

Summary N169-092

OFFENDER PARTICIPATION IN JUVENILE COURT DECISIONS

by

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NCJ-000487

## OFFENDER PARTICIPATION IN JUVENILE COURT DECISIONS\*

The Task Force on Juvenile Delinquency of the President's Commission on Law Enforcement and Administration of Justice called attention to the "increasing feeling on the part of sociologists and social welfare people that the informal procedures (of the juvenile court), contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent."<sup>2</sup> In explaining the basis for this feeling, they called attention to the "often observed sense of injustice engendered in the child by seemingly allpowerful and challengeless exercise of authority by judges and probation officers, based, in the child's eyes, on inconsistency, hypocrisy, favoritism, and whimsy;"<sup>3</sup> and also to the "atmosphere of the proceedings, which instills in the child a feeling that he is being treated as a 'nonperson' incapable of making decisions as to his own welfare and future, and engenders in him a regression and diminution of self-respect."<sup>3</sup>

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\* This paper is based upon a report<sup>1</sup> made to the Department of Justice on a study of the feasibility of offender participation in the dispositional decision of the juvenile court which was supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Office of Law Enforcement Assistance Administration under its ACORN Project. Their support does not necessarily indicate their concurrence in the statements or conclusions contained in the report or in this paper.

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The Supreme Court decision In re Gault in 1967 sought to correct the illegal features of the informal procedures of the juvenile court by insisting upon the right of due process for those youths who face the possibility of commitment to a correctional institution. But the implementation of due process in the juvenile court does not necessarily eliminate all those features of the court system which produce feelings of injustice, depersonalization, and the diminution of self-esteem. These system effects must also be modified or removed so that rehabilitation efforts will not be impeded by them.

The idea that delinquent acts are to some extent related to the way the systems and subsystems of social control impinge upon the delinquent's and the pre-delinquent's life is not new. Frank Tannenbaum pointed out as early as 1938 that "the development of a delinquent career involved being processed by various agencies, labeled as a delinquent, and stigmatized. These events ascribe to the individual a social role, change his public image and self-conception, and generate a set of appropriate responses."<sup>4</sup>

Perhaps nothing can be done to eliminate completely the stigmatization of those youths with whom the courts must deal,\* but it does not follow that the influence of this stigmatization cannot be moderated or softened by strategies and procedures which humanize the court process and enhance the offender's sense of justice and self-worth.\*\* Conceivably, the court experience could be a creative rather than a degrading and destructive one for juvenile offenders. If courts took more seriously the ancient belief in the dignity and worth of human beings and demonstrated more faith in the human potentialities of socially deviant

youths by instituting positive procedures for social control which do not intimidate or demean youths, perhaps some of the negative effects of stigmatization could be eliminated and the goal of the juvenile court to rehabilitate youth could be realized in a higher percentage of cases.

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\* Various strategies for diversion, if implemented, might reduce the numbers of youths that are marred by the stigma. One such strategy is the youth services bureau idea recommended by the President's Commission on Law Enforcement and Administration of Justice. Another is the policy of "judicious nonintervention" which Professor Lemert advocates for the juvenile court. He recommends that it be restricted to a court of last resort by requiring that all other remedies be exhausted before a case could be considered. Such a policy would not only reduce the numbers of youth stigmatized by the court process; it would also provide the court with the opportunity to become effective in dealing with those youths who are finally referred to it.<sup>5</sup>

\*\* There are of course other ways to moderate the effects of stigmatization which lie beyond the immediate concerns of this paper, e.g., making police and court records actually, and not merely theoretically, confidential.<sup>6</sup>

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It was to explore this possibility that a demonstration project was conceived involving offender participation in the dispositional decision of the juvenile court. The main hypothesis underlying such a project is that giving youths the opportunity of participating in a

meaningful way in the decision which so vitally affects their lives will enhance their sense of justice and self-worth and thus aid in the process of rehabilitation. It is perhaps the experience of having been excluded from participation in the decision of the court which arouses in youth the sense of unfairness about the court process and dispositional decision. The feeling of being a pawn or a puppet which others manipulate is dehumanizing and occasions frustration and resentment in any sensitive human being, not least of all adolescents in the process of achieving maturity. A former juvenile court judge believes that "if there is one impression that makes further treatment of the young person almost impossible it is that of having been unfairly treated."<sup>7</sup> If permitting youths to participate in the dispositional decision would eliminate the sense of unfairness in the minds of youths, then presumably part of the effect of stigmatization would be erased and some obstacles removed from the path toward rehabilitation.

