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IMPLEMENTING A DUE PROCESS MODEL: THE INFLUENCE OF LEGAL TRAINING ON JUVENILE  
INTAKE DECISION MAKING

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## INTRODUCTION

Since the Law Enforcement Assistance Administration was established as part of the Justice Department in 1968, attorneys have played an increasingly important and diversified role in formulating and implementing juvenile justice policy. Formerly social scientists had been the professional group with predominant influence in the areas of juvenile justice and correctional policy.<sup>1</sup> The shift was stimulated in part by several court decisions, most notably In Re Gault (387 U.S. 1 (1967)), which expanded the lawyers' participation in day-to-day juvenile court activities by extending the right to counsel to juveniles (Lemert, 1970:177; Kobetz and Bosarte, 1973:270). A number of right to treatment cases in state courts (Wald and Schwartz, 1974) have reflected the involvement of attorneys in deciding how a youth would be treated after he has been adjudicated as a delinquent. The growth of the attorneys' role in the delivery of justice has also been buttressed by proponents of a due process model of justice (Fogel, 1974; Morris, 1974; Von Hirsch, 1976), who have called for guidelines, standards and legal protections for alleged and adjudicated offenders.

The present study examined one program that was a part of the general trend to expand the attorney's role in the delivery of juvenile justice. The Community Arbitration Program in Anne Arundel County, Maryland (Larom, 1976) employed attorneys as intake officers, who screen all juvenile misdemeanors to determine if they should be forwarded to formal court or not. The attorneys replaced traditional intake staff who held baccalaureate degrees, usually in one of the social sciences.<sup>2</sup> The replacement of the traditionally trained workers with attorneys was intended to produce a change in the way that decisions were reached about misdemeanor youths.

The legal training of attorneys was expected to result in increased screening of cases for insufficiency of evidence. A number of national commissions have recently recommended the strengthening of this screening function of juvenile intake (Creekmore, 1976:124). Additionally, the attorneys were expected to divert more youths from formal court. This was to be accomplished by providing new decision options: to use volunteer work placements in a community setting as a form of social restitution; to refer youths to short-term educational programs in drug, alcohol, mini-bike, and traffic safety; and, to involve youths in increased counseling resources.

A concern related to criminal justice policy is whether intended policies are transformed into actual practices. As Musheno, et. al., (1976) have noted, a fragmented decision-structure, discretionary power, and the self-interest goals of staff typify justice programs. All of these factors could counteract attempts to change a program in such a way that decisions are made differently. Would the Community Arbitration Program result in a real change in the way that the intake decisions were made? And, would the change be reflected by different decision outcomes? The first of these two questions is addressed in this study.

#### THEORY OF DECISION MAKING, PUBLIC POLICY EVALUATION, AND PRIOR RESEARCH

Pressman and Wildavsky (1973:xv) have described the overlap between policy and theory:

Policies imply theories. Whether stated explicitly or not, policies point to a chain of causation between initial conditions and future consequences. If X, then Y. Policies become programs when, by authoritative action, the initial conditions are created. X now exists. Programs make the theories operational by forging the first link in the causal chain connecting actions to objectives. Given X, we act to obtain Y. Implementation, then, is the ability to forge subsequent links in the causal chain so as to obtain the desired results.

Theories about decision making are pertinent to our study of one link in the causal chain, the effect of components of the Community Arbitration Program, such as legal training of the decision maker, on the decision-making process.

Theories about decision making in the juvenile justice system have suggested that it is likely that professional training will influence decision making. In separate studies, Lerman (1975:200), Wilson (1968), and Wheeler (1968) found that probation staff, policemen, and judges who had a professional orientation or training more frequently ordered some form of social intervention than other personnel. Additionally, Gross (1967) found that within a group of probation officers, those with the greatest amount of formal education, who read more professional journals, regarded objective types of data (e.g., prior record) as relatively less important in the preparation of prehearing reports and recommendations.

