Diverting and Abdicating Judicial Discretion: Cultural, Political, and Procedural Dynamics in California Juvenile Justice

Alexes Harris

Although tensions between substantive and formal rationality in the adult criminal justice system have received a great deal of attention, the existence of these tensions in the juvenile justice system has received little scholarly consideration. I seek to remedy this gap by exploring how punitive policies associated with the war on crime impact the formal and informal process of justice, the court community and work group, and the exercise of discretion in the juvenile courts. Drawing on qualitative data collected in three juvenile courts in Southern California, I identify the mechanisms by which prosecutors divert judicial discretion from the traditional rehabilitation-oriented bench officers to bench officers who are more accepting of the criminalization of juveniles. In addition, I investigate how and why rehabilitation-oriented bench officers at times abdicate their decisionmaking authority and make rulings that contradict their own assessments. My findings suggest that as the war on crime is extended to youth, the juvenile courts increasingly share the criminal courts' emphasis on offense rather than offender, enhanced prosecutorial power, and adversarial relationships within the court.

I don't like it. The power has shifted. The federal court guidelines take the discretion away [from judges]. Every kid declared unfit is fit [for juvenile court]. The juvenile justice system is designed to rehabilitate them. The criminal system is to warehouse them—lock them up for as long as they can until they wear them out. These hearings have their places. [But] they shouldn't be driven by the law—where if the kid commits this crime or this crime he automatically is unfit [for juvenile court treatment]. Someone should look to see if the youth is salvageable. I have been reversed on that [by the appellate court], found people unfit [for

An earlier version of this article was presented at the American Sociological Association Conference in August 2003, Atlanta, Georgia. I am grateful for the extensive comments of Bob Emerson and Katherine Beckett on earlier drafts of this article, and for the thoughtful suggestions for the development of the article from Sara Steen, Ross Matsueda, and Joan Graham. I would also like to thank the Law, Society and Justice working group at the University of Washington; the Macarthur Research Network on Juvenile Competency and Culpability; and the *LSR* editor and reviewers for the critique they provided in developing the ideas in this article. Please direct correspondence to Alexes Harris, Department of Sociology, University of Washington, Box 353340, Seattle, WA 9819-3340; e-mail: yharris@u.washington.edu.

Law & Society Review, Volume 41, Number 2 (2007)
© 2007 by The Law and Society Association. All rights reserved.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

> juvenile court] and talked about as a fool. I gave up on that, unless I can talk to the DA on it [to come to some negotiation].
> (bench officer #8)

As evident by the bench officer's remarks at the conclusion of a court hearing, contemporary juvenile court officials are struggling to reconcile the traditional rehabilitative ideology of juvenile justice with the increasingly formalized criminalization statutes. Researchers investigating the impact of similar legal changes within the last 20 years on the criminal courts have identified significant tensions between formal and substantive rationality in those institutional settings (Savelsberg 1992; Steffensmeier & Demuth 2000). This Weberian framework characterizes formal law as that in which "the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning" (Weber 1968:657). By contrast, substantivized law "is influenced by norms different from those obtained through logical generalization of abstract interpretations of meaning," including "ethical imperatives, utilitarian and other expediential rules and political maxims" (Weber 1968:657). This distinction highlights the long-standing conflict between the desire for equal justice and the value of individualized justice (Weber 1968).

For example, in the United States scholars have suggested that the classical emphasis on the rule of law—the basis of intended "equal justice"—was increasingly supplanted by the rhetoric and goal of rehabilitation by the turn of the twentieth century (Garland 1990). However, it gradually became clear to many that significant discretion in criminal sentencing decisions, as required by the rehabilitative paradigm, led to racial disparities in sentencing. As a result, discretionary decisionmaking in the 1960s and 1970s was largely discredited. Over the following decades, a variety of policies aimed at reducing discretion in the courts have been adopted. For example, criminal sentencing guidelines, formal legal criteria that judges must use when computing the length of offenders' punishment, were created and imposed by legislatures to reduce disparities. This trend has been described as an attempt to move from substantive reasoning toward formal reasoning to justify decisions (Steffensmeier & Demuth 2000; Ulmer & Kramer 1996, 1998).

Many analysts have explored the effect of attempts by federal and state governments to bridle judicial discretion through the use of sentencing guidelines (Davis 1969; Engen & Steen 2000; Miethe 1987; Moore & Miethe 1986; Savelsberg 1992; Ulmer & Kramer 1996). Interestingly, scholars have found that even with the imposition of requirements aimed at curbing discretion, both substan-

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

tive rationality and organizational dynamics continue to influence case outcomes (Dixon 1995; Steffensmeier et al. 1998; Ulmer & Kramer 1996, 1998; Steffensmeier & Demuth 2000, 2001). These studies suggest that sentencing guidelines may actually reroute discretion away from judges at the sentencing stage, while leaving prosecutorial discretion unfettered at the filing stage (Kessler & Piehl 1998).

The effect of this "hydraulic displacement" of discretion (Miethe 1987; Tonry & Coffee 1987) may be to restructure, rather than eliminate, the exercise of discretion in the courtroom work group (Savelsberg 1992; Ulmer & Kramer 1996). This pattern appears to confirm Weber's observation that "substantive motives almost always enter the picture" in legal decisionmaking (1968:870). In this case, the opportunities to express such motives have been increased for prosecutors and reduced for judges. That is, judges have lost some of their discretion, in terms of the types of sentencing options available, and as a result prosecutors' discretion has become more significant in that they now have the ability to select types of offenses to charge, thus effectively selecting potential sentencing outcomes.

The increased implementation of formal legal reasoning restructured the use of discretion within the courtroom workgroup. However, the reform has not created uniform judicial outcomes across similar cases as intended. This is most likely because bench officers have found ways to use substantive decisionmaking practices even within the confines of formal law. Researchers have investigated how bench officers are able to introduce leniency or punitiveness into their reasoning, producing disparity despite the legal guidelines (Albonetti 1991, 1992, 1997; Heumann & Loftin 1979; Miethe 1987; Moore & Miethe 1986; Spohn et al. 1987; Ulmer & Kramer 1996, 1998).

For example, racial disparities have not necessarily been reduced—one impetus for the legal reforms (Engen & Steen 2000; Steffensmeier & Demuth 2001). Research has suggested that disparities in outcomes may be a result of judges "correcting" sentencing guidelines—that is, characterizing offense behavior in a way that mitigates the seriousness of the crime, thus reducing sentences under the guideline rankings—when they feel sentences are too punitive (Kramer & Ulmer 2002:925). Disparities also may result from judges' intertwining their focal concerns (e.g., the blameworthiness and dangerousness of the individual, the practical constraints, and the consequences of their decisions) with their perceptions and characterizations of individuals based on their race, gender, and age (Steffensmeier et al. 1998). As a result of using these substantive legal decisionmaking practices, bench officers may be arriving at different sentencing options for whites than for people of color, producing disparities in outcomes.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

In sum, despite the introduction of formal legal criteria to guide judicial decisions, judges still have some discretion in the ways that they characterize both offenses and offenders in their sentencing decisions, even if the discretion is somewhat abridged. An important issue in the research that investigates the tension between substantive and formal reasoning is judicial and prosecutorial discretion—how it is limited or facilitated, how it shifts, and how courtroom actors respond to these dynamics. However, little is known about the techniques used by court officials—both those who work within the courtroom and those who supervise the courtroom workers—to subvert, enhance, or redirect discretionary authority in the decisionmaking process.

The concepts of courtroom work group and court community are useful in investigating this process. Eisenstein and Jacob (1977) develop a courtroom work group framework to understand the course by which actors in the courtroom arrived at felony disposition decisions in three large city felony courts. Beginning with Blumberg's (1967) organizational paradigm, the authors conceptualize courts as organizations in which group activity revolves around shared goals, thus leading actors to form relationships. These relationships, in turn, have important consequences for case outcomes (Eisenstein & Jacob 1977:295). Furthermore, these consequences are produced not only by inside forces, but also by forces from outside. For example, a key concept in this court framework is the notion of sponsoring organizations. These are bodies that have supervisory authority within the legal system and assign individual actors their roles and positions in the courthouse. Sponsoring organizations thus "attempt to regulate the behavior of their courtroom representatives" according to their own goals (1977:44). These organizations comprise individuals such as elected judges and elected prosecutors and have the authority to appoint judges and deputy district attorneys, respectively.

In subsequent works, Eisenstein and colleagues (Eisenstein et al. 1988, Nardulli et al. 1988, Flemming et al. 1992) develop a court community framework that stresses the importance of broader political demands and the aims of sponsoring organizations. This perspective recognizes the avenues by which pressures from both public constituencies and supervisors can be exerted on court officials' decisionmaking practices within the courtroom. The social and political environment of the court and local communities both "contour" the culture in which decisions are made and "craft" the knowledge of how justice is performed (Eisenstein et al. 1988; Flemming et al. 1992). That is, these communities inform and influence the courtroom culture and the informal structure and knowledge among court actors in terms of how the work of the

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

court should be done. Furthermore, the notion of sponsoring organizations specifically acknowledges the importance of the organizational hierarchy within each courthouse and in the encompassing jurisdiction.

This court community framework highlights important dimensions to explore when investigating the conflict between substantive and formal rationality within the juvenile justice system. Despite the shift in the American juvenile justice system's ideological orientation and practice from relying on substantive rationality to relying on a more formalistic interpretation of law, neither the change in legal reasoning nor the resulting tension between practitioners has been explored. In particular, the effect has not been investigated in either the courtroom work group or the broader court community.

The present investigation seeks to address this shortcoming by assessing how the implementation of a criminalization policy affects relationships within the courtroom and case processing within the juvenile court system. Specifically, I explore whether, and if so how, the shift from substantive reasoning toward more formal reasoning affects the nature of juvenile court organization and the exercise of discretion. I treat the California judicial waiver hearing as an expression of formal-rational law in the juvenile court system.

A judicial waiver hearing is the process by which juvenile court jurisdiction can be waived by a juvenile court bench officer, allowing an adolescent to be prosecuted in criminal court. During a waiver hearing, or what is often called in California a "fitness" hearing, a juvenile court bench officer evaluates whether a youth is "fit" to remain under juvenile court jurisdiction, or "unfit" to remain in juvenile court and deserving of criminal court management and punishment. A fit decision or a fit case means that a youth is assessed by a juvenile court judge to be amenable to the juvenile court system and will remain under its jurisdiction. While this process has existed since the creation of the juvenile court (Frazier et al. 1995), the hearing has shifted in the past 30 years from being grounded in substantive decisionmaking (guided by criteria that allow assessments to be based on extralegal factors, and by concerns regarding the outcome of the decision for the offender) to being grounded in formal legal reasoning (guided by criteria that prioritize offense circumstances over offender characteristics). Thus, similar to criminal sentencing guidelines, formalized laws guide the juvenile court waiver hearing and reduce judicial discretion by limiting the types of information bench officers can use to assess waiver-eligible minors. Essentially, juvenile court law has "re-criminalized" (Singer 1996) a portion of the youth it serves by implementing formal reasoning that produces a strong emphasis on retribution, deterrence, and social control.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

In order to explore how actors within courtroom work groups respond to criminalization policies, I use qualitative data from three juvenile courthouses in California. Thus, unlike studies that assess the impact of these policies on case outcomes for defendants, this study assesses the consequences of their adoption within the juvenile courts.[1] The primary question investigated in this article is how judicial waiver guidelines influence the juvenile court workgroup. More specifically, I explore what happens to bench officers who have internalized substantive reasoning in their decisionmaking but are forced to employ formalized reasoning during waiver hearings due to the structure of the statutes that guide their decisionmaking. I examine how these rehabilitation-oriented bench officers attempt to introduce substantive reasoning into their decisionmaking, and I then investigate how prosecutors use legal mechanisms to limit these judges' use of discretion.

