” the judge said.

“May I speak?” he asked. The judge nodded yes.

“The last few months he has had all the family support that one could ever dream of. He has had financial, emotional support above and beyond what anyone would expect or would desire. There are many people living in the apartment but he has plenty of space and privacy for himself. We attempt to get him some room, whether it be studying, playing music, whatever.”

“That’s NOT TRUE!,” Dario said with frustration in his voice.

“It is true. And he’s had it very very well living there. However, he’s been hanging out with the wrong crowd. I have had to go to school a few times already.

“What do you do for a living?” the judge asked.

“I’m a temp worker,” Dario’s father answered, “what I want to make clear is that I believe the best interest at this point after all this time of trying to accommodate Dario and trying to do my best to be able to help him go through this I believe I have no other recourse but to put him in a residential program. He has come home, although he hasn’t done this in three weeks, but he has come home in the last few months drunk to the point where myself and my family members had to clean up after him. It’s a never ending litany. He’s not following the rules at home. He’s behaving very reckless. It pains me to have to go through this but the bottom line is there’s no other recourse. And I believe I, as the natural parent and also the guardian, as the one who has SOLE custody, I believe I should be the one to make the decision as to where he should live.”

The judge replied, “You understand my choices are very limited and between his getting into a program and now my only choice is to put him back in jail.”

“If that is what it takes I’m sorry to say, then, so be it because he needs to be in a residential program. As long as he lives at home he’s going to continue to do this, and he’s heading down, he’s heading down a downward spiral such that I can no longer control.”

“What about school? How has he been doing?” the judge asked the program representative.

“School?” Dario’s father interjected, “I got stuff here indicating that he’s not doing very well. And incidentally, you report states that since his last court date he has been absent only once but in fact he’s been absent five times. In the last five months he’s missed approximately 20 to 25 days of school.”

“Have you confirmed this?” the judge asked the program representative.

“The report I have says that since the last court appearance he only has one absence from school. I know prior to the last court appearance he did have numerous absences.”

Dario spoke up in a pleading tone, “Since the last court date I’m doing everything I’m supposed to. I been doing good in school. I just had my regents exam and I think I did well. Living with my father I’m going back and forth to different homes. I have no space. No privacy to do anything. I can’t study. I used to live with my sister. I feel I could progress there.”

“How old are you?” the judge asked.

“Sixteen.”

“It’s not your choice to make,” the judge said stating the hard reality of Dario’s situation – he was old enough to be tried in criminal court but not old enough to determine his own living arrangements. The judge then asked if there was an open abuse case pending.

“They got in touch with me yesterday,” Dario’s father answered, “and someone told them I was abusive and neglectful. I smacked Dario on Sunday because he was being defiant and disrespectful.”

“He PUNCHED me,” Dario insisted.

“I did not!” responded Dario’s father, “He’s telling them all of this!”

After hearing Dario’s father admit in court that he had struck his son, the judge made a decision: “The defendant is REMANDED and the program will look into the viability of the sister’s home. And also make sure that you get a residential program for him to enter.”

“Excuse me,” Dario’s sister asked as Dario was being handcuffed, “Where he’s going?”

“You have no say in this, NO NO NO” said Dario’s father raising his voice and appearing visibly agitated toward the sister. A court officer took up a strategic position in the audience between Dario’s father and Dario’s sister while two other officers cuffed Dario and lead him out of the court. Dario’s father left the court and the judge asked the sister to stay in the audience until they could be sure that the father had left the building. The judge sent a court officer to make sure he did just that. After a long sidebar conversation among the judge, attorneys and ATI representative, the judge had Dario brought back out, released him to his sister and insisted that he make the necessary arrangements with the ATI program. He then set the next court date for the following week.

A week later Dario was in court with his sister and her husband. Dario was dressed in clean clothes and was clean shaven. Dario’s father was not in the courtroom.

“How is he doing in your house now?” the judge asked Dario’s sister

“Doing very well,” she replied.

“He follows your rules?”

“Everything.”

The judge then asked the program representative for her report.

“Since Monday he’s been coming to the program and he’s keeping curfew with the sister.”

“So you think we can keep him in the program?”

“He can continue with the program but he might need outpatient [treatment]. Until then we’ll see him at the program for drug counseling and once he gets in we can refer him outside.

“Your Honor,” Dario’s attorney said, “we are asking the sister, who I am very impressed with, for being a very mature, young woman, who has already taken a lot of matters into her own hand, she has an appointment on Monday with the people in [program]. And she needs a letter from the court stating that you released him to her supervision. I don’t want to use the word custody because I don’t think it’s appropriate.”

“Draft a letter,” the judge suggested.

“I’ll bring it over today,” the attorney said and then added, “he’s also going to be entering summer school. His sister’s already got that application.”

Looking at Dario, the judge said, “Keep up the good work,” and put the case over for a month.

A month later Dario came before the court again.

“How are you, Dario?” The judge asked.

“Fine.”

“Stand up,” the judge said, “I’m very proud of you. I understand you made a lot of progress.”

“Thank you,” replied Dario.

“Where is the sister?” the judge asked.

“She called me,” Dario’s attorney answered, “She wasn’t able to get out of work today.”

“Are you getting along well with her?” the judge asked Dario. Dario nodded ‘yes’ and the attorney said, “She said everything was going along well.”

“Are you working this summer?” the judge asked Dario.

Yes, I work at [fast food restaurant]” answered Dario.

“What are you doing there?” the judge asked.

“Making burgers.”

“Do you like it?” the judge asked.

“No,” Dario replied smiling.

“Do you get paid?” the judge asked.

“Yes.”

“How long have you been working there?”

“For about two, three weeks.”

“What time do you go to work in the morning?”

“I got to be there at twelve.”

“Twelve,” the judge said, “you get there early?”

“Yeah.”

“You always get there a few minutes early,” the judge suggested and then asked, “How late do you work until?”

“I get home before curfew,” Dario answered quickly.

“That’s okay. If you want to work, you get overtime. I’m not worrying about the curfew, as long as you’re working. Do you understand me?”

“Yes,” answered Dario. Just then the ATI representative spoke up.

“Your Honor, He’s been referred for therapy. He doesn’t want to go because he’s afraid it’s going to interfere with his work schedule.”

“I’d rather Dario work right now,” the judge said, “But if you start not doing what we expect of you, then we have to make different arrangements. Do you understand?”

“Yes,” answered Dario.

A few months later Dario was still doing well and was ready for sentencing.

“Dario is done today, we expect,” said the judge as Dario took his seat. He had a portable CD player in his hands. The judge asked Dario what he had been listening to. Dario told him the name of the rap artist.

“Give me some of the lyrics,” the judge said to Dario.

“Some of the lyrics go like – I don’t know – some is called we should spread love, not war.”

“Is that right?” the judge asked with interest. A court officer familiar with the artist said that it was right.

“Well that’s a good start,” the judge stated, adding that he would have to look out for the artist.

“Anything further the District Attorney would like to say before I sentence this young Man?”

“No, your honor.”

“It’s been somewhat of a rocky road,” the judge stated, “so I think he had made great progress. Keep up the good work.”

“Where is your sister, is she here today?”

“No,” answered the attorney, “I spoke with her yesterday, she had some things she had to do, so she could not come to court today. I talked to her and I pointed out to her, as I will point out to your honor, I was more cynical about the sister being able to handle things. She proved me wrong, happily so, and you were right, so....”

“Okay,” said the judge, “the sentence of the court is the promised sentence of probation for a period of five years and the defendant is declared a youthful offender.”

Both Kendrick and Dario, although “adults” under the penal code were, in fact, dependant children in need of protection from their abusive parents. Without the individualized attention to the specifics of their situations either, or both, might easily

have been judged to be not doing well in the ATI programs which could have resulted in their not being given YO and being given sentences of incarceration instead. In Dario's case, we see the upheavals of his home situation – in which he was legally in the custody of his father and not an autonomous adult able to make his own decisions regarding residence – contributing to his inability to meet the requirements of the program. The judge could have easily looked at the “facts” of Dario's missed curfews and failed attendance record and not given him a second chance.

It is through the active awareness of the reality of their life circumstances as adolescents that the court is able to deal more realistically with kids like Dario and Kendrick – finding mechanisms by which to hold them responsible for their actions and the circumstances within their control while remaining cognizant of the reality of their social status as dependant adolescents. Here again, the Youth Part adapts one of the traditional functions of the juvenile court (caring for abused and neglected children) for application in a criminal court setting.

We are not dealing with superpredators. We are dealing with children, 14 and 15 year-old children. We cannot demonize and dehumanize children.

(Judge Michael Corriero)⁶⁷

CONCLUSION

Does It “Work”?

Invariably, whenever I discuss my research from the Manhattan Youth Part with criminal justice researchers, I am asked some version of the same basic question. It is worded differently from person to person and place to place but it goes something like this, “So, do these kids re-offend less than others?” or “What is the data on recidivism rates for these kids?” or the simply skeptical, “Does that really work?” These are excellent questions and ones that have I have found it increasingly difficult to find simple answers for the longer I continue my research. Data, both quantitative and qualitative, attempting to answer the “does it work” question – for kids in the Manhattan Youth Part or for the concept of trying youth as adults in general –has either been rare, incomplete or less than satisfactory. In trying to answer this question, I have come to believe that there is another question that is just as important to ask – How should we best define “works”?

Whether one’s interest is in helping disadvantaged, troubled kids (child-saving) or in protecting the public from violent and/or delinquent youth (social control) the “does it work” question is, of course, an important one. However, as a sociologist and an

⁶⁷ Quoted in a 1996 New York Times article heralding the coming onslaught of superpredators (Purnick 1996).

ethnographer interested in how youth are constructed, or not constructed as adults through the process of criminal prosecution, I have never been particularly interested in producing a study which measures whether or not the Manhattan Youth Part practices produce higher or lower rates of recidivism. Rather, I have endeavored to uncover *how* the criminal prosecution of adolescents is undertaken in one court in one jurisdiction – and to discover what could be learned about current social and legal responses to adolescent transgression in the process. It was never my intention to ignore the “does it work” question in my analysis of the workings of the part so much as I hope that my research complicates the question and, if at all possible, humanizes it. Further, it is my hope that my research will provide information that helps us to ask somewhat different, perhaps more complex, questions about how we should best respond to acts of adolescent transgression.

Do Practices in the Manhattan Youth Part Work?