Burnham (1975:94) conceptualized the activity of making a decision as inextricable from the activity of choosing significant information from an abundance of data. This view led us to focus on differences in the way that attorneys and traditional intake workers used information to justify intake dispositions.

Studies of the juvenile justice decision-making process have identified several categories of information that influenced decision outcomes. These have included: (1) social characteristics of the offender (e.g., Cohen, 1975; Arnold, 1971); (2) offender's demeanor (e.g., Piliavin and Briar, 1963); (3) type of offense and prior record (e.g., Cohen, 1975; Terry, 1970); and, (4) prior decisions about the youth (e.g., Coates, et. al., 1975; Cohen, 1974). While these factors have been differentially stressed by various theoreticians, characteristics of the youths (e.g., sex, race, age), and type of offense and prior record, have most often been considered as independent variables affecting decision outcomes.

A majority of the studies mentioned above have reflected a conceptualization of a direct link between the type of information that is available and the decision outcome. The idea that the decision maker actively selects certain information alters the picture somewhat. It suggests that no matter what information is available, the decision maker will be guided by his own decision rules to use only certain parts of that information. This second theoretical orientation is at the crux of our study, as we expect the differences in decision maker's training and experience to influence his decision rules, and therefore his use of information. (A similar view has been presented by Burnham, 1975:100-101.)

### METHODOLOGY

Design. The Community Arbitration Program began in 1974. During the second year of program operation, a comparison group of misdemeanor youths was established and was exposed to the traditional intake procedure. Every fourth youth was referred to an intake worker when he appeared for Arbitration, and was interviewed by the worker in a counseling-like setting. These intake staff were told that the cases were assigned to them because Community Arbitration had too great a workload. The Community Arbitration Program was housed at a separate location, which provided some protection from inter-program influence.

The five traditional intake staff had routinely filled out a standardized form which required them to indicate their reasons for each case disposition. The two attorneys had the same form, but had never filled it out completely. They were asked to complete the forms for 100 consecutive cases. They completed 83 forms. Initially a set of 91 completed forms was drawn from the intake workers' files, which corresponded to the time period in which the attorneys filled the forms out. This was during the last months in which the comparison group existed. Fifty-one of these

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forms were used. The others had been completed by new workers who had been placed with the intake unit on a temporary basis. These workers were not considered to be representative of the traditional intake staff. There was no indication that cases were assigned to the temporary workers on any systematic basis.

The attorneys failed to complete about 20% of the forms, most often in cases that they denied for insufficient evidence. After the data had been collected, the attorneys verbally indicated that such explanations were "self-evident". The traditional workers had failed to complete less than 10% of the forms; there was no clear pattern of relationship between their incompleted forms and the type of disposition. The initial attempt to systematically assign equivalent cases to traditional intake staff and attorneys was compromised by failure to complete all forms.

Based on the review of the literature, these categories were used to classify the reasons that the intake workers and arbitrators gave for their decisions: qualities of the youth (good character, ability to understand, demeanor, appearance, truthfulness, age); legal considerations (mens rea, quality of the evidence); type of offense and prior history of delinquency; and, previous decisions about the offender.

At times, the development of information categories appeared to be related as much to what information has been recorded in office files as to theories that explain criminal justice decision making. Therefore, additional categories of information that were suggested by the data were included in the study. These were: whether the youth had other problems (psychiatric, psychological, family, drug, school); whether the offense had a cause which was not under the offender's control (caused by the school, the family, the social situation of adolescents); predictions about the offender's future (will get in trouble, won't get in trouble);<sup>3</sup> and

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considerations related to the victim's circumstances (victim's desires, victim-precipitated offense, amount of damage to the victim).

Once a full set of categories had been developed from the literature review and from examination of the data, an independent researcher coded each reason into one of the categories. He did not know the purpose of the study or the identity of the decision maker. The youths' sex, age, race, offense, prior record, and the number of codefendants were obtained from available records, and were used as covariates.