In what follows, I draw upon my observations of judicial waiver hearings and interviews with court officials in California juvenile courthouses to investigate the institutional consequences of the introduction of formal and punitive policies into the juvenile court setting. In the first section, I provide a brief historical discussion of trends in the administration of juvenile justice in the United States and in California, and describe the data, methods, and analytic strategy used in this study. In the second section, I present findings on how the courthouse work group is affected by formal-rational law. In the final section, I discuss the implications of these findings for our understanding of the juvenile courts.

Juvenile Courts in the United States and California

A brief review of the legal history of American juvenile justice will illustrate the change in emphasis from substantive to formal legal reasoning. The juvenile system, first established in Cook County, Illinois, in 1899, was created by policy makers, practitioners, and activists who believed that the causes of youth crime were distinctly different from the causes of adult crime. The proponents of a separate juvenile system believed that youth offended as a result of their inadequate environments, and that youth would be more amenable, more receptive to treatment than adults. Thus the aim of the juvenile court was to comprehensively assess and treat young "deviants" through a rehabilitation-oriented approach (versus a punishment-oriented approach applied to adults in criminal court) (Feld 1999). As in other countries, the American juvenile

[1] Previous research has quantitatively investigated the results of broadening transfer policies and has found that males of color tend to have higher rates of transfer to the criminal justice system (Barnes & Franz 1989; Podkopacz & Feld 1995).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

justice system was initially characterized by a philosophical orientation toward treatment, lack of formal legal procedure, and emphasis on broad judicial discretion (Krisberg & Austin 1993). As a result of this ideological orientation, the system initially was based on substantive decisionmaking. Judges assessed the character of the youth, the supportiveness of his or her family and community, and possible reasons for delinquency.

However, within the last 40 years a shift has occurred in both the philosophy and policies that guide the juvenile justice system. In the 1960s, the rehabilitative paradigm was challenged, and the juvenile courts were labeled "second-class criminal courts" (Feld 1993). The challenge came not because of skepticism about the philosophical aim of rehabilitation, but rather because the juvenile court processes were seen as inadequate—in reality many children did not receive individualized treatment, nor were they protected by procedural safeguards. Increasingly, the courts recognized that the expectation of treatment and rehabilitation was not often realized (see discussion in *Kent v. United States*, 383 U.S. 5456 [1966]), and the absence of formal procedures left children vulnerable.

In response, the Supreme Court made a series of decisions that formalized the juvenile court. For example, *Kent* introduced a set of legal guidelines to use in evaluating waiver-eligible minors, formalizing the judicial waiver process (*Kent v. United States* 1966). This decision was aimed at decreasing capricious waiver of juvenile court jurisdiction. *In re Gault* (1967), a major decision influencing the function of the juvenile court system, introduced the role of defense and prosecuting attorneys into the juvenile court. In addition, this case granted certain due process rights to minors (e.g., right to question accuser, right to know charges, privilege against self-incrimination, right to a transcript, right to an appellate review) (*In re Gault* 1967). As a result of these Supreme Court decisions, juvenile courts rely much more today than they did in the past on formal legal reasoning to guide the processing of offenders. For example, this legal reasoning is expressed in statutes that specify criteria used to evaluate whether minors will be prosecuted in juvenile court and, similar to criminal court sentencing guidelines, criteria based on age and offense type that specify circumstances in which judges can give youth indeterminate rather than determinate sentences.

Ironically, this due process era set the stage for the contemporary movement to treat juveniles as adult offenders, as the granting of legal rights to juveniles created a legal and philosophical linkage between the juvenile and criminal systems (Feld 1993). Thirty years after the "constitutional domestication" (Feld 1999) of the juvenile court, a more punitive approach to crime and justice increasingly guides the juvenile system (Singer 1996).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

In particular, statutes that criminalize juvenile offenders (either making minors eligible for criminal prosecution or requiring such prosecution) are now common. Since the 1980s, state legislatures and the voting public have enacted and modified statutes that criminalize violent and chronic juvenile offenders and impose harsher penalties. These measures are similar to those adopted in other countries, such as Canada's Youth Criminal Justice Act of 2002, the Crime and Disorder Act of 1998 in England, and the 1995 juvenile justice legislation enacted in the Netherlands (Griffin et al. 1998; Junger-Tas 2002). These statutes imposed blended sentences (where a criminal court sanction will be imposed if the youth fails to complete his or her juvenile sanction) and determinate sentences (similar to those required by criminal sentencing guidelines), eliminated confidentiality protections of juvenile records (allowing the media and general public access under certain conditions), allowed for the accumulation of "strikes" in juvenile court that are applicable to criminal court cases, and facilitated criminal prosecution (Feld 1999; Torbet et al. 1996). Thus a number of legal changes have been imposed that not only affect the treatment of the more severe cases on one end of the juvenile offender continuum, but also affect the lesser cases in the middle of the continuum. These numerous statutes represent a shift from substantively to formally rational law in that the processing, management, adjudication, and punishment of cases are determined by the alleged offense rather than by assessments of the offenders and other nonlegal factors.

More specifically, there are currently three types of legal mechanisms implemented nationwide by which a youth's legal status can be changed from juvenile delinquent to adult criminal offender: (1) judicial waiver hearings (which give juvenile bench officers the final authority to determine which youth are fit to remain in juvenile court); (2) prosecutorial waivers (which allow juvenile court prosecutors to waive their juvenile jurisdiction over youth, and have criminal court prosecutors directly file charges against minors in adult court when these minors meet certain age and offense criteria); and (3) automatic or legislative exclusions (which lower the maximum age for criminal court jurisdiction or exclude age categories from juvenile jurisdiction when youth are charged with certain offenses) (Fagan & Zimring 2000). This latter mechanism completely eliminates whole categories of youth from the protections and rehabilitation efforts of the juvenile courts without any type of juvenile court proceeding. For example, the New York Juvenile Justice Reform Act (1976) lowered the age of eligibility for criminal responsibility to 13 for murder and 14 for other violent offenses, while a statute in Mississippi excludes all 17-year-olds from juvenile court jurisdiction for any felony. As a result of changes in juvenile legislation within the last 25 years,

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

either through the broadening of the types of youth and offenses eligible for the mechanisms, or with the inclusion of all three mechanisms in a state's juvenile statutes, a wider net has been fashioned making minors charged with more kinds of offenses eligible for criminal court punishment (Torbet et al. 1996).

Thus the judicial waiver process investigated in this article is only one piece of evidence of the shift from rehabilitation toward punitive treatment of minors in juvenile and criminal courts across the United States (Torbet et al. 1996). To place the judicial waiver hearing in context, such hearings represent only 0.8 percent of juvenile cases formally processed in the juvenile justice system (7,500 cases in 1999) (Puzzanchera 2003).[2] Despite the relatively small percentage, however, judicial waiver hearings symbolically epitomize the shift toward more punitive responses to crime: they receive disproportionate media coverage and research attention, and therefore shape public perceptions more than other types of juvenile cases.[3]

In keeping with the national trend, California juvenile justice ideology has shifted away from a rehabilitative orientation and so, among other things, the waiver process has been formalized. Over the past 40 years, California has repeatedly altered its waiver statute (known presently as CA Welf. Insts. Code [WIC] § 707) and identified an increasingly broad range of offenses that may trigger the criminal prosecution of minors as young as 14 years old. For the most part, prior to the 1980s, juvenile court bench officers had full discretion to construct individualized assessments of minors' amenability to the juvenile court. However, new provisions to the waiver statute in 1979 allowed prosecutors to petition the court for a fitness hearing for a youth charged with serious and violent offenses. This minor would be "presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence (either extenuating or mitigating) that the minor would be amenable to the care, treatment, and training program available through the facilities of

[2] These cases represent about 1 percent of all felony defendants in criminal court (Strom & Smith 1998). The number of criminally prosecuted juvenile cases (judicially waived) increased by 73 percent between 1987 and 1994 (6,800 and 11,700 cases, respectively; Stahl 1999). These numbers do not include the cases from jurisdictions where youth were waived via direct-file or automatic/exclusionary systems. It has been estimated that in 1998, approximately 7,100 juveniles were prosecuted in criminal court (Rainville & Smith 2003) and in 2002, approximately 9,167 chronological minors were housed in either adult prison or jail facilities (Harrison & Karberg 2002).

[3] Despite being a small number of formally processed cases in the juvenile justice system, the media frequently highlights these cases. I conducted an analysis of article headlines and abstracts of the local newspaper of the jurisdiction studied printed between 1998 and 2001. I found that 16 percent of the articles searched by "juvenile justice" were in regard to transfer cases—primarily judicial waiver cases.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

the juvenile court" (WIC 707 [c]). In addition, the 1979 amendment dictated that the court must make its evaluation of minors based upon an assessment of *each* of five legal criteria. This was the first time that legal guidelines were introduced to the California waiver hearing. These amendments to the waiver statute represent a major transfer in legal discretion from juvenile court bench officers to prosecutors. Furthermore, bench officers were confined in their legal analyses of the types of criteria they were allowed to consider, and how they could apply the criteria to cases. These changes removed much of the traditional individualized assessment procedures commonly used in juvenile courts of the past.[4]

The most dramatic change to the waiver statute came in 2000, as a result of Proposition 21, The Gang Violence and Juvenile Crime Prevention Act (1999). Under this law, any youth whose current offense occurred after the youth had turned age 14 becomes eligible for prosecution in criminal court under a judicial-, prosecutorial-, and/or automatic-waiver statute.[5] The statute allows prosecutors to sort youth, to characterize both the offense and the youth's intent, and to determine whether or not to seek prosecution in adult court. In effect, prosecutors are selecting the types of sentences minors could face and decreasing the pool of youth over whom juvenile court bench officers have discretionary power. Proposition 21, like other statutes adopted nationwide, has thus impacted the role and discretionary power of both juvenile prosecutors and bench officers.[6]

The current five criteria that are used to evaluate youths' amenability to the juvenile justice system include (1) the degree of criminal sophistication of the minor and the offense, (2) whether the minor can be rehabilitated prior to the expiration of the juvenile court jurisdiction, (3) the minor's previous delinquent history, (4) the success of previous attempts by the juvenile court to rehabilitate, and (5) the circumstance and gravity of the offense. Each of these criteria must be evaluated independently by the bench officer. That is, the bench officer must state whether a youth is fit or unfit on each measure. It is here where the opportunity exists for substantive rationality to enter into the decisionmaking process. The bench officer can create an interpretation of youth using substantive criteria; the youth's family support, community involvement, and potential as a citizen as mitigating factors that may outweigh any of the aggravating factors. Yet as illustrated below, deputy district attorneys (DDAs) can and have challenged

[4] *Edsel P. v. Superior Court* 1985; *People v. Superior Court (Zaharias M.)* 1993.

[5] WIC 707 (a)(1)(A), (B).

[6] This has led to a legal contestation over who should have discretion to determine the jurisdiction a minor will be prosecuted within (*Manduley v. Superior Court* 2002).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

bench officers in a variety of legal ways for attempting to enter such factors into their evaluations to find youths fit to remain in the juvenile justice system.

