ROLE CONFLICT AMONG JUVENILE DEFENDERS IN AN EXPRESSED INTERESTS JURISDICTION AN EMPIRICAL STUDY

A dissertation

by

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ABSTRACT OF DISSERTATION

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Abstract

The defense attorney role in juvenile courts has been the source of considerable debate since juveniles’ right to counsel was first established in In re Gault, 1967. The legal literature refers to the existence of role confusion and conflict for juvenile defenders. Role conflict is considered the negative result of conflicting expectations of a job incumbent in his or her role. It has frequently been observed that juvenile defenders experience confusion about their role, their role tends to be constrained by other courtroom actors, and consequently, they tend to be marginal players in the courtroom. There has been very little focused and systematic investigation into how juvenile defenders view their role. There has also been little research into the extent to which juvenile defenders experience role conflict, how they respond to it, and how it affects the quality of their representation.

The present study examined the role of counsel in the juvenile courts more deeply than any prior empirical analysis. Its findings demonstrate the presence of role confusion even among juvenile defenders in a jurisdiction that clearly defines their role. Findings also support the conclusion that role conflict is very much a part of the juvenile defender experience in the examined jurisdictions. Analysis revealed contextual and other factors that contribute to role conflict, and identified role conflict’s impact as well as defender coping responses. Understanding the nature, extent, and impact of the role conflict experienced by juvenile defenders has important implications for juvenile justice system stakeholders, processes, and policy.
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Introduction

The defense attorney role in juvenile courts has been the source of considerable debate since juveniles’ right to counsel was first established in 1967 (In re Gault, 367 U.S. 1). This dissertation is an investigation of juvenile defender role meaning and the nature, extent, and impact of role conflict among juvenile defenders in a jurisdiction that has officially clarified the role. It begins with a brief history of the juvenile defender role and the controversy currently surrounding its meaning. It will then introduce the problem of the role and role conflict among juvenile defenders and discuss the scholarship addressing these issues. A description of the investigation’s target questions and methods will be followed by a presentation and discussion of its main findings. This dissertation will conclude with a discussion of the findings’ implications and directions for future research.

Much of the debate about the juvenile defender role has centered on the advocate, as opposed to the counselor, role.¹ It has focused on the question of whether juvenile defenders should advocate for the expressed interests of their clients (prioritizing clients’ expressed wishes), as required by the American Bar Association’s Model Rules of Professional Conduct, or for their best interests (prioritizing what the defense attorney believes is best for her clients even if it conflicts with clients’ expressed wishes), as do other juvenile court functionaries (Henning, 2005). This dissertation directly addresses the role’s meaning by interviewing juvenile defenders about how they view their role and its requirements, particularly with regard to the expressed-best interests dichotomy.

Lawyers’ professional behavior is governed by the Model Rules of Professional Conduct published by the American Bar Association. The Rules’ Preamble states, “[a]s
advocate, a lawyer zealously asserts the client's [emphasis added] position under the rules of the adversary system,” (ABA Model Rules, 2013: pmbl § 2). And, Rule 1.2 (a) states that, “a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued,” (ABA Model Rules, 2013). This Rule also states, “[a] lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify,” (ABA Model Rules, 2013).

So, the Rules appear to require a lawyer to inform her clients of their options and the consequences of those options but ultimately advocate for the clients’ stated interests. In other words, lawyers serve as their clients’ voice in the justice system. However, there is an added element of complexity when the client is a child who may not have the same maturity or capacity as an adult. Nevertheless, the National Juvenile Defense Standards indicate that juvenile defenders should apply these same mandates to their child clients.

Standard 1.2 “Elicit and Represent Client’s Stated Interests” states:

a. Counsel may not substitute his or her own view of the client’s best interests for those expressed by the client;

b. Counsel may not substitute a parent’s interests or view of the client’s best interests for those expressed by the client;

c. Where counsel believes that the client’s directions will not achieve the best long-term outcome for the client, counsel must provide the client with additional information to help the client understand the potential outcomes and offer an opportunity to reconsider; and

d. If the client is not persuaded, counsel must continue to act in accordance with the client’s expressed [emphasis added] interests
throughout the course of the case (National Juvenile Defense Standards, NJDC, 2012: 18).

While there has been extensive discussion of the juvenile defender role and its requirements in the legal literature, there is little evidence of empirical investigation in the social science literature. Moreover, the existing empirical literature on the juvenile defender role is limited, for the most part, to descriptive accounts of rates and types of representation (e.g., public defender, contract counsel, retained counsel) (e.g., Feld, 1988; Green & Dohrn, 1995), ABA/NJDC assessments of the nature and quality of representation in several states, with samples and methodology described only superficially (e.g., Puritz and Sterling, 2010), and more sophisticated multivariate analyses of the impact of representation on juvenile case outcomes (e.g., Burruss and Kempf-Leonard, 2002; Feld 1988). The present investigation fills a critical gap in the social science literature by directly addressing the juvenile defender role and how its incumbents define it.

Scholars have frequently observed that juvenile defenders are confused about their role (e.g., Henning, 2005; Puritz and Sterling; 2010; Scali et al., 2013), that their role tends to be constrained by other courtroom actors and that, as a result, they tend to be marginal players in the courtroom [e.g., Stapleton and Teitelbaum, 1972; ABA & NEJD, 2003 (“Maine Assessment”); Grindall and Puritz, 2003; Puritz and Sterling; 2010; Scali et al., 2013]. The present literature also refers to role conflict among juvenile defenders. Role conflict has been defined in the organizational literature as “a situation that results when role expectations are inconsistent, as when a supervisor sends employees mixed messages about their roles” (Levy, 2010: 292). However, there has been very little focused and systematic investigation of the extent to which juvenile defenders experience
role conflict, how they respond to it, and how it affects the quality of their representation.

The present study seeks to remedy this lack by investigating role meaning and the nature, extent, and impact of role conflict among juvenile defenders who practice in a jurisdiction where their role is clearly defined.

The present study sought to examine the juvenile defender advocate role and role conflict by systematically gathering qualitative data from a sample of active role incumbents. Understanding how juvenile defenders define their role and experience and cope with role conflict provides valuable insights into the role in the context of the modern day juvenile court. It also provides insights about the juvenile justice system, especially with regard to its role in upholding juveniles’ due process rights. These insights have important implications for the training, policy, and practice of juvenile court functionaries and the efficacy of the juvenile justice system.
Chapter One- History of Juvenile Defender Role and Review of Literature

The role of counsel for juveniles has been a source of confusion and controversy throughout the juvenile justice system’s short history. The role was not officially recognized as valuable or necessary until the mid-1960s, more than half a century after the juvenile court system was established. Furthermore, despite a landmark Supreme Court ruling officially recognizing the role as important and necessary, and half a century of practice, the role still seems to be misunderstood and viewed as somewhat superfluous.

A Brief History

The juvenile defender role was not a part of the first juvenile court in the United States when it opened in 1899 (Mennel, 1972). Before that time, youths accused of criminal acts were treated like adults; they were presumed to be rational actors who had chosen to commit a crime, and who were as culpable as adults for their misdeeds. So, there was no place for a juvenile advocate then either (Mennel, 1972).

During the juvenile court system’s initial development, social reformers embraced the notion that juvenile offenders were immature, vulnerable, and malleable (Bishop and Feld, 2012). They also viewed juvenile crime as caused by factors over which the offender had no control, such as neglectful parenting and exposure to deviant role models. These ideas—that young offenders are immature, that their offending is largely a function of external influences, and that corrective treatment can effect a cure—provided the philosophical foundation for the juvenile court (Bishop and Feld, 2012). This philosophical foundation is referred to as parens patriae- the State as parent- and was conceived as a protective and benevolent institution serving the ‘best interests of the child’ (Platt, 1977).
In the *parens patriae* scheme, where the child is viewed as in need of the court to serve as a benevolent parent substitute, there seemed to be no need for a defender, or other due process protections since the ultimate goal of the court was rehabilitative, not punitive (Birckhead, 2010). In fact, the central feature of the juvenile hearing was a casual conversation between the judge, the youth and his parents, which has been described as “a combination of instruction, lecture, and counseling” (Birckhead, 2010: 971). The child was questioned by the judge and encouraged to talk freely so that the court might gain insight into his problems and needs. Not surprisingly, “judges evinced active hostility to the participation of lawyers” (Feld, 1999: 68). And, “[a]lthough judges could not banish a lawyer from the courtroom altogether, they did not consider his presence either appropriate or necessary,” (Rothman, 1980: 216). This hostility is no surprise given that the court was initially less concerned with a determination of the child’s guilt or innocence through an adversarial process, but through a process that was much more casual, administrative, and inquisitorial (Birckhead, 2010).

For nearly three quarters of a century the juvenile court had functioned largely unnoticed, without successful challenge to the constitutionality of its loose standards and lack of regularized procedures (Bishop and Feld, 2012). This came to an end in the 1960s and early 1970s when the U.S. Supreme Court recognized the juvenile court’s rhetoric of careful, compassionate care was starkly contrasted by the arbitrary and punitive realities of its practices (Bishop and Feld, 2012).

In the landmark decision *In re Gault*, the U.S. Supreme Court described the lawless and unbridled discretion of the juvenile judges as “a poor substitute for principle and procedure,” likely to result in arbitrary adjudications of delinquency and loss of
liberty (Gault, 1967: 18-19). The Court ruled that, in light of the liberty interests at stake (“comparable in seriousness to a felony prosecution,” p. 36), any child facing the prospect of incarceration was entitled to a panoply of criminal procedural rights—the right to notice of the charges against him, the right to counsel, the privilege against self-incrimination, the right to compulsory process (e.g., have witnesses subpoenaed), the right to confront and cross-examine adversarial witnesses—in order to insure accurate fact-finding and protect the child from erroneous conviction. Importantly, the Court observed that children need counsel in order “to cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [they have] a defense and to prepare and submit it,” (Gault, 1967: 36).

In re Gault (1967) established a right to counsel for juveniles, but it did not specify exactly what that role should entail. Since the Court was silent on these details, one might have assumed the Court’s intent to create the same exact protections for juveniles as had been created for adults. However, the 1971 Supreme Court decision, McKeiver v. Pennsylvania, cast doubt on this assumption. In McKeiver, the Court was asked to extend the right to a jury trial to juvenile defendants. It declined to do so, asserting that, although fundamental fairness demanded accurate fact-finding, this could be insured as well by a judge as by a jury. In contrast to its decision in Gault, the McKeiver Court revived the image of the sympathetic, paternalistic juvenile court judge, and disregarded concerns that juvenile courts’ best interests orientation could compromise accurate fact-finding (Feld, 2012: 679). Fearful that the addition of right to a jury trial “might well destroy the traditional character of juvenile court proceedings,” (McKeiver, 1971: 540, quoting the Pennsylvania court), the U.S. Supreme Court refused
to extend the right to jury trial in order that juvenile courts might remain “informal 

enough to permit the benefits of the juvenile system to operate,” (McKeiver, 1971: 539, 
quoting the Pennsylvania court).

The *McKeiver* decision likely created a great deal of confusion for juvenile 
defenders. It appears to recognize that due process protections for juvenile defendants are 
not *exactly* the same as for adult defendants. It also endorses the value of the *parens 
patrie* orientation, possibly further obscuring the already unclear juvenile defender role. 
This pair of decisions appears to have sent juvenile defenders a mixed message: juvenile 
court should be like adult court in terms of due process protections like the right to 
counsel, but should retain its informal, paternalistic approach in terms of the fact finder. 
The confusion surrounding the true definition of the juvenile defender role is not unlike 
that surrounding defense attorneys who represent the mentally ill. Cohen describes these 
advocates as “stranger[s] in a strange land without benefit of guidebook, map, or 
dictionary,” (1965: p. 424). The result for both types of clients could be the same, “free 
citizens of a free country are frequently deprived of their liberty for [sometimes] an 

Legal scholars have criticized the Supreme Court for failing to adequately define 
the role of counsel for juveniles (e.g., Fedders, 2010). In reaffirming the *parens patriae* 
model, the *McKeiver* Court seemed to actively encourage the paternalistic bent of 
juvenile court judges and court functionaries (1971). This raises an important question: 
what role must defense counsel play in a system that embraces punitive outcomes but 
remains at least nominally committed to serving the *best* interests of the child?
The Supreme Court in *Gault* did not define the juvenile defender role (Shepherd and Volenik, 1987) leaving these attorneys to wonder how they are supposed to navigate the best interests orientation of the court while serving in what is officially an expressed interests advocate role. For instance, are they supposed to: Explain the proceedings to child clients in a largely disinterested and objective manner? Serve as independent advocates for the best interests of the child (i.e., the *guardian ad litem* function)? Serve in the exact same capacity as criminal defense attorneys for adults- work to minimize the probability and severity of coercive state intervention? Advocate for child clients’ expressed interests (i.e., what the child expressly states that she wants) even if these interests conflict with defenders’ view of what is in child clients’ best interests? Are juvenile defenders to advocate for their clients’ expressed interests at every stage of the proceedings, or should they shift to best interests advocacy at a particular stage (e.g., sentencing or “disposition”)?

Even though each of these functions had been identified as the most appropriate for juvenile defenders as of the early 1980s, (Shepard and Volenik, 1987), since then a professional and academic consensus has developed (Henning, 2005). Juvenile defenders are expected to act as zealous advocates for the *expressed* interests of their clients at all stages of the juvenile process (Henning, 2005). This means that, as far as the juvenile defense attorney is concerned, the child’s stated wishes are paramount and, as the child’s zealous advocate, the defense attorney is ethically obligated to use any legal means necessary to advocate for those expressed interests.

*Zealous advocacy* is the standard attorneys are expected to meet when representing their clients (Schmidt et al., 2003). It requires the attorney to encourage the
client to actively participate in the trial process by making decisions about the direction of his case with the attorney’s guidance. The zealous advocacy model presumes client capacity and relies on children’s capacity to participate in legal situations beyond mere “legal competence,” (p. 177). “Adjudicative competence” requires that a client be able to “understand and consult with his/her attorney, factually and rationally understand the charges against him/her, and aid his/her lawyer in creating the defense (Schmidt et al., 2003: 176). However, “effective participation” involves abilities beyond adjudicative competence such as the ability to make decisions, “foresee the consequences of multiple options” and weigh “their probability of occurrence and subjective desirability in making a decision,” (Schmidt et al, 2003: 176, citing Grisso, 1997).

The expectation of zealous (i.e., expressed interest) advocacy for juvenile defenders is a point of consensus among the National Advisory Committee on Juvenile Justice Standards and Goals (American Bar Association, 1980), the Institute of Judicial Administration and American Bar Association Joint Commission on Juvenile Standards (IJA/ABA, 1979), and “A Call for Justice” (Report, Puritz et al., 1996, 2002) (a joint report of the ABA Juvenile Justice Center, the Juvenile Law Center, and the Youth Law Center) (Henning, 2005). It is also the position of virtually every legal scholar on the national scene (Henning, 2005).

Despite this consensus, studies have shown that the right to counsel has been implemented unevenly both among the states and across counties within states (“A Call for Justice,” Puritz et al., 1996, 2002). Courts in many jurisdiction have been shown to actively discourage juveniles from invoking their right to counsel, either by telling them that they do not need counsel because nothing of consequence will happen to them, or by
assuring them that the judge will look after their interests (“A Call for Justice,” Puritz et al., 1996, 2002). For example, Professor Feld’s study of rates of juvenile representation in Minnesota revealed that rural counties had rates of representation as low as 19%, while large urban jurisdictions appointed counsel for juveniles at rates of 90% or greater (1989). In addition, the quality of representation has often been shown to be poor. Lawrence (1983) surveyed juvenile defense attorneys and found that 61% reported spending a total of two hours or less on case preparation.

In 1993, the American Bar Association’s Juvenile Justice Center conducted a national assessment of access to counsel and quality of representation for juveniles (“A Call for Justice,” Puritz et al., 1996, 2002). The report, “A Call for Justice,” indicated that many dedicated attorneys labored under tremendous systemic burdens—such as very high caseloads—that compromised their ability to provide quality representation to youth. Many attorneys rarely filed pretrial motions and many avoided post-dispositional issues entirely (“A Call for Justice,” Puritz et al., 1996, 2002). Two early in-depth studies of juvenile court proceedings showed that trials were rare and most were “marginally contested” and marked by “lackadaisical defense efforts—including making few objections, rarely calling defense witnesses, perfunctory cross-examination of prosecution witnesses, and either no, or very sketchy, closing arguments,” (Ainsworth, 1990: 1127-1128, citing a Boston assessment by Finkelstein et al, 1973 and a New York assessment by Knitzer and Sobie, 1984). The New York assessment estimated that only 5 percent of all juvenile trials involved what could be considered “effective representation” by defense attorneys (Moss, 1987: 29).
The quality of legal representation for juveniles is influenced by many factors including the poorly delineated role of defense counsel. However, even in jurisdictions where the role is very clear, it is likely that role confusion and conflict still exist and impact quality of counsel. That is the overall question with which this study was concerned.

**Statement of the Problem**

**Defense Attorney Duty vs. Court Mission**

Feld has noted a large number of unrepresented youth and “continuing judicial hostility to an advocacy role” in traditional rehabilitation-oriented, or *parens patriae* juvenile courts (1993: 223). In 1988 he argued that in the twenty years since the *Gault* decision, the “promise of legal representation remains unrealized” (Feld, 1988: 394). Even when juveniles had counsel, effectiveness was often compromised by various factors, including “role ambiguity created by the dual goals of rehabilitation and punishment” (Feld, 1993: 225). Several scholars suggest that counsel’s role is compromised by such factors as the judge’s hostility toward adversarial attorneys, defense attorneys’ internalization of the court’s rehabilitation mission, and pressures to be cooperative emanating from others in the courtroom (Fox, 1970; Clarke and Koch, 1980; Feld, 1989).

Henning’s (2005) discussion of the disparity between policy and practice in the juvenile courts identifies a “deeply entrenched history of paternalism in the juvenile justice system” as a source of attorney role conflict (p. 260). In discussing the expert
impressions of legal scholars and the findings of seven state assessments, she reflects that even defense attorneys who want to respect the expressed interests of their clients are confronted with “tremendous systemic opposition from judges, prosecutors, and probation officers who expect defense counsel to participate as part of the juvenile justice team,” [p. 260, citing: Stewart et al, 2000 (TX)]. The extent to which juvenile defenders appear to have internalized the best interests mission of the juvenile court in a jurisdiction where their role is clearly defined as expressed interests was explored in the present study.

**Impact of Process Stage**

Henning discusses a confusing Illinois Court of Appeals (*In re RD*, 1986) decision that held counsel for juvenile defendants must simultaneously advocate for their clients’ rights (i.e., client-directed, expressed interest advocacy) yet propose dispositions (i.e., sentencing options) reflecting the client’s best interests, whether or not the client agrees (2005). This decision supports that possibility that some attorneys may view the proper role of defense counsel to be different at different stages of the juvenile process. This may be particularly true of the disposition stage where the focus shifts from adjudication of responsibility (adversarial process) to determination of outcome (theoretically treatment, not punishment). This issue will be discussed in the following chapters.
Role Ambiguity/Confusion

An examination of the juvenile defender role was conducted by the New York State Bar Association in the mid-1980s (Knitzer and Sobie, 1984). The Bar Association reported that despite the professional rules, most lawyers serving as juvenile defenders defined their role as representatives of their clients’ best interests (Moss, 1987). A disturbingly small percentage of attorneys, 15%, likened their role to that of a defense attorney for adults (Moss, 1987). More recently, Buss (2000) asserted that the current consensus is that juvenile defenders must take direction from their juvenile clients as if they were adults (i.e., expressed interests advocacy). This consensus comes from the U.S. Supreme Court and the delinquency bar (i.e., lawyers’ professional associations). However, as illustrated by the state assessments introduced above, the courts do not share this view (Buss, 2000). The professional consensus is clearly inconsistent with the juvenile court’s rehabilitative mission and begs the question of whether lawyers’ professional standards and the juvenile court’s rehabilitative mission are ultimately irreconcilable. This possibility is discussed in the chapters that follow.

Implications of Best Interests Juvenile Defense

If the juvenile court system’s rehabilitative orientation contributes to an expectation that defense attorneys must advocate for their clients’ best interests, as appears to be the case in many jurisdictions, this expectation could place the defense attorney in conflict with her ethical duties. However, little is known about juvenile defenders’ experience of such an expectation or how it impacts their view and pursuit of zealous advocacy.
Juvenile defense attorneys face special challenges when they inhabit the traditional zealous (i.e., *expressed* interests) advocate role with their clients because they operate in a system that prioritizes defendants’ *best* interests. An example is illustrative. A juvenile defender’s client may express to his counsel that he does not want to be barred from associating with the friends with whom he was arrested for shoplifting. However, if the defendant’s defense is that he was merely following the crowd at the time of the offense, the court may include a forbidden friends clause in its disposition (sentencing) plan. In her traditional zealous advocate role, the defense attorney assumes her client has the capacity to consider and articulate his own interests. She must therefore advocate to remove the forbidden friends clause from the disposition plan even if she believes those friends are a bad influence on her client and it is in his *best* interests not to associate with them.

The juvenile defender could also pursue two alternatives— one that does not violate her ethical mandate of zealous advocacy and one that does. The juvenile defender could consider that her client’s lack of experience in life and in court prevents him from seeing the situation realistically. She may then, as part of her counselor function, attempt to convince him to reconsider his position regarding his friends or strongly urge him to accept the judge’s recommendation to include the forbidden friends clause. As long as she ultimately pushes to have the clause removed if her client is *not* persuaded, she is still complying with her ethical duties. However, she is not complying with them if she disregards the client’s wishes altogether and accepts the disposition plan as-is when her client disapproves. This would be the epitome of a best interests approach to this
particular scenario and her behavior would *not* comport with a zealous advocate’s duties because the attorney has not advocated for her client’s expressed interests.

If the defense attorney were to take a best interests role in this situation, she would be substituting *her* idea of her client’s interests for his expressed interests. She would be in violation of her ethical duty to provide her client with zealous advocacy of his expressed interests potentially weakening the impact of her role and his due process protections. Ethical dilemmas like these may be unique to juvenile defenders and can occur as a result of the mixed messages juvenile defenders receive about their role (i.e., role conflict). Exploring how juvenile defenders view their role and experience role conflict is central to this dissertation.

**Role Conflict**

Role conflict refers to “a situation that results when role expectations are inconsistent, as when a supervisor sends employees mixed messages about their roles,” (Levy, 2010: 292).iv These mixed messages need not come from a role incumbent’s superiors; they can come from other role senders (i.e., anyone who communicates messages about what is expected of the role incumbent) (Cordes and Dougherty, 1993). In the juvenile court context, role senders may include the juvenile defender’s client, the client’s parent, a court counselor (juvenile probation officer), the judge, or the prosecutor. Role conflict is especially likely when there is also role ambiguity, or uncertainty about what the role incumbent is supposed to do. In light of the history of confusion about the juvenile defender attorney role, it is likely that juvenile defense attorneys experience some role ambiguity, making role conflict more likely.
Role conflict was largely a theoretical concept until 1954 when Getzels and Guba conducted the first field study firmly establishing role conflict as a measurable construct. Since then, role conflict has been studied for various professions producing an abundant body of literature, a small set of instruments, and a relatively consistent set of correlates. For instance, empirical research has confirmed that:

role conflict is associated with decreased satisfaction, coping behavior that would be dysfunctional for the organization, and experiences of stress and anxiety (Rizzo et al., 1970: 154).

There has been some empirical attention to role conflict for law professionals, including juvenile prosecutors (Hicks, 1978; Sagatun and Edwards, 1979; Laub and McMurray, 1987; Shine and Price, 1992; Sanborn, 1995), public service lawyers (Jackson et al., 1987) and public defenders (Lynch, 1997). Role conflict, however, has yet to be studied in a systematic way among juvenile defenders. That there have been so many state assessments on juvenile defense implies that scholars have strong interest in role meaning and conflict-related issues for juvenile defenders. However, inadequate information about the methodology used to procure assessment data makes forming firm conclusions about the validity of their findings very difficult.

Katz and Kahn offer a theoretical framework of role conflict that shows promise for studying role conflict among juvenile defenders (1966). Katz and Kahn’s notion of *role behavior* focuses on the impact individuals’ organizational role has on their behavior. They define an individual’s role behavior as:

the recurring actions of an individual appropriately interrelated with the repetitive activities of others so as to yield a predictable outcome. The set of interdependent behaviours [sic] comprise a social system or subsystem, a stable collective pattern in which people play their parts (p. 174).
This definition provides an appropriate framework for examining role conflict among juvenile defenders for three reasons. First, there are clear indicators that the juvenile defender role is burdened with inconsistent expectations. Second, this inconsistency stems, in part, from the “repetitive activities of others [juvenile courtroom stakeholders]” (Katz and Kahn, 1966: 174) reflecting resistance to the official juvenile defender role: zealous, expressed interests, advocate. Third, state assessments of juvenile defense systems indicate that defenders’ departure from the official role is partially in response to pressures from organizational stakeholders.

Katz and Kahn identify at least four major sources of role conflict in an organization (1966). These are: intrasender conflict, where the role taker receives contradictory expectations from a single source; intersender conflict where the role taker receives different expectations from different role senders; interrole conflict, where the role taker occupies two contradictory roles, one of which is unrelated to his/her occupation (e.g., juvenile defender vs. spouse); and person-role conflict, which occurs “when role requirements violate the needs, values or capacities of the individual,” (Katz and Kahn, 1966: 185).

For juvenile defenders, these four sources of conflict could be applied as follows: intrasender—the juvenile defender perceives the Model Rules of Professional Conduct as requiring him to represent both the expressed and best interests of his client; intersender—the juvenile defender understands that the Model Rules require her to engage in zealous advocacy of his client’s expressed interests, but he is pressed by the judge to not be too adversarial (i.e., tone down his zealous advocacy) or he will be removed from the courtroom; interrole—the juvenile defender faces conflict because the
time required by his family responsibilities interferes with his ability to effectively represent his clients; and *person-role* (i.e., internal conflict) - a juvenile defender who is himself the parent of a young child finds that, when he is called upon to represent very young children who have difficulty articulating their interests, he tends to yield to his sense of paternalism and puts pressure on the child to agree to what he believes is in the client’s best interests instead of advocating for the client’s expressed interests.

The severity of the role conflict depends on how incompatible the role expectations are and how the individual adjusts to, or copes with, the incompatibility (Getzels and Guba, 1954). How incompatible the expressed and best interest roles are for juvenile defenders is difficult to discern based on the existing literature. The answer may depend on how juvenile defenders define their zealous advocacy role and how they cope with the unique needs of juvenile clients as well as other stressors. These other stressors could be internal (e.g., the defender’s own definition of the role, capacities, needs, and values) or external— including demands of the courtroom workgroup and logistical pressures (e.g., time constraints, excessive caseloads, etc.).

There appears to have yet to be a focused systematic empirical assessment of juvenile defenders’ role conflict experiences. This study proposes to be among the first. The study employed Katz and Kahn’s conceptual framework to examine role conflict using interviews with modern-day juvenile defenders (1966). The focus of this dissertation is on understanding the nature, extent, and impact of role conflict for juvenile defenders who serve in a jurisdiction that clearly defines the juvenile defender role as an *expressed* interests advocate.
Chapter Two- Prior Research

The literature on the juvenile defender role largely consists of legal analysis and is often focused on the ongoing debate about the type of advocacy juvenile defenders should provide for their clients. The traditional zealous (i.e., expressed interests) advocacy model is endorsed by many leading juvenile justice figures and scholars (Guggenheim, 1984; Mlyniec, 1995; Stranger, 1996; Buss, 1995; Buss, 1998; Marrus, 2003; Henning, 2005; Birckhead, 2010). Moreover, by the early 1980s, a professional consensus had developed that defense attorneys owe their juvenile clients the same duty of loyalty they owe their adult clients (i.e., expressed interests advocacy) (Henning, 2005). Attorneys’ professional rules of conduct clearly support the expressed interests advocate model (ABA Model Rules, 2013). As described previously in the Introduction, Section 2 of the Rules preamble states, “as advocate, a lawyer zealously asserts the client's position [emphasis added] under the rules of the adversary system,” (ABA Model Rules, 2013). And, as previously stated, the National Juvenile Defense Standards, specifically section 1.2, require attorneys to do the same for their juvenile clients (NJDC, 2012).

Empirical Examination of the Juvenile Defense Role

There is little social science scholarship on the juvenile defender role. One of the first empirical examinations of the juvenile defender role was published in 1972 (Stapleton and Teitelbaum). Stapleton and Teitelbaum used an experimental design to conduct a unique examination of juvenile court systems in two cites—Zenith (adversarial orientation) and Gotham (cooperative, parens patriae, orientation). The experimental
variable was legal representation by “project attorneys” who had been provided with specialized training\(^{vi}\) (Stapleton and Teitelbaum, 1972).

Youths facing delinquency charges were randomly assigned to project attorneys (experimental group) or left to such legal services as were available in the jurisdiction (control group) (Stapleton and Teitelbaum, 1972). Using court records and case reports provided by the project attorneys, these scholars found that representation by a project attorney (i.e., one who zealously advocated for her client’s *expressed* interests) had a slightly positive impact in one jurisdiction (Zenith- adversarial court), but no impact, or a slightly negative (though not statistically significant) impact in the other (Gotham- cooperative, *parens patriae*, court) (Stapleton and Teitelbaum, 1972).

Stapleton and Teitelbaum concluded that one of the most powerful factors affecting the role of counsel was the judge (1972). They noted that while Zenith’s court appeared relatively open to defense lawyers’ adversarial tactics, Gotham’s court impeded adversarial efforts. Not only were Gotham’s judges willing to proceed with a case without a defense lawyer present, they were willing to conclude the adjudication without the lawyer: Gotham [defense] attorneys did not have the time necessary for careful determination of the plea, and they could not rely on the court’s allowing them that time (1972: 127).

Stapleton and Teitelbaum explain that because the U.S. Supreme Court decision in *Gault* endorsed the use of adversarial defense tactics for juvenile clients, courts cannot disregard them entirely. However, when these tactics were pursued, it created “severe *role strain* [emphasis added] for all parties,” (1972: 146). Stapleton and Teitelbaum also assert that traditional juvenile courts like Gotham arranged their procedures in a way that
was incompatible with the presence of an adversarial role and failed to ameliorate role strain. However, in both the Gotham and Zenith courts, attorneys found themselves co-opted into the juvenile system’s orientation; lawyers in Gotham reported a “higher incidence of pressure by the court to cooperate,” (1972: 147), while lawyers in Zenith reported “exertions of judicial pressure for cooperation …[half] as frequently [as] in Gotham,” (Stapleton & Teitelbaum, 1972: 131). It is critical to recognize that both courts reflected some of this pressure (i.e., role conflict).

Stapleton and Teitelbaum point out that traditional juvenile courts, like Gotham’s, essentially reject the adversarial function of the juvenile defender and expect defense lawyers to shift their function from adversary to “ad hoc social worker” depending on whether the charge is denied (juvenile pleads “not guilty”) or the petition is sustained (i.e., juvenile is found “guilty”) (1972: 146). This places defense attorneys in conflict with their ethical mandate to serve as zealous advocates for their clients’ expressed interests. In addition, it deprives the juvenile of the representation guaranteed in Gault. Stapleton and Teitelbaum warn that tasking attorneys with such conflicting expectations would “sorely press the most adroit of actors,” (1972: 146).

That such powerful influences could impede juvenile defenders’ attempts to inhabit their role is disturbing. As Stapleton and Teitelbaum point out, although a criminal defense attorney is an officer of the court (as is any attorney) his duty is to serve as an “aggressive representative of his client” (1972:157). They also point out that while the defender must serve the institution of the court by being fair and honest, his duties to society and the court are of secondary importance to his duty to his client (1972).
Stapleton and Teitelbaum’s study (1972), while certainly informative and foundational, has several limitations, the most important of which is that it was conducted so soon after the *Gault* (1967) decision. The juvenile courts may not have had enough time to adapt to and implement *Gault*. Modern-day juvenile courts might demonstrate better adherence to the spirit of *Gault*.

In addition, Stapleton and Teitelbaum’s study did not involve in-depth qualitative interviews with the juvenile defenders (1972). Although their results provide an important indication that pressure from the court for juvenile defenders to relinquish their adversarial role exists, they do not provide an in-depth examination of attorneys’ experiences with these dynamics or of the impact of those experiences. The present study sought to fill some of this gap.

**State Assessments of Juvenile Defender Role**

Throughout the course of the last thirteen years, access to and quality of legal representation for juveniles has been assessed in twenty-one states. These assessments were conducted by the American Bar Association’s Juvenile Justice Center or by the National Juvenile Defender Center in the following states: Colorado, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Missouri, Mississippi, Montana, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Virginia, Washington, and West Virginia. They were conducted to (1) determine whether youth in the selected jurisdictions had “meaningful access to counsel in delinquency proceedings,” (2) “highlight systemic barriers to quality representation” and (3) “provide recommendations for improv[ement]” (Puritz et al., 2007: 15).
All twenty-one assessments appear to have utilized essentially the same methodology, slightly tailored to the individual jurisdictions. The published reports describe their methodology in a remarkably similar way with only slight variation and limited detail. These assessments applied a “well-tested and highly structured methodology” [e.g., Scali et al., 2013: 13 (MO)]. Data collection for all jurisdictions included: surveys and interviews of a variety of juvenile court stakeholders; courtroom observations; documentary analysis; and facility visits. In addition, an “investigative team of experts in juvenile defense” conducted courtroom observations and collected statistical data on the status of the municipalities’ children [e.g., Scali et al., 2013: 13 (MO)].

Unfortunately, there is insufficient detail on survey and interview content making it difficult to determine if the investigators sought to directly assess role problems faced by juvenile defenders. There is also no information available on survey samples, sampling methodologies, or the number of defense attorneys interviewed in each jurisdiction.

Despite these limitations, the findings suggest a great deal of confusion about the defense attorney role in every state examined. Almost every report provided the same conclusion, written in almost exactly the same way, indicating that despite the efforts of some zealous advocates, systemic barriers render the juvenile defender role insignificant. These barriers thwart juvenile defenders’ efforts to zealously advocate and some defenders resign themselves to an “insignificant” role [i.e., Cumming et al., 2003: p. 71 (MD)].

These, and other, reports note a lack of zealous advocacy among juvenile defenders. For example, the Kentucky assessment showed that “[t]rial practice and
preparation for disposition hearings in juvenile court were weak and showed an overall lack of advocacy efforts,” (Puritz & Brooks, 2002: 1). The Illinois assessment stated that, “[a] child is also guaranteed the right to … zealous advocacy during the sentencing phase…[and] …the quality of advocacy at this critical stage [is] lacking,” (Crawford et al, 2007: 4). The Mississippi assessment found that, “[a]cross the state, investigators observed that the level of advocacy provided for indigent youth in Mississippi was less than zealous,” (Puritz et al., 2007: 8). Nebraska’s assessment revealed that even though “instances of juvenile defenders providing diligent, creative, client-centered advocacy for their young clients” occurred, “this level of practice was not the norm,” (Beck et al., 2009: v) and “[i]n general, defense representation was well-meaning, and even caring, but not necessarily client-centered or zealous,” (Beck et al., 2009: vi).

