Institute of Judicial Administration

American Bar Association

Juvenile Justice Standards

STANDARDS RELATING TO

Adjudication

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

Hon. Irving R. Kaufman, *Chairman*

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

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This book is printed on recycled paper.

Preface

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

An account of the history and accomplishments of the project

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

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

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

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

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

Addendum of Revisions in the 1977 Tentative Draft

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

1. Standard 2.2 A. was revised by deleting provisions for amendment of the petition by the prosecutor with the permission of the juvenile court prior to tender of a plea admitting an allegation or by the close of the government's case, and substituting a provision that amendment should be governed by the same rules that apply to amendment of a charge in a criminal proceeding.

Commentary was revised to state the view that the new standard is consistent with the basic position that juvenile court proceedings should provide as much protection to an accused juvenile as criminal court proceedings would to an adult defendant.

2. Standard 3.3 B. was amended by adding dispositional concessions to the matters subject to negotiation in plea agreements.

3. Standard 4.1 B. was amended by inserting brackets around the number "six," the recommended minimum number of persons to constitute a jury.

Commentary was revised to explain that the authorized size of a jury in a juvenile court proceeding should be the same as in an equivalent criminal proceeding.

The commentary was amended further to note that the standard

provides for a demand by the respondent to invoke the right to a jury trial, which right can be waived, confirming the non-mandatory nature of a jury trial.

4. Commentary to Standard 2.4 B. was revised by adding a comment explaining the exclusion of a *nolo contendere* plea from the standards, on the ground that the plea would not admit or deny the allegations in the petition and therefore would not meet the criteria for plea terminology—that it be unambiguous and simple for juveniles to understand.

5. Commentary to Standard 3.1 was revised to add a cross-reference to Standard 4.4 and to assert the need to prove prejudice before disqualifying a judge who has inquired into social factors in determining that the respondent lacked the mental capacity to plead.

6. Commentary to Standard 5.3 C. was revised to add the observation that juvenile court adjudications may be admissible at the sentencing stage of criminal court proceedings for some purposes, but inadmissible for other purposes.

The commentary was revised further by the addition of cross-references to other volumes in which prior adjudications are factors in decisions affecting the juvenile's status at the various stages of juvenile court proceedings.

7. Commentary to Standard 6.1 was revised by distinguishing between the respondent's election to waive the right to a public trial and an absolute right to a closed trial, with a cross-reference to Standard 6.2.

Contents

Adjudication

Introduction

This volume deals with the adjudication phase of the juvenile justice process. The vast majority of juvenile cases do not reach the adjudication phase of the process. They are disposed of by police, schools, welfare workers, youth service bureaus, juvenile court intake workers, or probation officers. With the exception of cases in which transfer to criminal court is sought, however, cases pursued to adjudication are the most important cases handled in the juvenile system. They are the cases that are too serious to ignore, the cases in which the juvenile denies guilt, the cases involving recidivistic behavior, the cases in which the juvenile's actual or potential threat to self or the community indicates a need for the secure environment of a correctional institution, or the cases in which the juvenile's home environment is so destructive as to indicate placement elsewhere.

These standards deal with the adjudication process in juvenile cases that are brought because of the respondent's misconduct. In traditional terminology, these are delinquency cases based upon the respondent's alleged violation of the criminal law. Other functions of the juvenile court, such as adjudicating dependency and neglect, terminating parental rights, and conducting similar child protective proceedings, are not dealt with in this volume. The Juvenile Justice Standards Project has taken the position that the juvenile court should not have jurisdiction to adjudicate noncriminal misbehavior cases; therefore, the process that should be employed in such cases is not addressed here.

These standards are based upon the assumption that, as compared to other stages in the juvenile process, the adjudication stage is and ought to be relatively formal. The purpose of the adjudication process is to make the factual and legal findings that determine whether the court may take certain coercive measures that significantly affect the lives of the respondent and his or her family. That can best be done by dependence upon the adversary process, including vigorous advocacy by counsel for the respondent and the government. The judge of the juvenile court ought to be a judge, not a caseworker. While the judge should have a strong concern with the

welfare of the child before the court, this ought not to justify relaxation of significant procedural protections in the name of treatment. Accordingly, the position is taken that the adjudication process ought not to differ significantly from adjudications in other courts of law.

The unique features of the juvenile process—those characteristics that distinguish it from the criminal process and justify its existence as a separate system of social control—ought to be emphasized, in general, in phases of the process other than adjudication. This is not to say that juvenile court adjudication should merely be a junior criminal trial, although many of the constitutional protections associated with criminal adjudication proceedings must be recognized in juvenile adjudications. The fact of immaturity of the subject of the proceedings is recognized throughout these standards and, accordingly, greater protections are frequently provided juveniles than would be required in the case of the trial of an adult for a criminal offense.

The standards in this volume are organized into six parts. Part I deals with the procedural steps that should have been completed before adjudication proceedings begin and to a large extent incorporates positions taken in other volumes in this series. Part II deals with those standards that apply both to contested and uncontested adjudication proceedings. Part III deals with the uncontested adjudication—the juvenile equivalent of the plea of guilty—and sets standards governing that proceeding. Part IV deals with selected issues in the contested adjudication proceeding. Part V deals with the adjudication decision itself, whether based upon contested or uncontested proceedings. Part VI deals with public access to juvenile court adjudication proceedings.

Standards

PART I: REQUISITES FOR ADJUDICATION PROCEEDINGS TO BEGIN

1.1 Written petition.

A. Each jurisdiction should provide by law that the filing of a written petition giving the respondent adequate notice of the charges is a requisite for adjudication proceedings to begin.

B. If appropriate challenge is made to the legal sufficiency of the petition, the judge of the juvenile court should rule on that challenge before calling upon the respondent to plead.

1.2 Attorneys for respondent and the government.

The juvenile court should not begin adjudication proceedings unless the respondent is represented by an attorney who is present in court and the government is represented by an attorney who is present in court.

1.3 Presence of respondent.

A. The presence of the respondent should be required for adjudication proceedings to begin.

B. The respondent should be afforded the right to be present throughout adjudication proceedings, although the juvenile court should be permitted to proceed without a respondent who is voluntarily absent after adjudication proceedings have begun.

1.4 Presence of parents of respondent and others.*

A. Subject to subsection D. of this standard, parents and other per-

*Commissioner Justine Wise Polier objects to this standard as being so broadly drawn as to impair, rather than enlarge, due process rights of a child in requiring that juvenile courts shall make every reasonable effort to secure the presence of both parents. It does not require or even present consideration of past relationships between the child and both parents, including the prolonged absence of one parent or even the denial of paternity. It does not allow the court to consider the wishes of the custodial parent, of the child, or the best interests of the child.

sons required by law to be notified of adjudication proceedings should be entitled to be present throughout the proceedings.

B. The juvenile court should make every reasonable effort to secure the presence of both of respondent's parents at an adjudication proceeding.

C. If, after reasonable effort, only one of respondent's parents is present, the juvenile court should be empowered to proceed with adjudication proceedings. If, after reasonable effort, neither of the respondent's parents is present, or both have been excluded under subsection D. of this standard, the juvenile court should be empowered to proceed with adjudication proceedings after appointing a guardian *ad litem* for the respondent.

D. Persons specified in subsection A. should not be permitted to be present during adjudication proceedings if their presence would violate a rule on witnesses invoked by either the respondent or the government.

1.5 Opportunity to prepare for adjudication proceedings.

A. The juvenile court should determine whether the attorneys for the respondent and the government have had a reasonable opportunity to prepare for adjudication proceedings.

B. Attorneys for the respondent and the government have an obligation to exercise due diligence in preparation for adjudication proceedings and an obligation to make any motion for continuance at such time as to cause the least possible disruption of the work of the juvenile court.

PART II: STANDARDS APPLICABLE TO UNCONTESTED AND CONTESTED ADJUDICATION PROCEEDINGS

2.1 Recording adjudication proceedings.

A. A verbatim record should be made of all adjudication proceedings, whether or not the allegations in the petition are contested.

B. The record should be preserved and, with any exhibits, kept confidential.

C. The requirement of preservation should be subordinated to any order for expungement of the record and the requirement of confidentiality should be subordinated to appropriate court orders on behalf of the respondent or the government for a verbatim transcript of the record for use in subsequent legal proceedings.

2.2 Amending the petition.

A. Each jurisdiction should provide by law that the petition may be amended by the attorney for the government in the same manner

and according to the same rules for amending the charging instrument as in a proceeding in criminal court.

B. Each jurisdiction should provide by law that if the petition is amended, the respondent should be permitted a reasonable opportunity to prepare a defense to the amended allegations.

2.3 Double jeopardy protections.

Each jurisdiction should provide by law that the double jeopardy protections applicable to the trial of criminal cases should be applicable to delinquency adjudication proceedings.

2.4 Plea alternatives.

A. Each jurisdiction should provide by law for oral pleading by a respondent to the allegations of the petition.

B. The respondent should be permitted to admit or deny the allegations of the petition and if the respondent refuses to plead, a plea of deny should be entered by the court.

2.5 Effect of admission.

An admission of an allegation of the petition should be regarded as consent by the respondent to an adjudication by the court of the admitted allegation without proof of it, subject to the requirement of Standard 3.5, relating to verifying the accuracy of the plea.

2.6 Effect of denial.

A denial of an allegation of the petition should be regarded as an assertion by the respondent of the right to require the government to prove its allegation and not as an assertion that the allegation denied is untrue.

2.7 Interpreters.

A. When a witness is incapable of hearing or understanding the English language or is incapable of speaking or of speaking in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom the witness can understand and who can understand the witness should be appointed by the judge of the juvenile court and compensated from public funds.

B. When the respondent is incapable of hearing or understanding the English language, all of the proceedings should be interpreted in a language that the respondent understands by an interpreter appointed by the judge of the juvenile court and compensated from public funds.

C. When the respondent is incapable of speaking or of speaking in

a language understood by respondent's attorney, an interpreter who can understand the respondent should be appointed by the judge of the juvenile court and compensated from public funds to interpret communications from the respondent to respondent's attorney.

PART III: UNCONTESTED ADJUDICATION PROCEEDINGS

3.1 Capacity to plead.

A. The juvenile court should not accept a plea admitting an allegation of the petition without determining that the respondent has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea.

B. In determining whether the respondent has the mental capacity to enter a plea admitting an allegation of the petition, the juvenile court should inquire into, among other factors:

1. the respondent's chronological age;

2. the respondent's present grade level in school or the highest grade level achieved while in school;

3. whether the respondent can read and write; and

4. whether the respondent has ever been diagnosed or treated for mental illness or mental retardation.

3.2 Admonitions before accepting a plea admitting an allegation of the petition.

The judge of the juvenile court should not accept a plea admitting an allegation of the petition without first addressing the respondent personally, in language calculated to communicate effectively with the respondent, and:

A. determining that the respondent understands the nature of the allegations;

B. informing the respondent of the right to a hearing at which the government must confront respondent with witnesses and prove the allegations beyond a reasonable doubt and at which respondent's attorney will be permitted to cross-examine the witnesses called by the government and to call witnesses on the respondent's behalf;

C. informing the respondent of the right to remain silent with respect to the allegations of the petition as well as of the right to testify if desired;

D. informing the respondent of the right to appeal from the decision reached in the trial;

E. informing the respondent of the right to a trial by jury;

F. informing the respondent that one gives up those rights by a plea admitting an allegation of the petition; and

G. informing the respondent that if the court accepts the plea, the court can place respondent on conditional freedom for (___) years

or commit respondent to (the appropriate correctional agency) for (___) years.

3.3 Responsibilities of the juvenile court judge with respect to plea agreements.

A. Subject to the qualification contained in subsection B. of this standard, the juvenile court judge should not participate in plea discussions.

B. If a plea agreement has been reached that contemplates entry of a plea admitting an allegation of the petition in the expectation that other allegations will be dismissed or not filed, or that dispositional concessions will be made, the juvenile court judge should require disclosure of the agreement and the reasons therefor in advance of the time for tender of the plea. Disclosure of the plea agreement should be on the record in the presence of the respondent. The court should then indicate whether it will concur in the proposed agreement. If the court concurs, but later decides not to grant the concessions contemplated by the plea agreement, it should so advise the respondent and then call upon the respondent either to affirm or withdraw the plea.

C. When a plea admitting an allegation of the petition is tendered as a result of a plea agreement, the juvenile court judge should give the agreement due consideration, but notwithstanding its existence, should reach an independent decision whether to grant the concessions contemplated in the agreement.

3.4 Determining voluntariness of a plea admitting the allegations of the petition.

A. The juvenile court should not accept a plea admitting an allegation of the petition without determining that the plea is voluntary.

B. By inquiry of the attorneys for the respondent and for the government, the juvenile court should determine whether the tendered plea is the result of a plea agreement and, if so, what agreement has been reached.

C. If the attorney for the government has agreed to seek concessions that must be approved by the court, the court should advise the respondent personally that those recommendations are not binding on the court and follow the procedures provided in Standard 3.3 B.

D. The court should then address the respondent personally and determine whether any other promises or inducements or any force or threats were used to obtain the plea.

3.5 Determining accuracy of a plea admitting the allegations of the petition.

The juvenile court should not accept a plea admitting an allegation of the petition without making an inquiry and satisfying itself that the allegation admitted is true. The inquiry should be conducted:

A. by requiring the attorney for the government to describe the proof that the government would expect to produce if the case were tried; or

B. by personally questioning the respondent as to respondent's conduct in the case.

3.6 Inquiry concerning effectiveness of representation.

A. The juvenile court should not accept a plea admitting an allegation of the petition unless it determines that the respondent was given the effective assistance of an attorney.

B. The juvenile court should make that determination upon tender of a plea admitting an allegation of the petition and should do so by inquiring:

1. of the respondent and respondent's attorney concerning the number and length (but not the content) of conferences the attorney has had with respondent;

2. of the attorney for the respondent concerning the factual investigation, if any, that the attorney conducted in the case;

3. of the attorney for the respondent concerning the legal preparation, if any, that the attorney made on behalf of respondent;

4. of the respondent and respondent's attorney concerning what advice the attorney gave respondent concerning whether to admit or deny the allegations of the petition;

5. of the respondent and respondent's attorney concerning whether there has been any conflict between them as to whether respondent should admit an allegation of the petition, and if there was, subject to the attorney-client privilege, the nature of that conflict.

3.7 Parental participation in uncontested cases.

A. Except when a parent is the complainant, the judge of the juvenile court should not accept a plea admitting an allegation of the petition without inquiring of the respondent's parent or parents who are present in court whether they concur in the course of action the respondent has chosen.

B. The judge of the juvenile court should consider the responses of the respondent's parents to the court's inquiry in exercising discretion on whether to reject the tendered plea.

3.8 Plea withdrawal.

A. The juvenile court should allow the respondent to withdraw a

plea admitting an allegation of the petition whenever the respondent proves that withdrawal is necessary to correct a manifest injustice.

1. A motion for withdrawal is not barred because made subsequent to adjudication or disposition.

2. Withdrawal is necessary to correct a manifest injustice when the respondent proves:

a. denial of the effective assistance of counsel guaranteed by constitution, statute, or rule;

b. that the plea was not entered or ratified by the respondent;

c. that the plea was involuntary, or was entered without knowledge of the allegations or that the disposition actually imposed could be imposed;

d. that respondent did not receive the concessions contemplated by the plea agreement and the attorney for the government failed to seek or not to oppose those concessions as promised in the plea agreement; or

e. that respondent did not receive the concessions contemplated by the plea agreement concurred in by the court, and did not affirm the plea after being advised that the court no longer concurred and after being called upon to either affirm or withdraw the plea.

3. The respondent should be permitted to move for withdrawal of the plea without alleging innocence of the allegations to which the plea has been entered.

B. Before the disposition of the case, the court should allow the respondent to withdraw the plea for any fair and just reason without proof of manifest injustice as defined in subsection 2. of this standard.

PART IV: CONTESTED ADJUDICATION PROCEDURES

4.1 Trial by jury.

A. Each jurisdiction should provide by law that the respondent may demand trial by jury in adjudication proceedings when the respondent has denied the allegations of the petition.

B. Each jurisdiction should provide by law that the jury may consist of as few as [six] persons and that the verdict of the jury must be unanimous.

4.2 Rules of evidence.

The rules of evidence employed in the trial of criminal cases should be used in delinquency adjudication proceedings when the respondent has denied the allegations of the petition.

4.3 Burden of proof.

Each jurisdiction should provide by law that the government is required to adduce proof beyond a reasonable doubt that the respondent engaged in the conduct alleged when the respondent has denied the allegations of the petition.

4.4 Social information.

A. Except in preadjudication hearings in which social history information concerning the respondent is relevant and admissible, such as a detention hearing or a hearing to consider transfer to criminal court for prosecution as an adult, the judge of the juvenile court should not view a social history report or receive social history information concerning a respondent who has not been adjudicated delinquent.

B. Each jurisdiction should provide by law that when a jury is the trier of fact it should not view a social history report or receive social history information concerning the respondent.

4.5 Role of parents in contested proceedings.

A respondent's parents or other persons required by law to be served with a copy of the petition should be permitted to make representations to the court either pro se or through counsel in a jury-waived contested adjudication proceeding.

PART V: THE ADJUDICATION DECISION

5.1 Adjudication required for juvenile court disposition.

A. Each jurisdiction should provide by law that a juvenile court adjudication that a respondent is delinquent, as alleged in a written petition, is a requisite for any juvenile court disposition of the respondent, except for voluntary participation in preadjudication programs.

B. The adjudication should be based upon respondent's plea admitting one or more of the allegations of the petition, or upon the government's proof that respondent violated the law as alleged in the petition.

5.2 Suspended adjudication.

A. A juvenile court ordinarily should not suspend or refrain from making an adjudication on condition that the respondent continue or engage in behavior specified by the court or probation personnel.

B. To the extent that such a suspension of adjudication is permitted, it should be used only when:

1. in an extraordinary case an adjudication would work a particularly onerous burden upon the respondent or respondent's family; and

2. the respondent requests or consents to a suspension of adjudication.

C. When a suspension of adjudication is permitted, each jurisdiction should provide by law that it constitutes a final judgment for purposes of appeal.

D. When a suspension of adjudication is permitted, it should not be used except when the evidence justifies a finding of delinquency and should never be used because of weaknesses in the government's proof.

5.3 Legal consequences of adjudication.

A. Each jurisdiction should provide by law that a juvenile court adjudication is not a conviction of crime and should not be viewed to indicate criminality for any purpose.

B. Each jurisdiction should provide by law that a juvenile court adjudication is not a proper subject for inquiry in applications for public or private employment and in applications for public or private educational or licensing programs.

C. Each jurisdiction should provide by law that a plea admitting the allegations of the petition, an adjudication by the juvenile court, or evidence adduced in a juvenile court adjudication proceeding is not admissible in any other judicial or administrative proceeding except subsequent juvenile proceedings concerning the same respondent to the extent otherwise admissible.

PART VI: PUBLIC ACCESS TO ADJUDICATION PROCEEDINGS

6.1 Right to a public trial.

Each jurisdiction should provide by law that a respondent in a juvenile court adjudication proceeding has a right to a public trial.

6.2 Implementing the right to a public trial.

A. Each jurisdiction should provide by law that the respondent, after consulting with counsel, may waive the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court has discretion to permit members of the public who have a legitimate interest in the proceedings or in the work of the court, including representatives of the news media, to view adjudication proceedings when the respondent has waived the right to a public trial.

C. The judge of the juvenile court should honor any request by the respondent, respondent's attorney, or family that specified members of the public be permitted to observe the respondent's adjudication proceeding when the respondent has waived the right to a public trial.

D. The judge of the juvenile court should use judicial power to prevent distractions from and disruptions of adjudication proceedings and should use that power to order removed from the courtroom any member of the public causing a distraction or disruption.

6.3 Prohibiting disclosure of respondent's identity.

A. Each jurisdiction should provide by law that members of the public permitted by the judge of the juvenile court to observe adjudication proceedings may not disclose to others the identity of the respondent when the respondent has waived the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court should announce to members of the public present to view an adjudication proceeding when the respondent has waived the right to a public trial that they may not disclose to others the identity of the respondent.