In order to determine whether such a demonstration project were possible and might yield measurable results in terms of attitudinal and behavioral changes, a feasibility study was undertaken with the cooperation of the officials of a suburban juvenile and domestic relations court serving a large metropolitan county. More precisely the objectives of the feasibility study were to determine:

1. If offender participation in the dispositional decision is possible in the light of the law and of court procedures;
2. Whether juvenile offenders consider participation desirable;

3. The points in the court process where participation is possible, and the criteria for participation in terms of the capability of youths and their acceptability to the court officials;

4. The kinds of procedures and instruments for participation that would be necessary and practicable for such participation;

5. The appropriateness of the procedures and instruments for participation by testing them with a small number of youth during their court experience and by evaluating the results; and

6. Some of the major factors to be considered in the design of a demonstration project that would determine the value of offender participation.

To achieve these objectives, personnel involved in the feasibility study interviewed judges and other juvenile court officials; designed a self-administering questionnaire which was given to probationers and to youths in two state institutions regarding their court experience and their attitudes toward the concept of offender participation; developed in consultation with court officials the criteria for the the points of participation in the court process; designed procedures and instruments for participation; tested these procedures and instruments during a two week period with juveniles who were being processed by the juvenile court; observed the implementation of these procedures; designed a questionnaire for use with the juveniles who had participated in the test of the procedures and instruments of participation to gain their perceptions of the process and to evaluate their experiences; interviewed court officials following the implementation of the procedures; and evaluated the results of both the questionnaires and the interviews.

In this paper, the following significant elements of the feasibility study will be discussed: first, the results of the survey questionnaire administered to delinquents on probation and in state institutions; second, the procedures and instruments of participation designed for use in the feasibility study; and third, the significant findings resulting from the testing of these procedures and instruments at three points in the court process.

#### DELINQUENTS' VIEWS OF THE COURT PROCESS AND OF OFFENDER PARTICIPATION\*

A self-administering survey questionnaire<sup>8</sup> was given to forty (40) youths who had been placed on probation by the court in which the feasibility study was being conducted and to sixty (60) youths placed in two institutions by other juvenile courts of the state. The opinions received provide valuable insights into the perceptions of these youths regarding the court process and their attitudes toward the concept of offender participation. The juveniles who participated were selected on the basis of availability rather than by a scientifically drawn sample; the results, therefore, should not be viewed as necessarily representative of the delinquent population.

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\* The subject matter of this and the last section is based upon data collected and analyzed by Dian Callaghan, a member of the technical staff at Research Analysis Corporation.

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## 1.0 ATTITUDES TOWARD THE COURT PROCESS

A majority of the youths surveyed agreed with the following criticisms of the court process (see Figure 1)\*:

1. The hearing was not understandable (56%);
2. Youths are not given a chance to tell their side of the story (61%);
3. The judge did not get all the facts (62%); and
4. He could have made a better decision (52%).

A substantial minority of the respondents felt that:

1. The judge was not sincerely concerned about them (49%);
2. The trial was unfair (39%);
3. The decision was unfair (40%); and
4. The judge was too strict (40%).

Insert →  
Figure 1

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\* The Figures (with the exception of Figure 3) and the Table were prepared by Dian Callaghan.

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The institutionalized youth have a much more negative attitude toward their court experience than the youth on probation. As Figure 1 indicates, 55% of them felt that both the trial and the decision were unfair. This is not surprising since they had received a harsher disposition from the court. On the other hand, judging by the fact that 55% of the probationers thought that youth do not have a chance to tell their side of the story, and that 53% felt that the judge did not get all the facts in the case, it is surprising to find that only 30% of these probationers thought that their trial was unfair and 31% that the decision



was unfair. Possibly, their feelings about the trial and the decision were affected not so much by their dissatisfaction with their court experience as by their relief that the judge had placed them on probation rather than committing them to a state institution.