Multiple assessments reported that zealous advocacy is strongly discouraged in juvenile courtrooms [see, e.g., Stewart et al, 2000 (TX); Puritz and Sun, 2000 (GA); Calvin, 2003 (WA); and Scali et al., 2013 (MO)]. For instance, the Texas assessment reported, “defenders are systematically discouraged from providing adequate representation,” (Stewart et al, 2000: 18). The Georgia assessment noted that “[t]he nonadversarial culture of the juvenile court undoubtedly affects the level of zealous advocacy that lawyers feel they can engage in,” (Puritz & Sun, 2001: 31). Washington’s investigative team found that defenders experience a “subtle form of pressure” from courts to be team players such that “the value of ‘getting along’ with others in the court system hurts a juvenile’s prospects for zealous defense” (Calvin, 2003: 32). Missouri’s assessment noted that most of its counties “exert[ed] both covert and overt pressure for attorneys to minimize zealous advocacy and work with the judge and the [probation
officer]” (Scali et al., 2013: 38) and, that “the culture of many of the juvenile courts discourages formal assertion of legal issues and encourages hallway conversations to resolve legal questions,” (Scali et al., 2013: 46).

All twenty-one reports identify either judges, or the juvenile court culture, as a barrier or negative influence depressing the availability and/or quality of counsel. For example, the Illinois report revealed that judges often expressed relief that “’the attorneys have not been defense zealots in juvenile cases’” (Crawford et al, 2007: 63). Finally, the Missouri report noted the existence of “a court culture that appeared to exert pressure on defenders to work as a team with other stakeholders,” (Scali et al., 2013: 38). This report further remarked that “[e]ven when attorneys have the opportunity to be advocates, their voices are often ignored,” with one defense attorney stating, “’[i]n juvenile court, I am not more than a potted plant,’” and another sharing, “’[t]here is not a lot I can do… it’s essentially standing next to someone while they get sent to DYS [state facility] for petty nonsense’” (Scali et al., 2013: 52).

In sum, all of the state assessments document inconsistencies in the expectations of the juvenile defender role that still exist in the new century. It is problematic, however, that there are not more, and not more informative, empirical studies of the juvenile defender role. This dissertation sought to fill some of this gap.

**Juvenile Defense in North Carolina**

This study sought to examine the juvenile defender role in North Carolina as well as the nature, extent, and impact of the role conflict juvenile defenders experience there. Unlike adult defendants, child defendants cannot waive their right to counsel. North
Carolina legislatively abolished such waiver in the Juvenile Code Revision Committee of 1979, making the presence of juvenile defenders in North Carolina’s juvenile courts even more necessary (E. Zogry, Juvenile Defender, Office of the Juvenile Defender North Carolina, Member of National Juvenile Defender Center Advisory Committee, personal communication September 4, 2013). In North Carolina, children are presumed indigent because they are not expected to earn their own money. Thus, counsel is automatically appointed for each child when a delinquency petition is filed with the court (E. Zogry, personal communication September 4, 2013). Children, or their parents, can hire “retained counsel” if they wish. If they wish to change their appointed attorney to retained counsel, they are allowed to do so (E. Zogry, personal communication September 4, 2013).

It is prudent to look more closely at the ABA’s North Carolina state-wide juvenile defense assessment, the report for which was published in 2003. The North Carolina assessment involved a collaborative effort among the American Bar Association Juvenile Justice Center, the Southern Juvenile Defender Center, the National Juvenile Defender Center, and the North Carolina Office of Indigent Defense Services (Grindall & Puritz, 2003). The assessment included a cross-sectional analysis of eleven North Carolina counties including urban, suburban and rural areas, and a variety of defense systems. It resulted in a report that reflected many of the same role issues described in the other state reports.

The scope of the North Carolina assessment is very impressive. Unfortunately, like the other assessments, it offers insufficient detail on the methods it used including the specific questions used in the interviews. Attempts to learn more about the survey and
interview measures were unsuccessful. Moreover, the number of juvenile defenders interviewed, and the methods by which they were sampled, are unknown. Nevertheless, the findings of the assessment provide a solid foundation for a study of juvenile defender role conflict experiences.

The North Carolina assessment concluded that “a misapprehension of the role [emphasis added] of defense counsel in juvenile proceedings,” is thought to contribute to the “uneven state of defense representation observed in North Carolina,” (Grindall & Puritz, 2003: 2). Some juvenile defenders were so peripheral to the process that they appeared to play no role whatsoever in the proceedings. Grindall and Puritz also found that North Carolina juvenile defenders did not all see their role as “expressed interests,” as opposed to “best interests,” advocates. Some admitted that they hesitated to engage in disputatious adjudication in juvenile court cases since they believed doing so would negatively affect their standing in other cases heard in the same court (Grindall & Puritz, 2003: 6-7). Since many North Carolina judges hear both adult and juvenile cases, it is difficult to discern if Grindall and Puritz here refer to other juvenile, or adult, cases, or both. Any of these options is feasible in North Carolina given its variable juvenile judge schedule xvii (R. Waldrop Rugh, Court Counselor, Alamance County Clerk of Court, Juvenile Division, Graham, North Carolina, personal communication February, 2012).

The assessment revealed that frequently, juveniles appeared to believe that the court counselors (North Carolina’s version of juvenile probation officers) were their legal advocates without realizing that these counselors actually have, and could use, the power to testify “against [emphasis added] the juveniles’ interests” (Grindall & Puritz, 2003: 39). There also appeared to be a lack of representation for juveniles for whom no
placement, except detention, could be arranged (Grindall & Puritz, 2003). This is especially concerning given that detention is a restriction of liberty which, according to the spirit of *Gault* (1967), should trigger the right to effective assistance of a zealous (i.e., expressed interests) advocate.

One of the most concerning of the assessment’s findings is the extent to which juvenile defenders depended on “court counselors to plan and recommend disposition treatment plans,” (Grindall & Puritz, 2003: 4). The assessment further stated that:

[i]t was observed that judges, prosecutors and defense attorneys [emphasis added] routinely accept court counselor recommendations. In some counties, most cases (up to 70%) go to disposition immediately following adjudication, allowing no time for attorneys to develop alternative disposition treatment plans if they have not been completed prior to the court hearing. Even given a delay between adjudication and disposition, attorneys overwhelmingly failed to adequately review or question disposition recommendations made by court counselors or present alternative plans (Grindall & Puritz, 2003: 4).

The North Carolina assessment also acknowledged the existence of role confusion among juvenile defenders. In fact, one of its recommendations was to “…to clarify the appropriate role of defense counsel in various stages of the juvenile proceedings;” (Grindall & Puritz, 2003: 46).

According to a recently released Report by the Office of the Juvenile Defender for the State of North Carolina (“NCOJD”), the NCOJD responded to the state assessment by taking steps to improve the quality of representation for youth in delinquency court (NCOJD Report, 2013). More specifically, it explicitly identified the official juvenile defender role as an *expressed interests* advocate. The NCOJD distributed a Role Statement to juvenile defenders and “to all district court judges and chief court counselors,” throughout the state in 2005 (p. 26). This Statement reflects Guideline 2.1 of
the Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level, a guideline developed in 2005 and republished in 2007 in “Guidelines” by the North Carolina Commission on Indigent Defense Services (Newman et al., 2008: 1). The NCOJD also launched training workshops provided through the University of North Carolina’s School of Government for juvenile defenders throughout the state.

These training sessions were designed to address juvenile defenders’ role definition and related issues (NCOJD Report, 2013). The Report was released to review these efforts and make recommendations for further improvements. It indicated that “representation was [still] uneven in some districts,” but did not address the extent to which juvenile court functionaries appeared to have internalized the Role Statement (NCOJD, 2013: 10).

The present study sought, in part, to investigate this internalization, and is therefore timely.

The present study addresses the extent to which the NCOJD’s Role Statement has been integrated into juvenile court practices in two of North Carolina’s largest jurisdictions. Given the Statement, its dissemination—to all juvenile court functionaries—and ancillary training, juvenile defenders should readily identify their role as expressed interests advocates. Also, if the Statement’s message has been integrated into courtroom practices juvenile defenders should report little role conflict and much support of their zealous (i.e., expressed interests) advocate role from other courtroom functionaries. Finally, juvenile defenders should report little impact from role conflict.

As far as can be discerned, there has yet to be an empirical study that has engaged in a focused and purposeful empirical assessment of juvenile defenders’ view of their role
and the role conflict they experience. The state assessments discussed earlier sought to broadly capture factors affecting effectiveness of, and access to, counsel. The Investigator was informed that as part of the assessments’ interview process, juvenile defenders were asked, “about role confusion, conflict, and barriers to advocacy,” (R. Banks, personal communication, April 17, 2014). However, requests for further detail were unsuccessful. So, it is difficult to determine how deeply, or how well, juvenile defenders’ views of their role and role conflict were examined.

To the best of the Investigator’s knowledge, no study like that reported in this dissertation has been conducted in North Carolina prior to, or since, the distribution of the NCOJD Report in 2013. This assessment of juvenile defender role conflict in North Carolina is the next logical step after North Carolina’s statewide assessment and the NCOJD Report released in 2013. Not only does it directly examine how juvenile defenders in North Carolina view their role, it expands our understanding of the nature and impact of the role conflict they experience.
Chapter Three- Research Methods

This study provides an in-depth examination of role meaning and role conflict for juvenile defenders in North Carolina. xviii

Research Questions

The investigation was structured around the following research questions:

1. How do juvenile defenders in delinquency court view their role?
2. To what extent do juvenile defenders in delinquency court experience role conflict?
3. What are the sources of role conflict in delinquency court? From whom, or where, do pressures to depart from a zealous, expressed interest, advocate role emanate?

This study sought to uncover sources of role conflict by directly, and indirectly, inquiring about them. Participants had the opportunity to volunteer perceived sources of pressure to depart from their zealous advocate role. In addition, they were directly asked about specific sources implicated in the literature like the judge, caseload, time, financial resources, and other courtroom functionaries.

4. Does the nature and quality of defense representation vary across the different stages of the delinquency case process?

As part of this study participants were invited to share their views regarding the extent to which pressure to depart from their zealous advocate role varies by juvenile process stage. The obligation of the defense attorney to zealously advocate on behalf of his client’s expressed interests is likely to be least ambiguous at adjudication where, the issues involve pleading guilty—or accepting a plea offer—and/or determining how to
best defend the client at trial. The juvenile defender’s role at this stage is identical to that
of a defense attorney in adult criminal court. However, the disposition stage of the
juvenile process is different from the sentencing stage of a criminal proceeding in that the
court is meant to emphasize rehabilitation over punishment for the defendant. For
instance, at disposition, the juvenile could be sentenced to any of a variety of outcomes—
typically some kind of treatment, detention, placement, or other directive (e.g., avoid
certain friends, maintain good grades, etc.). If the attorney perceives of the disposition as
punishment then she may try to lessen that punishment as she would in a criminal case. If
the attorney perceives of the disposition as treatment, however, her role becomes more
ambiguous. Does she advocate for whatever treatment the client prefers? Make and
present an independent analysis of what treatment she believes to be in the client’s best
interests? Advocate for the least intrusive treatment? Or simply defer to the judgment of
the court counselor and the judge and take no position at all?

The ABA’s Model Rules do not provide much guidance on this matter. As
explained in the Introduction, the Rules indicate that decision-making authority for these
kinds of decisions is entirely in the client’s hands, and those decisions are binding on his
lawyer. Rule 1.2 states, “a lawyer shall abide by a client's decisions concerning the
objectives of representation and, as required by Rule 1.4, shall consult [emphasis added]
with the client as to the means by which they are to be pursued.” However, it also states
that, “[i]n a criminal case, the lawyer shall abide by the client's decision, after
consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and
whether the client will testify,” indicating that when it comes to outcomes the client’s
expressed interests rule. In the matter of a role shift at the disposition phase, a juvenile
defender would therefore likely find it difficult to justify a departure from the expressed interests advocate role under this Model Rule.

In addition, the National Juvenile Defense Standards provide guidelines in Standard 1.2 where juvenile defenders are disallowed from substituting their own view of the client’s best interests for those their clients express (Standard 1.2.a., National Juvenile Defense Standards, NJDC, 2012: 18). Additionally, these Standards direct juvenile defenders to proceed in an expressed interests advocate role if they are unable to convince their clients to change their expressed interests “throughout the course of the case,” (Standard 1.2.d., National Juvenile Defense Standards, NJDC, 2012: 18).

Finally, North Carolina has implemented explicit guidance for its juvenile defenders on the matter of expressed interests advocacy at the disposition stage. As discussed previously, the North Carolina Commission on Indigent Defense Services released a Role Statement in 2005 specifically stating that expressed interests advocacy is to be used for juvenile clients at all stages (NCCIDS, “Role Statement,” 2005). And, North Carolina has provided training materials recognizing that juvenile defenders must fill an expressed interests advocate role at all stages of the juvenile process (See, NCIDS, Penn, P. “Role of Defense Counsel, 2006, [http://www.ncids.org/JuvenileDefender/Training%20Seminars/2006%20Regional%20Workshops/Role%20of%20Defense%20Counsel.pdf](http://www.ncids.org/JuvenileDefender/Training%20Seminars/2006%20Regional%20Workshops/Role%20of%20Defense%20Counsel.pdf)).

5. How do juvenile defenders cope with role conflict?

Participants in this study were asked about the coping strategies they utilize to manage the role conflict they experience.

6. How does role conflict affect the quality of defense representation?
Finally, this study’s participants were invited to discuss the ways in which role conflict experiences impact the following: their case outcomes; the general quality of their work; and themselves as incumbents of the juvenile defender role (e.g., whether they experience tension or stress as a result of role conflict, etc.).

Methodology

Site Selection

The population for this study was juvenile defenders who provide services as either public defenders or appointed defense counsel at juvenile courts in two North Carolina counties. North Carolina was chosen as the study site for two reasons. First, as discussed previously, in 2003 it had been the subject of a state-wide assessment of juvenile defense. Again, the assessment reported a “misapprehension of the role [emphasis added] of defense counsel in juvenile proceedings,” (Grindall & Puritz, 2003: 2). The assessment even went so far as to recommend clarification of “… the appropriate role of defense counsel in various stages of the juvenile proceedings,” (Grindall & Puritz, 2003: 46). Second, North Carolina was selected because it responded to the state assessment by officially endorsing expressed interests advocacy for juvenile clients and instituting corresponding training for its juvenile defenders.

The counties selected for the study were chosen because of their accessibility and for the comparability of their juvenile defense systems to others in the nation. Indigent defense systems are typically one of three types: contract, assigned or appointed, and public defender (Spangenberg and Beeman, 1995). The study counties utilize the same blended system of juvenile defense: an attorney from the county’s public defender office
is primarily responsible for representing juveniles charged with acts of delinquency. Juvenile cases the Chief Juvenile Defender cannot cover are either assigned to other attorneys in the office or are appointed on a case-by-case basis by judges from a private attorneys list that is populated and managed by the Public Defender. These appointed attorneys are selected, trained, and supervised by the Chief Juvenile Defender.

**Recruitment of Participants**

The North Carolina counties chosen for this study graciously granted permission to the Investigator to conduct research among its juvenile defense attorneys. The total number of juvenile defenders eligible for interviews, including all Public Defender Office staff and their appointed attorneys, was sixty-five. All sixty-five attorneys were invited to participate in the study twice by phone, and twice by electronic mail. (See Appendix A: Recruiting Scripts and Appendix B: Waiver of Consent Form.) Interviews began on June 2, 2014 and concluded on November 13, 2014.

A total of twenty-four attorneys participated in the study. Fourteen worked in Alpha County and ten worked in Beta. Two of the Alpha County participants were full-time employees of the Public Defender’s Office and the remaining twelve were from the appointed list. One participant from Beta County was with the Public Defender’s Office while the remaining nine were from the appointed list.

The response rate for this study was twenty-four out of sixty-five, or 37%; this translates into a 63% non-response rate. Most of the non-responders did not reply to any of the four invitations. Three declined, offering no reason, and two indicated they no longer represented juveniles. One indicated he was nervous about participating in a study
where he felt he would have to justify his decisions. Three initially agreed to participate but did not follow through with their interviews.

**Participant Characteristics**

The sample included sixteen (67%) males and eight (33%) females. The average age of respondents was 46 years. Seventeen participants (71%) identified themselves as Caucasian or White; Five (21%) African American or Black, and two (8.4%) as “Other.” Most participants (seventeen or 71%) reported as “Married/Partnered,” five (21%), reported as “Single” and two (8.4%) reported as “Divorced/Separated.” The average tenure of experience as a juvenile defender was 12 years with a range of one to forty-five years, and a mode of four years. The majority of participants (20 or 83%) had completed some sort of juvenile defense-related training (e.g., Continuing Legal Education, self-study, etc.), and had some other relevant background (e.g., experience as a juvenile prosecutor, counselor, etc.).

**Instrumentation**

**Pilot test.**

In preparation to finalize the interview protocols, a set of pilot interviews was conducted with a small group of five juvenile defenders who worked in non-target North Carolina counties. The pilot interview findings suggested that, while juvenile defenders recognize and expect to fulfill their official mandate to advocate for their clients’ expressed interests, they also face intense pressure from members of the courtroom workgroup to advocate “less zealously” than they had planned and to join the court in its
efforts to determine what is best for the client. Some pilot participants reported experiencing emotional stress due to these pressures and discussed a variety of techniques they employ to resolve or adapt to incompatible role expectations.

The pilot interviews were helpful, then, in confirming that role conflict is a real issue for some, in identifying some of the sources of that conflict, and in suggesting ways that defense attorneys attempt to manage the problem. Pilot interviewees’ responses about substantive issues such as these contributed to the development of the final interview protocol. Pilot interviews were also helpful in making modifications to questions that needed clarification, and in suggesting appropriate follow-up questions which were incorporated into the final interviews.

**Constructs and instruments.**

**Role conflict.**

Until Rizzo et al.’s seminal work in 1970, role conflict does not appear to have been empirically tested or systematically measured. After noting an association between role conflict and lower job satisfaction, anxiety, stress, and “coping behavior that would be dysfunctional for the organization,” Rizzo et al. developed and validated two instruments; one measures role conflict and the other measures role ambiguity (1970: 154). Rizzo’s instrument has been the hallmark measure of role conflict in subsequent relevant scholarship. However, because its items could be construed as too generic and do not allow for qualitative responses, the instrument was deemed unsuitable for the present study. For example, responses to a Rizzo et al. prompt like, “I receive incompatible requests from two or more people,” might be artificially high given the
adversarial nature of the juvenile defender role. Katz and Kahn’s four sources of role conflict, described in the Statement of the Problem section, provided a more easily-tailored rubric for this study’s measures (1966).

The finalized interview protocols included some questions that are operationalizations of Katz and Kahn’s role conflict theoretical framework (1966). The focus of Katz and Kahn’s theoretical framework was the general notion that role conflict emerges from the conflicting expectations others have of role incumbents. Therefore, some questions were designed to elicit responses about conflicting expectations from various sources.\textsuperscript{xxiv}

The first portion of the interview focused on juvenile defenders’ meaning of their role and experience with role conflict. (See Appendix C: Juvenile Defender Role Conflict: Interview Protocol.) The role meaning questions included:

- \textit{What does zealous advocacy mean to you in terms of advocating for your client’s interests?} and
- \textit{In your opinion, should a defense attorney ever depart from advocating for the expressed interests of a client?}

The role conflict questions were designed using Katz and Kahn’s four sources of role conflict (1966). \textit{Intrasender} and \textit{intersender} sources of role conflict were tapped with the following questions:

- \textit{Do you ever feel like there are conflicting expectations of you in your role as a zealous advocate for juveniles? How so?}; and
- \textit{What do you think is the source or sources of these conflicting expectations?}

\textit{Person-role} sources of role conflict were tapped using the question:

- \textit{Do you ever feel like you, personally, are conflicted about your role as a zealous advocate for juveniles, or what it requires you to do? How so?}
Interrole conflict was not directly investigated because it does not implicate factors in the juvenile justice system that may be responsible for juvenile defenders’ experiences of role conflict. However, it was indirectly investigated by examining responses to other questions where participants might have volunteer that other roles they have, such as mother or father, presented them with a conflict about their role. However, when participants volunteered these situations, they implicated person-role conflict since the conflict was often internal and involved a conflict of values as opposed to a conflict of roles.\textsuperscript{xxv}

The interview questions were designed using three additional sources of information. First was the invaluable expertise of Eric Zogry of the North Carolina Office of the Juvenile Defender. Mr. Zogry oversees the quality of juvenile counsel for the entire State of North Carolina. He served as a sounding board for interview question wording, provided the Investigator with copies of his Office’s reports, and provided expertise on North Carolina’s juvenile justice system and process. Second were the findings of the pilot study discussed earlier in this chapter. Third was the North Carolina state assessment discussed previously. It provided direction for questions such as, \textit{does the stage of the process affect your zealous advocacy?}

The interviews encouraged participants to elaborate on their answers. They also allowed the Investigator to follow-up with questions about sources and impact of role conflict and related pressures. For example, participants were asked:

\begin{quote}
\textit{When there are pressures that prevent you from being as zealous an advocate as you would like to be, how does that affect case outcomes?}
\end{quote}

\begin{quote}
\textit{What is your impression of how these kinds of experiences have affected the quality of your work?}
\end{quote}
What is your impression of how these kinds of experiences have impacted you as a juvenile defender generally?

Coping.

Coping has been defined as a response that is intended to change the objective nature of a stressful situation (French, et al., 1974). It also refers to behavior that “protects people from being psychologically harmed by problematic social experience,” (Pearlin and Schooler, 1978: 2).

The second portion of the interview included questions designed to elicit information about how juvenile defenders cope with role conflict. (See Appendix D: Coping Responses to Role Conflict.) These questions were adapted from Burke and Belcourt’s seminal empirical examination of coping responses to role conflict in the workplace (1974). Participants were invited to consider the experiences they had shared in the previous interview exercise and then asked several questions about their reactions. For example, they were asked:

Would you please describe if those experiences caused you any tension or stress?

Would you please describe what you have done that you found particularly effective at reducing that tension or stress?

Would you please describe a specific example of those kinds of experiences?

Would you please describe specifically how you coped with that experience?

The use of interviews allowed participants to provide rich, textual information about their experiences of role conflict, and the ways they are impacted by it, that neither a survey, nor courtroom observations, would have revealed. The exclusive use of surveys
for this study would have limited the study due to the lack of opportunity to follow up on participant responses and space to provide the thick description so valuable in qualitative research (Geertz, 1973). It might also have failed to engender the type of focus from the participant that a live interview encourages. In addition, courtroom observations would not only have been limited to what the Investigator could observe, but would have required too much inference to justify their use for this type of study.

A vignette exercise, which gave participants an opportunity to demonstrate how they cope with role conflict dilemmas, was presented in the third and final portion of the interview. (See Appendix E: Coping Vignettes.) Participants were presented with eight brief scenarios highlighting obstacles to juvenile defenders’ legitimate efforts to zealously advocate for their clients. The dilemma vignettes were selected by the Investigator from input or materials provided by Eric Zogry, North Carolina’s Juvenile Defender, Tamar Birckhead, Associate Professor of Law and Interim Director of Clinical Programs at the University of North Carolina Chapel Hill, Barry C. Feld, Centennial Professor of Law at the University of Minnesota, and training materials provided by the North Carolina Office of Indigent Defense Services (NCIDS, http://www.ncids.org/JuvenileDefender/Training%20Seminars/Training%20Index.htm). The scenarios were selected to reflect a variety of relatable role conflict dilemmas that subject matter experts, and pilot participants, indicated were commonplace in North Carolina’s juvenile courts.
Data Analysis

A social constructivist orientation informed this study’s data analysis. Social constructivism assumes veracity in respondents’ retelling of their individual experiences (Guba and Lincoln, 1989). Respondents may have shared components of their lived experience of juvenile defender role meaning, role conflict, and related pressures and coping responses. An additional assumption is that this shared experience has informative value (Patton, 2002; Van Manen, 1990).

The social constructivist orientation assumes that multiple realities exist, and that different members in the same group will have diverse interpretations of similar events (Patton, 2002). It seeks to ascertain what individuals report as “truths” or constructed realities. It also focuses on how individuals make meaning of their experiences (Crotty, 1998). The social constructivist approach enabled the investigator to explore the unique experiences of each respondent as valid and worthy of attention. This understanding was key to social constructivism and key to fulfilling some of the foundational goals of this study.

In order to analyze the data an initial thematic framework was developed using the research questions. Similar themes were clustered into higher order categories to identify underlying patterns of meaning and interpretation (Strauss & Corbin, 1994). The initial thematic framework was amended and adapted several times during analysis as each interview was coded. The framework was finalized after the last interview was coded and previously coded interviews were reviewed and recoded to include emerging themes. Interpretive themes were developed, redefined, and retroactively applied as necessary to accommodate emerging meanings in the data as suggested by Miles and
Huberman (1994). Coping strategies in response to role conflict were analyzed using a previously established coping rubric (Hall, 1972) and category set (Burke and Belcourt, 1974). (See Appendix G: Juvenile Defender Role Conflict and Nodes.)

**Validity**

The highly investigator-involved nature of qualitative research can make establishing validity a challenge. In qualitative research the quality and credibility of the data are highly dependent on several factors including the following: investigator subjectivity; trustworthiness; authenticity; and triangulation (Patton, 2002: 544). The Investigator was the only interviewer and analyst for this study and was, therefore, the only instrument through which data were collected and analyzed. This makes for more consistent data analysis, but the analysis may suffer from investigator bias. It was thus incumbent upon the Investigator to be persistently mindful of any predisposed notions about juvenile defenders’ experiences of role conflict, relevant pressures, and resultant coping. She also needed to be mindful of any predisposed notions about juvenile justice matters overall such as critical or supportive thoughts regarding the juvenile court’s orientation (i.e., *parens patrie* vs. due process).

The Investigator designed this study because of her beliefs about the value of the United States Constitution, due process protections, human development, and the professional development of law practitioners, particularly of those who safeguard the due process rights of minors. These beliefs could have affected her objectivity throughout the study. However, the Investigator’s experience and rigorous training in scientific method have allowed her to develop the skills necessary to manage bias resulting from
her beliefs or perspectives. She has spent several years in training as a social science investigator, has conducted and published her own research, and has been trained as a lawyer and industrial/organizational psychologist. She also has several years of experience conducting interviews and working with courtroom workgroup members in a variety of roles. The Investigator lacks direct experience in the juvenile defender role. Not having performed that role, however, could allow her more objectivity. Since 2004, the Investigator has made the professional development of lawyers her primary research agenda.\textsuperscript{xxvi}
Chapter Four – The Defender Role and Role Conflict

Findings are presented in this chapter and the next. Chapter Four describes how juvenile defenders interpret their role as “zealous advocates.” Juvenile defenders’ interpretation of their role—especially given the clear role definitions provided by the ABA Model Rules of Professional Conduct and the North Carolina Role Statement—lays the foundation for understanding how they experience role conflict and justify departures from their role. The chapter concludes with a discussion of role conflict sources and impacts.

Role Meaning and “Justifiable” Departures

The Model Rules of Professional Conduct (2013) define the lawyer role as having two functions: advisor (i.e., counselor) and advocate (pmbl. § 2). The Rules further state that, in the advisor/counselor function, the attorney “provides an informed understanding of the client’s legal rights and obligations and explains their practical implication” and, in the advocate function, “zealously asserts the client’s position [emphasis added] under the rules of the adversary system,” (ABA Model Rules, 2013: pmbl § 2). Participants readily made the distinction between the advisor/counselor and advocate functions when they explained that the counseling (e.g., advising and strategizing) function, unlike the advocate function, does not require them to prioritize their client’s expressed interests.

Legal Counselor Role: Educate and advise

Several participants recognized that their role as legal counselors/advisors does not involve their clients’ expressed interests. Advisors provide expert legal advice about
their clients’ circumstances, rights and responsibilities, and counsel them about strategies and possible case outcomes. Participant 005 concisely explained, “your client gets to make the ultimate decision as to where you go with the case; as I tell a lot of my clients: you get to decide practical, I get to decide the tactical.”

Participants indicated they would not expect their juvenile clients, individuals of tender years who lack the legal education of attorneys, to provide their own legal advice. Many also recognized that children make unique clients because of their lack of life experience and less developed decision-making capacity. Therefore, juvenile defenders are not expected to prioritize their juvenile clients’ expressed interests when performing as legal counselors.xxvii

The Guidelines specify that defense attorneys must treat their juvenile clients just as they would their adult clients (NCCIDS, 2007: 1). Since attorneys would not defer to their adult clients when it comes to legal strategy and advice, their reluctance to defer to their child clients in these matters is understandable. However, participants do recognize the importance of effectively communicating strategy and advice to their child clients, as explained by Participant 022.

I think even in the more technical aspects of performing your job whether it's pre-adjudication, whether it's filing motions, at every point I feel that you should be explaining the law to your clients. … There will certainly be points where in my experience [clients] will almost always defer to your judgment because we're attorneys and because they don't really know what a motion means or they may not understand what precedents there are when it comes to a specific legal aspect of their case (022).

Participant 022’s comments address more than just strategy. He makes an important point about the need to explain the law to clients. The legal counselor function does not end with providing information, however. Participants commonly extend their
counselor function to attempts to persuade clients to change their interests when, in the view of the attorney, doing so would be beneficial.

The persuasion task may be construed as a link between the counselor and advocate functions. For example, if despite the attorney’s advice a juvenile client expresses desired outcomes that, in the experienced eyes of the attorney, are not feasible or sensible, the attorney may try to persuade the client to change those desired outcomes. This situation can be referred to as a “conflicting-client-interests” dilemma; the client expressly wants specific things but the attorney views those wishes as undesirable for whatever reason. If the attorney is successfully persuasive, she will not face the ethical dilemma of advocating for a client’s expressed desires with which she disagrees. She will also not face the ethical dilemma of departing from the zealous advocate role since it requires that she advocate for her clients’ expressed interests.

Legal Advocate Role: Pursuing the client’s expressed interests

The definition of an “advocate” is “a person who assists, defends, pleads, or prosecutes for another,” (Garner and Black, 2006: 23). This definition implies that an advocate stands in and uses his voice to speak for another, a view that was prevalent among participants in this study. Participant 003 explained, “[i]t's my job to be that juvenile's voice.” And, Participant 001 noted, “my role in the court system is to be the voice of the juvenile… not to be what's the best interests of the juvenile.” In the following excerpt, Participant 011 describes how she communicates this notion to her clients:

zealous advocacy means … you try and figure out what your kid really wants. You try and be their voice. … And I explain to them you're my
boss, I am your voice to the judge. I'll filter it so you can cuss all you want to me and I won't [cuss] to the judge.... To me zealous advocacy means really trying to get what that kid wants and make them feel heard even when you know you're going to go down in flames in front of a judge (011).

Participant 011’s “boss” analogy, shared by other participants, reflects her belief that her child clients have the capacity to form and articulate their own interests even if she has to make some effort to discern what those are. She also appears to believe her advocate role entails accepting the consequences of that advocacy as long as her client feels he has been heard. Another way to illustrate the voice analogy is to discuss the repercussions of its lack.

Some participants pointed out the potential consequences of not serving as their client’s voice because of their special role among other justice system functionaries. For example, Participant 004 argued, “if I don't give voice to what they want then nobody else does. …If I don't speak up for my kid, nobody hears his or her voice.” Several participants openly recognized that a key function of their role is to serve as a check against other, arguably more powerful, figures in the courtroom. For example, Participant 004 noted:

I've come to realize that my job as a zealous advocate and as a defense counsel is sometimes to be the thorn in the side [of the court’s authority]. And I'm willing to do that and so my role ... is sometimes for me to hold up my hand and say stop. And if they stop, fine, and if they don't, then try to do whatever I can to slow things down and say, “take another look at this, consider this alternative,” (004).

Other participants argued that they balance the predominant best interests forces (e.g., the court counselor and judge) in the courtroom. In other words, the juvenile already has the court counselor, the judge, the prosecutor (to some extent), and the
system at large serving his best interests, making the defense attorney’s advocate role all the more critical. Participant 018 explained this perspective in the following way:

I think that there are enough people in the courtroom to make sure that the best interests of the juvenile is observed so I think that yeah, just generally it's a[n] uphill battle and everybody thinks they know what the juvenile should be doing or what's in the juvenile's best interests versus what the juvenile might want and even from a personal standpoint [as opposed to a legal professional’s standpoint] sometimes I know that a 14-year-old doesn't need certain things but if that's what they're asking for, my job is to make sure that their voice is heard and that I'm representing them and asking for what they want (018).

These perspectives—that the defender serves as the client’s voice and balances courtroom power and viewpoints—reflect the juvenile defender values set out in the NCOJD’s Role Statement (2005), the North Carolina Juvenile Delinquency Performance Guidelines (NCCIDS, 2007), and the National Juvenile Defender Center Standards (2012). That participants’ views show consistency within themselves, and with these guidelines, suggests there may be less role confusion among North Carolina’s juvenile defenders in 2014 than when the state assessment was conducted in 2003. However, participants’ interpretations of their advocate role reflected some inconsistencies even when it came to the expressed interests component. This chapter next addresses participants’ interpretations of their advocate role more deeply.

Advocate type.

Participants’ responses indicated a clear understanding that their role as zealous advocates included some focus on expressed interests advocacy. Some openly acknowledged the official expressed interests advocate mandate. However, some pointed
out factors that may contribute to role ambiguity and a few participants suggested the expressed-best interests dichotomy is an oversimplification.

Most participants volunteered that their definition of zealous advocacy included consideration of their clients’ expressed interests. Participant 008 put it plainly when he stated, “Okay, here's the thing: you have to, as a lawyer and you know this, you have to advocate what your client's position [emphasis added] is. And your client can have a stupid position or have a wrong position, or have a dumb position (008).” Additionally, Participant 009 acknowledged, “we're so ingrained that as a zealous advocate you have to do what your client wants,” and Participant 005 stated, “I believe we are ethically bound to do what our client wants us to do.” Participant 016 provided one of the most illustrative explanations of the expressed interests advocate focus:

I think zealous advocacy first of all starts with finding out what it is that they are hoping to accomplish and then presenting that position and presenting it in the best way possible whether that's gathering information, providing resources for the client, for example if the client wants to do probation, you want to make sure to set them up for success and, of course, advocate on their behalf in a way that promotes their interests [emphasis added] (016).

Participant 016’s comments certainly reflect a perspective that prioritizes her clients’ expressed interests, as do comments from almost all the other participants in response to the role-meaning question. In fact, only three participants did not explicitly refer to clients’ expressed interests when asked about zealous advocacy. Instead, these three discussed the importance of pursuing the “best outcome” or “results” for their clients as a major part of their “zealous advocacy” definition. Some participants, like 007, may view the best outcome as “minimizing as much damage as possible to my clients.” The following excerpts illustrate.
I think for me what [zealous advocacy] means is getting the *best outcome* [emphasis added] that they can possibly get and whatever I need to do within the parameters of my job or ethics and everything I need to do that to get the best outcome they can get (015).

Well, in this case, juvenile clients, [zealous advocacy] means, particularly, fully defending them against criminal charges that they've been charged with and making sure that we get the *best results* [emphasis added] for their particular case (019).

Even though these participants did not explicitly discuss their clients’ *expressed* interests, their responses do not necessarily indicate a subrogation of expressed interests advocacy. For instance, Participant 015 recognizes he must advocate within the parameters of his “job” or “ethics.” He is presumably aware of his ethical responsibility to advocate for his child clients’ expressed interests since not only has he taken an oath to represent *all* his clients in this way pursuant to the Model Rules of Professional Conduct, he has also presumably been made aware of his jurisdiction’s explicit rules on expressed interests advocacy. Additionally, it is clear that Participant 019 views his role as one that “fully defend[s]” his clients “against criminal charges.” What is not clear is his willingness to disregard his client’s expressed interests to do so.