At the conclusion of the hearing the bench officer must then state, as a summation of the evaluation, whether the youth is amenable to the juvenile justice system (either unfit or fit). With the most frequent type of waiver statute filed in California, existing case law mandates that if a bench officer's assessment of a youth—on any one of these criteria—is negative (unfit), then the youth must be found unfit for the juvenile court. In effect, the offense circumstances come to outweigh the offender characteristics, since literally all of the offenses that make youth eligible for fitness hearings are serious offenses (e.g., murder, attempted murder, robbery, carjacking).

The present analysis of the impact of the judicial waiver process on three California juvenile courts is relevant to a general understanding of juvenile courts in other jurisdictions and to research in this area. First, legal guidelines have been imposed on juvenile courts nationwide, and we can therefore expect to encounter comparable behavior among courtroom actors in other states working under such rules. Although the tensions may not play out everywhere in precisely the same way, it is reasonable to assume that similar struggles over power and decisionmaking will exist between bench officers and prosecutors.

Second, the theoretical framework of this article offers a plausible approach to explaining courtroom dynamics in other juvenile courtrooms. Investigating actions of court officials as products not only of legal prescriptions, but also of pressures exerted on them by sponsoring organizations and public constituencies, broadens our understanding of court processes and outcomes. In particular, recognizing how changes in the law (chiefly changes that shift emphasis from one type of legal reasoning to another) may affect courtroom dynamics also informs our analyses of how decisions may be influenced by nonlegal, or even non-case-specific, factors. Due to the traditionally assumed cooperative work group environment of the juvenile court, one might not expect legal changes to affect courtroom dynamics. However, this framework broadens our understanding of the juvenile justice system and allows us to see how the work group has changed and, as a result, has impacted judicial decisionmaking.

Data and Methodology

The analysis presented here is part of a larger mixed-method study that explores the California waiver hearing process. During

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

select periods from 1999 through 2001, I conducted fieldwork in three juvenile courthouses in "Hughes County," California.[7] I observed waiver hearings and interviewed court officials: I conducted a total of 41 interviews with court officials (15 with bench officers, 16 with district attorneys, six with defense attorneys, three with probation officers, and one with a social worker).[8] I observed 29 hearings in which 37 youth were assessed.[9] Of those, 33 were found "unfit" to remain in the juvenile system and were transferred to the criminal system, and four were found "fit" to remain in the juvenile system.

I began my work with an interest in juvenile court officials' decisionmaking processes in judicial waiver hearings. Using a grounded theory approach, I entered the courtroom with images of juvenile courts based on previous ethnographic research (Cicourel 1968; Emerson 1969), which depicted a largely harmonious courtroom dominated by bench officers. Once I began the observations I was surprised to view contentious exchanges between bench officers and prosecutors struggling for control over decisions involved in waiver cases. Thus my project began to focus on these apparently new dynamics. Questions about the setting emerged: How and why do these two key courtroom officials fight for control over case outcomes? How might court actors also work behind closed doors to influence the course of a case? What happens within a work group if personnel have conflicting goals? What is the effect of such tensions on the juvenile system as an organization?

While still in the field, I began to code my detailed notes for themes and events that appeared frequently or seemed to be particularly important in each court I observed. The research process was recursive in that I continuously reviewed field notes, exploring them for patterns and contradictions to better understanding the complexity of the process at hand. I used the following codes to categorize the courtroom dynamics: instances of tensions between court actors; instances of negotiation; court officials' interpretations and applications of legal criteria; court officials' descriptions of tensions and struggles with other court officials; and court officials' use of legal mechanisms. Once I created the codes, I developed analytic memos on key themes related to questions about the

[7] The name of the actual county has been changed, as have the names of informants and youth observed, to protect their confidentiality.

[8] Observations primarily focused on waiver hearings. Interviews focused on court officials' attitudes and beliefs about the waiver system, the juvenile court, criminalization, and other relevant issues within the setting.

[9] At times, co-minors have their waiver hearings held at the same time.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

courtroom work group and actors' relationships to sponsoring organizations.

The categorization of bench officers used in the analysis below was developed once the coding of the field notes was completed. Criteria used to label the various bench officers included whether bench officers described themselves as adhering to a rehabilitative justice model (rehabilitative) and, if so, whether they made arguments that all youth should be retained in juvenile court (therapeutic) or stated that some youth should be transferred (liberal). Other criteria included investigating whether bench officers mentioned the application of the "law" as their primary duty (literalist) and, if so, whether they tended to focus on the offense over the offender in their characterizations (conservative) or whether at times they indicated that youth might be better served in the juvenile system (middle-ground). As a synthesis of this coding schema and the analytic memos, the following analysis characterizes the contemporary juvenile court community as represented by three California courts and explains how judicial waiver statutes affect the internal actions of courtroom work groups in these courts.

Findings

The Juvenile Court Community—Rehabilitative and Literalist Bench Officers

Like most professionals, bench officers observed and interviewed in this study are positioned in a hierarchy. A typical career path begins with an attorney being appointed by elected judges as a judicial referee, then serving as a bench officer when needed in various courtrooms. Eventually, the referee becomes a commissioner who performs similar duties but is assigned to a particular courtroom. Commissioners become judges when appointed by the governor, although they must then run in the next general election for the position. Most bench officers observed were either appointed judges or commissioners, and they would work in the various courts in the county court system (civil, juvenile, and criminal). Seven of the bench officers had made requests for permanent positions in juvenile courtrooms.

An important aim among bench officers interviewed was to either retain their positions as judges, or, for commissioners, to be appointed to judgeships. Because of their career aspirations, all bench officers were very conscious of how their work and reputations were perceived and characterized by the surrounding court community. Both referees and commissioners sought to create reputations that would generate prestige and connections to elected judges, with the goal of receiving future promotions. In addi-

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Table 1. Conceptual Chart of Literalist and Rehabilitative Bench Officer Typology

Action taken by bench officer against lack of discretion	Literalist	Rehabilitative
Yes	"Middle-Ground" These bench officers are in the middle of the continuum in terms of their orientation toward the traditional juvenile court ideology and interpretation of the waiver statutes. They believe certain youth are appropriate to be processed in the criminal system, yet they also feel certain youth should remain in the juvenile court system.	"Therapeutic" These bench officers base their assessments on the notion that the court is to serve minors' "best interests." They believe all youth have rehabilitative potential—even those considered the most violent. They request assignments in juvenile court because they say they can make a difference, and they attempt to retain most youth in the juvenile court system by making "fit" findings during the fitness hearing.
No	"Conservative" These bench officers usually have a background in the criminal or civil court, and have no affinity to or mention the traditional juvenile court ideology. They have career aspirations that would lead them out of the juvenile court. They frequently agree with DDAs that certain sectors of youth are unreachable and should be processed, judged, and punished in criminal court.	"Liberal" These bench officers adhere to the traditional court ideology, but also feel the "law" must be followed—thus less an individualized assessment of the youth than a legalized judgment of cases. They believe many youth are rehabilitatable and should remain in juvenile court, but feel constrained by the law, and subsequently acquiesce remaining discretion to DDAs during the waiver process.

tion, all bench officers cared about the perceptions of the broader citizenry. Similar to what Eisenstein and Jacob (1977:25) find, those interviewed were fully aware of the expectations of the police, the media, government bodies (such as the appellate court and state legislature), and the general public, and they were cognizant of how these groups' characterization of them and their work might affect their career paths. Often these outside groups would be referred to by informants as "society" in general.

In the following analysis, I contrast two ideal type categories of bench officers: "literalist" and "rehabilitative" (Table 1). I apply the literalist label to bench officers who frequently emphasized that "applying the law" to cases is more important than the substantive outcomes of their decisions. That is, literalist bench officers were individuals who did not attempt to broadly evaluate youth and their life circumstances when determining whether a youth was fit or unfit to remain in juvenile court. Instead, they strictly applied the legal criteria outlined in waiver statutes to youth and their offenses. Meanwhile, rehabilitative judges evaluated legal criteria

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

with more individualized interpretations of the offender (e.g., considering youths' rehabilitative potential and life circumstances), not just the details of the offense, and expressed concern about the consequences of their decisionmaking for the young people's lives.

It is important to recognize that these are ideal type categories —all bench officers observed did not fit neatly into these groups. However, the categories clearly emerged during the research of this project and are substantive working types used as analytical tools to understand bench officers' actions and the dynamics of the courtroom work group. The labels were partly taken from courtroom actors' words, and partly my own. During the data collection process it became very clear that court officials characterized bench officers by their varying ideologies regarding youth and delinquency, and they sometimes reflected bench officers' own career ambitions. Descriptions of bench officers from defense attorneys, probation officers, clerks, and prosecutors often included such terms as *rehabilitative, liberal, strict*, and *conservative*. For example, one prosecutor referred to a judge in the following manner: "She is liberal but follows the law." In another example, a defense attorney described judges who find youth fit to remain in juvenile court as commonly being labeled "liberal;" "[the prosecutors] think [certain judges] are liberal and [they] are just finding kids fit because [they] want them to remain in juvenile court." Court actors thus make explicit categorizations of bench officers. These categorizations have direct consequences for how other courtroom actors responded to and worked with those being labeled, as well as for how individual bench officers viewed their own work, their positions within the courtrooms, and their career expectations.

The fact that the two types of bench officers performed their duties differently and were labeled by other court officials accordingly is due in part to their differing philosophical orientation toward the juvenile court and the youth they served. The literalist bench officers tended to believe that the criminal offenses that the youth committed justified treating them as adults: their offenses defined them not as adolescents, but as youth who could not be positively affected by the juvenile court and did not need its protections. As a result, these bench officers were more conservative in their judgment of cases and tended to err on the side of public safety. For example, the literalist bench officers often argued that youth had matured past the capabilities of the juvenile court system —the services available within the juvenile system could no longer rehabilitate them—and that these individuals and society would be better served if they were processed and confined in the criminal system. In addition, some literalist judges argued that processing juvenile offenders in criminal court and labeling them as adult criminal offenders would hold youth more accountable for their

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

crimes. These bench officers often stated that youthful offenders needed "serious" punishment, and the sentences that juvenile courts offer were not adequate to provide such punishment.

Literalist bench officers' commitment to trying youth as adults varied. Although almost all of these bench officers transferred every youth petitioned for waiver by DDAs from the juvenile system to the criminal system, some literalist bench officers, those I labeled as *middle-ground*, were willing to find some youth amenable to remaining in the juvenile court system. These bench officers tended to be newer to the juvenile system. In general, however, literalist bench officers expressed little frustration or doubt in transferring a young person to criminal court and conveyed a strong conviction that transfer was an appropriate and necessary process. For example, in the following case, Michael was charged with assault. The police report described Michael and his friends as having "worked together" to shoot at a group of people. Justifying her ruling that Michael should be tried in criminal court, the judge concluded,

> The court finds that this is a perfect example of a gang-related crime which does show criminal sophistication. This is acting in-concert; this isn't a situation where Michael had just [had] an argument with one person [and he] sought to seek revenge. This appears to be a planned sophisticated act, [evidence] of going out and trying to take out as many individuals as possible. Not just one [victim], but four. This was planned. [The group in which Michael was a member was] armed, one person was the shooter (bench officer #15).

