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Dispositional Decisionmaking in the Juvenile Justice System: An Empirical Study of the Use of Offense and Offender Information

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I. INTRODUCTION

It has been almost a century since the juvenile court "experiment" began in the United States.1 The practice of processing juveniles' cases in a judicial system designed to specifically deal with juveniles instead of having juveniles be subject to the procedures and penalties of the adult criminal justice system has been but one step (albeit a major one) on a long ladder of legal reforms that have been implemented in hopes of effectively and humanely dealing with juveniles who commit crimes. Reforms had been taking place in juvenile penology for nearly a century prior to the juvenile court experiment.2 The notion of a separate juvenile justice system3 was a logical development.


3. See generally J. Hawes, Children in Urban Society: Juvenile Delinquency in Nineteenth-Century America (1971); R. Mennel, supra note 2; R. Pickett, supra note 2; D. Rothman, supra note 2; E. Ryerson, supra note 1; S. Schlossman, supra note 1; Fox, Juvenile Justice Reform: An Historical Perspective, 22
following earlier innovations such as appointing a child advocate to investigate whether punishment would be in a child's best interest.\(^4\) It also was a major structural and procedural change instituted to remedy the haphazard handling of juvenile offenders\(^5\) in places like Illinois, where the courts had severely curtailed the power of the State's legal and social welfare/charity organizations to intervene in the lives of juveniles.\(^6\)

Illinois led the way in state reform. In 1899 the Illinois legislature enacted the Juvenile Court Act,\(^7\) partly in response to the restrictions imposed by the courts and partly as an inevitable next step in the march of reforms targeting juveniles.\(^8\) The Juvenile Court Act represented the first attempt to organize reforms such as juvenile courts, probation, child guidance clinics, and reformatories into a "coherent system of juvenile justice."\(^9\)

Not surprisingly, given the receptivity of the times for trying new ways to deal with "wayward youths," most states followed the lead set by Illinois. In 1908, Utah became the first state to create a state-controlled juvenile court system. By 1917, virtually all states had passed a juvenile court act. The last state to establish a separate juvenile court was Wyoming, which finally did so in 1945.\(^10\)

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4. Sullinger reported that such a procedure was introduced in Massachusetts in 1869. T. SULLINGER, SOCIAL DETERMINANTS IN JUVENILE DELINQUENCY 225 (1936).

5. R. MENNEL, supra note 2, at 128.


8. Some jurisdictions, such as Massachusetts, New York, and Rhode Island, had already been holding separate hearings for juveniles charged with crimes since the early to mid-1800s. T. SULLINGER, supra note 4, at 225. However these efforts did not go so far as creating a separate system to address youth crime and criminals.

9. A. PLATT, supra note 1, at xviii (emphasis in original). See also id. at 9-10.

10. See Handler, The Juvenile Court and the Adversary System: Problems of Function and Form, 1985 Wis. L. Rev. 7. For detailed histories of the juvenile court and the juvenile justice movement, see JUVENILE JUSTICE PHILOSOPHY: READINGS, CASES AND COMMENTS (F. Faust & P. Brantingham eds. 2d ed. 1979); J. Hawes, supra note 3; R. MENNEL, supra note 2; A. PLATT, supra note 1; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1; Fox, supra note 3; Rendleman, supra note 3. See also THE CHILDREN ISHMAEL: CRITICAL PERSPECTIVES ON JUVENILE JUSTICE (B. Krisberg & J. Austin eds. 1978); T. Hurley, THE ORIGIN OF THE JUVENILE COURT LAW (1907); JUVENILE JUSTICE: THE PROGRESSIVE LEGACY AND CURRENT REFORMS (L. Empey ed. 1979); C. Larsen, THE GOOD FIGHT (1972); M.
Today, juvenile courts are commonplace. The issue now facing states is whether to begin a separate juvenile justice system, but whether to dismantle the separate juvenile justice system currently in place. Numerous commentators and researchers have charged that one of the problems with the juvenile justice system is that there is a misplaced focus on offender characteristics, such as a juvenile's race and socioeconomic status, that should not contribute to juvenile court decisions. They claim that the use of "extra-legal" offender factors


In reaction to the majority's imposition of a punitive sanction (i.e., short-term institutionalization) on a juvenile offender, a Minnesota appellate judge in In re D.S.F., 416 N.W.2d 772, 777 (Minn. Ct. App. 1987) (Crippen, J., dissenting), suggested that the abolition of the juvenile court should be given serious consideration in order to secure constitutional protections for young offenders. Of course, not all commentators who are dissatisfied with the juvenile justice system call for its abolition. For example, Melton, Taking Gault Seriously: Toward a New Juvenile Court, 68 Neb. L. Rev. 146 (1989), presents an argument for greater expansion of due process protections for juveniles in the context of existing juvenile court structures.

12. Feld, Principle of Offense, supra note 11, at 885-89; K. Federle, supra note 11, at 11. Much of the scholarship in this area has been the product of sociologists and criminologists who use a labeling theory approach to explain the problem. In brief, labeling theory suggests that differential dispositions are a function of readily identifiable, offender characteristic—e.g., race and socioeconomic status—that have little or nothing to do with either the offense committed or the future rehabilitation prospects of the juvenile. However, these easily identified attributes are used, either consciously or unconsciously, by decisionmakers as they make attributions of legal responsibility and culpability. See, e.g., M. Bortner, Inside a Juvenile Court: The Tarnished Ideal of Individualized Justice (1982); A.
is part of a broader problem in the criminal justice system;\textsuperscript{13} using this type of readily identifiable information inevitably leads to unjust, discriminatory decisionmaking.\textsuperscript{14}

The allegation being levied is that a justice system that explicitly calls for the use of offender information is a system that is vulnerable to non-rational decisionmaking.\textsuperscript{15} If juvenile justice decisionmaking is


15. \textit{See, e.g.,} Feld, \textit{Principle of Offense, supra} note 11. \textit{See generally} M. Gottfred-
inherently more susceptible to the use of evidence that is not properly considered in legal proceedings, perhaps it is necessary to return to a unitary criminal justice system in which it is clear that reliance on offender characteristics such as race is impermissible. However, the use of offender characteristic information does not inevitably lead to unjust decisionmaking. As Horwitz and Wasserman point out, the juvenile justice system's reliance on offender information is necessary to make appropriate judgments concerning proper treatment of an offender. Thus, the use of offender information may be consistent with desirable practices, or it may be reflective of inappropriate attention to impermissible factors.

An empirical approach is useful for addressing the question of the extent to which offender information and offense information contribute to juvenile justice decisions. Social scientific studies can quantify the extent to which decisions can be accounted for by various sets of variables. Empirical studies can reveal the extent to which offender information variables and offense information variables statistically contribute to disposition judgments. The data from such studies can provide information for the legislative debate over whether, and if so how, to modify the juvenile justice system. The data can also aid judges in determining whether practices in juvenile justice comport with the trade-off of a separate justice system for juveniles in return for decisionmaking that promotes rehabilitation values over punishment.

This Article will present a study of disposition judgments made by juvenile justice professionals. The empirical evidence reported here suggests that both offender characteristic data and offense characteristic data contribute significantly and substantially to disposition judgments. The data also suggest that there is an appropriate reliance on

SON & D. GOTTFREDSON, DECISIONMAKING IN CRIMINAL JUSTICE: TOWARD THE RATIONAL EXERCISE OF DISCRETION (1980).


17. Horwitz & Wasserman, Formal Rationality, Substantive Justice, and Discrimination: A Study of a Juvenile Court, 4 LAW & HUM. BEHAV. 103, 105 (1980). See also J. Ito & V. Stapleton, The Role of Court Type in Juvenile Court Dispositional Outcome (paper presented at the meeting of the Southern Sociological Society, Louisville, Kentucky, Apr. 1981)(offender characteristics can be subdivided into discriminatory variables, such as race and gender, and into non-discriminatory, "discretionary" variables, such as family composition and whether the juvenile is currently in school).


19. See, e.g., Feld, Principle of Offense, supra note 11. See also infra notes 141-43 and accompanying text.
both types of data in dispositional decisionmaking; there is neither an over-reliance nor an under-reliance on either type of information category.

Part II will briefly review the history of discretionary decisionmaking in the juvenile justice system. I will argue that by providing juvenile justice professionals broad discretion in their decisions, the juvenile system opened itself to the explicit reliance on offender information. However, the changes imposed on the juvenile justice system in the wake of U.S. Supreme Court decisions in the 1960's and 1970's resulted in a need for reliance on offense information to a much greater extent than previously required. The balance of offender and offense considerations that the Court has implicitly called for in its decisions would seem to allow juvenile justice professionals to use both offender and offense characteristics in decisionmaking so long as offense information accounts for a meaningful proportion of judgment variation.20

Part III describes an empirical research study that examined the

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20. The concept of "variation" has several different roles in statistics. See P. Robinson, Fundamentals of Experimental Psychology 88-116 (2d ed. 1981). As a descriptive statistic, variance is a quantitative summary of dispersion among a set of measures or scores. It is a tool for communicating the extent to which various measures or scores "deviate," that is, differ, from one another. See, e.g., D. Barnes, Statistics As Proof: Fundamentals Of Quantitative Evidence 75-80 (1983); J. Monahan & L. Walker, Social Science In Law: Cases And Materials 69-73 (2d ed. 1990). One often finds the terms variation and variance used interchangeably; however, as P. Robinson, supra, at 97, noted: "Variance and variation while synonymous are not exactly equal terms. . . . [V]ariance is only one of several statistical ways of representing variation." In the context used here, decision "variation" refers to dispersion in disposition decisions made about juveniles. Often, the set of decisions (i.e., the measures or scores under examination) are described in terms of means or proportions (e.g., 30% of delinquents were given out-of-home dispositions). To understand the concept of decision variance as used in this Article, consider a set of dichotomous disposition decisions in a hypothetical study of 100 juvenile dispositions. For each juvenile adjudicated delinquent, there is the option of placing the juvenile out-of-home (coded using the number "0") or keeping the juvenile in his or her home (coded as "1"). For the 100 juvenile dispositions examined, we can calculate the difference between each juvenile's particular disposition (coded as 0 or 1) and the mean of all 100 juveniles' "scores," that is, the sum of all 100 juveniles' dispositions divided by 100. This procedure provides a difference or deviation score for each juvenile. If we simply add all 100 difference scores together, the sum would be zero. (By definition of the concept "mean," half the scores are greater than the mean and half are less. Subtracting the mean value from each individual score and adding the results together therefore sums to zero.) However, if we square each deviation score before we add them together, we will obtain a value that is greater than zero. This value, that is, the total sum of the squared deviation scores, is commonly referred to as the total sum of squares. This also can be thought of as the total variation in the data set, or in the context of the hypothetical study of juvenile justice disposition decisions, the total decision variation. The sum of squares concept is nicely illustrated in an experimen-
use of offender and offense information in dispositional decisionmaking. The disposition research was part of a larger study that examined
the use of psychosocial information in three areas of juvenile justice
decisionmaking: pre-trial detentions; transfers or waivers from the ju-
venile justice system to criminal justice jurisdiction; and post-adjudica-
tion dispositions.21 I will briefly provide an overview of the larger
research project before focusing on the disposition study.

Finally, in Parts IV-VI, I will examine some of the implications of
the disposition study. I conclude that the research data reported here
indicates that, on the whole, the juvenile justice system is attentive to
the types of information to which it should be, given its dual purposes
of being a justice system as well as a treatment system. I also discuss
how to use empirical research to examine and even alter a deci-
sionmaker’s use of offender and offense information.