The preceding discussion reflects participants’ responses to an open-ended question about the meaning of zealous advocacy. That participants nearly unanimously recognized the central importance of expressed interests advocacy certainly does not indicate the level of role confusion or conflict suggested by Grindall and Puritz’s (2003) report. However, responses to a subsequent interview question were far more varied. xxviii When asked to indicate what interests they represent, only 9 out of 24 identified their client’s expressed interests. (See Appendix H: Table 1.) A number of participants identified as a number of alternative types of advocate, such as, “legal,” “personal,” “best
personal desired,” “true,” or “best defense.” Further, three participants further declined to answer the question.

An important point to make about those who identified as “expressed” interests advocates relates to their tenure as attorneys. Participants were split into two groups according to level of experience: those with more than ten years of experience and those with ten or fewer years of experience. Interestingly, less than a third (4/14 or 28.6%) of the most experienced participants identified as expressed interests advocates while half (5/10 or 50%) of the least experienced participants identified as expressed interests advocates. Even though it is difficult to ascertain why more experienced attorneys would more often identify with a role alternative to the one they are ethically mandated to fill, one might consider the fact that the North Carolina Role Statement and Juvenile Defender Guidelines were only published ten and seven years, respectively, before these data were collected. The Role Statement was distributed in 2005 so perhaps it is the newer, less experienced, attorneys who have been able to better internalize the new paradigm.

The fact that more than half of participants failed to identify themselves as expressed interests advocates after participating in an hour-long interview in which the expressed-best interests dichotomy was a focus is interesting. The fact that so many participants identified as alternate types of advocate may reflect the complex nature of the juvenile defender role. However, whether or not it indicates role confusion requires further consideration.

A juvenile defender who identifies herself as her client’s “personal,” “best personal,” or “true” interests advocates could still recognize her duty to prioritize her
clients’ expressed interests, even if she chooses to refer to it differently. Even though this assumption would require a level of inference the Investigator was not comfortable making for the purposes of this study, it could indicate that the dichotomy between expressed and best interests is oversimplified instead of indicating the existence of role confusion among juvenile defenders. In fact, the participant who identified as his client’s “true” interests advocate, specifically cautioned the Investigator against treating expressed and best interests as mutually exclusive. In addition, participants’ identification as their client’s “legal” interests advocates may indicate they are more focused on the counseling or strategizing function of their role than confused about it. The same could be said for Participant 007 who identified as his client’s “best defense” advocate.

Participants who identified as their clients’ “best” interests advocates (012, 015, 016, 017, 019) present a conundrum; in other parts of the interview they clearly recognized that their zealous advocate role requires their prioritization of their juvenile clients’ expressed wishes. The same could be said for the participants who declined to complete the advocate-type task, but their responses to the open-ended question were more nuanced, suggesting they believe that zealous advocacy requires considering clients’ best and expressed interests (Participants 005, 006, and 009). For example, Participant 006 admitted that while she pushes for the client’s best interests, she tells her clients that they are the ultimate decision-makers. In addition, Participant 009 indicated that he advocates for his client’s best interests but not in a way that he believes fully violates his zealous defense role. This is the explanation he provided:

In terms of advocating for the expressed interests of the client, again, I take a step back and… with the exception of mental health or drug abuse …I would always advocate exactly what the client wished. But I do think I am the representative of the child and, at the same, time look after his best
interests and so I would say that if the client had an expressed interest which I thought was very much in conflict with a holistic treatment or something that was going to better him in some sort of way I might… sidestep a little bit and say, “but you know historically I'm not sure that's the best course of action.” [I would] not completely… contradict the client, but point out alternatives that I think might be helpful and that's not something I would do in the adult system so, I wouldn't say that's necessarily departing from advocating… well, it's slightly departing from advocating for the [client’s expressed interests]… (009).

The more nuanced responses of these three participants could indicate that they balk at the expressed-best interests dichotomy. Like Participant 008, they may view such bifurcation as overly simplistic. This view may have been responsible for their reluctance to identify with a particular type of advocate for the completion task, and it may be responsible for others’ identification with alternative types of advocate. A larger future study on this topic would be useful in teasing out these relationships.

Again, notwithstanding the variation in the advocate-type (i.e., completion) task responses, participants demonstrated consistency in their recognition of expressed interests advocacy as central to the zealous advocate role they fill for juvenile defendants. These findings demonstrate that just over a decade after North Carolina’s state assessment revealing role confusion among its juvenile defenders, and almost a decade since the initial dissemination of its Role Statement, North Carolina’s juvenile defenders appear to recognize and understand their role as expressed interests advocates. At the same time, there are definite inconsistencies in participants’ responses to the advocate-type task that could reflect a number of issues. Again, they could indicate that the expressed-best interests dichotomy is more complex than one might expect, that North Carolina’s mandate has not been completely internalized among its juvenile defenders, or that role confusion still exists among North Carolina’s juvenile defenders.
Whatever their cause, it is clear that these inconsistencies reflect some reluctance on the part of juvenile defenders to restrict their role definition to “expressed” interests. Another manifestation of this reluctance can be seen in the extent to which participants view role departures as justifiable. This topic is addressed next.

**Role departure views.**

Most participants identified departures from expressed interests advocacy as *not* justifiable. (See Appendix H: Table 1.) Many referred to the legal profession’s ethical mandate or struggled to identify a scenario where a departure would be justified. Some participants believed such departures were at least sometimes justifiable and provided explanations that will be addressed in the remainder of this section.

These findings could be both encouraging and discouraging. They are encouraging in that they may reflect the extent to which juvenile defenders have internalized the NCOJD’s Role Statement since its first dissemination in 2005. There are no data from the 2003 state assessment to indicate if the present study reflects an increase or decrease in the extent to which juvenile defenders view role departures as justifiable (Grindall and Puritz). The assessment indicated that North Carolina’s juvenile defenders were regularly co-opted into the juvenile court’s best interests orientation; the state then went to great lengths to counteract this practice. Thus, participants’ responses lead one to believe that the present study may reflect a *decrease* in the extent to which departures are seen as justifiable (Grindall and Puritz, 2003).

This study’s findings could also be somewhat discouraging because they indicate that many juvenile defenders in North Carolina believe role departures are justifiable *despite* nearly a decade of the role being clearly and officially defined as expressed
interests. A decade may not have been sufficient time for the policy to sink in, but these findings also make it seem as though there are still powerful pressures encouraging juvenile defenders to depart from the role. These pressures likely originate in the court system and its stakeholders, as suggested by the North Carolina state assessment and confirmed by this study’s findings (Grindall and Puritz, 2003).

On the other hand, the persistent view that departures are justifiable could reflect role confusion or critical points of disparity between perspectives about representing juvenile and adult defendants. In other words, this view could be reflective of factors that are unique to juvenile defense that make a strictly expressed interests advocacy unpalatable to, or impracticable for, some juvenile defenders. In fact, some legal scholars suggest juvenile defense may be a unique type of practice that does not lend itself to the traditional expressed-best interests dichotomy (e.g., Birckhead, 2010; Henning, 2005). Nevertheless, participants were quick to point out the factors they believe create motivations, and possibly justifications, for zealous advocate role departures. These factors will now be discussed.

**Departures: Client age.**

Participants unanimously identified their clients’ status as children (e.g., individuals with less capacity and autonomy than adults), as a source of role conflict in some way. However, not all participants indicated they believe resulting role departures are justifiable. Participants identified a number of client-related factors they believed could justify a departure from the zealous advocate role such as: 1) the client’s age (e.g., 004, 009, 019, 020); 2) the client’s capacity/mental health (e.g., 005, 007, 015, 004, 009,
014, 022); 3) the client’s living/health conditions (e.g., 002, 006, 016); and 4) the client’s substance use status (e.g., 005, 007, 009).xxix

Birckhead astutely points out that, “[i]n any attorney-client relationship, assumptions, biases, and feelings of resignation may arise, but when the client is a child, this dynamic is magnified as such factors as paternalism, role confusion [emphasis added], and culture clash enter into the mix,” (2010, p. 986). Juvenile defenders’ views on children’s ability to understand what is best for them or to articulate their own interests can clearly impact the way these attorneys view their role and ethical duties. In fact, participants were specifically asked if having a very young client ever affected their zealous advocacy role. Once again, participants’ responses reflected Birckhead’s assertions as is described in the following paragraphs.

Participants reported that limits to expressed interest advocacy sometimes involve the extent to they believe child clients can form, or articulate, their own interests. For example, Participant 020 remarked that, “the client is 14, 15 years old and they’re generally idiots.” And, Participant 019 answered, “their age” when asked what he thought contributed to juvenile clients’ lack of understanding of what might be best for them.

Participant 020 articulated very well the tendency for some juvenile defenders to feel more compelled to depart from expressed interests advocate role due to their client’s age. The following excerpt illustrates.

I think the younger they are, [I’m] absolutely sure going to fall into that best interests analysis more and more so … I think… they’re going to have a hard time even understanding what's going on much less expressing what they want to happen with the case so absolutely maybe I can imagine in those cases thinking much more along the lines of best interests (020).
Participant 009 explained how easy it is for a juvenile defender to be so compelled.

"Young children just don't often fully appreciate what's going on and ... I feel like there's some, a little bit of a knee-jerk reaction when it's not clear what the kid wants, or what the kid understands to do what you think is the right thing. I would say that can affect the zealous advocacy role ... that you are really snapping much more towards the, “let’s help the kid” as opposed to defending the kid when there are attributes [for instance, inculpatory evidence] in place … (009).

As these excerpts indicate, some juvenile defenders struggle with the boundaries of their role as a result of their clients’ age, and the decision-making implications thereof. Juvenile clients’ age presents a complicated pressure because it calls into question the underlying reason for the child’s lack of understanding. For example, is his lack of capacity solely due to his age? Or, is it caused by a mental illness, or neurological deficit that may, or may not be, amenable to diagnosis or treatment? If it is the former, what are the implications for the client’s ability to articulate an interest at this particular point in his development? If it is the latter, will there be internal, or external, pressure on the defender to depart from the expressed interest advocate role so that the client can receive services even if he did not commit the act of which he is accused? These are critical questions for juvenile defender role research because of their implications for juvenile defense practice and policy. Some scholars have suggested a client’s young age could be viewed as a “cognitive deficit” similarly to how mental illness is viewed by defense attorneys with their adult defendants (see Cohen, 1965). These are critical questions for future research.

These questions also raise concerns about the extent to which juveniles’ status as individuals lacking experience, maturity, and capacity to make complex decisions should
be considered in the courtroom. Given the United States Supreme Court’s growing recognition of the need to account for age in justice system decisions (see, e.g., *Roper v. Simmons*, 2005 and *J.D.B. v. North Carolina*, 2011), the time may be ripe for addressing the implications of juveniles’ age-related mental status for juvenile defense. This issue is also beyond the scope of the present study but is worthy of future empirical attention.

Suffice it to say that juvenile defenders face pressure to depart from their expressed interests advocate role by mere virtue of their clients’ status as juveniles. Participants clearly recognize this reality and find themselves motivated to depart from the expressed interests advocate role; some feel justified departing from the role. This is particularly true for those who have had clients that are very young. It was also true for participants whose clients lacked capacity for non-age-related reasons or had special needs. These two justifications for role departures are collectively addressed next.

**Departures: Client special needs.**

The vast majority of participants felt that having a special-needs client affected their zealous advocate role. Even though not all participants had had the opportunity to work with these types of clients, virtually all agreed that having this type of client would, or could, impact a defense attorney’s zealous advocacy in some way, though not necessarily causing a departure. Participant 021 is a “legal” interests advocate who views role departures as unjustifiable, even at the disposition stage. He is the only participant to respond “no” to the question about special needs clients; he declined to provide any further comment. Even still, he demonstrated a recognition of the unique dilemma having
a special needs client might present in his response to the relevant vignette exercise, (i.e., “John” who has a low IQ and Attention Deficit Hyperactivity Disorder).

Participants predominately justify departures from the expressed interests component of their zealous advocate role when it comes to clients who lack capacity, or suffer from a mental illness. The following excerpt demonstrates one participant’s rationale.

I can think of a scenario though where you might have to [depart from the zealous advocacy role] and that's where your client’s severely mentally ill. … if I've got a client that I think is incompetent from mental illness … I'm cautious about [departing from the zealous advocacy role] but yeah, I'll kind of step out of that role …But yeah, I think there's a few times where you've got a step outside that and that's when they’re mentally ill or incompetent to stand trial (007).

Participant 007 recognizes the implications severe mental illness can have for a client’s competence or capacity. As explained previously in the age discussion, an individual’s capacity determines the extent to which he can understand the charges against him and assist in his own defense. Participant 007 appears to view mentally ill clients whose competence is compromised as lacking in capacity. He therefore justifies departing from the zealous advocate role with this type of client.

Like Participant 007, other participants who justify zealous advocate role departure for clients with special needs emphasized the client’s lack of capacity to assist in his or her own case. In other words, participants recognized that clients with special needs could have limited ability to know and articulate their wants. The following excerpt is illustrative.

[I]f I have issues about my juvenile's capacity to proceed, or to understand the process, then my role might switch to a best interests advocacy because I can't get to their expressed interest or I can't trust that they, as
much as a juvenile can understand, that their expressed interests may be against their best interests (014).

Participant 014 views these circumstances as worthy of a zealous advocate role departure because persisting in the traditional role would not be feasible. If clients are not capable of expressing their interests, the attorney lacks an expressed interest for which to advocate. Participant 014 implies, though, that he may use some discretion because he recognizes that his client may articulate an interest, but that interest may not be trustworthy because of the client’s lack of capacity. He therefore appears to view untrustworthy expressed interests in the same way as unarticulated interests. Under these circumstances attorneys may be left to discern on their own what would be best for their special needs clients and they might, as indicated by 014, “switch to a best interests advocacy.”

For reasons similar to those discussed in the previous section on client age, clients who lack the capacity to understand the charges against them, or to assist in their own defense, present a special challenge for juvenile defenders to adhere to the expressed interests advocate role. How can a defense attorney advocate for the expressed interests of a client who, due to compromised cognitive and decision-making ability, cannot clearly form or articulate a wish? Participant 014 identified this dilemma in an earlier excerpt; the following excerpt addresses it more thoroughly.

[I]f there were a mental illness problem on the part of my client where I really don't feel my client fully understands what's going on and, their view of the world due to their mental illness is skewed… and that's really the most difficult clients [sic] to represent. … sometimes you just don't know the truth. And, you don't feel confident that your client is either giving you the truth or is capable of giving you the truth. … And they just weren't in touch with reality so … now I really have a question about whether it's true so to the extent of representing the child's expressed interests you don't feel like the child's expressed interests are based upon
reality then it's a little difficult to represent, strictly, their expressed interests (003).

Participants’ approaches to their special needs clients do not appear to contravene North Carolina’s Professional Guidelines (Newman et al., 2008). The Guidelines encourage defenders to follow an outlined procedure when they have a “good faith doubt” as to their client’s capacity (Newman et al., 2008: 8). Beyond delineating the procedure, the Guidelines say very little about how counsel is to respond to such a situation. However, they do state that, “[a]lthough the juvenile’s expressed interests ordinarily control, counsel may question capacity to proceed without the juvenile’s assent or over the juvenile’s objection, if necessary,” [Guideline 5.2(b), Newman et al., 2008: 8]. This allows juvenile defenders some formal justification for departures from the role that are based on client capacity issues. Their role with clients who lack capacity or struggle with mental illness may be somewhat like the role of those who represent adults with mental illnesses (Cohen, 1965). Even though it is beyond the scope of the present study, this analogy may be a useful one to explore in future research.

A client’s mental state is a critical factor in the attorney-client relationship regardless of the client’s age. Participants unanimously recognized that situations involving mentally deficient clients require them to not only view their clients’ expressed interests with caution, but make it likelier that they will depart from their expressed interests advocate role. As they explained in their responses to the vignette involving a mentally deficient client scenario (“John”), participants have a systematic way of handling these clients. The process typically begins with a client competence assessment, if the client’s capacity is in question, and then the defender proceeds with great care in
terms of responsibly communicating with the client. This approach appears to indicate
the North Carolina’s Guidelines for juvenile defenders have been internalized.

The consistent way participants approached special needs clients begs the
question of whether their approaches truly constitute departures given the established
procedures for handling clients with special needs. Perhaps the expressed interests
element of the zealous advocate role presumes a competent client who has full use of his
faculties. Under this presumption, when juvenile defenders take a best interests approach
with special needs clients they neither depart from their role, nor violate their ethical
mandate.

Nevertheless, juvenile defenders appear to believe that when a client’s mental
capacity makes the expressed interests component of the zealous advocate role almost
impossible, a departure from the role is justified. Some participants raised an extreme,
and rare, type of scenario in which they would likely depart from the role even if the
client’s capacity were not compromised. These situations are referred to as mandated
reporting scenarios and they are discussed next.

Departures: Mandated reporting.

In response to the role-departure question a small number of participants referred
to their obligation to depart from their expressed interests advocate role in a mandated
reporting situation (e.g., client is danger to self; in a dangerous home situation, or a
danger to others, etc.). Participant 006 stated that departure from the role would be
justified, “if someone is going to do self-harm or harm to others,” And, Participant 002
explained the same justification in the following way:
I will give you an example. …. [Y]ou know you have to keep [your client’s] confidences, but in the situation where you think there might be abuse or neglect of your client, you have the authority to report that irrespective of what your client wants. In other words, this client didn't want me to tell the part about his dad beating him because that was the social services aspect of the case. He didn't want to be removed from his mom. His mom was allowing his stepdad to beat him … (002).

Mandated reporting situations are of considerable and unique concern to juvenile defenders because they involve two areas of ethical consideration for attorneys and one area of consideration for them as North Carolina citizens. First, of course, is the defender’s ethical duty to adhere to the expressed interests advocate role. Second, is the defender’s duty to maintain her client’s confidence. Attorneys are required to maintain their clients’ confidence with very few exceptions, (e.g., where a client may be a danger to himself or others, or in danger from others). For instance, if a juvenile defendant shares information with his defense attorney indicating that he threatened his stepfather with a knife because his stepfather was beating him, the attorney may feel compelled to use this information to defend her client. However, if the client does not want the attorney to use the information in the defense strategy, the attorney must comply according to her duties as a zealous advocate. The third area of consideration for juvenile defenders is that under North Carolina law, all citizens are mandated reporters for child abuse incidents. This law could place juvenile defenders at odds with their confidentiality duty to their clients.

Domestic abuse can frequently be a part of some juveniles’ lives. In extreme situations, it can be the reason a juvenile has been charged with a crime. This was the case with the “Steven” vignette. Steven has been charged with simple assault against his mother and expressly desires placement back in the home; this is an unlikely outcome given that his mother is the victim in Steven’s charges. Steven has claimed he was being
abused at the time and acting in self-defense. This only becomes a problem if Steven does not want his attorney to report the abuse he has claimed he suffered. Again, since attorneys are mandated reporters in the state of North Carolina (003), a juvenile defender may seek to involve the Department of Social Services (DSS) in a case like Steven’s as several participants indicated when they responded to the “Steven” vignette. To be clear, involving DSS would be a zealous advocate role departure because Steven has not given his consent to his attorney to share this information.

Participants who view role departures in mandated reporting situations as justifiable, notwithstanding the strict rules about attorney-client confidentiality, represent a modest consensus. Even though Participant 002 noted that the “Steven” scenario is “[v]ery similar to a lot of cases that [he’s] had over the years,” the fact that so few participants volunteered this specific type of pressure to depart from the role could indicate the dilemma is not very prevalent. Nevertheless, this is an issue that would benefit from future examination, particularly in jurisdictions with mandated reporting laws like North Carolina’s.

As made clear in the preceding paragraphs, participants identify a small number of situations where they view zealous advocate role departures as either: not true departures (e.g., when clients suffered from severe mentally illness); or otherwise justifiable. Participants who raised the issues of mental capacity and mandated reporting situations appear to form a consensus that an alternative approach under those circumstances is acceptable. However, there is no such consensus for client substance use problems. This topic is addressed next.
**Departures: Client substance use/abuse.**

Even though North Carolina’s Guidelines are silent on this issue, juvenile defenders identified client substance use or abuse as a circumstance where they might consider departing from the expressed interests advocate role. Participants noted that they might consider a role departure because of the potential for compromised cognitive functioning as a result of drug use. Participant 009 explains this perspective in the following excerpt.

> If there is a substance abuse or mental health issue obviously that's something that has to be brought up with the court and just [like] if you have someone who's crazy you don't go and then run and do exactly what they want that needs to be dealt with beforehand (009).

Participants seem to have a pretty cohesive idea of how to handle this type of scenario. They typically directly address the matter with clients, explaining to them their options and encouraging them to accept assistance, despite the implications of a “responsible” (i.e., “guilty”) plea. Some participants reported getting creative with the circumstance as Participant 007 explains in the following excerpt.

> [O]n one occasion… the juvenile was facing a lot of time and we had some issues to fight with but he had a really bad drug problem too and so I negotiated with the prosecutor and the court counselor to reduce the charges but get him in drug treatment. And so, that's kind of stepping, I guess, outside of the role because he has something to fight with … He could've been adjudicated [responsible] and then had all the problems that go with that …as far as the … heavy charges he was facing so I guess that's kind of how you step outside [the zealous advocate role] sometimes (007).

Other times, participants reported prioritizing the client’s expressed interests in order to comply with their zealous advocate role, but not without some internal conflict. Participant 014 explains the thought process he undergoes when wrestling with this situation:
Oftentimes I may get a case where my client is telling me that they are addicted to drugs, using drugs. And so when the case gets resolved they want to go back and get high. And then I have to determine whether or not what they're telling me is well, are they telling me information such that I feel that they're a danger to themselves, that would raise an ethical obligation for me to disclose that? Or, are they giving me information that I don't feel that it creates an issue where they pose a danger to themselves or others? I don't have a duty to disclose it. And so now I have to push aside the tendency to lessen the zealousness of my advocacy in hopes that the juvenile is found responsible so that they can get services as opposed to continuing to advocate zealously using every tool available to me to get the juvenile’s expressed wishes which is normally to walk away even though I know that they may be walking away to get high. … (014).

Even though participants view substance use as posing a similar problem to mental deficiency, they do not seem to view actual departure under this circumstance as justifiable. Clearly, there could be some question as to the client’s capacity in the case of drug or alcohol abuse, but participants seem to view it as a less serious matter than with an age, or mental illness, capacity question. In fact, Participant 006 argued, “I don’t think being an addict affects making decisions for yourself unless you’re high right there.”

Some of the reasoning behind this perspective may have to do with two critical distinctions between organic or trauma-induced mental deficiency and mental deficiency due to drug or substance use. One is that an organic or trauma-based mental deficiency is presumably chronic (at least from the time of the trauma), whereas a substance-based mental deficiency is presumably acute or episodic, as Participant 006 stated, “unless you’re high right there.” The second is that clients who consume substances do so voluntarily, while an individual suffering from trauma-based mental deficiency does not choose to do so. Thus, the presumption with clients who present with substance use behavior could be that they are otherwise competent but make poor decisions much like
any juvenile. These presumptions could explain participants’ reluctance to justify expressed interests role departures in substance use situations.

In the “James” vignette a client presents with drug abuse behavior and participants are told there are indicators the evidence was illegally obtained. Participants are not told what James has expressed he wants, but are asked how they would cope with the scenario based on the information they have. As participants explained during their interviews, and in their responses to the “James” vignette, this type of dilemma presents them with pressure to depart from the expressed interests advocate role because of their desire to get the client help. Nevertheless, participants’ responses indicated that, despite failed attempts to persuade their clients to change their interests, participants ultimately advocate for their clients’ expressed interests. So, participants do not seem to view client substance use or abuse as justification for zealous advocate role departure.

As made clear in the above paragraphs, a number of factors can influence how juvenile defenders view their zealous advocate role. These factors can also influence, or be influenced by, the role conflict experiences juvenile defenders face when they inhabit their role. These experiences are discussed in the following section.

**Role Conflict Manifestations and Sources**

For this study, “role conflict” was referred to in a number of different ways. The interview questions referred to role conflict as “pressure to depart” from the expressed interests advocate role and “conflicting expectations” of participants in their role. Throughout the interviews participants also referred to “pressures to depart” as “pushback.” Therefore, “pushback,” “pressure to depart,” and “conflicting expectations”
are all considered “role conflict” manifestations. The interview questions primed
participants to consider their zealous (i.e., expressed interests) advocate role, its meaning
for them, the extent to which they view departure from that role as justifiable, and the
extent to which others hold conflicting expectations of them in their role. It is therefore
reasonable to infer that participants’ responses relate to their experiences of role conflict
as distinguished from the normal pressures and pushback they would expect to
experience as part of the adversarial process.xxxiii

Participants unanimously reported facing some form of role conflict as either
conflicting expectations or pushback/pressure to depart from their role. Despite the fact
that a few indicated they “never” experienced it, every participant provided an example
of role conflict they had faced at some point in the interview.

Katz and Kahn’s (1966) rubric for organizing role conflict sources provided the
following coding categories: intrasender (inconsistent expectations from the same role
sender); intersender (inconsistent expectations from different role senders); interrole (the
role incumbent occupies two conflicting roles); and person-role (the role’s requirements
conflict with the individual’s values, needs or capacities). Interrole and intrasender
conflict were not supported as categories after data analysis. Person-role conflict is
addressed later in a discussion about internal forces that create role conflict. However
emerging themes followed the final category, intersender role conflict, fairly well. In
fact, most of the role conflict experiences participants reported fit easily into this category
and were further categorized by source.

To reiterate, intersender role conflict occurs when the role incumbent experiences
conflicting role expectations from different role senders (sources of role information). For
juvenile defenders, an example would involve discrepant messages about the juvenile
defender role from the Model Rules of Professional Conduct and judges. In other words,
both the Rules and judges wield authority over juvenile defenders but they may send
these attorneys different messages about how juvenile defenders are expected to perform
the role. For instance, the Rules require these attorneys to advocate for their clients’
expressed interests while some judges may expect that defenders will advocate for their
clients’ best interests.

Naturally, all of the intersender role conflict originates with forces external to
defenders and results in pressure for them to depart from their expressed interests
advocate role, regardless of whether or not they accommodate, or succumb to, the
pressure. Participants reported facing these pressures mostly from individuals (e.g.,
parents, prosecutors, etc.) and from the system itself. \textsuperscript{xxxiv} (See Appendix I: Table 2.)

Participants also offered explanations for the role conflict they experienced. They
reported the belief that others pressure juvenile defenders to depart from their zealous
advocacy role because they do not adequately understand, or respect, the juvenile
defender role. Interestingly, participants used this same explanation for role conflict
emanating from courtroom functionaries who are trained in due process rights and who
should be knowledgeable about the critical role that defense attorneys play in
safeguarding those rights. As will be discussed later in this section, role conflict from
law-educated courtroom functionaries may result more from a lack of respect for the role
than a lack of understanding. Nevertheless, participants reported experiencing most of
their role conflict from non-functionaries, namely clients and parents.
Clients.

Participants unanimously identified clients as a source of role conflict in a number of different ways. For instance, participants’ responses to the general role conflict questions, and to the vignettes, indicate that they experience pressure to depart from the zealous advocate role because of a client’s inability or unwillingness to share information that is particularly relevant to outcomes that the client might desire. Participant 015 explained in the following way:

[W]hen a client doesn't tell me something, it always turns out bad for them. And so, … I'm thinking of times when the clients didn't tell me everything I needed to know and I went in ready to go down swinging and I had information that was very different. And so then … I kind of lose my ability in some ways to get a good outcome at least as good as maybe if I had had that information (015).

Participant 015 identified himself as a “best” interests advocate and views departures from the expressed interests advocate role as justifiable. What he considers a “good outcome” for his client may be inconsistent with his client’s desires. The attorney notes that, especially, if he believes his client “just doesn’t understand” the decision the client must make, he will “actually make a decision contrary to my client’s … wishes that would be what I thought would be better for their interests.” Participant 015’s comments illustrate a dilemma many participants raised about representing very young children with limited capacity to understand their situation. This dilemma, and how defenders view it, was addressed previously in “Role departure views.”

Participant 016 also noted clients’ tendency to “get in their own way,” and in hers, by not returning phone calls, failing to meet with the attorney, and failing to appear in court. Participant 016 explained and “sometimes they just don't show up so that can totally be an obstacle because then you either have to delay your zealous advocacy or
sometimes you're just not able to present it at all.” Sometimes clients fail to meet with attorneys because they have no means of transportation. In other instances, the failure reflects a lack of trust. Attorneys generally recognize that it takes more time and effort to build trust with juvenile clients than with their adult counterparts, but caseloads are high and time is in short supply.

Like Participant 015, 016 identified as a “best” interests advocate and views role departures as justifiable. She also recognizes the impact a client’s young age can have on his ability to understand his legal situation. Participants reported the view that clients’ youth and inexperience are partially responsible for their conflicting expectations and pushback against their defense attorneys’ efforts. Even still, participants mostly attribute this client-based role conflict to their clients’ inadequate and incorrect understanding, and mistrust, of the juvenile defender role.

Participants reported that quite frequently clients do not understand the defense attorney role, some clients do not seem to care, and some have hidden motives for resisting their defenders’ efforts. Participant 002 provided an excellent example of a situation where his hands were tied because his client had, perhaps detrimentally, declined to use a valid defense:

I had a kid come in one time 13 years old he was charged with assaulting his stepfather with a knife he had gotten from the kitchen and he and I went into the little room to talk about it. He said, “I just want to go ahead and admit this charge.” And I said, “why?” He said, “because social services is involved and I don't want to be taken away from my mom.” And I said, “what [do] you mean social services is involved?” He said, “well, the reason I pulled a knife on my stepdad is because he beats me real bad and I just finally got tired of it so I went and got a knife from the kitchen and I attacked him.” And I said, “well it sounds to me like you have a self-defense argument.” And he said, “I don't care, I don't want to talk about any defenses I just want to go ahead and admit this because I don't want social services to take me away from my mom (002).”
Participant 002, despite identifying himself as an “expressed” interests advocate, views role departures as justifiable. He provided the scenario excerpted above as an example of when it is acceptable to depart from advocating for a youth’s expressed interests. The excerpt is an excellent example of the client’s lack of understanding of, or possibly, trust in, the juvenile defender role. Participants explained that the role conflict they experience from clients oftentimes results from clients’ desire to get their court experience over with—so commonplace among youth—or intimidation by the system or their parents. Overall, clients seem to misunderstand that juvenile defenders are there to help them navigate the system and to serve as their voice. Participant 003 explained the type of situation that presents him with the most difficulty. It illustrates circumstances with which even some adult defendants might struggle.

I think that's one of my most difficult times is when I have to tell our client he has to admit to something he didn't do when it’s a kid between the ages of 8 to 14. ...... you hear people all the time, “well if he didn't do it, why did he admit to it?” Well, because he didn't want to go to prison for 20 years [the prosecutor was threatening transfer to criminal court] as opposed to being on probation. [I] think it's difficult for a kid to wrap his head around especially when he's not really going to go to prison (003).

This last excerpt is poignant because it reflects the client’s inadequate understanding of the attorney’s duties to her client, the client’s mistrust of the attorney, and the attorney’s status as an expert of the juvenile justice system. Juvenile defenders must advocate for their clients’ expressed interests but only after discussing all of their options and making recommendations about what the attorney thinks is the best course of action. Participants indicated that the best course of action sometimes differs from the client’s expressed interests. This seems to be especially true if the client is very young, or has overbearing parents.
Parents.

Participants reported that much of the parent-based role conflict comes in the form of their reluctance to allow juvenile defenders to have one-on-one time with clients. Participant 001 identified himself as an “expressed” interests advocate and indicated that he rarely experienced role conflict. Nevertheless, he reported, “I think the biggest pressure I have faced in juvenile court is being able to separate the juvenile respondent from the parents. Lots of parents do not like to have me meet with their child separately.”

This type of obstacle can have ethical implications for juvenile defenders because it makes confidential communication a challenge. When it comes to speaking with one’s client, attorneys are trained to be extremely mindful of their duty of confidentiality. This means they cannot discuss their clients’ cases with anyone without the express permission of their clients. In addition, in order to be most effective and ethical, attorneys must be very careful about communicating with their client indirectly, or through third parties.

Another ethical challenge with parent-based role conflict occurs when parents attempt to supplant their child as the lawyer’s client, or the defender as the attorney. Participant 001 further explained:

Lots of times there is an issue with being able to meet with the client confidentially without the parents present and the parents not understanding that and then the respondent getting outside pressure from the parent or guardian to do something with the case… So, basically the parent[s] tried to make decisions for the juvenile or have already talked to the juvenile and sort of told that juvenile, “we’re going in this direction,” (001).
Pushback from parents in the form of an attempt to supplant the child as client, or the defender as attorney, is a common experience for participants. Participant 005 explains how intense some of these attempts could be in the following excerpt.

You get a lot of pushback from parents and that's probably the bigger area where you get pushback. The parents many times say, “well I am the parent and this needs to happen,” and I have to explain, “they’re my client and you're not,” to the point of sometimes it becomes a semi-heated exchange (005).

Participant 005 is one of the study’s most experienced juvenile defenders. He declined to identify as an advocate type making it somewhat challenging to assess the extent to which he has internalized North Carolina’s Role Statement. At the same time, his willingness to engage in a “semi-heated exchange” in order to assert his role as his client’s, not the parent’s, defender, indicates he has fully internalized his zealous advocate role, even its expressed interests component. The fact that reference to advocating for clients’ “expressed” interests emerged frequently from his responses to questions about how he interprets zealous advocacy validates this indication.

Participants also commonly reported parents’ attempts to inappropriately commandeer the court’s authority. Participant 011 is an “expressed” interests advocate who recognizes the punitive realities of the juvenile court system, despite its espoused rehabilitative mission. She explained her experience with the commandeering parent phenomenon in the following way:

Usually [I get pushback] from parents. I've had parents really pissed off at me saying … that I wasn't doing their child right and that I… they were going to hire a real lawyer to represent their child which meant represent what they wanted for their child. [T]he real obstacles are from the parents. I've actually been fired. Some rich [local town name] dad went and hired a lawyer, an outside lawyer, because I wouldn't do what he wanted for his kid (i.e., make him be locked up for another week just to learn his lesson) and stuff like that. ….[So,] parents would be at the top the list [of sources
of role conflict]. Particularly the parents that want to lock their kids up and throw away the key (011).

Parent-based role conflict is likely unique to defense attorneys for children. The juvenile court is a relatively recent development in the American legal system, and the expressed interests advocacy requirement is even more recent. As a result, parents may naively expect the court, due to its parens patriae orientation, to prioritize parental authority over the defense attorney role. In addition, parents are unlikely to be familiar with the nature of the defender role, including defenders’ ethical obligation of confidentiality to their juvenile clients. This may lead parents to misunderstand who has legal authority in their child’s case; they likely do not realize it is their child who has this authority, not them. Participant 020, a “legal” interests advocate who views role departures as unjustifiable, described his experience with this phenomenon in the following way:

I think the absolute most common situation is going to be butting heads with parents and the conversations tend to be pretty similar. … I'm pretty open with the parents from the very beginning about what my role is; a lot of times they’ll be frustrated. Sometimes they then will go on to ask how they can get a new attorney which brings us full circle right back to well, you don't get to fire me. It's actually the juvenile who gets to decide whether they want to fire me… (020).