Due to the limitations of the self-administering survey questionnaire, it was not determined whether the sense of unfairness about the trial and the decision resulted from being excluded from the decision process of the court. However, the data collected by the survey instrument did make clear that the concern and interest shown by the judge, as perceived by youths, significantly influenced their attitudes regarding the fairness of the trial and the decision (see Figure 2). Seventy-two (72%) percent of those who thought their trial and decision were fair felt that the judge was sincerely concerned about them; while of those who said their trial and decision were unfair only fourteen (14%) percent thought the judge had shown any personal interest in them.

Insert →  
Figure 2

Presumably, the implementation of a formal procedure which afforded youths an opportunity for participating in the decision-making process would give them a greater sense of the judge's concern and interest in them as well as providing them with a self-enhancing role in the court procedures. In those instances where the judge could not, for legal or other compelling reasons, follow the youth's suggestion regarding disposition, the judge's explanations of his reasons for setting aside the youth's recommendation would probably accentuate in the juvenile's mind the judge's interest and thus mitigate any harmful effects which might otherwise follow from the rejection of his recommendation.

### Attitudes Toward the Concept of Offender Participation

The delinquent youths were also asked in the survey questionnaire whether "young people over 13 years of age should be given an opportunity to participate in making a decision in their own case." Eighty-two (82%) percent of the respondents were in favor of offender participation. Some of those who disagreed with the idea did so on the basis that it is the judge's responsibility to make decisions. Had they understood that the participation would be in the form of a recommendation to the court, probably a higher percentage of youths would have concurred with the idea based on their written responses.

In Table I, the youths' reasons for agreeing and disagreeing are summarized. One youth put his reason quite succinctly and eloquently: "It just seems fair to have us participate in our own cases." This represents one of the four main reasons. Two other major categories of responses are closely related to the idea of fairness—i.e., "they are responsible and mature enough to make their own decisions" and "it would improve the judge's decision."

Insert →  
Table I

Clearly, the concept of offender participation was overwhelmingly accepted by the respondents, making it quite evident that these youths were interested in becoming active participants in the court process. Conceivably, their participation in the court decision-making process could be a decisive element in their perception of the fairness of the trial and the decision, and perhaps also in the successful treatment of their deviant behavior in some cases.

## THE PROCEDURES AND INSTRUMENTS FOR PARTICIPATION

To determine the feasibility of offender participation in the juvenile court process, three points were selected for developing and testing procedures and instruments of participation (see Figure 3).<sup>9</sup> The first two points related to two junctures at which dispositional decisions are made by the court. The third point expanded the idea of offender participation beyond the dispositional decision to include the decision process relating to the determination of the conditions of probation.

Insert →  
Figure 3

The first point occurred at the first court hearing. After deciding that a social history was not required, the judge recessed the hearing to give time for a youth to fill out a form on which he was asked to write his recommendation for disposition and the reason he thought such a disposition was fair and reasonable. The form provided space for the youth's own recommendation or for his selecting from among a number of traditional court alternatives.

When the hearing was reconvened, the youth's recommendation was considered by the judge and discussed. Where the judge made modifications in the youth's recommendations, he gave explanations for the changes. The changes made by the judge in all cases were minor and were mainly occasioned by the necessity of making the dispositional decision uniform in those cases where there were multiple offenders implicated in one complaint petition.

Participation at point 2 involved those cases in which the judge determined at the first hearing that he needed a social history. These youths were also given a form to be filled out and returned when they

appeared for the second hearing. This form provided an opportunity for the youths to write their own social histories and to recommend a dispositional decision. As in the case of the first point of participation, youths were asked to think up their own disposition or to choose from among traditional alternatives (enlarged in this instance to include a wider range of possibilities) and to provide their reasons for thinking that such a disposition was fair and reasonable.

As in point 1, the recommendation provided the basis for personal interaction between the judge and the youth, and in the two instances where the judge made minor changes in the recommended decision, explanations were given apparently to the youths' satisfaction.

The third point of participation involved probationers making recommendations regarding the conditions of their probation. As in the above instances, a form was provided on which a probationer could write his own recommendations regarding such matters as the frequency of visits to see the probation officer, curfew hours on weekdays and weekends, limitations on association with peers, and other restrictions.

These recommendations were discussed with the probation officer and agreements reached. The form provided a basis for meaningful discussions between the probationer and his probation officer and served the additional function of establishing rapport more quickly.