*Standards with Commentary**

PART I: REQUISITES FOR ADJUDICATION PROCEEDINGS TO BEGIN

Introduction. The standards in this part deal primarily with those matters that should be accomplished before adjudication proceedings begin. They may be regarded as an extended checklist for the judge of the juvenile court to ensure the completion of preliminary matters. Some of the standards, such as Standard 1.1 relating to a written petition and Standard 1.2 relating to counsel for the government and the respondent, are essentially restatements of standards that appear in other volumes in this series and are presented here with little further comment. Other standards, such as Standard 1.4 relating to parental presence at the adjudication hearing, are new and represent efforts to resolve important conflicting interests and values in the adjudication process.

1.1 Written petition.

A. Each jurisdiction should provide by law that the filing of a written petition giving the respondent adequate notice of the charges is a requisite for adjudication proceedings to begin.

B. If appropriate challenge is made to the legal sufficiency of the petition, the judge of the juvenile court should rule on that challenge before calling upon the respondent to plead.

Commentary

Subsection A. provides that the filing of a written petition giving adequate notice of the charges be a requisite for adjudication proceedings to begin. In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court held that notice of charges is required by due process of law in delinquency proceedings, specifically requiring "that the child and his parents or guardian be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that

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

such written notice be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation." *Id.* at 33. Subsection A. further provides that this basic requirement of notice be made a matter of law, by statute or court rule, and not merely a matter of juvenile court practice. Recommendations as to the contents and timing of filing the petition are beyond the scope of this volume.

Subsection B. provides that the judge of the juvenile court should rule on the legal sufficiency of the petition before requiring the respondent to plead. This subsection contemplates that a formal plea of "admit" or "deny" (see Standard 2.4) would not be entered until preliminary matters, including challenges to the legal sufficiency of the petition, have been determined. Thus, when a respondent enters a plea of "deny" to the petition, the parties have reasonable assurance that the case will really be contested and may prepare accordingly. Rejected by this subsection, then, is a system in which routine pleas of "deny" are entered by counsel for the child upon or soon after entering the case in order to obtain an opportunity to prepare a defense and decide whether pretrial motions are appropriate. Under such a system, many of the original pleas of "deny" are later changed to pleas of "admit" when the time for entering the "real plea" arrives. Very little function, except to confuse the respondent and family, is served by such a multiple plea system.

1.2 Attorneys for respondent and the government.

The juvenile court should not begin adjudication proceedings unless the respondent is represented by an attorney who is present in court and the government is represented by an attorney who is present in court.

Commentary

This standard takes the position that both the government and the respondent should be represented by attorneys at an adjudication proceeding. The respondent, of course, has a constitutional right to representation under the due process clause of the fourteenth amendment. *In re Gault*, 387 U.S. 1 (1967). This standard goes further and recommends that a respondent be represented by an attorney in every case in an adjudication hearing or, to put the matter differently, that the right to counsel be nonwaivable. The President's Commission on Law Enforcement and Administration of Justice made such a recommendation in 1967. See *The Challenge of Crime in a Free Society* 86-87 (1967). Empirical studies of implementing the right to

counsel in juvenile systems in which counsel can be waived demonstrate the great difficulty in obtaining waivers with confidence that they are knowing and voluntary. See Lefstein, Stapleton, and Teitelbaum, "In Search of Juvenile Justice: *Gault* and Its Implementation," 3 *Law & Soc. Rev.* 491 (1969); Ferguson and Douglas, "A Study of Juvenile Waiver," 7 *San Diego L. Rev.* 39 (1970). The problem of ensuring that a waiver is knowing and voluntary is made even more difficult when an unrepresented juvenile is required to decide whether to waive a privilege against self-incrimination or the right to a trial. See *In re D.A.S.*, 15 Cal. App. 3d 283, 93 Cal. Rptr. 112 (1971). Some recent revisions of juvenile legislation have taken the position that a juvenile's right to counsel is nonwaivable. See, *e.g.*, Texas Family Code § 51.10 (1973).

A state appears free to provide a nonwaivable right to counsel in juvenile cases despite the fact that it may not constitutionally do so in criminal cases. In *Faretta v. California*, 95 Sup. Ct. 2525 (1975), the United States Supreme Court held that an adult charged with crime has a federal constitutional right based on the sixth amendment to self-representation in a criminal trial. So long as adults waive the right to counsel knowingly and intelligently, they are entitled to represent themselves, even if it is the opinion of the trial court that it is not in their own interests to do so: "Although a defendant need not himself have the skill and experience of a lawyer in order competently and intelligently to choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Id.* at 2541. If *Faretta* were applicable to juvenile proceedings, then a respondent who insisted upon self-representation could not be denied the right to proceed as his or her own attorney. Presumably, also, the judge of the juvenile court would have to routinely inform the respondent of the right to self-representation in order to permit an intelligent exercise of the choice the Constitution makes available. Thus, the right of self-representation would open the door to waiver of the right to counsel in juvenile proceedings and to all of the difficulties that have historically accompanied such waivers of counsel.

Faretta may be distinguished on the ground that the right of self-representation in that case is based on the sixth amendment as applied to the states through the fourteenth amendment, while the federal constitutional right to counsel in juvenile proceedings is based directly upon the due process clause of the fourteenth amendment without making ultimate reference to the sixth amendment. *In re Gault*, 387 U.S. 1, 34-42 (1967). This position is reinforced

by the Court's holding in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), that the sixth amendment right of trial by jury is not applicable in state juvenile proceedings.

The court in *Faretta* noted that the trial court may provide standby counsel to be available to assist criminal defendants who are representing themselves. 95 Sup. Ct. at 2541, n. 46. Presumably, the trial court may also appoint counsel to advise a defendant on whether he or she should assert a right to self-representation. This would obviously be preferable to the trial court attempting to do so, since the attorney appointed for this purpose could delve into the facts of the case without endangering the defendant's privilege against self-incrimination. If a right of self-representation is asserted by a juvenile respondent, the juvenile court judge, at a minimum, should appoint counsel to confer with the respondent and the respondent's parents and to advise them on whether the respondent should assert that right.

1.3 Presence of respondent.

A. The presence of the respondent should be required for adjudication proceedings to begin.

B. The respondent should be afforded the right to be present throughout adjudication proceedings, although the juvenile court should be permitted to proceed without a respondent who is voluntarily absent after adjudication proceedings have begun.

Commentary

Subsection A. restates for juveniles a right that adult criminal defendants have enjoyed at least since *Lewis v. United States*, 146 U.S. 370 (1892), a right based on the confrontation clause of the sixth amendment. The right of confrontation was applied to state juvenile proceedings by *In re Gault*, 387 U.S. 1 (1967). See *In re B.*, 43 A.D.2d 688, 350 N.Y.S.2d 426 (1973).

Subsection B. affords a juvenile respondent the right to be present throughout adjudication proceedings. Older juvenile legislation gave the judge of the juvenile court discretion to exclude the child from court proceedings at any time. See Standard Juvenile Court Act § 19 (1959). More recent proposals, mindful of the confrontation holding in *Gault*, either are silent on the subject or specifically provide the right to be present during adjudication proceedings. See Legislative Guide for Drafting Family and Juvenile Court Acts § 29(C) and Uniform Juvenile Court Act § 24(C). Certainly, under current interpretations of the confrontation clause, a juvenile respondent enjoys a constitutional right to be present throughout adjudication proceedings unless he or she frustrates the orderly process of the hear-

ing by disruptive conduct. See *Illinois v. Allen*, 397 U.S. 337 (1970). The final clause of subsection B. states the position taken in criminal cases that although the presence of the defendant is required for the trial to begin, the court may continue with a trial without a defendant who is voluntarily absent after trial has begun. See Federal Rules of Criminal Procedure Rule 43; *In re B.*, 43 A.D.2d 688, 350 N.Y.S.2d 426 (1973). Any other position would likely result either in permitting an easy frustration of the orderly pursuit of a trial to its conclusion or in a strong temptation for judges to revoke the pretrial conditional release of a respondent once adjudication proceedings have begun.

1.4 Presence of parents of respondent and others.*

A. Subject to subsection D. of this standard, parents and other persons required by law to be notified of adjudication proceedings should be entitled to be present throughout the proceedings.

B. The juvenile court should make every reasonable effort to secure the presence of both of respondent's parents at an adjudication proceeding.

C. If, after reasonable effort, only one of respondent's parents is present, the juvenile court should be empowered to proceed with adjudication proceedings. If, after reasonable effort, neither of the respondent's parents is present, or both have been excluded under subsection D. of this standard, the juvenile court should be empowered to proceed with adjudication proceedings after appointing a guardian *ad litem* for the respondent.

D. Persons specified in subsection A. should not be permitted to be present during adjudication proceedings if their presence would violate a rule on witnesses invoked by either the respondent or the government.

Commentary

Subsection A. provides that parents and other persons who are required by law to be notified of adjudication proceedings may be present during those proceedings, subject to the qualifications ex-

*Commissioner Justine Wise Polier objects to this standard as being so broadly drawn as to impair, rather than enlarge, due process rights of a child in requiring that juvenile courts shall make every reasonable effort to secure the presence of both parents. It does not require or even present consideration of past relationships between the child and both parents, including the prolonged absence of one parent or even the denial of paternity. It does not allow the court to consider the wishes of the custodial parent, of the child, or the best interests of the child.

pressed in subsection D. Express recognition of the right of such persons to be present during court proceedings is necessary in view of the power of the judge of the juvenile court to exclude members of the public from court proceedings under some circumstances. See Part VI.

Subsection B. requires the juvenile court to make every reasonable effort to secure the presence of both of respondent's parents at the adjudication hearing. It is intended that "parent" include adoptive as well as natural parents, as the law has traditionally done, but also to include the father of an illegitimate child as well as the father of a legitimate child. The legitimate—or illegitimate—nature of the father-child relationship ought not to make a difference in whether the father is entitled to notice of the hearing under Subsection A. or, conversely, whether the court has an obligation to encourage his attendance under this subsection. Indeed, although the matter is far from clear, it may be that such a distinction, if made, would not pass constitutional muster. See *Stanley v. Illinois*, 405 U.S. 645 (1972). This subsection requires the juvenile court to make "every reasonable effort," including the use of those compulsory processes available to it, to secure the presence of both of the respondent's parents at the adjudication hearing. "Every reasonable effort" is not further defined. It seems preferable, in light of the near impossibility of anticipating every situation that can arise, to leave the statement general. Some of the considerations that should be taken into account in deciding whether to use compulsory process to secure the presence of a parent are: 1. whether the identity of the parent is known with reasonable certainty; 2. whether the whereabouts of the parent is known; 3. the physical proximity of the parent to the location of the adjudication hearing; and 4. the extent and intensity of prior contact between the parent and the respondent. Prior to beginning the adjudication hearing, the judge of the juvenile court should determine whether both parents are present and, if not, what efforts have been made to obtain their presence; he or she should then determine whether those efforts were reasonable in light of all the circumstances. If the court determines that the efforts were not reasonable ones, it should postpone the adjudication hearing until reasonable efforts have been made.

Subsection C. provides that the juvenile court should be empowered to proceed with the adjudication hearing if, after reasonable effort, one or both of respondent's parents are not present. This subsection does provide, however, that if neither of the respondent's parents is present, the juvenile court should appoint a guardian *ad litem* for the respondent before proceeding with the adjudication hearing. Actual participation by the guardian *ad litem* in the adjudication

proceedings would be limited by the provisions applicable to parental participation in Standards 3.7 and 4.5. Although this subsection would not preclude the juvenile court from appointing the respondent's attorney as guardian *ad litem*, it is contemplated that the court would first determine whether there are significant adults in the child's life other than his or her parents who might more suitably be brought into the proceedings as guardian *ad litem*.

Subsection D. expresses a limitation on the right of a parent or other person within the scope of subsection A. to be present during adjudication proceedings. If a provision of local law requiring witnesses in a case to be excluded from the courtroom while testimony of other witnesses is received is properly invoked, that rule ought to prevail over any right of the parent or other person to be present. This position has been taken by the Supreme Court of Ohio in *State v. Ostrowski*, 30 Ohio 2d 34, 282 N.E.2d 359 (1972), despite a statute providing that "the parents . . . shall be entitled to . . . be present at any hearing involving the child. . . ." The Ohio court concluded that the rule on witnesses should prevail over the right of the parents to be present and that because the respondent was represented by counsel, "no possible prejudice to the juvenile could result from such exclusion." 282 N.E.2d at 364. See *In re Akers*, 17 Ill. App. 3d 624, 307 N.E.2d 630 (1974) (upholding the application of the rule on witnesses to the respondent's parents under a statutory scheme making the parents parties to the proceeding). But see *D.C.A. v. State*, 135 Ga. App. 234, 217 S.E.2d 470 (1975) (concluding that excluding the respondent's mother was error, but refusing to decide it was harmful in view of the presence of the respondent's father and attorneys during the entire proceedings). Under Standard 1.2, a respondent will always be represented by counsel in adjudication proceedings. A respondent's rights during the period of exclusion will presumably be protected by counsel. Although the parents have undeniably important interests in the adjudication proceedings, the role they may play in contested adjudication hearings is normally limited to observing the proceedings, counseling the respondent, and testifying when that is appropriate under normal rules of evidence. Other parental interests in the proceedings during a period of witness exclusion are presumably protected by the respondent's counsel or, when the interests of the parents and the respondent conflict, by separate counsel for the parents. See Standard 4.5.

1.5 Opportunity to prepare for adjudication proceedings.

A. The juvenile court should determine whether the attorneys for the respondent and the government have had a reasonable opportunity to prepare for adjudication proceedings.

B. Attorneys for the respondent and the government have an obligation to exercise due diligence in preparation for adjudication proceedings and an obligation to make any motion for continuance at such time as to cause the least possible disruption of the work of the juvenile court.

Commentary

Subsection A. takes the position that the respondent's right to counsel includes counsel who has had a reasonable opportunity to prepare for the adjudication hearing. See *In re S.*, 36 A.D.2d 810, 320 N.Y.S.2d 320 (App. Div. 1971). It would require that the juvenile court determine on the record prior to beginning the adjudication hearing that both attorneys have had a reasonable opportunity to prepare for the hearing. No set time requirement is provided to define what is a reasonable opportunity to prepare since that would vary greatly from case to case.

Subsection B. simply reiterates the professional obligations of both attorneys to exercise due diligence in preparing for the hearing and to move for a continuance, if that becomes necessary, at such time as to cause the least possible disruption of the court's calendar.

PART II: STANDARDS APPLICABLE TO UNCONTESTED AND CONTESTED ADJUDICATION PROCEEDINGS

2.1 Recording adjudication proceedings.

A. A verbatim record should be made of all adjudication proceedings, whether or not the allegations in the petition are contested.

B. The record should be preserved and, with any exhibits, kept confidential.

C. The requirement of preservation should be subordinated to any order for expungement of the record and the requirement of confidentiality should be subordinated to appropriate court orders on behalf of the respondent or the government for a verbatim transcript of the record for use in subsequent legal proceedings.

Commentary

Subsection A. requires a verbatim record of adjudication proceedings. The Supreme Court, in *In re Gault*, 387 U.S. 1 (1967), did not reach the issue of a respondent's right to appeal from an adjudication and, therefore, did not decide whether a verbatim record

of adjudication proceedings is required. The Court did indicate, however, that verbatim recording is highly desirable and noted that failure to record proceedings saddles "the reviewing process with the burden of attempting to reconstruct a record, and . . . [imposes] upon the Juvenile Judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him." *Id.* at 58. All model juvenile legislation recommends recording by stenographic means or by "full minutes." Legislative Guide for Drafting Family and Juvenile Court Acts § 29 B (1969); Standard Juvenile Court Act § 19 (1959); Uniform Juvenile Court Act § 24 (1968). Subsection A. requires recording in both contested and uncontested cases. The need for a verbatim record in contested cases is clear; however, recording of court proceedings in which the respondent admits the allegations of the petition (similar to a plea of guilty in a criminal case) is also of great importance. In *Boykin v. Alabama*, 395 U.S. 238 (1969), an adult case, the Supreme Court held that a plea of guilty is invalid unless the record shows that the trial judge accepting the plea made a determination that the plea was intelligently and voluntarily made. The standards in Part III require the judge of the juvenile court to make these and several other important factual determinations prior to accepting a plea admitting the allegations of the petition. A verbatim record is necessary to show whether those constitutional and other requirements have been met.

Subsection B. requires preservation of the record and exhibits to make them available for later use. It also requires that these materials be kept confidential. This is in accord with the recommendations of model legislation—Legislative Guide for Drafting Family and Juvenile Court Acts § 45 (1969); Standard Juvenile Court Act § 33 (1959); Uniform Juvenile Court Act § 54 (1968)—and with the tradition of limiting public access to juvenile court proceedings and records. See Part VI. Safeguards to ensure implementation of the principle of confidentiality are not spelled out here since they are dealt with in some detail in the volume on *Juvenile Records and Information Systems.*

Subsection C. states two exceptions to the requirements of preservation and confidentiality. The requirement of preservation must be limited by any expungement provisions that are applicable and records must be destroyed or sealed, as the case may be, when such provisions are invoked. The requirement of confidentiality must also be limited by the need of the government or the respondent to obtain a transcript of the hearings for use in later legal proceedings, such as an appeal or hearing on a petition for writ of habeas corpus.

In order to limit the availability of transcripts to those purposes, this subsection contemplates that verbatim transcripts should become available to the parties upon appropriate court order, not simply upon request to the court reporter to transcribe notes.

2.2 Amending the petition.

A. Each jurisdiction should provide by law that the petition may be amended by the attorney for the government in the same manner and according to the same rules for amending the charging instrument as in a proceeding in criminal court.

B. Each jurisdiction should provide by law that if the petition is amended, the respondent should be permitted a reasonable opportunity to prepare a defense to the amended allegations.

Commentary

Subsection A. provides for amendment of the petition at the behest of the government as provided in criminal court. In Part III, the position is taken that plea bargaining is legitimate in juvenile proceedings if certain safeguards are followed. Standard 2.2 A., therefore, is designed to facilitate the plea-bargaining process by authorizing the amendment of a petition, such as by charging a related but not included offense. Amendments made pursuant to the authority in Standard 2.2 A. should present no notice problems, since they will have been one of the subjects of negotiation between the attorneys. Compare Model Rules for Juvenile Courts, Rule 8 (National Council on Crime and Delinquency, 1969): "A petition may be amended by order of the court at any time before an adjudication, provided that the court shall grant the parties such additional time to prepare as may be required to insure a full and fair hearing."

The restrictions placed upon amendment of charging instruments in criminal cases have been adopted here in preference to the more liberal provisions normally associated with amending pleadings in civil cases. This was done because of a belief that juvenile proceedings are not civil in nature. The purpose of pleading requirements in civil or criminal cases is fairly to apprise the defendant of the issues in the litigation so as to prevent surprise and permit adequate preparation of a defense. In those cases in which the amendment issue has been litigated in juvenile proceedings, some courts have concluded that the more liberal "civil" restrictions should apply. See *In re J.R.G.*, 305 A.2d 529 (D.C. App. 1973); *People v. Hicks*, 267 N.E.2d 763 (Ill. App. 1971); S. Fox, *The Law of Juvenile Courts in a Nutshell* 156–57 (1971); *contra In re Dana J.*, 26 Cal. App. 3d 768, 103 Cal. Rptr.

21 (1972) (respondent not given opportunity to defend against amended allegations). The published tentative draft of Standard 2.2 A. had included provisions similar to those governing amendment of civil pleadings. Following the recommendations of the ABA Section of Family Law and others, Standard 2.2 A. was amended to adopt the stricter procedural safeguards observed in criminal proceedings.

Subsection B. requires a delay in adjudication proceedings if the respondent requests delay to obtain an opportunity to defend the new or altered allegations. This is mandated by the notice of charges function of the petition and might require an interruption of a trial, even a jury trial, to permit the respondent to prepare to meet the new allegations. See *In re Appeal in Maricopa Cty.*, Juv. Action No. J-75755, 111 Ariz. 103, 523 P.2d 1304 (1974) (remand to permit respondent the opportunity to defend amended allegations).

2.3 Double jeopardy protections.

Each jurisdiction should provide by law that the double jeopardy protections applicable to the trial of criminal cases should be applicable to delinquency adjudication proceedings.

