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BOOK REVIEWS

THE IMPACT OF COUNSEL ON JUVENILE DELINQUENCY PROCEEDINGS

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I. INTRODUCTION: PROCEDURAL FORMALITY AND THE NATURE OF THE JUVENILE COURT

On June 8, 1964, fifteen-year-old Gerald Francis Gault was arrested after police in Gila County, Arizona, received a complaint regarding an obscene phone call.¹ The next day, proceedings were initiated against Gerald in juvenile court.² During these proceedings, Gerald was unrepresented by counsel. The State of Arizona never provided Gerald or his parents with any statement describing the factual allegations against him or the statute he was charged with violating.³ The complaining witness never appeared before the judge, despite requests by Gerald's mother for an in-court identification to clear her son of any wrongdoing.⁴ No witnesses were sworn. No record was kept of the testimony.⁵ At the conclusion of the proceedings, Gerald was committed to the State Industrial School "for the period of his minority [that is, until 21], unless


¹ In re Gault, 387 U.S. 1, 4 (1967).
² Id. at 5.
³ Id. at 5-9.
⁴ Id. at 7.
⁵ Id. at 5-9.

642
sooner discharged by due process of law."\(^6\)

The Supreme Court reversed the finding of delinquency, declaring that "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court."\(^7\) The Court held that juveniles are entitled to notice of charges,\(^8\) assistance of counsel,\(^9\) confrontation of witnesses,\(^10\) and the privilege against self-incrimination\(^11\) at proceedings to determine whether a minor has violated the law.

The *Gault* decision rang in a new era for the juvenile court. While a number of jurisdictions had previously adopted procedural protections for juveniles accused of committing crimes, the Supreme Court imposed such protections as a constitutional minimum.\(^12\) Shortly after *Gault*, the Supreme Court also held that criminal conduct must be proven beyond a reasonable doubt in juvenile delinquency proceedings.\(^13\) The infusion of formal procedures was viewed by some observers as a threat to the character of the juvenile court.\(^14\)

In the late nineteenth and early twentieth centuries, reformers were appalled by the way the criminal justice system treated children—giving young offenders harsh sentences and having them serve their punishment in penal institutions surrounded by adult criminals. The juvenile court system developed out of the progressive movement's vision of children as inherently innocent beings who could be molded into productive citizens.

The progressives established a framework entirely separate from adult criminal courts. Minors are adjudicated delinquent, not convicted of crimes. The juvenile judge holds a dispositional hear-

\(^6\) *Id.* at 7-8 (brackets in original).

\(^7\) *Id.* at 28.

\(^8\) *Id.* at 33-34.

\(^9\) *Id.* at 41-42.

\(^10\) *Id.* at 56.

\(^11\) *Id.* at 55.

\(^12\) See infra notes 55-57 and accompanying text.


\(^14\) For example, Chief Justice Burger stated:

[The Court has taken] steps eroding the differences between juvenile courts and traditional criminal courts. The original concept of the juvenile court system was to provide a benevolent and less formal means than criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. . . . What the juvenile court system needs is not more but less of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive, if it can survive the repeated assaults from this Court.

ing, not a sentencing hearing. The juvenile court’s concern at the dispositional hearing is not punishment, but the best interests of the minor. The traditional punitive concerns of retribution and deterrence give way to treatment and rehabilitation. Judge Julian Mack explained the purposes of the juvenile court in 1909:

Why is it not the duty of the state, instead of asking merely whether a boy or girl has committed a specific offense, to find out what he is, physically, mentally, morally, and then if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but to develop, not to make him a criminal but a worthy citizen.

Thus, the juvenile court judge evaluates the individual offender’s needs and fashion a program to improve the minor. Experts in child psychology and social work advise the judge of what is needed to reform the child and the judge implements the appropriate proposals through a dispositional order.

Many procedural rights guaranteed to adults in criminal cases have been deemed inappropriate in the juvenile context. Juvenile court judges need flexibility to determine the most appropriate disposition for minors. In rejecting the right to jury trials for juveniles, for example, the Supreme Court noted that “the jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal vision of the juvenile court’s creators:

There was almost a change in mores when the juvenile court was established. The child was brought before the judge with no one to prosecute him and none to defend him—the judge and all concerned were merely trying to find out what could be done on his behalf. The element of conflict was absolutely eliminated and with it all notions of punishment as such with its curiously belated connotations.

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17 See McKeiver v. Pennsylvania, 403 U.S. 528, 539 (1971) (“[T]he juvenile system has available and utilizes much more fully various diagnostic and rehabilitative services that are ‘far superior to those available in the regular criminal process.’”) (quoting In re Terry, 265 A.2d 350, 355 (1970); In re Seven Minors, 664 P.2d 947, 951 (Nev. 1983) (“Enforcing the state’s interests in a manner designed to hold juveniles responsible for their violations of the criminal laws need not by any means dilute the strength of educative and rehabilitative measures properly taken by the juvenile courts in attempting to socialize and civilize errant youth.”); Feld, supra note 15, at 9-10.

18 See Feld, supra note 15, at 14-16. Jane Addams explained the informal vision of the juvenile court’s creators:
informal protective proceeding."\textsuperscript{19} As envisioned by its creators, the juvenile court should not be encumbered by procedures that allow needy children to avoid supervision and control merely because of legal technicalities or juror nullification. Furthermore, concepts of proportionality could frustrate the efforts to help a child in need. The founders of the juvenile court believed that society has a moral obligation to impose a severe disposition if a child would benefit from such state involvement, regardless of whether the conduct that brought the child to the attention of the authorities is a heinous felony or a petty offense. The question is not what the child deserves, but what is best for the child.

Unfortunately, flexibility permits abuses. After reviewing the facts in \textit{Gault}, the Supreme Court quoted Dean Roscoe Pound’s warning that “the powers of the Star Chamber were a trifle in comparison with those of our juvenile courts.”\textsuperscript{20} Most apparent, flexibility can lead to excesses in the name of rehabilitation. Inevitably, at least some of the determinations made by unrestrained juvenile court judges will be inappropriate for and unfair to the children they are intended to help. Furthermore, many juvenile court judges are not convinced by the progressive movement’s vision of the inherent goodness of all children. Thus, individual judges sometimes use the wide powers granted in the name of rehabilitation to mete out punishment.\textsuperscript{21}

When judges do seek rehabilitative programs, state correctional systems often frustrate the judiciary’s remedial efforts. Many correctional facilities for juveniles are harsh institutions that serve to warehouse offenders rather than rehabilitate them.\textsuperscript{22} The lack of social services is compounded by the mistreatment of children. Reports of physical and sexual violence by staff members and fellow inmates are widespread.\textsuperscript{23} Given the reality of what happens to many juveniles during their period of “rehabilitation,” the Court in \textit{Gault} believed that some procedural protections are necessary.\textsuperscript{24}

\textsuperscript{19} \textit{McKeiver}, 403 U.S. at 545.
\textsuperscript{20} \textit{In re Gault}, 387 U.S. 1, 18 (1967). The Court warned, “The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. . . . Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.” \textit{Id.} at 19-20. 
\textit{See also} Mahoney, supra note 15, at 22-24 (discussing flexibility and discretion in the juvenile courts as a “two-edged sword”).
\textsuperscript{21} \textit{See infra} note 110 and accompanying text.
\textsuperscript{22} Feld, supra note 15, at 266-67.
\textsuperscript{24} \textit{Gault}, 387 U.S. at 27-28.
The Supreme Court was careful to caution, however, that procedural protections would not require the elimination of a separate juvenile court system focused on rehabilitation. The Court stated:

While due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceedings to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite, nor do we here rule upon the question whether ordinary due process requirements must be observed with respect to hearings to determine the disposition of the delinquent child.\(^\text{25}\)

Thus, the fundamental character of the juvenile court was to remain intact. Although minors would have some procedural protections at the guilt-determining stage of the proceedings, the juvenile court would retain its characteristically informal dispositional hearing when deciding what is in the best interests of the child.

In *Justice for Children: The Right to Counsel and the Juvenile Courts,* Barry C. Feld questions whether the Supreme Court's expectations have been realized. Feld argues that a tension exists between the progressive movement's ideal of a flexible juvenile court imposing social controls on children in need of supervision and the due process model of a juvenile court operating within the constitutional framework of criminal courts. The book evaluates the conflict between the traditional vision of the juvenile court and the procedural requirements now constitutionally imposed upon it and concludes that the procedural protections now guaranteed to children accused of crimes have led to a harsher, more punitive juvenile court.

Feld uses representation by counsel as a proxy for the overall level of formality in individual juvenile court systems. The presence of counsel makes it more likely that a respondent will invoke other procedural rights. A defense attorney, for example, presumably will file motions to quash illegal arrests and suppress suggestive identifi-

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\(^{25}\) *Id.* at 27. Three years after *Gault,* the Court included a similar disclaimer when ruling on the burden of proof required for a finding of delinquency:

Nor will [the proof beyond a reasonable doubt standard have] any effect on the informality, flexibility, or speed of the hearing at which the factfinding takes place. And the opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing. *In re Winship,* 397 U.S. 358, 366-67 (1970). Why the separation of the guilt-determining phase from the dispositional phase of juvenile proceedings is not an adequate means of retaining the flexible, rehabilitative character of the juvenile court, while granting the right to jury trials, was never explained by the Court in *McKeiver v. Pennsylvania,* 403 U.S. 528 (1971). *See supra* note 19 and accompanying text.