So what does the existing data tell us about “what works?” While to date no study has tracked Manhattan Youth Part defendants in particular to determine their recidivism rates or other longer term outcomes of their lives, New York City’s Criminal Justice Agency (CJA) released in 2005 a study which looked at re-arrest (through end of January 2005) among Juvenile Offenders (JOs) processed in Queens and Manhattan during 1997-2000 (Gewirtz & Revere 2005). While a similar study looking at JOs citywide (and by borough) is planned, this first report comparing Queens and Manhattan was undertaken because of the striking differences in the style of case processing of JOs in the two boroughs. Although characteristics of cases and offenders are similar in both boroughs, the authors state, “The experiences afforded to juvenile offenders prosecuted in

Manhattan and Queens are so divergent that they actually seem to constitute different models of youth crime prosecution” (2). Case processing comparisons in the study confirm what CJA annual reports on Juvenile Offenders have long documented:

- In Manhattan nearly all cases of JOs are handled in the Manhattan Youth Part, whereas in Queens less than half, on average, of all JO cases are handled in the Queens Youth Part (with the other JO cases being handled in various parts with various judges).⁶⁸
- The length of time for case processing is extremely different for the two boroughs and represents the largest difference across the city. In 2002, for example, “It took a median of 22 appearances and 18 months from disposition to sentencing for cases sentenced in Manhattan but only four appearances and two months for similar cases to reach sentencing in Queens” (Gewirtz & Revere 2005, p. 2). When measured in days, Manhattan had a median number of days from first to last appearance of 552 compared with only 183 days in Queens.
- ATI (Alternative to Incarceration) programs are heavily utilized in Manhattan, whereas, “ATI participation is not part of the Queens model of juvenile prosecution in the adult court” (Gewirtz & Revere 2005, p. 2).
- Although ATIs are not nearly as active in the Queens handling of JO cases, Youthful Offender (YO) treatment is still given at high rates in Queens. In Queens, determinations for YO are made early on and youth are not required to “earn it” through cooperation with ATIs and close court monitoring as they are in the Manhattan Youth Part.

This new JO recidivism study, titled, “Adult-Court Processing and Re-arrest of Juvenile Offenders in Manhattan and Queens,” details these stark differences in case processing and also compares re-arrest rates for the JOs processed through these two different systems in the same city. Given the very different practices in the two counties, the authors rightly wonder, “do borough differences in the processing of juvenile cases in adult court make a difference in re-arrest rates?” (2).

The study relies on re-arrest data and the authors point out that using re-arrest data in determining rates of recidivism is problematic because, “re-arrest is likely to

⁶⁸ See Appendix C.

underestimate recidivism because new offenses may not lead to re-arrests” (7). The authors go on to admit a second limitation of their re-arrest data by reminding us that the study does not account for re-arrests that take place outside of New York City. While these limitations to the data are real and worth noting, the authors fail to disclose other limitations that should caution our over-reliance on this re-arrest data. First, while we know that not all offending results in arrest, we also know that not all arrests account for an act of offending since innocent people get arrested.⁶⁹ Further, many arrests ultimately result in a “decline to prosecute” decision from the DA’s office or are never indicted by the grand jury. Gewirtz and Revere’s data reveal that “more than a quarter of the first re-arrests were not docketed for prosecution” (19).⁷⁰ This is an important reality of re-arrest data and an honest critique of the limits of re-arrest data as a standard of recidivism should include the limitations from all sides.

Caveats aside, the CJA study has still produced some interesting findings. First, the basic finding of the study is that both Manhattan and Queens, with their highly divergent practices, had similarly high re-arrest rates for JOs. As the authors state, “most of the juvenile offenders in this research were re-arrested” (18). In Manhattan 80% of JOs were re-arrested and 75% of JOs in Queens were re-arrested. A quick and easy

⁶⁹ This is particularly salient in certain communities with high levels of surveillance and where police activities commonly include sweeps. In certain New York City neighborhoods young people are much more likely to get caught in a police sweep than they are in other neighborhoods. This practice of arresting everyone anywhere near the area of a perceived incident and sorting out individual responsibility later is quite common in certain areas. Over the course of this research I have heard many accounts of youth who were caught in sweeps or initially arrested for trespassing on the grounds of the housing complex where they themselves lived. Such “arrest everyone and ask questions later” practices, often deemed necessary by law enforcement in certain high-crime neighborhoods, can lead to inflated arrest numbers. Many of the kids in the Youth Part live in such neighborhoods. Thus, re-indictment or re-conviction data may actually prove to be a more accurate measure of recidivism, although, of course, just because a case is not indicted nor convicted does not necessarily imply innocence on the part of the arrestee.

⁷⁰ These cases were either “declined to prosecute” or were sent to the Family Court (Gewirtz & Revere 2005).

conclusion to draw from this rather discouraging finding is simply that “nothing works,” or at least that the particular set of practices that have become institutionalized in the Manhattan Youth Part are nothing special and produce no significant differences in outcomes, at least compared with cases handled in Queens.

While such high rates of re-arrest are disheartening (even in spite of the problems with the data) further examination of Gewirtz and Revere’s research reveal two interesting, and I would argue important, differences between the Queens JOs and the Manhattan JOs who were re-arrested. First, for JOs in Queens re-arrest came much sooner than for those in Manhattan. Second, JOs in Queens were more likely than JOs in Manhattan to be re-arrested for serious violent felonies. These two qualitative differences may well be the result of the different reality of case processing in the two boroughs and may indicate something about Manhattan Youth Part practices that should not go unnoticed.

The delay in re-arrest in Manhattan (61% of Queens JOs who were re-arrested were arrested in the first year, versus 51% of Manhattan JOs) may well reflect an effect of Manhattan Youth Part practices, although we cannot know for sure. Additionally, only 51% of Manhattan JOs were re-arrested after case completion, compared with 74% of Queens JOs who were re-arrested after case completion (Gewirtz & Revere 2005). In a follow-up research brief Gewirtz (December 2005), speculates that the study “suggests that the Manhattan model of youth prosecution may offer a window of opportunity for intervention to reduce recidivism. Future research should assess which aspects of the Manhattan model are associated with longer time . . . to re-arrest” (7). Maybe it is due to the how closely kids are monitored by ATIs and the court in Manhattan, or maybe it is

the ATIs and other social welfare interventions that address individual and family issues that reduce kids risk of re-offending. Either way, given the relatively inexpensive cost of ATIs (compared to secure detention) maybe utilizing ATIs and having the court keep a close eye on kids “works” – at least in terms of delaying re-arrest. “In particular, it seems likely that the long period of time that Manhattan juveniles spend under the supervision of a placement program . . . might serve to delay re-offending behaviors” (Gewirtz & Revere 2005, p. 3). Rather than deciding nothing works because of a re-arrest, one conclusion might be to advocate for more ATIs with more funding to provide services longer than the usually mandated six months or one year. This makes even more sense if agree that it may be somewhat unrealistic to expect that an ATI – no matter how well designed – can solve a myriad of family and social problems in such a short time frame. If ATIs, as currently conceived, might delay re-offending behaviors, might it be possible that longer and better funded programs might delay re-offending behavior even longer?

The second difference reported in the comparison study – the type of charge at re-arrest – is even more important to consider. Although, overall, Gewirtz (December 2005) concludes that there is no significant difference in re-arrest or even felony re-arrest between the boroughs, a closer examination of the details of the re-arrest data reveals interesting trends. First, it is important to acknowledge that for both boroughs “the *most common single charge* for the first re-arrest was CPL 221.10, *criminal possession of marijuana* in the fifth degree, a B misdemeanor, which accounts for about one of every seven first re-arrests in both boroughs” (20, emphasis added). Gewirtz and Revere go on to state,

The most severe re-arrest charge was significantly more likely to be criminal sale of a controlled substance in the third degree (a B felony) or other felony narcotics

charges, for Manhattan juveniles who were re-arrested while the most severe re-arrest charge was significantly more likely to be murder in the second degree, or attempted murder in the second degree for Queens juveniles (22)

While for some observers any re-arrest may spell failure, I would argue that a youth originally arrested for robbing someone with a knife at the age of 14 subsequently being re-arrested three years later on a charge of possession of marijuana, does not a serious recidivist make, whereas a JO re-arrested for a violent felony is more cause for alarm. Indeed, the first scenario, from a practical point of view, could easily be judged as a criminal justice system success, albeit a measured one. Given the myriad of individual issues, family dysfunctions and social disorganization that most JOs experience in their young lives, this lack of serious violent felony recidivism could be lauded a success. Given decades worth of social policies which have relegated certain youth to poor communities with inadequate schooling and little prospects of sustainable employment, such a “harm reduction” outcome could be judged a successful outcome of criminal justice practices in regard to violent, and potentially violent, youth.

Other data beyond that in Gewirtz & Revere’s study also point to some of the possible impact of Manhattan Youth Part practices with its heavy reliance on ATIs. CASES (Center for Alternative Sentencing and Employment Services), one of the ATIs active in the part in providing supervision and services for non-JOs, has documented their success rates. The agency’s program for 15-20 year-olds with felony charges (52% of them with charges for violent offenses) has found that within two years of graduation from their program “89% had no new criminal convictions” in any of the five boroughs (Copperman *et al.* 2004), p. 29).⁷¹ Additionally, the study found that only four percent of

⁷¹ The report does not report graduation rates.

those who were re-convicted were re-convicted for violent offenses. All others were for property or drug charges.

The Andrew Glover Youth Program, a community-based ATI active with the Manhattan Youth Part documents their success rates by stating that, “only 19% of all AGYP clients were re-arrested in New York State for three years after enrolling in the program. The three-year recidivism rate for successful graduates of AGYP was very low at 7%” (Andrew Glover Youth Program 2005, n.p.). In conversations with AGYP personnel I was told that recidivism for them means any new court involvement.

Now compare these ATI recidivism rates with results from a study of youth placed with the Division For Youth (DFY) (now Office of Children and Family Services or OCFS) in 1991-1995 which found that for JOs placed with DFY (which by law means secure detention) 76% were arrested for some offense within 30 months of final discharge and 46% were arrested for a violent felony within 30 months after discharge. While difficulties arise in comparing this study with any of others (JOs in this study come from all over the state, the data is for the early 1990s and therefore somewhat old, the study measures re-arrest while CASES data measures re-conviction and is for kids ages 15-20 not just JOs, etc.) these data suggest that ATIs may be a cost effective and valuable tool for reducing youthful offending.