The judge characterized Michael as an adult criminal offender by saying he took part in an act that showed "criminal sophistication." In interviews, bench officers would commonly describe "adult-like" offenses as being preplanned, involving multiple offenders who carried out assigned roles, and involving tools or weapons that would help ensure success. Literalist judges frequently reported that they measured the seriousness of a crime by "the callousness, the coldness, random, wanton, callous, cold, premeditated(ness)" of the actions. In this example, the judge described the youth as similar to an adult criminal, "acting in-concert" with other gang members to purposefully hurt other people, and "planning" attacks on groups of people. The judge clearly focused on the circumstances of the offense to characterize the minor. Rather then assessing whether the youth would be amenable—or receptive—to juvenile court processing and services, the judge focused on certain features of the offense and then used her understanding of the offense to depict Michael as "sophisticated." Her attitude typified that of literalist judges who perceived juvenile offenders as having capacities to act in the same way as adult criminal offenders, and who concluded that they should therefore be treated as adults.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

While there were exceptions, for the most part literalist bench officers exhibited behavior and articulated judgments that expressed little support for conducting individualized assessments of amenability. For these judges, rehabilitation was not the primary goal of the juvenile institution. They emphasized instead the need to apply "the law," the meaning of which they saw as unambiguous. One bench officer told me, "The law is real clear on what I have to consider." He continued: "One of judges' biggest mistakes is to [only] ask, 'Can the minor be rehabilitated? Is he worth saving?' It is a legitimate factor, but only one" (bench officer #2).

In contrast to literalist bench officers, rehabilitative bench officers sought to make individualized assessments of youth and valued treatment as an outcome for most. Unlike literalist judges, rehabilitative judges openly described their ideology and opinions about juvenile offenders and the juvenile justice system during interviews. The following rehabilitative judge showed this orientation:

> There is more hope in the juvenile court. Even though it does not have as much prestige, it is satisfying because some of the kids you can turn around. We get [juvenile offenders who, after appearing before the court, have received their] high school diplomas and GEDs. I love high school diplomas and GEDs [the courtroom ceremonies acknowledging the completion of a high school curriculum or equivalent]. Sometimes things work out pretty well. In adult [court all you deal with is] guilt and punishment; adults do change but they have to do it themselves (bench officer #7).

Rehabilitative bench officers like this one often expressed a sense of connection to the youth they processed and felt they could "make a difference" (bench officer #7). This same bench officer, who had worked in juvenile court for 25 years, told me that he "feel[s] closer to the juveniles, to their problems, [and that he can] change their lives for the better." These rehabilitative bench officers often described waiver cases as situations that arose because a youth had made mistakes, but insisted that the youth nonetheless had "significant potential" or "had so much going for them" that they deserved a second chance (bench officers #7 and #11).

Rehabilitative bench officers ranged from those who openly expressed their desire to retain youth in the juvenile court for the most part, regardless of the offense, to those who were committed to the rehabilitative ideology of individualized assessments but felt constrained by the law to transfer certain youth to criminal court. I labeled the first set of judges "therapeutic," and the latter set "liberal." Therapeutic bench officers were oriented toward trying to reshape young offenders into productive citizens. These bench officers based their assessments on the belief that the court's

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

purpose was to serve minors' "best interests." What was important to these bench officers was not necessarily how the law was interpreted, but rather the outcome of the case—determining the best disposition for helping the youth. These judges frequently expressed the belief that all youth have rehabilitative potential and that prosecuting them in criminal court would not give youth the opportunity to become rehabilitated.

While liberal bench officers also expressed their belief in the traditional juvenile court ideology, they would also state repeatedly that "the law" must be followed. Recognizing the difficulty in expressing their ideological beliefs while performing their judicial duties (which involved applying punitive policies that were not based on traditional juvenile court ideology), these bench officers tended to describe youth as complicated individuals in complex situations, rather than depicting them as automatically amenable to the juvenile court because of their age. In their analyses of youths' multifaceted lives, bench officers often stated that they took into account not only individualized assessments of their rehabilitative potential, but also the circumstances of the offense and the extent of injury to the victim. As a result, at times these liberal bench officers would find youth unfit for the juvenile court, even when they believed the youth would be better served in the juvenile system.

Besides the differences in their philosophical orientations, the career aspirations of the bench officers varied in importance between the two broad categories. The literalist bench officers tended to have more ambitious career aspirations than those labeled as rehabilitative, aspirations that would, they hoped, lead them beyond the juvenile court. Many of these bench officers viewed juvenile court as a less-significant realm where they were "stuck" in the meantime (bench officer #6). In fact, during the three years that I conducted observations and interviews, several bench officers had moved "upstairs" to criminal court.[10] Frequently, the juvenile court was referred to as a "lesser" court, where some bench officers wanted to serve their term and get out. Thus, one key difference between literalist and rehabilitative bench officers was their outlook on the types of cases they would like to manage and where they felt their work was most valued and most effective. In contrast to the literalist bench officers, among the rehabilitative bench officers was a sentiment that their careers would be successful if they dedicated themselves to working with young people;

[10]Bench officers, prosecutors, and public defenders have rotating assignments in the juvenile or criminal court systems. They do not move between the systems unless their assignments have changed. Private defense attorneys often specialize in one type of court; however, I have seen occasions where a criminal defense attorney will represent a minor in a juvenile court waiver hearing and then follow the case to criminal court.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Table 2. Typology and Characteristics of Juvenile Court Bench Officers Interviewed

BO#	Type of Bench Officer	Typology	Characteristics
1	Judge	Middle-Ground	White, male, late forties, high career aspirations, first time in juvenile court
2	Judge	Middle-Ground	Latino, male, late forties, four years in juvenile court, fulfilling judicial rotation
3	Referee	Liberal	White, male, mid-fifties, floats among courts—recent position as referee came from civil courts
4	Judge	Liberal	African American, male, early sixties, requested assignment in juvenile court
5	Judge	Liberal	White, female, early fifties, requested juvenile assignment
6	Judge	Conservative	White, male, in his fifties, requested juvenile assignment for geographical reasons
7	Judge	Therapeutic	African American, male, mid-sixties, requested juvenile court assignment
8	Commissioner	Therapeutic	African American, male, mid-sixties, permanent position at inner-city courthouse per his request
9	Commissioner	Therapeutic	White, female, mid-fifties, actively speaks out against waiver process
10	Commissioner	Conservative	White, male, mid-fifties, assigned in juvenile, moved from municipal court
11	Judge	Liberal	African American, female, late forties, assigned to juvenile court
12	Commissioner	Therapeutic	African American, male, late sixties, permanent position in inner-city courthouse per his request
13	Commissioner	Therapeutic	African American, male, mid-fifties, requested assignment in juvenile court
14	Judge	Conservative	Asian American, female, late forties, in juvenile court on assignment, high career aspirations, eventually rotated to criminal court
15	Judge	Conservative	White, female, late forties, career aspirations in criminal court, eventually rotated to criminal court

thus, as noted earlier, many of the bench officers—therapeutic and liberal—had requested assignments in juvenile court.

Table 2 illustrates the personal characteristics of the bench officers interviewed. Among the nine rehabilitative bench officers studied were five African American men, one white man, one African American woman, and two white women. These bench officers tended to be older than the literalist bench officers: in their late fifties and mid-sixties. Six of these officers had requested assignments in the juvenile court system. Within this group of bench officers were four judges, four commissioners, and one referee. Among the six literalist bench officers studied were one Latino man, one Asian American woman, three white men, and one white woman. Overall these individuals were in their late forties and early fifties, younger than the rehabilitative bench officers. Only one of the literalist bench officers had requested an assignment in

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

juvenile court: he had done so to be close to his ailing mother. Among the entire group of literalist bench officers five were judges and one was a commissioner.

The analysis presented thus far suggests that people's ideological orientations toward the juvenile court and their career aims is related to how discretion is assessed and employed. I observed a discordant bench with competing notions of the substantive aims of the juvenile justice system: thus the ways legal criteria were assessed (e.g., criminal sophistication, likelihood of rehabilitation), and the ways final case outcomes were decided varied across bench officers. To complicate this depiction of the court community further, the sponsoring organizations—in particular the head prosecutor's office—had aims that conflicted with those of the rehabilitative bench officers.[11] As a result, as described in the following section, prosecutors proactively worked to make their aims clear to the rehabilitative bench officers, pressured them to abdicate their discretion, and used legal mechanisms to divert judicial discretion. As a result, tensions and conflict erupted.

Diverting Discretion

In response to rehabilitative bench officers' ideological orientation toward waiver hearings, and their desire to find minors fit to remain in juvenile court, prosecutors frequently attempted to inhibit judicial discretion by having cases reassigned to literalist bench officers, or created situations in which rehabilitative bench officers would abdicate their authority. The concept of work techniques captures this dynamic well. Eisenstein and Jacob (1977) use the term to describe the courtroom organization's "procedures to manipulate resources into desired outputs" (1977:30). As the following section shows, prosecutors' work techniques were remarkably successful in the context of waiver hearings and in anticipation of prosecutors' use of those techniques. Bench officers themselves often shied away from exercising discretion and made rulings in accordance with prosecutors' motions, rulings that contradicted their own assessments.

As a result of this tension, courtrooms presided over by rehabilitative bench officers were often characterized by a fragmented work group, evident not only in adversarial proceedings, as Eisenstein and Jacob predict, but a generally adversarial environment. The following section describes how prosecutors attempted to divert and shape judicial discretion using legal mechanisms. The subsequent section explores how prosecutors justified their efforts

[11] In this analysis, elected judges and the presiding judge of the jurisdiction are identified as the bench officers' sponsoring organizations.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

to do this. The final section describes bench officers' reasoning when they, in fact, relinquished their authority in the court.

DDAs' Legal Currency

Prosecutors' power to divert judicial discretion derives from three central sources: the use of stipulations, affidavits of prejudice, and appeals to the California appellate courts. Essentially, the first two mechanisms allow DDAs to "court shop"—that is, select bench officers whom they feel may be sympathetic to their interpretation of cases. These two techniques can be used once a case is assigned to a bench officer to prevent a certain individual from hearing a case. By contrast, the filing of appeals occurs after a decision has been made: it challenges the correctness of a bench officer's application of the waiver statute. These techniques are not new, but they become complicated as a consequence of the waiver process and punitive culture, and as a result, provide DDAs with a powerful form of legal currency. DDAs used these work techniques to select literalist bench officers, i.e., officers most likely to sustain the fitness petition, and at the same time to question the judicial capabilities of rehabilitative bench officers. These actions in effect rerouted judicial discretionary power from one bench officer to another.

The use of these mechanisms was an attempt to restrain rehabilitative bench officers' exercise of discretion not just in a case that was currently assigned to them, but in future decisions as well. This was done by threatening to have such bench officers' cases removed from their purview or to have their decisions evaluated publicly in an appellate court review. Thus prosecutors managed to reduce the decisionmaking powers of certain juvenile court bench officers by influencing how frequently bench officers had opportunities to apply their discretion. As illustrated below, my data suggest that the cultural trend toward the criminalization of youth, embodied in adjustments to the waiver statute, has created a situation where prosecutors are more inclined to use such legal maneuvers and have the upper hand when doing so.

One way DDAs were able to check the discretion of juvenile court bench officers was by refusing to stipulate to nonjudges (referees or commissioners). The California Civil Code of Procedures (CCP), which guides criminal court actions, grants court commissioners and referees the power to hold regular court proceedings —essentially allowing them to perform court duties as temporary judges (CA CCP § 259). However, to conduct hearings involving adjudication of guilt or innocence, a commissioner or referee must first obtain a stipulation by all persons before the court (Cal. Const., art. VI, § 21). Similar to these criminal court procedures, in juvenile court referees and commissioners may perform judicial duties that involve adjudication of guilt or innocence with a written

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

stipulation (CA WIC § 248). That is, these bench officers, with a signed stipulation from both the defendant and the prosecuting attorney, can serve in a sort of substitute role for elected or appointed judges. While the role of the referee in the juvenile court has been debated, case law currently interprets the legislative intent of the role of referees and commissioners to be limited in scope and not fully representing judges unless a stipulation from both parties is obtained.[12] Without a stipulation—implied, verbal, or written—any disposition or decision becomes merely advisory (*In re Krill*, Cal. App. Unpub. LEXIS 5624 [2002]). However, any judgment made by referees or commissioners without a stipulation will stand unless challenged by a defense attorney or prosecutor.