A natural objection to the use of a written form as the method of participation is that it makes participation less personal. In every case, however, the written recommendation became the basis for interaction between either the judge and the juvenile or the probation officer and the probationer. The major advantage of the written form

is that it gives youths a meaningful way to participate. Although some judges who were interviewed in the course of the feasibility study indicated that they have endeavored in their dealings with youths to involve them in the decisions of the court, their efforts, as reported, have not been productive largely because youths, like many adults, have great difficulty responding within the court setting. The usual response a judge receives to a question regarding what the youth thinks should be done is an embarrassed shrug of the shoulders or a painful silence. Youths need a more structured situation and a less threatening environment in order to respond meaningfully. Written forms provide the necessary handles for rational response and open up the possibility for meaningful interaction between court officials and juveniles on the basis of the written responses.<sup>10</sup>

#### SIGNIFICANT FINDINGS FROM THE FEASIBILITY STUDY

Given the broad discretionary powers of most juvenile court judges in respect to both court procedures and treatment decisions, there was little doubt from the start regarding the legal feasibility of offender participation in the dispositional decision of the court. Not all juvenile court judges, however, have the interest or the willingness to experiment with novel procedures. So the issue of legal feasibility is not critical. The real issue is the procedural feasibility and the personal preference and willingness on the part of the judge to use such procedures. The two judges of the court where the feasibility study was conducted were not only willing to permit the study but indicated strong support for a demonstration project to determine the value of offender participation for attitudinal and behavioral modifications.

The issue of whether youths are interested in and capable of participation was resolved by the feasibility study so far as suburban youths are concerned. Both judges stated that they were favorably impressed by the quality of the recommendations submitted by the youths. They thought that the youths' written statements about their background, their problems, and their feelings regarding their offenses were helpful in making suitable dispositions. Some alterations would undoubtedly need to be made in the procedures and instruments of participation for those inner city youths whose reading and writing skills are severely retarded if offender participation as defined by the feasibility study were to be introduced into a city court.

More significant than these findings, so far as the basic assumption of the study are concerned, were the reactions of the test group of juveniles of offender participation. All the youths who participated thought it was a good idea to make a recommendation to the judge. In addition, seventy (70%) percent felt that if all youths over 13 years of age were given the same opportunity, it would help prevent them from getting into trouble again. In answer to the question of why they thought it would help, there were responses which suggest that attitudinal changes and cognitive moral development may have occurred as a result of participating in the decision process of the court.

The following responses give the impression that some attitudinal changes may have occurred or would occur:

"Because it would make them feel like they were getting a fair shake. The other way, they would hate the judge and the court and would get into more trouble. Now they feel like the court treated them well."

"It might. It would give them the feeling that the judge cared about them. At any rate, it couldn't hurt."

"Most of the teenagers are prejudiced against police, judges, or anything to do with law. It would change their minds."

Some youths registered reactions which suggest that the experience caused them to reflect on the moral implications of their behavior, possibly even to the point of stimulating cognitive moral development, as in these responses:

"It kinda makes you feel that what you did was really serious and that your act is given your serious consideration."

"Writing a recommendation forces the juvenile to think seriously about the crime he is being charged with and about how it will affect his future."

"If they can recommend a decision to the judge, they can prove to themselves that they can stay out of trouble."

"It makes them think deeply about what they have done and helps them to further realize their relation with society."

And in these in answer to another question:

"... It makes them see that their actions do not pertain to them alone, but also concern the society in which they live."

"... If I got into trouble again I would feel as if I'd let the court down, after they had been fair to me. Now if I didn't get to make a recommendation to the judge, and he gave me a harsh sentence, I would feel hate for the court and such, and I would show the 'I'll show them' attitude, and I think I might not even care then, but now I feel pretty good about it."

Admittedly, these do not prove that actual attitudinal changes or cognitive moral development took place. Tests would need to be administered to youths before and after their court experience in order to validate the hypothesis that offender participation was productive of such socializing effects. But the feasibility study did reveal that such changes are possible where participation in the decision-making process is given to youths.

The element of fairness or justice was mentioned a number of times by these respondents, thus giving limited support to the assumption that it is the opportunity to participate itself which affects youths' attitudes toward the fairness of the trial and the decision. The following responses to the question of why participation would "help prevent youths from getting into trouble again" highlight this emphasis on justice:

"Because they had their chance to be fair to themselves."