\(^{26}\) FELD, *supra* note 15.
cations and involuntary statements when potential Fourth and Fourteenth Amendment violations exist. Defense attorneys will also typically advise respondents of their right to remain silent. Additionally, professional attorneys should be more adept at questioning state witnesses and presenting defense arguments than minors or their parents. Finally, a defense attorney is likely to increase the adversarial nature of the proceedings merely by being present as a counter to the probation officer or prosecuting attorney.  

As a practical matter, the measurement of other procedural rights would be difficult. Nobody can accurately count the number of cases in which minors would be compelled to testify or in which cross-examination of witnesses would not take place absent the Supreme Court's pronouncements in *Gault*. Researchers would face a significant challenge in attempting to count the number of convictions that would occur under a preponderance of the evidence standard as opposed to the reasonable doubt standard required under *Winship*. The right to counsel is one of the few proxies by which to measure the broader procedural approach of a court system.

Feld utilizes data from several jurisdictions, rather than the anecdotal observations that often permeate discussions of juvenile justice. First, he evaluates information collected in 1984 by the

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27 *Id.* at 76-157. By failing to evaluate the effect of plea agreements, Feld does not account for the possibility that counsel may actually reduce the adversarial nature of proceedings in juvenile court. *See infra* note 96 and accompanying text. Even if most cases are resolved by plea agreements, however, the presence of defense counsel probably still increases the formality of the juvenile court process. At a minimum, the fact that a prosecutor must tender an offer to a defense attorney, who then discusses the options with the client, introduces an extra level of procedure.

There is some evidence that indirectly supports Feld's contention. Edwin Lemert reported significant delays in cases with represented youths when California granted the right to counsel in 1961. Edwin M. Lemert, *Legislating Change in the Juvenile Court*, 1967 Wis. L. Rev. 421, 431.


Anne Rankin Mahoney has compiled data indicating that cases involving represented juveniles take, on the average, three times as long to go from arraignment to disposition as cases involving unrepresented juveniles. *Mahoney, supra* note 15, at 57. Mahoney's data, however, came from a study of only one wealthy, suburban county. Fifty-five percent of youths were represented and 69% of represented youths had private counsel. *Id.*

28 Few studies have evaluated the effects of counsel on dispositions received by juvenile respondents. Most work on this subject consists of observations made shortly after the *Gault* decision. In 1967, for example, an observer in Philadelphia reported that "the number of children being committed to institutions has dropped markedly as the proportion of children represented by counsel has risen." Spencer Coxe, *Lawyers in Juvenile Court*, 13 Crime & Delinqu. 488, 493 (1967). In New Jersey, commitments to the State
After comparing and evaluating data from the six jurisdictions ("the six-state survey"), Feld then conducts a more thorough inquiry on data collected by the Minnesota Supreme Court's Judicial Information System, the Nebraska Commission on Law Enforcement and Criminal Justice, the New York Office of Court Administration, the North Dakota Office of State Court Administrator, and the Pennsylvania Juvenile Court Judge's Commission. After California enacted a statutory right to counsel in juvenile cases in 1961, Lemert reviewed the outcomes of 1,760 juvenile court cases in Sacramento County during 1962 and 1963. Respondents were represented in 17.6% of the cases. Parties who were represented by counsel were three times more likely to have their cases dismissed than those who were unrepresented.

While represented parties fared much better than unrepresented parties, Lemert's statistics include dependency cases. In fact, the largest percentage of the dismissals occurred in dependency cases rather than delinquency cases. Id. at 443.

In at least one important category for minors accused of delinquency, counsel was associated with harsher treatment. While 12.3% of represented youths were committed to the California Youth Authority, only 5.9% of unrepresented youths received this harsh disposition. Id. at 442-43.

Chused studied three New Jersey counties in 1970 and reported that represented juveniles were slightly less likely to be found delinquent than unrepresented minors. Chused, supra note 27, at 520. Once a child had been found delinquent, however, the effects of procedural formality on the disposition were much more significant. New Jersey employed a two-tiered juvenile court system at the time of Chused's study, assigning some cases to a "formal" court calendar and other cases to an "informal" court calendar. Id. at 489-90. The right to counsel was guaranteed in formal calendars, but not in informal calendars.

Chused reported significant differences in the dispositions received by respondents in the different calendars. More than a third (33.6%) of the respondents in the formal juvenile courts were committed to out-of-home placements or secured facilities, while only 7.3% of juveniles in the informal courts received such severe dispositions. Id. at 597. More than half (53.8%) of the respondents in the informal calendars received minor dispositions, avoiding even probation. Only 10% of the children in the formal calendars were similarly treated. Id.

A number of factors correlated with the initial decision whether to assign a case to a formal or informal calendar, including the number of prior court referrals, previous dispositions received by juveniles with prior referrals, and the seriousness of the offense. Id. at 567-76. Unfortunately, Chused did not account for these factors while comparing treatment in the formal and informal calendars.

Stevens Clarke and Gary Koch reviewed the outcomes of 1,435 cases in the juvenile courts of Winston-Salem and Charlotte, North Carolina, during 1975 and 1976. Stevens H. Clarke & Gary G. Koch, Juvenile Court: Therapy or Crime Control, and Do Lawyers Make a Difference?, 14 LAW & SOCIETY REV. 263, 271 (1980). After accounting for the respondent's prior record, the seriousness of the offense, the relationship of the complaining witness to the respondent, and parental support for the respondent, Clarke and Koch discovered that "children without counsel were less likely to be committed" to a correctional facility. Id. at 301.

29 Feld, supra note 15, at 43.
Court's Judicial Information System during 1986.\textsuperscript{30} Feld reports that large numbers of youths go unrepresented in juvenile delinquency hearings.\textsuperscript{31} More surprising, children who are represented by counsel usually receive more severe sanctions than children who are unrepresented, even after accounting for the seriousness of the offense and the prior record of the juvenile.\textsuperscript{32} Interpreting the data, Feld suggests that procedural protections inject a level of conflict and formality into the juvenile court. The adversarial nature of the proceedings could antagonize judges into treating juveniles more harshly. Children who appear without counsel, however, could be perceived by judges as throwing themselves upon the mercy of the court and thus receive less severe sanctions.\textsuperscript{33} Additionally, procedural formality may allow a judge to feel justified in imposing punitive sanctions because of a perception that the youth was adequately protected during the proceedings. Thus, formality could embolden juvenile court judges into ordering stern penalties that they would not otherwise employ.\textsuperscript{34} If this is true, Feld argues, the procedural formality required by the Supreme Court in \textit{Gault} has actually resulted in more severe treatment of juveniles.

II. DIFFERING LEVELS OF REPRESENTATION

In some jurisdictions, the vast majority of children accused of crimes are represented by counsel. More than 95\% of youths accused of committing crimes or status offenses\textsuperscript{25} in New York, for example, are represented by counsel.\textsuperscript{36} The percentages of minors who are represented in Pennsylvania and California are also high—86.4\% and 84.9\% respectfully.\textsuperscript{37} Other jurisdictions, however, are characterized by significantly lower rates of representation. In Nebraska, only 52.7\% of minors are represented by counsel in delinquency proceedings.\textsuperscript{38} Likewise, only 47.7\% of juveniles are represented in Minnesota and only 37.5\% are represented in North Dakota.\textsuperscript{39}

\begin{itemize}
\item \textsuperscript{30} \textit{Id.} at 44.
\item \textsuperscript{31} \textit{See infra} notes 35-53 and accompanying text.
\item \textsuperscript{32} \textit{See infra} notes 61-77 and accompanying text.
\item \textsuperscript{33} FELD, \textit{supra} note 15, at 74, 100, 253-54.
\item \textsuperscript{34} \textit{Id.} at 253-54. The author will refer to both of these theories as "the antagonism hypothesis."
\item \textsuperscript{35} A status offense is conduct that is illegal due to the age of the offender (i.e., the offender's status as a minor). Examples include truancy and curfew violations. \textit{BLACK'S LAW DICTIONARY} 1410 (6th ed. 1990) (defining "status crime").
\item \textsuperscript{36} Feld, \textit{supra} note 15, at 55.
\item \textsuperscript{37} \textit{Id.}
\item \textsuperscript{38} \textit{Id.}
\item \textsuperscript{39} \textit{Id.}
\end{itemize}
The differences in rates of representation are not necessarily tied to less serious patterns of juvenile crime. After correcting for the seriousness of the offense, variations in rates of representation remain significant. In Minnesota, more than a third of all minors accused of committing felony offenses are not represented by counsel.\(^4\) In North Dakota, more than 40% of juveniles accused of felonies are unrepresented.\(^4\) Although all minors accused of committing felonies against persons in North Dakota are represented by counsel, more than 60% of North Dakota youths accused of committing felony property offenses proceed without the assistance of counsel.\(^4\)

More distressing, large numbers of unrepresented children receive severe dispositions. Feld divides the harshest dispositions that could be ordered by a juvenile court into two categories: commitments to out-of-home placements (such as group homes, substance abuse treatment programs, or psychiatric hospitals) and commitments to secured facilities.\(^4\)

Large percentages of unrepresented youths receive severe dispositions in all of the jurisdictions evaluated by Feld. In Minnesota, for example, nearly one-third of the youths sent to out-of-home placements and more than one-quarter committed to secured facilities are unrepresented by counsel.\(^4\) More than 35% of unrepresented youths charged with felonies against persons in California are sent to out-of-home placements, and more than 15% of them are committed to secured facilities.\(^4\) In Nebraska, more than 28% of unrepresented youths charged with felony offenses against persons are committed to out-of-home placements, and more than 20% of such youths are sentenced to secured facilities.\(^4\)

The Supreme Court has not mandated an unwaivable right to counsel in all juvenile cases. The \textit{Gault} decision requires only that juveniles and their parents be notified of the right to counsel, including the right to state-funded counsel if the family is unable to

\(^{40}\) Id.