Given the significant cost differentials between incarceration and ATIs alternative programs might be considered successful even if they produced recidivism rates on par with incarceration. Recent reports indicate a current annual cost of \$170,820 to house a youth in secure detention in Division of Juvenile Justice (DJJ) in New York City and an annual cost of over \$125,000 a year for OCFS placement (Correctional Association of

New York December 2006, September 2006) compared with ATI costs ranging from \$1,400 to \$13,000 per person served (Center for Alternative Sentencing and Employment Services (CASES n.d.).

None of this existing data necessarily proves that Manhattan Youth Part practices “work” in eradicating young offending but it does point to the possibility of a reduction in future re-offending and especially violent re-offending. Further, given the relative success of ATIs and the significant cost saving they represent, the high utilization of ATIs in the Manhattan Youth Part may provide a useful model for other courts.

Does Trying Youth as Adults Work?

A number of recidivism studies have been conducted across the country on the practice of trying youth as adults especially since the increase in transfer across the nation in the 1990s. Two more notes of caution regarding the reliance on recidivism as the only, or even main, standard by which criminal court practices are, or should be evaluated: First, as seen above, the methods of quantification of recidivism are often very different from study to study (re-arrest, re-indictment, re-conviction) and these markers are often measured over different time frames (six months, two years, five years). Such methodological matters can greatly effect study results. Of course, as we know, re-arrest or even re-conviction data is an inexact measure of actual offending. The standards used to quantify re-offending can significantly impact study results.

Second, while arguably the number one goal of the criminal justice system is to reduce criminal offending, I would argue that making recidivism the only marker for evaluating criminal justice practices creates an over emphasis on the evaluations of *outcomes* and neglects a thorough examination of criminal justice *processes* -

examinations that can provide important information in our efforts to know “what works.”

These caveats aside, the many and varied studies on recidivism for youth tried as adults tend to indicate that the practice doesn’t work. In his overview of extant research on recidivism and transfer policies, Redding (2003) reports that in several studies (Bishop *et al.* 1996; Fagan 1996; Mason & Chang 2001; Myers 2001; Podkapacz & Feld 1996; Winner *et al.* 1997; White as cited in Howell 1996) transferred youth had higher recidivism rates than similar youth in juvenile court systems. Redding sums up the findings of these studies by writing,

Thus, seven studies (from varying jurisdictions and time periods) examining the effect of all three types of transfer laws . . . suggest that transferring juveniles to criminal court results in higher recidivism rates, at least for juveniles convicted of offenses against persons. (136)

In summing up the findings of his own thorough study that compared juveniles in criminal courts in New York with similar juveniles in juvenile courts in New Jersey, Fagan (1996) found significantly lower recidivism rates among those youth sentenced in juvenile court. “The results suggest,” Fagan wrote, “that efforts to criminalize adolescent offending may not produce the desired results and may in fact be counterproductive” (77). Further, Bishop (2000) contends that the growing practice of trying youth as adults has no real deterrent effect, disproportionately effects minority youth and places “additional burdens on already overtaxed adult courts and correctional agencies” (85). In assessing existing data on the possible costs and benefits of transferring youth to criminal court, Bishop (2000) writes,

While broad transfer policies may serve the goal of retribution, they do so at a considerable price . . . it seems that the goals of doing justice and controlling crime may both be advanced by retaining the vast majority of transferred

offenders in a juvenile justice system with extended jurisdiction and an expanded portfolio of carefully selected treatment options.” (86)

Butts and Mitchell (2000), in their analysis of waiver and recidivism research, put it more bluntly, “If expanded criminal court transfer policies do increase public safety, researchers have yet to find clear evidence of that effect” (197).

While the punitive rhetoric of transfer was and still is popular in the political arena – most likely because it offers a quick and simple denouncement of youth crime – studies have shown that the public still largely favors a non-retributive approach to the problem of juvenile delinquency. Shepherd (1996) cited a variety of studies on attitudes toward juvenile justice that consistently show that, while most people felt that juvenile crime was increasing, they did not support a punitive model of juvenile justice, nor did they support the housing of juveniles with adult offenders.⁷² Shepherd stated: “The majority . . . still believe in the efficacy of the traditional juvenile system with its emphasis on prevention, treatment, and rehabilitation, and they reject the retributive thrust of a punishment-centered system” (2). Despite the politically popular “just deserts” politics of transfer, most people understand that juveniles are different from adults. Laws that govern voting, child labor, mandatory schooling, and the aged-based prohibitions on drinking alcohol and smoking tobacco all indicate the generally held belief that juveniles, even those in their upper teens, differ from adults in American society and therefore should be treated separately. In 2005 the US Supreme Court upheld this basic principle – that young people are qualitatively different from adults – when it found it unconstitutional to execute someone who was convicted of a capital crime committed

⁷² Many states house youth tried as adults with adults when they are incarcerated. New York State is not one of them.

while they were under the age of 18 (*Roper v. Simmons* 2005).⁷³ Given the following realities the practice of trying youth as adults continues:

- 1) The overall crime rates and juvenile crime rates in particular have been dropping for several years now (Butts 2002).
- 2) There is a body of recidivism research indicating that trying youth as adults does not have the intended effect and in fact may, in some cases, be counterproductive and put undue strain on already over-burdened criminal justice systems.
- 3) The general public when surveyed still believes in more treatment based, individualized justice based responses to most young offenders.

As Myers (2005) sums up his analysis, the practice of trying youth as adults “is a very limited approach to dealing with serious and violent youthful offending and one that should not be fully relied upon by politicians and the general public as a way to prevent and reduce juvenile crime” (11).

The Need for More Research – Quantitative and Qualitative

Recidivism studies, in spite of their limitations, remain tremendously valuable in assessing outcomes of criminal justice practices – punitive or rehabilitative – and I would argue that much more research is needed in this area. For example, any of the following studies would go a long way toward helping us understand the outcomes of various court practices:

- A recidivism study which analyzed felony re-convictions for both JO and non-JOs who are processed in the Youth Part.
- A study which compared felony re-conviction rates for non-JOs processed through the Manhattan Youth Part (given that the majority of the defendants in the part are non-JOs) vs. non-JO processed in other parts in the Manhattan court system.

⁷³ Many of us who work with or do research around youth who are tried as adults have been asking the same question since *Roper v. Simmons*: If, according to the Supreme Court, youth have a reduced level of culpability owing to their age when facing a death penalty, would it not follow that youth have a reduced level of culpability owing to their age when facing criminal prosecution in general?

- A study which tracked Manhattan defendants placed in ATIs with matched pairs in Queens who were not placed with ATIs.

I suggest that any such quantitative studies focus on re-indictment or re-conviction rates rather than relying on re-arrest data. More importantly, *felony* re-indictment or re-conviction rates (or violent felony re-indictment or re-conviction) should be looked at more carefully since different kinds of offending have different impacts on the community (Gewirtz December 2005). Studies which attempt to tease out these differences in types of offending would be invaluable.

In addition to these types of quantitative studies, I strongly urge further qualitative studies. I would propose research that accesses the knowledge base that is made up of court involved youth and all their experiences within the youth parts and other parts of the criminal and Family Court systems. Given the uniqueness of many of the practices within the Manhattan Youth Part I believe that research that attempts to understand the impact, if any, of these divergent practices on the feelings, attitudes, and actions of the youth themselves to be of great importance. Bishop (2000) acknowledges the importance of studies that survey the perspectives of youth in that they, “shed light on the consequences of transfer from the vantage point of offenders. They tune in to the subjective, cognitive and affective dimensions of the ways processing and incarceration are experienced, dimensions that are not tapped into by other research methods” (135). Bishop and Frazier (2000) in a study where they interviewed youth reported differences in youths’ own descriptions of their experiences in the criminal and juvenile system, with many viewing the criminal process to be more unfair and punishment driven than the juvenile court. Further, as Grisso & Schwartz (2000) state:

“Respect for the legal process and for society’s rules is not likely to be engendered in a youth who is shuffled thorough courts as a mere object about

whom persons in authority make decisions. But taking steps to improve youths' grasp of the nature of the legal process they are enduring and assuring that the process is fair offers the possibility of promoting youths' respect for law and the beginning of a sense of citizenship." (70-71)

After observing the day to day practices in the Manhattan Youth Part and interviewing many of the those involved in the part's day to day operations I am convinced that not just the outcomes of criminal justice policy, but as Grisso and Schwartz suggest in the above quote, the process of justice itself is important, particularly in regards to young people. Day to day practices in the Manhattan Youth Part, which include treating young people as individual human beings, remaining cognizant of their social status as adolescents, treating fragile families with respect, allowing family members a voice in the court, and prioritizing community safety and responsibility as well as child saving, should be no less important a focus of your inquiry simply because their results are harder to quantify. Thorough investigations of "what works" must include research for all angles.

What is the Proper Response to Adolescent Law-Breaking?

Given the known reality of the high costs and low return of incarceration in terms of reducing recidivism, how best are we to respond to violent youthful transgression? And does this study of day to day practices in the Manhattan Youth Part help us answer that question? Three things were made very clear from my research. First, most all of the young people I observed had been involved, to varying degrees, in acts of violent and dangerous transgression. Second, as Zimring (1998) reminds us in *American Youth Violence*, young offenders don't become older when they offend – they remain youth regardless of their alleged offense and courts mandated to respond to youthful transgression must contend with this fact. Third, one simple fact of the Youth Part – and a

fact of most all courts in the country mandated to deal with young offenders – is that, as Judge Corriero stated on our first meeting, “most of these kids were victims long before they were ever perpetrators.” Any attempts to deal with, contain, respond to, treat, deter, or even punish these kids will not be successful if it fails to take into account all of these factors.