II. HISTORICAL OVERVIEW OF DECISIONMAKERS’

DISCRETION IN THE JUVENILE JUSTICE SYSTEM

Since its inception, a hallmark of the juvenile justice system has
been discretionary decisionmaking.22 It was believed that broad lati-
tude in discretion would allow decisionmakers to be benevolent in-
stead of punitive.23 Furthermore, rigid adherence to formal rules
would be more likely to result in harsher treatment of juveniles. Sim-
ilarly, one additional hallmark of the juvenile justice system has been
its focus on the offender rather than on the offense.24 The common
belief was that, if decisionmakers were obliged to focus on the juvenile
rather than on the juvenile’s criminal actions, judgments would re-

22. D. Rothman, Conscience and Convenience: The Asylum and Its Alterna-
tives in Progressive America 58-60 & 248-60 (1980). For early descriptions
of the need for broad discretion in juvenile court decisionmaking, see generally A.
Platt, supra note 1; S. Schlossman, supra note 1; Flicker, Discretionary Law
for Juveniles, in Social Psychology and Discretionary Law 289 (L. Axt & I.
Stuart eds. 1979); Fox, supra note 3. See also The Child, the Clinic and the
Court (J. Addams ed. 1925); Mack, The Juvenile Court, 23 Harv. L. Rev. 104
(1909).
23. See generally A. Platt, supra note 1; E. Ryerson, supra note 1; S. Schlossman,
supra note 1; Juvenile Justice: The Progressive Legacy and Current Re-
forms, supra note 10; Juvenile Justice Philosophy: Readings, Cases and
Comments, supra note 10; Fox, supra note 3.
24. E.g., E. Ryerson, supra note 1; S. Schlossman, supra note 1.
The rehabilitative ideal was designed to assist the juvenile in becoming a properly socialized member of society. Thus, instead of punishing a youth who committed a crime, the philosophy was to provide the juvenile court with sufficient flexibility to fashion a remedial program specifically tailored to the unique needs and circumstances of the youthful offender.25 As Vedder recognized,26 this approach was consistent with the old “court of equity” model27 upon which the juvenile court was based.28 Vedder noted that the juvenile court has become essentially “a court of human relations.”29

Thus, in large part, the juvenile justice system was created to protect juveniles from the consequences associated with conviction in criminal courts.30 In particular, the juvenile justice system was going to provide juvenile offenders with an alternative to the harsh penalties meted out to adult offenders. Juveniles were not going to be tried

25. For a general discussion of the philosophies and purposes underlying dispositional options, see generally J. ANDENAES, PUNISHMENT AND DETERRENCE (1974); J. FEINBERG, DOING AND DESERVING (1970); H. HART, PUNISHMENT AND RESPONSIBILITY (1968); S. KADISH & M. PAULSEN, CRIMINAL LAW AND ITS PROCESSES: CASES AND MATERIALS 1-71 (1975); A. VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS (1976); F. ZIMRING & G. HAWKINS, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973). For a discussion of the juvenile justice system's rehabilitation ideal, see Ketcham, The Unfulfilled Promise of the American Juvenile Court, in JUSTICE FOR THE CHILD: THE JUVENILE COURT IN TRANSITION 22 (M. Rosenheim ed. 1963); for a discussion of whether rehabilitation should continue to be considered a core part of juvenile justice dispositions, compare the dissenting statements of Judge Polier and Commissioner Wald with the disposition standard draft approved by the majority of the IJA-ABA Joint Commission on Juvenile Justice Standards, in INSTITUTE FOR JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS PROJECT: STANDARDS RELATING TO DISPOSITIONS (1980). See also the comments and dissents to REPORT OF THE TWENTIETH CENTURY FUND, TASK FORCE ON SENTENCING POLICY TOWARD YOUNG OFFENDERS (1978); Feld, Principle of Offense, supra note 11.

26. B. VEDDER, supra note 1, at 146.

27. It is important to recall that at the time juvenile courts were being established in the United States, there was almost as much a tradition of courts of equity as courts of law. Rendleman, supra note 3. In this century, courts of equity have all but disappeared in the United States. Juvenile courts are one of the last vestiges of equity court models left in our system, and even some of those who argue for the continuation of a separate juvenile court nonetheless argue that they should adopt the characteristics and protections more commonly associated with courts of law. See, e.g., Melton, supra note 11.

28. See, e.g., Flexner, The Juvenile Court, Its Legal Aspects, 46 ANNALS AM. ACAD. POL. & SOC. SCI. 49 (1910); Rendleman, supra note 3. Cf. Beemsterboer, supra note 10 (juvenile court operated more like the Star Chamber than a court of equity).


30. For early statements of this goal, see W. HEALY, THE INDIVIDUAL DELINQUENT (1915); T. HURLEY, supra note 10; H. LOU, supra note 10; Lindsey, The Boy and the Court, 13 CHARITIES 350 (1905); Mack, supra note 22.
for crimes and have their guilt determined; instead, they were going to receive a hearing before a benevolent parent-surrogate — the juvenile court judge — who was to determine whether the youngsters needed to become a ward of the court — an adjudicated delinquent. Delinquent youths would not be sentenced; instead, they would receive dispositions tailored to their rehabilitation needs. Thus, it was less important whether dispositions were commensurate with juveniles' offenses so long as they were consistent with the juveniles' treatment needs.

Consequently, juvenile court decisionmaking was characterized by a considerable amount of discretion. The court's discretionary decisionmaking was fueled to a great extent by information it received about a juvenile and was frequently only tangentially related to the juvenile's offense.

A. The Use of Psychosocial Information About the Offender in Juvenile Justice Decisionmaking

The juvenile court was accorded a considerable amount of discretion in reaching its determinations about juvenile offenders. Decisionmaking was typically guided by no more than the requirement that decisions be in the "best interest" of the child. In order to ascertain what would be in the best interest of a child, courts have looked to receive information from those who could assist in determining what would be best for the child. The broad and vague "best interest" standard allowed juvenile justice decisionmakers to consider virtually any

31. Part of the unique approach undertaken by those who began the juvenile court was that juvenile offenders were to be rehabilitated not punished. E.g., W. HEALY, supra note 30; H. LOU, supra note 10. See generally M. LEVINE & A. LEVINE, supra note 10; R. MENNEL, supra note 2; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1. Cf. A. PLATT, supra note 1 (rehabilitation was stated as a goal, but juveniles were nonetheless punished).

32. For detailed discussions of the purposes of the juvenile court, the way courts actually operated, and the roles adopted by various court officials including judges, probation officers, and attorneys, see, e.g., THE CHILD, THE CLINIC AND THE COURT, supra note 22; A. PLATT, supra note 1; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1.

33. See supra sources cited in note 22.

information that they deemed relevant. The ultimate goal of the juvenile court was to formulate a treatment plan that addressed the particularized needs of the juvenile who came before the judge.36 Naturally, social service and mental health professionals became principal participants in the juvenile justice decisionmaking process.37 In fact, within a decade of the creation of the Chicago juvenile court, psychiatrist William Healy was asked to establish a child guidance clinic to assist the juvenile court in making decisions about juvenile offenders.38 It was believed that mental health perspectives would allow juvenile courts to be on the “cutting edge” of scientific breakthroughs that would address such major concerns as the causes and treatment of juvenile delinquency.39 It was thought that social scientific and mental health information would provide juvenile court decisionmakers with the ability to make “correct” decisions about the juveniles who came before them and to accurately develop the treat-

36. See, e.g., W. HEALY, supra note 30; W. HEALY, MENTAL CONFLICTS AND MISCONDUCT (1917); W. HEALY & A. BRONNER, DELINQUENTS AND CRIMINALS: THEIR MAKING AND UNMAKING (1928) [hereinafter W. HEALY & A. BRONNER, DELINQUENTS AND CRIMINALS]; W. HEALY & A. BRONNER, NEW LIGHT ON DELINQUENCY AND ITS TREATMENT (1936) [hereinafter W. HEALY & A. BRONNER, NEW LIGHT ON DELINQUENCY]. See also R. MENNEL, supra note 2; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1.

37. M. LEVINE & A. LEVINE, supra note 10; R. MENNEL, supra note 2.

38. R. MENNEL, supra note 2, at 161-69. Dr. Healy not only established assessment and treatment clinics, first in Chicago and then in Boston, but he also used these settings as laboratories for research into the causes of and solutions to delinquency. See F. ALEXANDER & W. HEALY, ROOTS OF CRIME: PSYCHOANALYTIC STUDIES (1935); W. HEALY, supra note 30; W. HEALY, supra note 36; W. HEALY & A. BRONNER, DELINQUENTS AND CRIMINALS, supra note 36; W. HEALY & A. BRONNER, NEW LIGHT ON DELINQUENCY, supra note 36. Dr. Healy was not the only mental health professional conducting such inquiries; numerous psychologists, psychiatrists, sociologists, and social workers were also studying the causes and treatments of delinquency. See, e.g., A. AICHORN, WAYWARD YOUTH (1935); E. BURLEIGH & F. HARRIS, THE DELINQUENT GIRL (1923); E. COOLEY, PROBATION AND DELINQUENCY (1927); FIVE HUNDRED DELINQUENT WOMEN (1934); S. GLUECK & E. GLUECK, 500 CRIMINAL CAREERS (1930); S. GLUECK & E. GLUECK, ONE THOUSAND JUVENILE DELINQUENTS: THEIR TREATMENT BY COURT AND CLINIC (1934); S. GLUECK & E. GLUECK, UNRAVELING JUVENILE DELINQUENCY (1950); G. HALL, ADOLESCENCE: ITS PSYCHOLOGY AND ITS RELATIONS TO PHYSIOLOGY, ANTHROPOLGY, SEX, CRIME, RELIGION AND EDUCATION (1904); G. HALL, YOUTH: ITS EDUCATION, REGIMEN, AND HYGIENE (1906); J. PUFFER, THE BOY AND HIS GANG (1921); C. ROGERS, THE CLINICAL TREATMENT OF THE PROBLEM CHILD (1939); C. SHAW, DELINQUENCY AREAS (1929); C. SHAW, THE JACK-ROLLER: A DELINQUENT BOY’S OWN STORY (1930); C. SHAW & H. MCKAY, SOCIAL FACTORS IN JUVENILE DELINQUENCY (1931); W. THOMAS, THE UNADJUSTED GIRL. (1923); F. THRASHER, THE GANG: A STUDY OF 1,313 GANGS IN CHICAGO (1927); M. VAN WATERS, YOUTH IN CONFlict (1925). See generally R. MENNEL, supra note 2; E. RYERSON, supra note 1; Van Waters, The Juvenile Court as a Social Laboratory, 7 J. APPLIED SOC. 318 (1923).

39. See supra sources cited in note 38. See generally R. MENNEL, supra note 2; A. PLATT, supra note 1; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1.
ment plans that were required to rehabilitate delinquent youths.\(^\text{40}\)

Sometimes called the "discretionary, medical model of juvenile justice," \(^\text{41}\) the juvenile court became, in effect, a mental health agency armed with the legitimized authority of law. The court asked for and received information about the offender. Such information included not only information pertaining directly to the offender such as motivation to change, alcohol and drug use, and psychiatric history, but also information about the offender's family, friends, and social environment. The information provided the juvenile court judge — "descriptions of juveniles' needs, character, and treatment prospects" — would be difficult to distinguish from the information provided to a psychologist, psychiatrist, or social worker charged with the responsibility of deciding what to do with a youngster.\(^\text{42}\)

This use of psychosocial information in juvenile court decisionmaking has continued and is still used today.\(^\text{43}\) However, due in large part to the legal reforms of the 1960's and 1970's that resulted from United States Supreme Court's consideration of practices and procedures used in the juvenile justice system, there has emerged a greater focus on information that is generally considered more legal in nature. Such information includes the nature of the present offense, premeditation of the present offense, and any past offenses. The move to greater reliance on legal information will be discussed in the next section.