\(^{41}\) Id.

\(^{42}\) Id. Surprisingly, many minors facing serious charges in high representation jurisdictions also proceed without the assistance of counsel. In California, for example, more than 10% of minors accused of committing felonies against persons proceed without representation by counsel. Nearly 9% of similarly charged youths in Pennsylvania go unrepresented. \textit{Id.}

\(^{43}\) Id. at 45-46.

\(^{44}\) Id. at 100.

\(^{45}\) Id. at 59.

\(^{46}\) Id.
Feld theorizes that differences in rates of representation might be the result of juvenile court judges admonishing juveniles and their families in such a way as to discourage requests for counsel. The manner in which judges or other actors in the juvenile justice system describe the need for counsel undoubtedly can influence a youth's choice whether to secure the services of an attorney.

Feld evaluates a number of factors associated with differing levels of representation. Youths who are detained prior to trial, for example, are more likely to be represented by counsel than youths who are not detained. Representation by counsel also appears more frequently in cases involving juveniles with prior court referrals and cases involving more serious allegations. Even after controlling for these factors, however, representation is much lower in some jurisdictions than in others.

Feld argues that the low rates of representation in some states may reflect a continuing hesitance to implement the procedural guarantees outlined in Gault. Feld observes that both California

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47 In re Gault, 387 U.S. 1, 41 (1967).
48 Feld, supra note 15, at 100. Feld does not analyze how statutory frameworks impact on rates of representation. In some jurisdictions, the right to counsel is unwaivable. See, e.g., 705 Ill. Comp. Stat. 405/1-5(1) (1993). Most jurisdictions do not confer an unwaivable right to counsel, but some statutes expressly establish requirements for waiver. See, e.g., Minn. Stat. Ann. § 260.155(8)(b) (West 1992) (“Waiver of a child’s right to be represented by counsel . . . must be an express waiver voluntarily and intelligently made by the child after the child has been fully and effectively informed of the right being waived . . . . If the court accepts the child’s waiver, it shall state on the record the findings and conclusions that form the basis for its decision to accept the waiver.”); 42 Pa. Cons. Stat. Ann. § 6337 (1982) (“Counsel must be provided for a child unless his parent, guardian, or custodian is present in court and affirmatively waive it.”). Other jurisdictions grant the right to counsel, but provide little statutory guidance for evaluating the conditions under which the right may be waived. See, e.g., Neb. Rev. Stat. § 43-272(1) (1984); N.D. Cent. Code § 27-20-26 (1991).
50 Feld, supra note 15, at 62-64, 120. In several categories of crimes, however, detained youths in North Dakota were less likely to employ the services of counsel than released youths. Id. at 68.
51 Id. at 68-70, 126.
52 Id. at 55, 126.
53 Id. at 66-70. In Nebraska, for example, half of all minors with three to four prior court referrals and presently charged with committing a felony offense against a person go unrepresented. Id. at 69. More than 60% of Nebraska minors with three to four prior court referrals and accused of a misdemeanor against a person proceed without representation. Id.
54 Id. at 72.
and New York, which are presently high representation jurisdictions, provided counsel in juvenile cases before the Supreme Court constitutionalized the practice.\textsuperscript{55} North Dakota, a low representation state, did not legislatively provide for appointment of counsel in juvenile cases until two years after \textit{Gault}.\textsuperscript{56} A number of examples, however, contradict this pattern. Minnesota, which is presently a low representation state, afforded juveniles the right to counsel prior to \textit{Gault}.\textsuperscript{57} Pennsylvania, which is currently a high representation state, did not provide for counsel prior to \textit{Gault}.\textsuperscript{58}

Further research into why counsel is appointed in some cases and declined in others would shed light on the effects of procedural formality on the juvenile court. The apparent correlation between harsh dispositions and representation by counsel can be explained by several different hypotheses.\textsuperscript{59} Information on why some minors are represented and others are not could help determine whether the presence of counsel is itself an aggravating factor or merely an indication of other, underlying causes of severe sanctions.\textsuperscript{60}

\textsuperscript{55} \textit{CAL. WELF. \\& INST. CODE} § 679 (West 1984) (enacted in 1961); \textit{N.Y. JUD. LAW} § 241 (McKinney 1988) (enacted in 1962). The California provisions did not mandate appointment of counsel to indigent minors accused of non-felony offenses until 1967.\\n
\textsuperscript{56} \textit{N.D. CENT CODE} § 27-20-26 (1991) (enacted in 1969).\\n
\textsuperscript{57} \textit{MINN. STAT. ANN.} § 260.155(2) (West 1992).\\n
\textsuperscript{58} \textit{42 PA. CONS. STAT. ANN} § 6337 (1982) (enacted in 1972). In some jurisdictions, local court systems quickly accommodated the right to counsel. In Philadelphia, it has been estimated that the rate of representation went from 5% to 40% of respondents in less than six months after the \textit{Gault} decision. Coxe, \textit{supra} note 28, at 488. Despite the surge in the numbers of represented youth, however, Coxe reported significant resistance on the part of Philadelphia's judicial system. \textit{Id.} at 489-90.

Court systems that guaranteed the right to counsel prior to \textit{Gault} were not necessarily long-standing supporters of procedural formality. As late as 1959, only three years before the state of New York adopted statutory provisions guaranteeing the right to counsel for juveniles in delinquency cases, only 8% of minors in delinquency cases in New York City were represented by counsel. \textit{See Handler, supra} note 15, at 22.

When state legislatures adopted right to counsel statutes on their own accord prior to \textit{Gault}, local juvenile courts were sometimes slow to accommodate the change. California enacted a statutory guarantee of the right to counsel for juveniles in 1961. \textit{See supra} note 55. The vast majority of minor respondents, however, remained unrepresented for at least several years. In 1961, counsel appeared in 3% of California juvenile cases. By 1965, that figure had risen to just 10% of juvenile cases. Lemert, \textit{supra} note 27, at 425-26. Similarly, the District of Columbia provided for the right to counsel prior to \textit{Gault}, but only 10 to 15% of all juveniles opted for such assistance. \textit{See In re Gault}, 387 U.S. 1, 41 n.69 (1967).\\n
\textsuperscript{59} \textit{See infra} notes 101-08 and accompanying text.\\n
\textsuperscript{60} In particular, more data on socio-economic characteristics of youths who accept and decline assistance of counsel is necessary. Further, a thorough review of the practices of juvenile court personnel during arraignment and pretrial detention hearings could shed light on the reasons why some children accused of crimes go unrepresented.

Adult criminal court systems could also provide a useful comparison. If similar percentages of adults and juveniles in a given jurisdiction proceed without the assistance of
III. The Effects of Representation on Dispositions

Feld provides two measures of the impact of counsel. First, he compares how represented and unrepresented minors are treated within various court systems. To facilitate comparisons, Feld divides jurisdictions into three categories—those providing low, medium, and high rates of representation for minors. Feld then compares the overall rates of severe dispositions in low, medium, and high representation counties without distinguishing between how represented and unrepresented minors are sanctioned.

When focusing on how represented and unrepresented youths are treated within jurisdictions covered by the six-state survey, Feld reports that representation is almost always associated with more severe dispositions. In Pennsylvania, for example, more than 30% of all youths accused of felony offenses against persons and represented by counsel are committed to out-of-home placements. Unrepresented children accused of felonies against persons, however, are committed to out-of-home placements in only 16.8% of the cases.61 In Minnesota, youths accused of felonies are approximately twice as likely to be committed to secured facilities if they are represented by counsel.62

The statistics cited in Justice for Children always distinguish categories of criminal offenses, and thus account for the seriousness of the charges. After accounting for the influences of pretrial detention and prior juvenile records, Feld finds that represented youths still typically receive more severe dispositions than unrepresented youths.63

After reviewing the data from the six-state survey, Feld conducts a more thorough inquiry using the 1986 Minnesota statistics. The state is divided into high representation (more than 66% of youths represented), medium representation (between 33% and 66% of youths represented), and low representation (less than 33% of youths represented) counties.64 Statewide, 45.3% of all minors counsel, then the low levels of representation in juvenile cases might not indicate any unique phenomenon.

61 FELD, supra note 15, at 59.
62 Id.
63 Id. at 66-71.
64 High representation counties handle higher percentages of felonies and misdemeanors against persons than do medium and low representation counties. Low representation counties handle higher percentages of status offenses and misdemeanor offenses involving property than do medium and high representation counties. Id. at 77-78.