"Because it would make them feel like they were getting a fair shake."

"If the youth in question were to recommend the decision to the judge, he would realize that to live in a free society requires rational thinking, and that by making the recommendation, the judge could judge on the youth's opinion of himself, his actions, and his life."

And these in response to the open-ended question:

"The process of allowing the defendant to make a recommendation to the judge will not insure that all defendants will receive the right sentence, but it will increase the percentage of just (as in justice) sentencing...."



"I was completely satisfied."

"I feel that it is only fair for the youth involved to be able to analyze what he has done and what motivated him to do it. It gives him a chance to make a fair recommendation and to present his feelings toward the situation."

"Like I said before, I liked it because I was able to make my own recommendation and I thought the court, the judge, and my counselor treated me fair. If I got into trouble again I would feel as if I'd let the court down, after they had been fair to me...."

Not all youths agreed with the sentiments expressed above. A small minority responded negatively to the question regarding offender participation by all youths 13 years of age and above. Typical of these negative responses are the following:

"Some people never learn how wrong it is to commit a crime."

"I think it all depends on the person, because some would be sincere but some would get off easy and they would think they would get off easy again."

And one lad in response to the open-ended question revealed a rather highly developed cynicism for his years in writing:

"While it is no 'miracle system,' the idea of having the youth write a recommendation has considerable merit. The only real problem I noticed was that I sensed, I can see how others might also sense, that the judge wanted to see what you wrote, but that he had very little intention of following it unless it coincided with his own inclinations.

I honestly didn't feel any direct connection with his decision. Thank you for the opportunity to express myself."

These responses, although representing a very small minority, help to keep one aware of the ambiguous character of all human endeavors. Furthermore, one would naturally suspect a sample of opinion which produced unanimous agreement on this or any other issue. Yet it is of considerable interest and importance to recall that seventy (70%) percent thought that the opportunity to participate would help prevent youths from getting into trouble again. This, it would appear, constitutes sufficient evidence to warrant further experimentation and research on involving youths in the dispositional decision of the juvenile court.

The study demonstrated that given the interest and the willingness of juvenile court judges, a research project on offender participation is feasible and that youths are both capable of and interested in participation. It did not prove that such participation would enhance the self-worth of youths or moderate the negative effects of stigmatization from being processed through the juvenile court. It did, however, provide strong intimations that such results might be realized through the implementation of procedures and instruments for offender participation.

It may be questioned whether such an experience in the court, representing only an isolated incident within the context of an alienated and rebellious youth's life, would exercise a decisive enough influence to change the behavior patterns of such a youth. But who can tell in advance what the influence of a self-enhancing experience will be? Quite

possibly, it could set in motion a chain of events in some youths which could prevent them from turning to or continuing in crime as a way of life. At least it appears to promise better results than the present methods of processing youth in the juvenile courts. Its value, therefore, should be demonstrated by an experimental project conducted in both a suburban and an urban court.

One could contend that the humanization of the processes of dealing with persons is a good in and of itself, but it is the practical consequences of treating individuals as persons which must be demonstrated, it appears, in order to make the point convincing.

## REFERENCES

<sup>1</sup>Buchwalter, Omar R., Dian Callaghan, and Stephen B. Forman, A Feasibility Study of Offender Participation in the Dispositional Decision of the Juvenile Court (The Research Analysis Corporation, McLean, Virginia, 1969, hereafter referred to as A Feasibility Study ).

<sup>2</sup>President's Commission on Law Enforcement and Administration of Justice, Task Force on Juvenile Delinquency, Task Force Report: Juvenile Delinquency and Youth Crime (U. S. Government Printing Office, Washington, D. C., 1967), p. 31.

<sup>3</sup>Ibid. See also Matza, David, Delinquency and Drift (John Wiley & Sons, Inc., New York, 1964), p. 101ff; and Emerson, Robert M., Judging Delinquents (Aldine Publishing Co., Chicago, 1969). In his chapter on "Courtroom Ceremony and Interaction," Emerson describes the varying demeanor of the judge with different types of delinquents. It is hard to escape the conclusion from his description that the more friendly and informal the judge became, the more demeaning and dehumanizing were the effects.

<sup>4</sup>Tannenbaum, Frank, Crime and Community (Columbia University Press, New York, 1938), pp. 8-22.