In looking for best practices, Scott and Steinberg (2003) suggest that “a model under which immaturity mitigates responsibility – but does not excuse the criminal acts of youths who are beyond childhood – is more compatible with conventional theories of criminal responsibility and the standard doctrines and practices of the criminal law” (2). Butts and Mitchell (2000), in their attempt to provide policy makers with a workable solution to the current messy and bifurcated systems of juvenile and criminal justice that make up the current response to adolescent transgression, suggest an integrated court structure:

An integrated process would have to recognize that adolescents are not adults, that the factors bringing youths to court require special consideration, and that the entire court process should involve an individualized, problem-solving approach rather than simply fact finding and sentencing.” (206)

The authors go on to suggest that policy makers “draw on the innovations emerging from drug courts and other specialized courts, including gun courts and domestic violence courts” (206). The authors list the main methods utilized in these various specialized court settings:

- Treatment and rehabilitation programs are individually matched to offender characteristics
- Judges personally supervise treatment agreements with offenders and monitor their compliance
- The court uses a combination of immediate penalties and rewards that are contingent on offender behavior

- The entire process relies heavily on community-based programs for delivering services and sanctions. (207)

The model suggested by Butts and Mitchell is the model used on a day to day basis in the Manhattan Youth Part. The part then, since 1992, has been engaged in an experiment like that proposed by Butts and Mitchell to develop a set of practices that finds mechanisms for holding young people accountable for their (often violent) actions (or their complicity with the violent actions of others) while at the same time acknowledging the reality of the true challenges these young people and their families face. Kids, mandated by law to be “tried as adults” are largely treated as the adolescents they are and although the law requires that their cases be handled in a criminal court as though they were adults, the reality of their adolescence is acknowledged and every attempt is given, when and where appropriate, to treat them as redeemable, as salvageable. Thus, the Manhattan Youth Part has developed a re-conceptualized *parens patriae* style of justice, creatively redesigned to fit within the statutory constraints and legal cultural context of a criminal court. The part, with its attention to the individual realities of the kids lives and an emphasis on the now passé ideal of rehabilitation of wayward youth, operates in a manner which harkens back to the best promise of the early juvenile court reforms and therefore puts itself at odds with the very concept of trying youth as adults – the idea that the nature of their alleged criminal transgressions shifts their status from that of adolescent to adult.

In creating a specialized place apart the Manhattan Youth Part casts doubt upon the practicality and tenability of this now common criminal justice response to delinquent youth and upon current retributive practices in general. The part provides a model for

best practices for how to respond to transgressive youth – a model that simultaneously endeavors to protect the community and to save children. Such aspirations are worth the effort, for as James Baldwin stated, “these are all our children. We will all profit by, or pay for, whatever they become.”⁷⁴

⁷⁴ Quoted in Butterfield (1995 n.p.).

APPENDIX A – A Summary of Transfer Provisions in the US (As of the end of the 2002 legislative sessions)

	Oldest Age for Juvenile Court Jurisdiction	Judicial Waiver			Prosecutorial Waiver	Statutory Exclusion	Once an Adult, Always an Adult
		Discretionary	Presumptive	Mandatory			
Total # of states		45	15	15	15	29	34
Alabama	17	x					x
Alaska	17	x					
Arizona	17	x			x	x	x
Arkansas	17	x			x		
California	17	x	x		x	x	x
Colorado	17	x	x		x		
Connecticut	15			x			
Delaware	17	x		x		x	x
DC	17	x	x		x		x
Florida	17				x	x	x
Georgia	16			x	x	x	
Hawaii	17	x					x
Idaho	17	x				x	x
Illinois	16	x	x	x		x	x
Indiana	17	x		x		x	x
Iowa	17	x				x	x
Kansas	17	x	x				x
Kentucky	17	x		x			
Louisiana	16	x		x	x	x	
Maine	17	x	x				x
Maryland	17	x				x	x
Massachusetts	16					x	x
Michigan	16	x			x		
Minnesota	17	x	x			x	x
Mississippi	17	x				x	x
Missouri	16	x					
Montana	17				x	x	x
Nebraska	17				x		
Nevada	17	x	x			x	x
New Hampshire	16	x	x				
New Jersey	17	x	x	x			
New Mexico	17					x	x

	Oldest Age for Juvenile Court Jurisdiction	Judicial Waiver			Prosecutorial Waiver	Statutory Exclusion	Once an Adult, Always an Adult
		Discretionary	Presumptive	Mandatory			
New York	15					x	x
North Carolina	15	x		x			
North Dakota	17	x	x	x			
Ohio	17	x		x			
Oklahoma	17	x			x	x	x
Oregon	17	x				x	x
Pennsylvania	17	x	x			x	x
Rhode Island	1	x	x	x			
South Carolina	16	x		x		x	x
South Dakota	17	x				x	x
Tennessee	17	x					
Texas	16	x					
Utah	17	x	x			x	x
Vermont	17	x			x	x	x
Virginia	17	x		x	x		
Washington	17	x				x	x
West Virginia	17	x		x			
Wisconsin	16	x				x	x
Wyoming	17	x			x		

Source: Griffin, P. (2003) *Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws*. Pittsburgh, PA: National Center for Juvenile Justice.

APPENDIX B

Details of Juvenile Offender Offenses

CHARGE	FELONY CLASS	AGE	DESCRIPTION	MINIMUM SENTENCE	MAXIMUM SENTENCE
MURDER 2	A	13/14/ 15	<p>A person is guilty of murder in the second degree as a Juvenile Offender when:</p> <ol style="list-style-type: none"> 1. With intent to cause the death of another person, he causes the death of such person or of a third person (<i>at 13, 14 or 15</i>). 2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person (<i>at 13, 14, or 15</i>). 3. Acting alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight there from, he, or another participant, if there be any, causes the death of a person other than one of the participants except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime (<i>at 14 or 15 only</i>). [NY P.L. 125.25(1)(2)] 	<p>13: 5-9 14/15: 7½</p>	<p>13: LIFE 14/15: LIFE</p>

ARSON 1	A	14/15	<p>A person is guilty of arson in the first degree as a Juvenile Offender when:</p> <p>1. He intentionally damages a building or motor vehicle by causing an explosion or a fire and when,</p> <p>(a) such explosion or fire is caused by an incendiary device propelled, thrown or placed inside or near such building or motor vehicle; or when such explosion or fire is caused by an explosive; or when such explosion or fire either (i) causes serious physical injury to another person other than a participant, or (ii) the explosion or fire was caused with the expectation or receipt of financial advantage or pecuniary profit by the actor; and when</p> <p>(b) another person who is not a participant in the crime is present in such building or motor vehicle at the time; and</p> <p>(c) the defendant knows that fact or the circumstances are such as to render the presence of such person therein a reasonable possibility.</p> <p>As used in this section, "incendiary device" means a breakable container designed to explode or produce uncontained combustion upon impact, containing flammable liquid and having a wick or a similar device capable of being ignited. [NY P.L. 150.20]</p>	4-6	12-15
KIDNAPPING 1	A	14/15	<p>A person is guilty of kidnapping in the first degree as a Juvenile Offender when he abducts another person and when:</p> <p>1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct,</p>	4-6	12-15

			<p>or to refrain from engaging in particular conduct; or</p> <p>2. He restrains the person abducted for a period of more than twelve hours with intent to:</p> <p>(a) Inflict physical injury upon him or violate or abuse him sexually; or</p> <p>(b) Accomplish or advance the commission of a felony; or</p> <p>(c) Terrorize him or a third person; or</p> <p>(d) Interfere with the performance of a governmental or political function; or</p> <p>3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. [NY P.L. 135.25]</p>		
AGGRAVATED SEXUAL ABUSE 1	B	14/15	<p>A person is guilty of aggravated sexual abuse in the first degree as a Juvenile Offender when:</p> <p>1. He inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person:</p> <p>(a) By forcible compulsion; or</p> <p>(b) When the other person is incapable of consent by reason of being physically helpless; or</p> <p>(c) When the other person is less than eleven years old.</p> <p>2. Conduct performed for a valid medical purpose does not violate the provisions of this section. [NY P.L. 130.70]</p>	1-3 $\frac{1}{3}$	3-10
ARSON 2	B	14/15	<p>A person is guilty of arson in the second degree as a Juvenile Offender when he intentionally damages a building or motor</p>	1-3 $\frac{1}{3}$	3-10

			<p>vehicle by starting a fire, and when</p> <p>(a) another person who is not a participant in the crime is present in such building or motor vehicle at the time, and</p> <p>(b) the defendant knows that fact or the circumstances are such as to render the presence of such a person therein a reasonable possibility. [NY P.L. 150.15]</p>		
ASSAULT 1	B	14/15	<p>A person is guilty of assault in the first degree as a Juvenile Offender when:</p> <p>1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or</p> <p>2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person. [NY P.L. 120.10(1)(2)]</p>	1-3 $\frac{1}{3}$	3-10
ATTEMPTED KIDNAPPING 1	B	14/15	<p>A person is guilty of attempted kidnapping in the first degree as a Juvenile Offender when, with intent to commit the following crime, he engages in conduct which tends to effect the commission of such a crime:</p> <p>1. His intent is to compel a third person to pay or deliver money or property as ransom, or to engage in other particular conduct, or to refrain from engaging in particular conduct; or</p> <p>2. He restrains the person abducted for a period of more than twelve hours with intent to:</p> <p>(a) Inflict physical injury upon him or violate or abuse him</p>	1-3 $\frac{1}{3}$	3-10

			<p>sexually; or</p> <p>(b) Accomplish or advance the commission of a felony; or</p> <p>(c) Terrorize him or a third person; or</p> <p>(d) Interfere with the performance of a governmental or political function; or</p> <p>3. The person abducted dies during the abduction or before he is able to return or to be returned to safety. [NY P.L. 110/135.25]</p>		
ATTEMPTED MURDER 2	B	14/15	<p>A person is guilty of attempted murder in the second degree as a Juvenile Offender when, with intent to commit the following crime, he engages in conduct which tends to effect the commission of such a crime:</p> <p>1. With intent to cause the death of another person, he causes the death of such person or of a third person;</p> <p>2. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes the death of another person; or</p> <p>3. Acting either alone or with one or more other persons, he commits or attempts to commit robbery, burglary, kidnapping, arson, rape in the first degree, criminal sexual act in the first degree, sexual abuse in the first degree, aggravated sexual abuse, escape in the first degree, or escape in the second degree, and, in the course of and in furtherance of such crime or of immediate flight there from, he, or another participant, if there be any, causes the death of a person other than one of</p>	1-3 $\frac{1}{3}$	3-10

			<p>the participants; except that in any prosecution under this subdivision, in which the defendant was not the only participant in the underlying crime, it is an affirmative defense that the defendant:</p> <p>(a) Did not commit the homicidal act or in any way solicit, request, command, importune, cause or aid the commission thereof; and</p> <p>(b) Was not armed with a deadly weapon, or any instrument, article or substance readily capable of causing death or serious physical injury and of a sort not ordinarily carried in public places by law-abiding persons; and</p> <p>(c) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article or substance; and</p> <p>(d) Had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious physical injury; or</p> <p>4. Under circumstances evincing a depraved indifference to human life, and being eighteen years old or more the defendant recklessly engages in conduct which creates a grave risk of serious physical injury or death to another person less than eleven years old and thereby causes the death of such person. [NY P.L. 110/125.25]</p>		
BURGLARY 1	B	14/15	<p>A person is guilty of burglary in the first degree as a Juvenile Offender when:</p> <p>He knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein, and when, in effecting entry or</p>	1-3 $\frac{1}{3}$	3-10