Commentary

This standard provides that the protections of double jeopardy applicable to the prosecution of adults should be applied in juvenile court as well. In *Benton v. Maryland*, 395 U.S. 784 (1969), the Supreme Court held that the double jeopardy prohibition is a fundamental right that is applicable to the states through the fourteenth amendment. Pre-*Gault* cases had rejected the application of double jeopardy protections to juvenile proceedings, usually on the now discredited notion that juvenile proceedings are civil. See S. Fox, *The Law of Juvenile Courts in a Nutshell* 28–29 (1971). Recent cases, however, have given juveniles the benefit of double jeopardy protection to the same extent that they would be enjoyed by the respondent were he or she an adult. See, *e.g.*, *Fain v. Duff*, 488 F.2d 218 (5th Cir. 1973). In *Breed v. Jones*, 95 Sup. Ct. 1779 (1975), the respondent was adjudicated a delinquent and then was transferred to criminal court, where he was convicted of a criminal offense for the same conduct. The court unanimously concluded that the respondent had been placed in jeopardy at the juvenile court adjudication hearing:

> We believe it is simply too late in the day to conclude . . . that a juvenile is not put in jeopardy at a proceeding whose object is to determine

> whether he has committed acts that violate a criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years. *Id.* at 1785.

The court also concluded that jeopardy attached in the juvenile proceedings "when the Juvenile Court, as the trier of the facts, began to hear evidence." *Id.* at 1787. This standard equates a juvenile adjudication proceeding to an adult criminal trial for purposes of determining when the protections of double jeopardy attach to juvenile proceedings. The Legislative Guide for Drafting Family and Juvenile Court Acts § 27 takes a similar position and recommends that jeopardy attach when the court has begun taking evidence in a contested case, or, in an uncontested case, after the court has accepted the child's plea of guilty. It should also be noted that the ban on double jeopardy recommended by this standard would bar criminal prosecution of a child after adjudication proceedings for the same offense have begun. See *Breed v. Jones*, 95 Sup. Ct. 1779 (1975).

2.4 Plea alternatives.

A. Each jurisdiction should provide by law for oral pleading by a respondent to the allegations of the petition.

B. The respondent should be permitted to admit or deny the allegations of the petition and if the respondent refuses to plead, a plea of deny should be entered by the court.

Commentary

Even in jurisdictions that in general adhere to rules of civil procedure in delinquency proceedings, provision is frequently made for oral pleading by the respondent to the allegations of the petition. See, *e.g.*, Tex. Fam. Code § 53.04(e) (1973). This is in accord with the practice in criminal cases and seems a simple and, therefore, desirable way of proceeding in juvenile cases.

There is still considerable controversy over the terminology that should be used to denote the plea options available to the respondent in juvenile proceedings. Proponents may be found for "guilty/not guilty," "admit/deny," "involved/not involved," and others. The choice of terminology doubtless has symbolic implications about fundamental conceptions of the juvenile justice process, such as whether it is a junior criminal process or something quite different. Those considerations seem less important, however, than that plea terminology be adopted that is unambiguous and that can be under-

stood by juvenile respondents, who must enter the plea personally. Because of their failure clearly to concede the allegations of the petition, the terms "involved/not involved" and the like have been rejected. The plea of *nolo contendere* also is unacceptable, since it is neither an admission nor a denial of the allegations in the petition, leaving the juvenile's position concerning the acts alleged ambiguous and unsettled. The ABA Section of Family Law asserted the contrary view, that juveniles should be permitted to enter a *nolo* plea in jurisdictions that accept the plea from adults. "Guilty/not guilty" would meet the appropriate criteria except that it would be desirable to provide more flexibility in pleading alternatives than those terms permit. For example, a respondent may wish to admit one essential allegation of the petition, such as his or her age, while denying the remaining allegations. The "admit/deny" language seems best to fit the peculiar needs of pleas in juvenile court while being sufficiently simple to be understood by respondents. Subsection B. also provides that if the respondent refuses to plead, the court should enter a plea of deny for him or her, a provision quite common in criminal procedure. See Federal Rules of Criminal Procedure, Rule 11.

2.5 Effect of admission.

An admission of an allegation of the petition should be regarded as consent by the respondent to an adjudication by the court of the admitted allegation without proof of it, subject to the requirement of Standard 3.5, relating to verifying the accuracy of the plea.

Commentary

This standard defines a plea of admit as a waiver of the requirement that the government prove the allegation admitted by the plea. Although many pleas of admit will doubtless be to all the allegations of the petition, it is contemplated that a respondent may wish to admit only certain counts in the petition or only certain allegations in a count. For example, a petition may charge two discrete offenses, and the respondent might enter a plea of admit to one and deny to the other. The effect of such a plea would be to permit adjudication of the admitted offense, while requiring the government to prove the other offense or dismiss that count in the petition. A plea of admit might be even more specific. For example, a respondent may enter a plea of admit as to one essential allegation, such as his or her age, while entering a denial as to all other allegations. This would require the government to prove all of the allegations in the petition save the respondent's age. In these senses, then, the plea of admit, as here conceived, is a much more flexible plea than is a plea of guilty in a

criminal proceeding. Standard 3.5 requires the judge of the juvenile court to accept evidence to verify the accuracy of any plea of admit. That requirement would obtain even when a plea of admit has been entered that does not totally relieve the government of its burden of proving the respondent engaged in conduct prohibited by the juvenile laws.

2.6 Effect of denial.

A denial of an allegation of the petition should be regarded as an assertion by the respondent of the right to require the government to prove its allegation and not as an assertion that the allegation denied is untrue.

Commentary

This standard states for juveniles what has long been true for adults: a plea of not guilty is a demand by the accused that the government prove the charges it has made and is not an assertion or affirmation of innocence. See *Wood v. United States*, 128 F.2d 265, 273 (D.C. Cir. 1942). It is important specifically to define the plea of denial in this fashion since "civil" nomenclature is selected to denote the plea. Compare Federal Rules of Civil Procedure, Rules 8(b) and 11.

2.7 Interpreters.

A. When a witness is incapable of hearing or understanding the English language or is incapable of speaking or of speaking in the English language so as to be understood directly by counsel, court, and jury, an interpreter whom the witness can understand and who can understand the respondent should be appointed by the judge of the juvenile court and compensated from public funds.

B. When the respondent is incapable of hearing or understanding the English language, all of the proceedings should be interpreted in a language that the respondent understands by an interpreter appointed by the judge of the juvenile court and compensated from public funds.

C. When the respondent is incapable of speaking or of speaking in a language understood by respondent's attorney, an interpreter who can understand the respondent should be appointed by the judge of the juvenile court and compensated from public funds to interpret communications from the respondent to respondent's attorney.

Commentary

This standard deals with the use of interpreters in juvenile court adjudication proceedings. The need for an interpreter may arise be-

cause of a defect preventing an individual from speaking and/or understanding the English language or because English is a foreign language that is understood not at all or only to a very limited extent.

Subsection A. deals with the use of an interpreter for a witness. It is based on Cal. Ann. Evid. Code § 752 (West 1966). It requires provision of an interpreter if the witness is deaf or mute or otherwise incapable of communicating in the English language. An interpreter for such a witness is also a witness and should be qualified as an expert to perform the interpretation services needed. See Federal Rules of Evidence, Rule 604.

Subsection B. deals with the situation in which the respondent is incapable of hearing or understanding the English language. It requires the appointment of an interpreter to communicate the proceedings to the respondent. Failure to provide such interpretation services may in some instances deprive the respondent of confrontation rights. Even if the respondent's attorney is capable of communicating with the respondent, it would impose an unreasonable burden upon counsel to require such communication while engaged in adjudication proceedings. Subsection B. places a duty upon the judge of the juvenile court, when a suggestion is made of the need for an interpreter for the respondent, to make an inquiry to determine whether the need exists and to provide an interpreter if it does. Compare Federal Rules of Criminal Procedure, Rule 28, and Federal Rules of Civil Procedure, Rule 43(f).

Subsection C. is intended to deal with a respondent who is able to understand English but is incapable of speaking to his or her attorney. Since communication between respondent and counsel during adjudication proceedings is a vital aspect of the respondent's right to trial and to representation by counsel, subsection C. requires the appointment of an interpreter to facilitate the needed attorney-client communication. Of course, if a respondent takes the stand as a witness, the interpreter requirements of subsection A. would apply as in the case of any witness.

PART III: UNCONTESTED ADJUDICATION PROCEEDINGS

The standards in this part deal with cases that are disposed of without requiring the government to prove its charges to a court or jury in an adjudication hearing. Although large numbers of cases are adjudicated on pleas of admit by respondents in juvenile proceedings (see commentary to Standard 3.3 *infra*) the law has provided few norms for regulating adjudication by this process.

One function of the law in regulating adjudication by plea of admit should be the setting of standards to determine when such a plea is an "intelligent and voluntary" act on the part of the respondent, a standard required by the Supreme Court for the acceptance of pleas of guilty in criminal proceedings. *Boykin v. Alabama*, 395 U.S. 238 (1969). Standards 3.2 and 3.4 attempt to guide the judge of the juvenile court in making that determination.

The law should also attempt to determine whether additional protections should be provided in the plea acceptance process in juvenile cases by virtue of the immaturity of the respondent entering the plea. Standard 3.1 requires the juvenile court judge to determine whether the respondent has the mental capacity to enter a plea admitting an allegation of the petition. Standard 3.6 requires the judge to determine on the record whether the respondent has received the effective assistance of counsel in defense of the charges. And Standard 3.7 deals with the role of the respondent's parents in plea acceptance proceedings.

Finally, the law should deal with the question of plea bargaining in juvenile cases. The phenomenon of guilty plea bargaining is virtually universal in the criminal justice system and accounts in large part for the high rate of disposition of criminal cases by plea of guilty. The extent of plea bargaining in juvenile cases is not certain, but it is known that plea bargaining does exist in at least some metropolitan juvenile justice systems. See commentary to Standard 3.3 *infra*. Plea bargaining in criminal cases is a subject of current controversy. The Supreme Court has accepted the constitutionality of plea bargaining, and the American Bar Association, Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968), is based on the express assumption that plea bargaining in criminal cases is proper if correctly regulated. On the other hand, the National Advisory Commission on Criminal Justice Standards and Goals, "Courts" § 3.1 (1973), recommends the elimination of plea bargaining in criminal cases by 1978.

Most commentators would probably agree that plea bargaining, where it exists in the juvenile justice system, represents the "worst of both worlds," since it is invisible and unregulated. Most would also agree that plea bargaining in juvenile cases must move in one of two directions: either plea bargaining should be recognized and regulated or it should be eliminated. Which direction to take appears to be a close question; certainly it is one that closely divided various committees of the Juvenile Justice Standards Project as well as the commission. These standards take the "recognize and regulate" approach. Accordingly, Standards 3.3, 3.4, and 3.8 assume that plea bargaining will exist and propose a regulatory mechanism to

avoid its abuses. On the other hand, there is recognition that the matter is a close question and that, perhaps unlike the criminal justice process, it may be possible, by serious and sustained effort, to eliminate plea bargaining in the juvenile justice process. Therefore, alternate standards have been drafted on the assumption that plea bargaining can and should be eliminated in the juvenile justice process. Alternate Standards 3.3, 3.4, and 3.8 appear, with appropriate commentary, as an Appendix to this volume. While it may be a close question whether the approach of the main standards or of their alternatives is preferable, it seems indisputable that the juvenile justice process must move in one of those directions.

3.1 Capacity to plead.

A. The juvenile court should not accept a plea admitting an allegation of the petition without determining that the respondent has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea.

B. In determining whether the respondent has the mental capacity to enter a plea admitting an allegation of the petition, the juvenile court should inquire into, among other factors:

1. the respondent's chronological age;

2. the respondent's present grade level in school or the highest grade level achieved while in school;

3. whether the respondent can read and write; and

4. whether the respondent has ever been diagnosed or treated for mental illness or mental retardation.

Commentary

It is important to note that the determination and inquiry recommended in this standard is broader than an inquiry to determine whether the respondent lacks mental capacity to be tried because of mental disease or defect. A respondent who has the minimal mental capacity required by the "competency to stand trial" test may still not be mentally capable of waiving his or her right to a trial and entering a plea admitting the allegations of the petition. Further, the inquiry here is directed more at the respondent's maturity than at the existence of a mental disease or defect. If a finding of lack of such capacity were made, the case could still be disposed of by a contested adjudication proceeding, which would not require the respondent to waive constitutional and other legal rights of the magnitude of the right to a trial. A judge who has reviewed social information bearing on the respondent's mental capacity may be disqualified from presiding over the adjudication hearing after refusing to accept a plea. The

commentary to Standard 4.4 cautions that the judge should not be removed unless the respondent can prove prejudice.

Subsection A. requires the judge of the juvenile court to determine, before accepting a plea admitting an allegation of the petition, that the respondent has the mental capacity to enter such a plea. A plea of admit, like a plea of guilty, must be made personally by the respondent. *In re Robin J.*, 47 A.D.2d 818, 366 N.Y.S.2d 127 (1975). Although the respondent is entitled to the advice of counsel in making the decision whether to admit or deny the allegations of the petition, counsel cannot make the decision for him or her; nor can the respondent's parents. The Constitution requires of the judge of a criminal court accepting a plea of guilty from an adult that he or she determine that the plea is a voluntary and knowing act. *Boykin v. Alabama*, 395 U.S. 238 (1969). Because juvenile respondents required to make the pleading decision may be very young, obvious problems exist in making those constitutionally required determinations. Subsection A. sets a general standard to guide the judge in making the determination of whether a plea is knowing. The judge must find that the respondent "has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of" a plea admitting the allegations of the petition. Standard 3.2 requires the judge to explain to the respondent the nature of the adjudication hearing and the significance of a plea of admit. Standard 3.6 requires the judge to determine whether respondent's attorney has provided effective representation, including advising respondent concerning the proffered plea. Subsection 3.1 A. here requires the court to determine whether the respondent has the mental capacity to understand the advice from the judge and the defense attorney.

Subsection B. directs the attention of the court to appropriate areas of inquiry to determine whether the respondent has the mental capacity to plead. The four areas of inquiry indicated are not exhaustive of those that might appropriately form the subject of the court's inquiry. Each directs the court's attention to a reasonably concrete fact that can be determined by a brief colloquy with the respondent during the plea acceptance proceeding. It is contemplated that if this or a similar brief inquiry were conducted and information throwing doubt upon capacity to plead discovered, the court should conduct or have conducted a more intense inquiry into the subject.

3.2 Admonitions before accepting a plea admitting an allegation of the petition.

The judge of the juvenile court should not accept a plea admitting an allegation of the petition without first addressing the respondent

personally, in language calculated to communicate effectively with the respondent, and:

A. determining that the respondent understands the nature of the allegations;

B. informing the respondent of the right to a hearing at which the government must confront respondent with witnesses and prove the allegations beyond a reasonable doubt and at which respondent's attorney will be permitted to cross-examine the witnesses called by the government and to call witnesses on the respondent's behalf;

C. informing the respondent of the right to remain silent with respect to the allegations of the petition as well as of the right to testify if desired;

D. informing the respondent of the right to appeal from the decision reached in the trial;

E. informing the respondent of the right to a trial by jury;

F. informing the respondent that one gives up those rights by a plea admitting an allegation of the petition; and

G. informing the respondent that if the court accepts the plea, the court can place respondent on conditional freedom for (___) years or commit respondent to (the appropriate correctional agency) for___years.

Commentary

This standard is derived from Standard 1.4 of American Bar Association, Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968). That standard, in turn, is derived from Federal Rules of Criminal Procedure, Rule 11. The crux of Rule 11 is the requirement that before accepting a plea of guilty, the court must address the defendant personally and determine that the plea is made voluntarily, with understanding of the nature of the charge and the consequences of the plea. Since it is the respondent who must personally make the pleading decision and enter the plea, this standard requires the court to address the respondent personally, not through counsel or respondent's parents, to determine whether he or she understands his or her legal rights in the matter. Furthermore, this standard requires the court to address the respondent "in language calculated to communicate effectively with" him or her. While it is not suggested that the judge demean himself or herself or the court by attempting to communicate with the respondent in street argot, it is nevertheless true that the language of the law is not designed to communicate effectively with nonlawyers, particularly with adolescents. This standard contemplates,

then, that judges will try really to communicate the appropriate legal concepts to the respondent and not satisfy themselves with adherence to a litany that is meaningless to the juvenile before them.

Subsection A. requires the judge of the juvenile court to determine the petition. Before one can admit the allegations of a petition, he or she must understand what those allegations mean. To have that knowledge, he or she must possess "an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). *McCarthy* dealt with the meaning of Rule 11, but the Court took the opportunity to speak to the federal constitutional aspects of pleading guilty in criminal cases:

> A defendant who enters such a plea [of guilty] simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be "an intentional relinquishment or abandonment of a known right or privilege" *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts. *Id.*

In *Boykin v. Alabama*, 395 U.S. 238 (1969), the Court amplified its discussion in *McCarthy*. The Court in *Boykin* held that "[i]t was error, plain on the face of the record, for the trial judge to accept petitioner's guilty plea without an affirmative showing that it was intelligent and voluntary." *Id.* at 242. Furthermore, the Court indicated that it is the responsibility of the trial judge to determine that due process is complied with in the acceptance of guilty pleas:

> What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought. . . . *Id.* at 243–44.

Those juvenile cases that have considered the question conclude that the constitutional standards announced in *Boykin* to govern acceptance of guilty pleas in criminal cases also apply to juvenile proceedings. See *In re Appeal No. 544*, 25 Md. App. 26, 332 A.2d 680 (1975); *G.M.K. v. State*, 312 S.2d 538 (Fla. App. 1975);

State ex rel. Juvenile Dept. of Coos County v. Welch, 501 P.2d 991 (Ore. App. 1972); *In re Mary B*, 20 Cal. App. 3d 816, 98 Cal. Rptr. 178 (1971).

Subsection A. does not specify how the judge should go about making the determination. However, simply reading the petition would almost certainly not be sufficient to convey the necessary information. The judge should explain the allegation to the respondent "in language calculated to communicate effectively with" him or her. The judge should also break down the allegation into its essential elements and explain each to the respondent in plain language. The court's explanation of the allegations should also include lesser included offenses. The Court in *McCarthy* noted:

> The nature of the inquiry required by Rule 11 must necessarily vary from case to case, and, therefore, we do not establish any general guidelines other than those expressed in the Rule itself. As our discussion of the facts in this particular case suggests, however, where the charge encompasses lesser included offenses, personally addressing the defendant as to his understanding of the essential elements of the charge to which he pleads guilty would seem a necessary prerequisite to a determination that he understands the meaning of the charge. In all such inquiries, "[m]atters of reality, and not mere ritual, should be controlling." 394 U.S. at 467-68, n. 20.

It is clear, of course, that the judge of the juvenile court is constitutionally required to make this inquiry even of a respondent who is represented by counsel. *Boykin v. Alabama*, 395 U.S. 238 (1969).

Subsections B. through E. spell out the rights that are waived by a plea admitting an allegation of the petition. It is probably not meaningful to most respondents to inform them simply that they have a right to trial without also telling them something of what a trial involves. Subsection B. requires the judge to inform the respondent of the rights to confrontation and cross-examination of witnesses, rights recognized in *In re Gault*, 387 U.S. 1 (1967). The judge is also required to inform the respondent that the government must prove its allegations beyond a reasonable doubt. Although it is unclear whether the reasonable doubt requirement of *In re Winship*, 397 U.S. 358 (1970), applies to all allegations of delinquency or only to certain kinds of allegations, the position is taken in Standard 4.3 that proof beyond a reasonable doubt should be required in all juvenile adjudication proceedings. Accordingly, it is here recommended that the court inform the respondent of that facet of the adjudication hearing in all cases. Finally, subsection B. requires the judge

to inform the respondent of the right to defend the charges by calling witnesses. Subsection C. requires the judge to inform the respondent of the privilege against self-incrimination in accordance with *In re Gault*, 387 U.S. 1 (1967). Subsection E. requires the judge to inform the respondent of the right to appeal from the decision reached in the trial. Although appellate rights are not ripe for exercise at this stage in juvenile proceedings, it is necessary to convey to the respondent that appellate courts do exist to "look over" the work of the juvenile court judge and that the matters that may be presented to the appellate courts are severely restricted when the respondent enters a plea admitting an allegation of the petition. Subsection E. requires the judge to inform the respondent of the right to a jury trial. Although jury trials in juvenile cases are not required as a matter of federal constitutional law, *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), nor provided in the majority of the states, the position is taken in Standard 4.1 that a juvenile respondent should have the right of trial by jury. Accordingly, subsection E. requires the judge to tell the respondent of that right.