Another participant, 015, indicated that some parents make things worse for their children:

Parents are the worst thing that ever happened to the defendant in a criminal case because they always talk their child into doing something that they probably shouldn't do and… they don't often listen to the attorney… You know, parents are often the reason that their children get a worse outcome because they convinced their child to do something they shouldn’t do against their attorney’s advice (015).
Participant 015 explained that parents are “not gonna understand the way the system works but they don't understand that it would be better if you did it one way or another and so they're pushing their child to do one thing.” Other participants’ comments reflected the belief that parents’ misunderstanding of, or lack of respect for, the juvenile defender role is responsible for their pushback. Participant 014 noted, “[parents do] not fully understand[] my role as a juvenile defense attorney or… the juvenile legal system…. [and] because they don't fully understand I have a specific ethical duty to represent my juvenile client in a particular way… I think it's difficult for them to understand that.” He recognized this failing even though he admitted that as a father, “it’d be difficult for me to have somebody tell me, ‘no, I can’t be in that room when you’re talking to my child about the case.’” Participant 014 identifies as an “expressed” interests advocate and views role departures as largely unjustifiable. His recognition of parents’ unique position likely allows him to empathize with their concerns, but he does not appear to compromise his dedication to the expressed interests advocate role as a result.

Participants explained that parents also seem to misunderstand the role of the court, and the juvenile justice system at large. In support of this belief, Participant 003 pointed out that even well-intentioned parents can misunderstand the juvenile system’s due process function:

[Q]uite often you are at odds with the parents. The parents are the one that told them go to the police department and tell the truth. And you're sitting here saying well you should've kept your mouth shut. And the parents said, “no I told you to tell the truth.” And to some extent the courts are recognizing that the parent can't waive the juvenile's right to silence (003).

Participant 020 reflected some of the same sentiment raised by Participants 003 and 011 in the previous segment: parents often want the juvenile court to perform a
function outside its authority and expect the defender to fall in line with this mistaken expectation. He explained that, “[parents] want help from the court system to discipline the juvenile so typically they want… ...some type of punishment. They want more than a slap on the wrist. They want … the court to do something that’s going to shape up the juvenile.”

As Participant 020 points out, some parents push for more punitive outcomes than are reasonable in an apparent effort to use the juvenile justice system as a dumping ground for their unwanted children, or to otherwise relieve themselves of their parental obligations. Participant 001 noted this tendency as well when he remarked that the pushback he gets from parents typically occurs when, “the parents come to court and want the juvenile court system to punish the child more than they can be under the statute …[I get] pressure from them to lock the child up when [that’s not my role].”

This seemingly prevalent parental expectation is very interesting. Do parents take the juvenile court’s parens patriae orientation too literally? In other words, does this rehabilitative culture give parents the impression that the court’s role is to completely substitute itself for the parents of juveniles in the fashion some parents appear to expect? That some parents have such unreasonable expectations of the court is unsettling. Equally concerning, though not surprising, is some parents’ unreasonable expectation that juvenile defenders defer to parents’ wishes over the child client’s. As indicated by participants’ comments, parents tend to give the impression that their own expectations of their children’s court experience trump attorneys’ ethical obligations, specifically, to maintain confidentiality with their clients and to give voice to the expressed interests of their child clients.
As suggested earlier, parent-based role conflict may be unique to juvenile justice. This type of role conflict presents a problem that may not be easily resolved with policy changes like North Carolina’s Role Statement since parents have a legal duty to protect their children. Additionally, it is not unreasonable for a parent to bristle at a stranger’s insistence on meeting with a minor child in private without the parent’s presence, regardless of that stranger’s official role. At the same time, a failure to protect the attorney-client privilege can have severe ramifications for the juvenile, the case outcome, and the attorney’s professional standing and career. For instance, if a juvenile client does not wish his parent to be involved with his attorney meetings, but does not have the courage to ask the parent to leave, not only may he feel unable to communicate freely with his attorney, but the attorney’s confidentiality duty could be jeopardized. A client could always waive the privilege and allow his parent to be in the room when he speaks with his attorney. However, that decision could trigger additional dilemmas placing the client at the center of role conflict, and as discussed earlier in this chapter, clients themselves already present juvenile defenders with enough role conflict.xxxv

Participants’ comments indicate that they unanimously view clients and parents as their primary sources of role conflict. Role conflict from these individuals is understandable given that most parents and children are unlikely to be as familiar with the courtroom functionaries’ official roles as are the functionaries themselves. However, it does not explain why participants reported experiencing role conflict from other courtroom functionaries, particularly those with legal training. These sources of role conflict are addressed next.
Courtroom.

Functionaries.

Participants identified multiple courtroom functionaries as sources of role conflict. (See Appendix I: Table 2. Support for Role and Sources of Role Conflict.)

Judges.

Participants were asked if they thought judges supported their role and they unanimously answered in the affirmative. At the same time, most participants identified judges as sources of role conflict.

Understandably, judges are viewed as the most powerful juvenile courtroom functionary. Judges are also theoretically experts in the due process rights that form the foundation of the juvenile defender role, should be aware of the Supreme Court’s decision in In re Gault (1967), and should be aware of the NCOJD’s Guidelines and Role Statement. Therefore, they should be supportive of the juvenile defender as an expressed interests advocate despite the juvenile court’s best interests approach. It is therefore surprising that so many participants identified judges as sources of role conflict.

One explanation of the discrepancy involves the politics of the courtroom and the culture of the legal profession. The judge inhabits the most powerful role in the juvenile court; a critical component to any attorney’s professional success is her ability to avoid showing disrespect to a judge or getting on his bad side. Thus, juvenile defenders may be reluctant to openly acknowledge judges’ failings, even in a confidential interview. However, that may not be the case for all juvenile defenders. Participant 018 appears to
have had the confidence to remind an inquiring judge of his “actual role.” When sharing a role conflict scenario he had experienced, he reflected, “it was a little bit concerning because my job is to act in the expressed interest of the juvenile and I had to refresh the judge's memory that it wasn’t best interests but it was expressed interest.” Participant 018 identifies as an “expressed” interests advocate and indicated he experienced role conflict “all the time.” The frequency with which he experiences role conflict may not be surprising since he appears to be a stalwart expressed interests advocate who views role departures as unjustifiable. He is also new to juvenile defense, having only practiced one year, so he may receive more pushback as other courtroom functionaries test his boundaries.

At the same time, when asked about whether he has ever felt personally conflicted about his role, Participant 018 offered more examples of internal role conflict than other participants. This may also reflect his growing pains as he adjusts to his new role as a juvenile defender. Internal role conflict will be addressed later in this chapter in the “Person-role” section. However, it is important to recognize its presence here since it may be the distinguishing factor between participants like 018 and others who provided fewer examples of internal conflict and report experiencing less role conflict overall; for example, Participants 001 and 014 are also “expressed” interests advocates who view role departures as unjustifiable but they reported experiencing role conflict rarely.

For some participants judicial support was mixed with pushback. For example, Participant 006 explained, “[y]eah… [i]n the trials I’ve had… I feel like I’ve had equal time. I feel like equal weight was given to what I say.” She then followed up with, “[t]here’s one judge … who is very likely to rule against your client. You just know that.
If you have a trial before the judge it will be hard to convince them (006).” Participant 006 declined to identify as an advocate type so it is difficult to determine if her dedication to the expressed interests role makes her more vulnerable to pushback. However, in her definition of the “zealous advocate” role she emphasized her ultimate commitment to her client’s expressed wishes but still views role departures as justifiable.

Participant 003 remarked that judges were generally supportive of him in his role, “[i]n fact, I had a district court judge regularly serve in juvenile court who constantly would compliment me to my clients [that] I would represent them zealously.” However, Participant 003 quickly noted that this praise only came after a number of occasions where he had stood his ground against the judge who had been pressuring him to depart from his zealous advocate role and almost held him in contempt for not accommodating that pressure. Participant 003 further added:

…I think that judges should recognize that that's what the attorney does. And most of the… judges that I’ve dealt with understood that's what I was doing. Do they support it? 95% of the time [they do]. Does it have a lot of effect on [judges]? No. …It would probably just come in the form of you just don't feel like the judge is listening to you. … And when I see it, then not liking it, what I mean is they may have something in their mind that they think is appropriate and best for the child and I'm putting up roadblocks and saying, “Your Honor, you can't legally do that,” or, “you know the statute doesn't provide for that.” And so it frustrates them and their purpose.

Participant 003’s comments suggest that perhaps experience allows defenders the opportunity to pick up on nuances from judges that less experienced attorneys may not notice. This explanation makes sense given that he had been practicing juvenile defense for nearly two decades at the time of his interview.

These responses may indicate that some judges experience role confusion about the defender role; they could also indicate role denial on the part of judges who may be
so distracted with other concerns (e.g., courtroom efficiency) that they overlook the purpose of the defender role and its importance to due process. Judges could be attempting to create boundaries to zealous advocacy by demonstrating that they have different degrees of tolerance for zealousness. For example, some judges appear to punish defenders who take their expressed interests advocate role too seriously. Participant 024, a “legal” interests advocate who views role departures as unjustifiable explained:

[T]here's been a couple of attorneys that have received consistent complaints because they litigate to the nth degree everything. And they have no balance as to what's the really important thing to fight for and what's not and a couple of judges have gotten to the point where they said, …if [a] case comes up they won't allow them to be appointed to any cases coming on their list because they find them so detrimental to their clients and disruptive of the court process (024).

Participant 024’s comment about judges not assigning new cases to defenders who “litigate everything to the nth degree” is poignant and it raises a number of questions. Is this an example of mismatched expectations of juvenile defenders in their role? Or, is it part of an informal, but otherwise legitimate, process undertaken by judges who are tasked with weeding out attorneys who gum up the works with frivolous objections and motions? What constitutes a “frivolous motion” and does that differ by advocate type or respect for the juvenile defender role? To what extent does it become unfair that defense attorneys’ zealous advocacy, despite slowing down the court process, might lead to a loss of appointments for them? Could fighting for one’s client “to the nth degree” be detrimental to the client even though fighting hard for the clients is what an attorney is supposed to do?

If that is the case perhaps a more creative, or integrated, approach to juvenile defense, as suggested by Birckhead (2010), would be more appropriate for juvenile
clients. Could it be that, practically speaking, an integrated approach, such as one that incorporates clients’ expressed and best interests, to juvenile defense is more suitable given the unique status of the clients and the orientation of the court? This suggestion, and others, will be addressed to a greater extent in the Discussion chapter.

Given North Carolina’s efforts to inform juvenile court functionaries of its Role Statement’s emphasis on expressed interests advocacy for juvenile defendants, it is surprising that so many participants identified judges as sources of pressure to depart from their designated role. Participants provided some explanations.

Most participants believe judges do not respect their role. Judges are the courtroom functionaries who should most understand the juvenile defender role given that they are due process experts. However, judges are also managers of an organization and the organization’s stakeholders. They are also human beings. Even they can lose themselves in the court’s organizational needs, place a higher priority on the need for efficient processing of each day’s docket (i.e., schedule). Or, they may simply have too little respect for the juvenile defender role. Participant 017 explained this perspective in the following way:

[S]ometimes what court judges will do is they'll bring you up to the bench and tell you what they are leaning towards or what they would want to do. So, in that way they may be supporting what you want for your client or they may be telling you exactly what they think is best for your client. [I: Why do you think they do that?] I think sometimes it's respect or lack thereof (017).

Participant 017’s recognition that this judicial behavior is disrespectful is very interesting. He identifies as a “best” interests advocate, but he also views departures from the zealous advocate role as unjustifiable. So, from what role does he view departures as unacceptable? He views judges telling juvenile defenders how they plan to decide cases
before cases have been presented as disrespectful so does that mean he does not allow himself to be co-opted into the judge’s pre-hearing plan? When asked what “zealous advocacy” means to him, he replied that it means, “doing what's necessary to reach the end that my client feels I need to reach. In other words, if my client says he's innocent then I zealously defend him from the beginning to the end.” Participant 017 also indicated that he rarely experiences role conflict so perhaps in his three decades of experience he has learned to navigate judges attempts to co-opt him without making him feel he has departed from his zealous advocate role. A juvenile defender’s experience and skills are critical to negotiating the power relationships that exist in juvenile court. This issue is discussed at more length in Chapter Five.

The importance of a judge— the functionary with the most due process expertise and the most power in the courtroom— respecting and supporting the juvenile defender role cannot be overemphasized. The judge serves as a referee not just to the adversarial contest between the prosecutor and defense attorney, but also to the contest between individual citizens and a powerful government. The judge also serves as a role model of how to behave, and to whom respect is shown, in the courtroom. A judge’s lack of respect for the only check on government power over individual citizens diminishes the check’s impact and sends an important message about the strength, or lack thereof, of due process guarantees. Even if there is a question about how appropriate a strictly expressed interests advocacy approach is for juvenile defendants, there clearly is still a need for power balance in the courtroom.
Prosecutors.

Few participants volunteered that prosecutors were supportive of their role as zealous advocates of their clients’ expressed interests. Even though these responses were volunteered (i.e., not elicited through a direct question) this low number is concerning because of the prosecutor’s powerful role. Participant 004 shared that he felt prosecutors were supportive but they were still a source of role conflict for him because of their position of imbalanced power. He explained, “[t]he district attorney representing the state basically owns the adjudication proceedings from… the adversarial… the state side, and will be very involved in things like producing discovery, scheduling probable [cause] hearings and trials.” Participant 004’s comments on prosecutor-based role conflict are not surprising given that he is an “expressed” interests advocate and views role departures as only sometimes justifiable. Interestingly, he reported that he experiences role conflict “[e]very day!”

Most participants described prosecutor-based role conflict situations where the prosecutor would leverage her power in order to move things along more quickly or steer the case a certain way. For example, Participant 009 stated, “I do see the [DA and judge] sometimes pressuring departure [sic] from zealous advocacy model….I think there’s pressure to expedite cases.” Participant 009 declined to identify with an advocate type but views role departures as only sometimes justifiable. He also indicated that while he has been the target of pressures to depart from zealous advocacy, he does not “see that they hinder me representing the juvenile's interests at all.”

Participant 005 revealed the power prosecutors have to present juvenile defenders with role conflict when he commented that:
Participant 011 described her experiences with prosecutors’ push for efficiency in the following way.

[W]e've had some DAs come through juvenile court that really have no desire to be there. In our system in the Alpha County Public… DAs office system, juvenile court is the way you get moved up to Superior Court because you're doing felonies that nobody's looking at. And so a lot of them that move through there have the goal of moving up as fast as they can by getting felony convictions so they can prove they can do felonies and move up and they will say stuff about… but that's not the kid's best interests. And I’m like yeah, that's your standard, not mine (011).

Other participants, for example 010, reflected Participant 011’s impressions about prosecutors. Participant 010 identifies as an advocate of his clients’ “personal” interests and views role departures as unjustifiable. He also indicated that he does not face any pressures to depart from his zealous advocate role. Nevertheless, he pointed out the following about prosecutors’ focus on procuring convictions and how it affects his role.

The district attorney is one of those situations where … it's still conviction based for them. You know, how can I get a conviction, rather than how can we assist the juvenile moving forward? …I'll say this: there are times when you have … the district attorney who is in the courtroom… they want a conviction so it's kind of hard to negotiate and advocate with your client when they’re looking at the conviction instead of how can we assist this client and, I don't know…. let's do a deferral instead of a guilty. So those pressures are real because I'm thinking a deferral is probably better but you're trying to make sure that you get a conviction. So those are pressures that we see a lot… they do affect how you can advocate for your client (010).

These descriptions paint a less-than-encouraging picture of a key figure in the courtroom workgroup. Prosecutors, as law professionals with essentially the same legal
education as defense attorneys, should understand the defense role. Consequently, their reported level of pushback is troubling. Perhaps North Carolina reflects some of what the Georgia state assessment reported: that prosecutors and judges seemed to prefer a less adversarial juvenile court (Georgia Assessment, Puritz and Sun, 2001). The assessment indicated that this preference was a result of the belief that a best interests orientation ultimately poses no risk of negative consequences to juveniles, making the defender role altogether unnecessary (Georgia Assessment, Puritz and Sun, 2001). While it is important to recognize that the prosecutor serves the state’s interests, and is the official adversary of the defense attorney, this should not preclude prosecutors, presumably as well-trained in due process requirements as defense attorneys, from recognizing and respecting the need for a check against their power in the courtroom.

Participants’ responses make it clear that prosecutors feel pressure to obtain convictions and move cases expeditiously through the court process. However, participants also suggested other reasons for prosecutor-based role conflict. Participants indicated they believed prosecutors either misunderstand, or lack respect for, the defender role.

Prosecutors are presumably aware of the nature and structure of the adversarial system of which they are a critical half; they should understand the defense attorney is the other. However, the parens patriae orientation of the juvenile court may encourage prosecutors to loosen the boundaries normally placed on these roles causing them to pressure defense attorneys to depart from their expressed interests advocate role. This may reflect a lack of respect instead of a lack of understanding as it would were the pressure to come from a parent or client.
Participant 008 is one of the study’s most experienced juvenile defenders and identifies himself as an advocate of his clients’ “true” interests. He views role departures as justifiable. He also indicated that he sees the “expressed-best” interests dichotomy as an oversimplification such that juvenile court is more of an “everybody get on the same page, let's fix this kid, let’s not let this kid fall into the hole of becoming a criminal.” He also indicated that this approach does not interfere with his expressed interests advocacy. Even though he did not volunteer that prosecutors are supportive of his role, he reported that they are a source of role conflict. He described prosecutor-based pressure in the following way.

We do get pressure in some situations where… well, always the DAs think we're supposed to be helping them, which is completely insane. [I: Are these experiences that you had here in Alpha County?] Oh all the time…. Constantly. The DAs think we’re supposed to help them (008)!

The pushback described by Participant 008 reflects conflict that is clearly not a normal part of the adversarial process. However, that does not mean that the role conflict participants experience is never confounded with conflict that typically accompanies the adversarial process. Again, prosecutors and defense attorneys represent opposite sides in an adversarial system. Prosecutors are supposed to create pressure or pushback for the defense. It is an inescapable requirement of the prosecutorial role, a reality to which some participants alluded. As a result, it can be difficult to tease out where the prosecutor’s own zealous advocacy ends, and role conflict manifestations begin. Perhaps the answer may be found in an examination of situations where the prosecutor encourages defense attorneys to ‘play along.’ This is a nuance that could be the focus of future investigations. (See Appendix K: Figure 2. Framework of Expressed Interests Advocate Role Conflict Antecedents to Consider for Future Research and Appendix L: Figure 3. Framework of
Expressed Interests Advocate Role Conflict Outcomes to Consider for Future Research. However, it is not a nuance that explains role conflict from courtroom functionaries that are not trained in law.

Court counselors.

The court counselor, unlike the prosecutor, is not the official adversary of the defense attorney. So, juvenile defenders’ experiences of pushback from court counselors may be easier to distinguish from other role behaviors. The court counselor’s role up to adjudication (i.e., the fact-finding stage) is to work closely with the juvenile and his family to understand what his life is like and what factors may be contributing to his poor choices (R. Waldrop Rugh, Court Counselor, Alamance County Clerk of Court, Juvenile Division, Graham, North Carolina, personal communication July 25, 2015). At some point, the court counselor may “diagnose” a problematic factor that could be addressed with services that she suggests in her report to the judge at the disposition (i.e., sentencing) stage.

The court counselor’s role is definitively not legal, but informational and relational. In other words, while a juvenile defender’s role is to protect the juvenile’s legal rights, the court counselor’s role is to find ways to meet the juvenile’s personal needs in recognition of the youth’s tender years. At disposition, the court counselor’s role is to make treatment and/or residence recommendations to the judge based on her understanding of the unique needs and circumstances of the juvenile (R. Waldrop Rugh, Court Counselor, Alamance County Clerk of Court, Juvenile Division, Graham, North Carolina, personal communication July 25, 2015).
The juvenile defender and court counselor roles are, essentially, mutually exclusive; they cover different turf (legal and personal, respectively) with regard to the juvenile’s needs. However, they share a desire to improve the juvenile’s life in some way. As a result, one might expect most juvenile defenders to report feeling their role is supported by court counselors but not many of the study’s participants reported feeling this way. Given the shared desire of the two roles, and the apparent lack of territory overlap, one might have expected a larger portion of participants to report feeling supported by court counselors.

The majority of participants reported experiencing role conflict from court counselors. For example, Participant 010 indicated that pressure to depart from the expressed interests advocate role from a court counselor was “one of the main things that sticks out that happens probably more often than not.” In addition, Participant 023 noted that, “the ones that don't [support my zealous advocacy role] the most are the court counselors. Sometimes I butt heads with court counselors and again that's a tricky line because they're not lawyers but …also… they get a lot more personal sort of connection to the client…. ” Participant 023 identifies as an advocate of his client’s “best personal desired” interests and views role departures as unjustifiable, even at the disposition stage where the court counselors have the most input to the judge.

Court counselors’ considerable influence with the judge at the disposition phase may also be responsible for the “tricky line” Participant 023 identifies, but his point about their unique connection to the client is important. Perhaps some court counselors feel territorial, or protective, over juvenile defendants because of their more intimate familiarity with the juvenile’s life and personal needs. Perhaps because they lack legal
training they fail to recognize the due process repercussions of inadequate assistance of
counsel and therefore also fail to recognize the importance of the defender role.

Participant 011 shared her frustration at having to repeatedly explain her role to court
counselors who seemed unable to accept the reality of the defender’s role:

I've had court counselors tell me that I'm not really working in the kid's best interests. And I repeatedly say that's not my job; that's yours. ... I have to keep saying it over and over again. The same court counselor will come in and say... and I'm trying to get the kid out of detention... and they're saying he really needs to stay in until he goes to placement or he's gonna get more charges. And I go, “I know that. But my job is to say what he wants, not what you want.” [I: Do you find that here in this county even now, today?] Yes. Even now. And even with the same court counselors over and over again that are just surprised that I don't come in and rubberstamp what they want in the best interest of the child. ... they can't believe that I will go into the courtroom and make a zealous, really try hard to get them out. “Why you trying so hard?” Because it's my job. Because the kid needs to see me fighting for them. I will tell the kid behind closed doors, “we're gonna go down in a blaze of glory but hey it's gonna be a big blaze and I'm going to make it big; we're gonna fight hard.” And I have gotten a few kids out on... who I shouldn't have but I told them I was gonna fight for them and I did (011).

It seems logical that a juvenile courtroom functionary who has not received legal
training feels compelled to push back against the juvenile defender role. In other words,
someone who is not familiar with the nuances of Constitutional rights may struggle to
justify actions that do not appear to prioritize a child’s best interests. This could be
especially true when court counselors see other courtroom functionaries, like the judge,
pushing back against juvenile defenders as well. In addition, court counselors may not
feel confidence in the adversarial system to achieve the rehabilitation goals the court
counselor role is designed to accomplish. Participants offered their own ideas of why
court counselors pressure them to depart from their expressed interests advocate role.
Participants expressed the belief that court counselors are a source of role conflict because they lack understanding, or respect for, the juvenile defender role. Participant 010 offered an excellent example of both inadequate understanding and respect for the juvenile defender role.

I'll give you a specific case. I have a client who I think … may be charged with … assault but speaking with the court counselor, they know and understand that the DA is not going to be able to prove their case because my client was not seen hitting the child, wasn't seen kicking the child, wasn't seen punching the child, she was just there. And, just got caught up with everybody who got arrested or got cited. So the … court counselor [comes to me and] says, “look I know this case should be dismissed but the girl's father isn't in her life, the mother is an alcoholic, she lives with the grandmother, the mother’s in and out of the home so I want to be able to get the child services as well as the mother services and the only way I can get the child services is if you allow her to plead guilty.” …

So those are pressures that we see a lot… they do affect how you can advocate for your client. …the court counselors … will [also] kind of push you towards… like with the services I want to get this kid the services so if you can get him to plead you know just so we can get the services that we need so … I do run into those situations (010).

Participant 010’s experience of a court counselor pressuring her to advocate a certain way reflects a lack of respect for the juvenile defender role. The court counselor in the excerpt seems to understand the way the justice system works because he says, “I know the case should be dismissed.” The court counselor must understand the defender role to some extent because otherwise, he would not have known to ask the juvenile defender to “allow [her client] to plead guilty.” At the same time, the fact that he asked her to do this reflects too little true understanding of the defender role and its ethical duty to zealously advocate for the expressed interests of the client. In addition, it is easy to see how a juvenile defender might feel her role is disrespected when a court counselor admits the case against her client should fail but still presses her to allow her client admit guilt.
Even though the court counselor’s intentions for the juvenile might be benevolent, his pushing the defense attorney to depart from her role indicates that he lacks respect for the role.

The court counselor, or juvenile probation officer, is the functionary who is the most responsible for the advocating for the juvenile’s best interests. This functionary distinguishes the juvenile justice system from the adult system and, theoretically, makes the juvenile system effective. It is therefore understandable that court counselors might feel a certain level of territoriality, protectiveness, and authority over juvenile defendants.

Another factor that may contribute to court counselors’ apparent sense of territoriality is the greater extent to which court counselors are familiar with the juveniles; their familiarity begins at an earlier stage, and occurs at a deeper, more personal, level. Finally, court counselors’ recommendations are accorded a great deal of deference, even to the point that judges are viewed as merely rubber-stamping them (Participant 011). This could lead to court counselors feeling a false sense of authority over juvenile defendants, or defenders, emboldening them to push back against defenders’ expressed interests advocacy efforts.

Whatever their motivations, court counselors were viewed by many participants as lacking understanding of, or respect for, the juvenile defender role. This can have serious implications for the expressed interests advocate’s efficacy. The most practical solution to this particular problem is likely to educate court counselors and raise their awareness about different functionaries’ roles instead of changing the roles or their parameters. Another solution could be to discourage pushback from other courtroom functionaries.
Arguably, more detrimental to the balance of power in the juvenile courtroom is the matter of defense attorneys who do not support each other in the role. This topic is addressed next.

*Other defense attorneys.*

Surprisingly, some participants identified other defense attorneys as responsible for pressure to depart from the zealous advocate role. Multiple responses indicated this has typically been an issue in group— or multiple—defendant cases or when some of the involved juvenile defenders are either new to juvenile defense practice or are unclear about their role. Participant 003 explained his views on this particular source of role conflict.

I probably [get pushback] more so … from other defenders … I think what's been most troubling is running into other attorneys who may not have the same view of zealous advocacy as I do. … I've run into several situations where I might have arrived at the courtroom later than the other attorney [in a multiple defendant scenario] and they’ve already made their decision to roll without having talked to me. “You don't know what our position is.” …[T]here's lots of reasons that attorneys do and don't do what they're supposed to. I mean, if it's a good defense attorney that really is interested in representing his clients, but unfortunately there's some attorneys where it's a job and the easiest way they can get it done is the way they get it done. So, I mean that's why you have good attorneys and you have bad attorneys. …I can't say what their reason is for what they do. Sometimes I just don't think they… I think there's some attorneys who don't necessarily like to fight and they see juvenile court as an easy place to… you know, let’s just all work it out as opposed to… [fighting] (003).

Participants tended to view pushback from other defense attorneys as partly the result of confusion about the meaning of their role; this would confirm some of the previously discussed findings of the 2003 state assessment (Grindall and Puritz). Additional explanations of role conflict from other defense attorneys imply a disinterest
in juvenile defense or a view of the juvenile defender role as merely a stepping stone to another, more desirable, role. Finally, the pushback seems to come from other defense attorneys’ internalizing the pressure they may feel from the court to ‘move things along.’ This explanation has been touched upon in prior sections discussing other sources of role conflict such as judges or prosecutors. At the same time, the efficiency, or expediency, pressure could constitute a role conflict source on its own. This source is discussed next.

**System push for efficiency.**

The majority of participants identified the system itself as, in some way, a source of pressure for juvenile defenders to depart from their zealous advocacy role. (See Appendix I: Table 2.) While a number of participants praised the system for working well, most noted aspects of it that were problematic for them in their expressed interests advocate role. For instance, some participants held the system responsible for being co-opted by parents to respond to child issues that parents were unable, or unwilling, to manage. And some held other system functionaries as responsible for facilitating the system’s push for efficiency. Participant 009 explained his view on this pressure.

I think there’s pressure to expedite cases. There are a lot of people standing in the courtroom, there's an awful lot of money… and so I think there's some pressure to move cases along as opposed to really delving into the facts, particularly in the disposition stage… I have had some issues with district attorneys who when I intimate that a case might be triable and they look through the file and … there's some pressure from the DAs to have an efficient disposition (009).

The pragmatic considerations Participant 009 raises are likely a source of concern for all courtroom functionaries, regardless of their role. However, the pressure to expedite cases can be difficult to tease apart from pressures posed by other sources and for
different reasons. For example, it may be difficult for juvenile defenders to distinguish between judge-based role conflict that stems from a desire for efficiency or from disrespect for the defender role. Ultimately, it may not matter if the defender believes she must accommodate the pressure in order to avoid harm to her client. Participant 016 refers to this dynamic in the following excerpt:

I think for the most part [judges] understand that you're doing your job but for whatever reason, whether it's the juvenile's history or the nature of the charges … if the judge is telling you what they’re going to do already and you can kind of see the irritation or frustration again for the time constraints and the caseload you may feel like you're just kind of treading on thin ice there but I think there's a way to advocate zealously but at the same time respecting the court and the process and not just saying, “you’re just not going to hear my argument and you're violating my client's constitutional rights.” …[It’s] not an incorrect statement but … it does not always go over well and I think that can hurt your zealous advocacy in the future for clients because sometimes attorneys get labeled as long-winded or what-have-you and so it's almost like before you even start saying anything they've already kind of decided that you are going to say a whole bunch of nothing and unfortunately that's not the case…but, that's just the perception sometimes so it's a fine balance between understanding your time constraints, the court's time constraints, the interests of the juvenile and just kind of how to really put that out there fully without ending up having a negative impact on your client which is not what you're trying to do (016).

Participant 016 makes a critical point. She clearly recognizes that her role is to zealously advocate for the expressed interests of her client. However, she also recognizes that pressing the judge when it is clear he has already made up his mind may have negative ramifications for her client. She indicates that pushing forward with expressed interests advocacy may negatively affect other clients’ future chances with the same judge.

As indicated previously judges are not supposed to decide cases before hearing from both the prosecutor and the defense attorney. However, participants’ responses
make clear that some North Carolina judges regularly engage in this practice and possibly do so in the interest of efficiency. Juvenile defenders are then left with having to decide just how far they want to push for their clients without incurring the wrath of certain judges. Successfully navigating this decision takes experience, finesse, and considerable interpersonal skills. The system efficiency pressure also raises several questions concerning the appropriateness of the zealous advocacy model for the juvenile process when it comes to the defender role. These topics will be discussed more thoroughly in Chapter Six.

The role the system’s push for efficiency presents a critical area for future research given that so many participants find the system itself to be an enormous source of role conflict. The excerpts discussed here suggest that participants believe the system has a major internal inconsistency, specifically, a due process requirement (necessitating careful use of an adversarial structure and the expressed interests advocate defender role) alongside immense pressure to process cases efficiently. While this inconsistency also exists in the adult court, the fact that it exists in the juvenile court where the espoused mission is to take time and care with youths because of their tender years, calls the system’s efficacy and legitimacy into question. This inconsistency can lead to role confusion, raising the question, again, about the appropriateness of a strictly expressed interests advocate role for clients in the juvenile system. Future research could certainly reveal critical factors and possibly lead to solutions.

Thus far the role conflict sources discussed have been external to the juvenile defender. However, previous sections of this chapter have also touched upon the juvenile defender’s personal values as a source of role conflict. Person-role, or internal role,
conflict is now addressed more thoroughly.

**Person-role conflict.**

An individual’s personal values, perspectives, or goals may play a part in how he views his professional role regardless of how well a governing authority defines it. The influence of these forces could lead to role confusion or what Katz and Kahn referred to as “person-role,” or *internal role* conflict (1966: 185). Participant 018 described an example of this as a “dilemma [of] my personal concern for this kid versus my professional duty.” Internal role conflict occurs “when role requirements violate the needs, values or capacities of the individual” (Katz and Kahn, 1966: 185). This study assessed internal role conflict by asking participants if they ever felt like they, personally, were conflicted about their role as zealous advocates for juveniles. One participant, 015, explained internal role conflict in the following way:

I'm probably one of the few defense attorneys around that … and I hate to say this, but it is what it is… one of the few defense attorneys around that actually has a moral apprehension about doing defense work. It's funny. I do it and I think I do a good job at it but at the same time I'm always… if my client’s guilty… I… my loyalty is more to the system and making the system work than it is to “get your client out of it” or something like that. So, when I'm representing someone that I know is guilty it does impact me in some way (015).

Here, Participant 015 openly recognizes that he puts the system ahead of his client if the client is guilty. Recall that Participant 015 identifies himself as a “best” interests advocate and views role departures as acceptable, even at the disposition stage. He also identified the system’s push for efficiency as a source of role conflict. This excerpt reflects how his “moral apprehension” about his role might shift his view of his role at the disposition stage.
Whether or not they accommodated it, all participants provided at least one example of internal conflict they had experienced; several provided more than one. Examples often reflected a friction between participants’ values as attorneys and values as humans with compassion for children in need. For instance, the following excerpt shows how Participant 016 works to compartmentalize these roles and maintain professionalism for her clients.

Oh yeah, you can get confused, absolutely…because sometimes personally, or in your own conscience, you're taking the side of the prosecutor or you're taking the side of the parent or the court counselor or all of the above … I think we all have opinions about clients and cases and I think that you just have to really work hard to keep that opinion out of your advocacy whether it's good, or bad, sometimes you've got a positive opinion about the client, sometimes you've got a negative opinion about the client but that should not factor into how you advocate for them (016).

Participant 016 clearly struggles to separate her personal opinions from her professional duties. In fact, she provided more examples of internal role conflict than many participants. The extent of her internal role conflict may be partly responsible for her identifying as a “best” interests advocate despite her recognition of the importance of clients’ expressed interests to her zealous advocate role. Or, these opposing views could be responsible for her internal role conflict. Most importantly, Participant 016 recognizes the reality of this struggle and acknowledges her need to conquer it in favor of her clients.

A very small number of participants identified the seemingly rare situation where their role as parents presented them with conflicting feelings about their advocate role. Others noted they felt personally conflicted about their role when the client was in need of services but may not be actually guilty of the charges filed against him.

For example, Participant 012 recognized her internal conflict but opted to prioritize her juvenile advocate role over her role as a compassionate human being.
Recall that Participant 012 is a “best” interests advocate who views role departures as unjustifiable, even at the disposition stage. She also indicated that she does not experience role conflict but acknowledged that there is a balance that must be struck when dealing with whomever has custody of her clients. She explained that even when she has a client who really needed services she still fulfills her zealous advocacy responsibilities to her client. She was candid in admitting that while she was “only human,” she would not feel good compelling her client to plead responsible in a case just to “get him all this treatment,” when the “case doesn't really warrant my client going in there and pleading responsible.”

Like Participant 016, Participant 012 recognizes the pressure but does not accommodate it. Theirs, and others’, comments regarding person-role conflict indicate that these types of dilemmas typically do not result in role departures. It would seem, then, that juvenile defenders do not view role departures due to internal conflicts as typically justifiable. At the same time, participants identified situations in which they viewed role departures as justifiable. Perhaps these situations reflect Birckhead’s assertion that prioritizing a client’s expressed over best interests is often more difficult than it sounds (2010). This can depend on a number of factors including the context within which juvenile defenders practice. Contextual factors of role conflict are addressed in the next section.

**Role Conflict Context.**

Participants experience role conflict and cope with it within the context of the juvenile court system. Four major factors emerged as context-relevant: the disposition
stage; the juvenile court culture; juvenile defenders’ professional ethics; and resource availability.

Disposition stage.