B. The Use of Legal Information About the Offense in Juvenile Justice Decisionmaking

By the 1960s, it had become apparent that the juvenile justice system was not working as well as its conceptualizers had hoped. The treatment and rehabilitation ideals were not being met. Often, offenders who entered the system were trapped between its cracks. Almost as if they were caught in a "no-man's land" of governmental interven-

\(^\text{40}\) Miriam Van Waters, a sociologist, juvenile judge, and a leading figure in juvenile justice and corrections, went so far as to advocate that juvenile court hearing officers ought to be trained in the social sciences such as psychology in addition to the law. See Van Waters, The Socialization of Juvenile Court Procedures, 12 J. CRIM. L. & CRIMINOLOGY 61 (1922). See generally B. ROWLES, supra note 10 (biography of Van Waters).

\(^\text{41}\) Morse & Whitebread, Mental Health Implications of the Juvenile Justice Standards, in LEGAL REFORMS AFFECTING CHILD AND YOUTH SERVICES 5 (G. Melton ed. 1982).

\(^\text{42}\) Grisso, Tomkins & Casey, supra note 18, at 404 (citing W. HEALY, supra note 30; R. MENNEL, supra note 2; E. RYERSON, supra note 1; S. SCHLOSSMAN, supra note 1).

tion, juveniles were subject to deprivations of liberty without access to constitutional protections afforded adult offenders and without giving them the promised benefits of effective treatment. The juvenile justice system seemed to be offering offenders the worst of both the legal and the social service systems.44

In recognition of this and other problems, public officials, blue-ribbon panels, and interested commentators from both the social sciences and the legal system began to call for the elimination of or radical change to the juvenile justice system.45 State and federal courts began to uphold the claims of juveniles who sued on constitutional and statutory grounds for the applications of adult legal protections to the juvenile justice process.46

44. As the Court concluded after examining much of the available assessments and commentary in its consideration of the juvenile transfer case, Kent v. United States, 383 U.S. 541, 556 (1966)(citations omitted): “There is evidence ... that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.”


46. For example, several courts held that the right to counsel is available to juvenile offenders. See, e.g., Black v. United States, 355 F.2d 104 (D.C. Cir. 1965); In re Castro, 243 Cal. App. 2d 467, 52 Cal. Rptr. 469 (1965); In re Long, 184 So. 2d 861 (Miss. 1966). Courts also upheld the privilege against self-incrimination or coerced confessions. See, e.g., United States v. Morales, 283 F. Supp. 160 (D. Mont. 1964); In re Carlo, 48 N.J. 224, 225 A.2d 110 (1966); In re W., 19 N.Y. 2d 55, 224 N.E.2d 102 (1966). Finally, courts upheld the right to avoid double jeopardy. See, e.g., Sawyer v. Hauck, 245 F. Supp. 55 (W.D. Tex. 1965). In fact, some courts suggested a general application of due process rights to juveniles. See Harling v. United States, 295 F.2d 161 (D.C. Cir. 1961); Fee v. United States, 274 F.2d 556 (D.C. Cir. 1959). The trend of providing due process protections was by no means universal during this period. See, e.g., Application of Gault, 99 Ariz. 181, 407 F.2d 760 (1965)(no right to counsel; no privilege against self-incrimination; no right to confrontation); In re Castro, 243 Cal. App. 2d, 52 Cal. Rptr. 469 (1966)(no privilege against self-incrimination); In re Perham, 104 N.H. 276, 184 A.2d 449 (1962)(no right to trial by jury in juvenile court proceedings).
These problems with the juvenile justice system were ultimately addressed by the U.S. Supreme Court. The Supreme Court had previously provided some indication that juveniles were entitled to constitutional protections of due process in certain circumstances.\textsuperscript{47} However, the first cases that directly examined the juvenile justice system were not decided until after the groundswell of criticisms had become a crescendo of opinion that converged on the realization that “[a]lthough the juvenile-court system had its genesis in the desire to provide a distinctive procedure and setting to deal with the problems of youth,... there [was] a gap between the originally benign conception of the system and its realities.”\textsuperscript{48}

In the decade between 1965 and 1975, the Supreme Court carved out the constitutional boundaries that would apply to juveniles. Noting that “[d]ue process of law is the primary and indispensable foundation of individual freedom,”\textsuperscript{49} the Court issued numerous rulings providing a broad range of basic due process protections for juveniles in the context of transfer and adjudication hearings. These historic rulings began with the seminal case of \textit{Kent v. United States}.\textsuperscript{50} In \textit{Kent}, the Court noted that the decision whether to transfer a juvenile to the jurisdiction of the criminal court required adherence to “procedural regularity sufficient in the particular circumstances to satisfy the basic requirements of due process and fairness”\textsuperscript{51} notwithstanding the need for judicial discretion in the judgment. \textit{In re Gault}\textsuperscript{52} extended the \textit{Kent} analysis and provided juveniles with the right of written notice of charges, the right to counsel, the privilege against self-incrimination, and the rights to confrontation and cross-examination of witnesses.\textsuperscript{53} The right to have a conviction supported by proof beyond a reasonable doubt was applied to “the adjudicatory stage of a delinquency proceeding” in \textit{In re Winship}.\textsuperscript{54} Finally, in \textit{Breed v.}
the right not to be exposed to double jeopardy was held to be applicable to juveniles. Even though juveniles are subject to the jurisdictions of two different systems, the Breed Court held that it must be determined prior to a trial or adjudicatory hearing whether a state "wants to treat a juvenile within the juvenile-court system before entering upon a proceeding that may result in an adjudication that he has violated a criminal law."\(^5\)

With a broad range of constitutional rights now applicable to juveniles, it was finally true that the guarantees of the Bill of Rights were not to be enjoyed solely by adults.\(^5\) Although juveniles charged with crimes were not given the full range of constitutional protections available to adult offenders,\(^5\) the Court required that juvenile justice proceedings “measure up to the essentials of due process and fair treatment.”\(^5\) In other words, procedures used in juvenile justice proceedings must be “compatible with the ‘fundamental fairness’ demanded by the Due Process Clause” of the fourteenth amendment.\(^5\)

The extension of constitutional guarantees to juveniles provided young offenders with some of the same checks and balances against inappropriate state actions as are afforded adults. These rulings meant that juvenile courts were explicitly required to consider legal information such as the type and seriousness of the offense. Juvenile court attention to such information would prevent appellate courts from overturning the trial court’s decision under due process theories.

However, these new due process applications were not meant to undercut the basic social welfare orientation that had characterized the juvenile justice system since its inception. For example, in *Schall v. Martin*, the Court pointedly noted that the due process movement was not meant to undercut the *parens patriae* philosophy at the root of the juvenile justice system, as this feature is what “makes a juvenile

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\(^5\) \textit{Id.} at 537-38.
\(^5\) In re *Gault*, 387 U.S. 1, 13 (1967). \textit{See supra} note 47.
\(^5\) For example, the right to a trial by jury was held not to apply to juvenile proceedings. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). As Justice Rehnquist indicated in the majority’s opinion in *Schall v. Martin*, 467 U.S. 253, 263 (1984) (citations omitted):

\[\text{T}he\ Constitution\ does\ not\ mandate\ elimination\ of\ all\ differences\ in\ the\ treatment\ of\ juveniles.\ .\ .\ .\ \text{The\ State\ has\ a} \textit{parens patriae}\ \text{interest\ in\ preserving\ and\ promoting\ the\ welfare\ of\ the\ child} \text{which\ makes\ a\ juvenile\ proceeding\ fundamentally\ different\ from\ an\ adult\ criminal\ trial.} \]

We have tried, therefore, to strike a balance — to respect the "informality" and "flexibility" that characterize juvenile proceedings, and yet to ensure that such proceedings comport with the "fundamental fairness" demanded by the Due Process Clause.

proceeding fundamentally different from an adult criminal trial." State legislative actions and court decisions in the wake of *Kent*, *Gault*, and their progeny attempted to provide for both the legal rights and the mental health and rehabilitative interests of juveniles. Consequently, discretion has remained a mainstay in juvenile justice decisionmaking possibly because of the usefulness of offense information in making the due process determinations that are required as a matter of constitutional law and because of the usefulness of offender information in making the individualized justice and treatment determinations that continue to be an integral part of the *parens patriae* facet of the juvenile justice system.

C. Post-Adjudication Disposition Decisions: A Particular Case for the Use of Offender and Offense Information

While it is clear that judicial discretion to use offender and offense information may occur at any stage of the juvenile court process, the post-adjudication disposition decision is an especially critical stage in delinquency proceedings. It is the culmination of a series of discretionary decisions made about a youth. At the outset there was a decision made to officially charge the juvenile with an offense rather than deal informally with the situation. Furthermore, a decision was made to handle the case within the juvenile justice system rather than divert the case. Even after these two critical steps, a disposition determinations remain.

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ruination was made only if the offender remained in the juvenile justice system rather than being transferred to the criminal justice system and was adjudicated delinquent. Although the vast majority of juveniles are ushered out of the system beforehand, for those juveniles who make it to disposition, their involvement in the system is considerable.

To date, the Supreme Court has not considered a dispositional case from the juvenile justice system. However, the Court has recently dealt with the issue of the death penalty for juvenile defendants whose cases were transferred to criminal courts. In these cases, the Court confronted some of the conflicts that arise when discussing appropriate dispositional alternatives for juveniles.

The difficulties of determining an appropriate disposition for a juvenile — even one who has committed an especially "brutal murder . . . [in which] the victim had been shot twice, [had] his throat, chest, and abdomen . . . cut[,] had multiple bruises and a broken leg[,] and had his body] chained to a concrete block and thrown into a river" — is evident from the Court's analysis in Thompson v. Oklahoma. Although a majority of justices agreed that the defendant should not be put to death, there was not a majority of Justices who could agree why. The four Justices who joined in the plurality opinion of the

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68. E.g., I. SCHWARTZ, supra note 35. Judge Rubin analogized the juvenile justice system to an inverted pyramid, with two to three million youths a year in contact with the police, but with only about 100,000 juveniles actually going through the entire system and being institutionalized. Rubin, supra note 63, at 87.


70. Stanford v. Kentucky, 109 S. Ct. 2969 (1989); Thompson v. Oklahoma, 108 S. Ct. 2687 (1988); Eddings v. Oklahoma, 455 U.S. 104 (1982). Thompson and Stanford will be discussed in the text; Eddings will not. In Eddings, the Court held that in deciding whether to impose the sentence of death on a defendant who was sixteen years of age at the time of the offense, information about the juvenile's relationship with his family during his youth, that the defendant offered in mitigation, must be considered. The Court avoided the more difficult issue of whether it is constitutional to execute a juvenile-offender. See Eddings v. Oklahoma 455 U.S. 104, 120 (1982)(Burger, C.J., dissenting).

Court indicated that the imposition of capital punishment on a defendant who was fifteen years old at the time he committed the offense would violate the eighth amendment's prohibition against cruel and unusual punishment. Although the plurality's opinion can be read as a statement of the lower limit of societal tolerance for the imposition of death, it also can be read as an analysis relevant to juvenile punishment issues.

Justice Stevens, who wrote the plurality's opinion, indicated that there is something unique about imposing a disposition on a juvenile. Although he wrote about it in the context of mitigating circumstances and penological issues, his analysis recognized that youthful behavior is different from adult behavior. The analysis suggests that juveniles' illegal acts are often a function of such factors as lack of maturity; inexperience; lack of perspective; poor judgment; impulsivity; lack of self-discipline; a failure of their families, schools, and the social system; absence of unfettered free will; great physiological and psychological stress; reliance on the opinions of their peers; vulnerability to peer group pressure; a lack of risk aversion; less-than-fully developed senses of morality and reasoning capacity; and an unrealistic sense of omnipotence. In light of these offender characteristics, Justice Stevens argued that notwithstanding the heinous nature of the offense, juveniles who were under the age of sixteen at the time they committed their crime should not be put to death.