Subsections F. and G. require the court to explain to the respondent the two major consequences of entering a plea admitting an allegation of the petition. Subsection F. requires informing the respondent that a plea of admit means that he or she "gives up" the rights that have been explained in subsections B. through E. It is recommended that language such as "gives up" be used rather than the more legalistic "waives." Subsection G. requires the court to inform the respondent of the dispositional consequences that could result from the plea that has been tendered. This is in accord with the requirement in criminal cases that the trial court inform the defendant of the major sentencing consequences of a plea of guilty. See ABA, *Pleas of Guilty* § 1.4(c).

3.3 Responsibilities of the juvenile court judge with respect to plea agreements.

A. Subject to the qualification contained in subsection B. of this standard, the juvenile court judge should not participate in plea discussions.

B. If a plea agreement has been reached that contemplates entry of a plea admitting an allegation of the petition in the expectation that other allegations will be dismissed or not filed, or that dispositional concessions will be made, the juvenile court judge should require disclosure of the agreement and the reasons therefor in advance of the time for tender of the plea. Disclosure of the plea agreement should

be on the record in the presence of the respondent. The court should then indicate whether it will concur in the proposed agreement. If the court concurs, but later decides not to grant the concessions contemplated by the plea agreement, it should so advise the respondent and then call upon the respondent either to affirm or withdraw the plea.

C. When a plea admitting an allegation of the petition is tendered as a result of a plea agreement, the juvenile court judge should give the agreement due consideration, but notwithstanding its existence, should reach an independent decision whether to grant the concessions contemplated in the agreement.

Commentary

Standard 3.3 and Standards 3.4 and 3.8 deal with the subject of plea bargaining in juvenile cases. These standards 1. recognize the existence of plea bargaining in juvenile proceedings, 2. concede its legitimacy, and 3. seek to regulate it.

There is considerable evidence of the existence of plea bargaining in the juvenile process. A deputy public defender in Chicago reports:

> Although the desirability of plea bargaining in juvenile courts has been questioned, it is now common in Illinois, especially Cook County, because of the large number of cases. In urban areas it is argued that the system would break down if all matters were adjudicated. In effect, the minor is "rewarded" for entering an admission. Kleczek, "Procedure in the Illinois Juvenile Court System," 6 *John Marshall J. of Prac. & Proc.* 48, 62 (1972).

In the report of an empirical study of the Denver juvenile process, a deputy district attorney is quoted as stating: "I would guess about 90% of the delinquency cases in juvenile court are bargained out." Hufnagel and Davidson, "Children in Need: Observations of Practices of the Denver Juvenile Court," 51 *Den. L.J.* 337, 377 (1974). The authors of another empirical study report that "[p]lea bargaining is discouraged in juvenile court, though we have witnessed several conferences between defense lawyer, state's attorney and judge where, in return for a plea of guilty, a client has been guaranteed probation or supervision instead of incarceration." Platt and Friedman, "The Limits of Advocacy: Occupational Hazards in Juvenile Court," 116 *U. of Penna. L. Rev.* 1156, 1177-78 (1968). A juvenile court judge indicates that the juvenile system is dependent upon uncontested adjudications to keep abreast of the caseload: "[S]heer numbers alone indicate that if the

court and the administration of justice system are to function, there must be a vehicle for the acceptance of pleas of involvement. Or otherwise, both the court and the bar would be desperately overtaxed." McMillan and McMurtry, "The Role of the Defense Lawyer in the Juvenile Court—Advocate or Social Worker?" 14 *St. Louis U. L.J.* 561, 582 (1970). Petitioners in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), asserted that in Philadelphia "counsel and the prosecution engage in plea bargaining." *Id.* at 542. The government in *State ex rel. Juvenile Dept. of Coos County v. Welch*, 501 P.2d 991 (Ore. App. 1972), argued that the judge of the juvenile court should be excused from determining whether the respondent's admission was knowing and voluntary because the admission was entered pursuant to a plea bargain. The Oregon court rejected this contention:

> A "plea bargain," if one exists, is a vital element to be considered in such a determination. In the present case it appears that an "understanding" between the parties was the primary consideration in his admission. If this was the case, the court's failure to inform the child and his parents that the court was not bound by such "understanding" would also be relevant to a determination as to whether the admissions were intelligently made. *Id.* at 995.

In some instances, when prosecutors have not been involved in juvenile proceedings, plea bargaining has occurred between defense attorneys and juvenile probation officers. See Cayton, "Emerging Patterns in the Administration of Juvenile Justice," 49 *J. of Urban L.* 377, 389 (1971). In *In re Bacon*, 49 Cal. Rptr. 322 (Cal. App. 1966), appellants alleged that prior to the adjudication hearing, "their counsel were given to understand by members of the probation department that a favorable recommendation on disposition would be highly unlikely if appellants refused to cooperate with the probation officers and the court." *Id.* at 328.

It seems clear that despite disapproval of the practice, plea bargaining exists in a considerable number of American jurisdictions. The fact of disapproval itself is significant. It tends to drive plea bargaining in juvenile cases underground and to make it more difficult to regulate.

Stripped to its essentials, plea bargaining in any court is nothing more than leniency in disposition given in exchange for a waiver of the right to a trial. The bargain need not be explicitly stated and there need be no explicit plea bargaining between prosecutor and defense attorney: a defendant may plead guilty to a charge because his or

her attorney has informed him or her that the judge of the trial court invariably gives leniency to a guilty pleader that is denied to one convicted after a trial. Professor Newman has documented the existence of such "implicit bargains" in criminal cases. D. Newman, *Conviction: The Determination of Guilt or Innocence Without Trial* 60–62 (1966). The respondent who has admitted committing the offense alleged appears contrite and more amenable to rehabilitation to both social staff and the juvenile court judge than one adjudicated after denying the allegations. Thus, the juvenile pleader very likely benefits from his or her plea even when encouraging the adjudication of cases by pleas is not a conscious objective of the participants. Defense counsel, knowing this, takes it into account in advising his or her client whether to admit the allegations of the petition. The extent to which plea bargaining in juvenile cases is not explicit may reflect an ambivalence of officials toward its propriety. This, in turn, may indicate that the possibilities of eliminating plea bargaining are greater in the juvenile process than in the criminal. On the other hand, the existence of implicit bargaining in the juvenile process may make it extraordinarily difficult to implement and monitor a policy decision to eliminate plea bargaining in juvenile cases.

The legality of plea bargaining in criminal cases and, therefore, arguably, in juvenile cases as well, cannot fairly be disputed. The Supreme Court, in the so-called guilty plea trilogy of *Brady v. United States*, 397 U.S. 742 (1970), *McMann v. Richardson*, 397 U.S. 759 (1970), and *Parker v. North Carolina*, 397 U.S. 790 (1970), held that a plea of guilty is not involuntary even though partially induced by sentence leniency of such a compelling nature as avoidance of the possibility of a death sentence. Writing for the majority in *Brady*, the lead case in the trilogy, Mr. Justice White took the occasion to address the question of whether the plea bargaining system is *per se* unconstitutional because it produces involuntary pleas:

> Insofar as the voluntariness of his plea is concerned, there is little to differentiate Brady from (1) the defendant, in a jurisdiction where the judge and jury have the same range of sentencing power, who pleads guilty because his lawyer advises him that the judge will very probably be more lenient than the jury; (2) the defendant, in a jurisdiction where the judge alone has sentencing power, who is advised by counsel that the judge is normally more lenient with defendants who plead guilty than with those who go to trial; (3) the defendant who is permitted by the prosecutor and judge to plead guilty to a lesser offense included in the offense charged; and (4) the defendant who pleads guilty to certain counts with the understanding that other charges will be dropped. In each of these situations, as in Brady's case, the defendant might never

plead guilty absent the possibility or certainty that the plea will result in a lesser penalty than the sentence that would be imposed after a trial and a verdict of guilty. We decline to hold, however, that a guilty plea is compelled and invalid under the Fifth Amendment whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged.

The issue we deal with is inherent in the criminal law and its administration because guilty pleas are not constitutionally forbidden, because the criminal law characteristically extends to judge or jury a range of choice in setting the sentence in individual cases, and because both the State and the defendant often find it advantageous to preclude the possibility of the maximum penalty authorized by law. For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious—his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages—the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof. It is this mutuality of advantage that perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be imposed if there were a guilty verdict after a trial to judge or jury.

Of course, that the prevalence of guilty pleas is explainable does not necessarily validate those pleas or the system which produces them. But we cannot hold that it is unconstitutional for the State to extend a benefit to a defendant who in turn extends a substantial benefit to the State and who demonstrates by his plea that he is ready and willing to admit his crime and to enter the correctional system in a frame of mind that affords hope for success in rehabilitation over a shorter period of time than might otherwise be necessary.

A contrary holding would require the States and Federal Government to forbid guilty pleas altogether, to provide a single invariable penalty for each crime defined by the statutes, or to place the sentencing function in a separate authority having no knowledge of the manner in which the conviction in each case was obtained. In any event, it would be necessary to forbid prosecutors and judges to accept guilty pleas to selected counts, to lesser included offenses, or to reduced charges. The Fifth Amendment does not reach so far. 397 U.S. at 751–53.

While it is doubtless true that in individual cases plea bargaining can result in the coercion of a plea, it seems clear that, as an institution, guilty-plea bargaining passes constitutional muster. Finally, there is nothing to suggest that a different constitutional standard would be applied to plea bargaining in juvenile cases. Those appellate cases considering the point have applied guilty plea standards to pleas of admit in juvenile court. See commentary to Standard 3.2 *supra.*

Having recognized the existence of plea bargaining in juvenile cases and having conceded its constitutionality, these standards seek to regulate its practice. (Alternate standards that are designed to implement a policy decision to eliminate plea bargaining are preserved in an appendix to these standards.) The general approach here is the same as the American Bar Association, Standards for Criminal Justice, *Pleas of Guilty* (Approved Draft 1968), and in many instances the language of those standards is copied, with modifications appropriate to the terminology employed in juvenile cases. The basic assumption of these standards and the *Pleas of Guilty* standards is that plea bargaining should remain the responsibility of the attorneys for the government and for the respondent, but that the trial court judge should require disclosure of the agreement reached and explicitly indicate the conditions under which he or she is willing to honor it.

Standard 3.3 A. takes the position that the judge of the juvenile court should not participate in plea discussions. The same position is taken in Standard 3.3(a) of *Pleas of Guilty*. The issue of judicial participation in plea bargaining presents something of a dilemma. On the one hand, active participation by the trial judge, who normally holds the sentencing power, introduces a great potential for coercion of the plea and offends our sense that the trial court should be a neutral arbiter and not be actively involved in the handling of criminal cases. On the other hand, since it is the trial judge who must carry out any plea agreements arrived at by prosecution and defense, it is obviously of great importance to know whether the judge will do so in each particular case. The issue is resolved in this subsection by prohibiting judicial participation in plea discussions but by requiring in the next subsection prepleading judicial scrutiny and approval of a plea agreement once the parties have arrived at one.

Subsection B. is based on Standard 3.3(b) of *Pleas of Guilty*. Unlike *Pleas of Guilty*, however, this subsection *requires* the judge to scrutinize the plea agreement prior to tender of the plea. This modification was made to ensure that all respondents receive the

benefits of prepleading judicial approval and not merely those respondents whose attorneys have requested it. The second sentence of this subsection requires that the prepleading disclosure be on the record and in the presence of the respondent. This provision does not appear in *Pleas of Guilty* and is designed to make the agreement disclosure practice visible to appellate courts and to the respondent, who is most immediately affected by the agreement reached. The third sentence is also based on *Pleas of Guilty* and would require the judge of the juvenile court to permit the respondent at any time to withdraw the plea should the court fail to grant the concessions contemplated by the plea agreement. This would be a major change from plea-bargaining practices in most courts in that the parties would be assured either that the concessions contemplated by the plea agreement will be granted or that the respondent will have the opportunity to withdraw the plea. This provision goes considerably beyond the Supreme Court's decision in *Santobello v. New York*, 404 U.S. 257 (1971), which merely required the prosecutor's office to perform its part of the plea agreement.

Subsection C. is based on Standard 3.3(c) of *Pleas of Guilty*. It permits the juvenile court to refuse to follow the plea agreement if, after receiving the appropriate information, it concludes that the agreement should not be carried into effect. It must be noted, however, that should such an event occur, the judge must give the respondent an opportunity to withdraw or affirm the plea in accordance with subsection B. It would then be up to the respondent to decide with advice of counsel whether to withdraw the plea.

3.4 Determining voluntariness of a plea admitting the allegations of the petition.

A. The juvenile court should not accept a plea admitting an allegation of the petition without determining that the plea is voluntary.

B. By inquiry of the attorneys for the respondent and for the government, the juvenile court should determine whether the tendered plea is the result of a plea agreement and, if so, what agreement has been reached.

C. If the attorney for the government has agreed to seek concessions that must be approved by the court, the court should advise the respondent personally that those recommendations are not binding on the court and follow the procedures provided in Standard 3.3 B.

D. The court should then address the respondent personally and

determine whether any other promises or inducements or any force or threats were used to obtain the plea.

Commentary

This standard continues the policy of Standard 3.3 that plea bargaining, if it is to be continued, must be recognized and given greater visibility. For years, criminal courts studiously refused to take official notice of the existence of plea bargaining. As a result, the plea acceptance ceremony had an atmosphere of unreality about it—judges asked defendants whether they had been promised anything for their plea, and defendants, knowing that they had but also having been coached as to the required answer, responded in the negative. The thrust of this standard is to require disclosure in court of the plea agreement and to require the judge to determine whether there were other inducements to plead. Unless such disclosure is required in every case, the constitutionally mandated voluntariness inquiry will remain a counterproductive ritual. In general, the approach of *Pleas of Guilty* is used. Alternate Standard 3.4, designed to implement a policy decision to eliminate plea bargaining in juvenile cases, is reproduced in the Appendix with appropriate commentary.

Subsection A. expresses the juvenile court judge's constitutional obligation to determine whether a tendered plea of admit is voluntary. (See the commentary to Standard 3.2.) It is based on Standard 1.5 of *Pleas of Guilty*.

Subsection B. requires the judge of the juvenile court to determine in every case prior to accepting a plea admitting an allegation of the petition whether the plea is the result of a plea agreement. If there has been a plea agreement, the details must be disclosed on the record.

Subsection C. requires the court to advise the respondent personally that any elements of the plea agreement that require judicial consent for implementation (such as dismissal of other allegations or petitions) are not binding on the court. However, subsection C. also requires the court to then follow the procedures specified in Standard 3.3 B. If the court concurs in the plea agreement but later decides that it cannot be implemented, it must permit the respondent the opportunity to withdraw the plea or to affirm it. See Standard 3.3 B.

Subsection D. requires the court then to address the respondent personally and to determine whether any promises or inducements other than the plea agreement just disclosed in court were used to

obtain the plea. It further requires the court to inquire personally of the respondent whether any force or threats were used to obtain the plea.

3.5 Determining accuracy of a plea admitting the allegations of the petition.

The juvenile court should not accept a plea admitting an allegation of the petition without making an inquiry and satisfying itself that the allegation admitted is true. The inquiry should be conducted:

A. by requiring the attorney for the government to describe the proof that the government would expect to produce if the case were tried; or

B. by personally questioning the respondent as to respondent's conduct in the case.

Commentary

In recent years, there has been concern in criminal cases that a plea of guilty is not sufficient assurance of guilt in fact to justify, without more, entry of a judgment of conviction. Several factors contribute to this concern: the strong inducements on defendants to plead guilty as a result of plea bargaining; increasing recognition of the inability of the traditional plea acceptance ceremony to uncover pleas offered in ignorance of critical facts or elements of the offense; and increasing recognition of the problem of securing effective defense representation in the guilty plea process. See D. Newman, *Conviction: The Determination of Guilt or Innocence Without Trial* 10-21 (1966). This concern has resulted in legal requirements such as that embodied in Rule 11 of the Federal Rules of Criminal Procedure that the trial court "not enter a judgment upon [a plea of guilty] without making such inquiry as shall satisfy it that there is a factual basis for the plea." A similar requirement is recommended in Standard 1.6 of *Pleas of Guilty*. In juvenile cases, Rule 23 of Model Rules for Juvenile Courts authorizes, but does not require, the judge of the juvenile court to "take testimony to corroborate the admission" to verify the accuracy of the plea. It can be argued that there is even greater need for plea verification in juvenile than in criminal cases because of the comparative lack of sophistication of the juvenile respondent and his or her greater vulnerability to pleading pressures, although some appellate courts have refused to require verification of juvenile pleas. *In re Mikkelson*, 226 C.A.2d 467, 38 Cal. Rptr. 106 (1964).

Standard 3.5 requires the court, upon tender of a plea admitting an allegation of the petition, to make an inquiry and satisfy itself that "the allegation admitted is true." No standard is specified by which the judge is to resolve doubts in making that determination; presumably, he or she must conclude at a minimum that it is more likely than not that the facts admitted by the plea exist. Unlike Rule 11 and Standard 1.6 of *Pleas of Guilty*, Standard 3.5 requires that the inquiry upon which the factual determination is to be based must be made in one of two ways. The court may determine the facts of the case by questioning the attorney for the government as to the proof he or she would expect to produce if the case were to be tried. The court may also determine the facts of the case by questioning the respondent personally as to his or her conduct in the case. The court is authorized by this standard to accept the plea if either of those inquiries produced facts from which the court concluded that the allegation admitted was true. Rejected by Standard 3.5 is the practice of using the presentence report or social history report to verify the accuracy of the plea, a practice of some courts in criminal cases. Newman, *supra* at 14–18. It seems far preferable to verify the accuracy of the plea at the time it is tendered rather than days or weeks later when the social history report is considered by the court. Further, it seems desirable not to burden the social history report with added functions that perhaps are foreign to the training of those conducting the social investigation.

3.6 Inquiry concerning effectiveness of representation.

A. The juvenile court should not accept a plea admitting an allegation of the petition unless it determines that the respondent was given the effective assistance of an attorney.

B. The juvenile court should make that determination upon tender of a plea admitting an allegation of the petition and should do so by inquiring:

1. of the respondent and respondent's attorney concerning the number and length (but not the content) of conferences the attorney has had with respondent;

2. of the attorney for the respondent concerning the factual investigation, if any, that the attorney conducted in the case;

3. of the attorney for the respondent concerning the legal preparation, if any, that the attorney made on behalf of respondent;

4. of the respondent and respondent's attorney concerning what advice the attorney gave respondent concerning whether to admit or deny the allegations of the petition;

5. of the respondent and respondent's attorney concerning whether there has been any conflict between them as to whether respondent should admit an allegation of the petition, and if there was, subject to the attorney-client privilege, the nature of that conflict.

Commentary

In criminal cases, the Supreme Court has made it clear that defense counsel has an important, perhaps critical, role to play in the disposition of cases by plea of guilty. Not only is the criminal defendant entitled to representation by counsel, but he or she is entitled to the effective assistance of counsel in his or her defense. In addition, the Supreme Court has indicated that it is the responsibility of the trial court judge to determine at the time he or she receives a plea of guilty that the defendant is being represented by competent counsel. In *Brady v. United States*, 397 U.S. 742 (1970), the Court outlined its expectations of trial judges in this respect:

> We would have serious doubts about this case if the encouragement of guilty pleas by offers of leniency substantially increased the likelihood that defendants, advised by competent counsel, would falsely condemn themselves. But our view is to the contrary and is based on our expectations that courts will satisfy themselves that pleas of guilty are voluntarily and intelligently made by competent defendants *with adequate advice of counsel* and that there is nothing to question the accuracy and reliability of the defendants' admissions that they committed the crimes with which they are charged. *Id.* at 758 (emphasis added).

In *McMann v. Richardson*, 397 U.S. 759 (1970), the Supreme Court elaborated on the responsibility of the trial court to ensure the effective assistance of counsel in the guilty plea process:

> [W]e think the matter, for the most part, should be left to the good sense and discretion of the trial courts with the admonition that if the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel, and that judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts. *Id.* at 771.