One of this study’s most compelling findings is participants’ divergent views of their role at the disposition stage of the juvenile process compared to earlier stages in the process (e.g., probable cause hearing, detention hearing, adjudicatory hearing). There is clear guidance addressing the need for expressed interests advocacy for juveniles at all stages of the process. For instance, North Carolina’s “Role of Defense Counsel in Juvenile Delinquency Proceedings” states:

> [a]n attorney in a juvenile delinquency proceeding or in an order to show cause against an undisciplined juvenile shall be the juvenile’s voice to the court, representing the expressed interests of the juvenile at every stage [emphasis added] of the proceedings. (North Carolina Office of the Juvenile Defender, [http://www.ncids.org/JuvenileDefender/Role/Role%20Statement.pdf](http://www.ncids.org/JuvenileDefender/Role/Role%20Statement.pdf).

In addition, North Carolina’s Performance Guideline 2.1(a) states:

> [a]n attorney in a juvenile delinquency proceeding is the juvenile’s voice to the court, representing the expressed interests of the juvenile at every stage of the proceedings [emphasis added], (Newman et al., 2008: 1).

Indeed, the National Juvenile Defense Standards direct juvenile defenders to adopt an expressed interests advocate role, even after their persuasive efforts have failed, “throughout the course of the case,” (Standard 1.2.d., National Juvenile Defense Standards, NJDC, 2012: 18). In addition, since 2005, North Carolina has required its juvenile defenders to take on an expressed interests advocate role at all stages of the juvenile process (See, NCCIDS, 2007 and NCIDS, Penn, P. “Role of Defense Counsel, 2006,
Despite clear guidelines requiring attorneys to maintain their zealous advocate role throughout all stages of the juvenile process, participants noted that the stage of the juvenile justice process could trigger motivation to depart from the role. Their comments either specifically referred to, or suggested that, the disposition (i.e., sentencing) stage is a time in the juvenile process during which they could feel compelled to step out of their expressed interests advocate role. For example, Participant 019 was one of only three participants who did not discuss expressed interests advocacy as central to his meaning of the zealous advocate role. He identifies as his clients’ “best” interests advocate and even though he views role departures as unjustifiable, he appears to make an exception for the disposition stage. He explains his views in the following excerpt.

[D]ifferent stages do require different ways that I might approach an issue with the client but I do try to advocate for… their best interests at that particular stage [disposition]. At certain stages I can truly advocate for their interests and sometimes I might have to shift to what is their best interests (019).

Participant 019 clearly justifies departing from the expressed interests role in favor of a best interests role at the disposition stage. This could indicate that he either does not understand or respect his ethical duties. A likelier explanation is that he believes juvenile defense requires a more nuanced approach, as suggested by Birckhead (2010).

Other participants appear to believe juvenile defense requires a more nuanced approach. In fact, a few suggested that the distinction between expressed and best
interests at the disposition stage is not so dichotomous. For example, Participant 009 explained:

I would say the answer is yes [a defense attorney should depart from advocating for the expressed interests of a client]…[but] I would keep that in the context of disposition [sentencing phase] of the case as opposed to adjudication [fact-finding phase]. So, I think in a [disposition] context alone, yes, in a mild sort of way. In the adjudication process, no. … [A]nd it's not really in conflict with … their expressed interests… I think it's more kind of a compromise position. And that's certainly a form of advocacy but do I ever depart from advocating their expressed interests, no. Again to answer your question in disposition, yes, and adjudication, no (009).

Importantly, even though most participants view the disposition stage as a potential trigger for role departure, the majority (roughly two-thirds) do not view such a departure as justifiable. However, those that do provided similar explanations to Participant 009’s. For instance, some participants asserted that the pressure they feel to depart from the expressed interests advocacy role at this stage specifically stems from their having less information about their clients than court counselors. Participant 001 explained:

I think I have a problem … when we get to the dispositional phase. The juvenile court counselor oftentimes has met with the client and parents and maybe will have gone to the client’s house or [will] have a better understanding of the client history than I do. Because I just focus on legal issues in the case. So, when they are recommending therapy or that they go to some program to get them involved in the community, that they have some structure after school or that they attend some curriculum assistance at school lots of times they know more about the client at that point than I do. So, it's hard for me to quibble lots of times with what they're asking for because lots of times they know about the juvenile more than I do (001).

It would appear that at the disposition stage Participant 001 may lose sight of his expressed interests advocate role and feels compelled to defer to the court counselor’s recommendation. As indicated earlier in this chapter, this information-discrepancy
pressure is not necessarily exclusive to the disposition stage. Even still, other participants appear to falter in the zealous advocate role at this stage for the same reason. They recognize the critical role the court counselor plays and the deeper knowledge court counselors tend to have of the juveniles’ lives. Participants thus feel compelled to defer to court counselor recommendations as a result of counselors’ deeper knowledge. Some participants, like Participant 001, view this deference as a weakness.

One of my weaknesses when we get to dispositional phase [is] I probably don't challenge… The court counselor’s office does a dispositional court report; they make their recommendations. Lots of times those recommendations seem completely logical and rational to me. Some attorneys do challenge some of the things in the dispositional report more often than I do… So I think some lawyers see their role as, ‘let's get the least amount of punishment we can,’ and I don't when we get to disposition, I don't often change much about what the court counselors are recommending because usually to me it seems to be pretty rational what they're asking (001).

The excerpts discussed in this section have indicated participants’ recognition of the difficulty in maintaining the expressed interests advocate role at the disposition stage. They also indicate some participants’ willingness to depart from the role at this stage and view such departures as justifiable. Even though Participant 001 refers to his role departure willingness as a “weakness,” Participant 009 refers to it as an acceptable “compromise.” Perhaps this is a nuance worth considering in future studies given the implications of role departures for juveniles’ due process protections.

Participants reported they were less knowledgeable about their clients than the court counselors whose recommendations are typically accepted, out-of-hand, by judges (Participant 011). xxxix This knowledge discrepancy appears to make juvenile defenders reluctant to “quibble” (Participant 001) with counselors’ recommendations potentially eroding their adherence to the expressed interests component of their zealous advocate
role. Court counselors are key juvenile courtroom functionaries in that they provide information and assist in establishing relationships (R. Waldrop Rugh, Court Counselor, Alamance County Clerk of Court, Juvenile Division, Graham, North Carolina, personal communication July 25, 2105). Yet, despite having no legal training, they appear to exert a great deal of influence on what is, for all intents and purposes, a legal, process. Should this influence be cause for concern given its apparent impact on the extent to which juvenile defenders fill their critical role? Is the court counselor’s input crucial enough to justify potentially subjugating juveniles’ due process protections? In other words, does juvenile defenders’ failure to “quibble” with the court counselor’s recommendations constitute a departure from the zealous advocate role if their clients disagree with those recommendations? These are critical questions for future research.

Some participants appear to bring to the disposition stage a paternalistic stance toward their clients that encourages them to prioritize their clients’ best interests over their expressed interests. Participant 015 provides an example.

I think the time that it changes for me is after the plea or after they are found guilty in a trial. I kind of shift from telling the court what they want and fighting for that into probably in my opinion the best at that point. So, if they’re already found guilty, and we’re trying to figure out what to do with them whether that be wilderness camp, or juvenile detention, or just probation or something, I tend to argue more what I think is best and not exactly what the client wants... because the client may not want wilderness camp but if that's what I think is actually best for the child then I will say, “absolutely, I think wilderness camps a good idea.” Obviously that's not what my client wants (015).

Participant 015 appears to be motivated by an internal humanitarian pull to fight for what he believes is best for his client because the adjudication phase has passed. This apparently justifiable shift in role from expressed to best interests is concerning given the fact that the disposition phase of the juvenile process has become more
punitive, and less rehabilitative (Birckhead, 2010). The juvenile court process is like the adult process in that it is adversarial. However, the disposition (i.e., sentencing) stage is meant to reflect a rehabilitative approach. If this is not necessarily the case in reality, as Birckhead suggests, it could have severe ramifications for juveniles’ due process protections. The ramifications of the punitive realities in the modern-day juvenile court are discussed more thoroughly later in this chapter.

To reiterate, guidelines at the state and national level seem to clearly support the expressed interests advocate role at all stages of the juvenile process. It is therefore puzzling that most participants identify the disposition stage as a role conflict source. Even more puzzling is the extent to which participants view role departure at the disposition stage justifiable.

What is it about the disposition stage that prompts some juvenile defenders to become flexible about what seems to be a very clearly delineated role? Are they motivated by their humanity or feelings of compassion toward their clients? Are they being co-opted into the best interests orientation of the court believing in the court’s ‘innocuous’ impact as implied by Participant 009 who said, “we’re not there to punish; it's not a permanent stigma. The kid obviously needs help?” Do they allow themselves to be co-opted because they see their efforts to serve as the client’s voice as futile in the face of judges’ heavy deference to the court counselor’s recommendations and the judge’s power? Could it be that attorneys who find such a departure acceptable do not view the ABA’s Model Rules as controlling when it comes to juvenile representation? And, if this is the case, why is it the case? Is there something special about juvenile defense as a
profession that compels these attorneys to depart from the role they are ethically bound to fill?

Perhaps there is a greater chance for person-role (i.e., internal) conflict among juvenile defenders when they get to the disposition stage. Attorneys’ professional success seems somewhat dependent on their ability to compartmentalize. However, they are still human beings, and some may have children the same age as some of their clients. All of these factors could impact their view of their clients’ ability to express an interest, particularly one that involves a suitable state response to bad behavior.

Since so many more participants viewed role departure due to the disposition stage as unjustifiable than justifiable, it is reasonable to conclude that the discrepancy may not be prevalent. However, the discrepancy exists and is robust, a disturbing fact given North Carolina’s tremendous efforts to clarify the juvenile defender role. It is a discrepancy that merits further investigation, particularly with regard to what might diminish it (e.g., relevant training for defenders and/or court counselors, or changes in courtroom procedures). Such investigation is beyond the scope of this study one of whose chief aims is to investigate juvenile defenders’ experiences of role conflict from any source.

**Juvenile court culture.**

As explained in Chapter One juvenile courts have historically eschewed the adversarial function and minimized the importance of the juvenile defender role. According to recent state assessments, including the North Carolina assessment (Grindall and Puritz, 2003), this “best interests” culture remains intact (e.g., Scali et al., 2013).
Proponents of this approach use the *parens patriae*, or rehabilitative mission, to justify its use, despite the implications for juveniles’ due process protections. Even though participants were not directly asked about their views on the juvenile court culture, their responses to other questions indicate that this culture still exists to some extent, as some participants believe it should. However, participants vary on whether they believe that culture should extend to the juvenile defender role. Most believe it should not, especially considering the court’s punitive realities.

Despite the system’s espoused rehabilitative orientation, in practice, it administers *punishment* to juveniles. The majority of participants recognized this reality. Participant 008 addresses this reality, and its consequences, in the following excerpt.

[Prosecutors are] terribly afraid of saying something wrong and so they just say they've been told, “push for more punishment” so they do that and that's often the wrong thing to do in juvenile court. Push for more therapy! Push for more intervention! Push for more anything but just locking the kids up; all [juveniles] do is to get angry [008].

Participants’ discussions of “training school” or, in North Carolina, YDC (Youth Development Center, referred to as “Youth Detention Center” by several participants) indicate that it is perceived as, essentially, a prison for juveniles. Some participants acknowledged that the intention behind training school is rehabilitation, but recognized the reality is more punitive. Participant 017 acknowledged this when he said, “there's no question YDC [Youth Development Center] is a punishment. You're in a closed, structured program….” He further explained, “judges may consider [YDC] punishment but the way it's designed it's supposed to be rehabilitation; that's the emphasis. But the more kids that are there, the more overworked they are, the less counseling sessions they
get, then it becomes punishment.” Participant 009 also considered the rehabilitation mission to be somewhat of a pretext, and provided the following explanation:

[T]hat courtroom is set up so we are not stigmatizing with a criminal conviction that will last you forever. [But] [t]he punishments are designed to be punishments… I'm sure it feels like that to the kid… It's meant to be rehabilitative whereas in the adult system it's meant to be partially rehabilitative and so there are conflicts in balancing, I think, helping the kid versus defending the kid to some extent. …Training school is what we call it, but it's not really a school at all to be honest [009].

As explained in earlier chapters, and by the U.S. Supreme Court in its In re Gault (1967) decision, once the system introduces the possibility of punishment, a defendant, regardless of age, has the right to effective assistance of counsel. Clearly punishment exists for juveniles in North Carolina making the juvenile defender’s expressed interests advocate role a necessary part of the juvenile court system. The possibility of punishment for juveniles in the juvenile court system, traditionally a rehabilitative court, could also mean any role conflict could pose a serious problem, and thus pose a threat to the due process protections juvenile defenders are meant to provide.

Participants did not explicitly identify the juvenile court’s “best interests culture” as responsible for the role conflict they experience. However, several identified court functionaries and their behavior as manifestations of the best interests culture when asked about their role conflict experiences. Some manifestations were presented earlier in this chapter as examples of role conflict from specific court functionaries. For example, participants recognized the tendency for juvenile judges to automatically accept court counselors’ recommendations despite defense attorneys’ arguments. And, there were some reports of judges pushing back against defenders’ efforts to zealously advocate for their clients’ expressed interests. Another example is the expectation of some court
counselors and prosecutors that defenders reduce their zealous advocacy in an effort to get the juvenile help. These are quintessential examples of juvenile court functionaries’ attempts to co-opt the juvenile defender into the court’s best interests scheme and clearly places defenders at odds with their professional ethics.

**Professional ethics.**

As explained previously in the Introduction, lawyers’ professional conduct is governed by the Model Rules of Professional Conduct. These Rules require attorneys to advocate for their clients’ *expressed* interests (ABA Model Rules, 2013: pmbl § 2). Therefore, the role conflict juvenile defenders experience can have implications for their professional standing. Even though participants were not directly asked about the ethical implications of their role conflict, their concern over this issue emerged as a theme.

Participants recognized that all of the vignette scenarios presented them with role conflict and ethical dilemmas. Indeed, one of their main concerns about the impact of role conflict was that it might place them in conflict with the ethical standards they have sworn to uphold. For example, the “Jasmine” vignette describes a situation where a young girl (age 11) is being arraigned for a “Assault with a Deadly Weapon.” She wants to get her case over with (i.e., admit to the charges) but her parents believe she is innocent. The participant (juvenile defender) does not have much time with her before the Assistant District attorney interrupts and says the judge is ready to hear the case. The participant has not had much time to speak with Jasmine so he is left to decide how to handle the situation. Participant 002 indicated he would respond this dilemma by asking for a continuance and pointing out to the court that, “[m]y client is receiving ineffective
assistance of counsel at this point because I haven't had enough time to fully develop and investigate this case. I need a continuance. I get that on the record you know it's kind of a constitutional rights argument or due process argument.” For the purposes of this study, the pressure juvenile defenders face in this kind of dilemma is also a professional conduct matter. Other participants recognized the ethical implications of the role conflict presented in the “Jasmine” vignette. This vignette, and participants’ responses to it, is discussed more thoroughly in the next chapter.

Participant 003 acknowledged the ethical ramifications of a best interests approach earlier in his career and changed his approach to expressed interests as a result. The following exchange with Participant 005 also illustrates the ethical concerns role conflict raises.

005: Been doing this for nearly 25 years and not often but there have been times when someone would either suggest or request that you take shortcuts … and when that happens sometimes it comes from the people that are in power or apparent power and that's when you need to go to your moral and ethical compass and say, “no, going to do this the right way to matter what,” and stick your guns.

I: That's great. What is the right way when it comes to your clients’ interests?

005: What's the right way?

I: Mmm hmm. Because there seem to be a couple of different ideas when it comes to juveniles about what you should be doing.

005: Well, your client is still your client whether they are juvenile or they are an adult. And you have to listen to your client. …if your client is telling you to do something that is immoral, illegal, or unethical whether adult or juvenile you tell them, “no.” If they are doing something that is not in their best interests, I believe that you have an obligation to explain to them the ramifications that go along with that, but they still get to make the ultimate decision. If you get past the point where you feel they should be making the ultimate decision then instead of you making that ultimate decision you should seek guidance as to whether or not they are competent
to help with their own cases because that's not a decision you get to make. It's still your client's case.

Despite participants’ recognition of their ethical mandate to advocate for the expressed interests of their clients, many participants, including 005, viewed the “expressed-best” interests dichotomy as an oversimplification. Immediately after the above exchange, Participant 005 commented, “I feel you have an ethical obligation to your client to explain both of those [interests] in working toward a resolution for your client.” Participant 005 is one of only three who firmly declined to identify with an advocate type. As described previously in this chapter, this indicates that participants have varying interpretations of their role and views on the extent to which role departures are acceptable or justifiable. Following an ethical mandate may, particularly at the disposition stage, seem like a factor over which juvenile defenders can exercise some choice in practice, even if not in theory. However, factors over which they cannot exercise choice include the resources that are available to support them in their role. This topic is addressed next.

**Resource availability.**

Participants indicated that resource availability (primarily time), or lack thereof, prevented them from being the kind of advocates they would like to be. (See Appendix I: Table 2.) This resonates somewhat with their reports of pressure to prioritize efficiency in the system over their clients’ due process rights. Participants identified the following as actual, or potential, resource pressures: time; caseload; access to service providers or sufficient information; and pay/money. What follow are brief discussions of each of these main areas of organizational forces.
**Resources- time (caseload/access to clients).**

For some participants, insufficient opportunities to connect with their clients create role conflict. For most, this kind of time pressure is intertwined with other pressure sources such as caseload, transportation, parents’ schedules, or statutory requirements. Participant 015 explains that his struggle with time is tied to caseload in the following excerpt.

Yeah [I have faced obstacles or pressures to depart form the zealous advocate role], some of those being time, or maybe not connecting with your client. Things that… would, I guess, make you emotionally not want to do the best you could do. … Yeah, for me I think it's going to be time and caseload more than anything (015).

Participant 022 found himself in the same boat and astutely noted the strong link between time and caseload. He explains how hard it is to tease time apart from caseload in the excerpt that follows.

Caseload can be a big one…. . I've been practicing law for a couple of years now and I am starting to handle felonies and I've been doing that for over a year now so … some have been resolved and some are dragging on and Superior Court is one of those courts that you take a lot of time away from other courts. I still practice in district [court], I still practice plenty of other types of law and even in juvenile court there’re other clients that need attending to so you cannot always focus on one person and one set of facts at a time. So, I think caseload and time kind of go hand-in-hand (022).

The majority of participants reported “time” as a resource pressure to depart from their role. However, it was not the only resource pressure identified as problematic.
**Resources- access to service providers/information.**

Some participants identified (lack of) access to service providers and information as a resource pressure that interfered with their zealous advocate role. However, access to service providers could also be intertwined with lack of information as explained by Participant 008 who here addresses the frustrations of procuring a private investigator.

The hardest thing we have, and this is true all through the system, is if you get in a situation where you need a private investigator. … [I]f I need an investigator in juvenile court I probably won't be able to get one. And then I end up going out trying to do something I really don't understand how to do (008).

Like with “time,” “information” as a resource pressure may be hard to tease apart from other sources of role conflict. However, one resource pressure that is relatively clear-cut is compensation.

**Resources- pay/money.**

All but three participants are non-salaried attorneys who are paid by appointment. In other words, their income is dependent upon the number of cases a judge assigns them. A number of participants reported that they sometimes experience financial pressure that interferes with their ability to advocate as zealously as they would like. In the following, Participant 015 disappointedly notes how juvenile defenders’ pay in his jurisdiction has shifted.

[I]t's really hard to actually bring home any money and pay your bills without having a huge caseload because the money is just not there. [W]hen I first became an attorney it was $75 an hour and they lowered it back when… the economy wasn't doing real well, they lowered it and they just never put it back up because that's not very popular to do (015).
This would have been the case for all participants since they practice in the same state. The fact that the rate did not shift upward after the economy picked up again likely has had some impact on most of this study’s participants since most are appointed counsel. But, the shift’s plateau would have had its greatest impact on those who only manage a few cases.

Making conclusions about the impact of pay and money is challenging because, as with many other resource restraints, pay and money are tied to other resource pressures, such as the time juvenile defenders spend on their cases. As, Participant 004 noted, “all … defense attorneys in juvenile court are appointed for all practical purposes and we get paid a pittance and the judge scrutinizes our time and if the judge doesn’t scrutinize our time the indigent defense services statewide offices scrutinizes our time and … fairly so.” The same can be said for nearly all other resources addressed in participants’ responses since they also seem to be intertwined with either time or money.

Other role-conflict relevant factors that can be difficult to tease apart include the ways role conflict impacts juvenile defenders. These topics are addressed next.

**Role Conflict Impact.**

Participants reported being impacted by role conflict in a number of different ways. Their responses are categorized into the following: tension and stress; time spent managing and coping; work quality; and client outcomes.
**Tension and stress.**

Most participants reported experiencing tension or stress as a result of their role conflict experiences. (See Appendix J: Table 3.) Participants provided a variety of descriptions of the tension or stress they experience including the following: a sense of frustration over facing; pushback from parents; getting yelled at by a judge for trying to do their job; and experiencing frustrated compassion for a client stuck in tragic circumstances. Some participants reported experiencing stress from circumstances where their clients’ expressed and best interests conflicted (i.e., “conflicting-client-interests” dilemmas).

As explained in previous chapters, role conflict occurs when there are conflicting expectations of a particular role. A number of participants recognized that some of the tension or stress they experience stems from these conflicting expectations. Participant 022 provides an example in the following excerpt:

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I would have to say, ‘yes,’ [experiences with pressure to depart from the zealous advocacy role cause me tension or stress]. I do think that they have personally caused some stress because I think part of it goes back to… we talked a bit earlier about expectations and there's of course the expectation that everyone else has and then there's the expectation that you have. … there can be a fair amount of stress, both in the stress that [parents] put on me and then in my own expectations for how I would do it. I think whenever you have a job and you find out that the job is not going to go the way that you expect it to, [and] while there are certainly sometimes pleasant surprises, it can often be a source of stress even just to change gears … (022).
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Participant 022’s excerpt indicates that facing conflicting expectations about one’s role can cause one to experience a lot of stress, a relationship that has been supported in the organizational literature (Jackson et al., 1987). Even though most participants did not identify what they believed to be the specific root of this stress,
Participant 005 implicated a sense of frustration and unfairness over thwarted goals. His response to the question of whether role conflict experiences ever cause him tension or stress follows.

Yeah. It does. I think from a personal side I want to do the very best that I can when I'm in trial and working with a client or working with any project. And the stress for me is I think it's unfair to my client to not allow me to go forward zealously and do the things that I feel need[] to be done in a case (005).

It is reasonable to expect that role incumbents will want to do well in their role. This is especially true when the purpose of that role is to ensure the system is *fair* to their clients. Juvenile defenders have presumably inhabited the role out of some desire to make sure juveniles are treated fairly in the justice system. So, if role conflict creates an unfair situation for their clients, juvenile defenders are very likely to experience stress as a result.

Even though other participants did not explain their experiences of stress in the same way as Participant 005, one can imagine that they, too, might feel a sense of frustration or unfairness as a result of conflicting messages about what they are supposed to do in their role. Instead, much of why participants reported experiencing tension or stress appears to be due frustration with individuals, mostly parents, who misunderstand the juvenile defender role, the system itself, or their own role. Participant 008 explained that much of his stress comes from naïve parents who “either can’t accept the fact that their kid did something, which is common, or … just [are] not going to see what’s going on.” Participant 001 also provided an example of how parent-based role conflict can create stress for him:

There are certainly times when there's been tension or stress involved when I have sort of conflicting ideas from the parents about what they
want to see happen or… and it goes both ways… [they want] the client not to be adjudicated on anything or … more often when the parents come to court and want the juvenile court system to punish the child more than they can be under the statute [such as] taken out of the home and sent to a group home. Getting pressure from them to lock the child up when [it’s unwarranted]… that makes it very difficult (001).

Despite participants’ efforts to compartmentalize their professional role from their role as human beings, a skill at which lawyers are considered particularly adept, juvenile defenders still reported experiencing tension or stress from their role. However, role conflict does not only affect the juvenile defender herself. Role conflict can also impact the client through its effect on defenders’ time resources, their work quality, and case outcomes.

**Time spent managing and coping.**

Participants were asked how much time they spend per week coping with role conflict. (See Appendix J: Table 3. Impact of Role Conflict.) Participants struggled with this question more than any other but were able to articulate an estimate of the kind of time they spend managing role conflict situations. Most participants reported that they spend anywhere from a little, to a lot of, time coping with role conflict. (See Appendix J: Table 3. Impact of Role Conflict.) For example, Participant 003 indicated that he spends very little time coping with role conflict when he said, “[m]aybe five or ten minutes it's hard to say. … probably I'm coping by just getting back to the office and diving into whatever the next [thing is].” Alternatively, Participant 002 noted, “[coping with role conflict] might make my stay down at the courthouse a little bit longer, maybe I stay down there two hours instead of one hour if I have a case that week.” At the same time, Participant 005 indicated that coping with role conflict was an ongoing effort:
I guess the real answer is how many hours are there? It's a constant… I think I do deal with it on a very constant basis because even when you're not directly working with it, it affects your life. However, I think the question is more directed as how much time is spent negatively affecting you? And, I think that varies, it varies very likely with what you're dealing with and who you're dealing with. I don't know of an attorney that does trial work that doesn't go, “oh, that’s the judge we got? Great!” Or, “oh, we've got them? Oh, that's gonna be fine.” It changes from day to day and time-to-time, as I explain to clients. we’re dealing with people and I may know the way that they react 90% of the time but they’re people. And, if something happened in their life bad or good last night they may act differently than what we think. And so you have to change within the moment sometimes. So, I don't know that I have a good answer for you on how much [time I spend coping with role conflict].

Participants reported that this time is often spent managing parents or clients about the extent to which parental involvement in the case is appropriate. This demonstrates a direct way that role conflict costs juvenile defenders time. On the other hand, there are indirect ways role conflict can cost these attorneys time such as when it affects the quality of their work.

**Work quality.**

Most participants reported that role conflict experiences affect the quality of their work. (See Appendix J: Table 3.) For example, in the following excerpt Participant 008 explains how role conflict experiences have negatively impacted his attitude, the way he strategizes, and the way he views his professional development:

[Role conflict] made me more cynical. And I think I started cynical so I think I'm a whole lot worse than I ever used to be. … what I know is at the start of the case that if I'm gonna win I have to define what that win is very carefully. See, I think I came out of law school believing that the cops made all this stuff up. I mean I really do. …I have never had a suppression motion granted by any judge at any level of anything I've ever done. The judge thinks everything's fine… and it's like, “no, that's not how it's supposed to work!” The fact that I still… 24 years and I'm still practicing law, that sometimes surprises me. There were a lot of days in the early
couple [of] years I didn't think I was going to make it. .... There's this emotional wall to get through with a new profession, teaching, or law or whatever and if you get through it you're okay (008).

Most participants who suggested role conflict has a negative effect on the quality of their work focused on how it makes them feel less effective, or could negatively affect their work quality. For example, Participant 022 said, “[a]ny time you find that you have pressure or tension in a case it always has the potential to have a detrimental effect.” It is important to note, however, that of those participants who reported that role conflict affects their work quality, not all of them believe the impact is bad. Interestingly, just over half of those participants reported they believe their role conflict experiences have a good impact on their work quality. Here Participant 005 paints a compelling picture of role conflict’s positive effect on his work quality:

I think it makes [my work quality] better. With adversity comes growth and we all need a little rain to make the flowers grow. … If everything went smoothly all the time it's probably because no one is questioning the system and it's just a check-off sheet. And that's not what the law is. The law is about real people and real events and very seldom is it as simple as checking these three boxes … [and] I think it's made me a better advocate all around. But I also think on a personal level I think it's helped me to understand how to deal with all of life in a better way because of it being a trial is kind of a mirror of life in some ways (005).

The extent to which some juvenile defenders believe their role conflict experiences positively impacts their work quality is a very interesting finding. Do these particular individuals have personality traits (e.g., resilience, tenacity, or confidence, etc.) or life circumstances that have made them more immune or resistant to the negative impact of role conflict than others? Do these traits, or defenders’ tenure in the role, enable them to move past the role conflict experience or turn it into something advantageous? Finally, do these particular participants have better interpersonal skills or
familiarity with the idiosyncrasies of the court and its functionaries than do the participants who reported experiencing a negative impact from role conflict, or those who have avoided or withdrawn from the role? These are critical questions for future studies.

An important point to make about the sample used in this study is that it is made up of attorneys who have chosen to not withdraw from the juvenile defender role. In other words, the study is made up of participants who have repeatedly chosen to remain in the role despite the role conflict they experienced. As a result, these participants may be likelier to have traits or perspectives that allow them to view role conflict as a positive challenge, or an opportunity for professional development. Therefore, participants’ responses on this topic may not accurately reflect the nature of role conflict’s impact on their work quality. A more concrete way to assess role conflict’s impact on juvenile defenders might be in how it impacts their clients’ outcomes. This topic is discussed next.

**Client outcomes.**

Most participants recognized that role conflict could, or does, affect the quality of their work and case outcomes. (See Appendix J: Table 3.) Participant 001 explained that it, “clearly it affects case outcomes just because it's difficult to manage what I'm getting…from the parents; what they want it’s just … difficult when the parents want a different outcome than what the juvenile wants. And so I think it does affect [case outcomes].” Participant 002 explained that one possible way role conflict impacts his case outcomes is by discouraging him from his purpose. He describes this indirect process in the following excerpt.

I sort of feel like … We talked about it before you turned on the tape… this feeling that lawyers get of losing all the time; it's sort of depressing
them. And I think it sort of also makes me perform worse too in situations like this like what I'm going into tomorrow I'm going to feel like I have no chance of winning, but you know we’re going to take a shot at it and maybe the witnesses won't show up or maybe I'll convince the judge that they’re lying (002).

Participant 005 also indicated that role conflict might serve to discourage juvenile defenders. He explains, “I think … if something affects you and keeps you from being zealous then I think you're going to get a less positive outcome because you need to be able to put your best foot forward and do whatever needs to be done.” His comment here implies that role conflict suppresses juvenile defenders’ ability to put their best foot forward and consequently negatively affects their case outcomes.

Participant 013, an “expressed” interests advocate who views role departures as unjustifiable, even at the disposition stage, made an interesting note about role conflict’s impact on one of her case outcomes. She described a situation where she advised her client to cooperate with the state to avoid getting transferred to adult court. Unfortunately, her uncooperative client would not take her advice so she had to make plans to accommodate her client’s expressed wishes. While she was planning, Participant 013 and her client “outwaited” the prosecutor who ultimately removed the threat of transfer. This resulted in a plea agreement where her client admitted to most of the charges.

Participant 013 was asked, “when there are pressures that could prevent you from being as zealous an advocate as you would like, how does that affect case outcomes?” She referred back to the uncooperative client case and replied, “in order to guarantee the fact that he didn't get transferred [to adult court] we probably pled to some charges that we otherwise may have fought a little harder.” The fact that the threat of transfer was
removed was a stroke of luck and Participant 013 was able to convince her client to accept a plea agreement without feeling like she departed from her zealous advocate role. However, she still felt like she would have fought harder had the threat not been removed. And, since her client was giving her pushback, the outcome could have been far worse. For instance, he could have been transferred to adult court given his previous uncooperative stance and this was an outcome Participant 013 very much wanted to avoid.

Participants’ recognition that role conflict affects their case outcomes is poignant. Not every juvenile defender will have developed the skills necessary to prevent role conflict’s impact. For instance, judges can be intimidating and this can discourage zealous advocacy on the part of less experienced, or less confident, juvenile defenders possibly leaving their juvenile clients with less-than-effective assistance of counsel.

The consensus that role conflict can have a negative impact on case outcomes reflects the relationship found in the organizational literature between role conflict and work performance (e.g., Wright & Bonett, 1997). It is reasonable to conclude that if the system or its functionaries exhibit pushback behavior beyond what is necessary for the adversarial process, and that behavior interferes with the juvenile defender’s role, she will likely be less successful than if she did not face such interference. It is therefore also reasonable to conclude that the role conflict juvenile defenders experience negatively impacts their performance or the quality of their work. In fact, such a relationship was found in a study of burnout correlates among public service attorneys (Jackson et al.’s 1987). Since there is a good deal of overlap between the work of public service attorneys
and juvenile defenders, a replication of the Jackson et al. study might be a suitable
follow-up to this one.

Regardless of participants’ spin on the ways role conflict impacts them, they
clearly experience role conflict and find ways to cope with it. Understanding how
participants cope with the role conflict they experience is an important part of setting the
stage for future examinations. Participants’ coping responses to role conflict are
addressed next.
Chapter Five- Role Conflict Coping and Coping Consequences

Participants coped with the phenomenon of role conflict and its effects against the background of the context and juvenile defender factors discussed in the previous chapter. This study invited participants to share the ways in which they cope with role conflict. Four major themes emerged from participants’ responses to coping questions and vignette scenarios: (a) client management; (b) parent management; (c) courtroom management; and (d) self management.

Client Management

Participants provided several examples of coping strategies for managing their client-based role conflict. These strategies emerged under two major themes: using persuasion skills and qualifying the way defenders spoke to the court on behalf of their clients.

Use persuasion skills.

Participants described how they utilize their skills of persuasion to convince a client to shift his interests in conflicting-client-interests situations. This type of dilemma was a meaningful and common reality for many participants. Participant 024, a juvenile defender for nearly four decades, explained how she would use her persuasion skills to try to convince her clients to change their unreasonable or unrealistic interests. She explained:

[O]bviously if your client says, “I want [you] to advocate for the fact that my probation should include a trip to Disney World,”… no, I don't think you should do that but I think you can always advocate for your client’s
expressed interests as well as … something that's more likely to happen that still would be a benefit to client (024).

Participant 024 was one of the study’s most experienced defenders. She had attended one of the better law schools in the state. Even though she had not participated in her law school’s juvenile defense clinic, probably because it did not exist at the time she attended, she had participated in a number of CLEs (continuing legal education courses) that were facilitated by her county’s juvenile association and defense lawyers’ association. Clearly, Participant 024 seems to have the confidence and experience to identify when she can try to help her client without departing from what she believes is her role as a zealous advocate. She had identified her role as her clients’ “legal” interests advocate and was one of the few participants who said she had not “experienced any outside unwarranted pressure that affects the advocacy.” So, confident in skills as a persuasive counselor and advocate, she seems to know when to tell her client, “no,” without feeling like she is departing from the role.

Another very experienced participant shared the ways he used his persuasion skills to get a client to change his interests, such as when the client would like to testify or speak to the judge himself. In the following excerpt, he explains how he speaks to a client who has been pushing back against the defender’s need for the judge to view his client as credible:

One of the things I do with clients [who give me pushback] on a semi regular basis to try to help them understand when they have a story that doesn't hold together. Many times I will turn the tables and say “let's imagine you're the judge, you have a black robe, you just heard the story that you told me. What would you think?” And almost without exception you know, “I wouldn't believe that!” And I’ll kind of go, “and, the judge wouldn't either.” So that's been very helpful (005).
Other participants described the ways they would use persuasion to handle the dilemma presented in one of the study’s most realistic vignette scenarios. The scenario involves a fourteen-year-old, James, who has been arrested for heroin possession and is struggling with addiction. The participant, James’ juvenile defender, is presented with evidence that the search leading to James’ arrest may have been illegal. The defender is asked if he would file a motion to suppress evidence born of a potentially illegal search if it means James will not get help for his addiction that he cannot otherwise afford. The vignette is silent about what James wants. Participants’ responses to this vignette scenario indicate that it would be difficult, maybe even impossible, for the defender to advocate to the court for something if the client does not truly want it.