The Justices who joined the concurring opinion and the dissenting opinion, on the other hand, were unconvinced that a juvenile should not receive the "ultimate punishment" solely because of age. The dissent focused on the fact that the offense was a brutal, premeditated murder. Among its other arguments, the dissent quoted from the Justice Department's testimony to the Subcommittee on Criminal Law of the Senate Committee on the Judiciary in which it was noted that "many juvenile delinquents were 'cynical, street-wise, repeat offenders, indistinguishable, except for their age, from their criminal counterparts.'" The dissent also quoted Justice Powell's dissenting opinion in Fare v. Michael: "Minors who become embroiled with the law range from the very young up to those on the brink of major-

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72. See id. at 2691, 2695-96.
73. Id. at 2698-99 (citations omitted). See also Stanford v. Kentucky, 109 S. Ct. 2969, 2988-94 (1989)(Brennan, J., dissenting). In their "evaluation" of such evidence in Stanford, the plurality termed it "socioscientific" and "ethicoscientific." Id. at 2979.
75. Id. at 2710-19 (Scalia, J., dissenting).
ity. Some of the older minors become fully 'street-wise,' hardened criminals, deserving no greater consideration than that properly accorded all persons suspected of crime."78 Both the concurring and dissenting Justices clearly signalled their willingness to impose adult sanctions for adult-type offenses.

This orientation prevailed in *Stanford v. Kentucky*, a consolidated case in which the Court was confronted with two juvenile murderers, one of whom shot a gas station attendant "point blank in the face and then in the back of [the] head," after having first robbed and sodomized her, and the other of whom robbed and stabbed a salesclerk at a convenience store and when the victim "began to beg for her life, [the juvenile] stabbed her four more times in the neck, opening her carotid artery . . . [and left her] to die on the floor."79 If the murder in *Thompson* could be labeled a "10" on a ten-point scale of "especially heinous, atrocious, or cruel"80 crimes, then the crimes at the heart of *Stanford* might give rise to an additional 10 points on the scale! The *Stanford* crimes seemed at least twice as bad as the brutal acts reported in *Thompson*. Armed with these especially vile, mean-spirited acts, the majority of the Court found no constitutional barrier to imposing the death penalty in *Stanford*. Given the "better" fact scenario and given juveniles who were sixteen and seventeen at the time of their offenses, the focus on the offense rather than on the offender was unsurprising.

Despite their differences, the analyses in these death penalty cases are united in their support of the proposition that juveniles are different from adults and that this difference is important for dispositional determinations. Although all of the Justices seem to be in agreement that a youth's age must be taken into account in deciding whether to impose the death penalty on him or her,81 there also seems to be a trend by a majority of the Court toward focusing more on the offense characteristics than on the offender's characteristics. Nevertheless, there remains a minority of Justices who reason consistent with the traditional juvenile court philosophy; not only are juveniles different from adults, but as a matter of policy, their age difference makes them

78. **Id.** at 2719 (quoting *Fare v. Michael C.*, 442 U.S. 707, 734 n.4 (1979)(Powell, J., dissenting)).
81. **See Stanford v. Kentucky**, 109 S. Ct. 2969, 2978 (1988); *Eddings v. Oklahoma*, 455 U.S. 104, 115-16 (1982). Because the judgment in *Thompson* held that the defendant's age prohibited him from being put to death, there was no need for the plurality opinion to assert this proposition. The dissent, however, did reinforce the view that the youthful age of a defendant should be considered before imposing the death sentence on a juvenile offender. *Thompson v. Oklahoma*, 108 S. Ct. 2687, 2713 (1988)(Scalia, J., dissenting).
less blameworthy and more likely to be amenable to treatment and rehabilitation.

Thus, the Supreme Court's rulings in juvenile death penalty cases have underscored the continuing importance of offense and offender information in disposition determinations. However, the Court has not directly confronted the issue in the juvenile court context.82 The Court has intimated, albeit in dicta, that there should be “an opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment” needs.83 Unless the Court holds that the rehabilitation ideal is irrelevant to juvenile justice dispositions — an improbable likelihood — some measure of rehabilitation or treatment considerations must be part of dispositional decisionmaking in the near future. Even the Court's majority opinion in the juvenile, pretrial detention case, Schall v. Martin,84 which was highly critical of traditional juvenile justice philosophy and focused primarily on the criminal justice goal of protection of the community,85 did not go so far as to argue for the elimination of the rehabilitation goal in juvenile justice. Consequently, in light of numerous Supreme Court considerations of juvenile disposition issues over nearly twenty-five years, it is reasonable to assume that juvenile justice disposition decisionmakers will be required to attend to offender information and will be permitted to attend to offense information.

III. EMPIRICAL RESEARCH ON DISPOSITIONAL DECISIONMAKING

A. Previous Empirical Research Efforts

Previous research efforts on dispositional decisionmaking have largely been unable to account for substantial proportions of disposition decision variation.86 A meta-analytic review of twelve disposition

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82. The Court has directly commented on dispositional goal differences in the criminal court versus the juvenile court. See especially In re Gault, 387 U.S. 1, 14-17 (1967). See also id. at 79 (Stewart, J., dissenting): “[A] juvenile proceeding’s whole purpose and mission is the very opposite of the mission and purpose of a prosecution in a criminal court. The object of one is correction of a condition. The object of the other is conviction and punishment for a criminal act.” A similar analysis is found in McKeiver v. Pennsylvania, 403 U.S. 528, 551-52 (1971)(White, J., concurring)(discussing differences between juvenile justice system's focus on rehabilitation and reunification with the offender's family as soon as possible and the criminal justice system's focus on punishment and retribution).


85. Id. at 264-74.

86. The disposition studies are discussed infra note 87. The concepts of “variation” and “proportion of variation” are discussed supra note 20.
decisionmaking studies (see Table 1) revealed that a small portion of disposition variance, approximately 20%, could be accounted for by the data the researchers had collected and analyzed. In previous studies, data had been obtained primarily from the archival files in juvenile

87. Until recently, when social scientists integrated a body of empirical literature, they depended upon their personal abilities to produce a cohesive, meaningful cumulation of all relevant research results. However, regardless of how well researchers could synthesize the research literature, their integration depended upon their subjective judgments. It has been argued that it is as inappropriate to rely upon reviewers' impressions of studies as it would be to use researchers' impressions as a data collection tool in the first instance. For example, it would be clearly unacceptable for a researcher to "eyeball" the data he or she had collected in order to determine whether the results were significant. Yet, this qualitative approach is precisely the type of procedure that has been tolerated in reviews of empirical literatures. See generally H. Cooper, Integrating Research: A Guide for Literature Reviews (2d ed. 1989); Jackson, Methods for Integrative Reviews, 40 Rev. Educ. Res. 438 (1980). Several commentators have argued for quantitative alternatives to subjective assessments of empirical studies. See, e.g., Cooper, Scientific Guidelines for Conducting Integrative Research Reviews, 52 Rev. Educ. Res. 291 (1982); Cooper & Rosenthal, Statistical versus Traditional Procedures for Summarizing Research Findings, 87 Psychological Bull. 442 (1980).


To obtain an overall coefficient of determination for a literature, each study's coefficient is computed first. As G. Glass, B. McGaw & M. Smith, supra, at 151, observed, "There usually is an algebraic path from the reported statistics [in a study] to a Pearson correlation [i.e., a coefficient of determination] or an approximation to one." Many statistical texts provide the formulas needed to allow one to convert most statistics reported in a study into a coefficient of determination. See G. Glass, B. McGaw & M. Smith, supra, at 149-50. See generally G. Glass & J. C. Stanley, Statistical Methods in Education and Psychology (1970); W. Hays, Statistics (3d ed. 1981); L. Marascuilo & J. Levin, Multivariate Statistics in the Social Sciences: A Researcher's Guide (1983); B. Tabachnick & L. Fidell, Using Multivariate Statistics (2d ed. 1989). Once the coefficients of determination are obtained for each study, they can be combined to pro-

Only 12 studies of disposition decisions contained sufficient information to permit calculation of the proportion of disposition variation accounted for in the research; the rest of the studies did not report the data necessary to estimate effect sizes. The 12 studies were: M. Bortner, supra note 12 (Bortner used two different data collection methods, and each is treated as its own "study"; the first
lice records and probation records. Studies that examined data that were not part of some official bureaucratic record were typically observational studies. Few studies have used standard social scientific methods of controlled data collection.

In addition to these methodological problems, there have also been concerns about how researchers operationalized offender and offense information. For many years, the dominant approach in juvenile justice research was first to divide the universe of juvenile information variables into traditional legal information variables such as the nature of the present offense and the number of prior offenses, and then group all other variables such as age, gender, and maturity together as

study was based upon cases that Bortner tracked using court records and the second study was based upon Bortner’s observation of juvenile court hearings); L. Cohen, supra (studies were conducted in three different jurisdictions, and each is treated as its own study); Bailey & Peterson, supra; Carter, supra; Horwitz & Wasserman, supra note 17; Kowalski & Rickicki, supra note 17; Phillips & Dinitz, supra; Terry, supra; and Thomas & Cage, supra. The effect sizes obtained for each of these studies are reported in Table 1.

The effect sizes for each study were cumulated in order to arrive at an average multiple correlation coefficient (r) for the 12 studies. A. Tomkins, supra, at 54-74. The average multiple correlation was r = .45, accounting for 20% of the variation in the analyzed disposition decisions. Id. See also Grasso, Tomkins & Casey, supra note 18, at 411 n.18. Although not a trivial proportion of variation for which to be able to account, it is not a substantial proportion of disposition variation.

Finally, because of the large number of cases examined in the meta-analysis (there were over 75,000 disposition cases that were the basis of the studies conducted by the investigators of the twelve meta-analyzed studies), it is unlikely that any unanalyzed studies, subsequently conducted studies, nor any other studies which may have been conducted but which have not been reported (i.e., they are locked in a researcher’s “file drawer”) would cause the multiple correlation coefficient to change very much. To change the estimate of the effect size, there would need to be tens of thousands of juveniles’ cases studied that yielded an effect size greater than the 20% effect size found in the present meta-analysis. See generally R. Rosenthal, Meta-Analytic Procedures For Social Research (1984); Rosenthal, Meta-Analysis: Toward a More Cumulative Social Science, 4 APPLIED SOC. PSYCHOLOGY ANN. 65 (1983)(discussing the file-drawer issue and presenting data relevant to the large number of studies that would have to be available to alter inferences made from meta-analyses). There is no basis or empirical evidence available to support such a belief. Thus, we can feel confident that the 20% variation is a fair representation of the proportion of variation accounted for by previous dispositional studies.

88. See studies listed supra note 87. See also Feld, Principle of Offense, supra note 11, at 879-89.

89. E.g., M. Bortner, supra note 12 (observation of 162 disposition hearings).

90. For an exception, see W. Reay & R. Millimet, Judgmental Factors in the Disposition of the Juvenile Offender (1990)(unpublished manuscript)(using an experimental design and case vignettes to examine dispositional decisionmaking). Barton, supra note 18, and Lamiell, supra note 18, are among several critics who have argued that the use of such standard methodologies would contribute greatly to our understanding of juvenile justice decisionmaking issues.
extra-legal variables.\footnote{19} The legal/extra-legal distinction is arguably valid in the criminal justice context because there the justice system is presumably dealing with the offense, not the offender. In the juvenile justice context, however, the distinction is of little use because juvenile courts are provided virtually unlimited discretion in decisionmaking.\footnote{20} Even after the juvenile rights movement gained momentum in the 1960's, the juvenile justice system remained an offender-oriented system, even as it took on more of the attributes of an offense-oriented system. As the Court indicated in \textit{Kent v. United States},\footnote{21} broad discretion is allowed in the juvenile courts because of the rehabilitative and nonpunitive missions of that system. Because that discretion properly relies on not only legal offense information but also nonlegal offender characteristics, several commentators have called for systematic study of juvenile justice decisionmaking in order to document the variety of offender and offense variables used in decisionmaking and the extent to which these variables actually influence judgments.\footnote{22}

B. The Present Study

The present disposition study was part of a larger program of research undertaken by a team of researchers trained in psychology and law, headed by St. Louis University psychologist Thomas Grisso.\footnote{23} The primary research study ("SLU Study") was an examination of the use of psychosocial information regarding offender characteristics and legally-relevant data regarding offense characteristics in juvenile justice decisionmaking. The researchers wanted to identify the legal and psychosocial characteristics of children used by juvenile justice professionals in their detention, transfer, and disposition decisionmaking. As the researchers wrote, "social science methods can assist the law by examining the range of information available for decisions, structuring the diversity of information, and examining courts' current uses of information in relation to legal decisions."\footnote{24}

The research was intended to improve upon past methodological limitations, especially the characterization of the offender and offense

\footnotesize{\textsuperscript{91}} See supra note 13 & accompanying text. See also supra note 17 & accompanying text. For a review of this literature and a critique of the distinction between legal and extra-legal variables, see, e.g., Horwitz & Wasserman, supra note 13; Horwitz & Wasserman, supra note 17.