Analysis. A multivariate analysis of variance was used to compare the number of times that arbitrators and traditional intake workers indicated their use of each category of decision justification. As a part of this analysis contrasts were written to compare: (1) the justifications of the decisions that were provided by arbitrators and by intake workers; (2) the justifications of the decisions that were provided by the two arbitrators; and, (3) the justifications of the decisions that were provided by the five intake workers.

As mentioned above, the arbitrators did not record their reasons for 20% of the cases that were systematically assigned to them. It is not reasonable to assume that decisions made by the arbitrators and the intake workers were based on equivalent groups of youths. While statistical control does not compensate for the lack of equivalence, it provides control for specific variables. Available data was used to provide measures of the covariates: type of offense (against person, against property, nuisance, or other); number of codefendants; prior offense history (yes, no); and, offender's age, sex and race. The numbers of times that a decision in each of the categories of decision justifications was used were the values of the dependent variables.



## FINDINGS

Comparison of Decision Justifications Reported by Traditional Intake Workers and Arbitrators. The multivariate test of the differences in the rationales that arbitrators and traditional intake workers provided for their decisions was significant ( $F_{8,112}=2.54$ ,  $\alpha=.014$ ). Four variables accounted for the difference, as reflected by the univariate F-tests. Arbitrators were more likely to note legal considerations, the child's other problems, and predictions about the child's future lawbreaking behavior, as reasons for their decisions. Intake workers were more likely to indicate that the child's prior record and type of offense justified their decisions. Chart A summarizes these results.

Within Group Differences. A comparison of the decision justifications of the two arbitrators resulted in a significant multivariate test ( $F_{8,112}=2.03$ ,  $\alpha=.0489$ ). The average number of times a type of justification was provided by each arbitrator is presented in Table B for the variables for which the univariate test was significant. The arbitrators differed in the degree to which they reported that considerations related to the victim and characteristics of youths were influences upon their case dispositions.

Four contrasts written to compare the intake workers revealed only one significant multivariate F ( $\alpha=.06$ ). It does not appear that there are consistently significant differences between decision justifications offered by the intake workers.

## DISCUSSION

Practical Implication of Findings. The Community Arbitration Program has introduced changes in the way that intake decisions are made. The decision makers' reports of their reasons for decisions suggested that the arbitrators are placing more emphasis on due process concerns, as legal considerations are more frequently used to justify their decisions than the intake workers' decisions. However, there is not a clear shift from a "treatment oriented" to a due process model. Arbitrators also more frequently use the treatment related concerns of whether the child is likely to get into trouble again and whether the child has other problems (i.e., psychiatric, family, school, etc.) to justify their decisions. Compared to the arbitrators, the intake workers more frequently justify their decisions by citing the type of offense and the youth's prior record.

It may be that the Arbitration Program has strengthened the attention that the decision maker pays to both due process and intervention concerns. The necessity of abandoning a view of due process and treatment models as simple alternatives has been stressed in a recent article by Rosenheim (1976). She has argued for an increase in case dispositions that involve youths in educational and socializing experiences, along with the trend towards due process. At least as reflected by the self-reported use of information, arbitrators appear to be implementing a policy of due process and diversion through their decision making.

The arbitrators' decreased use of the youth's prior record and type of offense, as compared to the intake workers' use of these decision rationales, would also appear to be desirable. A major finding of Wolfgang's, et. al., (1972) cohort study was that offense and prior record were poor predictors of a youth's recidivism. It might also be noted that our finding was consistent with Gross's (1967) finding that increased training was associated with probation officers' decreased use of prior record and type of offense as decision criteria.