<sup>5</sup>Lemert, Edwin M., "The Juvenile Court--Quest and Realities" in the Task Force Report: Juvenile Delinquency and Youth Crime (U. S. Government Printing Office, Washington, D. C., 1967), p. 92f.

<sup>6</sup>See Handler, Joel F., "The Juvenile Court and the Adversary System: Problems of Function and Form," Wisconsin Law Review, 1, 13f (1965), for an account of the numerous ways confidentiality is violated.

<sup>7</sup>Downs, William T., "Juvenile Courts and the Gault Decision: An Invitation to Innovation," Children, 15: 3, 93 (1968).

<sup>8</sup>A sample of these questionnaires are contained in A Feasibility Study, Appendix A.

<sup>9</sup>These procedures and instruments of participation are included in Ibid., Appendix C.

<sup>10</sup>For another description of probationer participation in setting the conditions of his probation see Bartlett, Robert M., "Involving the Youth with the Adult in the Probation Process," Crime and Delinquency (October 1969). He reports similar success in promoting interaction and speedier rapport between probation officers and probationers.

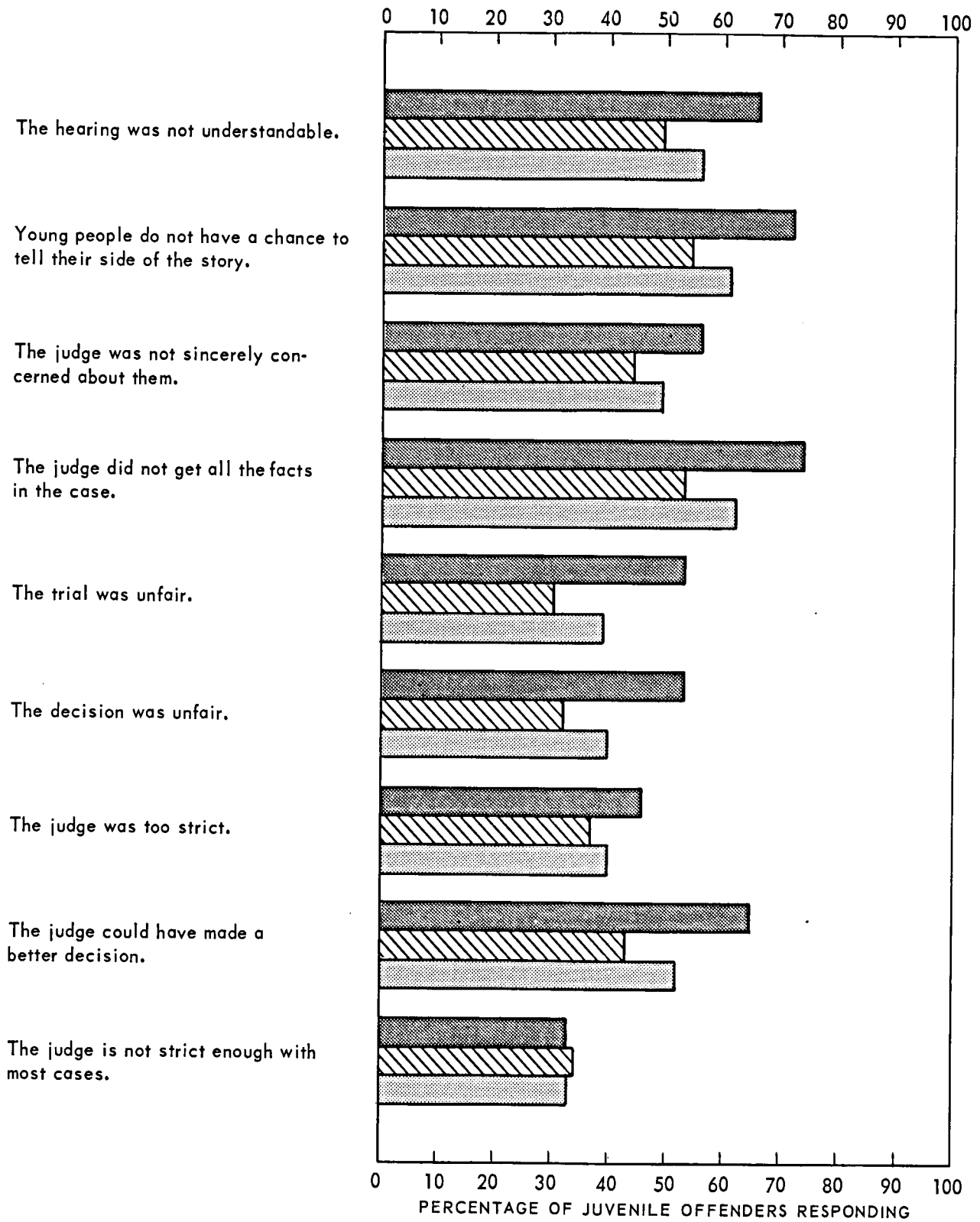
## FIGURES

Figure 1 — Comparison of Unfavorable Attitudes of Institutionalized  
Youths and Probationers toward the Court Process


Figure 2 — Relationship between Fairness of Both the Trial and the  
Decision and Attitudes of Juveniles


Figure 3 — Points in Juvenile Court Process for Offender Participation


Table I — Summary of Attitudes Toward the Concept of Offender Participation



**Fig. 1—Comparison of Unfavorable Attitudes of Institutionalized Youths and Probationers toward the Court Process**

 Institutionalized (N = 40)

 Probationers (N = 60)

 Total (N = 100)

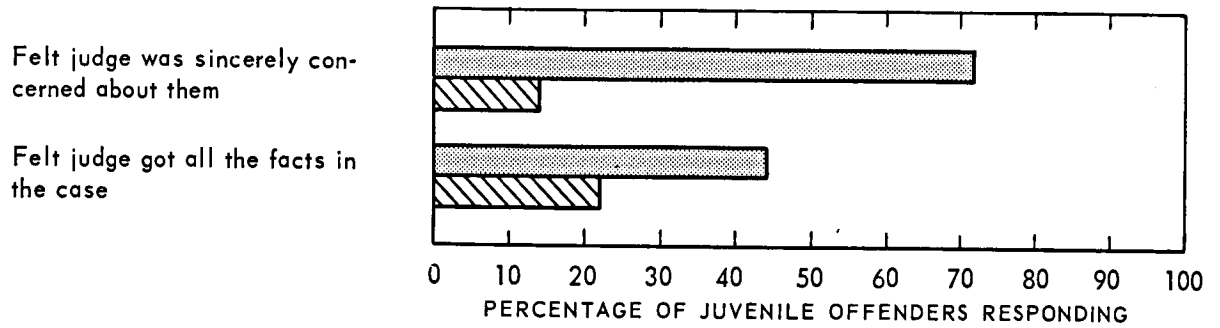


Fig. 2 — Relationship between Fairness of Both the Trial and the Decision and Attitudes of Juveniles

Fair trial + decision (N = 50)
  Unfair trial + decision (N = 29)