Somewhat surprising was the difference in the severity of sentencing for status offenses. Low representation counties, which process higher percentages of status of-
are represented by counsel at adjudicatory hearings. In high representation counties, 94.5% of all minors are represented. In medium representation counties, the rate decreases to 46.8% of all respondents. Only 19.3% of minors are represented by counsel in low representation counties.65

The 1986 Minnesota data reflect the same pattern observed in the six-state survey. Represented minors are generally penalized more harshly than unrepresented minors. Statewide, Feld notes that "youths with counsel are nearly three times more likely to receive severe dispositions than those without counsel—28.1% of represented juveniles versus 10.3% of unrepresented youths received out-of-home placement and 17.6% versus 5.2% received secured confinement."66

Although unrepresented juveniles generally receive less severe sanctions, the data reveal some exceptions. In high representation counties, minors represented by counsel fare better than unrepresented children in a number of categories. For example, only 34.6% of represented youths charged with felony offenses in high representation jurisdictions are committed to out-of-home placements, while 60% of unrepresented children charged with felony offenses receive such dispositions.67 Similarly, fewer than 25% of represented children accused of felonies in high representation counties are sentenced to secured facilities, as compared with 40% of unrepresented minors accused of felonies in high representation counties.68 Children accused of minor property offenses in high representation counties are also more likely to face an out-of-home placement if they are unrepresented by counsel.69
The statistics indicate that some children represented by counsel in high representation counties receive better treatment than unrepresented youths. Feld is careful to note, however, that very few youths accused of felonies are unrepresented in high representation counties. Due to the small sample size, the better treatment apparently received by represented children accused of felony crimes in high representation counties may be an anomaly. Most children receiving the services of counsel in high representation counties face harsher dispositions than children who are unrepresented. Furthermore, Feld argues that the data are still consistent with the antagonism hypothesis, even if the small sample size does not skew the statistics. Judges in counties with high rates of representation are so used to the presence of counsel that defense lawyers do not inject a uniquely adversarial element into the proceedings, as might occur in counties where representation is a rarity.

In most cases, represented youths in high representation counties are treated more severely than unrepresented minors in high representation counties. Consistent with Feld's analysis, the differences in treatment are more significant in low representation counties than in high representation counties. A youth accused of a misdemeanor offense and represented by counsel in a high representation county is 1.25 times more likely to be committed to an out-of-home placement than an unrepresented youth and 1.28 times more likely to be committed to a secured facility than an unrepresented youth. In medium representation counties, a represented youth accused of a misdemeanor is 2.3 times more likely to be committed to an out-of-home placement than an unrepresented youth and 2.4 times more likely to be committed to a secured facility than an unrepresented youth. In low representation counties, a represented youth charged with committing a misdemeanor offense is 2.92 times more likely to be committed to an out-of-home placement than an unrepresented youth and 3.32 times more likely to be committed to a secured facility than an unrepresented youth. Thus, the lower the rate of representation in a particular jurisdiction, the higher the penalty for retaining counsel in that jurisdiction. In counties with low rates of juvenile representation, judges may react more strongly to the presence of defense lawyers in juvenile proceedings. A judge in a low representation jurisdiction might view the proceedings as more adversarial, and thus impose more severe

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70 Id.
71 Id. at 98.
72 Id. at 100.
73 See id. at 99.
dispositions, when counsel in present. Conversely, a juvenile court judge in a county with a high rate of representation might be unfazed by the presence of defense lawyers, and thus not treat represented juveniles more harshly.

The same pattern exists after correcting for other factors that could influence dispositions. In analyzing the 1986 Minnesota data, Feld employs a regression model to evaluate the effects of prior out-of-home removals, pretrial detention, severity of offense, prior record, age, and gender. After simultaneously accounting for all of these factors, Feld finds that representation by counsel correlates with more severe sanctions for juvenile respondents. The largest differences in treatment are observed in low representation counties. The smallest differential appears in high representation counties.74

An analysis of the systemwide impact of representation by comparing dispositions in low, medium, and high representation counties in Minnesota also demonstrates that higher rates of representation are associated with more severe sanctions. The overall rates of commitments to out-of-home placements and secured facilities are higher in high representation counties than in low representation counties.75 Over 25% of all youths charged with crimes or status offenses in high representation counties are committed to out-of-home placements, as compared with 20.0% in medium representation counties and 13.9% in low representation counties. Similarly, 15.8% of all juvenile respondents in high representation counties are committed to secured facilities, as compared with 12.3% in medium representation counties and 7.8% in low representation counties.76 Thus, higher percentages of representation correlate with systemwide harshness in dispositions.77

IV. LIMITATIONS IN THE DATA

Feld has uncovered an interesting possibility that the right to

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74 Id. at 135-41.
75 Id. at 91-94.
76 Id. at 92.
77 Any comparison of different jurisdictions is difficult without data verifying a similarity in socio-economic conditions and judicial philosophies. Juvenile court judges in high representation counties in Minnesota might labor under conditions that would lead them to impose harsher dispositions than judges in low representation counties even if none of the minors appearing before the high representation judges were represented by counsel. Given that Feld's data cover all counties throughout one state, however, the data might correct for variances caused by other factors that would be present in a comparison of only two counties or a comparison of jurisdictions in different parts of the country.
counsel may actually hurt juveniles accused of committing criminal offenses. His analysis, however, is only the beginning of an important inquiry. Researchers run into pitfalls when using statistics to analyze any judicial system. The sheer number of factors that must be considered, combined with alternative causes for different phenomena, makes statistical analysis of criminal activity and the juvenile court system extremely complex. Inevitably, the data used in Justice for Children suffer from a number of shortcomings.

A. INCONSISTENCIES IN THE DATA

First, some of the data are inconsistent with the antagonism hypothesis. Although minors represented by counsel typically receive more severe dispositions than unrepresented minors, the numbers do not reveal a universal trend. In Nebraska, for example, 58.8% of minors accused of committing felonies against persons are represented by counsel. The antagonism hypothesis would predict that represented minors should be treated more severely than unrepresented minors. The statistics do not bear out the hypothesis. Only 15% of represented youths who are accused of committing felonies against persons in Nebraska are committed to secured facilities, compared with 21.4% of unrepresented juveniles.

The same pattern exists for some less serious categories of crime. Twenty percent of represented youths accused of committing minor offenses against persons in Nebraska are committed to out-of-home placements, as compared with 28.2% of unrepresented juveniles who are comparably charged. Similar inconsistencies are also present in the data from North Dakota, where the statistics do not reflect a clear pattern of leniency for unrepresented children.

The above examples are anomalies. In most cases, represented youths fare worse than unrepresented youths when it comes time for

78 Id. at 55.
79 Id. at 59. Likewise, only 25% of represented youths charged with committing felonies against persons in Nebraska are committed to out-of-home placements, as compared with 28.6% of unrepresented juveniles who are comparably charged. Similar inconsistencies are also present in the data from North Dakota, where the statistics do not reflect a clear pattern of leniency for unrepresented children.

80 Id.
81 Overall, only 37.5% of juveniles accused of criminal conduct in North Dakota are represented by counsel in delinquency proceedings. Id. at 55. In the category of felonies against persons, all North Dakota youths are represented by counsel. Thus, no effective comparison can be made in that category. The statistics for other offenses, however, do not reflect a clear pattern of leniency for unrepresented children. Only 11.8% of represented juveniles charged with felony offenses involving property are committed to secured facilities, as compared with 21.3% of unrepresented youths. Id. at 59. Similarly, only 9.1% of represented youths accused of misdemeanors against persons in North Dakota are committed to secured facilities, as compared with 16.7% of unrepresented youths. Id.
the dispositional hearing. These examples are particularly damaging to the antagonism hypothesis, however, because they occur in low representation jurisdictions where the addition of counsel to a proceeding should be more noticeable and therefore more provoking than in high representation jurisdictions.

B. POORLY DEFINED CLASSIFICATIONS IN THE DATA

Some classifications employed by Feld do not adequately distinguish between different factors. Distinctions that initially appear useful, such as separating felonies from minor offenses, can mask differences that they are designed to reveal. In some jurisdictions, for example, a teenager who is joy-riding in the family car without parental consent has committed a much more serious offense than a gang member roaming the streets with a loaded pistol.82

Furthermore, fact patterns often distinguish the seriousness of the offenses of juveniles charged with violating the same statute. A minor who throws a snowball at another child on a public way has committed an aggravated battery in some jurisdictions.83 Likewise, a minor who breaks a bottle and then uses the sharp edges of the broken glass to slash another person’s face has also committed an aggravated battery. The seriousness of the offense is an important factor for determining whether counsel should be appointed and how a juvenile should be treated after a finding of delinquency, but measurement of this factor can become complicated. Thus, while the misdemeanor/felony distinction is a convenient way to analyze juvenile cases, it may not be the best system for data classification.

Hard data on the severity of the disposition could also be misleading. Secure confinement, as defined by Feld, includes both county-level institutions and state correctional facilities.84 A com-

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82 Compare 625 ILL. COMP. STAT. 5/4-103(a)(1), (b) (1993) (possession of stolen vehicle, class two felony with potential sentence of seven years for adults) with 720 ILL. COMP. STAT. 5/24-1(a)(10), (b) (1993) (unlawful use of weapons, class A misdemeanor with potential sentence of 364 days for adults).

83 The example is not far-fetched. In some jurisdictions, the locally elected state’s attorney will pursue almost any case in which a complaining witness demands prosecution. The author has represented juveniles charged with aggravated battery arising from a snowball fight. Similar experiences are common. See How Kids’ Cases Clog the Courts, Chi. SUN-TIMES, March 23, 1992, at 1.

“I have a case of a kid hitting someone with a spitball,” said Judge John Rodgers. “I have a 9-year-old girl here for hitting her mother. These cases do not belong in court.” They are in court because prosecutors are pursuing unsubstantiated and inconsequential cases with frequency and fervor . . . . “I’ve asked why these cases are brought before me,” said Associate Judge Charles May. “The assistant state’s attorneys said they thought it was political. That their instructions were to prosecute.”