In his coping plan for the James dilemma, Participant 009 explained that he would attempt to persuade the client to admit to the problem. He stated, “I think an effective way of reducing that tension is to get the kid to admit the fact that [substance use] might be an issue,” yet explained, “it's hard for me to get up there and say the kid needs drug therapy if he's like, ‘what are you talking about?’”

Unlike Participant 024, Participant 009 was one of the study’s least experienced juvenile defenders with ten years of experience as an attorney, but only three years of experience as a juvenile defender. He had attended a well-respected law school outside of North Carolina and declined to identify as any type of advocate. Participant 009 would have begun his practice of juvenile defense law after the North Carolina Role Statement was released so he should have had a clear idea of the expressed interests element of his role, even if he is not willing to identify as any particular type. His response to how he defines his role made this understanding clear, though it also shows his recognition of the
role’s nuanced reality. It also demonstrates his recognition of the importance of using persuasion skills to cope with client-based role conflict.

I would always advocate exactly what the client wished. But I do think I am the representative of the child and at the same time look after his best interests and so I would say that if the client had an expressed interest which I thought was very much in conflict with a holistic treatment or something that was going to better him in some sort of way I might… the way I might … sidestep a little bit and say, “but you know historically I'm not sure that's the best course of action.” … and not completely… contradict the client, but point out alternatives that I think might be helpful and that's not something I would do in the adult system. … I wouldn't say that's necessarily departing from advocating [for the client’s expressed interests]… Well, it's slightly departing from advocating for [them]… (009).

Other participants’ responses to the interview questions indicated their use of persuasion skills to cope with conflicting-client-interests dilemmas. For example, Participant 017 stated, “[w]ell, [if what the client wants isn’t in his best interests] you zealously argue to your client that [something else] is what his best interests is.” Participant 017 followed up that even though he would hope to convince his client to change his interests, he would ultimately respect the client’s expressed wishes.

Participant 017 had attended a law school outside of North Carolina and had participated in the juvenile law clinic it offered. He had relocated to North Carolina and was aware of the state’s prioritization of expressed interests advocacy since he had attended juvenile defense trainings (“CLE’s”) in North Carolina. Even though he identified as a “best” interests advocate he still prioritized his clients’ expressed interests. This interesting discrepancy may demonstrate Participant 017’s recognition of the nuances inherent to juvenile defense and explain why he uses persuasion to try to change his clients’ interests.
Participant 014, a far less experienced defender who identified as an expressed interests advocate, reflected the same approach. The following excerpt is illustrative:

So there's the counseling aspect to when I'm talking to my juvenile clients, well, we'll talk about what their expressed interests are and what I may think their best interests are. After we've had that conversation and if they are adamant in going a certain route, their expressed interests, well, I've satisfied myself and my ethical obligations to counsel them as far as the process, outcomes, and things like that so that now I can go full force and try to accomplish their expressed wishes even if I personally think that's the worst thing that could happen to them (014).

Even with only two years of experience as a juvenile defender Participant 014 had completed a number of trainings offered by the University of North Carolina’s School of Government and North Carolina’s Indigent Defense Services. Participant 014 is one of three full-time juvenile defenders who participated in the study so it is easy to see how he would have been able to develop the clear definition he has of his role. To be sure, even participants who served as part-time juvenile defenders would have engaged in some training either through logging courtroom observation hours or completing a number of CLEs (Participant 011). Since Participant 014 is a more recent addition to the cadre of juvenile defenders in his county, having only graduated from a local law school in 2010, he is likely to have been more influenced by North Carolina’s new approach to the juvenile defender role and the plethora of available training opportunities.

As illustrated in Participant 014’s excerpt, participants appear willing to do their best to inform their clients of relevant information and options, even when clients’ expressed interests do not make sense to their attorneys. However, once participants feel they have adequately performed their counselor function, they ultimately advocate for their clients’ expressed interests. This appears to demonstrate an adherence, in 2014, to
the expressed interests role that Grindall and Puritz (2003) reported as so often abandoned.\textsuperscript{xlv}

**Qualify language to the court.**

As discussed in the previous chapter, participants widely recognized that they serve as their clients’ “voice” to the court. Participant 013, who identified as an expressed interests advocate, stated her view in the following way:

I am one voice among many and my voice is going to be my client’s voice. And, my client doesn't need me to be looking out for what I personally think is in their best interest; there’s lots of other folks in the room that are doing that. And so what's most important to me is that my client's voice be heard and I have no conflict with that at all (013).

Participant 013’s dedication to serving as her clients’ voice to the court is inspiring and shared by several other participants who identified as “expressed” interests advocates. Nevertheless, some participants, despite sharing these two characteristics, described the ways that they qualified their language to the court even while speaking on behalf of their clients.

One example is Participant 008, one of the study’s most experienced, and most colorful, defenders. He identified himself as his clients’ “true” interests advocate. He described that one of the ways he copes with the impact of role conflict involves signaling to the judge that he disagrees with his client.

\[Y\]ou can code things to a judge when you're in the courtroom. You can say things like, “Your Honor, my client [emphasis added] wants you to know the following facts,” and then the judge at that point has quit listening to you because it’s coming from your client [not from you] but your kid gets to hear you represent them and say their bit and that really carries a lot of weight with kids.
Here Participant 008 illustrates how he communicates to the judge his personal disagreement with his client’s wishes while still serving as his client’s voice. In doing so Participant 008 ensures that his client sees him speak to the judge on the client’s behalf, thereby safeguarding the trust his client has placed in him. At the same time, Participant 008 safeguards his professional standing with the judge whom he is likely to encounter when representing other clients. He does this by signaling to the judge that what he is saying comes only from the client, not from himself. This is a unique coping technique that technically does not violate the zealous advocate role requirements, though may draw scrutiny from attorneys who define the role more strictly. At the same time, it is common knowledge among attorneys that maintaining a positive relationship with the judge is of paramount importance to attorneys and their clients. This issue is addressed more thoroughly in Chapter Six.

Another example comes from Participant 003 who found himself needing to qualify his language to the court, in part, to preserve his standing in the court. He explains:

I used to take more of a tack that I would act in the best interest of the juvenile. I don't think I ever really did that in regards to the guilt and innocence phase I probably did that more so in regards to the disposition phase….what I felt was actually better for the client. As I got older I realized that there may be some ethical issues so I think I just more or less kept quiet and let the court realize [by] my wording and my silence that I may not be in approval of what my client was asking for (003).

Both participants 008 and 003 genuinely wish to serve as the client’s “voice,” but they also appear to recognize the pressure to qualify how they do so because of their concern for the relationship they have with their client or the judge. This demonstrates how role conflict can create situations that, as Stapleton and Teitelbaum (1972) asserted,
would “sorely press the most adroit of actors,” (p. 146). Defense attorneys must advocate for their clients’ expressed interests without triggering the judge’s ire for being too zealous and all the while try to create, or preserve, their clients’ trust. This is an understandable concern given the literature on the trouble juvenile defendants have trusting their attorneys and the importance of trust to the attorney-client relationship (Pierce and Brodsky, 2002).

Other participants reported qualifying their language to the court for the sake of preserving their clients’ feelings and trust, among other things. Participant 011 shared a story of the struggle she faced when speaking to the court about a client whose mother no longer wanted him.

I'm standing there saying this is a neglectful mother that doesn't want her kids and it's true. But how do you say she doesn't want him with him sitting right there, you know, I have to choose my words so that the judge understands it without saying mom doesn't want him when he’s sitting right there beside me. I get a lot of that and I just keep going. I have a very thick skin (011).

Participant 011, like Participant 008, has a long history of working on behalf of juveniles in the court system. Even though her tenure in the juvenile defender role is not as long as Participant 008’s, her experience cultivating and nurturing the trust of at-risk juveniles is essentially the same given her seventeen years as an attorney and decades of experience as a child abuse investigator. Also like Participant 008, 011 has been directly involved in training tool development for other juvenile defenders.

These excerpts raise a number of questions. For example, how many participants qualify their language to the courts when speaking on behalf of their clients? Does ‘coding’ things to the judge so he knows the defender disagrees with his client comport with “zealous advocacy?” It clearly does for Participant 008. And, when Participant 011
limits the way she frames her client’s story to the judge in open court so her client will not hear that his mother simply does not want him, is she departing from her expressed interests role? One could argue that she is not unless the client specifically wants her to explain this to the judge.

Would some juvenile defenders regard this ‘coding’ or qualifying language as role departures or as the defender’s being ‘co-opted’ into the rehabilitative scheme of the juvenile court as suggested by the 2003 juvenile defense assessment (Grindall and Puritz)? The practice of qualifying a client’s words to the court constituting a departure from expressed interests advocacy is an excellent topic for future research.

**Parent Management**

Participants frequently spoke of ways of coping with parent-based role conflict. As described in the previous chapter, parents often come to blows with juvenile defenders in their, oftentimes, misplaced efforts to protect their children. Parents frequently attempt to act as either the client or the lawyer in their child’s case. The most prevalent strategies that emerged from participants’ parent-based role conflict included: affirming the defender’s role with the parents and excluding the parents from client meetings.

**Affirm role to parent.**

As explained in the previous chapter participants believe that parents typically do not understand the juvenile defender role. One of the ways participants often cope with pushback from parents is to use their communication skills to help clarify the true nature of the juvenile defender role.
Participant 001 explained how he handles difficult parents in the following way:

I typically speak to the parents. I explain to them my role in the court system which is for the expressed interests of the juvenile. That is what the parents want, it’s not necessarily what their child wants and that my role is to advocate for the child … and [i]f they’re not rational then what happens is typically, if I’m really frustrated, I would bring it to the attention of the court (001).

Participant 001 began in his role as a juvenile defender about nine years prior to the interview he gave for this study. That was about the same time that North Carolina’s Role Statement was disseminated for the first time. Like so many other participants who identified as “expressed” interests advocates, Participant 001 availed himself of the Continued Legal Education courses offered by the state, particularly the juvenile defense training offered through the School of Government at UNC Chapel Hill. These combined experiences may have provided him with the communication skills and confidence to adeptly manage parent-based role conflict.

Participants provided a plethora of examples of how they would communicate information about their role, and the client’s, to parents. For example, Participant 005 explained his way of coping with the dilemma presented in the “Daniel” vignette.

Daniel’s mother wants her son to admit to the charges against him even though Daniel wants to go to trial. Here is Participant 005’s description of how he would handle it:

[S]o [you would] explain[] to her your ethical obligations and that Daniel is the client and he has to make that decision and possibly remov[e] her from the room because he doesn't need to have that pressure of trying to please her and talk about his case at the same time. So, that is part of it in the way to cope with it is to do exactly that (005).

Participant 005 is one of the study’s most experienced defenders. He has practiced juvenile defense for twenty-three years and engaged in extensive juvenile defense training (i.e., CLEs, clinics, self-study). And, while he did not wish to identify with an
advocate type, his definition of his role included a strong expressed interests component. Despite having a lot more experience than most other participants, 005’s coping strategy in the excerpt above reflects those offered by several other participants. The above excerpts illustrate how participants would attempt to enlighten parents about the juvenile defender role. However, their efforts were not always successful. In some instances, defenders would remove, or otherwise exclude, parents from their meetings with clients.

**Exclude parent from client meetings.**

Participant 019 provided the following answer to the question about what he has found to be effective at reducing role-conflict-based tension or stress:

[R]emoving the parent or guardian, where normally the problem is, from the interview with the juvenile and just taking some time even before … getting into the details to just talk to the juvenile about what their likes and dislikes are and that kind opens up the lines of communication and kind of gets them to understand, “hey, I'm on your side,” (019).

Participant 019’s willingness to draw boundaries with parents so that he can have more open lines of communication with his clients indicates that he takes his zealous advocate role seriously.

Participant 005 also engages the coping strategy of drawing boundaries with parents. He explained that, in a pinch, he would not, “have any problem asking a parent to leave the room even when they are very irate about wanting to be there and explain to them that, ‘I have an ethical obligation and I'm going to follow that.’” However, failing that, he would “go to the (North Carolina state) Bar, go to the judge [and say], ‘do what you have to do but I'm going to do it the way that I feel it has to be done.’”
Participant 005, as indicated earlier in this chapter, is one of the study’s most experienced juvenile defenders. Like Participants 011 and 008, he is well-known as a zealous advocate for the juveniles in his county. His willingness to seek help from the judge in a parent-based role conflict situation reflects a type of confidence and professional skill experienced juvenile defenders may have over inexperienced defenders. At the same time, there may be situations where the judge is unable or unwilling to assist a juvenile defender in this way. Perhaps the judge is reluctant to put his foot down with a parent, possibly because he does not support, or respect, the juvenile defender role. Or, the judge may be unsupportive of the role in other ways that tie the hands of a defender. Under those kinds of circumstances, and in situations where juvenile defenders feel they cannot ethically proceed in a case, they may choose to officially withdraw from it.

Participant 001 offers an experience he had:

If [parents are] not rational then what happens is typically if I’m really frustrated I would bring it be attention of the court that this person is … you know… I had a mother one time blast me for, I can't remember what the situation was, but just got completely bent out of shape, you know. Sometimes I'll just bring it to the court’s attention that this isn't, even though she's not the juvenile, “this is not working out and, based on my compensation in this courtroom, you want to appoint somebody else to this case that's fine (001).”

Another participant, 017, introduced earlier in this chapter, described how a clash between the client’s expressed and best interests could lead to withdrawal. He explained that he would zealously argue to his client what he thought was in the client’s best interests. But, if it came to a point where his options amounted to the “level of ineffective assistance” of counsel, he would withdraw. Withdrawal from the role is the most extreme role conflict coping response. It is also the most effective at reducing the tension or stress juvenile defenders experience from role conflict. However, none of the participants
reported having actually withdrawn from a case as an immediate response to role conflict.\textsuperscript{xlvii}

It is not surprising that “withdrawal” is not a widely cited coping response to role conflict. The participants, at the time of their interviews, were current job incumbents so it stands to reason that they have found a way to cope with, or adapt to, role conflict in a way that allows them to remain in the role.

**Courtroom Management**

As indicated in the previous chapter, participants reported courtroom functionary-based role conflict as occurring less often than role conflict from clients and parents. Nevertheless, this type of role conflict has the potential for more impact given the power of its sources: judges, prosecutors, court counselors, and other defense attorneys. Even though participants recognized some support from these functionaries, they also easily provided examples of role conflict from them and described corresponding coping strategies. These strategies involved: affirming their role definition with functionaries and building a strong reputation and tenure of experience as zealous advocates for juveniles.

**Affirm role to functionaries.**

Participants, typically more experienced defenders, would sometimes explicitly remind courtroom functionaries of the defender role definition. Participant 011, one of the study’s full-time juvenile defenders described how she would have to constantly do this with court counselors. She explains how she copes with pushback in the following excerpt:
I've had court counselors tell me that I'm not really working in the kid's best interests. And I repeatedly say, “that's not my job; that's yours. … That's not mine.” And … I have to keep saying it over and over again. The same court counselor will come in and say… and I'm trying to get the kid out of detention… and they're saying he really needs to stay in until he goes to placement or he's gonna get more charges. And I go, “I know that. But my job is to say what he wants, not what you want.” [I: Do you find that here in this county even now, today?] Yes. Even now. And even with the same court counselors over and over again that are just surprised that I don't come in and rubberstamp what they want in the best interest of the child (011).

Even though Participant 011 had previously been a child abuse investigator (best interests role) for over two decades, she demonstrates a clear understanding of the expressed interests component of her juvenile defender role. This is true despite the fact that she has only inhabited the role for seven years. She also openly recognizes that court counselors’ reports are often “rubberstamp[ed]” by judges yet still asserts her zealous advocate (expressed interests) role in the face of pushback from court counselors and judges as demonstrated in the following excerpt.

Two [judges of three] very much [support me in my role]. …We do have a judge [who] still doesn't get that. Bless his heart. And I just have to continually say you know, “your Honor, I'm here for my client and this is what he wants.” And [then] he rubberstamps what the court counselor asks for.

Other participants were willing to remind the judge of the responsibilities of the juvenile defender role. Participant 018 had only one year of experience as a juvenile defender but found himself in the confusing position of reminding the judge of the true meaning of the defender role.

I actually recently had a judge inquire about what my actual role was as an attorney in court and it was a little bit concerning because my job is to act in the expressed interest of the juvenile and I had to refresh the judge's memory that it wasn’t best interests but it was expressed interest (018).
Even though Participant 018 did not have 011’s years of experience in the defender role, like her, he identified himself as an “expressed” interests advocate and had engaged in some additional juvenile defense training, specifically, continuing legal education courses (“CLE’s”). This is a background shared with Participant 022 who explains in the following excerpt how he handles role conflict from prosecutors:

[I]f I’m having a problem with the DA I always remind the DA what my job is, that I am advocating for the expressed interests of my child, of my client. And I… my job is to inform them, …to help them, … to listen to them, and to not judge them (022).

Participant 022 has only practiced juvenile defense for four years. However, his experience with juvenile defense professional development activities like CLEs and the juvenile justice clinic at his law school may have increased his awareness of the North Carolina Role Statement emphasizing expressed interests advocacy and instilled in him the confidence to adhere to it.

This chapter has so far discussed the ways that juvenile defenders cope with person-based role conflict. However, the findings have shown that participants also hold system-based factors (e.g., pressure for efficiency) responsible for the role conflict they experience. How participants cope with the system’s pressure for efficiency is addressed next.

**Affirm role- system push for efficiency.**

Even though the system’s push for efficiency is manifested through a courtroom functionary’s behavior (e.g., the judge getting impatient and urging defenders to “move things along”), this type of role conflict was recognized as its own source because it came from so many courtroom functionaries. Also, one of the vignette scenarios focused on the
system’s push for efficiency. The “Jasmine” scenario involves an eleven-year-old girl who is being arraigned for “assault with a deadly weapon.” Her parents insist she is innocent, but Jasmine wants to get the whole thing over with. The defender’s information leads him to conclude that she needs a trial. While the defender is speaking with Jasmine and her parents, the Assistant District Attorney knocks on the conference room door and informs the defender that the judge is ready to hear Jasmine’s case.

Participants’ coping responses to the “Jasmine” vignette invariably included a request to the judge to continue the case to another date so the defender could have more time to prepare. Participant 003 explains a situation where he requested a continuance as a result of the push for efficiency:

[T]his [scenario] is probably one that makes my stress level rise … when the assistant DA [tries to push forward] because the judge is ready to hear a case… I've had at least one example of when I walked out and said, “Your Honor, this is the first time that I've met with the juvenile and we need additional, I need additional, time to be able to talk to some possible witnesses (003).”

The “request for continuance” coping response also poses a bit of an analytical challenge. A request for a continuance could be construed as a departure from the expressed interests component of the zealous advocate role because Jasmine has clearly indicated she wants to expedite her case, in other words, admit to the charges. But, if a defender does not automatically advocate for his client’s expressed wishes, does that necessarily mean he has departed from the zealous advocate role? As explained in previous chapters, there are ethical implications for not advocating for a client’s expressed interests. However, there are also ethical implications for doing so in such an automatic fashion, as indicated by several participants.
Participant 011 illustrates how she would cope with the “Jasmine” vignette by mentioning her ethical duties. “I would say, ‘Your Honor, at this point I have not been given the time to do my ethical duties as effective assistance of counsel in this case therefore, I request a continuance.’” Although somewhat reluctant to request a continuance given the system’s emphasis on efficient case processing, participants indicated they regularly do so when it is critical to making sure their clients make an informed decision with respect to defense strategy. This is likely the most critical when it comes to the disposition stage. Recall that this is the sentencing phase of the juvenile court process and appears to trigger person-role conflict for some participants. How they affirmed their role at this stage is addressed next.

**Affirm role (mostly)- disposition stage.**

Participants’ responses to disposition-based role conflict indicated that they would use the same coping strategies addressed previously in this chapter. At the same time, some participants, particularly those who view the disposition stage as a justifiable reason for zealous advocate role departure, indicated they would adjust their zealous advocacy role. For example, Participant 009, explained:

I think I would always say my client’s thoughts and then if I had thoughts that were slightly alternative or maybe in direct conflict,… I think I might say, “here are some ideas, some alternatives, that maybe historically worked better in the past,” … And oftentimes it's that it's actually a form of advocacy because if you have a kid who’s charged with something somewhat brutal and wants to be on unsupervised probation, the judge isn't going to do that. So, to kind of meet halfway … [is] not really in conflict with what their expressed interests [are].… I think it's more kind of a compromise position. And that's certainly a form of advocacy but do I ever depart from advocating their expressed interests? … in disposition yes, in adjudication, no (009).
Other participants who viewed the disposition stage as a justifiable reason for role departures indicated they would, “step outside” the role (Participant 007), and think “about a lot more than [the client’s] expressed interest,” (Participant 016). Like a number of others, Participant 008 shared that his goals with his client shift at the disposition stage; he explained “[o]nce we're in the system [meaning the client has been adjudicated “guilty” or “responsible’] my goal is to get the kid to address whatever got [him in trouble] and then straighten that out and get out.” Others argued that because clients are so young (Participant 019) they do not understand and do not know (Participant 020) what their expressed interests are. Participant 020 explained his view on the reason for the dilemma many juvenile defenders face at disposition:

[I]f they want to admit or deny [responsibility in] a case you know that's not going to be something I'm ever going to deviate from what they say but as for sentencing … there's not a whole lot to go on. They're not giving me much to work with as to what they want to [get] help [for] and… then I will be thinking in terms of best interests (020).

Most participants responded to disposition-based role conflict by affirming their role, and often using their persuasion skills to do so. Nevertheless, even some who viewed role departures at the disposition stage as unjustifiable admitted that the juvenile defender role “doesn’t end” with adjudication and “what [they] do in disposition is at least as important,” (004). Participant 004 regarded juvenile court as a “problem-solving” court. Even though he is an “expressed” interests advocate and views disposition-based role departures as unjustifiable, he appears to have developed, over the course of his six-year career, a view of the juvenile defender role that implies compromise:

I think most of us who practice defense … view one of our primary roles as trying to find alternatives for disposition that will benefit our clients, … make recommendations to the court counselors and try to represent to the
judges that the kinds of information on disposition will help them look favorably upon whatever it is our client wants to see happen (004).

Participant 005, declined to identify as an advocate type. However, like Participant 004, he views disposition-based departures as unjustifiable. Nevertheless, he stated that he understood why juvenile defenders might view their role as changing at the disposition stage and that best and expressed interests should “go hand-in-hand” and “mesh in your mind.” He explained, “it may be that your strategy changes or your client’s mind changes as the process goes along, but it should be based upon working those two issues together as opposed to separately.” As already indicated previously in this chapter Participant 005 is one of the most experienced, and widely respected, juvenile defenders in his county. He, along with a number of other participants, seem to have developed an understanding of how nuanced a role they fill as juvenile defenders. In fact, a number of them identified that building experience and a reputation served as their own kinds of coping strategies.

**Build reputation and experience.**

Participants indicated that they coped with role conflict and its effects by building a strong reputation as a zealous advocate and learning from their experiences in the role. Their staying committed to the role despite role conflict incidents allowed them to gain confidence and courage to either effectively cope with role conflict or avoid it altogether. Participant 008, one of the most experienced and widely regarded juvenile defenders, made the following assertion about building experience:

> I think the most effective thing any lawyer does is just catch onto that stuff [informal norms and practices in the courtroom] and that's just a matter of doing it. Because they can't teach you this stuff in law school because you
don't have professors who spent 20 to 25 years a courtroom. They spent 25 years in the classroom. Nothing wrong with that, but in terms of learning how to practice law you need to come out and get bloodied yourself. Get into the trench, take out your knife and go kill someone (008).

Participant 008’s insistence that lawyers need to “catch on to stuff” could hold one of the keys to how juvenile defenders navigate the murky waters of the role conflict that so clearly exists. Participant 008 admitted at one point in his interview that he was not sure he would “make it” in his chosen profession. But, he was able to “catch on to stuff” which may have played a critical part in his remaining committed to the role. It also may have paved the way for him to succeed in the role for as long as he has- twenty-four years- and as well as he has. Participant 008’s confidence in the face of role conflict experiences, and ability to use subtle communications to the judge without departing from his expressed interests advocate role, also appear to have been pivotal to his success as an attorney. What also helped Participant 008, and other participants, was his ability to develop a reputation for being a zealous advocate for his clients.

A law professional’s reputation is critical to her success; a reputation cannot be built if one is not willing to put in the time and practice. Participant 013 explained how her reputation might allow her to avoid role conflict. She also implies that her reputation was built, in part, because she was able to effectively cope with internal conflict.

I think from my experiences that the folks that I work with know where I stand and so inside I might have a conflict [about what my role is] but on the outside nobody knows that I have a conflict with it. I'll be doing what my client wants and they know that and I have not had any issues with that (013).

This excerpt indicates that Participant 013, an “expressed” interests advocate, appears to have built enough of a reputation in the five years she has been practicing to possibly avoid much courtroom-based role conflict and its impact. She has remained
committed to her expressed interests advocate role and avoided showing hesitation or conflict in doing so.

**Self Management**

Participants described the ways they cope with role conflict by identifying things they do for themselves as individuals to reduce stress or decompress. These strategies could be categorized into the following: (a) redirect attention; (b) create work-life balance; and (c) build a support network.

**Redirect attention.**

Some participants described the creative ways they handled role conflict when it happened in open court. Even though lawyers are trained to think on their feet and have good poker faces, experiencing role conflict in the middle of their most public professional tasks can be very stressful. Some participants shared that in order to deal with this type of stress, they would redirect their attention to buy time during court proceedings. Participant 022 explained that:

[To effectively reduce the tension or stress you get from role conflict] you can't just say, “Your Honor I need a 15 minute recess and drive home and play with my dog for a while.” What you can do is turn to your client if you've got even just a couple moments and kind of explain things to them and when you hear yourself explaining things to a client it will also help you think about it. I have had this happen numerous times where something happens in court and I say, “Your Honor, I need a moment to explain this to my client.” As I'm talking to him I’m saying, “all right, they're allowing this evidence that I didn't think was admissible; here's what I think we should do.” [In my mind, as I'm explaining it to them I am hearing myself say it and I'm already thinking about what I can do to reassess the situation (022).
This is a coping response that requires the ability to think quickly on one’s feet, a necessary skill for any litigation attorney, especially those safeguarding due process rights in a court culture that pushes for efficiency and may not recognize the value of the defender role. Participant 022, with four years of experience as a juvenile defender, may have been less experienced than most of the other participants, but he had attended law school and attended a juvenile law clinic in the same county where he practices. These experiences could have provided him with opportunities to develop the skills he displays in the excerpt above.

**Create work-life balance.**

Several participants implicitly addressed the importance of work-life balance, and one, Participant 016, explicitly noted it when she said, “I try to work out and run a lot. I think it just helps me to kind of get a work-life balance to not kind of let the stress build up.” Other participants recognized the ameliorative effects of exercise and Participant 002 used physical and mental exercises to reduce his role conflict-based stress. He explains in the following excerpt:

I exercise a lot. That's the biggest thing that I do. I'm a long-distance runner and that has really helped I think over the years just keeping me calm, keeping the blood pressure down, being better and … then just the other techniques, [telling yourself to] “be calm,” even if a judge is railing at you and you completely think they are wrong just, “be calm.” You know, ride it out …or the prosecutor or whoever. I think the being calm and the exercise are probably two of the most effective things in terms of reducing stress in my job (002).

Like Participant 002, Participant 022 suggested a mental exercise he used to reduce his role conflict-based stress. He explained:

Well just briefly, and I think this is something that every attorney should do, but not every attorney has time for, is to take a step back.
...Obviously, not in court. I go all the way in court as I can, but when I am no longer meeting with the client, and I am no longer in court, then I take a step back. I do not take my work home with me if I don't have to (022).

**Build support network.**

Participants’ considerable communication skills help them in their efforts to resolve personal tension or stress. These skills are used to develop positive work relationships with others who can lend support during difficult times. Many participants appear to rely a great deal on the strong relationships they have developed with their colleagues, and other professionals, to cope with the role conflict they face. Participants heavily identified talking to others, specifically colleagues and mentors, as a way to relieve their role-conflict based tension or stress. Participant 002:

[I]t helps to go talk to other people and say, “here's my dilemma, here is my problem, is my thinking about this wrong, what [do] you think with your fresh eyes?” I get some good info that way. ... That's therapy in itself, you know, just going and talking to somebody else and saying, “hey, what am I doing wrong here?” And it's okay if somebody says, “you're being unreasonable, let it go ... it's not worth it,” or whatever. “There are bigger, ... pick your battles,” or what have you. “Don't let that judge get to you don't let that parent get to you... prosecutor get to you, just deal with it” ...(002).

Even though a small number of participants mentioned talking to their significant others, while honoring their duty of confidentiality to their clients, most of them indicated that they talk to colleagues, or other professionals, to vent about role conflict experiences or get validation for their perspectives or coping responses. As indicated by Participant 002’s comments, he is doing more than simply *talking* to other people; he is also receiving solace, guidance, and mentorship.

Participants also identified mentors, or mentorship relationships, as sources of solace, validation, and guidance. One participant, 008, found guidance merely by
witnessing the steadfastness of another attorney in the same role. One type of mentorship is certainly to simply serve as a model of effective behavior. However, most participants identified engaging in mentorship relationships that were more direct and interactive. For example, Participant 013 discussed the way a mentorship group provided her with a venue in which she could “debrief” about role conflict experiences:

[To cope with a role conflict experience] I debriefed with folks like Alpha County Defender [mentor] who understand. We have a lunch group that every so often meet[s]… We go out to lunch and people talk about their stuff and make sure you're doing what you're supposed to be, doing everything you can do, and some things are just out of your control. … Yeah, they help (013).

Over half of the participants referred to mentorship as part of their continued management of cases and professional lives. Participant 007 describes his process of leaning on past mentors in order to cope with role conflict in the following way:

I just thought back to the attorneys that I worked under and watched them in court, watched them butt heads with prosecutors and judges that wanted it done a certain way and I just kind of leaned on that. So, it was more a matter of what I experienced, the formative years of law practice and law school that sort of got me through that (007).

Based on participants’ responses, the importance of relationships with others, particularly with those who serve to guide juvenile defenders through the dilemmas they inevitably face in their work, cannot be overemphasized. Some participants even suggested mentorship relationships could improve training for juvenile defenders. Mentorship during training could certainly increase one’s chances of developing the skills needed to perform the job well; and, it could build the confidence juvenile defenders need to weather the role conflict they face. It could also build the kinds of skills required for a juvenile defender to effectively turn a role conflict encounter into a learning experience.
Whatever coping strategies juvenile defenders enlist when facing role conflict, the picture painted by this study’s participants is far from that of the co-opted juvenile defenders portrayed in Grindall and Puritz’s 2003 assessment. With a few exceptions, like those who view the disposition stage as a justifiable time to depart from their role, North Carolina’s juvenile defenders appear quite dedicated to the expressed interests component of the zealous advocate role. Participants who utilized coping strategies that seemed most in line with expressed interests advocacy— for instance, standing up to the judge and court counselors— appear to have internalized North Carolina’s Role Statement the most. There appears to be some relationship between participants’ coping strategy, type of advocacy, and the extent to which they have engaged in juvenile defense training (e.g., CLEs, clinics, self-study). The sample’s small size makes it difficult to identify these relationships with any confidence, but there certainly appear to be some connections among these factors. Nevertheless, participants of all advocate types and training experiences demonstrate great dedication to their clients. The consequences, both positive and negative, of this dedication are addressed next.

**Consequences of Role Conflict Coping Strategies**

Participants used a number of different strategies to cope with the role conflict they encountered. These strategies provided participants with ways of relieving the tension or stress that accompanied the role conflict they experienced from other juvenile justice system stakeholders, or from the system’s pressures and proceedings. These strategies, for the most part, allowed participants to continue to function in a role from which they might otherwise have withdrawn. Nevertheless, these strategies also
generated consequences that sometimes had detrimental or beneficial effects on juvenile defenders.

Sometimes participants’ coping strategies led to additional role conflict creating a vicious cycle for them. Sometimes the consequences involved improving a child’s life. And, sometimes the strategies brought about learning as well as a sense of affirmation and purpose.

**Juvenile Court Stakeholders**

Most coping consequences that emerged from participants’ responses elicited negative responses from courtroom functionaries, primarily judges and other lawyers. The most common scenario participants recounted entailed judges showing their displeasure at the defenders’ display of zealous advocacy behaviors. For example, Participant 011 describes a judge who persists in pushing back against her role as an expressed interests advocate; her response to him is not without consequence.

[W]e've had a judge in there that still doesn't get that I'm not there for the best interest of the child. And I just have to reeducate him, routinely. My job is to ask for what the kid wants. … [When the judges push back] you can tell because… one judge in particular, although I do love him, gets this real angry look and sometimes I'm worried that because he's angry at me; he's going to take it out on my kid (011).

Participant 002 remarked that “judges and DAs start getting mad at me,” when he tries to get a continuance request “on the record” because he believes he has not been granted enough time with his client and is concerned his client will consequently receive “ineffective assistance of counsel.” Participant 003 admitted that he has, “probably incurred the wrath of a judge because I said in one of those conversations I'm going to recommend my client maybe not answer the question. And, they don’t like that.”
Participant 007 shared an experience he had with a multiple defendant case where the consequences came from not only the judge but from his fellow defenders. In this particular situation he encountered a cycle of pushback from other defense attorneys for attempting to discredit a weak piece of evidence on behalf of his client. Participant 007 zealously cross-examined a police officer about charging his client for drug possession despite the fact that there was no concrete evidence that what his client possessed was a controlled substance. As a result, Participant 007 “got talked to later in the week [by] the other attorneys about you know you have to… we all gotta get along here and stuff like that.”

It is important to point out that participants’ coping responses to judge-based role conflict did not always result in igniting the judge’s ire. In the following excerpt Participant 003 described how his affirming his role to a judge as a coping response to role conflict benefitted him. However, it did not appear that way at first. In the following excerpt, Participant 003 describes a relationship he has with a judge that seems to have evolved over time and eventually turned the judge into an unexpected supporter.

I had a district court judge regularly serve in juvenile court who constantly would compliment me to my clients about I would represent them zealously. We had a couple run-ins because he would do what he thought was in the best interest of the child and sometimes I think that violated their constitutional rights. I would speak out to that and we had a pretty loud, or he had a pretty loud outbreak. I kept my mouth shut. I walked out very angry but I didn't let him know about it. Later he didn't so much apologize[] but he did say we’re good, we’re fine. [I: That’s something. That really is something.] Yeah, from a judge (003).

Participants also recognized when their coping responses to role conflict had consequences for the very people they are tasked with helping. An example from earlier in this chapter is illustrative. Participant 019 shared that, “removing the parent or
guardian where normally the problem is from the interview with the juvenile,” as well as “taking some time even before to getting into the details to just talk to the juvenile about what their likes and dislikes are,” resulted in opening up “the lines of communication and kind of gets [clients] to understand, ‘hey, I'm on your side.’”

Participant 008 described how he would use his time in the courtroom to ‘out’ an abusive parent. In other words, he would cope with role conflict by qualifying his language to the court in such a way that the judge would be alerted to a major issue that Participant 008 believed would ultimately help his client. The following excerpt illustrates:

[O]ften, if the problem is the parent, it's very important that the judge see that and so what you do is piss off the parent in the courtroom so the parent flares up at you. And then the judge sees that. … [I]f you get the problem, the issue, to flare up in court and let a judge see that then you say to the judge, “I think you've seen what you need to see, Judge,” and sit down. It drives the point home (008).

Participant 003 described an experience he had where his request for a continuance so that he could have more time to prepare his client’s case was denied. This denial compounded the stress he already felt from having so little time to prepare for his client.