			<p>while in the dwelling or in immediate flight there from, he or another participant in the crime:</p> <ol style="list-style-type: none"> 1. Is armed with explosives or a deadly weapon; or 2. Causes physical injury to any person who is not a participant in the crime; or 3. Uses or threatens the immediate use of a dangerous instrument; or 4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; except that in any prosecution under this subdivision, it is an affirmative defense that such pistol, revolver, rifle, shotgun, machine gun or other firearm was not a loaded weapon from which a shot, readily capable of producing death or other serious physical injury, could be discharged. [NY P.L. 140.30] 		
CRIMINAL SEX ACT 1 (Formerly "SODOMY")	B	14/15	<p>A person is guilty of criminal sexual act in the first degree as a Juvenile Offender when he engages in oral sexual conduct or anal sexual conduct with another person:</p> <ol style="list-style-type: none"> 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically helpless. [NY P.L. 130.50(1)(2)]. 	1-3 $\frac{1}{3}$	3-10
MANSLAUGHTER 1	B	14/15	<p>A person is guilty of manslaughter in the first degree as a Juvenile Offender when:</p> <ol style="list-style-type: none"> 1. With intent to cause serious physical injury to another person, he causes the death of such person or of a third person; or 2. With intent to cause the death of another person, he causes 	1-3 $\frac{1}{3}$	3-10

			<p>the death of such person or of a third person under circumstances which do not constitute murder because he acts under the influence of extreme emotional disturbance, as defined in paragraph</p> <p>(a) of subdivision one of section 125.25. The fact that homicide was committed under the influence of extreme emotional disturbance constitutes a mitigating circumstance reducing murder to manslaughter in the first degree and need not be proved in any prosecution initiated under this subdivision; or</p> <p>3. He commits upon a female pregnant for more than twenty-four weeks an abortifacient act which causes her death, unless such abortifacient act is justifiable pursuant to subdivision three of section 125.05. [NY P.L. 125.20]</p>		
RAPE 1	B	14/15	<p>A person is guilty of rape in the first degree as a Juvenile Offender when he or she engages in sexual intercourse with another person:</p> <ol style="list-style-type: none"> 1. By forcible compulsion; or 2. Who is incapable of consent by reason of being physically helpless. [NY P.L. 130.35(1)(2)] 	1-3$\frac{1}{3}$	3-10
ROBBERY 1	B	14/15	<p>A person is guilty of robbery in the first degree as a Juvenile Offender when:</p> <p>He forcibly steals property and when, in the course of the commission of the crime of immediate flight there from, he or another participant in the crime:</p> <ol style="list-style-type: none"> 1. Causes serious physical injury to any person who is not a 	1-3$\frac{1}{3}$	3-10

			<p>participant in the crime; or</p> <p>2. Is armed with a deadly weapon; or</p> <p>3. Uses or threatens the immediate use of a dangerous instrument; or</p> <p>4. Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. [NY P.L. 160.15]</p>		
BURGLARY 2	C	14/15	<p>A person is guilty of burglary in the second degree as a Juvenile Offender when:</p> <p>He knowingly enters or remains unlawfully in a building with intent to commit a crime therein, and when:</p> <p>1. In effecting entry or while in the building or in immediate flight there from, he or another participant in the crime:</p> <p>(a) Is armed with explosives or a deadly weapon; or (b) causes physical injury to any person who is not a participant in the crime; or (c) uses or threatens the immediate use of a dangerous instrument; or (d) displays what appears to be a pistol , revolver, rifle, shotgun, machine gun or other firearm. [NY P.L. 140.25(1)]</p>	1-2 $\frac{1}{3}$	3-7
ROBBERY 2	C	14/15	<p>A person is guilty of robbery in the second degree as a Juvenile Offender when he forcibly steals property and when:</p> <p>In the course of the commission of the crime or of immediate flight there from, he or another participant in the crime:</p> <p>(a) Causes physical injury to any person who is not a participant in the crime; or</p>	1-2 $\frac{1}{3}$	3-7

			(b) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm. [NY P.L. 160.10(2)]		
CRIMINAL POSSESSION OF A WEAPON 2 (when weapon is possessed on school grounds)	C	14/15	<p>A person is guilty of criminal possession of a weapon in the second degree as a Juvenile Offender when, on school grounds:</p> <p>With intent to use the same unlawfully against another, such person:</p> <ol style="list-style-type: none"> 1. Possesses a machine-gun; or 2. A loaded firearm; or 3. a disguised gun. <p>On school grounds meaning: (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within on thousand feet of the real property boundary line comprising any such school. [NY P.L. 265.03/220.00(14)]</p>	1-2 $\frac{1}{3}$	3-7

<p>CRIMINAL POSSESSION OF A WEAPON 3 (when weapons is possessed on school grounds)</p>	<p>D</p>	<p>14/15</p>	<p>A person is guilty of criminal possession of a weapon in the third degree as a Juvenile Offender when, on school grounds:</p> <ol style="list-style-type: none"> 1. Such person commits the crime of criminal possession of a weapon in the fourth degree as defined in subdivision one, two, three or five of section 265.01, and has been previously convicted of any crime; 2. Such person possesses any explosive or incendiary bomb, bombshell, firearm silencer, machine-gun or any other firearm or weapon simulating a machine-gun and which is adaptable for such use; or 3. Such person knowingly possesses a machine-gun, firearm, rifle or shotgun which has been defaced for the purpose of concealment or prevention of the detection of a crime or misrepresenting the identity of such machine-gun, firearm, rifle or shotgun; or 4. Such person possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven, constitute a violation of this section if such possession takes place in such person's home or place of business; or 5. (i) Such person possesses three or more firearms; or (ii) such person possesses a firearm and has been previously convicted of a felony or a class A misdemeanor defined in this chapter within the five years immediately preceding the commission of the offense and such possession did not take place in the person's home or place of business; or 6. Such person knowingly possesses any disguised gun; or 	<p>1-1$\frac{1}{3}$</p>	<p>3-4</p>
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		<p>7. Such person possesses an assault weapon; or</p> <p>8. Such person possesses a large capacity ammunition feeding device.</p> <p>On school grounds meaning: (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within on thousand feet of the real property boundary line comprising any such school. [NY P.L. 265.02/220.00(14)]</p>		
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APPENDIX C

1. Data on Juvenile Offender Arrests

	Brooklyn		Bronx		Manhattan		Queens		Staten Island		CITYWIDE	
	#	%	#	%	#	%	#	%	#	%	#	%
1995	765	39%	459	23%	346	18%	339	17%	55	3%	1964	100%
1996	664	37%	422	23%	316	17%	365	20%	41	2%	1808	100%
1997	477	37%	298	23%	278	22%	196	15%	41	3%	1290	100%
1998*	800	33%	533	22%	439	18%	551	23%	71	3%	2394	100%
1999	851	35%	494	21%	409	17%	586	24%	61	3%	2401	100%
2000	659	36%	356	20%	288	16%	459	25%	47	3%	1809	100%
2001	664	39%	340	20%	273	16%	377	22%	32	2%	1686	100%
2002	613	39%	317	20%	261	17%	328	21%	37	2%	1556	100%
2003	648	39%	348	21%	257	15%	345	21%	74	4%	1672	100%
2004	543	33%	363	22%	299	18%	384	23%	55	3%	1644	100%
2005	655	34%	473	24%	345	18%	423	22%	57	3%	1953	100%

*Criminal Possession of a Weapon 2 and 3 were added to the list of JO charges in 1998
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

	Brooklyn			Bronx			Manhattan			Queens			Staten Island			CITYWIDE			CITYWIDE PERCENTAGE OF TOTAL		
	13	14	15	13	14	15	13	14	15	13	14	15	13	14	15	13	14	15	13	14	15
1995	1	267	437	0	155	262	0	112	207	0	100	197	0	17	36	1	651	1139	0.1%	36.3%	63.6%
1996	0	258	404	0	162	259	0	128	186	0	155	207	0	15	25	0	718	1081	0.0%	39.9%	60.1%
1997	0	117	202	0	79	153	0	74	128	0	49	92	0	10	21	0	329	596	0.0%	35.6%	64.4%
1998	0	309	491	1	232	300	1	162	276	0	230	320	0	31	40	2	964	1427	0.1%	40.3%	59.6%
1999	3	235	307	1	155	158	0	86	164	0	160	249	0	12	31	4	668	909	0.3%	42.3%	57.5%
2000	0	261	398	0	137	215	0	105	179	1	184	271	0	14	31	1	701	1094	0.1%	39.0%	60.9%
2001	0	283	381	0	142	198	0	116	157	0	158	209	0	14	18	0	713	963	0.0%	42.5%	57.5%
2002	1	243	369	0	126	191	0	102	159	0	126	202	0	11	26	1	608	947	0.1%	39.1%	60.9%
2003	0	263	385	0	131	217	0	100	157	0	121	224	0	31	43	0	646	1026	0.0%	38.6%	61.4%
2004	0	236	307	0	138	225	0	117	182	2	148	234	0	23	32	2	662	980	0.1%	40.3%	59.6%
2005	0	218	437	2	181	290	0	147	198	0	161	262	0	25	32	2	732	1219	0.1%	37.5%	62.4%

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Juvenile Offender Arrests by Gender, New York City, 1995-2005														
	Brooklyn		Bronx		Manhattan		Queens		Staten Island		CITYWIDE		CITYWIDE PERCENTAGE OF TOTAL	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
1995	83	681	63	396	43	302	33	303	6	49	228	1731	12%	88%
1996	105	558	64	358	34	282	47	318	7	34	257	1150	18%	82%
1997	68	409	31	264	23	255	22	173	8	33	152	1134	12%	88%
1998	116	684	81	452	71	367	52	498	9	62	329	2063	14%	86%
1999	127	722	72	422	50	359	95	490	8	53	352	2046	15%	85%
2000	66	591	44	312	41	247	54	405	7	40	212	1595	12%	88%
2001	83	581	53	287	42	230	42	335	8	24	228	1457	14%	86%
2002	62	550	26	291	26	234	31	297	2	35	147	1407	9%	91%
2003	71	577	54	294	25	232	48	297	13	61	211	1461	13%	87%
2004	46	496	28	335	56	243	48	336	6	49	184	1459	11%	89%
2005	71	584	64	409	42	303	62	361	11	46	250	1703	13%	87%