Subsection A. expresses for juvenile cases the trial court's constitutional responsibility to determine that a respondent entering a plea of admit receives, in the words of the Court in *Brady*, "adequate

advice of counsel" in his or her defense. There are sound policy reasons, in addition, for a requirement that the judge of the juvenile court determine as part of the plea acceptance proceeding that the respondent was given the effective assistance of counsel in his or her defense. When a case is tried, whether to a jury or the court, the quality of defense representation frequently becomes visible to the other participants in the trial and to knowledgeable observers. Judgments can be made about whether defense counsel has an understanding of the law involved in the case and the extent to which he or she has investigated and prepared the case for trial. The trial of a case thus imposes a healthy accountability on defense counsel to do his or her job well. That accountability is lacking when a case is disposed of by plea of guilty or, in juvenile court, by a plea of admit. Indeed, it is likely that each community has members of the defense bar whose practice is based upon high volume disposition of cases by plea of guilty or admit. The criminal defendant or juvenile respondent is ill-equipped to judge the performance of the attorney, and the plea acceptance ceremony is unlikely to uncover even the most gross instances of neglect by defense counsel. Thus, simply asking a juvenile respondent whether he or she is satisfied with the services of his or her attorney does not adequately discharge the trial court's responsibilities.

Subsection B. provides that the judge of the juvenile court should make a brief inquiry on the record at the time of a tender of a plea of admit to determine whether the constitutional requirement of effective assistance of counsel has been met. A similar recommendation in criminal cases was made in Gentile, "Fair Bargains and Accurate Pleas," 49 *Boston U.L. Rev.* 514 (1969):

> Measuring the adequacy of counsel's representation in a plea-bargaining situation is especially difficult since, unlike a trial, counsel's activities are largely not a matter of public record. Therefore, to the extent possible, counsel's activities on behalf of his client should be included in the record. This could be done most appropriately through the trial judge's open-court questioning of counsel prior to the offering of the plea. Through his responses counsel could indicate the agreement reached with the prosecutor, the extent of his investigation and analysis, and, finally, the information relayed to the defendant. The effort entailed in such an inquiry would be minimal when measured by the benefit conferred on the plea-bargaining process and would provide substantial protection against dishonest collateral attacks and appeals. *Id.* at 535-36.

Subsections 1. through 5. suggest areas of inquiry that are appropriate for the juvenile court judge to pursue. Subsection 1. is de-

signed to uncover the attorney who proposes to dispose of a case by plea of admit after only one or two hurried hallway conferences with his or her client. It is not possible, of course, to provide quantitative standards for attorney-client conferences, since that will properly vary enormously from case to case, but if a response to this inquiry is received that indicates that the attorney has conferred with this client only briefly, then further, intensive inquiry would be indicated. The inquiry should be directed to both the respondent and the defense attorney. Subsections 2. and 3. invite the attention of the juvenile court to two areas of inquiry of the defense attorney: factual investigation and legal preparation of the case. The inquiry concerning factual investigation is important to uncover the attorney who is willing to participate in the tender of a plea of admit without really determining the facts of the case. Not all cases require factual investigation, but certainly investigation is appropriate if the client conference and discovery with the prosecutor lead to a dispute as to what happened. Much the same is true of the inquiry directed to what legal preparations, if any, the attorney made in the case. Not all cases require specific legal preparations; that will depend upon the nature of the case and the prior experience of the attorney. But the judge of the juvenile court should be suspicious of the attorney who is willing to tender a plea of admit for a client in a case involving complicated or unusual legal propositions without bothering to research the matter. Subsection 4. is designed to invite the attention of the juvenile court to whether the defense attorney advised his or her client to enter the plea of admit now tendered. While it is certainly true that a client, even a juvenile client, is not required to follow the advice of his or her attorney, a juvenile court judge who determines that the plea of admit is being entered against the advice of counsel should properly conduct further inquiry to determine whether the plea, if accepted, would be voluntary and intelligent. Subsection 5. invites the attention of the court to the situation in which the client really does not want to enter a plea of admit but his or her lawyer talked or pressured him or her into doing so. Thus, the court should inquire of both the respondent and his or her attorney whether there was any disagreement between them as to whether to offer a plea of admit. While the court cannot require the disclosure of communications privileged by the attorney-client relationship, it should seek to determine the nature of any conflict to determine whether the plea is being tendered as a result of coercion or undue pressure from the defense attorney.

The five areas of inquiry are merely illustrative of those that would be appropriate for the juvenile court judge determined to discharge his or her obligation, in the words of the Supreme Court in *Mc-*

Mann v. Richardson, "to maintain proper standards of performance by attorneys who are representing" respondents in their courts. 397 U.S. at 771. There are very definite limits on the capacity of this or any other judicial inquiry to discharge that responsibility. The juvenile court judge who does not accept the responsibility seriously will merely add another meaningless litany to his or her list for the plea acceptance ceremony; the judge who takes the responsibility seriously may deter some attorneys from practicing in his or her court and may encourage others to provide better representation by providing somewhat greater visibility to their activities.

3.7 Parental participation in uncontested cases.

A. Except when a parent is the complainant, the judge of the juvenile court should not accept a plea admitting an allegation of the petition without inquiring of the respondent's parent or parents who are present in court whether they concur in the course of action the respondent has chosen.

B. The judge of the juvenile court should consider the responses of the respondent's parents to the court's inquiry in exercising discretion in whether to reject the tendered plea.

Commentary

In Standard 1.4, the position is taken that a respondent's parents have the right to be present at adjudication proceedings and that the judge of the juvenile court "should make every reasonable effort to secure the presence of both of respondent's parents" at the proceeding. Standard 3.7 speaks to the role of the parents in uncontested adjudication proceedings; Standard 4.5 speaks to their role in contested cases.

There is enormous ambiguity in the law concerning the legal rights of parents of children who are respondents in delinquency proceedings. On the one hand, such a proceeding is mainly directed toward the child on account of alleged misconduct and has as its basic justification the protection of society from adolescent misdeeds. On the other hand, any dispositional order of the juvenile court entered as a result of a plea of admit is to a greater or lesser extent an interference with the parent's rights to custody of the child. The position taken in this standard is that parents should be given the opportunity to make their wishes known in the disposition of uncontested cases but that, despite their custody interests in the child, they should not be empowered to veto a plea of admit.

Subsection A. requires the juvenile court judge to inquire of a respondent's parent or parents present in court whether they agree with the child's decision to admit the allegations of the petition. If neither parent is present, the juvenile court should have appointed a guardian *ad litem* for the child as recommended in Standard 1.4 C., and the inquiry might then appropriately be made of that person. Subsection A. excepts from the requirement of parental inquiry those situations in which a parent is a complainant because the parent has, in effect, requested juvenile court interference with his or her custodial rights.

Subsection B. provides that the court take the parents' attitudes into account in exercising its discretion whether to accept or reject the tendered plea of admit. This course of action is recommended because each of the alternatives—no parental input into the court's decision or parental veto power over pleas of admit—presents enormous difficulties. The matter seems better left to the court's discretion.

3.8 Plea withdrawal.

A. The juvenile court should allow the respondent to withdraw a plea admitting an allegation of the petition whenever the respondent proves that withdrawal is necessary to correct a manifest injustice.

1. A motion for withdrawal is not barred because made subsequent to adjudication or disposition.

2. Withdrawal is necessary to correct a manifest injustice when the respondent proves:

a. denial of the effective assistance of counsel guaranteed by constitution, statute, or rule;

b. that the plea was not entered or ratified by the respondent;

c. that the plea was involuntary, or was entered without knowledge of the allegations or that the disposition actually imposed could be imposed;

d. that respondent did not receive the concessions contemplated by the plea agreement and the attorney for the government failed to seek or not to oppose those concessions as promised in the plea agreement; or

e. that respondent did not receive the concessions contemplated by the plea agreement concurred in by the court, and did not affirm the plea after being advised that the court no longer concurred and after being called upon to either affirm or withdraw the plea.

3. The respondent should be permitted to move for withdrawal

of the plea without alleging innocence of the allegations to which the plea has been entered.

B. Before disposition of the case, the court should allow the respondent to withdraw the plea for any fair and just reason without proof of manifest injustice as defined in subsection 2. of this standard.

Commentary

This standard describes the circumstances in which a plea of admit may be withdrawn by the respondent. With a few exceptions, this standard tracks the language of Standard 2.1 of *Pleas of Guilty*. Alternate Standard 3.8, which is necessary to implement a policy decision to eliminate plea bargaining in juvenile cases, appears in the Appendix with appropriate commentary.

Subsection A. is based on Standard 2.1(a) of *Pleas of Guilty*. The language stating the "manifest injustice" standard for ruling on motions for withdrawal is, in turn, derived from Federal Rules of Criminal Procedure, Rule 32(d).

Subsection 1. provides that a motion to withdraw is not barred merely because made subsequent to adjudication or disposition. If the respondent can prove "manifest injustice" as defined in subsection 2., there is no reason to require the motion to withdraw to be made before disposition. Indeed, the grounds for withdrawal specified in subsections d. and e. would not arise until after disposition of the case. It should also be noted that more liberal standards for withdrawal prior to disposition are proposed in subsection B. of this standard.

Subsection 2. defines five situations that constitute grounds for withdrawal of a plea. If the juvenile court judge has adhered to the standards applicable to acceptance of pleas of admit, there will be very little occasion for withdrawal of a plea on any of these five grounds. Subsection a. makes denial of the effective assistance of counsel a ground for withdrawal of the plea. If Standard 1.2's requirement of counsel for the respondent in all juvenile cases is met, and if the judge of the juvenile court conscientiously complies with Standard 3.6 requiring an inquiry into counsel's performance at the time the plea is accepted, there should be few, if any, occasions in which motions to withdraw on this ground will properly be granted. Subsection b. makes it a ground for withdrawal that the plea was not entered or ratified by the respondent. If the judge of the juvenile court complies with Standard 3.2 requiring that he or she address the respondent personally, there should be no occasion for withdrawal of the plea on this ground. Subsection c. provides that a plea can be withdrawn if the respondent proves that the plea was in-

voluntary or was entered without knowledge of the allegations or that the disposition actually imposed could be imposed. Standard 3.4 requires the juvenile court judge to determine when accepting the plea that it is voluntary, and Standard 3.2 requires the court to inform the respondent "in language calculated to communicate effectively with" him or her the nature of the allegations and the disposition that can be imposed upon a plea of admit to those allegations. Subsection d. provides that if the prosecutor fails to perform the promises he or she made in the plea agreement, the respondent can withdraw the plea of admit. A provision such as this is essential to enforce plea agreements. In *Santobello v. New York*, 404 U.S. 257 (1971), the Supreme Court determined that the defendant was entitled to relief when the prosecutor inadvertently failed to perform his part of the agreement, but did not decide whether the remedy should be withdrawal of the plea or remand for resentencing in accordance with the agreement reached. The position taken here is that a respondent in such circumstances should be permitted to withdraw the plea. Subsection e. provides that it is a ground for withdrawal of a plea that the juvenile court judge did not follow the procedures specified in Standard 3.3 B. and concur in the plea agreement or call upon the respondent to affirm or withdraw the plea.

Subsection 3. follows Standard 2.1 (a)(iii) of *Pleas of Guilty* in not requiring an allegation of innocence before withdrawal is permitted. The principal purpose of the plea withdrawal provision in this standard is to enforce the earlier standards related to safeguards in the acceptance of pleas of admit. A departure from one of those standards, as defined in subsections 2. a. through e. should be grounds for withdrawal of the plea.

Subsection B. gives the judge of the juvenile court discretion to permit withdrawal of a plea of admit when the motion to withdraw is made before disposition of the case. This is based on Standard 2.1(b) of *Pleas of Guilty* and follows the language articulated by the Supreme Court in *Kercheval v. United States*, 274 U.S. 220, 224 (1927): "The court in exercise of its discretion will permit one accused to substitute a plea of not guilty and have a trial if for any reason the granting of the privilege seems fair and just."

PART IV: CONTESTED ADJUDICATION PROCEEDINGS

Standards in this part deal with the major issues in adjudication proceedings when the respondent has denied an allegation of the petition and thus put the government to its proof. No effort is made to establish standards concerning the details of trial procedure.

Rather, five issues have been identified that present fundamental, often controversial, questions about the nature of the trial process in juvenile cases. Standard 4.1 recommends that a respondent have a right to trial by jury and that although the jury may consist of as few as six persons, its verdict must be unanimous. Standard 4.2 recommends that the rules of evidence employed in the trial of criminal cases be used in contested adjudication proceedings. Standard 4.3 recommends that the proof beyond a reasonable doubt standard be employed in delinquency proceedings. Standard 4.4 recommends that, with certain exceptions, the finder of fact should not receive social history information concerning a child until there has been an adjudication. Standard 4.5 deals with the role of respondent's parents at an adjudication proceeding.

It is important to identify a major assumption underlying the standards in this part. The assumption is made that it is important that the juvenile process provide a formal adjudication proceeding when the respondent has denied the allegations of the petition. When the respondent has elected to put the government to its proof, accuracy of fact finding must assume precedence over whatever benefits may arise from informality elsewhere in the process. While the tone of the proceeding need not involve the formal trappings of the typical criminal trial—judge in robes and sitting on a raised bench—the proceedings should be carefully governed to maximize the accuracy of the fact-finding process within the limits imposed by the adversary system. This is not the occasion for the judge to attempt to get next to the respondent emotionally or to engage in therapeutically oriented conduct designed to begin the process of rehabilitation. Opportunities for such worthwhile purposes are abundant both before and after the adjudication proceeding when the respondent has denied the allegations of the petition.

4.1 Trial by jury.

A. Each jurisdiction should provide by law that the respondent may demand trial by jury in adjudication proceedings when respondent has denied the allegations of the petition.

B. Each jurisdiction should provide by law that the jury may consist of as few as [six] persons and that the verdict of the jury must be unanimous.

Commentary

Subsection A. recommends that jury trials be made available in juvenile proceedings as a matter of state public policy. Such a policy would effect a substantial change in the juvenile law of most juris-

dictions, but would materially enhance the fairness of the adjudication proceeding. It is important to note at the outset that this standard recommends that juries be available upon demand of the respondent and not that there be a jury in every case. Further, there is every reason to believe that jury trials in juvenile cases would be at least as rare as they are in criminal cases and would probably occur even less frequently. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 561 (1971). Thus it is anticipated that the juvenile would consult with counsel to make an informed decision in exercising the option to demand or waive a jury.

In *McKeiver*, the Supreme Court held that the United States Constitution does not require states to provide jury trials in juvenile cases. State courts in cases subsequent to *McKeiver* have divided on the question of whether jury trials are required in juvenile proceedings by various state constitutional provisions. Compare *In re McCloud*, 293 A.2d 512 (R.I. 1972) (not required), with *R.L.R. v. State*, 487 P.2d 27 (Alaska 1971) (required). *McKeiver* itself makes it clear that states are free to require jury trials in juvenile cases: "If, in its wisdom, any State feels the jury trial is desirable in all cases, or in certain kinds, there appears to be no impediment to its installing a system embracing that feature. That, however, is the State's privilege and not its obligation." 403 U.S. at 547.

The policy arguments in favor of authorizing jury trials in juvenile cases begin with the same reasons that underlie constitutional provisions authorizing jury trials in criminal cases. In *Duncan v. Louisiana*, 391 U.S. 145 (1968), the Court held that the fourteenth amendment requires states to make jury trials available in criminal prosecutions for nonpetty offenses. Mr. Justice White, writing for the Court, stated:

> The framers of the [federal and state] constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. *Id.* at 156.

The importance of the availability of jury trials in juvenile cases goes beyond neutralizing the biased juvenile court judge. A jury trial gives enhanced visibility to the adjudicative process. A jury trial requires the trial court judge to articulate his or her views of the applicable law in the case through jury instructions, thereby facilitating appellate court review of the legal issues involved. Without the focus on legal issues that such an exercise entails, the danger is great that the applicable law may be misperceived or misapplied and that the error will go uncorrected on appeal. In addition, many significant evidentiary protections in the adjudicative process are based on the assumption that preliminary rulings on admissibility will be made by the trial judge and that a jury will receive the evidence only if it has been ruled admissible. When a jury is not present, the evidentiary questions tend to become blurred and appellate review of evidentiary questions is made extremely difficult by the universal presumption that the trial judge disregarded inadmissible evidence and relied only upon competent evidence in arriving at his or her decision. For example, *Jackson v. Denno*, 378 U.S. 368 (1964), requires the trial judge to make specific findings that a confession is voluntary before admitting it into evidence in a jury trial. In *In the Matter of Simmons*, 24 N.C. App. 28, 210 S.E.2d 84 (1974), the North Carolina Court of Appeals excused the juvenile court judge's failure to make specific voluntariness findings, commenting:

> Certainly an involuntary confession made by a child is no more admissible than would be an involuntary confession of an adult accused of the same criminal offense. . . . Nevertheless, there are significant differences between a juvenile proceeding and a criminal trial in the superior court. The absence of a jury and the fact that the District Judge rules on admissibility as well as on credibility and weight of evidence, makes largely artificial and meaningless any clear-cut distinction between that portion of the juvenile hearing during which the District Judge is hearing testimony bearing upon the admissibility of evidence and portions of the hearing when he receives and considers the evidence as it bears upon the ultimate factual issues presented for his determination. *Id.* at 88.

See also *In the Matter of D.L.*, 46 Cal. App. 3d 65, 120 Cal. Rptr. 276 (1975) (attempting to apply the respondent's right to confrontation with respect to an accusation in a correspondent's confession under *Bruton v. United States*, 391 U.S. 123 [1968] in the context of a juvenile adjudication proceeding without a jury). Of course, these same evidentiary problems may arise in a criminal trial when the jury has been waived, but at least the criminal defendant

has had the option of demanding a jury in order to obtain meaningful rulings on what may be outcome-determining questions.

There may be special needs for having jury trials available in juvenile court. Although the position is taken in other volumes of standards that juvenile court intake should be an executive function, not subject to administrative control of the juvenile court judge, historically the juvenile court judge was the chief administrator of the juvenile process in his or her locality. Such a judge is likely to have had a substantial involvement in the structuring and operation of the court intake process and may have played a substantial part in persuading local officials of the importance of the juvenile process in local funding priorities. The judge may be committed to the juvenile court concept as a "social movement" and thus may find it difficult to view dispassionately the evidence produced by the operatives in that system. Further, such a judge is more likely than his or her counterpart in the criminal justice process to have had contact with a case prior to an adjudication hearing, in a detention hearing or perhaps even a hearing to consider transfer for prosecution in criminal court, in which background information that would be unfairly prejudicial to the respondent at adjudication was properly presented. See *Michaels v. Arizona*, 94 Sup. Ct. 3063 (1974) (Mr. Justice Douglas dissenting from dismissal of appeal).

There are, of course, costs of providing jury trials in juvenile cases. The major argument appears to be administrative. Mr. Justice Blackmun, writing for the plurality in *McKeiver*, asserted that "[i]f the jury trial were to be injected into the juvenile court system as a matter of right, it would bring with it into that system the traditional delay, the formality, and the clamor of the adversary system and, possibly, the public trial." 403 U.S. at 550.

The Court had earlier introduced into the juvenile process all the elements necessary to make the adjudication hearing into an adversary process—the right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses. *In re Gault*, 387 U.S. 1 (1967). Further, if the allegations of the petition have been denied and the case is contested before a juvenile court judge sitting without a jury, the adjudication hearing should be conducted in a careful, formal manner to assure accurate findings of fact. Contested adjudication hearings should be formal proceedings whether or not there is a jury present. An empirical study of the operation of the Denver juvenile court included this observation: "The adjudicatory hearing or trial of a juvenile in Denver so closely resembles an adult criminal trial that, except for the age and size of the 'defendant,' the legal terminology used, and the numbers of jurors, most lay people and a substantial number of attorneys would find the two

types of proceedings impossible to differentiate." Hufnagel and Davidson, "Children in Need: Observations of Practices of the Denver Juvenile Court," 51 *Den. L.J.* 337, 387–88 (1974). This appears to be true whether or not a jury is the trier of fact. *Id.* Indeed, considering the adversarial rights recognized by the Supreme Court in *Gault*, it could hardly be otherwise.