84 Feld, supra note 15, at 46.
mitment to a state correctional facility is typically the most severe sanction available to a juvenile court judge. A one-week commitment to a county-level juvenile detention facility, which may or may not be followed by a period of probation, would also constitute a commitment to a secured facility using Feld's methodology. To classify both of these dispositional alternatives as "severe" sanctions might result in misleading conclusions.

C. THE NEED FOR ADDITIONAL DATA

Juvenile court judges consider a variety of factors when sentencing a young offender. Unfortunately, Feld fails to evaluate many characteristics that might simultaneously affect the disposition and the appointment of counsel. In particular, the study does not account for socio-economic factors. Education, neighborhoods, family support, psychological disorders, drug addiction, and other circumstances can influence the dispositional decisions of juvenile court judges. The same factors might influence whether a minor requests counsel, how strenuously the minor pursues the right to counsel, and how much contact the minor makes with counsel prior to a court proceeding.

One manner of accounting for these factors would be to compare juvenile justice systems in urban, suburban, and rural settings. While Feld does make such comparisons, he does not use them as a means of evaluating socio-economic influences on dispositions received by youthful offenders.

Feld argues that urban juvenile courts are legalistic and punish based on the offense, while rural juvenile courts operate informally and emphasize rehabilitation. Using the Minnesota data, Feld re-

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85 Nationally, approximately one quarter of all juvenile court dispositions of secured confinement involve commitments to short-term detention centers rather than state correctional institutions. Orlando & Crippen, supra note 49, at 91-92.
87 Chused studied factors that affected the dispositions ordered by juvenile court judges in New Jersey. Factors included whether the minor lives with two parents, whether the minor has a history of drug use, and whether the minor attends school. Chused, supra note 27, at 508, 602-06. In their study of juvenile court systems in Winston-Salem and Charlotte, North Carolina, Clarke and Koch reported that a number of factors influenced dispositions received by respondents. Factors included whether the respondent lives with both natural parents, a single parent, a relative, or foster parents and whether the parents or custodian attends court hearings. Clarke & Koch, supra note 28, at 288-90.
88 Surprisingly, Clarke and Koch reported that the child's age, gender, race, and family income did not have a statistically significant effect on the disposition after accounting for the juvenile's prior record and the seriousness of the offense. Id. at 290-93.
ports that juveniles in urban and suburban settings are represented by counsel more often than children accused of crimes in rural settings. In urban courts, 62.6% of juveniles are represented in delinquency proceedings. In suburban courts, 55.2% of juveniles are represented. In rural court systems, barely one quarter of youths are represented by counsel.\(^8\)

After noting the varying rates of representation, Feld presents statistics to demonstrate that children in urban courts typically receive more severe dispositions than children in rural courts. Over 42% of Minnesota juveniles accused of committing felonies in urban courts, for example, are committed to out-of-home placements and a third are committed to secured facilities.\(^9\) Only 29.5% of youths accused of committing felonies in rural counties are committed to out-of-home placements and 20.4% are committed to secured facilities.\(^10\) Thus, the urban/rural comparison appears to provide further evidence that formal courtroom procedures lead to severe dispositions for youthful offenders.

The statistics cited by Feld, however, are not entirely consistent with his hypothesis. Although suburban court systems provide counsel at rates close to urban settings, suburban judges often impose more lenient dispositions than their rural counterparts.\(^11\) Similarly, some categories of offenders are treated more severely in rural courts than in either urban or suburban settings. Minnesota females accused of felony offenses, for example, receive more severe sanctions in rural juvenile courts than in urban or suburban juvenile courts.\(^12\)

Differences in court system resources also result in different dispositions, regardless of the rate of representation. Urban juvenile court judges often have options that are unavailable to their rural counterparts. Most obviously, urban court systems typically employ a large number of public defenders. Thus, appointment of counsel can be more convenient in urban than rural settings.\(^13\)

\(^8\) Id. at 183.
\(^9\) Id. at 190.
\(^10\) Id.
\(^11\) In particular, suburban juvenile court judges impose less severe sanctions than rural juvenile court judges when adjudicating felonies against persons, felonies involving property, and misdemeanors against persons. Id. For example, only 11.4% of suburban cases in which juveniles are charged with felonies against persons result in commitments to secured facilities, as compared with 24.6% of such rural cases. Id.
\(^12\) Id. at 225.
\(^13\) Clarke and Koch reported a measurable increase in the exercise of the right to counsel after the juvenile court in Charlotte, North Carolina established the Juvenile Defender Project in 1976. Previously, counsel had been appointed through a list provided by the local bar association. Clarke & Koch, supra note 28, at 296-97.
Differences in resources also affect sentencing alternatives. A county with large numbers of juvenile offenders and a large tax base is more likely to maintain a separate or larger juvenile detention facility than a rural county that deals with only a handful of youthful offenders every year, enabling urban judges to incarcerate minors under circumstances when their rural counterparts might desire the same dispositional option.95

Another shortcoming of Justice for Children is the lack of data on the practice of plea bargaining. The vast majority of criminal cases are resolved through plea agreements. A similar pattern exists in juvenile cases.96

An observer cannot have a complete understanding of how attorneys interact with the juvenile justice system without information comparing the percentages of represented and unrepresented children who enter admissions or contest their cases. The percentages of plea agreements are crucial for determining whether the right to counsel leads to an adversarial environment in the juvenile court.97 If a larger percentage of represented minors than unrepresented minors enter admissions, it may well be that the right to counsel is associated with less conflict.

The statistics themselves, however, would only reveal part of the picture. Any thorough study of the impact of the right to counsel in juvenile delinquency cases must also examine the manner in which court systems appoint counsel. In some jurisdictions, judges might choose to appoint counsel only after discussing allegations with minors and their families and determining whether cases will

95 The biggest flaw in comparing urban with rural statistics to evaluate the effects of representation is that the urban/rural dichotomy is not identical to a high representation/low representation dichotomy. Hennepin County, for example, includes the urban setting of Minneapolis and has a “well-established public defender system.” Feld, supra note 15, at 209. Less than half of all children accused of committing crimes in Hennepin County are represented by counsel. Id. at 209. Thus, an urban setting that might be associated with more severe dispositions is not a high representation county.

A better comparison would be low representation urban counties versus high representation urban counties, low representation suburban counties versus high representation suburban counties, and low representation rural counties versus high representation rural counties. These comparisons would better account for socio-economic differences as they influence rates of representation and severity of dispositions in juvenile court systems.

96 See Joseph W. Rogers & G. Larry Mays, Juvenile Delinquency and Juvenile Justice 366 (1987); Mahoney, supra note 15, at 58 (study of one wealthy, suburban county); Clarke & Koch, supra note 28, at 297 (during study of juvenile courts in Winston-Salem and Charlotte, North Carolina, 72.4% of juveniles entered admissions).

97 During their study of the juvenile court systems in Winston-Salem and Charlotte, North Carolina, Clarke and Koch reported that 68.3% of represented juveniles admitted to the allegations in their cases, while 79.7% of unrepresented children admitted to the allegations. Clarke & Koch, supra note 28, at 298.
be contested. Thus, defense counsel would only enter the picture when an adversarial position has already been established.

Another important factor to be considered is the percentage of cases that are dismissed, both before and after the appointment of counsel. Feld's data are limited to delinquency cases that are formally filed, thus avoiding cases that are informally disposed of by juvenile court screening departments.\textsuperscript{98} Even after a petition has been filed, however, cases are often dismissed.\textsuperscript{99} Frequently, complaining witnesses fail to appear for court dates. Other factors may also influence a prosecutor to dismiss a petition prior to an adjudicatory hearing.

The timing of dismissals could have a significant effect on statistics evaluating the impact of representation by counsel. If charges are dismissed prior to any decision to appoint counsel, the seemingly good treatment received by unrepresented minors may be the fortuitous result of counsel not yet being appointed.\textsuperscript{100} In other words, if judges wait to see whether cases will be dismissed before appointing counsel, then the better treatment apparently received by unrepresented juveniles may be the result of dismissals by prosecutors rather than the result of leniency by judges.

D. ALTERNATIVE EXPLANATIONS FOR THE DATA

The antagonism hypothesis is only one of several possible explanations for the data reported by Feld. The decision to appoint counsel may be associated with severe dispositions because judges might predict the disposition at the time of arraignment and might encourage appointment of counsel when a child is at risk of being committed to a secured facility or an out-of-home placement.\textsuperscript{101} In less populated counties, one judge might hear every juvenile case. Prior experience with a particular youth or the youth's family could cause a judge to foresee the disposition. In high volume or urban settings, judges could also have past dealings with certain juvenile

\textsuperscript{98} Feld, supra note 15, at 43-44.

\textsuperscript{99} Krisberg & Austin, supra note 14, at 56 (estimating that 37% of all juvenile court petitions are dismissed prior to adjudication).

\textsuperscript{100} In Minnesota, Feld reports that the charges are dismissed for 5% of represented juveniles, as compared with 23.8% of unrepresented minors. Feld, supra note 15, at 144. Clarke and Koch found that 46.4% of cases involving unrepresented juveniles were dismissed, while only 36.2% of cases involving the juvenile defender and 30.7% of cases involving the court appointed counsel were dismissed. Clarke & Koch, supra note 28, at 298-99. Neither Feld nor Clarke and Koch compare the timing of appointments of counsel with the timing of dismissals of cases.