The waiver hearing is an unusual juvenile court proceeding in that while the stipulation is not legally required (an adjudication of guilt does not occur), nonjudges still frequently request stipulations to avoid future review of their decisions: the hearing outcome is subject to review by a juvenile court judge in the absence of a stipulation. Juvenile justice officials I interviewed discussed stipulations as a main concern for commissioners and referees in regard to the waiver hearings and their positions in the courtroom. If a DDA characterizes a commissioner or referee as too lenient toward minors, she or he can choose not to stipulate to the bench officer and request that the case be sent before a different judge. Similarly, if a commissioner or referee does not obtain a stipulation prior to the start of a fitness hearing, and the prosecutor firmly objects to the bench officer's finding on the fitness case, then a rehearing by a another judge can be requested by the prosecutor. Thus this work technique can be used by prosecutors to "court shop" before, and also after, a bench officer hears a case if that officer is a commissioner or referee.

For example, during one lull in court proceedings, John, a court clerk, mentioned to me that a case was coming over from the courtroom next door. When I asked why, he told me that the DDAs were trying to court shop, which he defined as "finding a courtroom where a judge will do what the counsel wants." In this instance, the DDA had refused to stipulate to the bench officer who was assigned this particular case, and as a result the case was brought into John's courtroom. According to John, the case involved a youth who had been detained prior to adjudication for more than 15 days. The original bench officer assigned to the case had indicated to the attorneys involved that he was going to release

[12]Appellate courts have found that in certain circumstances the stipulation may be verbal—for example, when the youth and attorney fully participate in proceedings without complaint, the stipulation is implied (*In re Aontae* 1994, *In re Julio N.* 1992, *Charles R. v. Superior Court* 1980, Welf. & Inst. Code § 253).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

the minor, as he was mandated to do by law. The DDA assumed that John's judge would not release the minor—declaring that the minor would be a threat to society. By refusing to stipulate to the original bench officer, the DDA ensured that this case would be reassigned to a different bench officer.

As evident in this example, the stipulation became a work tool used by DDAs to select bench officers who might be more open to supporting their petitions to waive juvenile court jurisdiction. These bench officers knew they needed stipulations in order to maintain their judicial power in the courtroom and therefore tended to avoid offending DDAs. During an interview, a commissioner discussed the power DDAs have over his professional career:

> At the beginning, you are a referee; you want people to stipulate to you because [if they don't] down the line you can't become a commissioner. And, remember it is one thing to be stipulated by a public defender, but if a district attorney [does not stipulate], you can't work. Yes, there is a lot of pressure to work with the district attorney (bench officer #13).

As this commissioner noted, pressure from the DDAs' office was felt more acutely by bench officers than pressure from the public defenders' office, in part due to the political climate that they were situated within, and in part (as discussed in detail below) due to differences in defense attorneys' ability to utilize the work tools. As a result, many bench officers felt they needed to "work with," or make compromises with, the prosecutors' office on contentious cases.

In response to the threat of not being stipulated to, bench officers attempted to use whatever legal means they had in defense. For example, on occasion bench officers would use legal channels to make it more difficult for DDAs to select specific bench officers or to challenge judicial discretion during waiver hearings. During my conversation with John, he told me that his judge had asked him to obtain signed stipulations from the prosecuting and defense attorneys prior to the fitness hearing that I was observing that day. When I asked why, clarifying that stipulations were not required because this was not an adjudication of guilt, John told me that the bench officer was leaning toward finding the two youths fit for the juvenile justice system. If stipulations were signed, then the DDAs could not simply request that another fitness hearing be held but would instead have to file for an appeal—one step that would make it a bit more difficult for the DDAs to legally maneuver around the bench officer's decision.

A second technique prosecutors use to ensure the assignment of a case to a specific bench officer is filing an affidavit of prejudice. Any party before the court (e.g., the defendant via the defense

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

attorney, or the prosecutor) can file an affidavit of prejudice. These motions assert that the bench officer before whom the case is pending is prejudiced against an attorney or defendant to the extent that "a fair and impartial trial or hearing" before the court would not occur (CA CCP § 170.6).[13] If the motion is suitably presented to the court, the bench officer in charge of the court calendar should assign the case to another court officer; no formal criteria or argument is necessary. An affidavit of prejudice can only be filed once in any one action or special proceeding; that is, a defense attorney or a prosecuting attorney can each "burn paper" just once per case.[14] In the following statement, a defense attorney described how affidavits of prejudice can be used against bench officers labeled as "liberal" to divert their discretion: "Pretty soon, [prosecutors] will start 'affidaviting' you, which means that they won't allow you, they won't agree to have you hear their cases."

The ability of attorneys, particularly prosecuting attorneys, to court shop via the filing of affidavits is a more aggressive move than just refusing to sign a stipulation: stating that a bench officer is unable to perform his or her duties because the bench officer is prejudiced against a client or attorney. Such a statement directly calls into question the judicial competence of a bench officer. Furthermore, affidavits of prejudice can be effective against bench officers at all levels, while the stipulation is mainly useful against referees and commissioners.

A final legal technique DDAs have to threaten judicial discretion is filing for an appeal to the state appellate court after a fitness decision has been made. By definition, appellate courts provide what Davis (1969) terms the checking of discretion: the administrative and judicial supervision and review of judicial decisions. The appellate courts interpret and establish the legislative intent of statutes, determining whether a bench officer has correctly applied the law. Other research has shown that institutional pressures such as appellate review can influence judicial decisionmaking (Baum 1980, 1997, Segal & Spaeth 1993). Moreover, these courts' decisions set a precedent for how future decisions in similar cases should be made. Major appellate decisions are printed in a state law journal commonly read by the court community. Thus the

[13]The California Code of Civil Procedure of Courts of Justice, Section 170.6, outlines issues pertaining to prejudice, motions, and affidavits in regard to judges, court commissioners, and referees of any superior or municipal court of the State of California.

[14]This statute was added in 1957, and it has had no major changes through the present day. Several appellate challenges have occurred over the past 50 years, mostly on behalf of court officers challenging the constitutionality of the statute and seeking clarification of criteria to establish prejudice. In *Johnson v. Superior Court* (1958), the court found it unnecessary for the legislature to list in the statute factors that may indicate a judge is prejudiced. In 1977, a California appellate decision found that affidavits of prejudice can constitutionally be applied in juvenile courts (*In re Pamela H*. 1977).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

questioning of judicial decisions through the appeals process becomes a public event.

Prosecutors may appeal any waiver decision prior to a case being adjudicated. Conversely, minors have only a limited right to appellate review of fitness decisions: they can only file an appeal in protest of a fitness decision once the case has been adjudicated in criminal court. In 1961, youth in California were given the right to appeal a judgment in either a juvenile status offense matter (an act that is illegal only because a person under 18 committed it) or a delinquent adjudication (a judicial determination of guilt or innocence in regard to a criminal code violation by a youth) (CA WIC § 800), but the fitness hearing does not qualify under either category.[15] As a result of the defense attorneys' inability to file appeals, prosecutors have the upper hand in limiting and shaping judicial discretion in these instances. As illustrated below, prosecutors are able to manipulate judicial decisionmaking by invoking the threat of appeal or actually filing appeals before adjudication. However, defense attorneys are essentially unable to threaten a bench officer with an appellate review, much less actually file an appeal prior to the adjudication of the case.

In response to DDAs' use of appeals, bench officers often second-guess their initial assessment that youth should be retained in juvenile court due to fear of requests for appellate review. Bench officers' concern about having their decisions appealed was quite evident:

> Years ago, I had two cases that I found fit. The district attorney took them on appeal and I lost both. One of them, the kid was homeless, here illegally, had a gun, robbed someone to buy food. He also had a drug problem. I found those mitigating circumstances. The district attorney appealed and said that they did not find that mitigating. I lost those two back to back. I'll always remember (bench officer #13).

Prosecutors' threats to appeal bench officers' decisions become a constant reminder to judges that their discretion is limited and can be challenged after each decision. In the above-quoted statement, the DDA had used an appeal to publicly question the bench officer's evaluation of a minor's amenability. Even though such factors as being homeless and in need of food are outlined under the sentencing rules as mitigating circumstances, the appellate

[15] In 1991, prosecutors were given the right to appeal juvenile court decisions including waiver hearings. By contrast, there are a number of appellate cases concerning the circumstance, clarification, and scope of minors' rights to appellate review. A decision finding a minor unfit for treatment in the juvenile court may be challenged only by extraordinary writ in collateral proceedings (*People v. Chi Ko Wong* 1976). Thus as stated in *People v. Browning* (1975), fitness decisions are reviewable on the behalf of the minor only by writ or on appeal from an ensuing criminal conviction.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

court disagreed with the bench officer's application of the criteria and the emphasis he gave to the mitigating factors versus the seriousness of the offense, and overturned his decision.[16] Having his authority and judicial ability questioned will make him always remember the potential consequence of each decision he makes.

During this research I often heard stories and saw cases where DDAs did successfully appeal fit decisions—decisions that would retain youth in the juvenile justice system. For example, in a discussion about the types of fit cases he would allow to be retained in juvenile court, the head DDA[17] argued that all cases involving severe injury to victims should be transferred to criminal court. When I asked what would happen if a bench officer decided to keep a case where the victim was seriously injured in juvenile court, the DDA responded,

> Not going to happen. I'll litigate [appeal] that. We had 23, 25, writs [appeals] at Hughes [Juvenile Justice Center], two that went to the State Supreme Court. These bench officers know I'm not taking it lying down. These bench officers know it; sometimes your reputation precedes you (head deputy prosecutor).

As suggested by these remarks, in some courthouses waiver hearings became intense disputes, often framed as one player being on the "right" side and the other being on the "wrong" side of the issue. Frequently these cases ended up being handled in the appellate courts. Through this process, certain court actors were labeled by others in the court community as taking one side or the other. Commonly these actors earned a reputation of how they would respond to those making opposing decisions. As this head DDA indicated, the bench officers in his courthouse knew he would respond to instances where bench officers found youth fit with various work tools to make sure the case would eventually be transferred to criminal court.

Many of the conflicts I observed or learned about from participants occurred in the Hughes Juvenile Justice Center (HJJC), a center located in an extremely impoverished minority community. The HJJC courthouse has two courtrooms. Within the HJJC, two African American male commissioners in their sixties (Commissioners Stanford and Charles) had been labeled by primarily white DDAs as "too liberal." Commissioner Stanford, along with a judge who previously worked in the courthouse (also male and African American), Judge Mitchell, had been outspoken critics of juvenile

[16]Under Rule 423 of the Superior Court's Sentencing Rules, the circumstances in mitigation include "the defendant was motivated by a desire to provide necessities for his/her family or his/herself" (1671. West's CA Codes Penal Code, 1997).

[17]Each courthouse has a Deputy in Charge (DIC) or "head DDA" who supervises the prosecutors in the courthouse.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

court waiver statutes. As a result of their opposition to fitness waiver policies, and the DDAs' use of work tools in response to their findings of fitness, Commissioner Stanford had come to an informal agreement with the DDAs that he would not handle waiver hearings. Judge Mitchell, at one point, had five fit decisions in a row appealed by DDAs and is now retired.