A limitation of the study design was that the effects of the several changes in intake that were introduced as a part of the Community Arbitration Program cannot be assessed independently. It would seem logical that the arbitrators' legal training led them to weigh legal considerations heavily in their decision making, and that the new decision options led them to pay increased attention to youths special needs. Alternative explanations are also plausible. For example, the introduction of the new intake program, with new objectives and staff, could have allowed for a break with an established agency routine of relying on youths' prior records and type of offense in making intake decisions. Or, the supervision provided to the arbitrators could have accounted for their use of information in making intake decisions. The confounding of the effects of various parts of the Community Arbitration Program should be taken into account in generalizing the findings of this study. Experimentation that allows for variation of each program component (e.g., decision makers' training, decision options, type of supervision) independent from other program components would be necessary to test the specific effects of each variation introduced by the new intake procedure.

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Implications of the Findings for Theory. While the present study was not primarily designed to test or develop a theory of decision making, the study results have implications for theory. The categories that have traditionally been used to classify the types of information that influence decision making in the justice system have not fully described the types of information that decision makers identify as justifying their choices. A potential avenue for research would be to broaden the categories of information that are used to study decision making in the justice system. Multiple methods of measurement (Denzin, 1970), including interviews with decision makers, observation of the decision-making process, and use of available data, might be used to obtain a valid indication of which factors influence decision outcomes.

### CONCLUSION

There is evidence that the Community Arbitration Program, as compared with the traditional intake procedure, has changed the way that the decision makers use information. The arbitrators' increased use of information related to legal considerations, the youths' other problems, and whether the youths appear likely to get in trouble again, may reflect a strengthening of both a due process model and the concern with selecting an appropriate intervention strategy for each child. Both of these tendencies were intended and would be evaluated positively by program originators and administrators.

The arbitrators' relative lack of attention to a youth's prior record and the type of offense he has committed may also be viewed in a positive light, as such factors are not clearly related to individualized justice. Reliance on them may, instead, reflect a pattern of routinized decision making.

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## FOOTNOTES

<sup>1</sup>This tradition can be traced to the Chicago School (e.g., Carey, 1975), and is exemplified by the influence of opportunity theory on criminal justice programs (Sundquist, 1968).

<sup>2</sup>In a statement that could be generalized to include intake staff, McDonough (1976:109) has written that in the United States, "approximately 85% of the probation officers were required to have a bachelor's degree...". It appears that the training of Anne Arundel County intake staff would be comparable to national levels.

For a full description of the intake function of the juvenile court, see Cohen, 1975; Kobetz and Bosarte, 1973.

<sup>3</sup>The predictions referred to here are general guesses, and would not include the application of special prediction schemes, such as those reviewed by Venezia (1971), or Gottfredson (1967).

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CHART A: THE NUMBER OF TIMES A JUSTIFICATION WAS USED PER 100 DECISIONS,  
FOR THE DECISION-JUSTIFICATION CATEGORIES IN WHICH ARBITRATORS AND INTAKE  
WORKERS WERE SIGNIFICANTLY DIFFERENT

Decision Justification Category	No. of Times Used/100 Decisions		Univariate F (df=1,119)	$\alpha$
	arbitration	intake		
Legal considerations	15.7	6.2	4.545	.035
Prior record & type offense	30.5	51.6	4.543	.035
Likelihood of future trouble	13.5	2.0	3.936	.049
Youth has other problems	27.4	7.8	3.565	.061



CHART B: THE NUMBER OF TIMES A JUSTIFICATION WAS USED PER 100 DECISIONS,  
FOR THE DECISION-JUSTIFICATION CATEGORIES IN WHICH THE TWO ARBITRATORS  
WERE SIGNIFICANTLY DIFFERENT FROM EACH OTHER

Decision Justification Category	No. of Times Used/100 Decisions		Univariate F (df=1,119)	$\alpha$
	arbitrator 1	arbitrator 2		
Considerations related to the victim's behavior or circumstances	6.98	15.0	4.912	.029
Characteristics of the youth	48.84	32.5	4.477	.036

**END**