I need[ed] additional time to be able to talk to some possible witnesses and he refuse[d]. [I: Does that usually happen that you get a refusal?] No, it doesn't usually happen but it did happen on at least one occasion. …I ended up pleading the client because… I don't know that I would do that again today. But it would be up to the client and what the ramifications … would be pleading guilty as opposed to pushing it and appealing the case because you weren't provided an opportunity to represent your client. (003).

Self
The judge-based pushback Participant 003 experienced appears to have been a very poignant one. The fact that the judge with whom he seemed to receive the most pushback ultimately sang his praises may have reinforced 003’s decision to convert from a best to an expressed interests advocate, despite the growing pains of getting yelled at by the judge. Early in his interview, he shared that he used to view his role as a best interests advocate but after recognizing the ethical implications of that approach switched to an expressed interests approach. He explained, “[a]fter some time I thought maybe that's not really zealously representing my client as I should so even though it might be my personal feelings; it’s not what I was there for.” So, learning appears to be one of the consequences of the role conflict coping strategies participants use.

Stress-relief appears to have been an important consequence of the coping strategies used by participants. Participant 020 frankly explained how overtly complaining does a lot to clear the air and relieve his stress. He also noted the importance of perspective when he said:

I … rant… [I’m] not saying I don't take it home but I'm a believer in getting things off your chest and when… things happen… that things aren't happening to me they're happening to my clients and unfortunately so… I get to go home at the end of the day so I do okay with it but if I'm feeling bummed out about the prosecutor, about the judge, we just rant and rave. And that's about it (020).

Finally, Participant 022 explained how taking a “step back” or busying himself with alternative activities served to provide him with a fresh outlook on role conflict that was causing him stress. He described this process in the following way:

I do not take my work home with me if I don't have to, I have interests … that I turn to in these sorts of situations … but I turn away from it and then when I come back to it I am refreshed. I have perhaps a more objective point [of view]… and when I come back to it, after doing these other things and I have kind of a more of a clean slate, more of a fresh outlook.
then I can think of things that I couldn't see before simply because I was in
the moment, I had to deal with them, I had to deal with the judge perhaps
that when you're in the thick of it you can't see the forest for the trees, if
you follow. And then so I think while certainly there are attorneys I know
that are working 80 hour weeks and I bless them for that because they…
they’re doing a great job, I have the, perhaps, luxury of having a family
life and I really turn to that when I can and it allows me to unwind and
come back and be more focused than I would've been if I'd simply just
kept going full tilt.

Participants involved in this study seem to have been able to take the role conflict
they experience and turn it into a learning experience. They draw professional
development opportunities from the role conflict they experience. They even find
learning opportunities in the negative consequences from their coping responses. It is
possible that participants’ fortitude to persevere past role conflict and the resulting
negative consequences is due to the attitude that inspired Participant 005 to say, “[w]ith
adversity comes growth and we all need a little rain to make the flowers grow.”
Chapter Six - Discussion

As has been suggested throughout this dissertation, juvenile defenders face a unique challenge when attempting to follow a strictly expressed interests advocate mandate in the context of a best interests system (Henning, 2005; Birckhead, 2010). Birckhead observes that defense attorneys are pressed by other courtroom functionaries and by clients’ parents to depart from advocacy norms, and may feel internally conflicted about their role, even if they are absolutely devoted to the most zealous expressed interests form of advocacy. Birckhead argues that the quality of juvenile defense suffers as a result of the unique challenges inherent in expressed interests advocacy for juveniles (2010). Her assertions are confirmed by the present study.

Nature of the Role

Consistent with Grindall and Puritz’s (2003) state assessment, we saw in Chapters Four and Five that juvenile defenders struggle with role confusion or role ambiguity. That so many participants do not identify as expressed interests advocates suggests the Role Statement message promulgated by the North Carolina Juvenile Defender Office has not yet fully reached them. It may also mean that juvenile defenders are unwilling to adopt a strictly expressed interests approach out of principle or apparent necessity. Perhaps the expressed-best interests dichotomy oversimplifies the realities of the juvenile defender role, as legal scholars have surmised.

Overall, however, participants report adhering to the expressed interests component of their zealous advocate role despite the challenges that doing so presents. Most have a clear idea of what the role is supposed to be. This is encouraging given that
the 2003 state assessment reported a “misapprehension of the role [emphasis added] of defense counsel in juvenile proceedings,” which resulted in an “uneven state of defense representation … in North Carolina,” (Grindall & Puritz, 2003: 2).

**Role Conflict Impact**

Despite the admirable pluck of those participants who reported that role conflict had a positive impact on the quality of their work—largely by motivating them to work harder—there was still a negative impact on work quality for others. The extremely complex, and confidential, nature of juvenile defense makes work quality an incredibly difficult phenomenon to measure. As explained in the Methods chapter, the amount of inference involved in any effort to assess juvenile defenders’ work quality through observation could easily negate any value such efforts could offer. However, this does not render attempts to empirically examine role conflict and its impact on work quality futile. Future efforts could make better use of triangulation techniques by supplementing interviews with participant shadowing or courtroom observations to reveal more about role conflict dynamics.

With regard to role conflict prevalence, participants indicate a full spectrum; some never, or rarely, experience it and others experience it on a regular basis. Even participants who report never having experienced role conflict reported they have witnessed it in others.
Push for efficiency.

The majority of role conflict juvenile defenders face appears to originate with external forces, primarily clients, parents, and the systemic emphasis on efficiency. Oftentimes, the role conflict participants experience from other courtroom functionaries, namely the judge, prosecutors, and other defense attorneys seems to be related to the concern about efficient processing of cases. Even though this finding comes as no surprise given how crowded court dockets are known to be, it is also rather disturbing. The primary purpose of the juvenile defender is to safeguard juveniles’ due process rights against abuses of power by the system’s functionaries. A court’s push for efficiency, in favor of careful consideration, could be construed as an abuse of power. A court’s primary purpose is unlike that of any other organization: to achieve justice. Justice is a goal that cannot be accomplished without careful application of the U.S. Constitution’s due process protections, chief among which is the effective assistance of a zealous advocate for the defendant. This is even more the case with juvenile courts given the need for accurate fact-finding and careful consideration of juveniles’ tender years. This approach could be difficult to honor if the process is rushed. Additionally, if the court’s operations impede a key figure who serves as the solitary check against abuse or error by the system’s functionaries, the justice goal cannot be achieved.

That juvenile defenders face pushback from so many sources, and in a context that regularly imposes actual punishment (e.g., restriction of an individual’s freedom) on juveniles, calls into question the system’s fairness and legitimacy. If the court has the power to mete out punishment to juveniles, individuals who are entitled to effective assistance of counsel, how effective can that counsel be if there are such powerful forces
working against her, beyond what is necessary for the adversarial process? As explained earlier, even though several participants appear to have a clear idea of what their role is supposed to be, more identified their advocate role as something other than “expressed” interests. Additionally, even the “expressed” interests advocates reported experiencing some form of role conflict. Role ambiguity exists and role conflict occurs as a result of courtroom functionaries’ actions and/or the system’s push for efficiency. These findings imply that when effective assistance of counsel is unnecessarily impeded by the system, and/or its functionaries, due process guarantees are compromised as a result.

**Negative impact of role conflict.**

Participants reported experiencing negative effects from their role conflict experiences. Even though some participants reported feeling motivated to work harder as a result of pushback or conflicting expectations, not all did. The tension and stress participants reported experiencing draws attention, energy, and time away from their clients with whom they already have limited time. In addition some participants believe that their role conflict negatively affects case outcomes. Given the clear expressed interests advocacy mandate, the existence of any pushback for defenders beyond what is necessary for an adversarial system is likely to be detrimental to juveniles and the system at large. For example, if child clients witness their advocates getting pushback from other courtroom functionaries (e.g., the judge or prosecutor acting in a dismissive way toward the defense attorney) they may not feel confident enough in their advocates to be honest with them about their circumstances or wishes. As suggested by Pierce and Brodsky (2002), “[d]efendants who believe that their lawyer works for the judge or ‘the system’
may believe that anything that they tell their attorney will be shared with the judge and possibly the prosecutor of the policy.” (p. 102). Pierce and Brodsky further note that defendants’ lack of trust in their attorneys could lead to a “disparity in the quality of defense;” (202, p. 102).

How serious a problem role conflict is for a juvenile defender appears to depend on multiple factors. These include: advocate type; tenure of experience; access to mentorship; willingness to take on juvenile defense-specific training (e.g., engage in self-study xlvi); personality; and persuasion skills.

As previously discussed, some conflict is inherent in an adversarial process, however, juvenile defenders cannot be expected to provide effective assistance of counsel if they are faced with the kind and degree of role conflict reported by study participants. Participants unanimously face role conflict with parents and clients, and the majority experience role conflict at the disposition stage, with several viewing departures from the expressed interests role at this stage as justifiable despite clearly stated standards that such departure is not acceptable. And, several participants, as a result of role conflict, incur a negative impact on themselves (e.g., feeling tension or stress), their case outcomes (e.g., a “responsible” plea for an offense the juvenile did not commit in order to avoid a more severe punishment if the attorney had pushed for a trial), and on the quality of their work as juvenile defenders (e.g., failing to seek supportive witnesses because the defender lacks resources for an investigation).

Prior research indicates that role conflict can lead to role turnover (withdrawal) and burnout (including emotional exhaustion) (Cordes and Dougherty, 1993; Jackson et al., 1987). While it is true that participants find ways to cope with role conflict, and some
draw benefits from it, this says nothing about those who are unable to do the same, or who withdraw from the role, leaving an already overburdened juvenile justice system with fewer capable juvenile defenders. Additional research is necessary to determine what truly makes the difference between those who remain in the role and those who leave. Arbitrary barriers to the defense function do not appear to benefit these attorneys (notwithstanding those who turn challenges into advantages), the juveniles defenders seek to serve, or the society that relies on a fair justice system. Allowing these barriers to persist may create unnecessary, and undeserved, hardship for juvenile defenders. In addition, it diminishes the benefit the role is designed to bestow upon juveniles, unnecessarily frustrates the system and its purpose, and erodes society’s confidence in the system to be fair and just.

**Defender Factors vs. Context**

All participants sometimes feel internally conflicted about their role and several identify the conflicting-client-interests dilemma (client’s best and expressed interests conflict) as responsible for that internal conflict. This tendency demonstrates a relatively clear understanding of the expressed interests advocacy mandate. It also reflects some discernment between client conditions that might justify role departures. Either way, participants sometimes experience a conflict between their duty as expressed interests advocates and their desire to do what they believe is best for the client. This is most clearly demonstrated at disposition, where the tendency is to defer to the expertise of the court counselor.
In fact, one of the most controversial findings of this study is the extent to which the disposition stage is viewed as a source of role conflict and the extent to which participants view role departures at disposition as justifiable. As explained in Chapter Four, North Carolina’s Role Statement (NCCIDS, 2005) and Performance Guidelines (Newman, et al. 2008) clearly state that juvenile defenders are expected to provide “expressed” interests advocacy at all stages of the process. These were disseminated at least partially in response to the 2003 state assessment which found that juvenile defenders were regularly co-opted into the juvenile court’s best interests scheme (Grindall and Puritz). Even though the assessment found this phenomenon at all stages of the process, the present study’s findings confirm that this discrepancy is still prevalent at the disposition stage, even a decade after the Role Statement’s dissemination.

The Cost of Coping

Juvenile defenders cope with role conflict in a variety of ways. They primarily rely upon their professional skills, training, and relationships, particularly with mentors. Participants’ identification of their most effective coping responses to role conflict suggests that familiarity with the juvenile court’s networks, norms, and nuances is at least partially responsible for their success in coping with role conflict. These responses somewhat align with Burke and Belcourt’s (1974) seminal work on coping responses to role stress. Burke and Belcourt found that the most common effective coping responses were, in descending order of frequency: talking with others; analyzing the situation and changing the strategy of attack; and working harder and longer (a distant third) (1974). Additional research on the nuances of how juvenile defenders cope with role stress may
be useful to contributing to the role stress coping literature. The present study’s findings appear to deviate from Burke and Belcourt’s in that juvenile defenders’ coping responses emphasize their ability to pick up on informal cultural norms and build their interpersonal, communication, and networking skills.

Is it enough to expect juvenile defenders to seek out mentors, engage in extra training, spend valuable time “butting heads” with parents, judges, prosecutors, court counselors, and other defense attorneys, when they already spend too little time with their clients? How is the system to achieve justice if juvenile defenders are expected to rush through their cases in order to avoid triggering the judge’s ire so future cases with the same judge are not jeopardized, or so they are not passed over for court appointments? If building experience and reputation have such an impact on the likelihood that juvenile defenders will face, or be affected by, role conflict as the findings here suggest, what else can be done to support newer, less experienced attorneys to help them through their growing pains?

The Future of the Juvenile Defender Role

Given the variety of role conflict factors that emerged from this study, there is ample evidence to suggest the expressed interests advocate role in the juvenile system is far more nuanced than it seems. Birckhead (2010) argues that defense attorneys are caught in the middle of competing norms from family, criminal defense, and juvenile court cultures. She argues that juvenile defenders face “competing systemic pressures” (p. 959) and that these pressures have a negative impact on defenders’ “effective representation of juveniles,” (2010: 982).
Birckhead offers a number of suggestions to respond to this situation (2010). Among them is a critical first step: encourage juvenile defenders to acknowledge that expressed interests advocacy of juveniles presents them with a unique problem given the competing cultures involved. Such recognition will legitimate the problem and provide defenders some solace, an excellent start to further solutions (2010). The present study does much to accomplish this first step.

Birckhead further suggests that law schools provide courses and clinics geared toward raising awareness of the culture clash and encouraging cross-cultural lawyering (2010). She also suggests that state bar associations offer similar programs (2010). Birckhead further recommends that members of the legal community, including legislators and policymakers, change the juvenile system culture by challenging the common attitude that juvenile court does not merit serious attention and has outcomes that do not negatively impact the juvenile’s future (2010). This is an especially critical suggestion since a number of modern-day juvenile defenders hold this view of juvenile court. See note xli.

Another of Birckhead’s (2010) suggestions involves a cross-cultural perspective of law practice referred to as the “Five Habits of Cross-Cultural Lawyering” (p. 982). These “five habits” encourage attorneys to be, among other things, more reflective, flexible and culturally aware in their practice of law (Bryant, 2001). Some of the “five habits” address the need for lawyers to be sensitive and responsive communicators as well as more mindful of cultural differences and similarities among courtroom functionaries. Bryant also recommends that these efforts should aim to build rapport, understanding, and trust between lawyers and their clients (2001, p. 33). Bryant’s
suggestions make sense, but would be difficult to implement without some level of facility with an organization’s informal norms and practices.

This study’s findings indicate that, among other things, a juvenile defender’s ability to develop, or tap into, the court’s informal norms and practices may play an important role in her navigating, and effectively coping with, role conflict. At the same time, she will need some cooperation from other courtroom functionaries who may need to change their attitudes and beliefs about the juvenile defender role. Such changes would be difficult given the juvenile court’s best interests culture, an approach clearly entailing informal values and norms that contravene the officially endorsed juvenile defender role.

While the question of whether or not a strictly expressed interests approach to juvenile defense is more appropriate for legal scholars, further investigation of the juvenile court culture, juvenile defender role, role conflict, and coping responses is necessary to assess the validity of this study’s conclusions. Facility with court norms and practices appears to play an important role in role conflict coping. However, it was not a focus of the present study.

Limitations.

One of the major limitations to this study is that it focuses on a matter of some delicacy for the participants. Juvenile defenders are ethically required to advocate for the expressed interests of a client. Yet, they are tasked with advocating for clients who may not be mature, or experienced, enough to form and express their intentions and desires. This places juvenile defenders in a uniquely conflicted position that could easily result in a violation of their ethical duties. Juvenile defenders may be reluctant to openly
acknowledge their struggles with adhering to their ethical rules even though they operate in a context that pressures them to disregard those rules. This is especially true because law is a profession where even the appearance of impropriety can be grounds for scrutiny and, possibly, sanction. The following statement by Participant 022 reflects the nature of this reluctance. “Well, I try not to let [role conflict] affect case outcomes at all… and I'm sure every person you ask that will say that because we want to believe that we will be as effective as possible (022).”

A related limitation is the fact that not all participants may have recognized certain experiences as manifestations of role conflict or as relevant to the expressed interests advocate role. Making this matter even more difficult is the ambiguity surrounding what type of advocate juvenile defenders identify with. In other words, is it truly the “expressed” interests role they view themselves as pressured to depart from if participants view themselves as “best” interests advocates? Several participants, at the end of an hour-long interview discussing topics related to the expressed-best interests dichotomy, identified themselves as an advocate of neither expressed nor best interests. That so many participants deliberately avoided identifying themselves as one of the two types of advocate, and three firmly declined to answer the question, is important on its own. This avoidance could reflect participants’ reluctance to be pigeon-holed, frustration over role ambiguity, or recognition of the complicated nature of juvenile defense. Additional research will likely shed light on these dynamics.

There is certainly some difficulty in teasing out role conflict manifestations from what is considered normal adversarial process conflict. Even though the juvenile court uses euphemisms to create a less stigmatizing atmosphere than criminal court (e.g.,
referring to juvenile probation officers as “court counselors”), the nature of the juvenile process is adversarial, and punishment is actually administered. Were punishment not a reality in juvenile court, the U.S. Supreme Court would not have used it to justify juveniles’ right to assistance of counsel in In re Gault (1967). However, it is unlikely that the adversarial nature of a court proceeding fully explains the role conflict juvenile defenders experience from judges and prosecutors. This is especially true because, as discussed previously, the juvenile court is often nowhere near as adversarial as adult criminal court. In addition, the adversarial nature of the court process also does not explain the role conflict juvenile defenders experience from court counselors, whose critical role is more informational than legal.

Another limitation to this study is the fact that it only involved interviews with practicing juvenile defenders. At their most impactful, role conflict experiences could lead a role incumbent to withdraw from the role. In fact, that could have been the case for sample members who declined to participate in the study because they no longer represent juveniles. While withdrawal is a coping response that should not be overlooked, the purpose of this study was to assess coping techniques of juvenile defenders remaining in the role. One of the reasons for this was to identify successful forms of coping with the hope of deriving training tools. Individuals who have permanently discontinued serving in the juvenile defender role were not included in the study. As a result, it provides an incomplete picture of role conflict’s impact.

The coping measure used in this study may have some limitations, particularly with regard to the time spent coping question. Participants do not indicate they spend a great deal of time coping with role conflict, but there are two major problems with using
this information to conclude that role conflict is not a serious issue among juvenile defenders. First, participants struggled with the question indicating they may not readily recognize the time they spend coping with role conflict. Second, given the sensitive nature of juveniles and their legal status as children (i.e., individuals who typically cannot transport themselves to meetings, hearings, contact their attorneys on their own, etc.), one could argue that any time that juvenile defenders spend managing role conflict—especially role conflict that originates outside the juvenile—is time taken away from their clients’ needs. The time spent question may not accurately capture what it was designed to capture and what was captured is likely an underestimate of the seriousness of the problem.

A logistical study limitation is that it was restricted to juvenile defenders in two counties in a single state and included only twenty-four participants. The jurisdictions studied could have unique cultural factors that reduce their representative value. Additionally, the organization of the public defender system, the legal rules, and the legal culture of the juvenile court in the sites where the study took place are likely to be unique in some ways.

Another limitation involves the interpretive nature of qualitative research. The Investigator, who served as the sole data collector and analyst, has never served as a juvenile defender. There may be nuances and inferences that she missed as a result of her lack of experience in the role. A juvenile defender conducting this study may have interpreted response meanings more accurately and understood implications more readily than the Investigator.
A final limitation of this study also relates to the Investigator. There is only one investigator who served as the sole interviewer and analyst. Therefore, any biases the Investigator might have as the result of her own professional and personal experiences could influence the interpretations and inferences made.

Notwithstanding these limitations, this study helps to close some of the gap in the empirical literature on juvenile defense. Until now, there appears to have been no empirical study that systematically assesses the nature and impact of role conflict experienced by juvenile defenders or their coping responses. Given the considerable debate surrounding the nature and definition of the juvenile defender role, such a study is essential to shed light on the challenges these attorneys face as well as some of the obstacles to their noble endeavors. This study also provides an important view of the inner workings, and consequences, of the juvenile justice system as it navigates competing paradigmatic and challenging politico-socio-economic transitions (e.g., shifts in political power, public views on juveniles or crime, funding sources). The study also raises several questions that are now ripe for further investigation.

**Directions for Future Research.**

This study produced an incredibly rich dataset. The numerous quotes provided in these chapters, do not approach an exhaustive list of relevant excerpts. Not only are there abundant additional illustrations of the concepts and phenomena discussed, there are a great many more topics that simply did not relate enough to the central question of the study to justify inclusion.
The present study also leaves several unanswered questions. For instance, the sample size is too small for more than descriptive analysis, but there are constructs that are quite suitable for quantitative measurement and analysis. These constructs could be converted into quantitative instruments, pilot-tested, and more widely disseminated to achieve a broader understanding of the extent and impact of role conflict for juvenile defenders. (See Appendix K: Figure 2. Framework of Expressed Interests Advocate Role Conflict Antecedents to Consider for Future Research and Appendix L: Figure 3. Framework of Expressed Interests Advocate Role Conflict Outcomes to Consider for Future Research.)

Figures 2 and 3 organize concepts that emerged from this study into variables that appear to predict, or result from, role conflict. For instance, if a juvenile defender does not view his role as “tempering the system” but as “helping the juvenile,” he may not experience as much role conflict as a juvenile defender who prioritizes his role as a system check over his role as a juvenile helper. Or, if a juvenile defender views his role as a best interests advocate he might not be as aware of role conflict manifestations. So, future research could involve more, and more varied, questions targeting role conflict or involve alternative techniques that raise participants’ awareness of role conflict manifestations. There also may be some predictive value in a juvenile defender’s beliefs about the capacity of children to make decisions and articulate their own interests. The same can be said about the extent to which a defender finds role departure at the disposition stage justifiable. This is especially true given how widely available is information on developmental psychology information for juvenile defenders who wish to engage in self-study. Therefore, nuances of role meaning, and beliefs about children,
may help predict a defender’s experience of role conflict. Figure 2 in Appendix K displays this potential relationship, among others.

In addition, there appears to be some association between the extent to which participants experience role conflict and its impact on their work quality and experience of tension or stress. However, there also appears to be an intervening factor of mentorship or facility with the court’s informal norms and practices. Identifying the nature and power of these potential relationships would be invaluable to helping clarify the juvenile defender role and improving its efficacy. Figure 3 in Appendix L displays this potential set of relationships, among others.

Other topics that are ripe for further qualitative investigation emerged from the data analysis. For instance, one of the most compelling findings of this study was the extent to which participants view the disposition stage of the juvenile process a source of pressure to depart from the expressed interests advocate role; most, in fact, all but two identified disposition as a source of role conflict. Even more compelling, several participants indicated they saw role departures at this stage as justifiable, despite clearly stated guidelines that such departures are not. This finding raises the question: what is it about the disposition stage of the juvenile process that prompts otherwise zealous advocates to depart from their officially mandated role? Could it be, as Birckhead suggests, that the juvenile defense function is far too nuanced rendering the expressed-best interests dichotomy overly simplistic (2010)? Could juveniles’ due process rights be just as well protected with a more blended approach to juvenile defense? Or, is the court’s best interests orientation so powerful it actually has a negative impact on the very
group it seeks to assist? A study examining the implications of role conflict and advocacy practices at the disposition stage might provide answers to these questions.

Additionally, deeper qualitative examinations of the ways juvenile defenders experience role conflict as a result of their relationships with other juvenile court stakeholders, particularly their clients, would be useful in identifying correlates of role conflict. A closer examination of other stakeholders’ attitudes toward the juvenile defender role would balance scientific understanding of juvenile defender role conflict. This is particularly true with regard to the attitudes of other juvenile court functionaries like judges, prosecutors, and court counselors.

Participants’ qualifying their language to court, asserting their role with role conflict sources, persuasion skills, networking skills, and facility with the court’s informal norms and practices appear to play critical roles in how juvenile defenders experience, are impacted by, and cope with role conflict. The emergence of these factors is another of this study’s most compelling findings. A logical next step in the development of research on juvenile defender role conflict prevalence and impact would be to develop relevant quantitative measures.

Participants’ responses hint at a relationship between their coping skills and juvenile defense training experiences. Relatedly, most participants gave suggestions for improving juvenile defender training such as more: on-the-job training; courtroom time and in-service training with other juvenile defenders; training on how to deal with problem clients; and training on the juvenile mindset. Some suggested more training on understanding the roles of other court functionaries, specifically the court counselors. And, Participant 002 suggested, “just general CLE’s (continuing legal education courses)
that talk about the process, talk about ethical dilemmas you face, talk about the child's
desires versus the child's best interests [since this] is a common dilemma you face in
juvenile delinquency court.” A study examining the impact of some of these professional
development experiences could shed light on the ways juvenile defenders develop and
utilize their most necessary skills, including those that help them avoid, or cope with, role
conflict.

Some participants emphasize the need for mentorship, and others like Participant
012, believed, “you have to learn how to communicate to be an effective defender of
juveniles- period. It's all about communication.” These responses reinforce the notion that
some of the emerging factors previously discussed in this chapter (i.e., persuasion skills,
building a support group) merit additional investigation.

Finally, the present study could be replicated in other jurisdictions to shed
comparative light on the prevalence and impact of juvenile defender role conflict and
coping responses. It would be interesting to see if jurisdictions that make lesser, or
greater, efforts to encourage strictly expressed interests advocacy also reflect differences
in role conflict prevalence. This would be especially important to study in the states that
have undergone assessments, as North Carolina did in 2003. Since these assessments tend
to find that defenders demonstrate role confusion and many articulate a lack of support in
their role, as well as pressure to depart from it, determining which jurisdictions have
made role definition changes is important on its own (Grindall and Puritz, 2003). A
comparison of states that have implemented changes like North Carolina’s, and those that
have not could inform future policy.
Conclusions and Recommendations

This study is the first assessment of role conflict among North Carolina juvenile defenders since the 2003 NJDC assessment brought the matter to light, and the 2005 Role Statement clarified the state’s policy on the juvenile defender role. This study comprises an in-depth examination of what could be considered the most critical, and least respected, role in the juvenile justice system: the juvenile defender. These attorneys serve as the only voice of the juvenile in the justice system, a system that, despite its noble intentions, exercises actual punitive power over juveniles. It is a system that pushes a rehabilitative orientation even at the cost of the due process rights of those it seeks to serve.

Despite North Carolina’s efforts to promote expressed interests advocacy among its juvenile defenders, the majority of participants in this study still reported experiencing role conflict from forces that could compel them to depart from their expressed interests advocate role. Some of those forces originated within the juvenile defender, some created justification for role departure (i.e., the client’s mental capacity, etc), but most were external (i.e., parents, clients, push for efficiency, etc.).

Notwithstanding these pressures, the juvenile defenders who participated in this study exhibited a great deal of passion and dedication to their clients, the juvenile court, and to the U.S. Constitution. They were very clear in their praise for other functionaries in their home courts. They reported interacting with incredibly supportive courtroom functionaries who not only understand and support the juvenile defender role, but also commend them for their zealous efforts. As encouraging as these remarks are, there remain strong forces that work against juvenile defenders.
This study’s findings make clear that the expressed-best interests dichotomy for juvenile defense may not be as simple as with adult defense. However, the best response to this dilemma is unlikely to be co-opting juvenile defenders, the sole voice for the juvenile, into the best interests orientation of the juvenile court. Doing so seriously undermines the juvenile defender’s role as guardian of juvenile clients’ due process rights. The time may be ripe for creating another solution making additional research on these topics important and necessary.

This study’s findings lead to the following recommendations:

1. Conduct more empirical research on juvenile defenders’ role conflict and coping responses including replications, after refinement, of this study in other jurisdictions, and, especially, including assessments using quantitative measures of the target constructs and applied to larger samples. (See Appendix K: Figure 2. Framework of Expressed Interests Advocate Role Conflict Antecedents to Consider for Future Research and Appendix L: Figure 3. Framework of Expressed Interests Advocate Role Conflict Outcomes to Consider for Future Research.);

2. Conduct a role definition assessment of juvenile justice defender systems throughout the United States;

3. Identify NJDC Assessment states that have implemented role clarification changes and replicate this study with those states; compare the results to states without role clarification changes;

4. Conduct qualitative examinations of juvenile courtroom functionaries’ attitudes, definitions, and expectations of the juvenile defender role;

5. Conduct an assessment of juvenile court functionaries’ attitudes toward the disposition stage of the process, and actual nature of outcomes; address implications for juvenile defender role;

6. Assess and foster clarity about the juvenile defender role among juvenile justice system stakeholders (i.e., courtroom functionaries, parents, clients, service providers, etc.);

7. Conduct qualitative examinations of the influence of the following juvenile defender factors on their role conflict experiences, responses, and impact: advocate type; length of experience (tenure); reputation;
interpersonal/communication skills; and facility with informal norms and practices;

8. Conduct Continuing Legal/Judicial Education (CLE/CJE) workshops designed to foster clarity and support for: a) the juvenile defender role; b) role conflict source identification; and c) coping response options;

9. Identify, assess, and foster mentorship programs for juvenile defenders;

10. Collaborate with the National Juvenile Defender Center (NJDC) to develop and disseminate materials (print and electronic) to foster clarity and support for: a) the juvenile defender role; b) role conflict source identification; and c) coping response options;

11. Collaborate with National Juvenile Defender Center (NJDC) to establish a clearinghouse of best practices, information, and ‘war stories’ to foster clarity and support for: a) the juvenile defender role; b) role conflict source identification; and c) coping response options.

Further investigation including, but not limited to, these recommendations is critical. Without it, and without seeking ways to resolve the nefarious problems that are juvenile defender role ambiguity and conflict, juveniles might be left with a game of chance as to what type of advocate they are assigned. Based on the implications of this study’s findings, not all juveniles will be assigned a defense attorney who is dedicated and passionate enough to navigate role conflict. They also might not be assigned an attorney who can navigate it long enough to develop strong skills and solid reputations or have the time and desire to mentor others. If the system cannot correct itself and, at least, hold its functionaries to the same adversarial and due process standards expected in the adult system, juvenile defenders could be in the same gambling position as their clients.

When it comes to due process protections in the justice system, is it acceptable that the best kids can hope for are well-intentioned advocates who are beleaguered with unnecessary pushback from those who should support them in their role? In the words of one such advocate, “we brought them here and we owe it to them [to zealously advocate
for them] … [the] kid needs it done so I’m going to do it. …But, [it’s] not fair [to not zealously advocate for the kid]; [I] don’t [want to] let the poor [kid] down” (Maine juvenile defender, personal communication July 28, 2011). As long as juvenile defenders must contend with role ambiguity and conflict from the very system tasked with helping these kids, we all may be letting them down.
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Appendix A
Recruiting Scripts

JUVENILE DEFENSE PRACTICE AND PERFORMANCE
TELEPHONE RECRUITING SCRIPT

Hello, my name is Anne Corbin with Northeastern University and I am contacting you because you have been identified as a juvenile defense attorney in [Alpha/Beta/Sigma/Theta] County. Like you, I have a background in law but right now I am conducting a study on how juvenile defense attorneys perform their tasks for my PhD dissertation. So, I am interviewing juvenile defense attorneys in your County. I would like to invite you to participate in my study. It would only require about an hour of your time and we could do it over-the-phone. Your participation would be entirely voluntary and completely confidential. You can conclude the interview at any time, and refuse to participate in any part of it. I am the only person, besides you, who will know you have participated and I am ethically bound to maintain your confidence and privacy. I am very interested in hearing about your experiences as a juvenile defender.

JUVENILE DEFENSE PRACTICE AND PERFORMANCE
ELECTRONIC MAIL RECRUITING SCRIPT

Dear Mr./Ms. ___________________

I am writing you because you have been identified as a juvenile defense attorney in [Alpha/Beta/Sigma/Theta] County, North Carolina. I also have a background in law, but am currently conducting a scientific study on how juvenile defense attorneys perform their tasks. This study is for my PhD dissertation. The study is overseen by Northeastern University. I am interviewing juvenile defense attorneys in your County and would like to invite you to participate in my study.

Your participation in an interview would be entirely voluntary and completely confidential. The interview should take no more than about an hour and it could take place over-the-phone. You can conclude the interview at any time, and refuse to participate in any part of it. I am the only person, besides you, who will know you have participated. And, I am ethically bound to maintain your confidence and privacy. I am very interested in hearing about your experiences.

Please contact me at your convenience to arrange a time for us to speak at a time of your choosing.

Sincerely,

Anne M. Corbin, J.D.
Northeastern University, School of Criminology and Criminal Justice
Boston, Massachusetts
517-214-5396 (mobile)
juveniledefenderstudy@gmail.com
Appendix B

ID#: _{(001)}______________________________________

JUVENILE DEFENSE PRACTICE AND PERFORMANCE
WAIVER OF CONSENT FORM

Northeastern University is exploring how juvenile defense attorneys perform their tasks. As part of this research, an investigator from Northeastern is interviewing juvenile defense attorneys in your county. You are being asked to participate in this study because you are someone who works, or has worked, in such a capacity. We are very interested in hearing your views, experiences, and suggestions. Please feel free to provide us with any comments on the questions themselves.

- The interview should take no more than a total of 60 minutes to complete.
- Participation in this research is completely voluntary. You may choose not to participate at all in this study. If you do choose to participate, you may refuse to answer any question without consequences.
- Participation in this research is confidential. Only the members of the Northeastern University research team will have access to any information obtained through the interviews.
- Your privacy will be protected to the maximum extent permissible by law. You will not be identifiable in the project’s final reports and findings.
- Potential risks are nominal, but may involve acknowledgement of negative feelings about topics related to the juvenile justice system.
- Potential benefits may include contribution to research designed to shed light on various aspects of the juvenile justice system. Benefits also include facilitation of acknowledgement, recognition and encouragement for attention to a crucial, yet often overlooked, area of the justice system.

If you have any questions about this study, please contact Dr. Donna Bishop by phone: (617) 373-3362; email: d.bishop@neu.edu; or regular mail: 400 Churchill Hall, 360 Huntington Avenue, Boston, MA 02115. If you have questions or concerns regarding your rights as a study participant, or are dissatisfied at any time with any aspect of this study, you may contact — anonymously, if you wish — Nan Clark Regina, Director of Human Research Protection, (617) 373-4588 fax (617)373-4595, e-mail n.regina@neu.edu, mail 960 Renaissance Park 360 Huntington Avenue Boston, MA 02115.

Your participation in this study indicates your voluntary agreement to participate in this study.
Appendix C

ID#: (001)

JUVENILE DEFENDER ROLE CONFLICT

Interview Protocol

1. What does zealous advocacy mean to you in terms of advocating for your client’s interests?

2. Have you ever faced obstacles or pressures to depart from the zealously advocate role? What were they?

3. Who or what do you think is responsible for any pressure you experience to depart from the zealous advocate role? Can you make a list?

4. In your experience, do you think judges support your role as a zealous advocate of the expressed interests of your juvenile client? Why or why not?

5. In your experience, do you think other courtroom workgroup members support your role as a zealous advocate of the expressed interests of your juvenile client? Why or why not?

6. In your opinion, should a defense attorney ever depart from advocating for the expressed interests of a client?

7. Do you ever feel like there are conflicting expectations of you in your role as a zealous advocate for juveniles? How so?

8. What do you think is the source or sources of these conflicting expectations?

9. Do you ever feel like you, personally, are conflicted about your role as a zealous advocate for juveniles, or what it requires you to do? How so?