This tension between rehabilitative bench officers and DDAs at HJJC was reinforced and encouraged by the prosecutors' sponsoring organization, the office of the elected county prosecutor. A key informant who was a prosecutor told me that DDAs made a concerted effort to "clean up" that courthouse by contesting all decisions made there that found youth amenable to remain under juvenile court jurisdiction, in response to their boss's concern over a number of fit decisions that retained youth in the juvenile system. This "warfare," as it was described by the head DDA, was instigated by his boss—his sponsoring organization—and exemplified the ideological clash between the treatment model and the justice model.[18] That is, HJJC bench officers were focused on addressing the rehabilitative needs of the youth, and prosecutors were focused on ensuring adjudication and punishment in the criminal justice system.

In sum, key work techniques—stipulations, affidavits of prejudice, and appeals to a higher court—were used when it appeared to DDAs that bench officers might be leaning toward retaining minors in the juvenile court, when probation officers recommended to the court that minors be retained, or when bench officers had found similar cases fit to remain in the juvenile system in the past. In most cases, these techniques significantly constrained bench officers' capacity to retain youth in the juvenile system.

Thus despite the existence of these techniques in juvenile court for both DDAs and defense attorneys to use, prosecutors have been able to rely on work tools to gain the upper hand in the work group for two reasons. First, the waiver process has become more formalized via the imposition of narrow legal guidelines that emphasize offense circumstances: these changes limit the types of individualized assessments bench officers can legally construct, thus making it relatively easy to challenge any decision that finds a minor fit to remain in juvenile court. Second, the sense of a more punitive political climate in the broader community ("society," the Legislature, appellate courts) gives prosecutors the moral authority within the courtroom to use the legal maneuvers to divert judicial discretion, or in other instances to force bench officers to abdicate their own discretion. Furthermore, in regard to the stipulations and affidavits of prejudice, because of the referees' and

[18]For a discussion of the justice model, see Fogel 1975.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

commissioners' tenuous positions with the waiver hearing (their decisions can be reevaluated by elected and appointed judges and essentially thrown out if challenged by DDAs) these mechanisms have more consequences during waiver decisions than they would have in "normal" hearings.

Defense Attorneys' Role (or Lack Thereof)

Formally, minors and their defense attorneys have the same legal capacity as prosecutors to employ the legal mechanisms described above. Why were they not mobilizing these legal tools? One reason is that defense attorneys in juvenile court (as in criminal court) were primarily public defenders who had a limited set of resources. They lacked the money, time, and institutional support enjoyed by prosecutors. A second reason why defense attorneys did not rely on these mechanisms as frequently as prosecutors may be due to the organizational structure of the respective legal bodies and the inconvenience that results if cases are transferred to other courthouses. If a defense attorney refused to stipulate to a bench officer and the case happened to be reassigned to a different courthouse, then that defense attorney would have to follow the case away from his or her usual courthouse to a new site (which could be anywhere in the county).

The reasoning behind this practice is twofold. First, in an ideal world defense attorneys form relationships with their clients, and thus it makes sense for the attorney to continue to work with this client regardless of where the case will be heard. Second, in addition to the moral obligations, structural reasons all but force defense attorneys to represent a client's case from assignment through adjudication. Attorneys must follow a case wherever it is sent in order to fulfill their contractual and financial obligation to the client. However, the majority of defense attorneys observed and interviewed worked for the juvenile justice system as public defenders and were assigned by the public defenders' office to work in specific courthouses; the bulk of their cases were at one courthouse.[19] Thus, traveling to various courthouses in a day can be expensive and time-consuming, and it can decrease the quality of their representation of cases, especially serious given their already high caseloads. As a consequence, legally challenging a

[19]There are generally three types of defense attorneys who represent youth in juvenile court: individually chosen private attorneys, panel attorneys (who are private attorneys but serve on a panel of attorneys who "pick up" cases on their assigned days), and public defenders housed at the courthouse. The latter two are assigned to specific courthouses. Private attorneys charge a flat rate or an hourly rate to the youth they represent and are sought out specifically by their clients. The panel attorneys represent youth who are either victims of or co-defendants of youth who have already been assigned to a public defender. These attorneys are paid a flat rate per youth they represent by the county court system.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

bench officer and potentially having a case transferred to a different courthouse as a result is inconvenient for defense attorneys, and it reduces the quality of work they can do as representatives for a number of clients.

In contrast to defense attorneys, DDAs represent a system, not individuals, and thus they do not travel to a courthouse when a case is transferred: the DDA assigned to the courthouse where the case was sent will handle the matter in court. Therefore, there are fewer penalties for prosecutors than there are for defense attorneys if they refuse to stipulate to a bench officer, or file an affidavit against one. "Using paper," as one public defender informed me, is "just damn inconvenient" for defense attorneys, but not for prosecutors. As a result, public defenders tend to not use these legal channels as frequently as DDAs.

A third reason why these work tools are used less often by defense attorneys is that there is a difference between prosecutors' and defense attorneys' reward structures that may affect how cases are managed. Prosecutors' career trajectories are based on the success of their cases (conviction of offenders or, in this case, their transfer to adult court). By contrast, defense attorneys are not evaluated in terms of acquittal rates or the number of cases they retain in juvenile court. As a result, prosecutors appear to be more inclined to engage in legal battles.

Finally, defense attorneys may also use stipulations and affidavits less frequently than prosecutors for reasons connected to the cultural and political climate. In recent decades, the emphasis has been on the need to "get tough" on crime; this orientation drove the revision of state statutes that formalized decisionmaking processes (such as mandatory minimums and juvenile criminalization and accountability laws) (Beckett 1997; Tonry 1995). Defense attorneys now represent young clients in a culture that no longer views these youth as malleable, immature, and in need of rehabilitation; "[d]efense attorneys are shackled by the stigma attached to their clients. They are usually the weakest competitors for influence within the courthouse," and as a result end up "getting along by going along" (Flemming et al. 1992:9). By contrast, as Flemming et alia find in their study of a felony court, "[p]rosecutors have several potential advantages over courthouse rivals": they have "electoral political clout," they are "free to use the symbols of law-and-order politics," and they are "not expected to be neutral or passive in performing this task" (1992:9). Because the DDAs clearly have the upper hand (in terms of political capital and legal position to appeal cases) in the courtroom, the defense attorneys are particularly careful about alienating bench officers. By contrast, DDAs seem more willing to do so, presumably as a result of their greater institutional power.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

DDAs' Justifications for Diverting Discretion

Prosecutors justified their efforts to divert judicial discretion through a combination of arguments relying on ideas of "appropriateness" and "justice." They often criticized what they saw as bench officers' overreliance on the individualized treatment approach. Such an approach was not popularly seen as an appropriate way to handle serious and chronic offenders. DDAs also viewed juvenile treatment for these cases as a failure to achieve justice for the victims and for society in general. At times, DDAs would argue that legal criteria had previously been applied wrongly by certain bench officers. In these instances, DDAs justified filing appeals or engaging in court shopping by arguing that the legal criteria would be inappropriately applied again and justice would not be served. For instance, at HJJC, prosecutors felt that the two commissioners in the courthouse were too liberal in their orientations toward waiver fitness decisions:

> [Commissioner Charles] was finding kids fit [for juvenile court] with no business, not even close calls. It was unheard of. He had a political agenda. See Judge Mitchell was his mentor, and he thought that Mitchell was going to give him a judgeship. He took it [the repeated filing of appeals against his rulings] personally (head DDA).

In this courthouse, prosecutors repeatedly filed appeals on cases retained in the juvenile court system and created a threatening environment for rehabilitative bench officers.

As noted earlier, as a result of this contention between the DDAs and commissioners at HJJC, Commissioner Stanford came to an agreement with the prosecutors to avoid future legal challenges. This informal policy diverted all of Commissioner Stanford's decisionmaking power during waiver hearings to another courtroom. Commissioner Stanford handled cases petitioned for transfer up to the fitness hearing, but at that point the other bench officer in the courthouse would conduct the hearing itself. Rather than having affidavits of prejudice filed against him, Commissioner Stanford abdicated his discretion in waiver cases to prosecutors, accepting a sort of institutionalized exclusion. That is, this commissioner no longer had any discretionary power over waiver-eligible cases in this courthouse. Commissioner Stanford described the context leading to this arrangement:

> It is interesting that I have not tried any fitness hearings . . .. The reason is that the district attorney's office apparently feels that I am not hard enough. And, that there are cases where I would find the minor to be fit, left as a juvenile. And, as you know they can file what we call an affidavit under the appropriate section of the penal code, which would exclude me from handling the fitness motions (bench officer #12).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Commissioner Stanford explained that as a result of finding some youth fit to remain in juvenile court, he was labeled as too liberal or soft on crime and was identified as a target by the prosecutors' office. The head DDA explained this informal agreement he made with Commissioner Stanford and how his office decided to use more legal pressure on Judge Mitchell:

> With Stanford we 170.6 ["papered"] him. We never filed [an appeal]. We agreed he would do the housekeeping. Mitchell would not agree to anything, so we filed on him. He was a fairly pushy bench officer, big political guy (head DDA).

In response to the threat of having his decisions legally challenged, Commissioner Stanford became willing to cede his discretionary authority over fitness hearings. Thus just as certain prospective jurors who are against the death penalty are barred from sitting on juries involving capital offenses, prosecutors sought to prevent bench officers they deemed too liberal from overseeing waiver hearings. When bench officers were not allowed to hear cases, their right to use discretion was obviously limited, and their independence as decision makers was diminished.

The case of Judge Mitchell demonstrates how extreme the tensions between prosecutors and bench officers could become. Judge Mitchell was unwilling to enter into any informal agreements, or to change his decisions; in response, the DDAs repeatedly filed appeals against his judgments. In my subsequent discussion with the same DDA about Judge Mitchell, the DDA described the prosecutors' office frustration with losing fitness hearings and the need to be more aggressive in restraining Judge Mitchell's discretion.

> We were losing 50 percent of fitness hearings. Jerry [supervising DDA of a certain segment of Hughes County] and I had a talk with Mitchell. Jerry started filing writs. We were successful on all. We talked to Mitchell, told him we would start using paper. Things calmed down a bit. Then stuff started happening again. We had a run of writs, 15 in a row. And the kicker was—the kid's name was Ramirez—this young man drove up in front of a house and fires six rounds in front of a house at a birthday party. He gets arrested. [Anyone hurt?] No. At the fitness hearing Mitchell finds the guy unfit, but ORs him [release on own recognizance]. I went berserk with Mitchell. He [the young man] goes out and steals a car the next day. The police follow him, because he looks suspicious. He goes to the same house, shoots at the house. The cops get out, they exchange over 40 rounds. He takes off in the car, the cops follow. They finally catch him. The area commander was pissed off at me. I explained what had happened with the judge. Mitchell never heard any more cases .... We put Mitchell out of the fitness business (head DDA).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Here the DDA described a kind of situation in which his organization felt pressured to do something about a particular bench officer's decisions. He implied that Judge Mitchell, while making a correct assessment of amenability, made a wrong decision to release the minor. The DDA also described a sense of embarrassment he felt when questioned by the police department about the prosecutors' apparent inability to do their job correctly. This DDA's account suggests that pressures external to the case and the courtroom work group intensified his desire to divert discretion from rehabilitative bench officers, not only in waiver decisions, but in other juvenile matters as well.