Another approach to the jury trial issue is to encourage more extensive resort to advisory juries in adjudication proceedings. The Supreme Court adverted to this possibility in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971): "There is, of course, nothing to prevent a juvenile court judge, in a particular case where he feels the need, or when the need is demonstrated, from using an advisory jury." *Id.* at 548. Courts of equity historically had the power to empanel an advisory jury to assist in resolving issues of fact, but the jury's verdict was, of course, not binding upon the court. See Wright and Miller, *Federal Practice and Procedure*, Civil § 2335 (1971). Recent cases have upheld the discretionary power of the juvenile court judge to use advisory juries in delinquency cases. See *People v. Superior Court of Santa Clara County*, 124 Cal. Rptr. 47, 539 P.2d 807 (1975) (finding the power in statutory language authorizing the juvenile court judge to "control all proceedings . . . with a view to expeditious and effective ascertainment of the jurisdictional facts"); *Ex parte State ex rel. Simpson*, 263 So. 2d 137 (Ala. 1972) (finding the power in statutory language giving the juvenile court "the jurisdiction and power possessed by equity courts in this state"). Advisory juries, however, because they are empaneled at the discretion of the trial court and because they render nonbinding verdicts, are not an adequate substitute for trial by jury.

Subsection B. recommends that jurisdictions adopting trial by jury as a matter of state policy in juvenile cases authorize that the jury consist of six rather than twelve persons. As the Supreme Court asserted in *Williams v. Florida*, 399 U.S. 78 (1970), in holding that a state may provide for a jury of six in criminal proceedings, there is no magic in a jury of twelve. Providing a jury of six rather than twelve would to some extent speed up the process of jury selection. Statutes providing for jury trial in juvenile cases frequently specify a jury of six. Colo. Rev. Stat. Ann. § 19-1-106(4) (1973); Okla. Stat. Ann. tit. 10, § 1110 (1975–76 Supp.); Mich. Comp. Laws Ann. § 712A.17 (1968); S.D. Compiled Laws Ann. § 26-8-31 (1967). However, the number six in the standard has been bracketed to indicate that the jury in a juvenile proceeding should be of a size consistent with the jury in an equivalent criminal proceeding, to provide juveniles with as much protection as adults in adjudicatory hearings.

It is also recommended that the jury be required to return a unani-

mous verdict. Although nonunanimous criminal verdicts are constitutionally acceptable in state proceedings under some circumstances, *Johnson v. Louisiana*, 406 U.S. 356 (1972), *Apodaca v. Oregon*, 406 U.S. 404 (1972), it seems preferable to require unanimity, especially in view of permitting the jury to consist of as few as six persons.

4.2 Rules of evidence.

The rules of evidence employed in the trial of criminal cases should be used in delinquency adjudication proceedings when the respondent has denied the allegations of the petition.

Commentary

Statutory provisions and model legislation vary on the question of what rules should govern the admissibility and sufficiency of evidence in juvenile adjudication proceedings. Tex. Fam. Code § 54.03(d) (1973) provides that "only material, relevant, and competent evidence in accordance with the requirements for the trial of civil cases may be considered in the adjudication hearing," while Cal. Welf. & Inst'ns Code § 701 (1972) requires evidence "legally admissible in the trial of criminal cases" when the respondent is charged with violation of a criminal statute. The Model Rules for Juvenile Courts, Rule 25, provides that "no testimony that would be inadmissible in a civil proceeding shall be admitted into evidence," while the Legislative Guide for Drafting Family and Juvenile Court Acts § 32(c) simply requires that a finding of delinquency be based upon "competent, material, and relevant evidence" without reference to either civil or criminal proceedings.

The differences among such statutory and model legislation provisions are not as great in their implementation as they appear at first glance. One reason is that certain federal constitutional limitations on evidence in criminal cases are applicable to juvenile proceedings and to that extent limit freedom to structure evidentiary rules purely along "civil" lines. *In re Gault*, 387 U.S. 1 (1967), requires recognition of the privilege against self-incrimination in juvenile proceedings and sets minimum standards of evidentiary competency by requiring recognition of the respondent's right to confront the witnesses against him or her. Lower courts have quite uniformly applied the rule excluding evidence obtained in violation of the fourth amendment to juvenile proceedings. See *In re Harvey*, 222 Pa. Super. 222, 295 A.2d 93 (1972). In general, the lower courts have applied to juvenile proceedings the federal constitutional evidentiary limitations required in state criminal proceedings. Recent statutes have tended to codify

that position. For example, Legislative Guide for Drafting Family and Juvenile Court Acts § 28 provides in part: "A child charged with a delinquent act or alleged to be in need of supervision shall be accorded the privilege against self-incrimination. An extrajudicial statement which would be constitutionally inadmissible in a criminal proceeding shall not be received in evidence over objection. Evidence illegally seized or obtained shall not be received in evidence over objection to establish the allegations against him." See also Uniform Juvenile Court Act § 27(b); Tex. Fam. Code § 54.03(e) (1973).

The major evidentiary standards in juvenile cases, therefore, have been set as a matter of federal constitutional law. Furthermore, the rules of evidence traditionally used do not differ greatly in civil and criminal proceedings. *Wigmore on Evidence* § 4(2) (3rd ed. 1940). Indeed, with possibly only the exception of the peculiar rule limiting the admissibility of dying declarations to homicide prosecutions, *McCormick on Evidence* § 283 (2nd ed. 1972), the nonconstitutional differences between civil and criminal rules of evidence appear to consist of a requirement in some jurisdictions for corroboration of particular types of testimony in criminal cases that is not required in civil cases. An excellent example is the requirement in some jurisdictions that the testimony of an accomplice be corroborated. In such jurisdictions, the courts have split on the question of whether such a requirement should also be imposed in juvenile cases. Compare *T.L.T. v. State*, 133 Ga. App. 895, 212 S.E.2d 650 (1975), and *Smith v. State*, 525 P.2d 1251 (Okla. Cr. 1974) (corroboration required), with *In re R.C.*, 39 Cal. App. 3d 887, 114 Cal. Rptr. 735 (1974), and *In the Matter of S.J.C.*, 533 S.W.2d 746 (Tex. Sup. Ct. 1976) (corroboration not required). Similarly, the rule that a criminal conviction may not rest upon the uncorroborated extrajudicial confession of the defendant has been applied in juvenile cases. See *D.C.A. v. State*, 217 S.E.2d 470 (Ga. App. 1975); *In the Interest of W.J.*, 116 N.J. Super. 462, 282 A.2d 770 (1971). This requirement, despite the fact that it is not grounded in the United States Constitution, has also been codified in a number of juvenile statutes. See Legislative Guide for Drafting Family and Juvenile Court Acts § 28; Uniform Juvenile Court Act § 27(b); Tex. Fam. Code § 54.03(e) (1973). Other courts have required corroboration in juvenile proceedings in sex cases when that would be required in criminal proceedings. *In the Matter of Robert M.*, 37 A.D.2d 527, 322 N.Y.S.2d 62 (1971); *In re D.*, 36 A.D.2d 742, 320 N.Y.S.2d 467 (1971). Still other courts have required corroboration of the testimony of extremely young witnesses. *In re H.*, 41 A.D.2d 817, 342 N.Y.S.2d 696 (1973).

Since major federal constitutional criminal evidentiary limitations

must be applied in juvenile proceedings in any event, Standard 4.2 takes the position, in part for reasons of simplicity, that evidentiary limitations in juvenile cases should be based entirely upon a jurisdiction's criminal rules of evidence. As noted earlier, the available area of choice is extremely limited, and it appears desirable to require some rules of corroboration in juvenile cases, particularly with regard to extrajudicial confessions and the testimony of accomplices.

It should be noted that Standard 4.2 does not address itself to specific exclusions of otherwise admissible evidence that may be contained elsewhere in a juvenile statute. For example, it is not unusual to provide that any statement made by a child in an intake or informal adjustment conference may not be admitted in an adjudication hearing. See Legislative Guide for Drafting Family and Juvenile Court Acts § 26; Tex. Fam. Code § 53.03(c) (1973). Such specific exclusions would, of course, be applicable in addition to the limitations provided by this standard. See *The Juvenile Probation Function: Intake and Predisposition Investigative Services* volume, Standard 2.12.

4.3 Burden of proof.

Each jurisdiction should provide by law that the government is required to adduce proof beyond a reasonable doubt that the respondent engaged in the conduct alleged when the respondent has denied the allegations of the petition.

Commentary

The Supreme Court of the United States, in *In re Winship*, 397 U.S. 358 (1970), held that the due process clause of the fourteenth amendment requires that some kinds of juvenile court adjudications must rest upon proof beyond a reasonable doubt that the respondent violated a relevant legal prohibition. For those situations, a standard of a preponderance of the evidence, typically employed in civil proceedings, or even the higher standard of clear and convincing evidence, is constitutionally insufficient. The precise reach of the Court's ruling is unclear. The Court was careful to note that the case before it involved a respondent charged with conduct that would have been a crime if committed by an adult and for which as a juvenile he or she could have received a commitment to a correctional institution for a period of several years. The Court also noted that it was not considering the burden of proof requirements in "need of supervision" cases. *Id.* at 359, n. 1.

There are several possible principles upon which the scope of the decision could be limited. First, *Winship* could be limited to juvenile cases in which the respondent is charged with conduct that would be a crime if committed by an adult. The Iowa Supreme Court, by a five to four vote, accepted such a limiting principle in *In re Henderson*, 199 N.W.2d 111 (1972). The respondent in *Henderson* was charged with delinquency by virtue of being "uncontrolled" and "habitually disobedient." Although the same dispositional possibilities existed for him as for a respondent adjudicated delinquent on the basis of criminal conduct, a majority of the court held that *Winship* was inapplicable and that the juvenile court properly applied the statutory "clear and convincing evidence" requirement. Such a distinction is particularly unfortunate when both the adjudicatory label—"delinquent"—and the dispositional consequences are identical for those respondents charged with criminal conduct and those who are not. Second, in jurisdictions that statutorily distinguish between delinquency and need of supervision, *Winship* could be limited to delinquency cases. "Delinquent" is presumably the more pejorative label; indeed, limiting the stigma of the delinquency label to more serious antisocial misconduct was one of the original purposes of need of supervision legislation. Such a limiting principle appears to have been rejected by lower New York courts, and *Winship* is regarded as applying to persons in need of supervision as well as to delinquency cases. *In the Matter of William D.*, 36 A.D.2d 970, 321 N.Y.S.2d 510 (App. Div. 1971). At the time *William D.* was decided, delinquents and PINS could be, and were, incarcerated in the same state correctional institutions. Third, in jurisdictions that statutorily distinguish between delinquents and PINS, and that require separate institutions and programs for the two groups, *Winship* could be limited to delinquency cases. This was the situation in New York after the court of appeals' decision in *In re Ellery C.*, 32 N.Y.2d 588, 300 N.E.2d 424 (1973). It might be questioned whether the establishment of such a two-track system for juvenile justice should be sufficient to justify different standards for burdens of proof so long as the possibility of institutionalization at all remains for the need of supervision group. Furthermore, a study of New York training schools after the *Ellery C.* decision indicates that there are few, if any, significant differences between the delinquency and PINS training schools in terms of program or custody. See Institute of Judicial Administration, "The Ellery C. Decision: A Case Study of Judicial Regulation of Juvenile Status Offenders" (September 1975).

The reasonable doubt standard minimizes the risk that an innocent respondent will be adjudicated and become subject to the risk of com-

mitment to an institution or to other significant interference with the respondent's liberty and the parents' interest in custody. This is an important protection and is one that is achieved without adding procedural steps to the juvenile process or interfering with rehabi i-tative efforts. The Legislative Guide for Drafting Family and Juvenile Court Acts § 32(c) requires proof beyond a reasonable doubt in both delinquency and need of supervision cases and the Uniform Juvenile Court Act § 29(b) imposes that standard for delinquency and "unruly" child proceedings.

4.4 Social information.

A. Except in preadjudication hearings in which social history information concerning the respondent is relevant and admissible, such as a detention hearing or a hearing to consider transfer to criminal court for prosecution as an adult, the judge of the juvenile court should not view a social history report or receive social history information concerning a respondent who has not been adjudicated delinquent.

B. Each jurisdiction should provide by law that when a jury is the trier of fact it should not view a social history report or receive social history information concerning the respondent.

Commentary

A fundamental principle of modern juvenile law is that the adjudication and disposition stages of the juvenile process should be separated. Earlier practice frequently included the juvenile court judge receiving and reading the social history report containing extensive background information about the respondent before the adjudication hearing was completed. This obviously had the potential of contaminating the adjudication decision by information that was unfairly prejudicial to the respondent and not relevant to the question of whether the respondent committed the violation alleged. To the extent that the social history information is contained in the form of a report written by a probation officer or other court worker, receiving it in the adjudication hearing would also violate the respondent's right of confrontation of witnesses under *In re Gault*, 387 U.S. 1(1967). No matter what form the information takes, its reception in adjudication hearings has been condemned. *In re R.*, 1 Cal. 3d 855, 83 Cal. Rptr. 671, 464 P.2d 127 (1970).

Model legislation places restrictions upon making the dispositional social study prior to the adjudication decision. The Legislative Guide

for Drafting Family and Juvenile Court Acts § 30 (a) prohibits making a predispositional study and report "prior to a finding with respect to the allegations in the petition unless a notice of intent to admit the allegations is filed, and the party consents thereto." The Uniform Juvenile Court Act § 28 prohibits making a predispositional study and report prior to an admission of the allegations in the petition or a finding that the respondent is a delinquent. The Standard Juvenile Court Act § 23 provides that when "the allegations of the petition are denied, the [predispositional] investigation shall not be made until after the allegations have been established at the hearing." It is important to note that the model legislation speaks only to the predispositional study and report and not to other types of social history information that may be obtained concerning the respondent. Background information is frequently obtained to assist in making pretrial detention decisions, decisions on whether to transfer the respondent to criminal court for prosecution as an adult, and decisions concerning informal adjustment or diversion of the respondent from the juvenile process. Use of such information prior to adjudication is not prohibited by model legislation.

Subsection A. permits the juvenile court judge to receive social history information concerning a respondent prior to the adjudication hearing if it is "relevant and admissible" in a judicial proceeding, such as a detention hearing or a hearing to consider transfer to criminal court. That exception seems necessary. Moreover, under Standard 3.1 B., the judge ought to consider social history in determining whether a juvenile respondent has sufficient mental capacity to enter a plea admitting an allegation in the petition. It should be noted that none of the model legislation is designed to prohibit such preadjudication use of social information so long as it does not appear in a predispositional report. It would be a desirable practice for different juvenile court judges to sit at adjudication and preadjudication hearings in which social information is presented, but that does not seem essential in view of the fact that it is recommended that the respondent have the right of trial by jury in the adjudication proceedings. In addition, in some jurisdictions counsel for the respondent may be able to utilize an affidavit of prejudice to remove from a case a judge whom he or she believes to be biased against the respondent for this or other reasons. See *In the Matter of G.K.*, 497 P.2d 914 (Alaska 1972); *Anonymous v. Superior Court*, 14 Ariz. App. 502, 484 P.2d 655 (1971). In the absence of an affidavit of prejudice procedure, the respondent must show that the juvenile court judge is prejudiced against his or her client to secure his or her removal from the case.

See *In the Interest of A.S. v. State*, 275 S.2d 286 (Fla. App. 1973); *State ex rel. Mitchell v. Bowman*, 54 Wis. 2d 5, 194 N.W.2d 297 (1972).

Since the jury has a role only at the adjudication hearing, there is no need for it to consider social history reports or information at any time. Accordingly, subsection B. places an absolute prohibition on the jury receiving that information.

4.5 Role of parents in contested proceedings.

A respondent's parents or other persons required by law to be served with a copy of the petition should be permitted to make representations to the court either pro se or through counsel in a jury-waived contested adjudication proceeding.

Commentary

Adjudication proceedings of the nature dealt with in these standards are viewed as proceedings in which the state and the respondents have the most direct interests. Unlike termination or other child protective proceedings, the adjudication proceedings here do not divest the parents of their rights as parents nor result in an order removing the child from their custody. An adjudication of delinquency also implies no parental fault or inadequacy in rearing the child. Nevertheless, a parent of a respondent has significant interests in the outcome of adjudication proceedings. As a result of such proceedings, a dispositional order may be entered that will interfere for a time with the parent's normal relationship with the respondent. For example, the respondent may be committed to a correctional institution or placed outside the home. For that reason, the position is taken in some legislation that the parents of a respondent should be given the right to participate in contested adjudication proceedings as parties to the proceedings. They may call witnesses or cross-examine witnesses in order to protect their parental interests in the proceedings. They may, under some circumstances, be entitled to provision of counsel by the government separate from counsel for the respondent. The Model Rules for Juvenile Courts, Rule 1–6 (1969) includes a "parent, guardian, or legal custodian" of a child who is the subject of juvenile court proceedings as a party. See Tex. Fam. Code § 51.02(10) (1973) for similar treatment.

The position taken here and in Standard 6.5 of the *Pretrial Court Proceedings* volume is that a respondent's parents should have the right to make representations to the court in contested proceedings, but should not enjoy full party rights in the proceedings. This permits the parents to assert their interest in the proceedings

without opening them up to the confusion and potential prejudice to the respondent of full party status. It is contemplated that parental participation at the dispositional hearing will be greater because the willingness and ability of the parents to care for the respondent is frequently a central question in the dispositional decision.

Permitting parental representations to be made in contested adjudication proceedings undoubtedly creates potential for confusion and prejudice to the respondent. For this reason, the right to make such representations is restricted to jury-waived proceedings: the judge of the juvenile court is more likely to be able to receive such representations without prejudice to the respondent than is a jury.

The position taken here is similar to the position taken in Standard 3.7 that a respondent's parents should be permitted to inform the court whether they agree with their child's decision to admit the allegations of the petition but should not be permitted to veto a plea of admit.

PART V: THE ADJUDICATION DECISION

5.1 Adjudication required for juvenile court disposition.

A. Each jurisdiction should provide by law that a juvenile court adjudication that a respondent is delinquent, as alleged in a written petition, is a requisite for any juvenile court disposition of the respondent, except for voluntary participation in preadjudication programs.

B. The adjudication should be based upon respondent's plea admitting one or more of the allegations of the petition or upon the government's proof that respondent violated the law as alleged in the petition.

Commentary

Standard 5.1 A. states the requirement that the juvenile court adjudicate a respondent to be within its jurisdiction before making any disposition of the respondent's case. An exception has been made for voluntary participation by the respondent in preadjudication programs, including programs providing for consent decrees. The exception is stated to make it clear that the provisions in this standard are not intended to prohibit juvenile courts from continuing with programs of nonjudicial dispositions. Standard 5.1 A. does require the juvenile court to make clear an adjudication decision with respect to a respondent whose case has advanced in the juvenile process to the

point of an adjudication hearing. It thus reinforces the position taken in Standard 5.2 discouraging the use of suspended adjudication.

Standard 5.1 B. provides that the adjudication must be based either upon a respondent's plea admitting an allegation of the petition or upon proof by the government. The court should be required to make specific adjudications with respect to each charge or contention made by the government in its petition. If a multiple charge petition has been filed, the juvenile court should be required to make adjudications with respect to each of the multiple counts in the petition and ought not to be permitted simply to find generally that the child is delinquent. For an illustration of the difficulties that failure to make specific findings can cause, see *In the Interest of Landorf*, 7 Ill. App. 3d 89, 287 N.E.2d 21 (1972).

5.2 Suspended adjudication.

A. A juvenile court ordinarily should not suspend or refrain from making an adjudication on condition that the respondent continue or engage in behavior specified by the court or probation personnel.

B. To the extent that such a suspension of adjudication is permitted, it should be used only when:

1. in an extraordinary case an adjudication would work a particularly onerous burden upon the respondent or respondent's family; and

2. the respondent requests or consents to a suspension of adjudication.

C. When a suspension of adjudication is permitted, each jurisdiction should provide by law that it constitutes a final judgment for purposes of appeal.

D. When a suspension of adjudication is permitted, it should not be used except when the evidence justifies a finding of delinquency and should never be used because of weaknesses in the government's proof.