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Juvenile Offender Arrests by Arrest Charge, New York City, 1995-2005												
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
Murder 2	35	23	25	17	21	16	7	5	4	11	10	
Kidnapping 1	3	3	2	2	0	0	1	0	0	0	1	
Arson 1	0	0	1	2	0	3	0	3	0	2	0	
Total A Felonies	38	26	28	21	21	19	8	8	4	13	11	
Att. Murder 2	57	33	31	27	27	16	16	6	22	17	20	
Robbery 1	889	632	635	673	606	428	338	343	333	386	399	
Assault 1*	83	67	78	135	91	81	72	62	74	96	68	
Manslaughter 1	0	0	0	1	1	0	0	0	0	0	0	
Rape 1	34	40	39	49	31	34	37	36	30	21	21	
Sodomy 1	23	14	22	34	41	53	49	29	39	40	35	
Agg. Sexual Abuse	0	1	2	2	2	1	2	1	2	4	1	
Burglary 1	15	20	15	18	25	18	12	5	4	9	9	
Arson 2	18	9	7	6	14	13	12	14	4	3	6	
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0	
Total B Felonies	1119	816	829	945	838	644	538	496	508	549	559	
Robbery 2	732	825	378	1146	1149	859	861	799	922	856	1149	
Burglary 2	75	141	55	277	196	147	137	121	106	109	91	
Poss. Weapon 2	n/a	n/a	n/a	5	56	49	51	43	45	37	45	
Poss. Weapon 3	n/a	n/a	n/a	0	141	91	91	89	87	80	98	
Total C Felonies	807	966	433	1428	1542	1146	1140	1052	1160	1082	1383	
TOTAL	1964	1808	1290	2394	2401	1809	1686	1556	1672	1644	1953	

*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Juvenile Offender Arrests by Arrest Charge, Brooklyn, 1995-2005											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Murder 2	17	11	1	3	9	5	3	3	2	4	3
Kidnapping 1	1	2	2	0	0	0	0	0	0	0	0
Arson 1	0	0	1	0	0	1	0	0	0	0	0
Total A Felonies	18	13	16	3	9	6	3	3	2	4	3
Att. Murder 2	19	18	15	6	2	4	2	2	12	3	4
Robbery 1	357	237	208	233	218	184	138	141	133	133	131
Assault 1*	31	15	26	40	37	34	27	20	24	23	26
Manslaughter 1	0	0	0	0	1	0	0	0	0	0	0
Rape 1	19	21	19	18	14	17	16	14	9	6	2
Sodomy 1	11	6	7	11	15	15	21	7	13	6	10
Agg. Sexual Abuse	0	0	0	1	1	1	2	0	0	0	0
Burglary 1	10	6	6	8	13	3	5	0	1	3	0
Arson 2	6	3	2	0	5	4	0	5	0	0	1
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Total B Felonies	453	306	283	317	306	262	211	189	192	174	174
Robbery 2	268	311	155	408	396	293	329	316	357	301	384
Burglary 2	26	34	23	71	47	37	40	51	38	21	30
Poss. Weapon 2	n/a	n/a	n/a	1	33	23	31	21	16	14	24
Poss. Weapon 3	n/a	n/a	n/a	0	60	38	50	33	43	29	40
Total C Felonies	294	345	178	480	538	391	450	421	454	365	478
TOTAL	765	664	477	800	851	659	664	613	648	543	655
*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.											
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)											

Juvenile Offender Arrests by Arrest Charge, Bronx, 1995-2005											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Murder 2	8	1	4	7	7	5	3	2	1	2	4
Kidnapping 1	0	0	0	0	0	0	1	0	0	0	0
Arson 1	0	0	0	0	0	0	0	3	0	2	0
Total A Felonies	8	1	4	7	7	5	4	5	1	4	4
Att. Murder 2	20	9	9	12	14	6	6	2	4	4	13
Robbery 1	203	150	136	164	109	58	49	71	63	87	108
Assault 1*	31	23	18	39	22	18	20	22	28	17	25
Manslaughter 1	0	0	0	0	0	0	0	0	0	0	0
Rape 1	7	6	13	24	13	11	10	19	10	5	9
Sodomy 1	7	5	6	17	10	20	15	14	12	16	14
Agg. Sexual Abuse	0	1	1	1	1	0	0	1	2	3	0
Burglary 1	4	7	4	4	6	4	4	0	1	0	5
Arson 2	7	5	2	2	4	4	7	4	0	1	5
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Total B Felonies	279	206	189	263	179	121	111	133	120	133	179
Robbery 2	148	174	93	198	218	169	165	117	181	170	231
Burglary 2	24	41	12	62	51	22	35	25	15	32	19
Poss. Weapon 2	n/a	n/a	n/a	3	7	15	9	8	12	6	10
Poss. Weapon 3	n/a	n/a	n/a	0	32	24	16	29	19	18	30
Total C Felonies	172	215	105	263	308	230	225	179	227	226	290
TOTAL	459	422	298	533	464	356	340	317	348	363	473
*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.											
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)											

Juvenile Offender Arrests by Arrest Charge, Manhattan, 1995-2005											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Murder 2	2	4	5	2	3	1	1	0	0	0	2
Kidnapping 1	1	1	0	2	0	0	0	0	0	0	1
Arson 1	0	0	0	0	0	0	0	0	0	0	0
Total A Felonies	3	5	5	4	3	1	1	0	0	0	3
Att. Murder 2	6	3	2	5	4	2	4	1	0	5	0
Robbery 1	149	148	135	133	133	80	68	68	57	83	80
Assault 1*	9	16	26	33	1	9	16	14	10	11	6
Manslaughter 1	0	0	0	0	0	0	0	0	0	0	0
Rape 1	5	3	5	6	2	1	6	1	4	6	4
Sodomy 1	4	2	8	5	6	8	4	3	8	11	5
Agg. Sexual Abuse	0	0	1	0	0	0	0	0	0	1	1
Burglary 1	0	3	1	1	1	4	3	0	0	0	2
Arson 2	4	0	2	2	2	1	1	1	3	2	0
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Total B Felonies	177	175	180	185	159	106	102	88	82	119	98
Robbery 2	160	128	84	223	208	135	139	141	152	149	213
Burglary 2	6	8	9	26	18	26	13	7	10	5	16
Poss. Weapon 2	n/a	n/a	n/a	1	9	6	6	9	6	9	5
Poss. Weapon 3	n/a	n/a	n/a	0	12	14	12	16	7	17	10
Total C Felonies	166	136	93	250	247	181	170	173	175	180	244
TOTAL	346	316	278	439	409	288	233	261	257	299	345
*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.											
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)											

Juvenile Offender Arrests by Arrest Charge, Queens, 1995-2005											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Murder 2	7	4	1	4	2	4	0	0	1	5	0
Kidnapping 1	1	0	0	0	0	0	0	0	0	0	0
Arson 1	0	0	0	2	0	2	0	0	0	0	0
Total A Felonies	8	4	1	6	2	6	0	0	1	5	0
Att. Murder 2	12	3	5	3	7	4	4	1	6	5	2
Robbery 1	165	91	136	125	130	96	78	58	63	79	74
Assault 1*	9	12	5	17	21	19	9	6	10	13	10
Manslaughter 1	0	0	0	1	0	0	0	0	0	0	0
Rape 1	2	6	2	1	2	4	2	2	6	1	5
Sodomy 1	1	1	1	1	9	7	8	5	5	3	4
Agg. Sexual Abuse	0	0	0	0	0	0	0	0	0	0	0
Burglary 1	1	4	4	5	5	6	0	3	2	6	2
Arson 2	1	1	1	2	2	3	4	3	1	0	0
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Total B Felonies	191	118	154	155	176	139	105	78	93	107	97
Robbery 2	123	197	32	279	306	244	212	205	192	205	283
Burglary 2	17	46	9	111	73	53	46	34	35	43	24
Poss. Weapon 2	n/a	n/a	n/a	0	6	4	4	3	11	8	5
Poss. Weapon 3	n/a	n/a	n/a	0	23	13	10	8	13	16	14
Total C Felonies	140	243	41	390	408	314	272	250	251	272	326
TOTAL	339	365	196	551	586	459	377	328	345	384	423
*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.											
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)											

Juvenile Offender Arrests by Arrest Charge, Staten Island, 1995-2005											
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Murder 2	1	3	2	1	0	1	0	0	0	0	1
Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Arson 1	0	0	0	0	0	0	0	0	0	0	0
Total A Felonies	1	3	2	1	0	1	0	0	0	0	1
Att. Murder 2	0	0	0	1	0	0	0	0	0	0	1
Robbery 1	15	6	20	18	16	10	5	5	17	4	6
Assault 1*	3	1	3	6	0	1	0	0	2	5	1
Manslaughter 1	0	0	0	0	0	0	0	0	0	0	0
Rape 1	1	4	0	0	0	1	3	0	1	3	1
Sodomy 1	0	0	0	0	1	2	1	0	1	4	2
Agg. Sexual Abuse	0	0	0	0	0	0	0	0	0	0	0
Burglary 1	0	0	0	0	0	1	0	0	0	0	0
Arson 2	0	0	0	0	1	1	0	1	0	0	0
Att. Kidnapping 1	0	0	0	0	0	0	0	0	0	0	0
Total B Felonies	19	11	23	25	18	16	9	8	21	16	11
Robbery 2	33	15	14	38	21	18	16	20	40	31	383
Burglary 2	2	12	2	7	7	9	3	4	8	8	2
Poss. Weapon 2	n/a	n/a	n/a	0	1	1	1	2	0	0	1
Poss. Weapon 3	n/a	n/a	n/a	0	14	2	3	3	5	0	4
Total C Felonies	35	27	16	45	43	30	23	29	53	39	45
TOTAL	55	41	41	71	61	47	32	37	74	55	57
*Prior to Nov 1996 Assault 1 was classified as a C felony level offense.											
Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)											