\footnotesize{\textsuperscript{92}} See supra note 22 and accompanying text.

\footnotesize{\textsuperscript{93}} 383 U.S. 541 (1966).

\footnotesize{\textsuperscript{94}} E.g., Barton, supra note 18; Horwitz & Wasserman, supra note 17; Lamiell, supra note 18. See also 2 C. SMITH, T. BLACK & A. WEIR, \textit{A NATIONAL ASSESSMENT OF CASE DISPOSITION AND CLASSIFICATION IN THE JUVENILE JUSTICE SYSTEM: INCONSISTENT LABELLING—RESULTS OF A LITERATURE SEARCH} (1980); Bailey & Peterson, supra note 87; Thomas & Cage, supra note 87.

\footnotesize{\textsuperscript{95}} Grisso, Tomkins & Casey, supra note 18.

\footnotesize{\textsuperscript{96}} Id. at 404.
variables. Juvenile justice professionals were asked to respond to questions relevant to a case about which they had made a judgment. They were asked not only about the legal information that they might have used in making important decisions about juvenile offenders, but also about the relevant psychosocial information that they had available to them. The initial research suggested that decisionmakers had access to and used such information in reaching legal judgments.

The SLU Study was primarily based upon responses to a comprehensive survey devised to examine the use of legal and extra-legal (i.e., psychosocial) variables in juvenile justice decisionmaking. The researchers surveyed 1,423 respondents in 127 separate courts located in 34 different states. The SLU Study respondents were juvenile justice professionals — including, juvenile court judges, referees, commissioners, prosecuting attorneys, defense attorneys, probation officers, and mental health professionals. These professionals had recently participated in making a detention, transfer, or disposition decision about a juvenile offender. The respondents were asked to describe the juvenile's case by answering 14 questions that categorically "described" various demographic or offense information, such as the juvenile's Age, Sex, Race, and Charge Information. The respondents were asked to use a seven-point, continuous response scale (ranging, for example, from "Not at All" to "A Great Deal") to rate the juvenile on 79 items, including the juvenile's motivation to change his or her behavior; depression; the family's ability to supervise, control, and discipline the juvenile; and prior police contacts.

As noted, the primary purpose of the SLU Study was to identify the domain of information used by juvenile justice professionals in their decisionmaking. We found that the information domain covered by the 79 continuous variables could be summarized by nine factor-analytic "metavariabes." These factor variables are: 1) Motiva-

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97. Id. at 409-15.
98. Id. at 412-15.
99. Id. at 415-19.
100. Id. at 417-19.
101. Id. at 419.
102. Id. at 416 & n.30.
103. Id. at 417 & n.31.
104. Factor analysis is a statistical technique used to identify large numbers of variables that can be grouped together to form factors, or meta-variables. See generally R. Cattell, The Scientific Use of Factor Analysis in Behavioral and Life Sciences (1978); H. Harman, Modern Factor Analysis (3d ed. 1976). For less technically complex descriptions of the factor analytic technique, see S. Kachigan, Statistical Analysis: An Interdisciplinary Introduction to Univariate and Multivariate Methods ch. 15 (1986); J. Kim & C. Mueller, Introduction to Factor Analysis (1978); B. Tabachnick & L. Fidell, supra note 87, 597-677. Perhaps the most comprehensible treatment of factor analysis for non-statisticians is Kim, Factor Analysis, in Statistical Package for the
tion to Accept Intervention; 2) Reliance and Self-Autonomy; 3) Prior Contacts with the Juvenile Justice System; 4) Absence of Serious Mental Disorder; 5) Family Caring and Resource Capability; 6) Susceptibility to Delinquent Peer Influence; 7) Family Socialization; 8) Behavioral Compliance in Legal Settings; and 9) Involvement in School or Work Settings.\textsuperscript{106} Simple correlations between the factor variables\textsuperscript{107} and detention, transfer, and disposition judgments revealed considerable relationships between the factor variables and the juvenile justice decisions.\textsuperscript{108}

Of fourteen categorical demographic and offense variables, seven addressed current offense information\textsuperscript{109}; these can be combined into one, Seriousness of Offense variable.\textsuperscript{110} Respondents also indicated whether it was a First Offense. Data on seven other demographic variables were obtained: Age, Gender, Race, Enrolled in School, Living with Family, Two Parents in Home, and Employed. Simple correlations between these categorical variables and the detention, transfer, and disposition decisions uncovered much less extensive relationships than had been found for the factor variables.\textsuperscript{111}

This information was based upon responses obtained for the entire SLU Study, which covered detention, transfer, and disposition cases. However, for the study reported in this Article, only the disposition cases from this larger study were used. The results from this sample's data are reported below.

1. Subjects for the Present Study

As part of the SLU Study, 470 juvenile justice professionals were asked to complete a survey that addressed disposition decisionmaking.
The juvenile justice professionals were randomly sent one of two survey forms. Two-hundred twenty-six decisionmakers were sent a survey that asked them to rate the last juvenile for which they had made a disposition judgment in which the respondent felt that the appropriate dispositional option was that the youth should remain in his or her home or home-community ("In-Home/Community"). Two-hundred forty-four decisionmakers were sent a survey that asked them to rate the last juvenile for which they had made a disposition judgment in which the respondent felt that the appropriate dispositional option was to remove the youth from his or her home or home-community ("Out-of-Home/Community"). Approximately 67% (N=317) of the professionals returned completed surveys; 146 of the 317 of the returned surveys were In-Home/Community surveys, and 171 were Out-of-Home/Community surveys. The 317 professionals came from 88 different juvenile courts located in 25 states. There were 8 judges; 6 referees/commissioners; 15 prosecuting attorneys; 44 defense attorneys; 200 court officers including probation officers, field officers, or supervisors; and 44 mental health professionals.

112. The exact wording of the In-Home/Community survey directions were as follows: Please think back to the most recent delinquency disposition case, with which you had direct contact, in which you felt that the juvenile should not be sent to a correctional or training facility because he/she could be rehabilitated in the community. It does not matter whether or not the juvenile was actually placed in such a facility as part of the imposed disposition, only that you personally felt that the juvenile could be rehabilitated in the community. This is the case that you will use to answer all the questions in this survey. Id. at 415-16. See also A. Tomkins, supra note 87, at 127.

113. The exact wording of the Out-of-Home/Community survey directions were as follows: Please think back to the most recent delinquency disposition case, with which you had direct contact, in which you felt that the juvenile should be sent to a correctional or training facility because he/she could not be rehabilitated in the community. It does not matter whether or not the juvenile was actually placed in such a facility as part of the imposed disposition, only that you personally felt that the juvenile could not be rehabilitated in the community. This is the case that you will use to answer all the questions in this survey. Grisso, Tomkins & Casey, supra note 18, at 416-16. See also A. Tomkins, supra note 87, at 127.

114. The return rate was comparable for the two surveys: 65% of the In-Home/Community surveys sent out were returned, and 70% of the Out-of-Home/Community surveys sent out were returned. This return rate was similar to the overall return rate, 68%, for all surveys sent as part of the SLU Study. Grisso, Tomkins & Casey, supra note 18, at 418.

115. The states, number of courts participating per state, and the number of juvenile justice professionals who participated from each state were as follows: California (15 courts, 64 respondents), Colorado (1 court, 4 respondents), Delaware (1 court, 2 respondents), Florida (4 courts, 11 respondents), Georgia (2 courts, 2 respondents), Illinois (3 courts, 7 respondents), Indiana (2 courts, 5 respondents), Louisiana (2 courts, 10 respondents), Maryland (5 courts, 18 respondents),
DISPOSITIONAL DECISIONMAKING

2. Measures Used in the Study

Each respondent completed a survey that contained over 100 offense and offender items. For the target-juvenile about whom the respondent had selected to base all survey responses, the respondent made ratings on the categorical variables\textsuperscript{116} and the continuous variables.\textsuperscript{117} The case instructions\textsuperscript{118} were the only part of the survey that differed between the In-Home/Community and the Out-of-Home/Community versions of the survey.\textsuperscript{119}

In order to assess the extent to which respondents' ratings of offense and offender characteristics correlated with dispositional decisionmaking, the following approach was used. First, respondents' ratings of the 79 continuous variable ratings were statistically transformed into factor scores for each of the nine factors,\textsuperscript{120} and the factor scores were treated as each decisionmaker's ratings on the nine factor variables. Then, using the nine factor ratings and the respondents' ratings on the nine categorical variables as the set of eighteen predictor variables, the predictor variables were regressed\textsuperscript{122} upon the In-Home/Community versus Out-of-Home/Community disposition. Thus, the disposition judgment was treated as the outcome or criterion variable.\textsuperscript{123}

\begin{itemize}
  \item Massachusetts (2 courts, 10 respondents), Michigan (6 courts, 40 respondents),
  \item Missouri (1 court, 2 respondents), New Jersey (7 courts, 24 respondents), New
  Mexico (1 court, 3 respondents), New York (6 courts, 14 respondents), North Car
 olina (3 courts, 11 respondents), Ohio (6 courts, 14 respondents), Oregon (1 court,
  2 respondents), Pennsylvania (7 courts, 21 respondents), Rhode Island (1 court, 19
  respondents), South Carolina (1 court, 1 respondent), Tennessee (4 courts, 11 re
  spondents), Texas (2 courts, 4 respondents), Virginia (2 courts, 7 respondents),
  and Wisconsin (3 courts, 11 respondents).
\end{itemize}

\begin{enumerate}
\item See supra text at note 102.
\item See supra text at note 103.
\item See supra notes 112 & 113.
\item For more details, see Grisso, Tomkins & Casey, supra note 18, at 415-17. See also A. Tomkins, supra note 87, at 126-27.
\item See supra note 104. Factor scores were computed using the complete estimation method. See Kim, supra note 104, at 488-89.
\item See supra note 20.
\item See supra note 20.
\end{enumerate}
3. Results

a. Descriptive Analyses

The disposition sample mean ratings and standard deviations for all 19 variables (the eighteen predictor variables and the one outcome variable), as well as the variable intercorrelations, are reported in Table 2. The mean Age of the juveniles who were rated was 15 1/2 years of age, with a standard deviation of 1.2 years. The Sex of the rated juvenile in the vast majority of the cases was male (86%). The Race of over half of the rated juveniles (56%) was white; 44% of the juveniles were non-white. The vast majority of the juveniles (86%) were living with their family. There were Two Parents in the Home of slightly less than half the juveniles rated (48%). Most juveniles were Enrolled in School (73%) and most were not Employed at least half-time (86%). Only 26% of the juveniles were facing their First Delinquency Charge. Finally, the Seriousness of the Charged Offense for most of the rated juveniles was fairly serious. Felony offenses were involved in 71% of the 287 cases in which the respondent provided offense ratings. Twenty-six percent of the 287 cases were misdemeanors and 3% were for status offenses.

124. Standard deviations will not be reported in the text for dichotomous variables, although they may be obtained from Table 2. Dichotomous variables were coded using “1” and “2”; thus, all means are between 1.00 and 2.00. For the “Sex” variable, female was coded as 1, male as 2.

125. See supra note 124. The Race variable was not broken down further than White versus Non-White for purposes of this study. White was coded as 1, Non-White was coded as 2.