Commentary

Discretion is exercised at the adjudication stage of the juvenile justice process just as it is at the law enforcement, pretrial, and correctional phases of the process. After the hearing has begun, the parties may decide to dismiss the delinquency petition and handle the case as one of parental neglect. The judge may decide that although the state has proven an act of delinquency, the problem that caused the delinquent conduct has already been solved, and may, therefore, dismiss the petition. The judge may also refrain from mak-

ing a finding of delinquency despite adequate proof, but may instead continue the proceedings conditioned upon the child's good conduct. See *Cal. Welf. & Inst'ns Code* § 725 (West 1972) (authorizing a six month probation period without an adjudication). It is important to ask why discretion should be exercised at the adjudication phase of the process. The usual reason for substituting a parental neglect petition for one of delinquency is that it makes available some dispositional resources that are denied to a child who is labeled a delinquent. So long as this is done with the consent of the child and of the parents, or at least with adequate notice to the parents so that they may defend the neglect action, there seems to be no problem with this beneficent deception. The dismissal because of problems having been solved before the court hearing also seems defensible, although the matter could be handled quite as well by adjudicating the child and simply suspending any disposition. The third situation, however, is more troublesome. The reason normally given in support of suspending the adjudication and placing the child on "probation" is that such a process creates a less serious record for the child—the record shows a dismissal of the case after "probation" is served instead of an adjudication. However, the real problem seems to be with the lack of confidentiality of the juvenile records. To the extent that that is the problem motivating a practice of suspending adjudication, it should be attacked more directly. It can also be seriously questioned to what extent simply substituting a dismissal following good conduct for an adjudication would present a less serious appearing record to a knowledgeable reader. Another justification given for suspending adjudication conditioned upon good behavior is that not adjudicating the child as a delinquent is beneficial in some cases in that it reenforces the child's feeling that he or she is not a criminal, a deviant, or a delinquent. This in some cases is thought important for the rehabilitation of the child. Balanced against this consideration should be the fact that suspended adjudication may have important adverse legal consequences upon the child; in particular, a suspension of adjudication may eliminate the child's right to appellate review of the proceedings. This problem could, of course, be dealt with specifically in defining the scope of appellate review available. That is done in subsection C. of this standard. A more difficult problem is whether the availability of suspending adjudication conditioned upon the child's future good conduct may not be used for justifying taking coercive correctional action in a case in which the government's proof has been shaky at best. That is to say, the availability of such a "compromise" device—neither an adjudication of delinquency nor a dismissal—accompanied by less than full coercive

dispositional measures, may be a tempting device for the judge who really does not believe the government has sustained its burden of proof.

On balance, it seems preferable not to have discretion exercised at the adjudication stage of the process when coercive measures will result. When a case reaches the adjudication stage of the process, all parties involved have a substantial interest in pursuing the matter to a final conclusion. The government should be entitled to a real adjudication one way or the other on the facts it has shown, and the respondent should likewise be entitled to require the judge to decide whether or not the government has proved its case. Given the availability of discretion at other places in the juvenile process, and particularly given the flexibility that is normally available at the dispositional phase of the juvenile process, it seems on balance to be unnecessary to authorize discretion in making the adjudication decision. Once again, the recommendations of this subsection are limited to the exercise of discretion when the "judgment" of the court requires future good conduct of the child.

While subsection A. of this standard recommends against the practice of suspending adjudication conditioned upon future good conduct, subsection B. suggests two conditions that should obtain when suspension of adjudication is permitted by law. These conditions restrict the availability of suspension of adjudication conditioned upon future good conduct to situations in which there is reason to believe that a formal adjudication would work a particularly onerous burden upon the respondent and/or respondent's family. In addition, subsection B. recommends that a suspension of adjudication not be undertaken unless the respondent requests or consents to it. This is in recognition of the potential jeopardy to respondent's legal rights that a suspension of adjudication under these circumstances may entail.

Subsection C. recommends that jurisdictions in which suspension of adjudication conditioned upon future good conduct is permitted should provide by law that the suspension of adjudication constitutes a "final judgment" of the juvenile court for purposes of appellate review. See Cal. Welf. & Inst'ns Code § 800 (West 1972). For an example of the difficulty in securing appellate review when the juvenile court judge has exercised discretion at the adjudication stage, see *Langley v. District of Columbia*, 277 A.2d 101 (D.C. Ct. App. 1971).

Subsection D. is intended to reaffirm the principle that suspension of adjudication should never be used because of weaknesses in the government's case. That is, of course, one of the major dangers underlying a suspension of adjudication procedure, and it is the purpose of this subsection merely to emphasize its impropriety.

5.3 Legal consequences of adjudication.

A. Each jurisdiction should provide by law that a juvenile court adjudication is not a conviction of crime and should not be viewed to indicate criminality for any purpose.

B. Each jurisdiction should provide by law that a juvenile court adjudication is not a proper subject for inquiry in applications for public or private employment and in applications for public or private educational or licensing programs.

C. Each jurisdiction should provide by law that a plea admitting the allegations of the petition, an adjudication by the juvenile court, or evidence adduced in a juvenile court adjudication proceeding is not admissible in any other judicial or administrative proceeding except subsequent juvenile proceedings concerning the same respondent to the extent otherwise admissible.

Commentary

Juvenile court legislation typically contains declarations that an adjudication by the juvenile court is not a conviction of crime and does not impose any of the disabilities normally imposed by a criminal conviction. Such provisions are central to the policy decision providing a separate juvenile court process. They are in part a reaction to a perception that collateral consequences of a conviction of crime are too serious to impose upon an adolescent whose misconduct has resulted in an adjudication by a juvenile court. Doubtless, when first enacted, such provisions also reflected the summary and frequently highly informal proceedings that characterized juvenile court hearings and, therefore, reflected a view that procedurally an adjudication of delinquency could not be equated with a conviction of crime even though the underlying misconduct may be the same. As a result of *In re Gault*, 387 U.S. 1 (1967), and subsequent juvenile cases, there is now constitutionally much less difference between criminal proceedings and a juvenile proceeding. Nevertheless, there is positive benefit in a declaration that a juvenile court adjudication does not constitute a conviction of crime. The Supreme Court discussed this feature of juvenile legislation in *In re Gault*, 387 U.S. 1 (1967):

> [W]e are told that one of the important benefits of the special juvenile court procedures is that they avoid classifying the juvenile as a "criminal." The juvenile offender is now classed as "delinquent." There is, of course, no reason why this should not continue. It is disconcerting, however, that this term has come to involve only slightly less stigma than the term "criminal" applied to adults. It is also emphasized that in

> practically all jurisdictions, statutes provide that an adjudication of the child as a delinquent shall not operate as a civil disability or disqualify him for civil service appointment. There is no reason why the application of due process requirements should interfere with such provisions. 387 U.S. at 22-24.

The policy underlying such provisions is to avoid inflicting serious collateral consequences of an adjudication of criminality upon an adolescent whose misconduct may not indicate the same threat to society as the same conduct engaged in by an adult.

The declaration recommended by subsection A. that an adjudication by a juvenile court is not a conviction of crime is one that appears in virtually all juvenile court legislation. The Legislative Guide for Drafting Family and Juvenile Court Acts § 35 provides in part: "An order of . . . adjudication in proceedings under this Act shall not be deemed a conviction of crime. . . ." The Uniform Juvenile Court Act § 33(a) contains a substantially identical provision, as does the Standard Juvenile Court Act § 25. The final provision of subsection A., providing that an adjudication by a juvenile court "should not be viewed to indicate criminality for any purpose," is somewhat broader than similar provisions found in typical juvenile statutes. For example, the Uniform Juvenile Court Act § 33(a) provides that an adjudication will not "operate to disqualify the child in any civil service application or appointment." A substantially identical provision appears in the Legislative Guide for Drafting Family and Juvenile Court Acts § 35. In addition to negating disqualification for civil service appointment, juvenile court acts typically contain a provision such as that found in Section 33(a) of the Uniform Juvenile Court Act that an adjudication "does not impose any civil disability ordinarily resulting from a conviction. . . ." Thus, although the underlying conduct may constitute a felony, an adjudication in a jurisdiction with such a provision would not disqualify the respondent from later holding public office, serving on a jury, or voting—typical disqualifications for felony convictions. The language "should not be viewed to indicate criminality for any purpose" and is intended to be somewhat broader than provisions relating to civil disabilities and eligibility for civil service employment. It is intended to state a general policy that informal disabilities, such as discrimination in public or private employment, should be eliminated in juvenile court proceedings, as well as the more formal disabilities or disqualifications mentioned in model and other legislation. This is based upon the belief that frequently the informal disabilities associated with conviction of crime are more significant obstacles to the subject of the

proceedings than are such matters as inability to vote, hold public office, serve on juries, or be eligible for civil service employment.

Subsection B. is intended to implement the broad view of disabilities to include informal as well as formal disabilities discussed in subsection A. This provision prohibits inquiries as to juvenile court proceedings in applications for "public or private employment and in applications for public or private educational or licensing programs." Even with a declaration that an adjudication is not a conviction of crime and does not impose the civil disabilities of a conviction of crime, and even with provisions designed to ensure the confidentiality of juvenile court records and proceedings, it is still useful to regulate directly the questions that can be asked on employment, educational, and licensing applications about juvenile court proceedings. The Supreme Court in *Gault* noted in its discussion of the lack of confidentiality in juvenile proceedings that "[p]rivate employers word their application forms to produce information concerning juvenile arrests and court proceedings. . . ." 387 U.S. at 25. This provision is intended to prohibit such inquiries with respect to an adjudication of delinquency. It makes very little sense to declare an adjudication not to be a conviction, but to permit inquiry of the respondent as to juvenile proceedings and to permit employers, educational institutions, and licensing boards to take such responses into account in conferring employment or other benefits upon the applicant. See also the *Juvenile Records and Information Systems* volume.

Juvenile legislation typically seeks to prevent the use in other court or administrative proceedings of evidence or court action taken in the juvenile court proceeding. The Uniform Juvenile Court Act § 33(b) provides: "The disposition of a child and evidence adduced in hearing in juvenile court may not be used against him in any proceeding in any court other than a juvenile court," with the exception of a presentence report in subsequent felony proceedings. A substantially similar provision appears in Section 35 of the Legislative Guide for Drafting Family and Juvenile Court Acts. The purpose of such provisions is to further implement the policy that juvenile court proceedings should not give rise to the collateral consequences that normally result from a conviction of crime. Prohibiting the use of juvenile proceedings in other court proceedings must, of course, be subjected to overriding constitutional principles. For example, in *Davis v. Alaska*, 415 U.S. 308 (1974), the United States Supreme Court held that a criminal defendant's right of confrontation permitted him or her to inquire upon cross-examination of a government witness as to the witness's vulnerable status as a juvenile probationer, despite a strong state policy prohibiting such disclosure, because the

witness's status as a probationer was highly important as indicating possible bias in his or her testimony. Therefore, juvenile court adjudications may be admissible in criminal court proceedings for some purposes, as in a presentence report, but inadmissible for others, such as prior bad acts or statutory enhancement of adult offenses. Rather than attempting to carve out exceptions for possible overriding constitutional considerations with respect to this type of provision, it seems more sensible to leave such matters to case-by-case adjudication.

Prior records of juvenile court adjudications are factors in decisions at every stage of the juvenile proceedings. See *Interim Status* Standard 6.6 A., *Juvenile Probation Function* Standard 2.8, *Police Handling of Juvenile Problems* Standard 2.3, *Youth Service Agencies* Standard 4.5, *Transfer Between Courts* Standard 2.2, and *Dispositional Procedures* Standard 2.3.

PART VI: PUBLIC ACCESS TO ADJUDICATION PROCEEDINGS

The standards in this part are intended to provide guidance on the difficult and complex policy and constitutional issues raised by the question of public access to adjudication proceedings in juvenile court. These standards depart in one significant respect from the tradition in juvenile proceedings that the adjudication hearing is not open to the public generally but that the judge has discretion to permit selected members of the public to view the proceedings. These standards recommend that the law expressly recognize a juvenile respondent's right to a public trial.

6.1 Right to a public trial.

Each jurisdiction should provide by law that a respondent in a juvenile court adjudication proceeding has a right to a public trial.

Commentary

This standard proposes that a juvenile have a right to a public hearing if he or she so desires.

Because the emphasis in traditional juvenile proceedings has been on confidentiality, it has been suggested that introduction of a "public element" represents a "clear betrayal of the juvenile court philosophy." Note, "Rights and Rehabilitation in the Juvenile Courts," 67 *Colum. L. Rev.* 281, 286 (1967). Adverse effects are said to include: interference with the caseworker-child relationship; additional and

excessive punishment for the child (President's Commission on Law Enforcement and Administration of Justice, *Task Force Report on Juvenile Delinquency and Youth Crime* 38 [hereafter cited as *Task Force Report*]); identification of the child as delinquent and the juvenile's consequent confirmation in that role (*Task Force Report* 39); and providing the child with an opportunity to flaunt his or her prowess to an audience. Note, "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," 79 *Harv. L. Rev.* 775, 794 (1966). It has been noted by the Alaska Supreme Court, however, that these possible consequences have not been empirically tested and may be false. *R.L.R. v. State*, 487 P.2d 27, 37 (Alaska 1971).

Model juvenile legislation, in its presumption that privacy of proceedings is a facet of the juvenile justice system worth preserving, advocates exclusion of the general public from juvenile hearings. Legislative Guide for Drafting Family and Juvenile Court Acts § 29(c); Uniform Juvenile Court Act § 24(d); Standard Juvenile Court Act § 19. But because both model legislation and many state statutes allow for the presence of "interested persons" at the judge's discretion, *e.g.*, Legislative Guide § 29(c); Minn. Stat. § 260.155(1) (1967), juvenile hearings cannot truly be described as confidential. Frequent attendance by students, social workers, lawyers, and observers of the court system indicates that one need not be "interested" in the child in order to qualify as an "interested person." This practice vitiates the promise of confidentiality, without giving the benefits of a truly open hearing.

The benefits of public trial have been acknowledged by the Supreme Court in *In re Oliver*, 333 U.S. 257 (1948). According to *Oliver*, "[t]he knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power." *Id.* at 270. In *Estes v. Texas*, 381 U.S. 532 (1965), the Court observed that the constitutional guarantee of public trial is to ensure that "the accused would be fairly dealt with. . . ." *Id.* at 538.

Justice Brennan's concurring and dissenting opinion in *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), stressed that openness of proceeding works analogously to jury trial to protect the accused from possible oppression by exposing improper judicial behavior to the indignation of the community at large. *Id.* at 554-55.

At least one juvenile court case that has dealt with the issue of open hearing has held that the respondent has a right to the presence and participation of his or her mother at the hearing. *In the Interest of Bobby Hopkins*, 227 So. 2d 282 (Miss. 1969). This is in congruence

with *In re Oliver*, 333 U.S. 257, 272 (1948), which held that the accused at the least is entitled to the presence of his or her friends, relatives, and counsel.

R.L.R. v. State, 487 P.2d 27 (Alaska 1971), granted juvenile respondents the right to a public hearing, noting that the appeal process is not a sufficient check on juvenile courts. In *R.L.R.*, the Alaska Supreme Court observed that children's cases, when appealed, frequently show more extensive and fundamental errors than may be found in adult cases. This raised for the court a question whether the secrecy usually found in juvenile proceedings fosters a casual attitude toward legal safeguards. *Id.* at 38. *R.L.R.*, while ruling that a juvenile does have the right to a public hearing, did not address itself to the question of the procedures to be used in implementing this right. If the child must bear the burden of asking for a public hearing, the request may be construed as an implicit criticism of the judge's impartiality. Comment, "Criminal Offenders in the Juvenile Court: More Brickbats and Another Proposal," 114 *U. Pa. L. Rev.* 1171, 1186 (1966). It would appear that the best solution is to assure the respondent a right to a public trial. This requires that the respondent be informed prior to the hearing of the right to an open adjudication proceeding. With advice of counsel, he or she may waive this right (see Standard 6.2 A.). This does not guarantee that the judge will exclude all persons not connected with the child's case (see commentary to Standard 6.2 B.), but rather allows a reversion to the current practice of permitting interested observers to view the hearing at the discretion of the judge. Thus, although respondents may waive their right to a public trial, they do not have an absolute right to a closed trial. Standard 6.2 rejects the position of the ABA Section of Family Law and other groups supporting a right to a closed trial by expressly authorizing the court to admit persons with an interest in the proceedings after the respondent has waived a public trial.

6.2 Implementing the right to a public trial.

A. Each jurisdiction should provide by law that the respondent, after consulting with counsel, may waive the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court has discretion to permit members of the public who have a legitimate interest in the proceedings or in the work of the court, including representatives of the news media, to view adjudication proceedings when the respondent has waived the right to a public trial.

C. The judge of the juvenile court should honor any request by the respondent, respondent's attorney, or family that specified members of the public be permitted to observe the respondent's adjudication proceeding when the respondent has waived the right to a public trial.

D. The judge of the juvenile court should use judicial power to prevent distractions from and disruptions of adjudication proceedings and should use that power to order removed from the courtroom any member of the public causing a distraction or disruption.

Commentary

Protection of the child is integral to these standards. It is, therefore, appropriate that the respondent be allowed the choice of excluding the general public if that is desired. This is the current practice in many states, *e.g.*, Ore. Rev. Stat. § 419.498(a) (1969).

In many cases, the decision to allow or exclude the general public is a tactical one. See Justice Brennan's dissenting opinion in the *Burrus* case, *McKeiver v. Pennsylvania*, 403 U.S. 528, 556 (1971). An attorney should, therefore, be consulted, both for strategic advice and to insure that if the respondent waives public hearing, such decision will be made intelligently, knowingly, and voluntarily.

Subsection B. generally restates current practice in light of the new emphasis that Standard 6.1 places on the juvenile's right to public trial; i.e., upon waiver, the judge has discretion to admit persons who have an interest in the proceedings. Such flexibility has been advocated in model juvenile legislation. Legislative Guide for Drafting Family and Juvenile Court Acts § 29(c).

Singer v. Sargent, 380 U.S. 24 (1965), established that an adult defendant, in waiving a right to jury trial, cannot complain if he or she receives a jury trial on the court's decision. When one waives a right, one may not ordinarily compel its opposite. Such was also the holding of *In re Jones*, 46 Ill. 2d 506, 263 N.E.2d 863 (1970), in which the Illinois Supreme Court ruled that a juvenile who waives a right to public trial does not have "an absolute right" to compel a private trial. *Id.* at 865, quoting *Singer v. Sargent*, 380 U.S. at 34–35.

This standard allows the judge to authorize the presence of media representatives. There are sharply conflicting views on this topic. Some would disallow the presence of the media altogether, claiming that any relaxation of the curb on publicity betrays the juvenile court philosophy. Note, "Rights and Rehabilitation in the Juvenile Courts," 67 *Colum. L. Rev.* 281, 286 (1967). Others have suggested

that publication of the names of juvenile respondents would act as a deterrent to other, potentially delinquent, youngsters and would help to rehabilitate the child who is the subject of the publicity. Arthur, "Should Children Be As Equal As People?" 45 *N. Dak. L. Rev.* 204, 213 (1969). Yet others claim that juvenile proceedings need not be secret to be private or confidential and that the media should be allowed to view proceedings if they do not publish names or identify details. Note, "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," 79 *Harv. L. Rev.* 775, 794 (1966).

There are several reasons why representatives of the media should be allowed to view private proceedings. The first may be viewed from the public's right of access to knowledge about the workings of its judicial system. *Hartman v. California*, 103 Cal. 242, 37 P. 153 (1894). *In re Jones*, 46 Ill. 2d 500, 263 N.E.2d 863 (1970), was decided on this theory. The second may be viewed from the aspect of protection for the accused. It has been suggested that although the presence of the uninterested populace should be forbidden, nevertheless the press should be admitted, as the public's representative, to exert a balancing influence on the court's operation. Geis, "Publicity and Juvenile Court Proceedings," 30 *Rocky Mtn. L. Rev.* 101, 125 (1958).

It must, however, be recognized that an uncontrolled invasion of the juvenile courts by the media may be harmful to the juvenile's case, indeed to his or her welfare. *Cf. Estes v. Texas*, 381 U.S. 532 (1965). It would seem logical to follow the Supreme Court's vision of suitable media representation as outlined for the adult criminal system in juvenile courts as well, namely, that the public's right to be informed about court proceedings is satisfied if reporters are free to attend and to report on the proceedings. *Id.* at 541–42. This reporting should be subject to the limitations on disclosure of identities stated in Standard 6.3.