In short, the externally oriented goals of the prosecutors' office (maintaining a cooperative working relationship with the police department, projecting an image that they are holding youth accountable to their offenses and that "justice" is being served) determined what would happen in the courtroom. Certain bench officers had their discretion diverted, while others abdicated their decisionmaking power in fear of the consequences of exercising it. In these instances, the courtroom work group was not cohesive. "To the degree that the sponsors supervise their courtroom personnel effectively, the workgroups find themselves severely inhibited" (Eisenstein & Jacob 1977:52). In this instance, the DDAs' sponsors were much more vocal and aggressive in managing what was happening in the courtroom than the bench officers' sponsors. This pattern is an indication of the enormous amount of power that formally rationalized criminalization policies have given DDAs within the juvenile justice system.

The Effects of Diverting Discretion

Whether or not DDAs would actually limit bench officers' discretion through the use of affidavits, stipulations, or appeals in particular cases, bench officers' perceptions were that the threats were very real. For example, a probation officer at the central juvenile hall described her perspective on the relationship between bench officers and prosecutors:

> A lot of commissioners and especially referees are not about to take a walk on the wild side even if they may want to find the kid fit. But, they don't do that, it is not the politically correct thing. I have seen referees fired in one day . . . because they work on an as-needed basis . . . just because you got on the bench doesn't mean you are going to make the right decision . . . there are a lot of things going on. An [elected or appointed] judge—they can walk on the wild side and make a decision, a fair decision. I see a lot of [bench officers catering to both sides] going on in the court and it makes me ill. You see that a lot, with [commissioners and referees] saying; "OK, what do you guys think," that bothers me.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

This probation officer described her frustration with what she saw as an unfair power relationship between nonjudges and prosecutors. Ironically, she equated objective judicial reviews of waiver cases that result in retaining youth in the juvenile system with walking on the "wild side." In a similar vein, many in the court, including judges, acknowledged the tensions between bench officers and prosecutors and the feeling that their jobs were in some part controlled by prosecutors. The presiding judge of one courthouse where I conducted observations and interviews summed up this relationship: "If the district attorney gets angry and doesn't want [referees and commissioners] to have cases, then *we* are out of a job" (bench officer #15). Even though this was an appointed judge speaking, she nonetheless indicated that all bench officers were concerned with alienating DDAs. Not only could DDAs affect the career trajectories of referees and commissioners, but as indicated by this judge, a sentiment existed that prosecutors could taint the reputation and legitimacy of judges as well. As a result, juvenile court bench officers reacted by tailoring their decisions to fit the current trend of criminalization: "They browbeat me into shape. I am selective with who I find 'fit'" (bench officer #8).

As a result of a punitive climate in the courtroom work group and environment, the issue of whether a fitness decision would withstand legal scrutiny outweighed bench officers' assessments of minors' rehabilitative potential. For example, during the following waiver hearing, Malcolm was charged with attempted murder after robbing a youth of his gold chain. Malcolm was not the shooter but took part in the robbery and knew his companion had a gun. In the following excerpt, the bench officer described the political dilemma he was faced with as he struggled to reconcile the grave crime with his belief that Malcolm could be rehabilitated in the juvenile court:

> I personally think Malcolm is rehabilitatable, but I am sticking with the facts here and I don't know how I can twist the turn here .... I am almost certain rehabilitation is possible if [he was retained in juvenile court and] sent to CYA [California Youth Authority[20]] he would be there until 25. I am almost certain the program could punish and rehabilitate .... I don't like doing this [finding him unfit], I think it is wrong. I know better than [the Legislature does], but it is the law. Sometimes I am willing to go out on a limb. But, the act takes the young man out of the realm (bench officer #8).

Based on his individualized assessment of Malcolm, the bench officer wanted to retain him in the juvenile justice system to make attempts at rehabilitation. However, he felt confined by legal

[20]The California Youth Authority (CYA) is part of California's juvenile justice system and is one of the largest correctional agencies in the nation.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

guidelines that prevented such an assessment. Thus, during waiver hearings bench officers were not examining whether or not minors were rehabilitatable, but whether or not their ultimate judgment of minors' fitness to the juvenile court would withstand scrutiny from DDAs and the appellate courts. In sum, as a result of DDAs' power within the courtroom work group, bench officers rarely retained minors in the juvenile system, even when they believed minors would benefit from the services available.

As a consequence of the changing institutional and cultural context within the juvenile court, a new form of discretionary justice emerged. Because there was a sense in the courtroom work group that a more punitive orientation existed among politicians, voters, and appellate courts, one that fully supports the criminalization of minors, juvenile court prosecutors were increasingly able to divert judicial discretion from one bench officer to another. Defense attorneys were not seen as a threat and were viewed by bench officers as having neither moral nor political authority in the courtroom.

These changes provided prosecuting attorneys the institutional capacity to mobilize a different courtroom ideology than in the past and to both limit and channel the use of judicial discretion affecting the work of both literalist and rehabilitative bench officers. For example, a literalist judge discussed how the prosecutorial-waiver process had affected his perspective on the relationships between bench officers, prosecutors, and defense attorneys:

> [The process] gives more power to the [district attorney]. Changes the power relationship. As compared to the [public defender] who is out of the picture. Here is a case where the [district attorney] decides if the case is decided by a juvenile [bench officer] or an adult [bench officer]. It delegitimizes and emasculates the juvenile court judge . . . if you don't have any authority to make a decision over a juvenile you are disrespected [as a bench officer]. Some sign of disrespect that the juvenile court is not capable of hearing all cases and the [district attorney] has greater authority than the court does (bench officer #1).

This judge illustrated how the new emphasis on formalized processes in juvenile court changed the dynamics and working relationships within the courtroom. In this context, not only rehabilitative bench officers, but literalist officers as well felt "delegitimated" by the loss of discretion over cases they once had primary control over.

As illustrated, case outcomes were being determined within a highly politicized and tension-filled institution. Waiver hearings were an arena of conflict between the key organizational actors in the juvenile court—bench officers and prosecutors—in terms of

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

their ideologies, power, and resources. The waiver system substantially increased the power of the latter at the expense of the former.

Discussion

The introduction of formal reasoning into the juvenile court system has had a differential impact on court players, resulting in a tension between bench officers and prosecutors. The guidelines, which call for judicial decisionmaking to be based on narrow legal criteria, are coupled with pressures from court communities to profoundly affect how social control decisions are made in the contemporary juvenile court. In what follows, I briefly consider the implications of these findings for the courtroom work group framework and for the court community framework in terms of our understanding of the tension between formal- and substantive-rationality in the implementation of the law.

Court Work Groups and Communities

Ethnographic studies of yesterday's juvenile courts often describe those institutions as having cordial work environments characterized by attempts to minimize conflict and support judicial decisions (Cicourel 1968; Emerson 1969). This study found a stark contrast between these descriptions of past juvenile courts and the contemporary ones observed. My findings suggest that the implementation of "get-tough" policies and perspectives have amplified frictions between key courtroom players and have altered the ideological purposes of this institution. The formality of the waiver process affects both the internal organizational dynamics of the court communities and the ways legal mechanisms are used by court actors, while the punitive nature of the process, which is supported by the court community, influences the internal dynamics of the work group by creating a competitive and adversarial culture. As a result, prosecutors now dominate the courtroom and are increasingly able to achieve their organizational aims.

As others have noted, the change in juvenile court workgroup relations began in the 1960s with *In re Gault* (1967) and similar decisions (Feld 1999). *Gault* established the role of both the defense and prosecuting attorneys in the juvenile courtroom. The analysis presented here suggests that more recent developments have enhanced prosecutors' ability to check and harness the exercise of judicial discretion. Increasingly, criminalization statutes, such as sentencing guideline changes in criminal court (Engen & Steen 2000), have begun to reroute judicial discretion and enhanced prosecutors' capacity to determine the jurisdiction that will process a case within the juvenile courts.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

The courtroom work group framework I used to examine the criminal system remains applicable to the juvenile courts observed.[21] At times, the work group's expressive, instrumental, and internal goals came into sharp conflict. The court community framework helps us understand when and why the goals of the courtroom actors clash by highlighting the importance of the social and political dynamics of the context in which the work group is situated. The present investigation illustrates how the broader political issues of the court community are represented in the court work group and influence case processing and outcomes. Jacobs (1990) reaches a similar conclusion in his investigation of how probation officers manage their duties within the disorganization of their environments. Jacobs finds that it is not just competing ideologies that influence court outcomes, but also pressures exerted by court communities on the court actors to obtain the externally oriented goals of the sponsoring organization. In response to these pressures, probation officers attempt to work the system to make the outcome of judicial decisions benefit their cases. Similarly, in the present study, DDAs used all work tools available to ensure the best outcome for their cases.

The cumulative effect of judicially, prosecutorially, and automatically waived cases, along with other criminalization mechanisms, and the increased development and implementation of criminalization statutes, have serious consequences for the meaning of both juvenile and criminal justice. The analysis presented here suggests that juvenile courts are increasingly characterized by diverse goals, conflict, and an asymmetrical distribution of power. The result is a judiciary that increasingly abdicates its discretion in order to preserve a semblance of authority in the courtroom. Although not assessed here, it appears likely that these changes will have important consequences for case outcomes.

Substantive versus Formalized Rationality

This study explores the relationship between substantive rationality and formalized rationality in recent criminalization changes to juvenile law. I have analyzed the effect of changing legal

[21] It is important to note the relevance of jurisdiction size. Eisenstein and Jacob's 1977 courtroom work group framework was developed from an investigation of large city felony courts, whereas the Eisenstein et alia 1988 framework was derived based on data from midsized felony courts. In a discussion about the differences in jurisdiction size, the latter authors suggest that the court community concept is still a core framework for understanding court processes, yet the extent to which the work groups are cohesive may vary depending upon the sponsoring organization's supervision (1988:283–4). The jurisdiction observed presently is a large jurisdiction (according to Eisenstein et alia parameters). It is most likely that the tensions observed were instances in time, and that the work group would eventually produce a new courtroom work group order based on negotiation. "Court communities are not only complex, then, but in a state of potential or actual flux as autonomous changes arise out of the interplay of external and internal events and out of the work and politics in the communities" (Flemming et alia 1992:205).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

guidelines on the culture and context of the juvenile court by highlighting how court actors struggle for control of case outcomes. The analysis presented suggests that the court community matters a good deal for juvenile justice decisionmaking processes; as the legal framework changes in ways that reflect larger political and cultural shifts, the substantive application of the law is altered.

This change manifests itself in the following three ways. First, the imposition of more formalized procedures in the juvenile system has altered the power dynamics that characterize the contemporary juvenile court work group. As noted earlier, these shifts began in the 1960s. Prior to the "constitutional domestication" of the juvenile court (Feld 1999), attorneys were virtually nonexistent; probation officers or teachers brought charges against minors (Emerson 1969). Post *Gault* (1967), prosecutors and defense attorneys had formalized roles in the juvenile court, yet each was still seen as relatively superfluous to the actions and decisions of bench officers. I argue that the triangular arrangement between the bench officer, the prosecuting attorney, and the defense attorney in the juvenile court has rotated, with the juvenile prosecuting attorney rising in influence in the courtroom.

A second illustration of these changes in the legal context and court community can be seen in the use of mechanisms by prosecutors attempting to subvert and divert bench officers' discretionary authority. Prosecutors' enhanced capacity to influence the decisionmaking process results not only from statutory changes, but also from transformations in the broader cultural context. In a sense, this expansive punitive climate supports prosecutors in their use of juvenile waiver as a device to separate youth still "deserving" of the rehabilitative ideal from those "undeserving" of treatment and labeled in need of punishment. The third expression of change is that bench officers who attempt to maintain the past ideology of the juvenile court find themselves politically, socially, and legally marginalized in the contemporary court.