2. Data on Juvenile Offender Case Processing

NEW YORK CITY											NEW YORK CITY					
	NEW YORK CITY					NYC TOTAL	SUB URBAN	UPSTATE	STATE TOTAL	NYC AS % OF STATE	New York as % of					
	BRONX	KINGS	YORK	QUEENS	RICHMOND						Bronx as % of NYC	Kings as % of NYC	York as % OF NYC	Queens as % of NYC	Richmond as % of NYC	
1984	91	123	96	61	2	373	47	27	447	83%	24%	33%	26%	16%	1%	
1985	85	153	96	65	3	402	39	62	503	80%	21%	38%	24%	16%	1%	
1986	77	126	84	65	5	357	37	34	428	83%	22%	35%	24%	18%	1%	
1987	82	71	50	53	2	258	16	23	297	87%	32%	28%	19%	21%	1%	
1988	88	134	82	48	1	353	24	35	412	86%	25%	38%	23%	14%	0%	
1989	151	117	118	67	2	455	23	26	504	90%	33%	26%	26%	15%	0%	
1990	149	186	157	160	9	661	25	19	705	94%	23%	28%	24%	24%	1%	
1991	155	239	130	151	6	681	43	50	774	88%	23%	35%	19%	22%	1%	
1992	130	284	136	147	4	701	36	64	801	88%	19%	41%	19%	21%	1%	
1993	158	209	127	181	6	681	46	54	781	87%	23%	31%	19%	27%	1%	
1994	154	177	145	179	11	666	63	68	797	84%	23%	27%	22%	27%	2%	
1995	135	165	100	146	6	552	46	62	660	84%	24%	30%	18%	26%	1%	
1996	121	164	87	78	7	457	50	60	567	81%	26%	36%	19%	17%	2%	
1997	91	154	83	98	8	434	38	59	531	82%	21%	35%	19%	23%	2%	
1998	131	100	92	86	6	415	35	38	488	85%	32%	24%	22%	21%	1%	
1999	73	114	105	82	10	384	32	43	459	84%	19%	30%	27%	21%	3%	
2000	37	89	63	51	4	244	42	39	325	75%	15%	36%	26%	21%	2%	
2001	41	64	55	57	6	223	22	59	304	73%	18%	29%	25%	26%	3%	
2002	52	47	60	34	4	197	41	51	289	68%	26%	24%	30%	17%	2%	
2003	62	45	54	72	4	237	49	46	332	71%	26%	19%	23%	30%	2%	
2004	69	68	59	93	3	292	34	63	389	75%	24%	23%	20%	32%	1%	
TOTAL	2132	2829	1979	1974	109	9023	788	982	10793	84%	24%	31%	22%	22%	1%	

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

**NEW YORK CITY JUVENILE OFFENDER (JO) INDICTMENTS BY GENDER,
1984-2004**

	TOTAL	FEMALE	MALE	Unknown	Percentage	
					Female	Male
1984	373	14	359	0	3.8%	96.2%
1985	402	10	392	0	2.5%	97.5%
1986	357	24	333	0	6.7%	93.3%
1987	258	7	251	0	2.7%	97.3%
1988	353	16	337	0	4.5%	95.5%
1989	455	23	428	4	5.1%	94.1%
1990	661	58	602	1	8.8%	91.1%
1991	681	44	637	0	6.5%	93.5%
1992	701	61	639	1	8.7%	91.2%
1993	681	60	620	1	8.8%	91.0%
1994	666	49	612	5	7.4%	91.9%
1995	552	48	503	1	8.7%	91.1%
1996	457	41	416	0	9.0%	91.0%
1997	434	44	390	0	10.1%	89.9%
1998	415	42	370	3	10.1%	89.2%
1999	384	48	336	0	12.5%	87.5%
2000	244	24	220	0	9.8%	90.2%
2001	223	17	205	1	7.6%	91.9%
2002	197	11	186	0	5.6%	94.4%
2003	237	24	212	1	10.1%	89.5%
2004	292	24	268	0	8.2%	91.8%
TOTAL	9023	689	8316	18	7.6%	92.2%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

Court Part at Supreme Court Disposition by Borough, 1995-2005

	Brooklyn		Bronx		Manhattan		Queens		CITYWIDE*	
	Non-Youth Part	Youth Part	Non-Youth Part	Youth Part	Non-Youth Part	Youth Part	Non-Youth Part	Youth Part	Non-Youth Part	Youth Part
1995	52%	48%	57%	43%	5%	95%	22%	78%	35%	65%
1996	34%	66%	51%	49%	6%	94%	44%	56%	34%	64%
1997	33%	67%	42%	58%	11%	89%	50%	50%	37%	63%
1998	19%	81%	69%	31%	6%	94%	58%	42%	41%	59%
1999	15%	85%	34%	66%	7%	93%	62%	38%	28%	72%
2000	10%	90%	19%	81%	0%	100%	71%	29%	21%	79%
2001	9%	91%	43%	57%	3%	97%	85%	15%	31%	69%
2002	17%	83%	15%	86%	0%	100%	72%	28%	27%	73%
2003	13%	87%	24%	76%	2%	98%	78%	22%	32%	68%
2004	19%	81%	43%	57%	0%	100%	77%	23%	40%	60%
2005	12%	88%	69%	31%	2%	98%	81%	19%	49%	51%

* Not including Staten Island

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

Juvenile Offender Supreme Court Sentences, New York City, 1995-2005

(Imp - Imprisonment, prob - probation, both - combination of imprisonment and probation)

	Brooklyn			Bronx			Manhattan			Queens			CITYWIDE*		
	Imp	prob	both	Imp	prob	both	Imp	prob	both	Imp	prob	both	Imp	prob	both
1995	46%	38%	11%	44%	49%	6%	46%	54%	1%	40%	44%	15%	44%	47%	8%
1996	57%	32%	11%	36%	54%	10%	48%	52%	-	41%	41%	9%	46%	44%	9%
1997	43%	35%	22%	43%	49%	8%	41%	57%	1%	31%	51%	18%	39%	47%	13%
1998	56%	25%	17%	34%	60%	4%	50%	50%	-	26%	68%	3%	39%	53%	6%
1999	60%	25%	14%	42%	48%	8%	18%	80%	-	28%	59%	10%	37%	50%	9%
2000	57%	29%	13%	54%	30%	15%	50%	50%	-	48%	42%	8%	53%	37%	9%
2001	52%	28%	15%	50%	39%	11%	32%	65%	2%	17%	65%	17%	38%	50%	11%
2002	47%	33%	21%	57%	44%	-	33%	67%	-	38%	44%	18%	41%	48%	10%
2003	46%	40%	13%	75%	19%	6%	26%	74%	-	24%	61%	11%	39%	52%	7%
2004	45%	44%	-	48%	45%	8%	47%	53%	-	31%	43%	26%	41%	48%	11%
2005	46%	48%	7%	46%	51%	4%	52%	43%	2%	34%	38%	27%	43%	44%	11%

* Not Including Staten Island

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Juvenile Offender Supreme Court Sentence by Felony Class,
Citywide,* 1995-2005**

(Imp - Imprisonment, prob - probation)
(both - combination of imprisonment and probation)

	<u>A Felonies</u>		<u>B Felonies</u>			<u>C or D Felonies</u>		
	<u>Imp</u>	<u>prob</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>
1995	93%	7%**	46%	45%	8%	34%	55%	8%
1996	100%	-	45%	45%	10%	37%	52%	8%
1997	100%	-	41%	46%	12%	30%	54%	17%
1998	100%	-	41%	52%	6%	21%	63%	8%
1999	100%	-	40%	47%	11%	31%	66%	3%
2000	86%	14%**	53%	37%	9%	45%	43%	12%
2001	100%	-	38%	49%	13%	35%	60%	3%
2002	100%	-	42%	44%	13%	33%	63%	5%
2003	100%	-	45%	46%	8%	28%	65%	6%
2004	-	-	39%	50%	11%	46%	43%	11%
2005	100%	-	49%	40%	11%	28%	57%	13%

* Not including Staten Island

**N=1

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Juvenile Offender Supreme Court Sentence by Felony Class,
Brooklyn, 1995-2005**

(Imp - Imprisonment, prob - probation)
(both - combination of imprisonment and probation)

	A Felonies		B Felonies			C or D Felonies		
	<u>Imp</u>	<u>prob</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>
1995	75%	25%*	47%	36%	13%	38%	48%	10%
1996	100%	-	56%	33%	11%	45%	40%	15%
1997	100%	-	38%	38%	25%	25%	55%	20%
1998	-	-	59%	24%	15%	50%	50%	-
1999	100%	-	59%	22%	17%	53%	41%	6%
2000	100%	-	56%	32%	11%	50%	25%	25%
2001	100%	-	50%	26%	20%	50%	42%	-
2002	-	-	44%	33%	22%	50%	33%	17%
2003	-	-	50%	35%	12%	38%	48%	14%
2004	-	-	46%	54%	-	40%	60%	-
2005	100%	-	42%	48%	10%	46%	55%	-

*N=1

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Juvenile Offender Supreme Court Sentence by Felony Class,
Bronx, 1995-2005**

(Imp - Imprisonment, prob - probation)
(both - combination of imprisonment and probation)

	<u>A Felonies</u>		<u>B Felonies</u>			<u>C or D Felonies</u>		
	<u>Imp</u>	<u>prob</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>
1995	100%	-	46%	49%	4%	32%	56%	9%
1996	100%	-	37%	49%	14%	33%	64%	3%
1997	100%	-	41%	48%	10%	38%	63%	-
1998	-	-	38%	59%	4%	17%	67%	8%
1999	-	-	43%	45%	10%	38%	63%	-
2000	100%	-	46%	36%	18%	75%	13%	13%
2001	-	-	54%	32%	14%	38%	63%	-
2002	-	-	56%	44%	-	60%	40%	-
2003	100%	-	76%	16%	8%	70%	30%	-
2004	-	-	48%	46%	6%	47%	41%	12%
2005	-	-	54%	42%	5%	21%	79%	-

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Juvenile Offender Supreme Court Sentence by Felony Class,
Manhattan, 1995-2005**

(Imp - Imprisonment, prob - probation)
(both - combination of imprisonment and probation)

	<u>A Felonies</u>		<u>B Felonies</u>			<u>C or D Felonies</u>		
	<u>Imp</u>	<u>prob</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>
1995	100%	-	51%	48%	1%	30%	70%	-
1996	100%	-	47%	53%	-	38%	62%	-
1997	100%	-	41%	57%	2%	39%	61%	-
1998	100%	-	55%	45%	-	25%	75%	-
1999	-	-	13%	84%	-	29%	71%	-
2000	-	100%*	59%	41%	-	29%	71%	-
2001	-	-	33%	65%	-	31%	69%	-
2002	100%	-	37%	59%	-	13%	87%	-
2003	-	-	37%	63%	-	8%	92%	-
2004	-	-	35%	65%	-	62%	38%	-
2005	-	-	58%	39%	-	44%	50%	6%

*N=1

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Juvenile Offender Supreme Court Sentence by Felony Class,
Queens, 1995-2005**

(Imp - Imprisonment, prob - probation)
(both - combination of imprisonment and probation)