Subsection C. states for juveniles what the Supreme Court allowed adult defendants in *In re Oliver*, 333 U.S. 257 (1948). The Court stated that regardless of the charge, an accused has the right to the presence of friends and relatives. *Id.* at 272. Although the current practice authorizes the judge to exercise discretion in allowing the attendance of interested parties, this subsection eliminates the question of discretion when the respondent has requested the presence of a particular party. This right has been enunciated at least once for juvenile court hearings. *In the Interest of Bobby Hopkins*, 227 So. 2d 282 (Miss. 1969). The respondent's request for a person's presence renders moot any questions concerning the legitimacy of that person's "interest in the proceedings."

Criminal cases have held that the term "public trial" is a relative term depending on the circumstances of each case. *Hampton v. People*, 465 P.2d 394 (Cal. 1970). A trial may be public when all citizens are not allowed to attend because the room is too crowded or a spectator is disrupting the proceedings. *State v. Mancini*, 274 A.2d 742 (R.I. 1970).

The Supreme Court, in *Estes v. Texas*, 381 U.S. 532 (1965), warned that absolute fairness in the judicial process must be observed and that the public right to knowledge must therefore be subject to this cardinal principle. *Id.* at 539. If juvenile proceedings are to benefit from the admission of the public, the judge should be authorized to remove any persons who are disturbing the proceedings.

6.3 Prohibiting disclosure of respondent's identity.

A. Each jurisdiction should provide by law that members of the public permitted by the judge of the juvenile court to observe adjudication proceedings may not disclose to others the identity of the respondent when the respondent has waived the right to a public trial.

B. Each jurisdiction should provide by law that the judge of the juvenile court should announce to members of the public present to view an adjudication proceeding when the respondent has waived the right to a public trial that they may not disclose to others the identity of the respondent.

Commentary

Subsection A. of this standard provides the respondent some protection of privacy when the right to a public trial has been waived. Although confidentiality of proceedings has long been a hallmark of juvenile hearings, many states have no law directly prohibiting the publication either of the juvenile court proceedings or the names of the respondents. This has been left to the discretion of the courts. See Geis, "Publication of Juvenile Felons' Names," 23 *Montana L. Rev.* 141, 145 (1962). It has been observed that confidentiality of hearings can be adequately preserved in the context of open proceedings, provided that names and identifying details are not published. Note, "Juvenile Delinquents: The Police, State Courts, and Individualized Justice," 79 *Harv. L. Rev.* 775, 794 (1967). This is said to improve community understanding of the juvenile court, while concurrently fostering the benefits that privacy of hearing was intended to accord juveniles. *Id.*

It is important to emphasize that the restriction of revealing the identity of the respondent applies only when the respondent has

waived the right to a public trial. In the absence of such a waiver, the press and other members of the public are free to disseminate reports of the proceedings, including identifying the respondent. That is an important limitation in light of *Cox Broadcasting Corp. v. Cohn*, 95 Sup. Ct. 1029 (1975), in which the court held in violation of the first amendment a state statute prohibiting the publication of the identity of a rape victim because the information was obtained from judicial records maintained in connection with a public prosecution. Although a state may not provide that records or proceedings are public yet prohibit accurate publication of information obtained from them, states have some flexibility in determining which records and proceedings are public: "If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation of other exposure of private information." *Id.* at 1047. In this connection, the court specifically adverted to the tradition of confidentiality of juvenile proceedings: "We mean to imply nothing about any constitutional questions which might arise from a state policy not allowing access by the public and press to various kinds of official records, such as records of juvenile court proceedings." *Id.* at 1047, n. 26.

Subsection B. sets forth the means by which the spectators will be informed of their obligation to protect the identities of the involved parties. Requiring the judge to make this announcement from the bench stresses the solemnity of the obligation and puts all observers on notice of expected compliance.

Dissenting View

Statement of Commissioner Justine Wise Polier

I concur in the majority of the proposed standards in this volume directed to ensure due process to children charged with what would constitute criminal offenses if committed by an adult. However, I disagree with the position that the adjudication process for children ought not to differ significantly from that in criminal courts and that the unique features of juvenile justice should be postponed to the dispositional phase.

I find it necessary to dissent strongly to two of the proposed standards, which would transform the juvenile courts into criminal courts, regardless of the age of children charged with delinquent acts.

First, Standard 4.1 would require a jury trial at the option of the child, on the assumption it would rarely be used. In effect, its use would result in a public trial, with an end of the protection of privacy for the child, and with consequences that a child could not anticipate. The child would be subjected to being treated as an adult defendant at the center of a criminal trial.

Second, Standard 6.1 would establish the "right" of a child to a public trial regardless of age. The supportive arguments are largely taken from the benefits of public trials for adult offenders. No evidence is submitted in the commentary to establish the alleged benefits to children of opening adjudicatory hearings to the media. There is a presumption in favor of the right to trial and the requirement that the child may waive it only after advice of counsel, based on expressed distrust of how courts would regard the request of a child for a public trial (Standard 6.2). There are no provisions to inform a child of possible consequences, such as are set forth in regard to waiver of counsel or plea bargaining.

It is proposed that the juvenile court shall have discretion in each case to admit members of the public, including the media, to "view" adjudicatory proceedings, even when a child waives the right to a public trial. This procedure would place a heavy administrative burden on the court; it would subject judges to the risk of becoming targets for press attacks when they denied admission. Most impor-

tant, since judges are not entitled to information about a child or family prior to an adjudicatory hearing, they have no crystal ball through which to foresee the need for protecting the privacy of a child at an adjudicatory hearing.

Finally, the protections proposed in Standard 6.3 to safeguard the identity of the child by those who "view" the trial are inadequate. To require that a judge "announce" to those present that they may not disclose the identity includes no remedy for noncompliance and appears to be largely hortatory. Even if followed, questions of the constitutionality of prior restraints would throw doubt on this safeguard.

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Appendix: Standards to Eliminate Plea Bargaining

It is undeniable that plea bargaining exists in many juvenile courts. See commentary to Standard 3.3 *supra*. It also exists despite the disapproval of some of the participants in the juvenile process. In Part III of these standards, the point is made that the legal system should recognize the existence of plea bargaining in juvenile cases and should respond in one of two ways: either make the process visible and regulate it or take steps to eliminate it. Which response to make is a difficult judgment. If, in fact, plea bargaining is less entrenched in the juvenile process than in the criminal, it may be possible by sustained effort to eliminate it. On the other hand, the danger is substantial that efforts to eliminate plea bargaining in all its forms, including the "implicit bargain" (see commentary to Standard 3.3 *supra*), may simply drive the practice even more underground than it is now and increase its potential for abuse.

In Part III of these standards, the judgment was made to seek to regulate plea bargaining in juvenile cases. Accordingly, Standards 3.3, 3.4, and 3.8 are proposed as regulatory standards to be adopted among the standards in Part III governing acceptance of the plea of admit in juvenile cases. In this Appendix, Alternate Standards 3.3, 3.4, and 3.8 are presented to implement a policy decision to seek to eliminate plea bargaining in juvenile cases. It is contemplated that the alternate standards, like the main ones, would be adopted as part of an entire set of standards governing acceptance of the plea of admit.

Alternate 3.3 Responsibilities of officials to prohibit plea bargaining.

A. Each jurisdiction should provide by law that its public policy is to prohibit plea bargaining in all forms in the juvenile courts of that jurisdiction and should endeavor to implement that policy by mandating the measures recommended in subsections B. through L. of this standard.

B. The juvenile court should not permit its disposition of a case to be affected by whether the respondent tendered a plea admitting an allegation of the petition.

C. The judge of the juvenile court should use all reasonable means

to prevent the recommendations or contents of social history reports from being affected by whether the respondent tendered a plea admitting an allegation of the petition.

D. The attorney for the government should not permit a recommendation of a disposition of a case or the representations made in a dispositional hearing to be affected by whether the respondent entered a plea admitting an allegation of the petition.

E. The attorneys for the respondent and the government should not discuss with each other any disposition of the case contemplating that the respondent will enter a plea admitting an allegation of the petition.

F. The attorney for the respondent should not advise or suggest to the respondent or respondent's family that the disposition of the case may be affected by whether the respondent tenders a plea admitting an allegation of the petition.

G. The attorney for the government should not refrain from filing allegations or refrain from prosecuting allegations already filed in the expectation that the respondent will thereby be induced to tender a plea admitting an allegation of the petition.

H. The attorney for the government should not file or threaten to file a motion to transfer a case to criminal court for prosecution of respondent as an adult or refrain from pressing such a motion or move to dismiss such a motion in the expectation that the respondent will thereby be induced to tender a plea admitting an allegation of the petition.

I. The attorney for the government may move to dismiss a petition or to strike an allegation in a petition, but should not move to dismiss or strike in the expectation that the respondent will thereby be induced to enter a plea admitting a remaining allegation.

J. The attorney for the government may move to amend a petition in accordance with Standard 2.2, but should not move to amend to allege less serious conduct in the expectation that the respondent will thereby be induced to enter a plea admitting an allegation of the amended petition.

K. The judge of the juvenile court should require the attorney for the government to state the reasons for moving to dismiss a petition, to strike an allegation in a petition, or to amend a petition to allege less serious conduct and should scrutinize such motions and statements of reasons with particular care to determine their compliance with the jurisdiction's policy of prohibiting plea bargaining.

L. If the juvenile court determines that a motion to dismiss a petition, to strike an allegation in a petition, or to amend a petition to allege less serious conduct was made in the expectation that the re-

spondent would thereby be induced to enter a plea admitting a remaining or amended allegation, it should deny the motion.

Commentary

Alternate Standard 3.3 A. recommends that each jurisdiction adopt as its public policy a decision to eliminate plea bargaining in juvenile cases. The National Advisory Commission on Criminal Justice Standards and Goals took the position that plea bargaining in criminal cases should be eliminated "as soon as possible":

> [N]egotiations between prosecutors and defendants—either personally or through their attorneys—concerning concessions to be made in return for guilty pleas should be prohibited. In the event that the prosecution makes a recommendation as to sentence, it should not be affected by the willingness of the defendant to plead guilty to some or all of the offenses with which he is charged. A plea of guilty should not be considered by the court in determining the sentence to be imposed. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* 46 (1973).

Although the commission took the position that plea bargaining should be eliminated, it did not propose procedures for effectuating that judgment, commenting that "successful implementation of the standard depends upon voluntary compliance by prosecutors, defense counsel, and trial judges." *Id.* at 48. While it is likely true, as the commission recognized, that "probably any procedural scheme devised to implement the standard could be evaded if the participants in the process set themselves to the task of evasion," *id.*, a policy decision to eliminate plea bargaining in either criminal or juvenile cases has little hope of success unless implementing procedures are imposed; the absence of implementing procedures also raises doubts about the seriousness with which the policy decision was made. Accordingly, subsections B. through L. propose specific measures to implement the public policy expressed in subsection A.

Subsection B. seeks to break the link between the mode of adjudication and the disposition of the case—the essence of plea bargaining —by providing that the judge of the juvenile court should not permit the fact that the respondent pleaded admit to affect the disposition of the case. In contrast, main Standard 3.3 C. recommends that the judge give a plea agreement "due consideration" in deciding upon the disposition of the case.

Subsection C. recognizes that the juvenile court social staff may be influenced in the recommendations or contents of social history

reports by whether the respondent admitted the offense. Since the judge presumably relies heavily upon those reports in making the disposition decision, it is necessary to attempt to break this link between mode of adjudication and the ultimate disposition of the case. It is contemplated that the juvenile court judge should inform the staff that it is not to mention in social history reports the modes of adjudication, and that the staff should not let the mode of adjudication affect the contents or recommendations of the reports. The court should also caution the staff about concluding that the respondent is "cooperative" or "contrite" because of the fact that an admission was entered, since that would be an indirect way of rewarding a respondent for entering a plea of admit. The point is not that admitting the offense is not sometimes evidence of contrition or an indication that the respondent will cooperate with probation supervision efforts; rather, the point is that unless social staff is prohibited from drawing those inferences and reporting them to the judge, there is substantial danger that the "implicit bargain" will exist using those or similar code words in the social history report.

It should also be noted that the concern here is with eliminating plea bargaining at the adjudication phase of the juvenile process. These standards do not reach the possibility that preadjudication processes of diversion or nonjudicial disposition may be made available only to respondents who admit the offense charged. There is also the danger, of course, that whatever temptation there may be to condition preadjudication community programs upon confession of guilt will be greatly increased by efforts to eliminate plea bargaining at the adjudication stage.

Subsection D. speaks to one role of the prosecutor in the plea-bargaining process. In one of its forms, plea bargaining consists of an agreement between the prosecutor and the defense attorney that in exchange for a plea of guilty, the prosecutor will recommend a specific disposition of the case. The judge, in turn, almost always follows that recommendation, in order to facilitate the adjudication of cases by plea. One response to that form of plea bargaining is to seek to eliminate the prosecutor's role in the disposition of cases, that is, prohibit the prosecutor from recommending a disposition or making any representations in the dispositional phase. That response goes further than needed to eliminate plea bargaining and deprives the public and the court of potentially valuable functions of the prosecutor in the disposition of juvenile cases. It would mean that advocacy at disposition would be one-sided: the respondent and/or the defense counsel would be permitted to urge a lenient disposition, while the attorney for the government would not be permitted to

participate. Subsection D. stops short of eliminating the role of the prosecutor at disposition and instead provides that prosecutoral recommendations and representations should not be affected by whether the respondent has admitted the petition.

Subsection E. directly prohibits plea bargaining between the attorneys for the respondent and the government. It would not be desirable to attempt to prohibit all discussions between the attorneys, since that would preclude discovery conferences and attempts by the respondent's attorney to convince the prosecutor to dismiss the case because of insufficient evidence or other reasons. Although perhaps difficult to enforce, Subsection E. prohibits the attorneys from discussing a disposition of a case only when the discussion contemplates a plea of admit.

Subsection F. is necessary to attempt to eliminate the "implicit bargain." Even without plea discussions between the attorneys, there is still plea bargaining in its essential form when the attorney for the respondent informs the client that the juvenile court judge is more lenient on respondents who admit the petition than on those who deny the petition and put the government to its proof. The point is still effectively made that leniency in disposition may be purchased by a plea of admit and it is reasonable to expect such advice to induce some respondents to enter pleas of admit.

Subsection G. speaks to the case in which multiple charges have been or could be filed in a case and seeks to prohibit the prosecutor from not filing or not prosecuting additional charges in the expectation that that will induce a plea of admit.

Subsection H. speaks to what may potentially be the most effective tool at the disposal of a prosecutor to induce pleas of admit: the possibility of seeking transfer of the respondent to criminal court for prosecution as an adult. In those cases in which transfer to criminal court is permitted by law, merely filing a motion for transfer provides a strong inducement for the respondent to admit the allegations of the delinquency petition. Once again, the ultimate question is the motive of the prosecutor in filing such a motion. Short of prohibiting the filing of the motion under any circumstances, the most that can be done is to attempt to prohibit the use of the motion as a device to induce a plea. Whether a motion was filed to induce a plea or was filed in "good faith" will frequently be difficult to determine.

Subsection I. addresses that form of plea bargaining in which the defendant agrees to plead guilty to one charge in exchange for the prosecutor's agreement to dismiss other charges. There are frequently valid reasons for moving to dismiss a petition or to strike allegations in a petition that have nothing to do with plea bargaining: a critical

witness may not appear, pretrial interviews may reveal previously unknown obstacles to proving the case, etc. Once again, the question becomes the motive of the prosecutor in moving to dismiss or to strike. In this connection, subsections K. and L. recommend judicial scrutiny of motions to dismiss or to strike to provide some review of the reasons for the motions.

Subsection J. speaks to that form of plea bargaining in which the respondent agrees to plead guilty to a less serious charge than the one filed. Unless the charge agreed to is a lesser included offense, the prosecutor must move to amend the petition to charge the agreed upon offense. There are, of course, reasons for amending a petition to charge a less serious offense that have nothing to do with plea bargaining, but which reflect, for example, information learned about a case after the charge was originally filed. Therefore, this subsection would not prohibit all amendments in petitions to charge less serious conduct but only those motivated by an expectation of inducing a plea of admit. Subsections K. and L. provide for judicial review of prosecutorial motions to amend.

Subsection K. requires the prosecutor to state reasons for filing a motion to dismiss a petition, to strike an allegation in a petition, or to amend a petition to allege less serious conduct. This subsection contemplates that the judge will not be satisfied with a routine explanation of "insufficient evidence," but will inquire in detail into the reasons for the motion with a view to determining whether they comply with the policy of prohibiting plea bargaining.

Subsection L. requires the judge to deny a motion to dismiss, strike, or amend if the judge determines that the motive for the motion was to induce the respondent to enter a plea of admit.

Alternate 3.4 Determining voluntariness of a plea admitting the allegations of the petition.

A. The juvenile court should not accept a plea admitting the allegations of the petition without determining whether the plea is voluntary.

B. The juvenile court should address the respondent personally and determine whether any promises or inducements or any force or threats were used to obtain the plea.

C. The juvenile court should address the respondent personally and inform the respondent that the disposition of the case, if there is an adjudication, will not be affected by whether respondent admits or denies the allegations of the petition.

D. By inquiry of the respondent and the attorneys for the respondent and the government, the juvenile court should determine

whether there have been plea discussions or a plea agreement and, if so, the nature of the discussions or agreement.

E. If the juvenile court determines that the tendered plea is the result of plea discussions or a plea agreement, it should reject the plea, enter a plea for the respondent denying the allegations of the petition, and set the matter for trial.

Commentary

This standard implements the juvenile court's obligation to determine that any plea of admit tendered by a respondent is voluntary in light of the jurisdiction's position that plea bargaining should be eliminated. Subsection A. states the requirement that the court determine the voluntariness of the plea before accepting it and is the same as subsection A. of the main standard.

Subsection B. requires the court to address the respondent personally and to determine whether "any promises or inducements or any force or threats were used to obtain the plea." In contrast, subsection B. of the main standard requires the court to determine whether there is a plea agreement, and subsection D. requires the court to determine whether "any *other* promises or inducements or any force or threats were used to obtain the plea."

Subsection C. requires the court to inform the respondent that the disposition of the case will not be affected by whether the respondent admitted or denied the petition. Alternate Standard 3.3 B. prohibits the court from taking the plea into account in disposition, and this subsection requires the court to inform the respondent that the court adheres to that position.

Subsection D. requires the court to inquire of the respondent and the attorneys whether there have been plea discussions or a plea agreement. It also requires the court to determine the nature of the discussions or agreement. Subsection E. takes the position that a plea entered as a result of plea discussions or a plea agreement is as a matter of the jurisdiction's public policy per se involuntary. If the court determines that the plea did result from such discussions or agreement, it is required to reject the plea and set the case for trial.

Alternate 3.8 Plea withdrawal.

A. The juvenile court should allow the respondent to withdraw a plea admitting the allegations of the petition when the respondent proves that withdrawal is necessary to correct a manifest injustice.

1. A motion for withdrawal is not barred because made subsequent to adjudication or disposition.

2. Withdrawal is necessary to correct a manifest injustice when the respondent proves:

a. denial of the effective assistance of counsel guaranteed by constitution, statute, or rule;

b. that the plea was not entered or ratified by the respondent;

c. that the plea was involuntary, or was entered without knowledge of the allegations or that the disposition actually imposed could be imposed; or

d. that the plea was entered as a result of a plea agreement.

3. The respondent should be permitted to move for withdrawal of the plea without alleging innocence of the allegations to which the plea has been entered.

B. Before disposition of the case, the court may allow the respondent to withdraw the plea for any fair and just reason without proof of manifest injustice as defined in subsection A. of this standard.

Commentary

Alternate Standard 3.8 is identical to Standard 3.8 with one exception. Subsections A. 2. d. and e. of the main standard provide as a ground for withdrawal of a plea that the respondent did not receive the dispositional leniency contemplated in the plea agreement. In the alternate, subsection A. 2. d. provides as a ground for withdrawal of the plea that it was "entered as a result of a plea agreement." Such a provision is needed to enforce the public policy determination recommended in Alternate Standard 3.3 A. that plea bargaining be eliminated in juvenile court.