This study has focused on juvenile court waiver hearings, but these hearings have important implications for other juvenile court processes. The waiver hearings do not occur in a vacuum. The tensions between participating bench officers and prosecutors have a spillover effect into other kinds of hearings and juvenile court matters.[22] Thus the tensions surrounding the implementation of waiver policies affect courtroom dynamics outside of the waiver hearings themselves.

[22]For example, one prosecutor illustrated how the tension over waiver hearings can permeate courthouse relations. The prosecutor described walking into a commissioner's courtroom: "He said 'Oh I didn't know you knew your way to my courtroom.' I said, 'Oh I know the way to the Supreme Court.' I think if you caught [him] in a moment of honesty, he would say that I ruined his career with the A. case."

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Conclusion

> If we file a [waiver petition], and [bench officers] make a mistake [e.g. finds the youth fit], that's not the end.
>
> (head DDA)

This article analyzes courtroom dynamics surrounding judicial waiver hearings in three juvenile courts in Southern California. My findings suggest that the increased emphasis on punishing the offender rather than assessing the prospects for her or his rehabilitation within the juvenile justice system is altering the juvenile court in important ways. This punitive ideology is coupled with a shift in the orientation and distribution of power among court actors; any judicial efforts to resist this transformation and retain a commitment to individual assessments and rehabilitation render work group relations and environments adversarial. As a result, recent cultural and legal changes have transformed not just the scaffolding of the institution but also the substance within. The court community perspective allows us to see more clearly the importance of treating "formal and substantive rationalization as interactive processes" (Sutton 1988:247). Formal rationalization—increasingly specific statutory requirements—can suppress substantive decisionmaking when the politics and culture of the community are aligned with the intent of the law. As a result, the nature and experience of justice has changed for many young people living in the United States and potentially in other countries where similar shifts in legal orientation have occurred.

References

Albonetti, Celesta (1991) "An Integration of Theories to Explain Judicial Discretion," 38 *Social Problems* 247–66.

——— (1992) "Charge Reduction: An Analysis of Prosecutorial Discretion in Burglary and Robbery Cases," 8 *J. of Quantitative Criminology* 317–33.

——— (1997) "Sentencing under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991–1992," 31 *Law & Society Rev.* 789–822.

Barnes, Carol, & Randal Franz (1989) "Questionably Adult: Determinants and Effects of the Juvenile Waiver Decision," 6 *Justice Q.* 117–35.

Baum, Lawrence (1980) "Responses of Federal District Judges to Court of Appeals Decisions: An Exploration," 33 *Western Political Q.* 217–24.

——— (1997) *The Puzzle of Judicial Behavior*. Ann Arbor: Univ. of Michigan Press.

Beckett, Katherine (1997) *Making Crime Pay*. New York: Oxford Univ. Press.

Blumberg, Abraham (1967) *Criminal Justice*. Chicago: Quadrangle Books.

Cicourel, Aaron (1968) *The Social Organization of Juvenile Justice*. New Brunswick, NJ: Transaction.

Davis, Kenneth (1969) *Discretionary Justice: A Preliminary Inquiry*. Baton Rouge: Louisiana State Univ. Press.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Dixon, Jo (1995) "The Organizational Context of Criminal Sentencing," 100 *American J. of Sociology* 1157–98.

Eisenstein, James, & Herbert Jacob (1977) *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little, Brown.

Eisenstein, James, et al. (1988) *The Contours of Justice: Communities and their Courts*. Boston: Little, Brown.

Emerson, Robert (1969) *Judging Delinquents: Context and Process in Juvenile Court*. Chicago: Aldine.

Engen, Rodney, & Sara Steen (2000) "The Power to Punish: Discretion and Sentencing Reform in the War on Drugs," 105 *American J. of Sociology* 1357–95.

Fagan, Jeffrey, & Franklin Zimring (2000) *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*. Chicago: Univ. of Chicago Press.

Feld, Barry (1993) "Juvenile (In)Justice and the Criminal Court Alternative," 39 *Crime and Delinquency* 403–24.

——— (1999) *Bad Kids: Race and the Transformation of the Juvenile Court*. New York: Oxford Univ. Press.

Flemming, Roy, et al. (1992) *The Craft of Justice: Politics and Work in Criminal Court Communities*. Philadelphia: Univ. of Pennsylvania Press.

Fogel, David (1975) *We Are the Living Proof: The Justice Model for Corrections*. Cincinnati: Anderson.

Frazier, Charles E., et al. (1995) *Juvenile Justice Transfer Legislation in Florida: Assessing the Impact on the Criminal Justice and Correctional Systems*. Tallahassee, FL: Task Force for the Review of Criminal Justice and Correctional Systems and the Collings Center for Public Policy.

Garland, David (1990) *Punishment and Modern Society*. Chicago: Univ. of Chicago Press.

Griffin, Patrick, et al. (1998) *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Harrison, Paige, & Jennifer Karberg (2002) *Prison and Jail Inmates at Midyear*. Washington, DC: Bureau of Justice Statistics, Department of Justice.

Heumann, Milton, & Colin Loftin (1979) "Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute," 13 *Law & Society Rev.* 393–430.

Jacobs, Mark (1990) *Screwing the System and Making It Work: Juvenile Justice in the No-Fault Society*. Chicago: Univ. of Chicago Press.

Junger-Tas, Josine (2002) "The Juvenile Justice System: Past and Present Trends in Western Society," in I. Weijers et al., eds., *Punishing Juveniles: Principle and Critique*. Portland, OR: Hart Publishing.

Kessler, Daniel, & Anne Morrison Piehl (1998) "The Role of Discretion in the Criminal Justice System," 14 *J. of Law Economics, and Organization* 256–76.

Kramer, John, & Jeffery T. Ulmer (2002) "Downward Departures for Serious Violent Offenders: Local Court 'Corrections' to Pennsylvania's Sentencing Guidelines," 40 *Criminology* 601–36.

Krisberg, Barry, & James Austin (1993) *Reinventing Juvenile Justice*. Thousand Oaks, CA: Sage.

Miethe, Terence D. (1987) "Charging and Plea Bargaining under Determinate Sentencing: An Investigation of the Hydraulic Displacement of Discretion," 78 *J. of Criminal Law and Criminology* 155–76.

Moore, Charles A., & Terence D. Miethe (1986) "Regulated and Unregulated Sentencing Decisions: An Analysis of First-Year Practices under Minnesota's Felony Sentencing Guidelines," 20 *Law & Society Rev.* 253–77.

Nardulli, Peter, et al. (1988) *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Urbana: Univ. of Illinois Press.

Podkopacz, March, & Barry Feld (1995) "Judicial Waiver Policy and Practice: Persistence, Seriousness and Race," 1 *Law & Inequality* 73–178.

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

Puzzanchera, Charles (2003) *Delinquency Cases Waived to Criminal Court, 1990–1999*. OJJDP Fact Sheet. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Rainville, Gerard, & Steven Smith (2003) *Juvenile Felony Defendants in Criminal Courts*. NCJ 197961. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Savelsberg, Joachim (1992) "Law That Does Not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law," 97 *American J. of Sociology* 1346–81.

Segal, Jeffrey, & Harold Spaeth (1993) *The Supreme Court and the Attitudinal Model*. Cambridge, United Kingdom: Cambridge Univ. Press.

Singer, Simon (1996) *Recriminalizing Delinquency*. Cambridge, United Kingdom: Cambridge Univ. Press.

Spohn, Cassia, et al. (1987) "The Impact of Ethnicity and Gender of Defendants on the Decision to Reject or Dismiss Felony Charges," 25 *Criminology* 175–92.

Stahl, Anne (1999) *Delinquency Cases Waived to Criminal Court, 1987–1996*. Fact Sheet. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Steffensmeier, Darrell, & Stephen Demuth (2000) "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who Is Punished More Harshly?," 65 *American Sociological Rev.* 705–29.

——— (2001) "Ethnicity and Judges' Sentencing Decisions in Pennsylvania: Hispanic-Black-White Comparisons," 39 *Criminology* 145–78.

Steffensmeier, Darrell J., et al. (1998) "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Costs of Being Young, Black, and Male," 36 *Criminology* 763–97.

Strom, Kevin, & Steven Smith (1998) *Juvenile Felony Defendants in Criminal Courts*. NCJ 165815. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Sutton, John (1988) *Stubborn Children: Controlling Delinquency in the United States, 1640–1981*. Berkeley: Univ. of California Press.

Tonry, Michael (1995) *Malign Neglect: Race, Crime and Punishment in America*. New York: Oxford Univ. Press.

Tonry, Michael, & John Coffee (1987) "Enforcing Sentencing Guidelines; Plea Bargaining and Review Mechanisms," in A. Von Hirsch et al., eds., *The Sentencing Commission and Its Guidelines*. Boston: Northeastern Univ. Press.

Torbet, Patricia, et al. (1996) *State Responses to Serious and Violent Juvenile Crime*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

Ulmer, Jeffery, & John Kramer (1996) "Court Communities under Sentencing Guidelines: Dilemmas of Formal Rationality and Sentencing Disparity," 34 *Criminology* 383–407.

——— (1998) "The Use and Transformation of Formal Decision Making Criteria: Sentencing Guidelines, Organizational Contexts, and Case Processing Strategies," 45 *Social Problems* 248–67.

Weber, Max (1968) *Economy and Society*. Berkeley: Univ. of California Press.

Cases Cited

Charles R. v. Superior Court, 110 Cal. App. 3d 945, 168 Cal. Rptr. 284, 2nd Dist. (1980).

Edsel P. v. Superior Court, 1st Dist. (1985).

Hicks v. Superior Court, 4th Dist. (1995).

In re Aontae D., 25 Cal. App. 4th 167 (1994).

In re Gault, 387 U.S. 1 (1967).

In re Julio N., 3 Cal. App. 4th 1120 (1992).

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press

In re Krill, Cal. App. Unpub. LEXIS 5624 (2002).
Johnson v. Superior Court, 50 C2d 693 (1958).
Kent v. United States, 383 U.S. 541 (1966).
Manduley v. Superior Court, 27 Cal. 4th 537 (2002).
People v. Browning, 45 Cal. App. 3d 125, 141 [119 Cal. Rptr. 420] (1975).
People v. Superior Court (Zaharias M.) 25 Cal. Rptr. 2d 838, 21 Cal. App. 4th 302 (App. 2 Dist.) (1993).

Statutes Cited

Gang Violence and Juvenile Crime Prevention Act of 1998 § (2) (K), Ballot Measure 4, 1999-2000 Legis. Sess. (Cal. 1999).
Juvenile Justice Reform Act of 1976, N.Y. Laws S. 878 (1976).
United Kingdom Crime and Disorder Act 1998 (c. 37).
Youth Criminal Justice Act, C-1, Ottawa, Minister of Supply and Services Canada (2002).

Alexes Harris *is Assistant Professor at the Department of Sociology at the University of Washington. Her degrees in the field of sociology are from the University of Washington (B.A., 1997) and the University of California, Los Angeles (M.A., 1999; Ph.D., 2002). Her research and teaching areas include the juvenile and criminal justice systems, qualitative research methods, and social stratification and inequality.*

https://doi.org/10.1111/j.1540-5893.2007.00302.x Published online by Cambridge University Press