\textsuperscript{101} See supra notes 48-49 and accompanying text. See also Clarke & Koch, supra note 28, at 267 ("it was easy for juvenile court judges to evade the requirement of counsel simply by not appointing counsel when lenient dispositions were expected."):.
respondents depending upon how the court system is organized. If cases are assigned to judges based on geographic factors, as is the practice in Chicago's juvenile court system, then each judge hears cases arising only from a specific neighborhood. Thus, an urban judge could have as much prior contact with a particular juvenile as judges in rural or suburban settings.

Other factors could enable a judge to anticipate a severe disposition at the time of appointment of counsel. The judge might be exposed to information regarding the juvenile's prior criminal history or the facts of the case during a pretrial detention hearing. Additionally, some probation departments prepare pretrial social evaluations, which could tip-off a judge or a prosecutor as to the potential disposition in a case and lead to appointment of counsel. Whatever the source of the information, some judges can gauge whether minors are at risk of being committed to a state correctional facility or a residential treatment program when admonishing children and their families of their right to counsel.

Feld discusses other explanations for the correlation between counsel and severe dispositions. Attorneys who represent minors might be "incompetent and prejudice their clients' cases." Public defenders who represent juveniles are typically overwhelmed by unreasonably large caseloads. Additionally, many public defender offices assign their least experienced attorneys to juvenile court. Regardless of the varying levels of competence of attorneys representing juveniles, however, it is doubtful that many children or their parents are better advocates than professional attorneys who regularly handle delinquency cases and who have completed law school.

Feld also theorizes that the therapeutic ideology of the juvenile court might lead defense attorneys to advocate what they believe is in their clients' "best interests," rather than their clients' legal rights. The rules of professional responsibility do not contain any exceptions for defense attorneys representing juveniles accused of crimes. The blatant ethical breach suggested by Feld would be

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102 Krisberg & Austin, supra note 14, at 79.
103 Feld, supra note 15, at 73.
105 Id.
106 Feld, supra note 15, at 255.
107 See Model Rules of Professional Conduct Rule 1.2 (1992) (Scope of Representation); Id. at Rule 1.7 (Conflicts of Interest: General Rule); Id. at Rule 1.14(a) (Client Under a Disability). Rule 1.14 cautions: "[w]hen a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because
astounding if present throughout most of the juvenile court defense bar. Furthermore, while a desire to help children might explain high rates of out-of-home placements for represented youths, such as commitments to substance abuse treatment programs, it strains the imagination to believe that defense attorneys are working to commit their juvenile clients to state correctional facilities out of a belief that their clients will be rehabilitated in such institutions.  

V. CONCLUSION: THE FUTURE OF THE JUVENILE COURT

The juvenile court system is currently the subject of much debate. Observers cite the breakdown of the family and rising levels of violence as evidence that our society should change its approach toward crime by youth. Many commentators fault the juvenile court for being too lenient. Public officials are reacting to the criticism through a variety of measures including statutes that automatically transfer cases involving young offenders to criminal courts, determinate sentencing schemes for children whose cases remain at juvenile courts, and increased institutionalization of children in adult and juvenile correctional facilities.
BOOK REVIEW

Other observers call for a renewal of the progressive movement's ideal of a rehabilitative juvenile court system that informally makes determinations in children's best interests. The problem with the juvenile court, some argue, is that society does not devote enough resources to needy children. Although commitments to correctional facilities are sometimes necessary, such commitments represent failures on the part of the juvenile court system and society. These critics envision a system in which social workers and psychological experts fashion individualistic treatment plans to reform young offenders.

The data in Justice for Children present a dilemma for those who wish to afford procedural protections to juveniles at the adjudicatory stage of delinquency proceedings while retaining an individualistic, treatment orientation at the dispositional stage. Is it possible to "convert a juvenile proceeding into a criminal prosecution" while simultaneously maintaining the progressive movement's vision of a non-punitive, rehabilitative agency? Feld answers this question in the negative and then explores the implications.

Feld proposes three potential futures for the juvenile court. First, the juvenile court can return to an informal, rehabilitative model. Second, the juvenile court can adopt an openly punitive model in which young offenders receive all procedural protections enjoyed by adults. Finally, society can abolish the juvenile court system and try children's cases in adult courts. After evaluating these options, Feld proposes that the juvenile court system be eliminated and that children receive additional procedural protections in criminal proceedings.

Feld rejects the informal, rehabilitative model of the juvenile court for a number of reasons. Assuming we could turn back the clock to a non-adversarial juvenile court, Feld questions whether the potential abuses associated with informal structures are worth the

Chicago's juvenile court, Judge Richard Tuthill transferred 37 children's cases to the criminal court. Mennel, supra note 15, at 133. The numbers of cases being transferred to the adult system, however, appear to be increasing. Stone, supra note 102, at 50; Orlando & Crippen, supra note 49, at 92.

The public and the media often express dissatisfaction with seemingly lenient sentences given to youthful offenders. Typical are the comments of a recent editorial in the Phoenix Gazette: "[T]he most dangerous group in America today is the teenage or young adult male with an early start into violent crime. That's where the incapacitation argument, the deterrent effect, might actually operate. Right now, juveniles laugh at the system. It's no deterrent." Richard DeUriarte, Sentences; Public Safety is the Priority, Phoenix Gazette, August 23, 1993, at A9.

In re Gault, 387 U.S. 1, 79 (1967) (Stewart, J., dissenting).

Feld, supra note 15, at 279-93.

Id. at 284-93.
advantages. Procedural formality brings with it certain benefits. By definition, procedures reduce arbitrary treatment. Moreover, formality arguably increases the accuracy of determinations.

Additionally, society would have to commit more resources to reforming young offenders if the traditional model of the juvenile court is ever to become a reality. Past experience indicates that such a commitment is unlikely. Feld's second proposal is an adversarial juvenile court. In this model, juvenile courts would no longer have jurisdiction over status offenders. Legislatures would fashion proportional and determinate sentencing schemes for juvenile delinquents. Children would be provided with the right to jury trials and a non-waivable right to counsel.

A separate, albeit punitive, juvenile justice system would retain some of the advantages of the progressive movement's vision of the juvenile court. Minors would not be stigmatized with a "criminal" label. Further, comparatively greater services would arguably remain available for dispositions in an independent juvenile court.

The data explored in *Justice for Children*, however, indicate that procedural formality leads to severe sanctions. Given the effect that the right to counsel appears to have, Feld argues, jury trials and non-waivable defense counsel are likely to hasten the transformation of juvenile courts into purely punitive institutions. Inevitably, juvenile courts would adopt more severe sentencing guidelines, and the differences between juvenile and criminal courts would disappear.

Given the pressures for retribution and the increasingly harsh treatment of young offenders, Feld reasons, we should simply recognize the inevitable and eliminate the juvenile court as a separate institution. He proposes that the criminal courts hear cases involving children as well as adults. He argues that the elimination of the juvenile court would be advantageous, principally because children would no longer be subjected to "an inferior justice system." Additionally, society would save the resources currently used on transfer hearings.

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114 *Id.* at 279-80.
115 *Id.* at 279-81.
116 *Id.* at 281.
117 *Id.* at 282.
118 *Id.* at 283.
119 *Id.* at 283.
120 *Id.* at 284-93.
121 *Id.* at 292.
122 *Id.* at 289.
Feld envisions some changes in practice for criminal cases involving children. Due to lower levels of capacity, the standard for an adult's knowing and intelligent waiver of the right to counsel is not applicable to juveniles. To compensate, the right to counsel should be non-waivable for minors in criminal cases. Additionally, Feld proposes reduced sentencing schemes for juveniles due to their diminished responsibility. Thus, juveniles would receive more procedural protections than adults.

It is ironic that after questioning the value of procedural formality throughout most of his book, Feld concludes with a call for more procedural protections. If the rehabilitative juvenile court is destined to fail, however, Feld's vision might be preferable to a covertly punitive court system that shortchanges children's rights.

Obviously, one need not accept Feld's hypothesis. The link between punishments and procedures is not necessarily causal. Even before the Supreme Court guaranteed rights to children in Gault, many observers called for more severe sanctions to combat juvenile crime. Correspondingly, large numbers of juvenile court judges did not make use of therapeutic social services to reform children prior to Gault. In at least some jurisdictions, juvenile offenders were incarcerated in state correctional institutions more frequently before the Supreme Court imposed procedural protections. While Feld's data is impressive, additional research is necessary.

123 Id. at 291.
124 Id. at 284-89.
126 See Alper, supra note 28, at 47-48; Coxe, supra note 28, at 489. At the time of the Gault decision, 80% to 90% of juvenile court judges had no psychologist or psychiatrist available to evaluate minors and recommend treatment plans. In re Gault, 387 U.S. 1, 14 n.14 (1967). One third of juvenile court judges ordered dispositions without as much as a social worker or a probation officer to report on the child's background. Id.

Unfortunately, judges could rarely employ personal expertise to make up for the lack of outside input. In 1967, half of all juvenile court judges did not even have a college degree. Id. They lacked in formal schooling, they did not make up for in experience. Three quarters of juvenile court judges devoted less than one quarter of their professional efforts to children’s cases. Id.
127 According to one study, juvenile respondents in North Carolina were committed to correctional institutions in 26.3% of cases between 1934 and 1939, and in 25.1% of the cases between 1939 and 1944. Clarke & Koch, supra note 28.