	<u>A Felonies</u>		<u>B Felonies</u>			<u>C or D Felonies</u>		
	<u>Imp</u>	<u>prob</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>	<u>Imp</u>	<u>prob</u>	<u>both</u>
1995	100%	-	39%	46%	15%	38%	44%	16%
1996	100%	-	36%	49%	15%	35%	29%	18%
1997	100%	-	34%	56%	10%	16%	48%	37%
1998	-	-	25%	72%	3%	33%	50%	-
1999	100%	-	33%	51%	12%	6%	88%	6%
2000	100%	-	49%	40%	9%	25%	75%	-
2001	-	-	19%	64%	17%	-	75%	25%
2002	-	-	38%	41%	22%	39%	54%	8%
2003	-	-	27%	57%	14%	18%	71%	6%
2004	-	-	29%	43%	28%	35%	42%	23%
2005	-	-	44%	33%	23%	11%	47%	38%

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Total* Youthful Offender (YO) Adjudications (Felony Conviction Charge),
New York State and New York City, 1984-2004**

	TOTAL New York State	TOTAL New York City	New York City Counties					SPECIAL NARCOTICS
			BRONX	KINGS (Brooklyn)	New York (Manhattan)	QUEENS	RICHMOND (St. Island)	
1984	4363	2451	554	785	517	528	26	41
1985	4063	2303	572	765	440	463	27	36
1986	4269	2660	579	820	502	712	15	32
1987	4226	2705	640	782	433	678	25	147
1988	4650	3010	742	870	432	763	37	166
1989	4669	3127	775	862	523	749	20	198
1990	5018	3394	818	914	619	776	34	233
1991	5740	3983	796	1291	767	783	40	306
1992	5347	3645	804	1232	627	665	34	283
1993	5023	3388	882	957	574	640	46	289
1994	5052	3383	909	778	594	833	25	244
1995	5143	3349	871	680	605	778	61	354
1996	4948	2987	769	689	439	702	52	336
1997	4900	2991	803	650	465	715	59	299
1998	4254	2434	831	385	374	578	37	229
1999	3899	2174	731	303	479	448	29	184
2000	4065	2262	594	419	441	642	30	136
2001	3775	2069	628	479	303	518	20	121
2002	3613	1886	586	352	274	567	20	87
2003	3668	1808	554	325	293	555	23	58
2004	3856	1989	539	345	272	730	32	71
TOTAL	94541	57998	14977	14683	9973	13823	692	3850

**Included JOs and Non-JOs*

Source: New York State Division of Criminal Justice Services, Indictment Statistical System,
August 2005

**Percentage of Youthful Offender (YO)
Conditions of Supreme Court Sentences
All Charges, Juvenile Offenders (JO)
New York City,* 2000-2005**

CITYWIDE*

	JO Part	Non-JO Part
2000	72%	70%
2001	76%	85%
2002	80%	69%
2003	74%	84%
2004	88%	84%
2005	71%	92%

* Not including Staten Island

Source: Gewirtz (2002-2006), Criminal Justice Agency (2001)

**Percentage of Youthful Offender (YO) Conditions of Supreme Court Sentences by Felony Class
Juvenile Offenders (JO), New York City,* 1995-2005**

(A=A Class Felony, B=B Class Felony, C/D=C or D Class Felony)

	Brooklyn			Bronx			Manhattan			Queens			CITYWIDE*		
	A (N)	B (N)	C/D (N)	A	B (N)	C/D (N)	A (N)	B (N)	C/D (N)	A (N)	B (N)	C/D (N)	A (N)	B (N)	C/D (N)
1995	33% (1)	67% (44)	84% (16)	-	67% (36)	90% (27)	-	62% (43)	79% (23)	34% (1)	74% (55)	86% (24)	17% (2)	68% (178)	85% (90)
1996	-	73% (46)	66% (12)	-	79% (45)	85% (28)	20% (1)	70% (32)	66% (14)	-	45% (21)	35% (6)	6% (1)	68% (144)	67% (60)
1997	66% (2)	30% (24)	85% (17)	-	72% (44)	88% (14)	-	71% (36)	65% (15)	-	88% (60)	89% (17)	25% (2)	63% (164)	81% (63)
1998	-	76% (26)	100% (2)	-	93% (49)	92% (11)	-	64% (7)	100% (4)	-	84% (27)	100% (6)	-	82% (109)	96% (23)
1999	-	76% (44)	94% (16)	-	99% (35)	100% (8)	-	94% (30)	88% (15)	-	82% (49)	94% (16)	-	83% (158)	93% (55)
2000	-	74% (42)	81% (13)	-	71% (20)	63% (5)	100% (1)	62% (24)	86% (12)	-	88% (38)	0%	20% (1)	74% (124)	71% (30)
2001	-	74% (34)	75% (9)	-	86% (24)	63% (5)	-	73% (36)	75% (12)	-	90% (38)	100% (4)	-	80% (132)	75% (30)
2002	-	78% (21)	67% (4)	-	67% (12)	80% (4)	-	93% (25)	88% (14)	-	69% (22)	70% (9)	-	77% (80)	78% (31)
2003	-	67% (22)	76% (16)	-	56% (14)	90% (9)	-	70% (26)	96% (23)	-	86% (32)	94% (16)	-	71% (94)	89% (64)
2004	-	81% (22)	100% (10)	-	85% (40)	82% (14)	-	85% (22)	89% (17)	-	90% (46)	85% (22)	-	86% (130)	88% (63)
2005	-	87% (27)	90% (9)	-	76% (31)	93% (13)	-	57% (15)	75% (12)	-	72% (31)	100% (19)	-	74% (104)	90% (53)

* Not including Staten Island

Source: Gewirtz (2002-2006), Criminal Justice Agency (1997-2001)

**Percentage of Juvenile Offender (JO) Cases
Removed to Family Court, Citywide, 2001-2005**

	<u>Brooklyn</u>	<u>Bronx</u>	<u>Manhattan</u>	<u>Queens</u>	<u>CITY WIDE*</u>
2001	4.5%	0.0%	0.0%	0.0%	1.4%
2002	0.0%	0.0%	0.0%	0.0%	0.0%
2003	2.4%	0.0%	0.0%	5.6%	2.2%
2004	2.9%	1.2%	0.0%	0.0%	1.0%
2005	1.1%	14.3%	0.0%	0.0%	6.5%

** Not Including Staten Island*
Source: Gewirtz (2002-2006)

3. Data on Juvenile Offender Indictments by Race, New York County Only

New York County (Manhattan) Juvenile Offender (JO) Indictments by Race, 1984-2004

								PERCENTAGES OF TOTAL NEW YORK COUNTY JO INDICTMENTS							<u>% TOTAL BLACK & HISPANIC</u>
	<u>WHITE</u>	<u>BLACK</u>	<u>HISPANIC</u>	<u>ASIAN</u>	<u>OTHER</u>	<u>UNK.</u>	<u>TOTAL</u>	<u>% WHITE</u>	<u>% BLACK</u>	<u>% HISPANIC</u>	<u>% ASIAN</u>	<u>% OTHER</u>	<u>% UNKNOWN</u>		
1984	4	60	32	0	0	0	96	4%	63%	33%	0%	0%	0%	96%	
1985	3	49	38	0	4	2	96	3%	51%	40%	0%	4%	2%	91%	
1986	3	43	28	0	7	3	84	4%	51%	33%	0%	8%	4%	85%	
1987	2	26	20	0	0	2	50	4%	52%	40%	0%	0%	4%	92%	
1988	1	39	35	0	4	3	82	1%	48%	43%	0%	5%	4%	90%	
1989	0	77	30	0	6	5	118	0%	65%	25%	0%	5%	4%	91%	
1990	1	96	52	0	6	2	157	1%	61%	33%	0%	4%	1%	94%	
1991	1	73	52	0	1	3	130	1%	56%	40%	0%	1%	2%	96%	
1992	3	63	62	0	1	7	136	2%	46%	46%	0%	1%	5%	92%	
1993	0	69	54	0	1	3	127	0%	54%	43%	0%	1%	2%	97%	
1994	4	64	65	0	8	4	145	3%	44%	45%	0%	6%	3%	89%	
1995	1	54	32	0	5	8	100	1%	54%	32%	0%	5%	8%	86%	
1996	0	48	20	6	1	12	87	0%	55%	23%	7%	1%	14%	78%	
1997	2	51	18	1	1	10	83	2%	61%	22%	1%	1%	12%	83%	
1998	1	51	20	1	0	19	92	1%	55%	22%	1%	0%	21%	77%	
1999	1	52	35	0	0	17	105	1%	50%	33%	0%	0%	16%	83%	
2000	0	31	25	1	0	6	63	0%	49%	40%	2%	0%	10%	89%	
2001	1	30	16	1	0	7	55	2%	55%	29%	2%	0%	13%	84%	
2002	1	28	19	0	0	12	60	2%	47%	32%	0%	0%	20%	78%	
2003	0	25	25	0	0	4	54	0%	46%	46%	0%	0%	7%	93%	
2004	1	33	22	0	0	3	59	2%	56%	37%	0%	0%	5%	93%	
TOTAL	30	1062	700	10	45	132	1979								

*1996-2002 show a high % of 'unknown' - Total Black/Hispanic is most likely actually higher than the % in the final column for those years

Source: New York State Division of Criminal Justice Services, Indictment Statistical System, August 2005

**New York County (Manhattan) Juvenile Offender (JO) Indictments by Race,
1984-1995**

PERCENTAGES OF TOTAL NEW YORK COUNTY JO INDICTMENTS

	<u>%</u> <u>WHITE</u>	<u>%</u> <u>BLACK</u>	<u>%</u> <u>HISPANIC</u>	<u>%</u> <u>ASIAN</u>	<u>%</u> <u>OTHER</u>	<u>%</u> <u>UNKNOWN</u>	<u>% TOTAL</u> <u>BLACK &</u> <u>HISPANIC</u>
1984	4%	63%	33%	0%	0%	0%	96%
1985	3%	51%	40%	0%	4%	2%	91%
1986	4%	51%	33%	0%	8%	4%	85%
1987	4%	52%	40%	0%	0%	4%	92%
1988	1%	48%	43%	0%	5%	4%	90%
1989	0%	65%	25%	0%	5%	4%	91%
1990	1%	61%	33%	0%	4%	1%	94%
1991	1%	56%	40%	0%	1%	2%	96%
1992	2%	46%	46%	0%	1%	5%	92%
1993	0%	54%	43%	0%	1%	2%	97%
1994	3%	44%	45%	0%	6%	3%	89%
1995	1%	54%	32%	0%	5%	8%	86%

Source: New York State Division of Criminal Justice Services, Indictment Statistical System,
August 2005

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