126. See supra note 124. If the juvenile was living with his/her family, it was coded as 1; if not, the code was 2.

127. See supra note 124. If there were two parents in the home, the code was 1; if not, the code was 2.

128. See supra note 124. If the juvenile was enrolled in school, the code was 1; if not, the code was 2.

129. See supra note 124. If the juvenile was employed half-time or more, the code was 1; if not, the code was 2.

130. See supra note 124. If the juvenile was facing his/her first delinquency charge, the code was 1; if not, the code was 2.

131. The coding scale for seriousness of offense ranged from 11 to 39, with 11 being the most serious allegations (a felony, or felonies, that were violent, against a person or against property). See supra note 110.

132. Twenty-nine percent (n=83) of the 287 cases for which offense data were available involved violent felonies and/or felonious crimes against a person. These 83 cases constituted 40% of all felony cases. However, it is likely that both the 29% and the 40% proportions underestimate the extent of violent or person felonies. In 44 (out of the 205) of the identified felony cases, the respondent failed to indicate the nature of the offense. Thus, of the 161 offenses in which there was some indication of whether the offense was against persons or against property and of whether it was a violent offense, more than half of them involved a violent felony or a felony against a person.
b. **Bivariate Correlations**\(^\text{133}\)

The 18 bivariate correlations between the factor and description, predictor variables and the disposition, criterion variable may be found by reading across row 19 of Table 2. These data show that 14 out of the 18 offense and offender variables were significantly\(^\text{134}\) correlated with the dispositional judgment.

The rate of correlation ("r") for five of the variables with disposition was at a level greater than or equal to .30, which is a very large correlation coefficient by social scientific standards. The five variables were Motivation to Accept Intervention (r = −.54), Behavioral Compliance in Legal Settings (r = −.44), Prior Contacts with the Juvenile Justice System (r = −.41), Involvement in School or Work Settings (r = −.38), and Family Caring and Resource Capability (r = −.30).\(^\text{135}\)

Only four variables did not display significant, bivariate correlations. These were Employed (r = .01), Sex (r = .04), Two Parents in the Home (r = .08), and Race (r = .08). These correlations indicate that there is virtually no rate of correspondence between these four variables and disposition.

The variable intercorrelations may be found to the left of the diagonal on the data matrix in Table 2. The intercorrelations reveal extensive relationships among the variables indicating that there is a great deal of shared variance among them. For example, judgments about a juvenile’s Motivation to Accept Intervention, the variable most highly correlated with the disposition variable, were highly correlated with judgments about 12 of the 17 other predictor variables. Similar patterns are found throughout the data set.

Where there is such a high intercorrelation rate among predictor variables, one predicts that the numbers of significant correlations between the disposition outcome variable and the offense and offender predictor variables will decrease if the extent of intercorrelation is statistically controlled, leaving only the unique correlation between each offense or offender variable and the disposition variable that is not otherwise accounted for by the shared correlations.\(^\text{136}\) Multiple regression analyses provide this information.

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133. Bivariate correlations are sometimes referred to as simple correlations or zero-order correlations. See infra note 137.

134. "Significance" is a statistical term, indicating that the relationship between variables is not a chance or random relationship but is a systematic one, at least according to probability distributions. See, e.g., J. Monahan & L. Walker, supra note 20, at 75-81.

135. Negative correlations indicate that there was an inverse relationship between high ratings on these factors and the likelihood that the juvenile would be deemed to need an Out-of-Home/Community placement.

136. See infra note 137.
c. The Multiple Repression Analysis

The 18 offense and offender predictor variables were regressed on the disposition variable. A simultaneous, multiple regression was used.\textsuperscript{137} The results of the analysis are reported in Table 3.

The multiple regression analysis yielded a multiple correlation coefficient of .68. This means that the offense and offender ratings were highly correlated with the disposition decision. These data accounted for nearly 46% of the variance associated with disposition judgments made by the 317 survey respondents.\textsuperscript{138}

As expected, controlling for the effects of the other variables markedly reduced the number of predictor variables which correlated significantly with the disposition variable. Variables for which controlled correlations were not significant, but which had been significantly correlated with disposition when the bivariate correlations were run were Behavioral Compliance in Legal Settings ($r = - .44$, $\beta = - .09$), Involvement in School or Work Settings ($r = - .38$, $\beta = - .04$), Family Caring and Resource Capability ($r = - .30$, $\beta = - .03$),

\textsuperscript{137} The multiple regression procedure provides the overall correlation coefficient between the disposition outcome variable and the 18 offense/offender variables. In addition, the procedure identifies the unique correlation between the disposition variable and each predictor variable. The simple, or bivariate, correlation does not control for the extent to which one predictor variable shares variance with another predictor variable. For example, the Motivation to Accept Intervention variable was highly correlated with most of the other predictor variables. \textit{See supra} text at note 136. The unique correlation between the disposition, outcome variable, and the Motivation variable and every other predictor variable is computed as part of the multiple regression procedure. \textit{See} Table 3 (the unique correlation is represented by the symbol $\beta$). Extensive discussions about the multiple regression statistic are contained in sources cited supra note 122.

\textsuperscript{138} The proportion of variance ($R^2$), which is calculated by squaring the multiple correlation coefficient ($R$), reveals the extent of the total variation, \textit{see supra} note 20, in the dispositional decisionmaking data that is able to be accounted for by the offense and offender data obtained in this study. To put the 46% proportion of variance obtained in this study into a broader perspective, it is useful to realize that social scientists consider 10% of the variance accounted for ($R > .3; R^2 \approx .1$) to be a meaningful proportion of variance to be able to explain. Thus, the extent of variation accounted for in this study indicates that a much greater proportion of variance has been explained in the study of dispositional decisionmaking than social scientists usually are able to explain in complex behavioral contexts such as discretionary decisionmaking. Moreover, the meta-analysis of the twelve disposition studies, \textit{see supra} note 87, yielded an average effect size of .20, half the rate accounted for in the present study. This difference is statistically significant. \textit{See} A. Tomkins, \textit{supra} note 87, at 139-40. \textit{See also id.} at 140-60 (examining whether the difference in effect sizes between the meta-analyzed studies and the present study could have been a function of the number of variables examined).

Even when an adjustment is made to the multiple correlation coefficient to take into account the large number of predictors included in the regression equation (the Adjusted $R^2$), the proportion of variation still remains at a sizeable 42.5%. \textit{See} Table 3. The $F$ test of the regression model confirmed that the model significantly accounted for disposition judgments ($p < .001$). \textit{See} Table 3.
Susceptible to Delinquent Peer Influence \( (r = -0.26, \beta = -0.06) \), Enrolled in School \( (r = -0.25, \beta = -0.06) \), Family Socialization \( (r = -0.23, \beta = -0.10) \), Age \( (r = 0.21, \beta = 0.10) \), Self-Reliance and Autonomy \( (r = 0.20, \beta = 0.08) \), First Delinquency Charge \( (r = 0.19, \beta = -0.02) \), and Seriousness of Charged Offense \( (r = -0.12, \beta = -0.04) \).

Only four correlations remained significant. The variable which correlated most highly with disposition was Motivation to Accept Intervention \( (\beta = -0.37) \). The correlation indicated that there was an increased likelihood that the decision would be made to keep the juvenile In-Home/Community associated with higher ratings on the Motivation variable.

The next highest correlation was with the variable Prior Contacts with the Juvenile Justice System \( (\beta = -0.18) \). The higher the rating on this variable (indicating fewer prior contacts), the less likely it was that the juvenile would be placed Out-of-Home/Community. The correlations for the other two significant variables — Living with Family and Absence of Serious Mental Disorder — were approximately \( \pm 0.10 \). A juvenile who did not live in the home of his or her parents was more likely to be recommended for an Out-of-Home/Community placement, as would a juvenile who displayed signs of a mental disorder.

Where there is a substantial correlation among variables, there is the likelihood that the contribution of certain variables to the explained disposition variation was suppressed by the simultaneous multiple regression procedure.\(^{139}\) This is because the simultaneous regression reveals only the unique proportion of variation accounted for by each variable on the dispositions. A forward multiple regression analysis\(^{140}\) was conducted to determine which of the offense and offender predictor variables contributed significantly to the explained disposition variation. The results of this analysis are presented in Table 4.

The results of the forward multiple regression revealed that there are six variables — Motivation to Accept Intervention, Prior Contacts with the Juvenile Justice System, Living with Family, Family Sociali-

\(^{139}\) See generally J. Cohen & P. Cohen, supra note 122, at 87-91.

\(^{140}\) See F. Kerlinger & E. Pedhauzer, supra note 122, at 285-89. In the forward multiple regression analysis, the predictor variable which is most highly correlated with the outcome variable is identified mathematically and then entered into the regression model as the first variable. Next, the variable which accounts for the greatest proportion of the remaining outcome variable variance, (i.e., the proportion of variance accounted for by the first predictor variable has already been removed) is entered into the regression model as the second variable. Subsequent variables are entered into the model after controlling for the amount of variance already accounted for by previously extracted predictor variables. Typically, additional variables are entered into the model if they reach the .05 level of significance for the increase in the explained proportion of variance that still remains left to be explained.
zation, Age, and Absence of Serious Mental Disorder — that significantly increased the proportion of disposition variation that can be accounted for by offense and offender data. Of the proportion of variation accounted for by the entire 18 variable data set ($R^2 = .46$; see Table 3), virtually all of it (96%) can be accounted for by the six variables.

IV. THE REHABILITATIVE IDEAL AND A DISCUSSION OF THE DISPOSITIONAL DECISIONMAKING STUDY

At the heart of the juvenile justice disposition system is the concept of rehabilitation.141 Judge Ketcham has argued that the juvenile justice system's focus on rehabilitation of the juvenile offender is the quid pro quo for the absence of procedural and substantive due process safeguards in the juvenile justice system. Juveniles exchange the full panoply of constitutional protections provided adults in return for

141. The idea of crime and punishment was to be abandoned. "The child was to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive." In re Gault, 387 U.S. 1, 15-16 (1967). E.g., Zimring, Background Paper, in Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, CONFRONTING YOUTH CRIME 27 (1975); Comment, Rehabilitation as the Justification of a Separate Juvenile Justice System, 64 CALIF. L. REV. 984 (1976).

Rehabilitation may be the goal, but there is some concern over whether it is a realistic one. For example, the National Academy of Sciences Task Force on the Rehabilitation of Criminal Offenders concluded that there is not sufficient evidence to support the proposition that juveniles are especially amenable to treatment. THE REHABILITATION OF CRIMINAL OFFENDERS: PROBLEMS AND PROSPECTS 50-51 (L. Sechrest, S. White & E. Brown eds. 1979). See generally Melton, supra note 11, at 159-66 (review of literature on whether juveniles are amenable to treatment).

the promise of treatment. Ketcham referred to this as the "mutual compact" between the juvenile offender and the juvenile justice system.\textsuperscript{142} In light of this promise for treatment, some have maintained that it permissible to institutionalize a juvenile, or, in fact, impose any lesser disposition only if the purpose of the intervention is to rehabilitate the youngster.\textsuperscript{143}

Although there is evidence to support the proposition that juvenile courts are dispensing with the pretense of rehabilitation and imposing punishments\,\textit{qua} punishments on juvenile offenders,\textsuperscript{144} it is unlikely that the dispositional goal of rehabilitation will be completely displaced so long as there remains an independent juvenile justice sys-
Thus, it was not surprising to find the Supreme Court, in *Schall v. Martin*, continuing to implicitly acknowledge the rehabilitative purposes of the juvenile justice system even as it legitimized the pretrial punishment of juvenile offenders. So long as the remnants of the rehabilitative ideal remain, disposition decisions should be a function of both offense and offender characteristics.