10. Does having a very young, or special-needs, client ever affect your zealous advocacy role? How so?

Follow-up Questions

1. What kinds of verbal or nonverbal pressures from others prevent you from being the kind of advocate you would like to be? From whom do you experience these pressures?

2. What kind of resource pressures, for example caseload, time, access to resources or service-providers, prevent you from being the kind of advocate you would like to be?
3. What kind of training opportunities do you think would help you improve your advocacy for juveniles?

4. Are there any other policy or practice changes you think would help you improve your advocacy for juveniles?

5. When there are pressures that prevent you from being as zealous an advocate as you would like to be, how does that affect case outcomes?
COPING RESPONSES TO ROLE CONFLICT

Interview Protocol

When thinking about the experiences you shared earlier in this interview:

1. Would you please describe if those experiences caused you any tension or stress?

2. Would you please describe what you have done that you found particularly effective at reducing that tension or stress?

3. Would you please describe a specific example of those kinds of experiences?

4. Would you please describe specifically how you coped with that experience?

5. What is your impression of how these kinds of experiences have affected the quality of your work?

6. What is your impression of how these kinds of experiences have impacted you as a juvenile defender generally?

7. How much time per week would you say you spend coping with these kinds of experiences?
Appendix E

ID#: _001__________________________

Coping Vignettes

Please consider the following scenarios. Please explain how you would cope with any ethical dilemma(s) the scenario presents. Please remember that there are no right, or wrong, answers.

1. **Daniel**: He is a 14-year-old charged with disorderly conduct at school. He wants to go to trial. There are some triable issues, and you think there is a fairly good chance of prevailing. He also wants to testify, though you think this is not advisable, as he tends to laugh nervously at most questions, and his story doesn’t completely hold together. His mother wants him to admit, as she feels he needs the structure offered by supervised probation.

What is the main dilemma and how would you cope with it?

2. **LaToya**: She is a 15-year-old girl charged with three counts of assault. Two of the alleged victims were seriously injured. The prosecutor and the court counselor will be recommending an out-of-home placement and/or wilderness camp at disposition. Meanwhile, there’s a very good defense based on mistaken identity; you and your supervisor feel very optimistic about your chances at trial.

LaToya is quite meek and defers to her parents on everything. It has been difficult to have interviews alone with her, as her parents have demanded to be present and she hasn’t said anything to counter that. Her parents say that she “confessed” to them soon after they were contacted re the juvenile petition, and they say it is her “moral duty” to admit to the charges in court and to suffer the consequences, whatever they might be. LaToya is very quiet during your interviews and says only that she’ll do what her parents want. She does admit that she didn’t have anything to do with the incident and that she “confessed” to her parents because they said if she didn’t, they would punish her.

What is the main dilemma and how would you cope with it?
3. **Michael:** He is a 13-year-old charged with possession w/intent to distribute marijuana. He was found w/10 baggies of weed, cash, a pager, and a list of “buyers.” He says that he is “guilty” and just wants to get it over with in court, but that he’s afraid of what his aunt – who is his guardian – will say, as he has denied the whole thing to her. His aunt wants him to go to trial. She says he was “set up” and that she doesn’t want to see him following in the footsteps of his father (her brother) who is currently doing time for drug trafficking.

What is the main dilemma and how would you cope with it?

4. **John:** He is a 15-year-old with an IQ of 68 and diagnosed with attention deficit hyperactivity disorder. Let’s say that the prosecutor has offered a plea to a misdemeanor which ensures that the case will remain in juvenile court. The DA also says that should John refuse to admit to the misdemeanor, then she will seek a transfer hearing and try John as an adult. In your professional judgment, John should accept the plea. If he is convicted of the class B1 felony, his presumptive range is 192-240 months, mitigated range is 144-192 months and aggravated range is 240-300 months. All sentences must be an active sentence. When you give John your advice, he tells you that he’s not admitting to anything and that he wants a jury trial.

What is the main dilemma and how would you cope with it?

5. **Sonya:** She is charged with two counts each of felony breaking and entering and felony larceny. Both the assistant district attorney and Sonya’s court counselor have advised you that they plan to strenuously recommend commitment. At Sonya’s last hearing, the judge warned her that “any more slip-ups” would result in her commitment to the youth development center.

Sonya’s cousin who is 19 and is familiar with the system, recommends to Sonya (though she’s unsure) that Sonya can waive her juvenile jurisdiction and enter a plea of guilty in adult criminal court because it is unlikely that Sonya will receive prison time as a first offender. Although Sonya has never been detained long-term, she attempted suicide during her most recent stay in detention because she “couldn’t take” being locked up.

What is the main dilemma and how would you cope with it?
6. **Steven:** He is a fourteen-year-old juvenile who is in the seventh grade and has been held in detention for five days while he waits for a detention hearing on Monday. He is being held because he is charged in a petition alleging simple assault. The alleged victim is his mother. The juvenile has a history of mental health problems, is diagnosed with attention deficit disorder, intermittent explosive disorder, oppositional defiant disorder, and it is believed he is bi-polar (though he is too young for that diagnosis). The juvenile’s mother tells you at the detention hearing that she wants to be present with you when you talk to her son because she wants to make sure you don’t put words in his mouth. She also tells you that he is going to plead because “he did it.” She also tells you that he cannot come home because she’s tired of him and wants the court to do something about him or lock him up. He has had numerous suspensions from school and has not been evaluated by the school though she has asked repeatedly since he was in the fifth grade. You learn from your client just before the detention hearing that there is a history of domestic violence in the home and that he believes that he acted in “self defense.” He wants to go home with his mother despite what his mother says. You know of alternative placements that could be available rather than detention.

What is the main dilemma and how would you cope with it?

7. **Jasmine:** It is arraignment day for your client, eleven-year-old Jasmine. She has a petition for Assault with a Deadly Weapon. You have eight cases on that morning. You do not have a lot of time to talk with the parents who need to talk to you. Your client tells you that she is guilty. You talk with your client about the details. You conclude that based on the information she provides that she needs a trial. As you are talking to your client and parents, the Assistant District Attorney knocks and says that the Judge is ready for your case to be heard. The parents tell you that their daughter is innocent and you need to investigate. Your client wants to get it over with.

What is the main dilemma and how would you cope with it?

8. **James:** James is fourteen years old and has been arrested for possession of heroin. In the course of preparing his case, you, learn he is an addict. You also come across evidence that the search leading to his arrest may have been illegal. Do you file a motion to suppress knowing James won’t get treatment for his addiction? His mother doesn’t have insurance and the only way for him to get treatment is for him to be adjudicated delinquent.

What is the main dilemma and how would you cope with it?
Your responses to the following questions are voluntary and will be kept confidential.

DEMOGRAPHICS

I identify with the following:

Age ______

Sex Female ______

Male ______

Race

Caucasian/White ______

Hispanic ______

African American/Black ______

Asian/Pacific Islander ______

Other (please specify) ______

Marital Status Married ______

Single ______

Divorced/Separated ______

Widowed ______

Annual Income $0-25,000 ______

$25,001-35,000 ______

$35,001-45,000 ______

$45,001-55,000 ______

$55,001-65,000 ______

$65,001+ ______
PROFESSIONAL BACKGROUND

Current Job Title ________________________________________________

Years of Service as Juvenile Defense Attorney ________

Years of Service in Related Role ________
(E.g., juvenile prosecutor, indigent counsel, court counselor, etc.)

Title of Related Role(s) __________________________________________

Years of Service as Attorney (of any type) ________

Law School Attended _____________________________________________

Year of Law School Graduation ________

Juvenile Defense Practice Training (certifications, CLEs, clinics, workshops, self-study, etc.)

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

Other Relevant Background

________________________________________________________________
________________________________________________________________
________________________________________________________________
________________________________________________________________

I view myself as an advocate for my client’s ________________ interests.

Thank you for your participation!
Appendix G

Juvenile Defender Role Conflict and Coping Nodes

Advocacy Improvement
- Advocacy Improvement Policy
- Advocacy Improvement Practice
- Advocacy Improvement Training

Advocate Type

Age

Background Other

Clients’ Interests Conflict

Conflicting Expectations
- No
- Yes

Coping
- Effectiveness
  + Depends
  + Less effective
  + More effective
- Responses

Current Title

Daniel
- Coping Response
- Pressure Source

Experience/Reputation

Graduation Year

Income

James
- Coping Response
- Pressure Source

Jasmine
- Coping Response
- Pressure Source

John
- Coping Response
- Pressure Source

Juvenile Training

LaToya
- Coping Response
- Pressure Source

Law School

Marital

Michael
- Coping Response
- Pressure Source

Mentorship

Pressure to Depart Sources (cont.)
- Family
  ^Parents
  ^Clients
  ^ Special needs/young clients
- Context
  + Access to Resources
    ^Disposition options
    ^Service providers
  + Caseload
  + lack of information
  + Pay/Money
  + system
  + Time

Pressure to Depart Sources
- Court Personnel
  ^ Court counselors
  ^ Other defense attorneys
  ^ Judges
  ^ Prosecutors
  ^ Self (internal conflict)
- Society
Punish

Pushback/Pressure
- Manifestations Nonverbal
- Manifestations Verbal
- Examples
- Impact
  + Juvenile defense in general
  + Case outcomes
  + Stress/tension
  + Time/week
  + Work quality

Race

Role Conflict Extent
- Prevalence
  + Never
  + Often
  + Rarely
  + Sometimes
- Seriousness
  + Less
  + More

Role Tempering (role tempers the system)

Sex

Sonia
- Coping Response
- Pressure Source

Steven
- Coping Response
- Pressure Source

Title related

Voice

Withdrawal

Years Attorney Total

Years Defender
Years Related

Zealous Advocacy Role Support
- Parents
- Courtroom
  + court counselors
  + other defense attorneys
  + prosecutor
  + judges

Zealous Advocacy Departure
- Others balance (the best interests so defense attorney is one for expressed)
- Stage
- Acceptable
- Not Acceptable
- Sometimes Acceptable

Zealous Advocacy Meaning
- best interest
- expressed interest
- External action
- Internal action
- Zealous advocacy outcomes

Zealous Advocacy Obstacles
- Non-Role Conflict obstacles (includes that others like court counselors spend more time with clients and know them better than defense attys)
- Role Conflict obstacles
Table 1. Demographic and Professional Characteristics of Participants

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Avg.</th>
<th>Range</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>45.63</td>
<td>28-74</td>
<td>24</td>
<td>100</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>16</td>
<td>66.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>8</td>
<td>33.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Race</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caucasian/White</td>
<td>17</td>
<td>70.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>African American/Black</td>
<td>5</td>
<td>20.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>8.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marital</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married/Partnered</td>
<td>17</td>
<td>70.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td>5</td>
<td>20.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Divorced/Separated</td>
<td>2</td>
<td>8.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$0 - 25,000</td>
<td>2</td>
<td>8.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$35,001 - 45,000</td>
<td>3</td>
<td>12.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$45,001 - 55,000</td>
<td>6</td>
<td>25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$65,001+</td>
<td>9</td>
<td>37.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N/A</td>
<td>4</td>
<td>16.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Years Juvenile Defense</td>
<td>11.92</td>
<td>1- 45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(0-10 years = “Least” Experienced) (11 + years = “most” experienced)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training Experience</td>
<td>20</td>
<td>83.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Relevant Background</td>
<td>17</td>
<td>70.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advocate Type</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expressed (44.4% most experienced) (55.6% least experienced)</td>
<td>9</td>
<td>37.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Best (80% most experienced) (20% least experienced)</td>
<td>5</td>
<td>20.8</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 Breakdowns of length of experience (most and least) and advocate type (expressed and best) are provided for many items in Tables 1, 2, and 3. The higher of the two percentages is provided. If there were no discernible pattern (no more than 5% difference), no percentage is provided.
<table>
<thead>
<tr>
<th>Legal (66.7% most experienced) (33.3% least experienced)</th>
<th>3</th>
<th>12.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal/Best personal desired (100% least experienced)</td>
<td>2</td>
<td>8.3</td>
</tr>
<tr>
<td>Other [“true” “best defense”] (100% most experienced)</td>
<td>2</td>
<td>8.3</td>
</tr>
<tr>
<td>Declined to answer (66.7% most experienced) (33.3% least experienced)</td>
<td>3</td>
<td>12.5</td>
</tr>
</tbody>
</table>

**Zealous Advocacy Meaning Question [“Expressed Interest”]**

| Mentioned | 21 | 87.5 |
| Did not mention (66.7% of most experienced; 66.7% of best) | 3 | 12.5 |

**Experienced Pressure to Depart From ZA Role**

| Yes (45% of most experienced; 45% of expressed) | 20 | 83.3 |
| No (75% of most experienced; 100% of expressed) | 4 | 16.7 |

**Experienced Conflicting Expectations of Role**

| Yes (66.7% of most experienced; 38.9% of expressed) | 18 | 75 |
| No (66.7% of least experienced; 33.3% of expressed) | 6 | 25 |

**Zealous Advocacy Departure Acceptable**

| No (56.3% of most experienced; 43.8% of expressed) | 16 | 66.7 |
| Yes/sometimes (62.5% of most experienced) | 8 | 33.3 |

**Role Conflict Prevalence (17/24 or 70.5% indicated a prevalence)**

| Never (75% of most experienced; 25% of best) | 4 | 23.5 |
| Rarely (50% of most experienced; 66.7% of expressed) | 6 | 35.3 |
| Sometimes (100% of least experienced; 100% of expressed) | 1 | 5.9 |
| Often (66.7% most experienced; 50% of expressed) | 6 | 35.3 |

| Subtotal | 17 | 100 |
| Did not indicate (57.1% of most experienced; 14.3% of best interests) | 7 | 29.2 |
| **TOTAL** | 24 | 100 |
Table 2. Support for Role and Sources of Role Conflict

<table>
<thead>
<tr>
<th>Support for Role</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges*</td>
<td>24</td>
<td>100</td>
</tr>
<tr>
<td>Prosecutors (20% of least experienced; 11.1% of expressed)</td>
<td>3</td>
<td>12</td>
</tr>
<tr>
<td>Court counselors (50% of most experienced 55.6% of expressed)</td>
<td>8</td>
<td>33.3</td>
</tr>
<tr>
<td>Other defense attorneys</td>
<td>7</td>
<td>29.2</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source</th>
<th>n</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro-Level [Individual]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parent/Guardian</td>
<td>24</td>
<td>100</td>
</tr>
<tr>
<td>Client</td>
<td>24</td>
<td>100</td>
</tr>
<tr>
<td>Very young or special needs client*</td>
<td>23</td>
<td>95.8</td>
</tr>
<tr>
<td>Prosecutors (90% of least experienced; 88.9% of expressed)</td>
<td>18</td>
<td>75</td>
</tr>
<tr>
<td>Court counselors (80% of best interests)</td>
<td>17</td>
<td>70.8</td>
</tr>
<tr>
<td>Judges (71.4% of most experienced)</td>
<td>15</td>
<td>62.5</td>
</tr>
<tr>
<td>Other defense attorneys (35.7% of most experienced)</td>
<td>7</td>
<td>29.2</td>
</tr>
<tr>
<td>Self [person-role conflict]* (best interests averaged 2.8 examples vs. 1.92 from expressed)</td>
<td>18</td>
<td>75</td>
</tr>
</tbody>
</table>

| Meso-Level [Organizational/Contextual]                |      |      |
| Resources                                             |      |      |
| Time* (90% of least experienced; 77.8% of expressed)  | 18   | 75   |
| General access to resources (including service providers) | 14  | 58.3 |
| Caseload* (intertwined with time)                     | 9    | 37.5 |
| Service providers [access to] (57.1% of most experienced; 66.7% of expressed) | 8   | 33.3 |
| Pay/Money* (35.7% of most experienced; 33.3% of expressed) | 8   | 33.3 |

| Macro-Level [Institutional/Societal]                  |      |      |
| System                                               |      |      |
| Process Stage – Disposition (see fn xxxvi)           | 22/24| 91.7 |
| Stage Departure Justified (85.7% most experienced; 28.6% best) | 8/22 | 36.4 |
| Stage Departure Not Justified (53.3% most experienced; 53.3% expressed) | 14/22 | 63.6 |
| System efficiency (90% of least experienced; 80% of best) | 19/24 | 79.2 |

2 All of these sources were volunteered by participants except where indicated by an asterisk (*). Asterisked sources were part of a direct question about the source.
Appendix J

Table 3. Impact of Role Conflict

<table>
<thead>
<tr>
<th>Reported Impact of Role Conflict Experiences</th>
<th>n (of 24)</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Time (n of 23)</td>
<td>[23]</td>
<td>[100]</td>
</tr>
<tr>
<td>A lot (3/3 or 100% most experienced; 2/3 or 66.7% best)</td>
<td>3</td>
<td>13</td>
</tr>
<tr>
<td>Some (80% least experienced; 80% expressed)</td>
<td>9</td>
<td>39.1</td>
</tr>
<tr>
<td>A little (66.7% most experienced; 33.3% expressed)</td>
<td>5</td>
<td>21.8</td>
</tr>
<tr>
<td>None (66.7% most experienced; 16.7% expressed)</td>
<td>6</td>
<td>26.1</td>
</tr>
<tr>
<td>Stress/Tension</td>
<td>[24]</td>
<td>[100]</td>
</tr>
<tr>
<td>Yes (100% of most experienced; 7.1% of expressed)</td>
<td>21</td>
<td>87.5</td>
</tr>
<tr>
<td>No (100% least experienced; 30% of least experienced)</td>
<td>3</td>
<td>12.5</td>
</tr>
<tr>
<td>Case Outcomes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (80% of least experienced; 88.9% of expressed)</td>
<td>15</td>
<td>62.5</td>
</tr>
<tr>
<td>No (77.8% most experienced and 50% of most experienced; 60% of best)</td>
<td>9</td>
<td>37.5</td>
</tr>
<tr>
<td>Work Quality</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes (80% of least experienced; 66.7% of expressed)</td>
<td>17</td>
<td>70.8</td>
</tr>
<tr>
<td>No (71.4% of most experienced; 40% of best)</td>
<td>7</td>
<td>29.2</td>
</tr>
<tr>
<td>Work Quality Yes Impacted [n= 17]</td>
<td>[17]</td>
<td>[100]</td>
</tr>
<tr>
<td>Positive impact (50% most experienced; 30% expressed)</td>
<td>10</td>
<td>58.8</td>
</tr>
<tr>
<td>Negative impact (60% of best)</td>
<td>7</td>
<td>41.2</td>
</tr>
</tbody>
</table>
Appendix K

Figure 2. Framework of Expressed Interests Advocate Role Conflict Antecedents to Consider for Future Research

**Role Conflict Antecedents**

- **Juvenile Defender Beliefs about Advocate Role, Juveniles, & Acceptability of Role Departure**
- **Role Conflict Sources (e.g., individuals, system)**
- **R/C Experience**
  - Pushback/Pressure & Conflicting Expectations
- **Juvenile Defender Experience & Skills**
Appendix L

Figure 3. Framework of Expressed Interests Advocate Role Conflict Outcomes to Consider for Future Research

**Role Conflict Impact and Coping**

- **Positive Impact**
  - ZA Role Support
  - Facility with court norms
  - Experience/Reputation
  - Mentorship

- **Effective Representation**
  - [Role Fulfillment]

- **Negative Impact**
  - Coping [Withdraw]
For the duration of this dissertation the “juvenile defender role” is presumed to indicate the advocate role more than the counselor role. The counselor role is just as critical to juvenile defense, but is not central to this dissertation's investigation.

The judge was assisted in that effort by the probation officer, who might tell the judge what the child and his parents had revealed to him during (uncounseled) intake interviews.

See also: Puritz & Brooks, 2002 (KY); Puritz et al., 2002 (VA); Albin et al., 2003 (MT); ABAJJ, 2003 (ME); Calvin, 2003 (WA); Cumming et al, 2003 (MD); Ainsworth, 1990.

Role conflict is also referred to as, “the simultaneous occurrence of two (or more) role sendings such that compliance with one would make more difficult compliance with the other,” (Katz and Kahn, 1966: 184).

This specialized training consisted of: orientation sessions...including visits to institutions, an introduction to police department procedures, a survey of available community facilities which worked with 'problem' youths, examination of relevant statutory and decisional law, and observation of juvenile court proceedings. In addition, the lawyers were enrolled in graduate law courses dealing with juvenile courts, delinquency, and related areas throughout their association with the project (Stapleton and Teitelbaum, 1972: 59).

Efforts by the Investigator to procure detailed information on samples and assessment measures, such as interview protocols, were unsuccessful. When the Investigator requested these details from the National Juvenile Defender Center, it
was explained that those details could not be released in order to protect the authors’ intellectual property rights.

ix E.g., Crawford et al, 2007 (IL); Puritz et al., 2007 (MS); Beck et al., 2009 (NE); Puritz & Sterling, 2010 (WV); Scali et al., 2010 (SC); Puritz, 2012 (CO); Scali et al., 2013 (MO), etc..

x Some defenders remain zealous advocates despite the odds that they may not be successful in their efforts; others, however, have accommodated the notion that the juvenile defense attorney plays an insignificant role in juvenile court [e.g., Albin et al, 2003: 7 (MT); Cumming et al., 2003: 71 (MD); Kehoe and Tandy, 2006: 10 (IN); Grindall & Puritz, 2003: 45 (NC); Crawford et al., 2007, pp. 5-6 (IL)].

xi E.g., Celeste & Puritz, 2001 (LA); Puritz & Brooks, 2002 (KY); Puritz & et al., 2007 (MS); Beck et al., 2009 (NE); Puritz & Sterling, 2010 (WV); Scali et al., 2010 (SC); Scali et al., 2013 (MO).

xii Stewart et al, 2000 (TX); Celeste & Puritz, 2001 (LA); Puritz & Sun, 2001 (GA); Puritz & Brooks, 2002 (KY); Puritz et al., 2002 (VA); Albin et al., 2003 (MT); ABAJJ, 2003 (ME); Brooks & Kamine, 2003 (OH); Calvin, 2003 (WA); Cumming et al, 2003 (MD); Grindall & Puritz, 2003 (NC); Miller-Wilson, 2003 (PA); Kehoe & Tandy, 2006 (IN); Puritz & Crawford, 2006 (FL); Crawford et al, 2007 (IL); Puritz et al., 2007 (MS); Beck et al., 2009 (NE); Puritz & Sterling, 2010 (WV); Scali et al., 2010 (SC); Puritz, 2012 (CO); Scali et al., 2013 (MO).

xiii Other examples include: the Mississippi assessment discusses “findings [that] the culture of the juvenile court, and other barriers ... affect the quality of representation of Mississippi youth,” (Puritz et al., 2007: 15). The Nebraska assessment concludes that “[I]law violation proceedings are infused with an informal, non-adversarial nature that facilitates less than zealous defense advocacy,” (Beck et al., 2009: 56). The West Virginia investigative team found that “a pervasive lack of legal advocacy permeates the juvenile court” because of the courthouse “emphasis on the importance of civility” and the “unwritten rule that [defense counsel] should not be ‘too adversarial or too aggressive’” (Puritz & Sterling, 2010: 5). Finally, the South Carolina report describes, “the conformist culture of the court” and indicates that a “misunderstanding of the juvenile defender’s role seem[] to create overwhelming pressure for the juvenile defender to be a ‘team player’ ... often prioritizing this goal ahead of zealous advocacy,” (Scali et al., 2010: 22).

xiv Stewart et al, 2000 (TX); Celeste & Puritz, 2001 (LA); Puritz & Sun, 2001 (GA); Puritz & Brooks, 2002 (KY); Puritz et al., 2002 (VA); Albin et al., 2003 (MT); ABAJJ, 2003 (ME); Brooks & Kamine, 2003 (OH); Calvin, 2003 (WA); Cumming et al, 2003 (MD); Grindall & Puritz, 2003 (NC); Miller-Wilson, 2003 (PA); Kehoe & Tandy, 2006 (IN); Puritz & Crawford, 2006 (FL); Crawford et al, 2007 (IL); Puritz et al., 2007 (MS);
Beck et al., 2009 (NE); Puritz & Sterling, 2010 (WV); Scali et al., 2010 (SC); Puritz, 2012 (CO); Scali et al., 2013 (MO).

Data collected were: statistics on population, racial composition, and income... for each county... data on juvenile [delinquency variables such as complaints, admissions, intakes, arrests, etc]... survey questionnaires [content not published or released upon request]... interviews [pursuant to standardized protocols [details neither published nor released upon request]... [courtroom observations]... facility [tours] and documentary [and statistical] evidence [details neither published nor released upon request] (Grindall and Puritz, 2003: 12).

Phone calls were used to follow up when information needed elaboration or clarification. Interviews and conversations were conducted with an unspecified number of: judges, juvenile public defenders, court appointed counsel, prosecutors, court personnel and administrators, court counselors, case managers, mental health experts, school resource officers, detention center personnel and administrators, service providers, key state stakeholders, policy advocates, children and parents (Grindall & Puritz, 2003: 12).

In North Carolina's counties it is common for judges to do 'double duty' in juvenile and adult court (R. Waldrop Rugh, Court Counselor, Alamance County Clerk of Court, Juvenile Division, Graham, North Carolina, personal communication February, 2012).

The study's instruments and plan to interview juvenile defenders in one North Carolina county were approved by Northeastern's Institutional Review Board (IRB) on May 30, 2014. On July 18, 2014, the IRB approval was modified to include participants from additional areas of the state.

According to role conflict scholars, the tension or stress role incumbents experience as a result of role conflict can lead to deleterious effects on-the-job like turnover (role withdrawal), burnout (emotional exhaustion) (Cordes and Dougherty, 1993; Jackson et al., 1987), and lower productivity (Van Sell et al., 1981).

Alpha and Beta Counties are roughly the same size as seventeen, and thirty-two (respectively) other counties in the United States (i.e., counties with populations between 900,000 and one million, and 450,000 and 550,000, respectively) (RocDocs Population of US Counties. http://rocdocs.democratandchronicle.com/database/population-us-counties).

All states, except for one (Maine), base their juvenile defense services in a state-or county-funded public defense scheme similar to North Carolina (NJDC State Profiles, http://njdc.info/practice-policy-resources/state-profiles/). Thirty-six (72%) states utilize some combination of systems and thirteen (26%), including North Carolina, use all three systems of indigent defense. Seventeen (35% of) other
states utilize the same system as Alpha and Beta Counties (public defender office supplemented by an appointed counsel list) (NJDC State Profiles, http://njdc.info/practice-policy-resources/state-profiles/). The prevalence of public defense office-based representation with supplemental representation from the legal community (the “local Bar”) make Alpha and Beta Counties’ juvenile defense systems comparable to most others in the United States.

xxii The Investigator identified herself as a Ph.D. student with a background in law and industrial/organizational psychology with an interest in studying the professional development of workgroup members in the juvenile courts, particularly defense attorneys. The Investigator made clear that interviews would be completely voluntary and confidential. She also made clear that no identifying information for any individual mentioned in participants’ responses (e.g., a named defendant) would be recorded at any time. Each attorney was invited twice using two methods of contact. If no response was received after the fourth contact, the attorney was removed from the list. If an attorney asked for further information about the study, the Investigator provided additional details from the Waiver of Consent Form and offered to e-mail it to him or her. The Investigator began sending invitations on May 30, 2014 and ceased after reaching the four-invitation-per-participant limit on November, 13, 2014.

xxiii Ten of the participants completed the interviews in-person, while the remaining fourteen were interviewed via telephone. The Investigator made every effort to make participation as convenient as possible for the participants. Every participant was sent a handwritten “thank you” card after the interview.

xxiv In order to ensure reliability, the Investigator read each question to each participant verbatim from the interview protocols, unless the answer had already been given in response to another question, or when the question was asked in edited form as a follow-up to a relevant response to another question. In these instances, the Investigator attempted to use wording as close as possible to the written question without impeding the flow of the interview. Also, paper (in-person interviews) or electronic (phone interviews) copies of the interview protocols were provided to the participants so they could read along throughout the interview. Additional follow-up questions were asked depending on participant responses. The “stage” question was not part of the written protocol because pilot responses indicated little variance on this item, but all participants were asked about role departure due to stage if they did not raise the topic themselves. Only two participants’ (006 and 023) responses were not captured in their transcripts but their responses are briefly discussed in note xxxvii.

xxv An example of true interrole conflict for a juvenile defender would be if the juvenile defender were also an employee at the Department of Social Services (DSS) and the two roles conflicted. Such investigation goes beyond the theoretical framework (e.g., organizational sources of role conflict) of the present study.
In order to counteract investigator subjectivity, the Investigator relied on her ethics training, research experience, and the study’s instruments. The Investigator also implemented member checks, providing each participant the opportunity to review his or her interview transcript and make changes. Participants had two weeks to make changes, but only one made any.

Juvenile defenders’ unique position as counselors of children is addressed to some extent in North Carolina’s Juvenile Delinquency Performance Guidelines. The Guidelines indicate that if there is an “absolute impasse as to tactical decisions [at adjudication], the juvenile’s wishes may [emphasis added] control,” (Newman et al., 2008: 17). The Guidelines do not address this conflict at other stages of the process except to say that such “tactical disagreements … do not justify withdrawal from a case,” (p. 2). The Guidelines may be written this way to provide some protection to defenders who choose to defer to their clients’ expressed interests when it comes to tactical decisions.

Interviews typically ran between one and one-and-a-half hours.

These participant numbers are provided to indicate which participants explicitly volunteered these circumstances in response to the question about whether they thought a defense attorney should ever depart from advocating for the expressed interests of a juvenile client. These participants replied “yes” or “sometimes” to that question and followed up with descriptions of circumstances under which they found such departure acceptable.

Eric Zogry, the Juvenile Defender of North Carolina, explained that there is no concrete law on the matter of mandated reporting for juvenile defenders. He added that he believed the Bar would support attorneys who maintained their client’s confidence and it would be unlikely for an attorney to get prosecuted for not complying with the mandated reporting laws. Personal communication, July 29, 2015.


Twenty-one of the twenty-two participants who responded to this vignette recognized the expressed-best interests dilemma and either explicitly stated (15/22), or implied (6/22), that they would defer to their client’s expressed interests. Participant 010 indicated he would either go to trial or try to get James services because James’ record would be fine since it was only juvenile court.

The nature of court systems in the United States is adversarial. This means there is a process of determining guilt that involves a contest between two opposing parties, the prosecuting attorney who brings charges against the defendant, and the
defendant who is typically represented by a defense attorney. The two attorneys present evidence to a fact-finder, a judge for the juvenile system, who ultimately determines if the evidence supports the conclusion that the defendant is responsible for violating the law. This contest is adversarial so it naturally involves conflict. However, this type of conflict can be distinguished from the role conflict that is the focus of this study in that role conflict can be presented to the juvenile defender by anyone involved in the juvenile court, not just the prosecutor or judge. In addition, the prosecutor and judge are both formally educated as to the proper role of the defense attorney and even though they play different roles in the court system, they should still be able to demonstrate respect, understanding, and even support for the defender role as a necessary part of the judicial process. At the same time, there may be some circumstances where it is difficult to distinguish adversarial conflict from role conflict, but only for the prosecutor and judge whose job it is to push back against the defense attorney in a professionally suitable fashion. However, participants seemed to be able to identify when pushback was outside the scope of the adversarial process. Nevertheless, some overlap could exist making it important to tease apart the two, if possible, in future research.

xxxiv To be clear, participants seemed to view these role conflict sources as forces they were unlikely to accommodate, unlike those addressed in the “Role departures view” section of this chapter. Participants also seemed to view role departures due to these sources as unjustifiable.

xxxv A number of the vignette scenarios participants reviewed and responded to for this study involved situations where clients’ parents attempted to interfere with the attorney-client relationship. Participants predominately remarked that they would cope with the situation by asking the parent to leave, and failing that, by seeking assistance from the judge to force the parent to refrain from interfering. Participants indicated they expect this support from the judge in this kind of situation; if they did not receive the judge’s support, they would seek to withdraw from the case.

xxxvi Participant 001 has practiced juvenile defense for nine years and 014 has practiced for only two so years of experience may not account for this difference. Age, however, may. Participant 018 was only twenty-eight at the time of his interview while 001 and 014 were forty-two and thirty-six, respectively.

xxxvii The participants who did not make this note were 006 and 023. Their views of how the stage of the juvenile process were discussed during the interview but not during the recorded portion. Participant 006 indicated she believed she did not have enough experience to answer the question and nothing else in her responses suggests a more detailed answer. 023 indicated it was “absolutely not” ever appropriate to depart from the expressed interests advocate role. He referred to his “prior answers” when asked about stages, but there was nothing concrete to identify as a response and attempts to follow up were unsuccessful. Participant 006 was the
only participant who declined to be audio-recorded and Participant 023 was one of two participants who passively declined to complete the Vignettes exercise.

xxxvii Interestingly, the other two (Participants 007 and 015) who did not indicate expressed interests advocacy as central to their zealous advocacy meaning were split on whether the disposition stage presented a justifiable departure from the expressed interests role. Participant 007 commented that it was an acceptable departure. However, Participant 015 commented that such a departure was not acceptable.

xxxix Participant 011 is one of the few full-time juvenile defenders in the sample and was also one of the most experienced so this perspective is presumably informed by that long tenure.

xl Participant 015 is also one of the three participants who did not raise expressed interests advocacy as central to their definition of zealous advocacy.

xli Participant 003 commented that a criminal defense attorney's presence would be unnecessary in a therapeutic system of justice. This point was suggested by a number of other participants and could be the result of the Supreme Court's rationale in In re Gault (1967), indicating that punitive outcomes trigger the required presence of defense counsel for defendants. Lawyers and judges are trained to be guided by rules and rationales primarily set forth by statutes and court decisions. Therefore, it is possible that they overlook the need for defense counsel in therapeutic settings since the requirement of defense counsel for juveniles is justified in part by the loss of freedom associated with punitive outcomes, but less so with therapeutic outcomes.

xlii “Time” was a difficult source of conflict to address since it seemed so intertwined with several other sources. However, the Investigator decided to focus the “time” as a source of role conflict discussion in the “system efficiency” section since that appeared to be where time was most prevalently an issue according to participants’ responses.

xliii As is made clear in the excerpts, these resources are often intertwined with other resources (i.e., lack of time could also mean heavy caseload, or insufficient pay, etc.), or other sources of role conflict.

xliv Participants’ responses indicated that the conflicting-client-interests dilemma only posed a challenge to the advocate role, the role with which this study is primarily concerned. It is important to reiterate that this dissertation’s discussion of role conflict focuses only on the advocate function of the juvenile defender role. This is due to the fact that unlike when juvenile defenders inhabit their counselor role, when they inhabit their advocate role they are ethically required to defer to their clients’ expressed wishes. In the advocate role they are also required to treat their
child clients just as they would treat their adult clients. However, as demonstrated by the research discussed previously, and confirmed by the present study, this is not so easily accomplished.

xliv Each state “Bar” is an organization responsible for the licensure and training of attorneys as well as the management of those whose ethics or practices do not meet certain standards.

xlvi Withdrawal only emerged as a coping response through participants’ sparse comments recognizing it as a coping response option. For example, Participant 003 was in the process of passively withdrawing from the list of appointed counsel in his county. However, he was still on the appointed counsel list, or the Investigator would not have been provided his contact information. His reasons for passively withdrawing had more to do with financial pressures (intervening conditions of role conflict) than with role conflict itself. He had been practicing juvenile defense for eighteen years and identified himself as an “expressed” interests advocate. Even though he was firm about his expressed interests role and found departures - even at disposition - to be unjustifiable, he still experienced role conflict rarely. Therefore, his passive withdrawal was not due to role conflict or its impact.

xlvii “Self-study” refers to an attorney’s informal self-directed examination of resources relevant to his or her role.