Clarke and Koch then evaluated juvenile cases arising in Winston-Salem and Charlotte, North Carolina, during 1975 through 1976. They reported significantly lower rates of commitment in the 1970s than in the 1930s and 1940s. In 1975 and 1976, the respondent was committed to a state correctional facility in 8% of all juvenile cases and 13.5% of cases in which the judge made a finding of delinquency. Id. at 270 n.7, 275.
Nonetheless, it is hard to deny society's punitive impulses when dealing with juvenile offenders. By its nature, the juvenile court provides services only after a determination that a minor is delinquent. The reason these children come to our attention is not their lack of food, shelter, clothing, education, health, or stable families. The only common characteristic of all children adjudicated delinquent is that they have violated society's rules. Although the juvenile court system may try to focus on the needs of these children, their criminal conduct inevitably garners society's attention.

The current calls for more severe sanctions for young offenders are merely a manifestation of society's conflicting attitudes toward juvenile crime and the juvenile court. When confronted with a violent crime, the first instinct of many observers is to demand swift punishment and decry attempts at rehabilitation, regardless of the offender's age. At the same time, most people believe that children are less mature and therefore less responsible for their criminal conduct. Further, most people believe that youngsters are more amenable to rehabilitative programs than adults. Few people wholeheartedly accept or reject either viewpoint. The result has been a separate juvenile court system that simultaneously dispenses rehabilitation and retribution. In light of these conflicting attitudes, perhaps we should not be so surprised if procedural protections in juvenile delinquency proceedings feed into our contradictory impulses and lead to harsher treatment for young offenders.

128 See Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) (Stevens, J., plurality): ([L]ess culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult .... Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.)

129 Krisberg & Austin, supra note 14, at 2-3, 175-76; Schwartz, supra note 109, at 216.
VICTIMS OF CRIMES: REPORTING, IDENTIFICATION AND VALUES

HARVEY WALLACE*


Professors Greenberg and Ruback’s book, *After the Crime: Victim Decision Making*, examines the various aspects of the crime victim’s decision-making process. After the Crime is a concise, well-written book which documents new research on the effects of external factors on victim behavior, offers insight into the identification abilities of victim eyewitnesses, and provides a theoretical model for understanding the process of victim decision-making. Prosecutors may find chapter four, entitled “Eyewitness Identification by Theft Victims,” of particular interest and value, as defense attorneys will undoubtedly use it during trials.

Chapter one introduces the subject of victims and their decision-making processes by examining victimization as a social problem, victim reaction to crime, and the purpose and strategy of research on victim decision-making. The chapter provides a brief overview of the victims’ movement in the United States, including a discussion of various organizations that deal with crime victims. To

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2 Greenberg and Ruback define the victims’ movement as “public and professional concern for crime victims” which grew in the 1960s and 1970s. Id. at 3.

3 The authors refer to national surveys conducted by Bureau of Justice Statistics regarding the number of crimes, but fail to mention that many forms of violence are considered to be underreported. See, e.g., Nat’l Victim Ctr. & Crime Victims Research & Treatment Ctr., *Rape in America: A Report to the Nation* 5 (1992) (suggesting that the crime of rape is far more commonplace than official reporting agencies have documented).
their credit, the authors do not define terms according to their own discipline. Rather, they set forth a broad and comprehensive definition of victimization as "a multidisciplinary endeavor involving contributions from criminology and sociology, psychology, social work, nursing and psychiatry."\(^4\) The authors analyze victim reaction to crime from a psychological perspective and focus on the victim's decision of whether or not to report the crime to authorities.

Chapter two covers the experiments conducted by the authors involving a simulated theft of money from a "victim." The authors placed a newspaper advertisement requesting clerical assistance, to which they received over one thousand responses.\(^5\) After eliminating some participants for failure to follow directions or suspected knowledge about the experiment, the researchers set up their "crime" with the remaining 768 valid subjects. The researchers paid the participants the money promised them in the newspaper advertisement for completing certain administrative work, and then informed the participants that they would receive an additional sum of money—either twenty or three dollars depending on their productivity—which would be measured by the amount of completed work they turned in. This additional work was subsequently stolen from them by a confederate posing as another participant. The confederate turned in the extra work and received the money which should have gone to the participant.\(^6\)

The experiment involved the loss or "theft" of either three dollars or twenty dollars. Most citizens probably consider such a loss to be a fairly minor crime, which may have influenced the participant's decision of whether or not to report the theft. The participants were unaware of the nature of the study until the conclusion of the experiment.\(^7\)

The researchers monitored and recorded each victim's reactions and responses, and then introduced variables to produce different reactions. These reactions became the basis of the authors' conclusions regarding victim decision-making processes.\(^8\)

Greenberg and Ruback selected the crime of theft as the basis of the experiment for valid reasons. First, theft is one of the most frequently reported crimes in the United States.\(^9\) Second, they could avoid inflicting the stress that might accompany a violent of-

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\(^4\) Greenberg & Ruback, supra note 1, at 6.
\(^5\) Id. at 19.
\(^6\) Id. at 20.
\(^7\) Id. at 29.
\(^8\) Id. at 35-36.
The authors conducted follow-up surveys regarding identification of the suspect several months after the "crime."

The authors were careful to avoid exposing the subjects to unduly high levels of emotional distress during the experiment. However, they failed to fully discuss the ethics of using individuals unaware of the true intent behind the simulated crime. Unfortunately, the authors wait until the Appendix to discuss a lawsuit filed against them by one of the participants, who claimed that the researchers were negligent, and in the alternative asserted that their acts intentionally caused her to suffer emotional distress because of the experiment.\(^\text{11}\)

Although the lawsuit was dismissed on a motion for directed verdict,\(^\text{12}\) it raises issues regarding potential liability for all researchers utilizing human subjects. All experimental studies must consider the ethics of the research and evaluate any potential liability. Issues such as liability for research, informed consent, and ethics should have been discussed in more detail in earlier chapters.

Greenberg and Ruback next examine the effect of different variables on the decision-making process of victims. In a series of studies, they introduce different factors into the experiment and review the various forces to determine which variables, if any, influenced the victim's decision to report the crime.

In one study, the authors examine social and emotional factors in victim decision-making, considering whether advice from bystanders or the level of the victim's anger have any effect upon whether the victim will contact the police.\(^\text{13}\) Although they conclude that the victim's emotional state is an important factor in crime reporting, Greenberg and Ruback reach no definitive conclusion regarding the effect of bystander advice on the victim's decision-making process.\(^\text{14}\) However, the authors indicate that bystanders who offer unambiguous advice to call the police and good reasons to do so facilitate victim reporting.\(^\text{15}\)

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\(^{10}\) The authors validated their research by conducting a pilot study during the development and testing of the paradigm. GREENBERG & RUBACK, supra note 1, at 20.

\(^{11}\) In the first cause of action, the plaintiff alleged that the researchers failed to take reasonable steps to guard against foreseeable injury that occurred because of the experiment. The second cause of action relied on the theory of intentional infliction of emotional distress. The plaintiff alleged that she suffered insomnia, traumatic neurosis, paranoid ideas of reference, depression and other mental and emotional problems as a result of the experiment. Id. at 248, 251.

\(^{12}\) Id. at 258.

\(^{13}\) Id. at 44.

\(^{14}\) Id.

\(^{15}\) Id. at 50.
Another study evaluates the effect of gender on victim and bystander crime-reporting. The authors had hypothesized that members of the same sex might be more empathetic toward each other, and that such empathy might influence the decision to report or not report. The study, however, indicates that similarities in sex between the bystander and the victim have no discernible impact on the victim's decision to report the crime.

A third study considers the effect of "shared fate" on the decision to report. Previous research has shown that when another person suffers a fate similar to that of the victim, the "co-victims" influence each other to report. Greenberg and Ruback's study corroborates these earlier findings. The participants explained in postexperimental debriefing that a person who had suffered the same fate provided them with social support in reporting the crime. Typical responses included statements such as "[h]er position was the same as mine, which gave me more confidence."

Another particularly interesting section of the book deals with the dynamics of eyewitness identification by theft victims. The authors briefly review previous research in this area and conclude that it focused on identification by a witness or bystander, rather than identification by the victim. Greenberg and Ruback take a novel approach and focus on the theft victim's eyewitness identification.

Eyewitness identification is often critical in convincing the jury of defendant guilt. As succinctly stated by one authority, eyewitness testimony can persuade a jury, even though it may not be accurate:

[E]yewitness testimony is likely to be believed by jurors, especially when it is offered with a high level of confidence, even though the accuracy of an eyewitness and the confidence of that witness may not be related to one another at all. All the evidence points rather strikingly to the conclusion that there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, "That's the one!"

Depending on the circumstances of the case, the prosecutor may bring out facts regarding the identification—such as how long the

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16 Id. at 53.
17 Id. at 57.
19 GREENBERG & RUBACK, supra note 1, at 62.
20 Id. at 61.
21 Id. at 66.
witness or victim was able to observe the defendant, the lighting conditions, and the eyesight of the witness. Most experienced prosecutors understand that unless they bring these facts out on direct examination, the defense attorney will pounce on the witness in an attempt to discredit the identification.

In addition to the questions regarding lighting, eyesight and other physical factors, some defense attorneys will attempt to show that the witness identified the defendant only because the witness saw the defendant at the preliminary hearing or an unduly suggestive line-up or show-up. The defense attorney may devote the entire cross examination to discrediting the identification of the defendant.