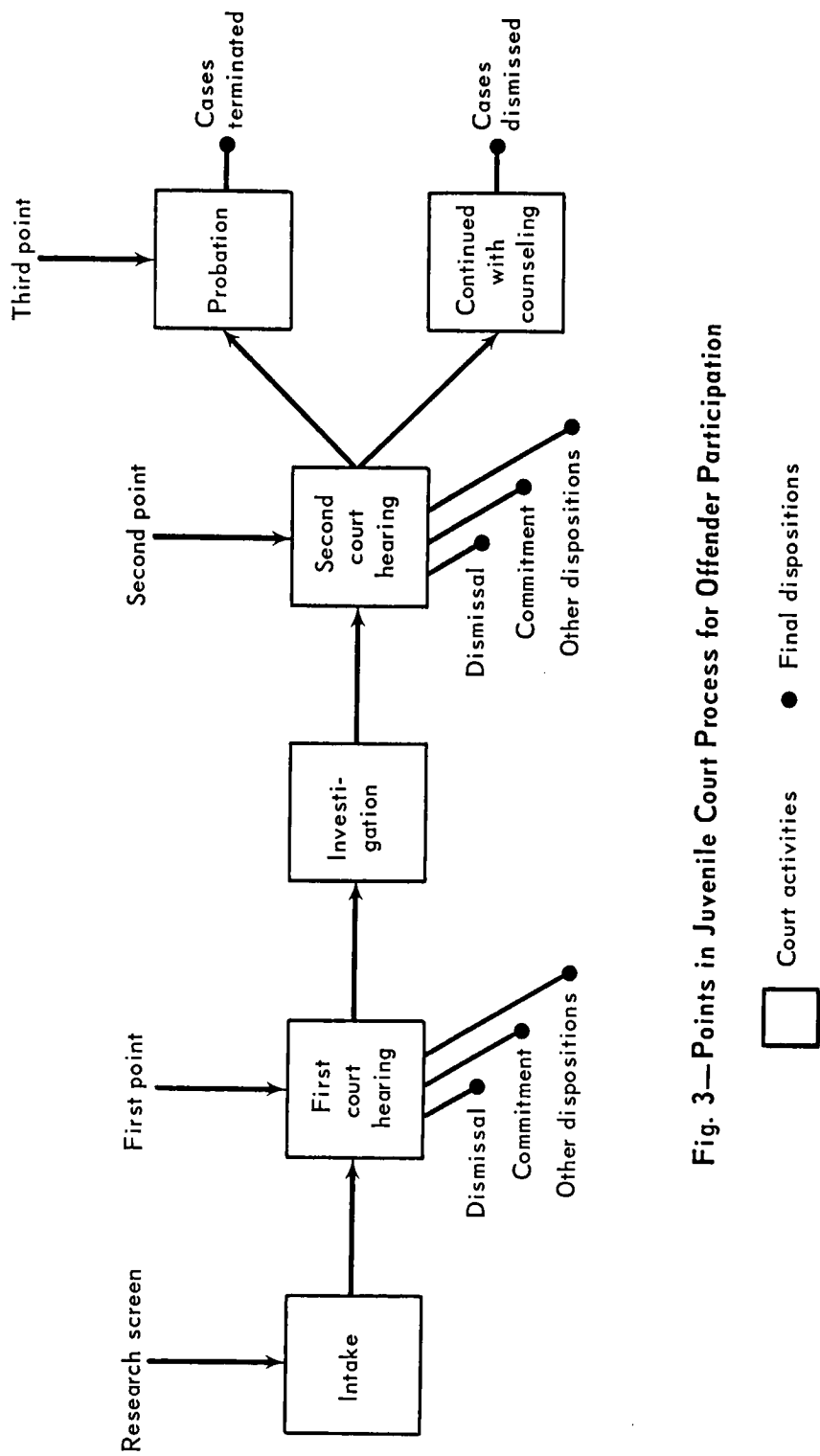


Fig. 3—Points in Juvenile Court Process for Offender Participation

TABLE I

## SUMMARY OF ATTITUDES TOWARD THE CONCEPT OF OFFENDER PARTICIPATION

Question	Response	
	Agree	Disagree
1. Young people <u>over 13 yrs. of age</u> should be given an opportunity to participate in making a decision in their own case.*	82 percent	18 percent
	Typical Responses	
2. If you agree, why?	<ol style="list-style-type: none"> <li>1. <u>They are responsible and mature enough to make their own decisions:</u> "They are old enough to make their own decisions"; "They know what their own problems are and how best to solve them."</li> <li>2. <u>It would be more fair:</u> "They have a right, it's only fair"; "They should have a say in what happens to them"; "It's their life, it involves them and they have to suffer the consequences."</li> <li>3. <u>It would improve the judge's decision:</u> "It would help the judge to understand them better and thus make a better decision"; "He doesn't know the whole situation nor does he know the individual very well."</li> <li>4. <u>It should be selective participation:</u> "It depends on the case and the maturity of the person."</li> </ol>	
3. If you disagree, why?	<ol style="list-style-type: none"> <li>1. <u>Youth are too immature and irresponsible:</u> "They don't know enough about the court"; "They are too young, they don't realize how serious what they've done is and don't have enough responsibility or maturity to make a decision like that"; "They should be 15 or 16."</li> <li>2. <u>That's what the judge is trained for:</u> "That's what the judge is there for"; "It's his job and his duty"; "He knows what's best."</li> <li>3. <u>They would recommend no punishment:</u> "They would be too easy on themselves and decide not to be punished."</li> </ol>	

\*About 66 percent of the juvenile offenders questioned felt that "all young people who come before the juvenile court should have a chance to say what they think should be the judge's decision in their case." Their responses to the question of why or why not were identical to those listed here but with more youths answering that there should be an age limit for participation.