According to the rehabilitative ideal, offender information should be used, along with offense information, since the "services" the court provides to the juvenile should be tailored to the juvenile's individual needs in light of the offense committed. The dispositional decision-making study reported in this Article indicates that offense and offender data are used by juvenile justice professionals, and these data are used in a manner consistent with what would be expected if the rehabilitative ideal continues to influence decisionmaking.

The multiple regression analysis of the disposition data indicated that offense and offender information, together, greatly influence dispositional judgments ($R^2 = .46$; see Table 3). Offense and offender variables also individually influence disposition judgments. Four variables were found to be significantly related to the disposition decision:

145. Several cases have held that there is a right to treatment for institutionalized juveniles. *E.g.*, Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974); Inmates of Boys' Training School v. Affleck, 346 F. Supp. 1354 (D.R.I. 1972); Pena v. New York State Division for Youth, 419 F. Supp. 203 (S.D.N.Y. 1976); Morgan v. Sproat, 423 F. Supp. 1130 (S.D. Miss. 1977). In order to prevent such "deep penetration" into the correctional side of the juvenile justice system, several commentators argue that in-home or community-based dispositions are preferable to out-of-home or out-of-community placements. *E.g.*, NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION, STANDARDS 297 (1980); I. SCHWARTZ, supra note 35. Although these commentators recognize exceptions to the in-home preference should include situations in which the juvenile has committed a violent offense or is a chronic offender, or a serious risk of future harm exists if the juvenile is not removed from the home or community, such situations are relatively rare in comparison to the numbers of juveniles who come into contact with the juvenile justice system. For most juveniles, the policy ought to be to keep the juvenile in his or her home. INSTITUTE OF JUDICIAL ADMINISTRATION/AMERICAN BAR ASSOCIATION, JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO DISPOSITIONS 34 (1980).


> Pretrial detention need not be considered punitive merely because a juvenile is subsequently discharged subject to conditions or put on probation. In fact, such actions reinforce the original finding that close supervision of the juvenile is required. Lenient but supervised disposition is in keeping with the [New York statute authorizing preventive detention] purpose to promote the welfare and development of the child. See also People ex rel. Wayburn v. Schupf, 39 N.Y.2d 682, 690, 350 N.E.2d 906, 910 (1976) ("It should surprise no one that caution and concern for both the juvenile and society may indicate the more conservative decision to detain at the very outset, whereas the later development of very much more relevant information may prove that while a finding of delinquency was warranted, placement may not be indicated.").
when the influence of all the other variables was controlled (see Table 3). The Motivation to Accept Intervention variable was most highly correlated with disposition, followed by Prior Contacts with the Juvenile Justice System. The other two variables were the Living with Family and the Absence of Serious Mental Disorders. Thus, the prior record variable, an offense-related variable, joined three offender variables in correlating significantly with disposition decisions.

The results of the forward multiple regression analysis mostly repeated the result pattern from the other regression analysis. The Motivation and Prior Contacts variables again were most highly correlated with disposition, followed by the Living with Family variable. Variables not previously found to be correlated, Family Socialization and Age, next entered the model. Absence of Serious Mental Disorders was the last variable significantly correlated with disposition. The results of the forward regression, therefore, point to the significant role that offender variables play in making disposition decisions. It also confirms the importance of the legal variable Prior Contacts, but as in the previous analysis, no present offense variable was found to significantly contribute to the disposition decisions.

Together, the results of the statistical analyses provide support for the notion that both offense and offender data contribute to disposition decisionmaking. Although the only legal or offense variable found to significantly correlate with disposition was Prior Contacts, this may have been an artifact of the distribution of Seriousness of Offense data. The vast majority of the offenders were charged with felonies, and there was evidence in the data to indicate that these felonies were serious ones. Without sufficient variation, it is possible that the statistical influence of this variable was underestimated. The lack of variation should not be surprising. If the juvenile justice system is working as both an offense-sensitive and an offender-sensitive system, it is reasonable to assume that without a threshold serious offense there would little reason to consider Out-of-Home/Community dispositional alternatives. Furthermore, since the most extreme serious offenses result in transfer to the criminal system anyway, there

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147. A similar result was obtained by Reay and Millimet in their research. They found that juvenile justice decisionmakers are very likely to recommend placement outside the home if the juvenile offender is seen to be living in a dysfunctional home, is judged to be suffering from a mental disorder, and... had prior contact with the juvenile court system. On the other hand, if the juvenile is living in a fully-functioning home, is not historically or presently showing signs of mental disorder, and... is a first-time offender, it is very likely that it will be recommended or decided that he remain in the family home.

W. Reay & R. Millimet, supra note 90, at 16.

148. See supra note 132 and accompanying text. See generally J. Cohen & P. Cohen, supra note 122, at 64-66 (discussing the issue of underestimated correlations when a variable's value range is restricted).
would likely be a narrow bandwidth of offenses that give rise to post-adjudication, disposition decisionmaking.

V. IMPLICATIONS OF THE STUDY FOR PRACTICE, POLICY, AND FUTURE RESEARCH

Both the general SLU Study and the specific, dispositional study reported here support the hope that social science can provide data useful for understanding juvenile justice decisionmaking in such a way that interventions can be fashioned that would result in decision-making changes. Several commentators have held out the hope that such studies can be used to positively influence the way that decisions are actually made in the system.\textsuperscript{149} Change strategies can be targeted at the individual decisionmaker level or at the systems level.

A. Strategies to Influence Change at the Individual Decisionmaker Level

Once empirical research has "captured" the contribution of offense and offender information to dispositional decisionmaking, it may be possible to control how much weight is placed upon specific variables. For example, Hammond and his colleagues,\textsuperscript{150} as well as other decision researchers,\textsuperscript{151} have shown that individuals' judgments can be

\textsuperscript{149} E.g., Barton, supra note 18; Lamiell, supra note 18. See also Griso, Tomkins & Casey, supra note 18.


changed by getting them to attend to specific decision factors. The implication for juvenile justice decisionmaking is there is a likelihood that decisionmakers could be "educated" as to the implications of their attending to certain types of offense or offender information. For example, although it was not a subject of investigation in the research reported here, it may be that when decisionmakers are trying to decide whether to recommend placement outside the home, they place too much weight on motivation information and not enough on family information. Future research that correlates juvenile justice decision-making information with future juvenile behavioral outcomes could lead to improved prediction as to which juveniles "cannot be rehabilitated in their home or community." In particular, empirical studies could be especially important in facilitating better use of secure institutionalization alternatives. The wisdom of institutionalizing juveniles in secure facilities, where the child experiences great deprivation of liberty, is being questioned. Despite overarching philosophical differences, policymakers and decisionmakers representing virtually the whole array of rehabilitation versus punishment perspectives agree that society has only a limited ability to incarcerate the numbers of juveniles adjudicated delinquent for committing serious offenses. Both those who espouse a more just deserts approach to juvenile crime and those who continue to call for more benevolent treatment for youthful offenders come together in the belief that the juvenile justice system cannot institutionalize great numbers of children. Regardless of whether they arrive at their position on philosophical grounds (e.g., kids should not be placed into institutions), on economic grounds (e.g., institutionalization re-
quires too much in the way of financial resources, both in light of the physical structure expenses and in light of the care costs), or on practical grounds (e.g., there are not enough beds to accommodate all the juveniles that get into non-minor legal trouble), there is a growing consensus to the effect that institutionalization is expensive and that there is a shortage of appropriate facilities and caretakers. Moreover, the more restrictive institutionalization settings are particularly expensive. Thus, most agree that such settings should be used only for the most hardcore, the most severe, the most dangerous, and the most dysfunctional youths.

Considered in this manner, institutionalization can be viewed as a scarce resource, and therefore a resource that should be used only when necessary. Unnecessary placements into institutions are not only inappropriate, they are costly, unnecessary governmental expenditures. Moreover, an inappropriate placement can have the effect of preventing a juvenile who needs services best provided outside of an institutionalized context from having access to the resources to which that juvenile is entitled and needs.

A debate currently exists concerning the precise nature of the juvenile who needs institutionalization. Although there is agreement that a juvenile who is dangerous or who is a serious "career criminal" should be institutionalized, there is less consensus as to which individuals are these type of offenders. Are all juveniles who commit a heinous act per se dangerous? Are those youths who have been ar-

157. I.SCHWARTZ, supra note 35; Schwartz, Steketee & Butts, supra note 155.
158. See, e.g., In re Groves, 93 N.C. App. 34, 376 S.E.2d 481 (1989). The Court in Groves held "that it was error to commit [the juvenile delinquent] to training school without first examining the appropriateness of community-based dispositional alternatives." Id. at 41, 376 S.E.2d at 485. The State's Juvenile Code and its dispositional options reflect a legislative preference for in home/community dispositions. Although the interest of the state and the safety of the public are appropriately considered, the out-of-home/community option is to be used only in "extraordinary" circumstances. Id. at 37-38. Professor Schwartz would have legislatures go even further. He recommends the closing of all state training schools and suggests that, in their place, there should be developed "small, high-security treatment units reserved for youth who commit serious violent crimes and for chronic offenders." These treatment units should house a maximum of 20 youths at a time. I. SCHWARTZ, supra note 35, at 169-70.
159. See, e.g., Barton & Butts, supra note 154. See also Gendreau & Ross, Revivification of Rehabilitation: Evidence from the 1980s, 4 JUST. Q. 349 (1987); Greenwood, Promising Approaches for the Rehabilitation or Prevention of Chronic Juvenile Offenders, in INTERVENTION STRATEGIES FOR CHRONIC JUVENILE OFFENDERS 207 (P. Greenwood ed. 1986).
160. See, e.g., Barton & Butts, supra note 154 (in-home placement, intensive supervision program was as effective — or ineffective — as institutionalization and was approximately one-third the cost).
161. See generally I. SCHWARTZ, supra note 35; Schwartz, Steketee & Butts, supra note 155.
rested more than, say, five times within a two year period properly labeled career criminals? What is the number of arrests or adjudications that serves as the threshold for the label of career criminal? Does it make a difference if a child has been adjudicated delinquent on charges of vandalism as opposed to armed robbery?

Both policy debate and juvenile justice decisionmaking could be improved if social scientists were able to distinguish which children would continue to be dangerous in the future and which children would commit crimes as part of a lifelong career of violence and wrongdoing from those which act-out in a time-limited, adolescent fashion. If this information were available, decisions could be structured to ensure accurate dispositions; only those who needed out-of-home placements would receive them. Even those youngsters who did need to be removed from their homes should not be placed in the deeper-end, secure facilities unless it could be demonstrated that there were sufficient resources available to treat the institutionalized offender. Unfortunately, the clinical literature does not provide much useful information beyond common sense; we have little basis to assess whether children are being appropriately placed into secure facilities. Indeed, the best estimate would be to assume that more children are locked-up than need to be.

Despite the lack of firm clinical data, the approach taken in conducting the research reported here could help address these issues. It has demonstrated the utility of studying decisionmakers' decisionmaking and judgment strategies rather than concentrating solely upon the offenders' characteristics. Decisionmakers' perceptions as to which youths deserve or are in need of institutionalized care are as important in determining who will receive an out-of-home placement as are the "realities" of the youth. If we can systematically identify the characteristics of kids who are perceived by juvenile justice decisionmakers to be in need of secure, out-of-home placements, then we can address whether the information to which they attend is allowing them to make the kinds of discriminations in judgment that are required in scarce resource systems. Although such research has not yet been conducted, there seems to be great benefits to doing so in the future.