The use of expert witnesses to attack the identification process has been the subject of heated debate. The trial court generally has discretion to decide whether to admit expert testimony. Where there is additional evidence of guilt independent of the eyewitness identification, appellate courts may uphold the trial court's determination to exclude expert testimony on the reliability of eyewitness identification. However, if the only evidence linking the defendant to the crime is eyewitness identification and an expert can aid the jury in its determinations, appellate courts have ruled that it is an abuse of discretion to exclude such expert testimony.

Numerous authorities have suggested that eyewitness identification of strangers is notoriously unreliable. One study reported that the stress of the crime can significantly affect the perception and the memory of the victim. Other research indicates that sug-

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24 A lineup has been defined as "a police identification procedure by which the suspect in a crime is exhibited before the victim or witness to determine if he committed the offense. In a lineup, the suspect is lined up with other individuals for purposes of identification." A showup is defined as a "[o]ne-to-one confrontation between a suspect and a witness to a crime. It is a form of pretrial identification procedure in which the suspect is confronted by or exposed to the victim of or witness to a crime." ZALMAN & SIEGEL, supra note 22, at 515.


27 United States v. Christophe, 833 F.2d 1296, 1299 (9th Cir. 1987); United States v. Poole, 794 F.2d 462, 468 (9th Cir. 1986); United States v. Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973).

28 United States v. Alexander, 816 F.2d 164, 169 (5th Cir. 1987).

29 See, e.g., EDWIN M. BORCHARD, CONVICTING THE INNOCENT: SIXTY-FIVE ACTUAL ERRORS OF CRIMINAL JUSTICE (1982). Professor Borchard's classic work documents early cases of individuals who were found guilty of felonies and later determined to be innocent. The great majority of these cases involved mistaken eyewitness identification.

gestions by authority figures such as police influence the identification process.\footnote{Frederic D. Woocher, Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification, 29 Stan. L. Rev. 969, 989 (1977).}

Greenberg and Ruback, however, contribute to this debate with three studies on victim identification of perpetrators of crimes. Each study examines a specific variable in the process of suspect identification by the victim of a theft. These studies should provide further ammunition for defense attorneys in their quest to establish reasonable doubt in criminal cases.

One study, for instance, evaluates the effect of prior identification on subsequent line-up identifications. One-half of the victims were shown a photographic lineup immediately after the crime and asked to identify the suspect. The other half of the victim participants did not see a photographic lineup. Two months later, researchers asked all of the victims to select the offender from a photographic lineup. The victims who had previously identified a suspect from a photographic lineup identified the defendant more successfully than those who had not been exposed to a prior lineup.\footnote{Greenberg & Ruback, supra note 1, at 66. The group which had not viewed the prior lineup achieved an 80% accuracy rate while the group that had seen the lineup before achieved a 98% accuracy rate. Id.}

Another experiment evaluates the effect of the passage of time on the identification process. Researchers asked victims to identify the suspect at two and fifteen month intervals. The authors conclude that there is no significant difference in the results given a lapse of thirteen months between each occurrence of suspect identification.\footnote{Id. at 73.}

Greenberg and Ruback also examine the effects of race on identification. Previous research had shown that observers are better able to identify persons of their own race than those of a different race.\footnote{John C. Brigham & Paul Barkowitz, Do "They All Look Alike"? The Effect of Race, Sex, Experience, and Attitudes on the Ability to Recognize Faces, 8 J. Applied Psychol. 306 (1978).} The authors conclude that while this principle applies to white victims, it does not apply to African-American victims.\footnote{Greenberg & Ruback, supra note 1, at 76.} More specifically, a white victim may have problems identifying a non-white offender; however, a black victim will not have the same difficulty identifying an offender who is a member of another race. One authority conducted similar research and reached similar conclusions:

[C]oniderable evidence indicates that people are poorer at identifying
members of another race than of their own. Some studies have found that, in the United States at least, whites have greater difficulty recognizing black faces than vice versa. Moreover, counterintuitively, the ability to perceive the physical characteristics of a person from another racial group apparently does not improve significantly upon increased contact with other members of that race. Because many crimes are cross-racial, these factors may play an important part in reducing the accuracy of eyewitness perception.\(^{36}\)

By focusing on the victim, rather than the bystander, as the eyewitness, these studies provide an important contribution to the literature on eyewitness identification. Clearly, as with any research project, there are shortcomings based upon the artificial nature of these studies and the fact that the victims were informed that no real crime had been committed. However, the conclusions lend support to other studies and should provide defense attorneys and prosecutors with insight into the identification process utilized by a crime victim.

Greenberg and Ruback took great pains to validate the accuracy and consistency of their research. The researchers took steps to insure the results obtained from their experiment were due to their manipulations, and not to the subjects' awareness of the study.\(^{37}\) They conclude that the participants had a low suspicion rate, were involved in the assigned tasks, and reacted to the experiments as intended.\(^{38}\)

The authors conclude that their experiments were highly valid and that the results could be accepted as an accurate projection of what occurs during actual thefts. Their conclusion is probably correct. While perhaps subject to minor flaws such as the size of the sample group, their research methodology and conclusions are supported by sound scientific principles. In addition, Greenberg and Ruback's conclusions are well reasoned and logical.

The remainder of the text concentrates on information and data obtained outside the previously discussed controlled experiments. In chapter six, Greenberg and Ruback examine how victims decide whether to call the police and report a theft. The authors surveyed students in four countries: the United States, Thailand, India and Nigeria. These students answered questions regarding their perception of crime and notification of law enforcement agencies. Seriousness of the crime had a strong influence on the victim's behavior and on whether the victim notified the police.\(^{39}\) Although

\(^{36}\) Woocher, supra note 31, at 982.

\(^{37}\) Greenberg & Ruback, supra note 1, at 82.

\(^{38}\) Id. at 84.

\(^{39}\) Id. at 115.
social norms regarding the appropriateness of calls to the police varied with the characteristics of the crime and the population studied, the survey indicated that the seriousness of crime in each country was influenced by whether the offender used a gun, as well as the degree of injury to the victim.

The authors successfully corroborate their research findings by reviewing particular police departments’ records regarding specific types of crimes and reporting patterns. Although limited to file review in various law enforcement agencies, this research reinforces previous conclusions and findings that social and emotional factors are important considerations in determining whether a victim will report a crime.

In an attempt to compensate for their inability to interview the “victims” of their experiment, the authors conducted a survey of actual crime victims using questionnaires and interviews. Through this survey, Greenberg and Ruback hoped to determine what factors influenced the victims’ immediate and delayed responses to crime. The survey method of research, however, has inherent problems regarding its validity. For example, the victims may not know why they acted in certain ways, they may intentionally withhold information from the interviewer, or they may not accurately recall their feelings and reasons for acting as they did. Despite these problems, so-called self-reporting is one of the most commonly used methods of studying crime victim reaction, due to its convenience and the ability of the interviewer to conduct an in-depth examination of the victim.

Greenberg and Ruback’s study found that social influences play a significant role in the decision to report or not report a crime. Victims indicated that they frequently spoke with other persons in deciding whether to report the crime, often confiding in family or friends. The authors conclude that social influence plays an important role both in crime reporting and in the victim’s subsequent

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40 Id. For example, in a hypothetical case of one person beating another person with his fists, participants in the United States gave equal approval to the reporting of the crime to the police, regardless of the identity of the perpetrator or the victim. Participants in other countries, however, gave less approval to the reporting of the crime when the victim was the wife of the perpetrator. Id.

41 Id. at 114.

42 Id. at 129.

43 Id. at 151.


45 GREENBERG & RUBACK, supra note 1, 152.
willingness to cooperate with the prosecution of the case.\textsuperscript{46}

Based on their research, the authors propose a theoretical model for understanding the dynamics of victim decision-making. Their model is composed of three stages: (a) victims label or recognize behavior as a crime, (b) they determine its seriousness, and (c) they decide what action to take.\textsuperscript{47} Each of these stages is influenced by variables such as the victim's reaction to the crime, perceived or actual harm, and support of family and friends.

While this model may not apply to all victims in all circumstances, it provides a useful framework for additional empirical research which may further enhance our understanding of victims' mental processes.\textsuperscript{48} Greenberg and Ruback's efforts provide a significant contribution to the study of victim decision making.

\textit{After the Crime} provides its readers with a careful, thought-out examination of victim decision-making. Its experiments and studies expand on existing research, and its model for future research will undoubtedly be utilized by other scholars in an ever-expanding quest to understand victims' reactions to crime. The chapter discussing eyewitness identification is essential for all attorneys participating in criminal trials which involve the victim's identification of the defendant. Yet the book's usefulness is not limited to this select group. With its carefully conducted research and thoughtful analysis, \textit{After the Crime} is an excellent text for any professional in the criminal justice system.

\textsuperscript{46} Id. at 178. The authors' findings are supported by the results of the National Crime Victimization Survey (NCVS), a biannual survey conducted by the Department of Justice and the Bureau of the Census. First developed in 1972 to more fully understand the impact of crime on victims, census takers contact and survey 50,000 dwellings regarding both reported and unreported crimes. Because the survey includes crimes that have not been reported to law enforcement agencies, it is considered a more comprehensive and reliable sample for purposes of determining the extent of crimes in the United States than the Uniform Crime Report conducted by the FBI, which only lists reported and known crimes. \textsc{Ruth Masters \& Cliff Robertson}, \textit{Inside Criminology} 69 (1990).

\textsuperscript{47} Id. at 182.

\textsuperscript{48} Id. at 184.