Another avenue of exploration concerns the extent to which of-

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162. See cases cited at note 145 (if a juvenile is institutionalized, the juvenile has a right to receive treatment in the institution).


fense and offender information interact with each other. For example, the Motivation variable was shown, by itself, to account for a considerable proportion of disposition variation (29.5%; see Table 4) in the study. Although the Motivation factor appears to be solely an offender characteristic, it is possible that it communicates offense-related information to the decisionmaker. It may be that a display of motivation to change, a sense of guilt or remorse, respect for authority and authority institutions such as the courts, and a willingness to accede to adult intervention — all major components of the Motivation to Accept Intervention construct\textsuperscript{165} — will provide a framework through which a juvenile justice decisionmaker will "see" the juvenile's offense. Some criminologists\textsuperscript{166} have hypothesized that the amalgam of offense and offender information will coalesce in a courtroom's initial impression formation of the juvenile offender and prompt the decisionmaker to make an assessment of the "moral character"\textsuperscript{167} of the juvenile. The moral character "frame" operates in a manner similar to a light filter; information that is compatible is let in, but incompatible information is shielded out. Consequently, initial impressions often lead to pervasive judgments about the extent to which the juvenile-in-question has entered into the world of crime.\textsuperscript{168}

Psychologists recognize the crucial importance of cognitive frameworks for the perception and processing of information.\textsuperscript{169} It is reasonable to expect that viewing subsequent information in light of an assessment of the juvenile's motivation will lead a decisionmaker to perceive the juvenile in a different "light" than if the juvenile's offense or family situation was assessed first. This is why the legislature can be so influential in shaping juvenile justice decisionmaking. For

\textsuperscript{165} See Grisso, Tomkins & Casey, supra note 18, at 422-25.
\textsuperscript{166} E.g., M. Bortner, supra note 12; R. Emerson, supra note 12.
\textsuperscript{167} R. Emerson, supra note 12.
\textsuperscript{168} See, e.g., Terry, supra note 87.
example, if the legislature draws a decisionmaker’s attention to family information\textsuperscript{170} by calling for a family-focus in juvenile justice considerations, it may influence the decisionmaker’s consideration of the other information that is received.\textsuperscript{171}

B. Strategies to Influence Change at the Systems Level

Field research conducted as part of the SLU Study,\textsuperscript{172} as well as that conducted by others,\textsuperscript{173} suggests that there is a tendency toward homogeneity of decisionmaking within courts. Most decisionmakers within a particular court tend to have a very similar outlook about the types of children that are causing problems, as well as the types of remedies that are likely to work with them. Although there are certainly differences within courts, there seems to be less within-court variation than there seems to be inter-court variation. How do courts, as institutions, get so many of their professionals to see juvenile justice issues in such a similar manner?

The most likely explanation is institutional socialization.\textsuperscript{174} Decisionmakers, particularly non-judges without ultimate dispositional authority, learn what the “expected” decisions are for certain juveniles. A learning process occurs with most organizationally “successful” professionals learning to identify which children will receive which dispositions. Such a socialization process is a plausible explanation for the high correspondence rates that have been found by researchers between probation officers’ dispositional recommendations and judges’ ultimate decisions.\textsuperscript{175}

Future empirical research efforts could uncover the types of pressures that could be applied to influence juvenile court systems to


\textsuperscript{171} See infra notes 177-82 and accompanying text.

\textsuperscript{172} Grisso, Tomkins & Casey, supra note 18, at 412-13.

\textsuperscript{173} E.g., M. Bortner, supra note 12; R. Emerson, supra note 12.


\textsuperscript{175} E.g., M. Bortner, supra note 12 (95% correspondence); Ariessohn, supra note 87 (80% correspondence). A plausible alternative hypothesis for the large correspondence is that judges rely on probation officers because defense counsel abdicates its responsibility for providing alternatives to the probation officer’s recommendations. See Roche, Juvenile Court Dispositional Alternatives: Imposing a Duty on the Defense, 27 SANTA CLARA L. REV. 279 (1987). The result is that the probation officer’s recommendation is the only viable alternative before the juvenile court.
change their decisionmaking tendencies. Given that decisionmakers do appear to "learn" the rules of decisionmaking and recognize which values are most important within their courts, it would seem possible to intervene for the purposes of having a smaller proportion of juveniles placed outside the home or community by establishing incentives for decisionmakers to learn new rules, by focusing them on certain factors,\(^{176}\) by steering them away from certain other factors, and by implementing reward structures for promoting a different outcome distribution of the numbers of juveniles who are removed from their families or communities.

One possible approach to such a systems level intervention is through the use of legislation. In Nebraska,\(^{177}\) as well as in other jurisdictions,\(^{178}\) new, broad policies have been enacted explicitly calling for the use of in-home/community options over options that result in removal.\(^{179}\) The advantage of comprehensive policies such as Nebraska's Family Policy Act of 1987\(^{180}\) is that they have the potential of fashioning a change in social views and expectations. If the juvenile justice and the child/family social service systems were to adopt a philosophy of non-removal except in the most extreme circumstances (and then put that philosophy into practice), juvenile justice decisionmakers, as would all child/family service decisionmakers, would likely begin to focus on those aspects of the offender that would most efficiently assist them in making the socially-preferred choice. The type of wholesale, social change that I am suggesting might occur in the future did in fact take place during the development of the juvenile justice system at the turn of the century. The juvenile justice philosophy was not only a reflection of the "progressive" times,\(^{181}\) it also helped to alter social norms about treating juvenile offenders.\(^{182}\) Thus, changes in laws can synergize broad social reforms and have considerable impact on individual decisionmaking.

\(^{176}\) See supra text accompanying notes 169-71.


\(^{179}\) Nebraska's law, for example, not only applies to all juveniles who "have violated the laws" but also applies to any child or family who requires "assistance from a department, agency, institution, committee, or commission of state government" "[E]very reasonable effort" must be made to keep the juvenile in his or home or "as close to the home community . . . as possible." Neb. Rev. Stat. § 45-532(2)(1990).

\(^{180}\) See supra note 177.

\(^{181}\) See, e.g., R. MenneI, supra note 2; A. Platt, supra note 1; S. Schlossman, supra note 1. See generally Levine & Levine, supra note 10.

System-level intervention and individual-level interventions are not mutually exclusive, however. The goals underlying the recent enactment of public policies that call for restricting out-of-home placement to a few specific juvenile delinquents will be furthered if social scientists can aid juvenile justice professionals in focusing on the information that will allow these decisionmakers to make the dispositional discriminations required to meet policy goals. This assistance is especially valuable in the period immediately after laws are changed when it is necessary for decisionmakers to change their judgment practices.

VI. CONCLUSION

The data reported from the empirical study of dispositional decisionmaking indicate that both offender information and offense information are being appropriately used in making disposition decisions. The study demonstrates the potential utility of using empirical methods to address policy and legal issues in the juvenile justice system.

Juvenile justice research does not need to rely solely on archival, bureaucratic data, nor does it need to focus only on the juvenile. Both the juveniles and the decisionmakers are important data sources. Regardless of whether the advocates of punishment or the advocates of rehabilitation prevail in the short term, and regardless of whether the two perspectives continue to co-exist in reality, empirical studies can help to shed light on the information being used by juvenile justice professionals in their decisionmaking activities.
VII. APPENDIX

TABLE 1
EFFECT SIZES, SAMPLE SIZES, AND NUMBER OF PREDICTOR VARIABLES INVESTIGATED FOR THE META-ANALYZED, DISPOSITION STUDIES (N = 12)

<table>
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<tr>
<th>Study</th>
<th>Effect Size</th>
<th>N</th>
<th>No. of Predictor Variables</th>
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</thead>
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<tr>
<td>Bortner, supra note 12</td>
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<tr>
<td>Carter, supra note 87</td>
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<td>Cohen, supra note 87</td>
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<td>Montgomery County</td>
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<tr>
<td>Horwitz &amp; Wasserman, supra note 17</td>
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<tr>
<td>Kowalski &amp; Rickicki, supra note 87</td>
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<td>6</td>
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<tr>
<td>Phillips &amp; Dinitz, supra note 87</td>
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<td>Terry, supra note 87</td>
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<td>Thomas &amp; Cage, supra note 87</td>
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<td>1,522</td>
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*Effect sizes listed are the reported, unadjusted multiple correlation coefficient, or its equivalent, unless otherwise indicated.

b Carter investigated both the probation officer's recommendation and the judge's decision. The correlation reported was the average of the canonical correlations (from the discriminate analyses) for the two groups (.840 and .842, respectively).

c This is a conservative (high) estimate of the number of non-status offender cases for which there was official treatment. Carter did not provide the exact figure; he did indicate that the total number of non-status offenders was 199. The sample size used here presumes a minimum number (i.e., 9) of these juveniles were unofficially handled. In fact, fewer juvenile cases probably were included in the discriminant analysis of non-status, officially-handled cases.

d Phillips & Dinitz used discriminate analysis in their study. An effect size was computed by taking the square root of the proportion of the explained variance accounted for by the relation between the independent variables and the discriminate functions. See L. Marascuilo & Levin, Multivariate Statistics in the Social Sciences: A Researchers Guide 320-22 (1983).

e Terry reported 12 bivariate correlations (tau). The average correlation was computed, and it is this value which is reported.

f Thomas and Cage reported nine bivariate correlations (Cramer's V). The average correlation was computed, and it is this value which is reported.
### TABLE 2: MEANS, STANDARD DEVIATIONS, AND INTERCORRELATIONS FOR ALL VARIABLES (N = 317)

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*Note: Item means substituted for missing data.

*p < .05; **p < .01; ***p < .001.
### TABLE 3
MULTIPLE REGRESSION FOR OFFENSE/OFFENDER
CHARACTERISTICS AND DISPOSITION
DECISIONS (N = 317)

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<tr>
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<th>Factor Variables</th>
<th>Description Variables</th>
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<td><strong>Self-Reliance and Autonomy</strong></td>
<td><strong>Age</strong></td>
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<tr>
<td><strong>Prior Contacts with Juvenile Justice System</strong></td>
<td><strong>Absence of Serious Mental Disorder</strong></td>
<td><strong>Sex</strong></td>
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<td><strong>Family Caring and Resource Capability</strong></td>
<td><strong>Susceptibility to Delinquent Peer Influence</strong></td>
<td><strong>Race</strong></td>
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<td><strong>Behavioral Compliance in Legal Settings</strong></td>
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<td><strong>Seriousness of Charged Offense</strong></td>
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<td><strong>Self-Reliance and Autonomy</strong></td>
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</tbody>
</table>

**Summary Table**

<table>
<thead>
<tr>
<th>Multiple R</th>
<th>R²</th>
<th>df</th>
<th>SS</th>
<th>MS</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>.6766</td>
<td>.4578</td>
<td>18</td>
<td>36.06</td>
<td>2.00</td>
<td>13.97***</td>
</tr>
<tr>
<td>.4250</td>
<td>.3785</td>
<td>298</td>
<td>42.70</td>
<td>.14</td>
<td></td>
</tr>
</tbody>
</table>

*p < .05; **p < .01; ***p < .001.
### TABLE 4
FORWARD MULTIPLE REGRESSION FOR ALL 18 PREDICTOR VARIABLES AND DISPOSITION DECISIONS (N = 317)

<table>
<thead>
<tr>
<th>Step</th>
<th>Variable</th>
<th>Multiple $R$</th>
<th>$R^2$</th>
<th>$\Delta R^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Motivation to Accept Intervention</td>
<td>.543</td>
<td>.295</td>
<td>.295***</td>
</tr>
<tr>
<td>2.</td>
<td>Prior Contacts with Juvenile Justice System</td>
<td>.611</td>
<td>.373</td>
<td>.078***</td>
</tr>
<tr>
<td>3.</td>
<td>Living with Family</td>
<td>.628</td>
<td>.394</td>
<td>.021***</td>
</tr>
<tr>
<td>4.</td>
<td>Family Socialization</td>
<td>.641</td>
<td>.411</td>
<td>.017**</td>
</tr>
<tr>
<td>5.</td>
<td>Age</td>
<td>.652</td>
<td>.426</td>
<td>.015**</td>
</tr>
<tr>
<td>6.</td>
<td>Absence of Serious Mental Disorder</td>
<td>.660</td>
<td>.440</td>
<td>.009*</td>
</tr>
</tbody>
</table>

Note: Criterion for inclusion was $p < .05$ for $\Delta R$.

*p < .05; **p < .01; ***p < .001.